

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-74**

### **PROCEDURAL HISTORY**

On June 10, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an individual (Complainant) regarding the provision of specially designed instruction to students (Students)<sup>1</sup> attending the Kent School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Students' education.

On June 14, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. As an initial matter, OSPI asked the District to provide it with detailed information on the class of Students – including, in part, a description of the Inclusive Education Classrooms (IECs) and a list detailing each IEC in the District. On June 22, 2022, the District provided OSPI with the requested information.

On June 24, 2022, OSPI selected four classrooms for investigation as being representative of the larger class. OSPI's June 24, 2022 letter read, in part: "the principal purpose of this investigation will be to determine whether the foregoing classes were staffed in such a manner as to permit the provision of specially designed instruction to each student in the class." In its June 24, 2022 letter, OSPI asked the District to provide greater detail on the four classrooms selected for investigation.

On July 1, 2022, OSPI clarified various deadlines related to this investigation. In that letter, OSPI stated, in part, the purpose of the investigation was to examine "staffing and implementation of special education services for when the [selected] program classrooms met" and that provision of services outside those classrooms, i.e., in the general education setting, "would not fall within the purview of [the] investigation."<sup>2</sup> In its July 1, 2022 letter, OSPI extended, at the District's request, the deadline for the District's response to the complaint request – OSPI also implemented a brief extension of the deadline for the decision due to the presence of exceptional circumstances.

On July 15, 2022, OSPI received the District's response to the complaint and forwarded a redacted copy to the Complainant.<sup>3</sup> OSPI invited the Complainant to reply.

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<sup>1</sup> The class was those Students with individualized education programs (IEPs) who were educated in the District's "Inclusive Education Classrooms" (IEC) during the 2021-2022 school year. According to the District, IECs "refers to every special education [setting] classroom in the District".

<sup>2</sup> Additionally, implementation of specialist services, such as occupational therapy, physical therapy, speech language therapy, etc., were also not investigated as part of this investigation as the complaint did not include allegations related to related services providers.

<sup>3</sup> The Family Educational Rights and Privacy Act (FERPA) required OSPI to not provide the Complainant with personally identifiable information on Students for whom OSPI had not received a signed release permitting OSPI to share said information with the Complainant.

On July 29, 2022, OSPI received additional information from the District. OSPI forwarded a redacted copy of that information to the Complainant on August 1, 2022.

On July 29, 2022, OSPI received additional information from the Complainant. OSPI forwarded a copy of that information to the District on August 1, 2022.

On August 18, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on August 19, 2022. OSPI forwarded that information to the Complainant on August 26, 2022.

On August 19, 2022, OSPI's investigator conducted separate Microsoft Teams interviews of special education teachers 1, 2, and 3.

On August 22, 2022, OSPI's investigator conducted a Microsoft Teams interview of a paraeducator.

On August 23, 2022, OSPI's investigator conducted a Microsoft Teams interview of special education teacher 4.

On August 24, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on August 29, 2022. OSPI forwarded that information to the Complainant on August 29, 2022.

On August 24, 2022, due to the presence of exceptional circumstances, including the nature of an extensive class action complaint and OSPI needed, but not having been provided, previously-requested information, OSPI implemented a brief extension of the due date for its decision.

OSPI considered all information provided by the Complainant and the District as part of its investigation. OSPI also considered information provided during interviews.

### **SCOPE OF INVESTIGATION**

Any information included from events prior to the 2021-2022 school year is mentioned for informative, background purposes only.

### **ISSUES**

1. During the 2021–2022 school year, did the District follow proper procedures for implementing the individualized educational programs (IEPs) for those Students in the District's Inclusive Education Classrooms?

### **NATURE OF COMPLAINT AND INVESTIGATION**

Given the nature of this complaint – and the subsequent investigation, OSPI does want to clarify several matters.

First, in any given classroom, a paraeducator can be present in the room, and not necessarily be providing specially designed instruction. For example, a paraeducator may be present to assist a student in staying on task and/or managing behavior. In other words, the existence of a certain staff-to-student ratio does not, in and of itself, mean a particular student or students were not able to access specially designed instruction.

Second, paraeducator support is not the only tool available to IEP teams and districts to ensure students are able to access their respective IEP services; other models and administrative interventions are available<sup>4</sup> – including, in part, having students receive a greater share of their specially designed instruction in either a *general education setting* or by general education staff.

Third, LEAs are responsible for providing FAPE to students eligible for special education, including specially designed instruction and related services that are provided by appropriately qualified staff. State and federal law do not mandate a specific staffing ratio or model; those are local determinations of what staffing is needed to enable FAPE to be provided to all eligible students.

Accordingly, the basis for the determinations included in this decision, see below, are based principally on staff interviews regarding whether students were able to fully access the specially designed instruction they were supposed to be able to access in the various *special education settings*; and, available progress reporting. Paraeducator staffing levels in the various classrooms was not the sole determinant of whether students were able to access their respective IEP services.

## **LEGAL STANDARDS**

IEP Implementation: Each district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. “When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district’s violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9<sup>th</sup> Cir. 2006).

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<sup>4</sup> See generally WAC 392-172A-02090.

