

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-28**

### **PROCEDURAL HISTORY**

On April 12, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Tacoma School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 15, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 6, 2019, the District requested an extension of time for the submission of its response. On May 6, 2019, OSPI granted the District an extension of time until May 13, 2019.

On May 14, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On May 20, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information the same day. OSPI forwarded that information to the District on May 22, 2019.

On May 20, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information on May 28, 2019, and forwarded the same to the Parent that same day.

On May 28, 2019 and May 30, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information on May 30, 2019, and forwarded the same to the Parent on May 31, 2019.

On May 30, 2019, OSPI's investigator conducted a phone interview with the Parent and a separate phone interview with the District's Assistant Director of Secondary Student Services.

OSPI considered all of the information provided by the Parent and the District as part of its investigation.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on April 13, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

## ISSUES

1. Did the District follow proper procedures for reporting the Student's progress on his annual goals to the Parent, in accordance with the Student's relevant individualized education programs (IEPs), since June 2018?
2. Since June 2018, did the District provide the Student with transportation in a manner that enabled him to access the services included in his relevant IEPs?

## LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

## FINDINGS OF FACT

### 2017-2018 School Year

1. On August 9, 2017, the Student transferred into the District from a different Washington state school district to attend tenth grade. At his previous school district, the Student was eligible for special education and received special education services. However, prior to his transfer to the District, the previous school district exited the Student from special education via "an [individualized education program] IEP review." Upon his enrollment in the District, the District determined that this was inappropriate, both in terms of the process used and the decision reached. The District therefore provided the Student with services comparable to those outlined in his last IEP until it could complete a reevaluation of the Student.
2. On October 31, 2017, the District completed an evaluation of the Student. The Student's evaluation group determined that the Student continued to be eligible for special education under the category of other health impairment. The October 2017 evaluation report recommended that the Student receive specially designed instruction in social emotional/behavioral.
3. Also on October 31, 2017, the Student's IEP team created a new annual IEP for the Student.
4. On March 2, 2018, the District completed a functional behavioral assessment (FBA) of the Student. The March 2018 FBA recommended that a behavioral intervention plan (BIP) be created for the Student.
5. On March 9, 2018, the Student's IEP team created an IEP and a BIP for the Student.
6. According to the District, on April 19, 2018, the Student was emergency expelled and subsequently placed on a short-term suspension through April 27, 2018.
7. On April 26, 2018, the Student's IEP team amended his March 2018 IEP. The April 2018 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from June 23, 2018 through March 9, 2019<sup>1</sup>:
  - Social emotional/behavioral: 165 minutes, 5 times a week (to be provided by a special education teacher)

The April 2018 amended IEP included two measurable annual goals, both of which concerned the area of social emotional/behavioral:

1. By 03/09/2019, when given the opportunity to practice self-regulation of behavior [Student] will use self-regulation strategies such as awareness, observation, monitoring, and/or documentation to control his behavioral choices improving his self-regulation skills from a score of 0/60 on a behavior self-monitoring tool (0%) to a score of 48/60 on a behavior self-

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<sup>1</sup> The April 2018 amended IEP also provided the Student with specially designed instruction from April 30, 2018 through June 22, 2018. This time period, however, is not relevant to the issues in this decision.

monitoring tool (80%) as measured by teacher observation, teacher behavior rating tool, and student self-monitoring data.

2. By 03/09/2019, when given the opportunity to interact with teacher and peers in the classroom setting, [Student] will increase his use of appropriate language throughout the class period (decrease use of foul language), improving his ability to self-regulate from a score of 0 total use of appropriate language out of 6 opportunities (0%) (which means [Student] used inappropriate language at least 1 time in 6 of his 6 class periods) to a score of 5 uses of appropriate language out of 6 opportunities (80%) (which means [Student] used inappropriate language at least 1 time in only 1 of his 6 class periods) as measured by teacher observation, classroom behavior monitoring tool/student behavior self-evaluation tool.

The April 2018 amended IEP stated the Student's progress on his two annual goals would be reported via a written progress report once a semester.

