

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-57**

### **PROCEDURAL HISTORY**

On May 9, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the College Place 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 May 10, 2022, 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 27, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on May 31, 2022. OSPI invited the Parent to reply.

On May 25 and 26, 2022, the Parent provided OSPI with additional information. On June 2, 2022, OSPI provided the District with a copy of that information.

On May 27, 2022, the District provided OSPI with additional information. On June 2, 2022, OSPI provided the Parent with a copy of that information.

On June 7, 2022, the Parent provided OSPI with additional information. On June 7, 2022, OSPI provided the District with a copy of that information.

On June 8 and 9, 2022, the Parent provided OSPI with additional information. On June 9, 2022, OSPI provided the District with a copy of that information.

On June 16, 2022 OSPI determined additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District the same day. OSPI forwarded that information to the Parent on June 23, 2022.

On June 23, 2022, OSPI determined additional information would be helpful the investigation and contacted the District. OSPI received the requested information from the District on June 24, 2022. OSPI forwarded that information to the Parent on June 27, 2022.

On June 27 and 28, 2022, the Parent provided OSPI with additional information. On June 30, 2022, OSPI provided the District with a copy of that information.

On June 27 and 29, 2022, OSPI determined additional information would be helpful the investigation and contacted the District. OSPI received the requested information from the District June 28 and 29, 2022. OSPI forwarded that information to the Parent on June 30, 2022.

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

## SCOPE OF INVESTIGATION

The time period under investigation begins on May 10, 2021, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to May 10, 2021 is mentioned for informative, background purposes only.

## ISSUE

1. Beginning May 10, 2021, did the District follow proper procedures to implement the Student's individualized education program (IEP)?

## 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 served through enrollment who is eligible to receive special education services. It must also 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 [student with a disability] 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, as appropriate, through the special education community complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). 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); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Complainants of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). "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

### 2020–2021 School Year

- As of May 10, 2021, the Student was eligible for special education services under the category of traumatic brain injury, was in the ninth grade, and attended a District high school. At that time, the Student’s April 2021 amended IEP was in effect.

The April 2021 amended IEP provided the Student with the following accommodations:

<b>Accommodations</b>	<b>Frequency</b>	<b>Location</b>	<b>Duration</b>
Access to teacher notes	As needed for assessments	General education classroom	01/27/2021 to 01/26/2022
Checklists to be provided	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Chunk reading assignments and provide audible access for reading materials	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Consider paper packets when fatigue on the computer sets in.	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Demonstration of mastery after 3 completed problems/examples rather than a full set	As needed	General Education Classes	01/27/2021 to 01/26/2022
Directions to be short, clear, steps.	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Extra Time (1.5) for assignments and tests	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Frequent Breaks (especially when focused on an independent task)	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Limit choices - provide one option at a time	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Preferential seating	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Quiet location to reset	As needed	General Education Classroom	01/27/2021 to 01/26/2022
Reduce loud sounds and avoid eye contact to reduce anxiety	As needed	General Education Classroom	01/27/2021 to 01/26/2022
SBAC General-Separate setting	As needed	During assessments/ standardized tests	01/27/2021 to 01/26/2022
Simplified Test Directions	As needed	During assessments/ standardized tests	01/27/2021 to 01/26/2022

Open notes during assessments both summative and formative	As needed	All classes	04/16/2021 to 01/26/2022
Physical Planner or calendar on cell phone to be utilized	At all times	All classes	04/16/2021 to 01/26/2022
Small group presentations	As requested by student	Gen ed	08/02/2021 to 01/26/2022

The April 2021 amended IEP provided the Student with the following specially designed (SDI) instruction in a *general education setting* through January 26, 2022:

- 15 minutes 1 time a month of communication (from a speech language pathologist).
2. According to the Parent, the Student first exhibited “emotional, memory, and cognitive” challenges following a concussion that took place in November 2019.
  3. The Student’s schedule for the latter portion of spring 2021 was as follows:
    - **Culinary Arts** – taught by a general education teacher
    - **Algebra 1** – taught by a general education teacher
    - **Academic Support**<sup>1</sup> – taught by a general education teacher
    - **Agricultural Science** – taught by a general education teacher
    - **English Standard** – taught by a general education teacher
    - **World History** – taught by a general education teacher

According to the District, “Student received speech services once a month on a Wednesday from 12:45 to 1:00”, and speech language pathologist (SLP) 1 provided the Student’s communication SDI in spring 2021. During this investigation, the District provided OSPI with a copy of SLP 1’s spring 2021 schedule, which showed she was scheduled to work with the Student once a month from 12:45–1 pm on Wednesdays.