Appropriate relief in the form of compensatory education is "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). Compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA. *Maine School Administrative District No. 35 v. Mr. and Mrs. R. ex rel. S.R.*, 321 F.3d 9, 38 IDELR 151 (1<sup>st</sup> Cir. 2003). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

## **FINDINGS OF FACT**

### **Background**

1. The Complainant alleged that necessary paraeducator staffing was not present in numerous *special education setting* classrooms throughout the District during the 2021-2022 school year - such that Students were unable to meaningfully access the specially designed instruction in their respective IEPs.
2. As part of its investigation, OSPI selected a representative sampling of special education setting classrooms. OSPI selected different program types, as well as different grade levels and schools. For investigation, OSPI selected: an Early Childhood Special Education (ECSE) classroom at an elementary school; a Support Center classroom at a separate elementary school; a School Adjustment program at a middle school; and, an Integrated Program at a high school.<sup>5</sup>

### **Early Childhood Special Education**

3. The ECSE IEC program selected for investigation was a preschool level program at a District elementary school.

The District described its ECSE IEC program as one that "provide[d] specially designed instruction and services to students with IEPs [that were of] 3 – 5 years of age."

4. According to the Complainant, the ECSE teacher (special education teacher 1) told the Complainant "she was able to provide the services as dictated by [her Students' IEPs] because her paraeducators, who supported her students, returned to her program and [it] was fully staffed."

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<sup>5</sup> After these 4 classrooms were selected by OSPI, the Complainant informed OSPI's investigator he had spoken with 5 other teachers that also stated their respective classrooms were not sufficiently staffed with paraeducators, such that the provision of IEP services were disrupted.

5. In its response, the District stated 5 individuals “were assigned to the two ECSE classrooms” as paraeducators at the District elementary school.

According to the Complainant, though, special education teacher 1 stated only 3 of these paraeducators actually “work[ed] in her program”:

[REDACTED]<sup>6</sup>

According to the District: [REDACTED] was present from August 26, 2021 through June 20, 2021; [REDACTED] was present from August 26, 2021 through October 8, 2021; and, [REDACTED] was present from November 1, 2021 through June 20, 2022.

6. According to the District’s response, there were 13 Students in special education teacher 1’s ECSE class.

According to their respective IEPs, these 13 Students were to be provided with the following: (a) specially designed instruction, related services, and/or supplementary aids and services in a *special education setting*; and, (b) paraeducator support, if applicable:

[REDACTED]

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]
- 5. [REDACTED]
- 6. [REDACTED]
- 7. [REDACTED]
- 8. [REDACTED]
- 9. [REDACTED]
- 10. [REDACTED]
- 11. [REDACTED]
- 12. [REDACTED]
- 13. [REDACTED]

[REDACTED]

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<sup>6</sup> The District’s response also mentioned paraeducators [REDACTED] as having worked in the ECSE environment. Based on the information provided by the Complainant, then, OSPI understands that [REDACTED] likely worked in the second ECSE classroom at the District elementary school – a classroom not being investigated as part of this complaint.



[REDACTED]

[REDACTED]

[REDACTED]

7. The progress reporting on the following Students in Classroom 1 included:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. On August 19, 2022, OSPI’s investigator interviewed special education teacher 1. The investigator’s notes of that interview are as follows:

**Question:** Based on information provided thus far, I see that: for most of the school year, there two paraeducators present in the classroom. But I also note that there was an approximate 3 week gap in mid-to-late October 2021 between when [REDACTED] left and [REDACTED] started. Did the presence of only 1 paraeducator ([REDACTED]) impact the Students’ ability to progress on IEP during this time, and/or prevent them from accessing certain services?

**Answer from special education teacher 1:** ‘It was hard [and] difficult [during these three weeks]...I was able to target Student’s and meet their IEPs goals and was able to be creative with staffing by having specialists like therapists come in and do their services with various students so that I could work with a smaller group of students.’<sup>7</sup> ‘I do not feel like IEPs went out of compliance at that time.’

**Scheduling:** The class met Monday, Tuesday, Thursday, and Friday – no Students were seen on Wednesdays. There was a 2.5 hour AM session – all 13 students were present and there was 1 peer model (*gen ed student*) present as well.

In the afternoon, there was an additional 2.5-hour session for a subset of the morning students – this was called ‘Extended Day’. The subset of the 13 students was comprised of: Students [REDACTED]

**Paraeducators:** The two paraeducators (that were there most of the year) were present all day – including the afternoon:

[REDACTED]: provided shared paraeducator support

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<sup>7</sup> Single parentheses denote paraphrasing – a close approximation of what special education teacher 1’s statement.



[REDACTED]: provided shared paraeducator support.

**Concerning Specific Students**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Other:** Special education teacher 1 says this year’s afternoon session (Extended Day) was odd – usually it is 6 or more students in the afternoon session, and, since the afternoon session is for students with extensive needs, this means additional staffing is needed.

‘Paraeducator staffing in our district is impacting students’ ability to progress on goals’

‘I was really bummed that I was selected [for investigation] because I was staffed appropriately to have enough for my students’ needs.’

**Support Center**

- 9. The Support Center IEC program selected for investigation was a fourth and fifth grade level program at a District elementary school.