8. On April 26, 2018, the District issued a prior written notice to the Parent. In part, it read:  
The team decided that it would be in [Student's] best interest to return for 3 class periods (a partial day) to the end of the school year. Due to his social emotional/behavioral disability and recent incidents [at Student's school] the team has decided that...providing a special education classroom with limited transitions is the most appropriate placement for [Student] at this time...During the 2018-2019 school year, the team anticipates [Student] returning to a full day schedule.
9. According to the District's response, "on May 31, 2018, the Student was placed on emergency expulsion through June 13, 2018. Student's IEP team met on June 13, 2018 to discuss his educational program."
10. On June 13, 2018, the District issued a prior written notice that read, in part:  
The team met to discuss appropriate services for [Student] after the conclusion of a manifestation determination review. The team agreed that the most recent interventions of a shortened school day, self-contained behavior setting and additional adult support has not been effective in improving [Student's] behavior or his accessing his education. His attendance has declined and there have been increased incidents of truancy and elopement. The team considered [Student's] current services and placement. It was agreed that [Student] would benefit from and needs increased social emotional/behavioral services in a small, more restrictive setting in order to access his education. The team agreed at this time a separate day school would be the most appropriate placement for [Student].
11. On June 13, 2018, the Student's IEP team amended his April 2018 amended IEP. The June 2018 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from June 16, 2018 through March 9, 2019:
  - Social emotional/behavioral: 306 minutes, 5 times a week (to be provided by a special education teacher)

The June 2018 amended IEP included the same two measurable annual goals as the April 2018 amended IEP. The June 2018 amended IEP stated that the Student's progress on his two annual goals would be reported via a written progress report once a semester.

The IEP stated the Student would be enrolled full-time at a nonpublic agency (NPA) that was a "private, self-contained, special education program designed to help students who have behavioral disabilities." While attending the NPA, the Student would have "no opportunity to participate with nondisabled students in the general education class, and in nonacademic and extracurricular activities. [Student] may be able to participate in extra-curricular activities through the District."

### **Summer 2018**

12. In July and August of 2018, the Student attended school at the NPA for approximately five weeks. According to the District, the Student's IEP contained extended school year (ESY) services, which were provided through his summer attendance at the NPA.
13. During the course of this investigation, the Parent provided OSPI with two charts that included Student-specific data gathered by the NPA during the course of ESY services. The Parent stated that she was provided these charts sometime in July and August 2018.

The charts included the following columns: daily points; self-regulation; strategies; behavior intervention; and the Student's grades in his respective classes.

In an interview with OSPI's investigator, the District's assistant director explained that each student that attended the NPA for ESY would have similar looking charts in their respective records.

14. During the investigation of this complaint, OSPI's investigator asked the District's assistant general counsel whether the aforementioned Student-specific data was the only information on the Student shared with the Parent during the summer of 2018. The assistant general counsel responded, in part:

The answer to this question is not clear. [Student's] IEP has progress reporting scheduled for twice a year at the Semester mark, and [Student] was not present at [NPA] at either of the semester-end periods. The attached documentation...tracks both daily behavior related to [Student's] social emotional goals and provides information on [Student's] daily academic progress. [NPA] staff report that the attached report does help track and inform progress towards [Student's] goals and would typically be sent home at parent's request or at a regular interval worked out between teacher and parent and/or presented to the IEP team to inform discussions related to the IEP.

[The] 'Daily Points' and 'Self-Regulation' [columns] are teacher behavior tracking ratings, and I understand that they do relate to the student's social emotional goals in that the ratings help inform progress toward those goals. I don't have a description of the specific point system used in [Student's] class that summer which the Daily Points data measures.

### **2018-2019 School Year**

15. The NPA's 2018-2019 school year began on September 4, 2018. The Student attended the NPA from the beginning of the school year through October 16, 2018.

16. Beginning sometime in the latter half of October 2018, the Student attended an out-of-state drug and alcohol treatment program. According to the District:

The decision to place Student in an out-of-state drug treatment program was purely a parental decision. Neither the IEP team nor any individual District staff members weighed in or provided opinions to the Parent regarding the drug treatment program. Rather, the Parent just notified the District that the Student was going to receive drug treatment in California and that he would receive educational services there.