4. According to the Parent, in spring 2021, she began to have concerns that the Student’s assignments were not being modified—“for example, with Student’s memory issues, she was given 40 vocabulary words where she was expected to memorize them...both Student and I felt this was not [an] appropriate [task to be required of her] several times a month.”

In particular, the Parent stated that case manager 1 was not following correct IEP supports in relation to “bell ringers”<sup>2</sup>, and the science teacher and “humanities” teachers were not providing proper IEP supports.

In relation to the “combined world history/ELA class,” the Parent stated the Student was not being given support to help read certain stories and/or assignments, and the teacher “would get upset [with Student] and tell her to sit down and read the story.”

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<sup>1</sup> The District described this class as, “A study hall [period] where students received academic supports on areas they were having challenges in. [Staff] also monitored [students’] grades and missing assignments in Skyward and worked on organization skills.”

<sup>2</sup> According to the Parent, “bell ringers” were daily quizzes.

5. According to the Parent, on May 20, 2021, in part, the Parent, Access teacher, and case manager 1 met to discuss the appropriate amount of vocabulary words for the Student, and after this date, the Access teacher would provide the Student with 10 vocabulary words, as opposed to 40.
6. On May 24, 2021, the Parent emailed the Student's private SLP, stating, in part:

I am attaching Student's vocabulary words that she was expected to memorize for science class. They are reducing her words to 10. I have been struggling with helping and having the school follow her IEP. From reading larger stories, to memorizing information, to writing lots of papers for her humanities class, watching videos and answering many questions while the video is playing, and so much more. I have had many meetings with the school and have sent many emails. I feel as if her special education teacher thinks Student is capable of doing all work. She keeps saying that Student can do the work, Student will be put into a class next year and 'will make sure she does all the work'.

Later that day, the private SLP emailed OSPI's special education email address, stating, in part:

I see this patient for cognitive-communication and memory difficulties secondary to a concussion/mild traumatic brain injury (mTBI). The parent has had multiple meetings with the teachers and principal however she is still not receiving the accommodations that she needs to be successful. She is supposed to have a reduced workload and additional assistance with written assignments and written directions however, her teachers feel that she is not doing her work as a choice can 'catch up' on her half days (days in which she is driving 3 hours each way for therapy).

Separately on May 24, 2021, the English language arts teacher emailed the Parent, stating, in part:

Thank you for reaching out to me. Right off the bat, I want to assure you that a 2.2 is a decent grade. It is not failing. I am proud that Student was able to go from a 1 on her previous full essay, which included a number of supports, to a 2.2 on an essay that required students to show mastery of a basic essay, and in Student's case with fewer supports. She did a really good job. And yes, there is room for improvement. But she is not failing. And I am confident her grade will improve with revisions.

All my students have the opportunity to revise their work for a higher grade. And I am re-grading those essays again this weekend. I encouraged Student to make revisions and submit her essay again. It is through this revision process that some of the best learning is had.

As for Student's overall grade for the class, she was passing with a D+ at 38.68 percent for the class before this summative essay. Her 2.2 took her to a 40.60 percent, which is still a D+ but very close to a C-. I feel confident that after her revisions, her essay will climb close to that 3.0 mark that signals the student has mastered the skills being measured. If she gets to a 2.7, which I believe she will, she will finish with a C- in the class.

I guess what I am saying is I think Student did great. And I am confident she will improve her grade with her revisions.

7. According to the Parent, on June 3, 2021:

The assistant principal offers to help Student with [an] essay. [The District] also help Student make notecards for science class during this time. This is maybe one of the first times Student was given help using notecards. We felt that both the assistant principal and the counselor really stepped up to help Student be successful in both science and ELA/History class [around this time]. We were told it is Student's responsibility to ask for notecards for tests.