The District described its Support Center IEC program as follows:  
Students primarily assigned to a Support Center caseload receive specially designed instruction (SDI) addressing their intensive academic and functional needs. Students receiving these services typically have opportunities to participate in the general education curriculum through specially designed instruction at their present level of performance. Instructional content varies based on each student’s IEP. Students with these services may

benefit from spending most of their instructional time in a smaller group setting as their least restrictive environment (LRE), however this can vary by IEP.

10. According to the Complainant, special education teacher 2 told Complainant:

She had IEPs that did in fact fall out of compliance because of the spotty paraeducator support...There were paraeducators that would, at times, be present and there were times when her program was short the necessary support to accommodate the minutes dictated by the IEPs...Not only did she not always have paraeducators working in her program and supporting her students, but the paraeducators she did have were pulled from her program from time to time to work and fill-in other positions in the school throughout the year, causing IEPs to be out of compliance.

According to the Complainant, special education teacher 2 stated the following individuals served as paraeducators in her Support Center classroom during the 2021-2022 school year:

[REDACTED]

According to the District, the foregoing paraeducators were present during the following date ranges:

- [REDACTED] November 29, 2021 to June 20, 2022;
- [REDACTED] : August 26, 2021 to September 29, 2021;
- [REDACTED] : August 26, 2021 to June 20, 2022;
- [REDACTED] : September 30, 2021 to June 20, 2022;
- [REDACTED] : August 26, 2021 "to unknown"<sup>8</sup>; and,
- [REDACTED] : January 13, 2022 to June 20, 2022.<sup>9</sup>

11. According to emails between special education teacher 2, the principal, and the executive assistant – dated July 2022:

- At the start of the school year, paraeducator [REDACTED] served as Student [REDACTED] [REDACTED] 1:1 paraeducator;
- Paraeducator [REDACTED] left the elementary school at some point prior to September 29, 2021;
- Paraeducator [REDACTED] stepped in to serve as Student [REDACTED] 1:1 paraeducator after paraeducator [REDACTED] left, but paraeducator [REDACTED] transferred to either a different school or a different district on or about September 29, 2021;
- Special education teacher 2 stated, "Student [REDACTED] need for support was higher than that of any other student in the classroom";

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<sup>8</sup> The District's response read, in part: "The staff member with access to the specific dates [of employment for this particular paraeducator] is not contracted to work over the summer. The District will supplement as the information becomes available."

<sup>9</sup> The District's response also mentioned paraeducators [REDACTED] as having worked in the Support Center environment. Based on the information provided by the Complainant, then, OSPI understands that [REDACTED] likely worked in the second Support Center classroom at the District elementary school – a classroom not being investigated as part of this complaint.







[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>11</sup> According to the December 2020 IEP, Student [REDACTED] a paraeducator was to provide certain service areas, including social emotional and adaptive SDI, but only when Student [REDACTED] was in the *general education setting*.

<sup>12</sup> Student [REDACTED] IEP did state Student was to receive paraeducator support during *general education settings*, including, in part: "morning meeting, recess, lunch, and specials."

[REDACTED]

[REDACTED]

13. The progress reporting for Students in Classroom 2 included:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



14. On August 19, 2022, OSPI's investigator conducted a Microsoft Teams interview of special education teacher 2. OSPI's investigator's notes from that interview are as follows:

**Schedule for Classroom 2:**

- Mondays through Friday – 5 days a week
- Most of special education teacher 2's students spend 30% of their time in the *general education setting* and the rest of their time with her. Most of special education teacher 2's students went to their *general education settings* for morning meeting, specialists, and lunch.
- Most students are in the class full time – for academic SDI.
- Schedule for a typical day:
  - Students arrive at 8:10 am and school starts 8:30 am with morning meeting or social emotional learning for 30 minutes.
  - 9:00 – 10:00 was for reading SDI.
  - Then, a recess block.
  - Then, math SDI was provided for roughly 10:10 – 11:00.
  - Then, lunch with general education peers.
  - After lunch work: adaptive skills work for approximately 30 minutes – 'adaptive skills SDI is in almost all their IEPs' – and special education teacher 2 tried to incorporate social emotional learning into this time period as well.
  - Then, Students worked on English language arts about 20 minutes – 'I tried to make this more independent time [for the students] to work on adaptive skills too.'
  - 'At 12:40 or 1:00 we went back to math.'
  - Then, the Students would meet with their respective specialist providers.

- o Then, Students were provided with approximately 30 additional minutes of written expression.

**Nature of Classroom 2:** Special education teacher 2 was a 'home room teacher – I teach the core curriculum, math, reading.'

**Paraeducator Matters:** [REDACTED] was hired as a shared paraeducator but ended up being a 1:1; and, while still present, [REDACTED] was in a teacher training program, so she would be frequently absent for about 2 hours out of the day.

[REDACTED] went back to being [REDACTED] full-time 1:1 paraeducator in January 2022 – after [REDACTED] was hired.

There were supposed to be two general paraeducators in the room from the start of the school year, but the second general paraeducator was not hired until November 29, 2021. (The other shared paraeducator was [REDACTED], who was present from the start of the school year.)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>13</sup> According to Student [REDACTED] attendance data, he had [REDACTED]  
[REDACTED]

[REDACTED]

15. On August 22, 2022, OSPI's investigator conducted a Microsoft Teams interview of paraeducator [REDACTED]. OSPI's investigator's notes from that interview are as follows: 'Only having 1 shared paraeducator for [approximately] the first three months did affect some students – because they weren't getting required 1:1 para support. [REDACTED] each struggled in fall 2021 because [we] only [had] 1 shared paraeducator.'