17. According to the District's response, "Student was discharged from the [out-of-state] treatment program on approximately November 14, 2018. From approximately November 19, 2018 through January 31, 2019, Student attended school at [a second location of the same the NPA]."<sup>2</sup>

According to the Parent, upon the Student's return from the out-of-state drug treatment program, "[She] received multiple mixed messages from [the District] regarding [Student's] return to [NPA location 1] and based largely on [Student's] fear of [a particular special education teacher at NPA location 1], as well as an environment with a new peer group, [Student] chose to attend [NPA location 2]."

18. According to the District:

The Student was on a full-day, full-week schedule [while] at [the NPA]. [NPA's] school day is Monday through Friday from 9:00 a.m. to 2:30 p.m., with early dismissal on Wednesdays at 12:30 p.m. Lunch is served at 11:30 a.m....Student was in math, language arts, science, history, reading, and recreational therapy. Students...are in self-contained classrooms all day. In other words, they have one teacher who teaches all subjects and they do not have class periods. They also do not transition to different classes, except, perhaps to transition to a different location with their teachers for recreational therapy. Special education services were provided throughout the day.

...

[NPA] does not have a...set-in-stone timed lunch period...The duration of the lunch period could vary on a day-to-day basis and a student-to-student basis depending upon different factors including how fast or slow a student might eat from one day to the next...lunch typically takes between 30 minutes to an hour.

19. The District described the Student's receipt of specially designed instruction in social emotional/behavioral while the Student was at the NPA as follows:

[NPA] typically delivers social-emotional [specially designed instruction] SDI in three different ways: (1) through a mental health staff member who works directly with high needs students; (2) through recreational therapy where a therapist pulls students and works through different activities designed to subtly teach social emotional learning in a recreational and engaging manner; and (3) through in-class social emotional lessons and activities which occur with the classroom teacher in the classroom setting. During his time at [NPA] [Student's] social-emotional SDI would have come largely from recreational therapy and in class lessons and activities. During [Student's] time at [NPA], he is recalled

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<sup>2</sup> According to its schedule, the NPA was on break from November 22-23, 2018, and December 19, 2018 through January 2, 2019.

as performing well with very few serious behavior incidents with other students or staff, this is part of the reason he was able to transition to [a District high school] in a relatively short period of time. As such, he demonstrated less need for direct therapeutic work with the mental health staff member.

20. According to the District's response, "during the time in which Student attended [NPA], his IEP goal progress was tracked through an IEP goal report."

The District's response included an "IEP Goal Report" for both of the social emotional/behavioral goals included in the Student's June 2018 amended IEP.

For social emotional/behavioral goal 1, the "IEP Goal Report"—dated January 1, 2019<sup>3</sup>—included data entries for thirty-two of the forty school days that took place between November 19, 2018 and January 31, 2019. The "IEP Goal Report" for goal 1 stated that the Student "mastered" the goal over this same time period.<sup>4</sup>

For social emotional/behavioral goal 2, the "IEP Goal Report" included data entries for thirty eight of the forty school days that took place between November 19, 2018 and January 31, 2019. The "IEP Goal Report" for goal 2 stated that the Student had "not mastered" the goal over this same time period.

21. According to the Parent:

I did not receive the 'IEP Goal Reports' covering the time period between 11/19/2018 and 01/31/2019. They were not provided to me via email or letter. Only one time—on 01/18/2019—via email was I made aware of a 'kickboard'<sup>5</sup> which I'm assuming is some type of online tracking for the students at [NPA]. I was never given any information prior or post that date to be able to sign in and access them...I was never provided access to any type of online access.

According to the District:

[NPA's] practice is to email copies of the 'IEP Goal Reports' to districts and mail a copy of the goal reports to parents. The District has no basis to believe that [NPA] did not act in accordance with its practice in this situation. Therefore, they should have been mailed to the Parent. The District does not have records showing when the Parent received them...the District received quarterly reports for both goals at the same time.