8. The District's response included a June 2021 progress reporting related to the goals in the April 2021 amended IEP. The progress reporting indicated the Student was making sufficient progress on the communication goal.
9. According to attendance records, between May 10 and June 16, 2021, the Student had 5.67 days of excused absences and .33 days of unexcused absences.
10. According to the District, SLP 1 was a contract employee and her contract with the District elapsed, effective June 16, 2021.

### **Summer 2021**

11. According to the Parent, in summer 2021, the "Student was diagnosed with narcolepsy [and] a heart arrhythmia [and] we knew [Student] would be missing many days of school in fall 2021 due to medical appointments [which were] a 7–8 week commitment."

### **2021–2022 School Year**

12. The District's first day of school was August 30, 2021.
13. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services under the category of traumatic brain injury, was in the tenth grade, and attended a District high school. At that time, the Student's April 2021 amended IEP was in effect.

In addition to the specially designed instruction described above, the April 2021 amended IEP provided the Student with the following specially designed instruction in a *special education setting* through January 26, 2022:

- 88 minutes 3 times a week of study skills (from special education staff)

14. The Student's schedule for the first semester of the school year was as follows:
  - **Geometry** – taught by a general education teacher
  - **Spanish** – taught by a general education teacher
  - **Biology** – taught by a general education teacher
  - **Access/Study Skills** – taught by a special education teacher
  - **US History** – taught by a general education teacher
  - **English Standard** – taught by a general education teacher

According to the District: (a) the Student received specially designed instruction during the access/study skills class; and (b) the access/study skills class met on Tuesdays, Thursdays, and

Fridays. On Tuesdays and Thursdays, it met for 1 hour 50 minutes. On Fridays, it met for 45 minutes.

According to the District, "Student received communication services one time per month for 15 minutes and...therapy logs [show] Student was seen during the fourth week of the month on [either] Mondays or Wednesdays." According to the District, two SLPs that worked with the local educational service district (ESD) provided the Student with communication SDI during the 2021–2022 school year.

During this investigation, the District provided OSPI with a "Speech and Language Therapy Data Log" from one of the ESD SLPs (SLP data log). It showed this SLP did know they were to work with the Student for 15 minutes 1 time a month, but from October 25 through December 15, 2021, there are only three entries—it appears the SLP worked with the Student on one occasion, on one occasion the Student was being tested (so, as OSPI understands it, the Student was not present for SLP services), and on the third occasion, the Student was absent.

The District's response also included an excel sheet related to the services the two ESD SLPs provided, to numerous students, during the 2021–2022 school year. This document does not appear to include any information contradictory of, or in excess of, that which is found in the SLP data log.

15. According to the Parent, in September 2021:

- On September 1, 2021, the Student suffered a temporary loss of consciousness caused by a fall in blood pressure, which necessitated additional appointments for medical testing;
- The Student was asked to complete math and science assignments electronically and "paper copies [were] part of Student's IEP";
- "Math assignments [were] lengthy";
- "Student's IEP [was] not being followed during English and history class";
- During her September 2021 medical appointments, the Student repeatedly expressed that school caused her distress; and,
- On September 21, 2021, "during a soccer game, Student takes another hit to the head...collapses [and] starts to shake."

16. On September 22, 2021, the Student's IEP accommodations were amended; the Student's specially designed instruction remained the same. The only change in IEP accommodations between the April 2021 amendment and the September 2021 amendment was the language "demonstration of mastery after 3 completed problems/examples rather than a full set" was replaced with "limit assessments and assignments to no more than 3 problems per standard/objective."

17. On September 28, 2021, the principal emailed the Parent, stating, in part, "All teachers have seen Student's IEP."

18. According to the Parent, in October 2021:

- The Student had challenges understanding how to upload math assignments once completed, and this was communicated to the math teacher;

- There were “still...some issues with geometry class [and] assignments [being] digital instead of paper. For the first time, [the District] offer[s] paper assignments instead of trying to read a digital book online”; and,
- On October 13, 2021, “Student [is] move[d] to a different math class with a different teacher.”<sup>3</sup>

19. According to the Parent, in November 2021:

- During testing that took place on or about November 11, 2021, “Student felt as if case manager 1 was distracted by her electronic devices”, which the Parent believes case manager 1 was using “for non-testing purposes”;
- Paperwork packets were not being provided to the Student in either the access class<sup>4</sup> or science class;
- The location of the access class kept changing; and,
- On November 24, 2021, the Student experienced another temporary loss of consciousness caused by a fall in blood pressure.