[REDACTED] also struggled to make progress in fall 2021 due to lack of proper 1:1 paraeducator support.

Pretty consistently – once or twice a week, [REDACTED] (shared paraeducator) would get pulled into a different classroom to assist other students.

### **School Adjustment**

16. The School Adjustment IEC program selected for investigation was a seventh and eighth grade level program at a District middle school.

The District described its School Adjustment IEC program as follows: "Students primarily assigned to a School Adjustment caseload receive specially designed instruction (SDI) supporting the development of their social/emotional skills, function, and understanding. Instructional content varies based on each student's IEP. Services are frequently delivered within a small group setting; however, this can vary by IEP."

17. According to the Complainant, special education teacher 3 told Complainant: He was able to provide the services as dictated by the IEPs he managed for two reasons: due to the small number of people on his caseload, he was able to support the IEPs properly; and, he was also given a paraeducator who also support[ed] the work of the IEPs.

According to both the Complainant and the District, the following individual served as a paraeducator in special education teacher 3's School Adjustment program from August 26, 2021 through June 20, 2022: [REDACTED].

18. According to the District's response, there were 7 Students in special education teacher 3's School Adjustment class.

According to their respective IEPs, these 7 Students were to be provided with the following: (a) specially designed instruction, related services, and/or supplementary aids and services in a *special education setting*; and, (b) paraeducator support, if applicable:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>14</sup> Bolded text signifies that services were to be provided concurrently.

<sup>15</sup> The District's response read, in part: "the staff member with knowledge of who provided the 1:1 paraeducator support is not contracted to work over the summer [and thus we cannot furnish this information at this time]."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. The progress reporting on the following Students in Classroom 3 included:

[REDACTED]

[REDACTED]

20. On August 19, 2022, OSPI's investigator conducted a Microsoft Teams interview of special education teacher 3. OSPI's investigator's notes from that interview are as follows:

**Schedule:** First, Second, and Sixth Period represented the School Adjustment *special education setting*: 55 minutes Monday, Tuesday, Thursday, and Friday; and, Wednesdays were early release and periods were 30 minutes.

Thirds, Fourth, and Fifth periods was when [REDACTED] was in push-in to *general education settings*.

These 7 Students were not present for all 3 periods each day: one Student was in both First and Sixth periods: [REDACTED]; the other 6 students were in only 1 period each day.

**Paraeducator** [REDACTED]: She was present during first and sixth periods. It was special education teacher 3's understanding that: [REDACTED] was a program/shared para from a district admin perspective – to help students in gen ed classes.

For second period, [REDACTED] had to go to another class with Student [REDACTED] because that student needed a 1:1 paraeducator in that general education setting. ([REDACTED] did not have a 1:1 paraeducator listed on his IEP.)

[REDACTED]: During the 1 *special education setting* period [REDACTED] was present in Classroom 3, it was to work on behavioral and social emotional.

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<sup>17</sup> According to the District's attendance data, Student [REDACTED] had a total of [REDACTED]

During this one class, [REDACTED] would work with the whole class – not as a 1:1 paraeducator for [REDACTED].

Special education teacher 3 believes [REDACTED] needed a functional 1:1 paraeducator in second period (outside Classroom 3) but was ok with only shared paraeducator support while in Classroom 3 because special education teacher 3's class was a low number of students.

[REDACTED] was present first period in Classroom 3 *special education setting*, he received *shared* paraeducator support.

Student was supposed to 'come up from elementary' with a 1:1 paraeducator but there was no one available for that position at that time 'so we made it work.'

After the May 2022 IEP, they'd 'sometimes' and/or 'sporadically' have a substitute paraeducator come in and serve as this Student's 1:1.

If [REDACTED] did not go to his general education math class for period 2 – and stayed in special education teacher 3's class, he did not have any paraeducator support.

Two things held this Student back: this student needed someone with him all the time (a 1:1 paraeducator) – and this was not provided; and, there was stuff 'outside our control' at home where student was not attending – Student would sometimes miss instruction for weeks at time.

### **Integrated Program**

21. The Integrated Program IEC program selected for investigation was an eleventh and twelfth grade level program at a District high school.

The District described its Integrated Program IEC program as follows: "Students primarily assigned to an Integrated Program (IP) caseload receive specially designed instruction (SDI) addressing the mild to moderate differences in their instructional needs. Instructional content varies based on each student's IEP. Services may be provided in any setting, based on the student's IEP."

22. In its response, the District stated there were six Integrated Program IECs at the District high school, and that five paraeducators worked across these 6 classrooms.<sup>18</sup>

According to the Complainant, though, special education teacher 4 stated four of these paraeducators "did not support special education teacher 4's program and did not aid in meeting the needs of her student's IEPs."<sup>19</sup> As regards the remaining paraeducator – [REDACTED] the Complainant stated: "She worked as a 1:1 [paraeducator] with a student and

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<sup>18</sup> [REDACTED]

<sup>19</sup> [REDACTED]



although she supported that student, she did not support special education teacher 4's program."