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<sup>3</sup> The "IEP Goal Report" for goal 1 has a "report interval" of "quarter," despite the fact that the June 2018 amended IEP says that progress will be reported once each semester. According to the District: "It is [the NPA's] practice to send progress reports at each quarter. While the IEP stated they would be provided each semester, there was no substantive impact [on the Student based on this] discrepancy."

<sup>4</sup> The "IEP Goal Report" for goal 1 has no entries after January 16, 2019. The District explained that it believes this is "because [NPA] found that Student had met [this goal]."

<sup>5</sup> According to the District: "Kickboard is an online behavior data tracking software that [the NPA] started implementing during the 2018-2019 school year." Sometime in December 2018, an email was sent to all school district representatives and parents with information on how to log-in to kickboard.

22. The District's response also included several "behavioral data" charts and graphs that represent the Student's negative and positive behavior occurrences from his time at the NPA from November 19, 2018 through January 31, 2019.

The Parent stated she had never received a copy of the behavioral data.

In regard to the behavioral data, the District stated:

It is [the NPA's] practice to track behavioral data for all students. The data helps demonstrate which strategies and/or supports are successful, as well as those that are not. This helps inform instructional strategies or positive behavior strategies to use with students. [NPA's] practice is to email copies of the behavioral data to school districts and mail copies of the data to parents. The District has no basis to believe that [the NPA] did not act in accordance with its practice in this situation. Therefore, they should have been mail[ed] to the Parent. The District has no documentary proof of the mailing.

23. On January 18, 2019, the Student's high school teacher at the NPA emailed the Parent, stating, in part:

As parents you have access to our kickboard system to track the daily progress of your student. The kickboard system recently underwent an update and parent logins and passwords have been reset. It will take a few days to get the new logins to every parent so please stand by for another email from our school's supervisor with new login information.

In the mean time I wanted to check in quickly about yesterday's class and update you on your student's kickboard point accumulation for the day as well as a general abstract on their performance.

[Student]...has been an absolute delight in class...completing his work on time, following instructions and treating staff with respect...[Student] is well respected by his peers and his approval is sought after...Kickboard points: 46 out of 55 = above average. Teacher rating: excellent.

24. Also on January 18, 2019, the Student's high school teacher emailed the Parent, stating, "Enclosed please find the kickboard point tracking for [Student] for Friday 1/18/2018." Attached to this email was a chart that tracked several behaviors by the Student: present; slurpee; safe, respectful; safe, responsible, respectful.

25. Later that same day, on January 18, 2019, the Parent emailed the District's assistant director of student services, the Student's high school teacher, a parent advocacy group representative, and a juvenile probation officer, stating, in part:

[Student] has been in [NPA] since June of 2018. I have only received 2 reports from [NPA location 1] and just today received my first and only report from [NPA location 2]. My main concern is in regards [sic] to his IEP. I have not seen or been made aware of any data reports and/or goals being achieved or revamped in regards [sic] to [Student's] IEP since he has been placed at [NPA]. I have had no meetings, conferences, phone calls—nothing. I'm looking forward to [Student] returning to 'regular' school however...I'm a little distressed on what his future performance will be as I have no clue to his academic level or functioning at this time.



Additionally...while he has attended [NPA location 2]<sup>6</sup>, the morning bus arrived anywhere from 12-45 minutes late every day which would mean [Student] was consistently late to school.

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Until today I was never made aware of nor offered information to monitor [Student's] progress at [NPA] via their 'kickboard' until I received an email from his current teacher. [The current teacher's] emails which I received today were very professional and complimentary of [Student] and his performance while in his class...in conclusion, I would like the outcome of this email to be to obtain the data and goals in direct correlation with [Student's] IEP.