20. On or about November 1, 2021, the Student’s IEP team further amended the Student’s IEP. The November 2021 amended IEP included the same accommodations as the September 2021 amended IEP. The IEP also provided the Student with the following specially designed instruction:

- Communication: 15 minutes, 1 time monthly (provided by an SLP in the general education setting)
- Study Skills: 110 minutes, 2 times weekly (provided by special education staff in the special education setting)
- Study Skills: 40 minutes, 1 time weekly (provided by special education staff in the special education setting)

The prior written notice related to the November 2021 amended IEP read, in part:

**Description of the proposed or refused action:** Update of service minutes to reflect school wide schedule change.

**The reason we are proposing or refusing to take action is:** The high school has added a...study hall on Fridays, which reduces class periods for 5 minutes. That change moves our 3 day service minutes from 88 minutes average 3 days per week to 86 minutes average 3 days per week.

21. According to the Parent, on or about November 4, 2021:

The director and/or high school principal offer to reduce Student’s class schedule because of her absences. Again, the director mentions Student is responsible for demonstrating content standards and making up missed work but does not offer any support to help Student ‘demonstrate her knowledge’. We have requested to reduce Student’s assignment work load many times yet most teachers are not reducing the workload for Student.

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<sup>3</sup> According to Parent, neither she nor the Student agreed with this schedule change.

<sup>4</sup> The Parent described the access class as, “a class for students on IEPs for additional support for their homework.”



But then, according to the Parent, on or about November 8, 2021, "the information [in the director's earlier email was] retracted" via an additional email from the director.

22. According to the Parent, on December 8, 2021, "A situation occurs in math: the general education math teacher seems to become frustrated and upset with Student. We feel that anytime the math paraeducator that works with Student is absent, the general education math teacher and Student struggled to work together."
23. In early December 2021, the District's evaluation group met with the Parent to discuss the results of a reevaluation.

According to the Parent, at one point during this meeting, one of the Student's medical providers stated an opinion similar to, "the District must put learning in repeat mode to support Student." According to the Student's health advocate, at the December 3, 2021 meeting, "Case manager 1 recommended Student stay in general education math with no accommodations even though Student tested below average."

The December 2021 evaluation summary read, in part:

#### **Organizational/Study Skills**

**Assessment Summary:** A study skills checklist was administered to three of Student's teachers and Student. This measure is divided into self-management skills, seat work skills, group discussion skills, and direction following. Ratings were based on the following scale: N - Almost Never, S - Sometimes, F - Frequently, A - Always...

**Significant Findings:** ...Student was found to be operating in between frequently and always in the area of Self-Management Skills, just below frequently in Seat-Work Skills, between almost never and sometimes in the area of group discussion skills, and between sometimes and frequently in the area of following directions.

The area of highest need for Student is her group discussion skills. Her biggest area of strength is her self-management skills.

Additional information provided by teachers included concerns surrounding Student's absences, frequent tiredness, and a tendency for Student to be more withdrawn or quiet.

Additional information provided by Student included the need for additional help with reading such as using audio and then being able to discuss/explain in chunks by processing with a partner or teacher. She indicated that she struggles with tracking assignments and keeping them straight/not mixing them up. She also recognizes the need for learning skills related to advocating for herself in an academic setting.

**Input from case manager:** Student has an IEP goal of tracking and monitoring classwork. She currently has 14 assignments marked as missing in the gradebook. 13 of the 14 missing assignments are in Spanish, and she currently has a B in that class. Student is passing all of her classes except Geometry with A's and B's. According to Student's teachers, when she is in class, she is on task and works hard on what is expected of her. She does not struggle with keeping track of what is assigned when she is in class. It's when she's absent that she loses track of what is due, which is not abnormal when comparing her to her peers. It is the recommendation of Student's case manager that she not qualify for study skills, and that

her deficits are due to lack of attendance rather than a study skills disability. It would be more appropriate to support Student through accommodations and a 504...

### **Communication**

**Assessment Summary:** On 10/05/2021 Student...was given the TAPS-4 which measures five abilities in three areas: Short-term memory, Auditory Processing skills, and Comprehension-Knowledge (acquired knowledge). It is a standardized norm-referenced assessment for individuals aged 5-21 years of age...