In additional information submitted during this investigation, the Complainant stated, in part:

Special education teacher 4 stated that she was out of compliance with some of her students because she was never provided paraeducator support despite asking repeatedly.<sup>20</sup> She was told there wasn't anyone available. After repeated requests were denied she stopped asking and said she decided to try to do her best but knew she would not be able to be in full compliance.

She shared that throughout the 2021-2022 school year she had roughly 12-15 [students] in [each of] 3 [separate] periods back-to-back<sup>21</sup> and had to attempt [to] plan, teach, collect data, monitor, and fully support the needs of all the students with no help or support apart from the [a] 1:1 paraeducator...who supported exclusively their student.<sup>22</sup>

Collectively she had between 36-40 students to monitor and collect data for all within her first 3 periods of each day.

...

When I asked her how many students, she thought had their IEP's out of compliance? She stated, 'at least 10 students were out of compliance, some out of compliance as far back as October 2021.'

During testing (SBA) there were so many students who needed specific accommodations, (manipulatives, readers for math, small group instruction), that she was unable to provide the support for because she wasn't given any addition para support...She gave the support she could, unfortunately she had kids in the same class who were not testing alongside students who were testing due to the testing schedule, and this caused some irregularities. She had approximately 12-15 students who were testing and the rest were not testing.

I asked if she could give me an example of the type of accommodation, she was unable to provide but could have been handled if she had had the proper para support. Special education teacher 4 responded with the example that some students needed their math problems and answers read to them but that couldn't be done because she was the only person in the room, and it would have been a disruption to the others. If she had been

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<sup>20</sup> In its response, the District stated, in part: "The District performed an email search designed to identify emails [wherein special education teacher 4 requested paraeducator support]. The search did not reveal any email in which special education teacher 3 articulated [a] request for paraeducator support in her Integrated Program classrooms."

<sup>21</sup> In a July 28, 2022 email to the Complainant, special education teacher 4 stated the periods she taught were three resource math classes, each with "approximately 12 to 14 special education students...ranging from 9<sup>th</sup> to 12<sup>th</sup> grade. Many of these students were not on my caseload to I needed to provide data to the other special education teachers who had their students in my class."

<sup>22</sup> In special education teacher 4's July 28, 2022 email to the Complainant, she referenced that a 1:1 paraeducator, at least occasionally, "came into [her] 1<sup>st</sup> period class but [this individual] was a 1:1 paraeducator for a fragile student."

provided a paraeducator that person could have taken a small group out to a quiet space and support those students without disrupting the others in the class.

23. In a July 28, 2022 email to the Complainant, special education teacher 4 wrote, in part: "As a result of not having any type of paraeducator support, some of my students' [IEPs] were out of compliance...By the end of the school year, there were approximately 10 students whose IEPs were out of compliance."

24. On August 23, 2022, OSPI's investigator conducted a Microsoft Teams interview of special education teacher 4. OSPI's investigator's notes from that interview are as follows:

**Nature of Class:** The purpose of the 3 Integrated Program periods was for students to receive SDI in math; students in the 3 Integrated Program periods were not to receive other SDI while in those periods.

**Period 1:** There was only 1 paraeducator present during the First Period – and this paraeducator worked as a 1:1 with [REDACTED].

Student [REDACTED] 'had an excellent para...she was awesome. If it was not for her, [REDACTED] would not have progressed' as well as he did. 'He did exceptionally well with her help.'

[REDACTED] paraeducator 'felt bad for me because I did not have any more assistance with all the students I had.'

**Period 2:** 'My second period class was the most challenging for behavior. Students that would come in and disrupt the class...some students were argumentative.'

**Question and Response Re: IEPs Out of Compliance Due to Staffing**

Investigator's Question:

In your email to Complainant, you mention about 10 students whose IEPs were out of compliance. Do you recall their names?

Answer:

'If they were failing [and those] students that had behavioral challenges...There were a couple Students that I failed and those Students definitely regressed' in their respective IEP math goals.

'If you look at the Students I failed at the end of the school year...those are the Students that did not progress well on their specially designed instruction in math.'

25. Special education teacher 4's Integrated Program at the District high school consisted of three classes, each of which met in the morning for 45 to 50 minutes (Periods 1 – 3). And those periods met 5 times a week – Monday through Friday.

26. The following information is related to Classroom 4 – **Period 1:**

- For the fall semester, the class had twelve students.

- For the spring semester, the class had fourteen students.
- Throughout the school year, 6 of the Students in the classroom had social, emotional, and/or behavioral needs on their respective IEPs.
- Throughout the school year, 6 Students received either a D or F for at least one semester.
- According to the teacher, student [REDACTED] needed a 1:1 paraeducator and was provided with the same while in Period 1.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]<sup>25</sup>

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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<sup>26</sup> OSPI could not locate either IEPs or progress reporting data for this Student in the District's response.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. The following information is related to Classroom 4 – **Period 2**:

- For the fall semester, the class had twelve students.
- For the spring semester, the class had fourteen students.
- Of the fourteen students listed below, eight received behavioral and/or SEL services.
- Of the fourteen students listed below, six received a D-grade and two received an F-grade during the school year.
- It is OSPI's understanding, based on the interview with special education teacher 4, that no paraeducators were present during Period 2.