26. According to the Parent, the NPA started at 8:30 am and "I always wait with [Student] to ensure he gets on the bus for school—that is how I know for a fact what time the bus would arrive." The Parent stated the bus was not scheduled to pick the Student up until 8:30 am, the same time school started. The Parent stated the NPA is "32 miles which equates into about a 45 minute bus ride...There were several times when the bus arrived significantly late; not to mention that it would be cancelled or some type of miscommunication between transportation and [NPA] causing [Student] to miss an entire day." The Parent further stated, "If [NPA] did not document a tardy in regards [sic] to transportation that is an error on their end. [Student] was late to [NPA] daily."

27. According to the District:

On the ride to [NPA], [Student] was transported on a bus operated by First Student. First Student reports that [Student] was one of two students on the bus route from Tacoma to [NPA]...[Student] was picked up as the second and final student on the bus from his home...First Student and the bus driver report that [Student]'s pickup time was at approximately 8:00 am...They further report that [Student] and the other student were typically dropped off at [NPA] between 8:30am and 8:45am, depending on traffic conditions. Similarly, [NPA] does not recall [Student] as being one of the students whose routes resulted in the student being consistently late. [NPA] also reports that though the doors to the campus open at 8:30am, the day typically begins with a check-in and breakfast period before they begin the work for the day. Accordingly, a student arriving at [the NPA] at 8:45am would not be missing instruction the same way a student at a traditional comprehensive high school would. [D]ue to a change in the physical bus that ran [Student's] route [the District] is unable to pull the typical ZONAR data which would populate a [bus route] log.

28. According to the Student's attendance record for the time he attended the NPA (November 18, 2018 through January 31, 2019), the Student had seven unexcused absences.

29. According to the District's response, the Student returned to a District high school on February 1, 2019.

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<sup>6</sup> In information the Parent provided to OSPI subsequent to the filing of her complaint, she clarified that, "in my original complaint I was only referencing the lack of consistent transportation to [NPA location 2]."

30. On March 7, 2019, the Student's IEP team created a new annual IEP for the Student. The March 2019 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Social emotional/behavioral: 80 minutes 5 times a week (to be provided by a special education teacher)

The March 2019 IEP included one measurable annual goal in the area of social emotional/behavioral:

1. By 03/06/2020, when given 10 opportunities to turn in assignments, [Student] will turn in his work improving work completion from 5 out of 10 assignments to 7 out of 10 assignments as measured by the special and general education teachers using grade book tracking.

The March 2019 IEP stated that the Student's progress on his annual goal would be reported via a written progress report once a semester.

31. The District's response included a District-created "Student Summary" for the Student. According to the document, on March 19, 2019, a District staff member "left [a] message for mom on Student's progress and missing assignments."

32. According to the District's response:

Student's March 7, 2019 IEP states that Student's progress toward meeting his annual IEP goals will be reported each semester through written progress reports. The second semester for the 2018-2019 school year began on February 5, 2019 and will end on June 19, 2019. Thus, the written progress report for Student's progress on his March 7, 2019 IEP goals are not due until June 19th. The District therefore has not failed to follow proper procedures for reporting Student's progress on his current IEP goals.

## CONCLUSIONS

**Issue 1: Progress Reporting** – The Parent alleged that, since June 2018, she did not receive reports on the Student's progress on the two measurable annual goals included in his June 2018 amended IEP. IEPs must include a statement indicating how a student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

Here, the Student's June 2018 amended IEP stated that the Student's progress on his two annual goals would be reported via a written progress report once a semester.

From July through August 2018, the Student attended a nonpublic agency (NPA) to receive extended school year (ESY) services. During this time, the Parent was provided with some information on the Student's performance. While some of this information (e.g., self-regulation and behavior interventions) was relevant to the Student's goals, the data was not presented as special education progress reporting on IEP goals. OSPI believes that these data were used to inform progress reporting and while providing the data to the Parent was a start; in the manner presented, it is not clear the Parent understood this information to be related to the Student's goals.

From September 2018 through October 16, 2018, the Student continued to attend the NPA. The record contains no evidence suggesting that the Parent received any progress reporting on the Student's goals during this time period. On October 16, 2018, the Student withdrew from the District to attend an out-of-state treatment program, prior to the end of the semester. Thus, because the Student's IEP called for progress reporting at the semester, the District was not yet obligated to provide progress reporting prior to the Student's withdrawal.