[REDACTED]





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. The following information is related to Classroom 4 – **Period 3**:

- Over the course of the 2021-2022 school year, there were 12 Students in Period 4.
  - Of these 12 Students, 8 Students had either social emotional and/or behavioral specially designed instruction.
- Regarding paraeducator presence: special education teacher 4 stated, in interview with OSPI's investigator: on somewhat rare occasions, there was a shared paraeducator present to assist with behavior – special education teacher 4 estimates this shared present was present '10% of the time.' Special education teacher 4 did not recall where



or why this paraeducator was getting pulled into other classrooms and/or to work with students outside Period 3 – again, according to special education teacher 4, approximately 90% of the time.

- Of the 12 Students in the classroom, 4 Students got failing grades at some point in the school year.

**Semesters 1 and 2**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

| [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## CONCLUSIONS

**Issue 1: IEP Implementation** – The Complainant alleged the staffing in the District was such that Students in IEC classes were unable to access the specially designed instruction they were supposed to be provided during those classes.<sup>27</sup> OSPI selected four classrooms/programs, Classrooms 1-4, to review as part of this investigation.

As stated above, the basis for the determinations included in this decision, see below, are based principally on staff interviews regarding whether students were able to fully access the specially designed instruction they were supposed to be able to access in the various *special education settings*; and, available progress reporting. Though, here, it is notable that several of the teachers OSPI interviewed as part of its investigation stated: paraeducator staffing levels did, at times, limit Students' ability to access their respective IEP services.

A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

### Classroom 1

Here, the Complainant stated special education teacher 1 told him: "she *was able* to provide the services as dictated by [her Students' IEPs] because her paraeducators, who supported her students, returned to her program and [it] was fully staffed." (Emphasis added.) And, during an interview with OSPI's investigator, special education teacher 1 confirmed this statement, and was able to speak, in detail, to various Students' progress on their respective IEP goals throughout the 2021-2022 school year.

For example: there were 13 Students in Classroom 1; four Students had an IEP that stated certain services were to be provided by a paraeducator [REDACTED]; [REDACTED]; for most of the school year, there were three general paraeducators present in Classroom 1<sup>28 29</sup>; and, the four Students who had an IEP that stated certain services were to be

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<sup>27</sup> The Complainant did not allege, and this investigation did not relate to, whether these Students received appropriate specialist services (for example, occupational therapy, physical therapy, speech language pathology, etc.). Nor did this investigation relate to whether the specially designed instruction that was to be provided to these Students in *general education settings* was materially implemented.

<sup>28</sup> [REDACTED] was present from August 26, 2021 through June 20, 2021; [REDACTED] was present from August 26, 2021 through October 8, 2021; and, [REDACTED] was present from November 1, 2021 through June 20, 2022.

<sup>29</sup> During the approximate three week period in late October when there were only two shared paraeducators present in the classroom, special education teacher 1 stated (in her interview with OSPI's investigator) she was still able to implement Students' service minutes because, in part, she was 'able to be

provided by a paraeducator all made sufficient progress on their social emotional, academic, and/or adaptive IEP goals throughout the 2021-2022 school year. Accordingly, OSPI finds no IEP implementation violation in relation to Classroom 1, as it appears all Students were able to access their respective *special education setting* IEP services.

### Classroom 2

As detailed in the Statement of Facts, above, this investigation revealed two challenges with the provision of specially designed instruction in Classroom 2, and it appears these challenges impacted the Students' ability to access relevant IEP services.

First, Students ██████████ were both supposed to receive a 1:1 paraeducator. From approximately September 30, 2021 through January 12, 2022, though, these two Students only received shared paraeducator support. By way of explanation: paraeducator ██████████ was supposed to be ██████████ 1:1 paraeducator, but, as ██████████ was not provided with a 1:1 paraeducator beginning on or about September 29, 2021, paraeducator ██████████ stepped in to serve as a shared paraeducator for both Students. And, during their respective interviews with OSPI's investigator, both special education teacher 2 and paraeducator ██████████ stated these Students experienced a relative lack of progress on IEP goals in fall 2021 due to not receiving proper paraeducator support.

Second, there were several occurrences that strongly suggest other students in Classroom 2 (besides Students ██████████) were not able to fully access the specially designed instruction they were supposed to be able to access. For example: (1) the staff interviews conducted during this investigation showed at, at least on occasion between September 30, 2021 and January 12, 2022, special education teacher 2 served as the 1:1 paraeducator for ██████████, and, on those occasions during which special education teacher 2 was serving as ██████████ 1:1 paraeducator, it is not clear how the other students in Classroom 2 were supposed to receive the specially designed instruction in their respective IEPs – those services special education teacher 2 would have normally provided; (2) during their respective interviews with OSPI's investigator, special education teacher 2 and paraeducator ██████████ both stated there were supposed to be two shared paraeducators in Classroom 2, but the second shared paraeducator ██████████) was not present in Classroom 2 until November 29, 2021; and, staff also stated that, in spring 2022, shared paraeducator ██████████ was pulled from Classroom 2 at least semi-regularly – meaning, on a semi-regular basis, only one shared paraeducator was present in Classroom 2.