From November 19, 2018 through January 31, 2019, the Student attended a second location of the same NPA. During this time period, the NPA did gather data that specifically related to the two measurable annual goals included in the Student's June 2018 amended IEP.<sup>7</sup> The Parent, however, denied that she ever received these reports; the Parent stated that she did not receive them via email, letter, or online access. The District stated the NPA's practice is to mail a copy of the goal reports to all parents but that it "does not have records showing when the Parent received them." Additionally, the record does not contain an email showing that the Parent was provided with the login information for online access. Under these circumstances, while progress reporting appears to have been completed, OSPI cannot determine that the Parent was provided progress reporting for the Student from November 19, 2018 through January 31, 2019.

Beginning on February 1, 2019, the Student returned to a District high school. The District's 2018-2019 school year does not end until June 19, 2019. As the Student's June 2018 amended IEP and newly developed March 2019 IEP requires that progress reporting be reported once a semester, the District has not yet provided the Parent with progress reporting as of the date of this decision and is not yet required to provide the Parent with progress reporting.

Even though data was collected, and some progress reporting was completed, because the District failed to ensure that the Parent *was provided* progress reporting, OSPI finds the District in violation. The District will be required to develop a policy or procedure to ensure parents of students placed at NPAs receive progress reporting.

**Issue 2: Transportation: Access to FAPE** – The Parent alleged that the Student's morning transportation schedule while he attended the NPA location 2 (November 19, 2018 through January 31, 2019) did not permit him to access the specially designed instruction in his June 2018 amended IEP. Every student eligible for special education between the ages of three and twenty-one has a right to receive a free appropriate public education (FAPE). A school district must ensure it provides all services in an IEP, consistent with the student's needs as described in the IEP.

Here, the NPA's morning schedule was as follows: a "check-in and breakfast period" from 8:30 am, with regular class periods beginning at 9:00 am. The parties disagree on whether the Student's morning transportation schedule allowed him to arrive by 9:00 am. For example, the District stated the Student was picked up from his home at around 8:00 am, and dropped off at school between 8:30 am and 8:45 am. The Parent stated the Student was picked up from his home at around 8:30 am, and dropped off at school around 9:15 am. The Parent stated she was aware of the time

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<sup>7</sup> The NPA also gathered data on the Student that did not directly relate to the two measurable annual goals. The Parent stated that she never received this information either.

because she would wait with the Student for the bus, while the District stated the Student's route was scheduled to pick him up at 8:00—although, the District stated because of a physical change in the bus route, the District was unable to pull the typical GPS data that would record the exact times. If the Parent's understanding is correct, then the Student missed approximately 15 minutes of regular instruction each morning. Regardless, even if OSPI assumed the Student arrived at school by 9:00 am each day, the NPA's schedule would not have permitted him to fully access the specially designed instruction included in his June 2018 amended IEP.

The Student's June 2018 amended IEP provided the Student with 306 minutes, 5 times a week of specially designed instruction in social emotional/behavioral. According to the District, while the Student was at the NPA, the Student received this instruction "throughout the school day," via both pull-out and in-class instruction.

The NPA's daily instructional day (excluding Wednesday) began at 9:00 am and ended at 2:30 pm, which would allow approximately 285 minutes of instruction each day (330 minutes of instruction minus an average of 45 minutes for lunch). Therefore, assuming the Student arrived at school by 9:00 am each Monday, Tuesday, Thursday, and Friday, the Student missed approximately 21 minutes each day (306 minutes minus 285 minutes). The NPA's Wednesday schedule had instruction beginning at 9:00 am and ending at 12:30 pm, which would allow for approximately 180 minutes of instruction each day (210 minutes of instruction minus an average of 30 minutes for lunch<sup>8</sup>). Therefore, each Wednesday, the Student missed approximately 126 minutes each day (306 minutes minus 180 minutes).