And, importantly, the relevant progress reporting data strongly suggests the foregoing occurrences negatively impacted the other Students' ability to progress on their IEP goals. For example: (1) Student ██████████ made little to no progress on most IEP goals throughout the

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creative with staffing by having specialists [such as] therapists come in and do their services with various students so that I could work with a smaller group of students.'

2021-2022 school year; (2) Students [REDACTED] made comparatively minimal progress in fall 2021 but made more significant progress in spring 2022; and, (3) some Students had mixed progress during the 2021-2022 school year – they made progress on some goals, but did not progress on other goals. For example, in relation to the aforementioned Category 3: Student [REDACTED] made limited progress in Reading Comprehension, Basic Reading Skills, and Written Expression; Student [REDACTED] made limited progress in Social emotional, adaptive 1, basic reading, writing skills, and written expression; [REDACTED] made limited progress in Written expression, adaptive 1, and basic reading skills; and, [REDACTED] made limited progress in Social Emotional.

In conclusion, as per staff statements and progress reporting, this investigation revealed challenges with the provision of specially designed instruction to the Students in Classroom 2 and thus OSPI finds a violation.

### Classroom 3

Classroom 3 was a School Adjustment program at a middle school. OSPI's investigation revealed service implementation issues in relation to the following two Students:

Student [REDACTED]: Special education teacher 3 stated in an August 19, 2022, interview that Student [REDACTED] required a 1:1 paraeducator - specifically, special education teacher 3 stated Student [REDACTED] was supposed to 'come up from elementary'<sup>30</sup> with a 1:1 paraeducator but there was no one available for that position at that time 'so we made it work.' The two documents below mention [REDACTED] receiving 1:1 paraeducator support:

*Program Accommodations/Modifications and Support for School Personnel*, [REDACTED] mentions paraeducator support for [REDACTED] daily across all settings until [REDACTED]. *Special Education and Related Services (Amendment)*, [REDACTED], mentions 1:1 paraeducator support for [REDACTED] through [REDACTED] in special education for 500 minutes per week and in general education for 440 minutes per week, and from August 1, 2022 through October 28, 2022, [REDACTED] is to receive 1:1 paraeducator support for 500 minutes per week in special education and 1,380 minutes in general education. Despite this fact, when [REDACTED] was in Classroom 3, he only received shared paraeducator support – for almost the entirety of the 2021-2022 school year.<sup>31</sup> This represents a material failure to implement the IEP.

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<sup>30</sup> Single parentheses denotes paraphrasing – a close approximation of the statement by special education teacher 3.

<sup>31</sup> In the interview with OSPI's investigator, special education teacher 3 stated: after the creation of the Student's [REDACTED] IEP, they would 'sometimes' and/or 'sporadically' have a substitute paraeducator come in and serve as this Student's 1:1.

██████████ most recent progress reports provided that he was making insufficient progress to meet his goals in each of the four areas in which he was receiving specially designed instruction. Those progress reports, which are dated October 2021 through June 2022, indicate that he made no progress for almost the entire school year. And, in the interview with OSPI's investigator, special education teacher 3 stated one element of the Student's instructional environment that prevented Student from making progress on his IEP goals was that he was not provided with the paraeducator support included in his respective IEPs. Accordingly, OSPI finds a violation.

Student ██████████ Regarding this Student, 1:1 paraeducator support was not listed in the Students May 18, 2021 or February 8, 2022 IEPs. Despite these documents, special education teacher 3 stated in an August 19, 2022, interview that Student ██████████ needs a 1:1 paraeducator in general education classes, but he is okay with only shared paraeducator support in special education because of the low number of students. OSPI therefore recommends Student ██████████ IEP team meet to specifically determine the extent to which he requires paraeducator support – both what type of paraeducator support and in which settings – and that the Student's IEP be amended accordingly.

#### Classroom 4

Special education teacher 4's Integrated Program at the District high school consisted of three classes, each of which met in the morning for 45 to 50 minutes (Periods 1 – 3). And, those periods met 5 times a week – Monday through Friday. The purpose of the 3 Integrated Program periods was for students to receive SDI in math; students in the 3 Integrated Program periods were not to receive other SDI while in those periods. As the Statement of Facts, above, demonstrate, several patterns were applicable to Periods 1 -3.

First, Students in these periods were to receive a range of specially designed instruction in math during said periods. For example, while each Student was to receive a distinct amount of specially designed instruction in math, most Students were to receive anywhere from 20 minutes 5 times a week to 50 minutes 5 times a week of specially designed instruction in math during their respective Integrated Program period.

Second, a fairly significant portion of Students in each period had social, emotional, and/or behavioral needs. For example: for period 1, of the 14 Students that were in the period throughout the school year, 6 of the Students in the classroom had social, emotional, and/or behavioral needs on their respective IEPs; for period 2, of the 14 students in the period, eight received behavioral and/or SEL services; and, for period 3, of 12 Students, 8 Students had either social emotional and/or behavioral specially designed instruction.