Therefore, assuming the Student arrived at school at 9:00 am on average, the Student missed approximately 210 minutes a week of instruction. From November 19, 2018 through January 31, 2019, there were approximately eight weeks of school, meaning that, over this time period, the Student missed approximately 1,800 minutes of specially designed instruction or 30 hours. Here, the District failed to ensure that the Student was provided the amount of specially designed instruction required in his IEP, in part due to the inconsistency of the Student's morning bus and based on the structure of the NPA's instructional day and weekly schedule. OSPI finds a violation and orders compensatory education. The District will also be required to develop guidance to address the issue of an NPA's schedule and student's IEP being misaligned.

A state educational agency is authorized to order compensatory education through the special education citizen complaint process. 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. There is no requirement to provide day-for-day compensation for time missed. 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. Here, the Student did make some progress over the period of time in question—for example, the Student mastered one of his two annual goals. Given that the Student did make some progress, and determining the amount of

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<sup>8</sup> OSPI is assuming that on days with an early release, students would be given less time for lunch to account for the early release.

instruction missed, an equitable remedy must account for this. In light of the foregoing, the District will be provided to provide approximately one-quarter of the missed instruction or 7.5 hours of compensatory education in the area of social emotional/behavioral.

### **CORRECTIVE ACTIONS**

By or before **July 5, 2019, August 30, 2019, and November 1, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **June 28, 2019**, the District and the Parent will develop a schedule for a total of 7.5 hours of compensatory services in the areas of social emotional/behavior. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may be accessed over summer break. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **October 25, 2019, including those needing to be rescheduled**. The District will provide OSPI with documentation of the schedule for services by or before **July 5, 2019**.

The District must provide OSPI with documentation by **August 30, 2019** of the compensatory services provided to the Student thus far. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **November 1, 2019**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburse the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation by **November 1, 2019**.

#### **DISTRICT SPECIFIC:**

##### Policy & Procedure

By **June 28, 2019**, the District will develop a policy or procedure to ensure that parents of students placed at NPAs receive copies of special education progress reporting. This could include requiring the NPA to note the date and method progress reporting is sent and providing that documentation to the District, or this could be a District procedure where the District (not the NPA) checks in with parents to ensure progress reporting is received.

By **July 5, 2019**, the District will provide OSPI with a draft copy of the policy or procedure for review. The District should also provide OSPI with the key individuals in the District who will be responsible for carrying out the policy or procedure—in other words, the individuals in the District

who work with IEP teams when a student will be placed at an NPA. OSPI will review and approve by July 19, 2019, or provide further dates for review, if necessary.

By **August 23, 2019**, the District will distribute the new policy or procedure to the individuals identified as key individuals in the implementation of the policy.

By **August 30, 2019**, the District will provide OSPI with documentation that these key individuals have had an opportunity to review the policy.

#### Guidance

By **June 28, 2019**, the District will develop written guidance to address the issue that arose in this complaint—that the NPA's schedule would not have permitted the Student to fully access the specially designed instruction included in his IEP. This guidance should emphasize that a student's unique needs and measurable annual goals should drive services, but also direct IEP teams to ensure that the IEP can actually be implemented given a school's schedule—particularly an NPA that may have a different schedule than the District's schools. This guidance should address potential steps to take (e.g., alerting the IEP team, scheduling a meeting, or amending an IEP) when a school's schedule and the services called for in an IEP do not align. The guidance will be provided to the key individuals identified above (see policy and procedure) and any other individuals the District identifies to review the guidance.

By **July 5, 2019**, the District will provide OSPI with a draft copy of the guidance for review. The District should also provide OSPI with any additional staff who will be required to review the guidance, in addition to the individuals identified above. OSPI will review and approve by July 19, 2019, or provide further dates for review, if necessary.

By **August 23, 2019**, the District will distribute the guidance to the identified individuals.

By **August 30, 2019**, the District will provide OSPI with documentation that these key individuals have had an opportunity to review the guidance. Documentation should include emails or signature sheets, indicating the individuals were provided with and reviewed the guidance.

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

Dated this \_\_\_\_ day of June, 2019

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
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.)