Third, the paraeducator support that was available during these periods appears to have consisted exclusively of the following: in period 1, Student ██████████ was provided with a 1:1 paraeducator; and, for period 3, special education teacher 3 stated a paraeducator was available to provide shared paraeducator support for social, emotional, and behavioral needs for a total of perhaps '10% of the time.' (From teacher interviews and the documentation provided to OSPI

during this investigation, it is OSPI's understanding no consistent paraeducator support was provided in Period 2.)

Fourth, during her interview with OSPI's investigator, special education teacher 4 stated: she requested paraeducator support for her students' social, emotional, and/or behavioral needs throughout the 2021-2022 school year<sup>32</sup>; no such additional support was provided; and, the relative lack of paraeducator support for social, emotional, and/or behavioral needs negatively impacted many of her students' ability to access their respective math SDI. Special education teacher 4 explained that those students that received failing grades at any time during the 2021-2022 school year were those students who were unable to progress on their respective math goals because of their respective social, emotional, and/or behavioral needs were not being sufficiently addressed during Periods 1 – 3. And: for period 1, 6 Students received either a D or F for at least one semester; for period 2, 6 Students received a D-grade and two received an F-grade during the school year; and, for period 3, 4 Students got failing grades at some point in the school year. Additionally, progress reporting shows: most all the Students that received failing grades for their Integrated Program math period at any point during the 2021-2022 school year either did not make progress on their respective math goals, and/or the District was unable to provide progress reporting entries for the same.

Accordingly, on the basis of the above, OSPI finds: it appear that many Students in Periods 1 – 3 did not have their social, emotional, and/or behavioral needs addressed in a sufficient matter – and that this negatively impacted their ability to access their respective math IEP services. Thus OSPI finds a violation with respect to the implementation of IEPs.

#### Other Classrooms

Even though special education teacher 1 stated she was able to provide the necessary SDI to the Students in Classroom 1, it is significant that: special education teacher 1 stated she knew other *special education setting* classrooms did not have sufficient paraeducator staffing – such that students were not able to fully access their respective IEP services. Further, during the investigation, the Complainant informed OSPI's investigator he had spoken with 5 other teachers that also stated their respective classrooms were not sufficiently staffed with paraeducators, such that the provision of IEP services were disrupted.

Accordingly, compensatory education is likely warranted for some students educated in *special education settings* during the 2021-2022 school year.

### **CORRECTIVE ACTIONS**

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<sup>32</sup> In its response, the District stated, in part: "The District performed an email search designed to identify emails [wherein special education teacher 4 requested paraeducator support]. The search did not reveal any email in which special education teacher 3 articulated [a] request for paraeducator support in her Integrated Program classrooms."



By or before **October 7, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

**DISTRICT SPECIFIC:**

Compensatory Specially Designed Instruction for Select Students

On June 22, 2022, the District provided OSPI with a list of approximately 160 Inclusive Education Classrooms (IECs) for the 2021-2022 school year. (Based on this investigation, IECs represented special education setting classrooms wherein students with IEPs were to receive certain services.)

By or before **October 7, 2022**, the District will:

- (1) Conduct a review of the classrooms included in the District's June 22, 2022 letter;
- (2) Identify each student that was to be educated in an IEC for any portion of the 2021-2022 school year and who falls within any of the following categories:
  - (a) had an IEP that stated that Student required a 1:1 paraeducator;
  - (b) had an IEP that stated that Student required shared paraeducator support; and/or,
  - (c) had an IEP that stated a paraeducator was to provide certain specially designed instruction while the Student was in a *special education setting* – in other words, if an IEP lists a paraeducator as the provider in the service matrix;
- (3) Determine whether appropriate paraeducator services were provided to each Student identified by Step 2, above;
- (4) To the extent appropriate paraeducator services were not provided to any particular Student, propose what the District believes is a reasonable offer of compensatory education to that Student – with said offer to reference any available progress reporting on the Student's IEP goals during the 2021-2022 school year, as well as what specially designed instruction the Student was supposed to receive in his or her respective IEC;<sup>33</sup> and,
- (5) Provide OSPI with the District's findings and proposals resulting from the above-stated review.

***Importantly, the District's October 7, 2022 submission should include a statement from the relevant classroom teacher regarding whether the Students in his or her classroom that had paraeducator support listed in their respective IEPs were able to access the same, unless a particular teacher is no longer employed by District.***

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<sup>33</sup> As stated above, this decision – and this compensatory education remedy, does not relate to either specialist services or specially designed instruction that was to be provided in a general education setting.

In relation to the specific classrooms investigated as part of this complaint:

Classroom 1 does not need to be included in the District's review.

The District's review of Classroom 2 can consist solely of its determination of reasonable compensatory education offers for Students [REDACTED]

The District's review of Classroom 3 can consist solely of its determination of a reasonable compensatory education offer for Student [REDACTED]

The District's review of Classroom 4 should relate to: whether any Students in Periods 1 – 3 had IEPs that included a paraeducator providing SDI in math in a *special education setting*; to the extent any Student's IEP did include such services, whether those services were provided; and, if not provided, determination of a reasonable compensatory education offer to account for the same.

Upon receipt of the foregoing, OSPI will determine additional corrective actions and deadlines, as warranted under the circumstances – whether this would be compensatory education administered to individual Students or a winter or summer tutoring program to be made available to a certain class of Students.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken and will attach any other supporting documents.

Dated this \_\_\_ day of September, 2022.

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)