**Significant Findings:** Student was given the TAPS-4 in a quiet room with no distractions. She was cooperative and answered all the questions given to her but at times seem to just 'quit' at the end of a section by saying 'I don't know'. ...The TAPS-4 has three subtests, a Phonological Processing index, Auditory Memory Index, and Listening Comprehension Index.

The Phonological Processing Index (PPI) subtest showed a standard score of 80, which is in the 9%ile or -1.33 standard deviations below the mean. The Phonological Processing Supplemental part of the PPI showed a standard score of 108, which is in the 75%ile, or .55 standard deviations above the mean. The Auditory Memory Index (AMI) subtest showed a standard score of 102, which is in the 55%ile or .13 standard deviations above the mean. The Listening Comprehension Index (LCI) subtest showed a standard score of 85, which is in the 16%ile or -1.00 standard deviations below the mean. The overall standard score which is a sum of the three subtests showed a standard score of 88, which is in the 21%ile or -.80 standard deviations below the mean.

Although Student was low in the PPI and LCI, these scores are still in the low average range for her aged peers and do not qualify her for specially designed instruction. Observation during the assessment showed she was alert and answered questions quickly with little or no hesitation. She did not exhibit difficulty in answering questions or in understanding and expressing in spontaneous conversation.

Student's current IEP shows she is in need of 15 minutes of services one time monthly. Her goal is an auditory goal which states, 'When given structured tasks to recall information from an auditory text, Student will respond by accurately recalling main idea, with 3-4 details, improving auditory recall from about 60% accuracy with minimal prompts to 80% accuracy independently as measured by SLP data.' She has had attempted sessions three times since the beginning of the school year. In the first session on 10/05/2021 she was being evaluated and was found to exceed the auditory goal with a standard score of 102 in the area of Auditory memory on the TAPS-4. In the second session on 10/25/2021 she was involved in school state testing, and on the third session on 11/24/2021 she was reported as absent.

**Conclusions from observations:** Based upon the standardized test given along with observation during spontaneous conversation, Student is not recommended for specialized services in the area of communication. This is based upon the findings of the TAPS-4, PPI and observation of spontaneous conversation before, during and after the testing.

24. On December 16, 2021, the Student's IEP team met to develop a new IEP for the Student. The team did not complete the Student's new IEP on that date.

25. The District was on break from December 20–31, 2021.
26. On or about December 22, 2021, case manager 1 was replaced by case manager 2.
27. Separately on December 22, 2021, the Student’s health advocate emailed the director, stating, in part:
- There are numerous ways to aid Student in being successful. In the classroom it would include: utilizing her IEP accommodations, repeating directions and key information, providing reminders, sharing concerns with her parents if her behavior suddenly changes, and ensuring there is open communication between all teachers and Student in the form of check-ins. Additional ways to aid Student in having a successful education and environment includes: allowing time to rest, taking breaks often, providing a consistent routine, avoiding excessive screen time, limiting bright lights and loud sounds, staying hydrated, and eating protein.
28. From January 10 through January 21, 2022, the Student participated in a “J-term schedule outside of the regular academic term.”

According to the District, the Student did not receive specially designed instruction during the J-term schedule.

29. On January 18, 2022, the Student’s private counselor emailed case manager 2, stating, in part:
- Student reports she has appreciated the hall pass to leave the classroom if she feels overwhelmed. Student states that she also feels validated I have [as] she needs it sometimes as she does get quickly triggered at school...Student seems hopeful that a reduced schedule will help her rest more at home, although she has some fears of missing out on social time with her friends...In terms of triggers, Student’s underlying maladaptive thought is that she is ‘stupid’ ‘can’t be a good student’. With all absent appointments and being tired and unable to focus from her concussion, she is emotionally sensitive...Student reports to me she notices that raised voices or a parade tone make her feel very nervous. Any correction by teachers in front of her classmates shuts her down emotionally. When I tested this with her in session, it appears any scowling also triggers her. We are working on those negative internalized beliefs by challenging herself with both exposure work, and traditional trauma-informed cognitive behavioral strategies.
30. The Student’s IEP team finalized the Student’s new IEP on or about January 19, 2022<sup>5</sup> and included the following accommodations:

<b>Accommodations</b>	<b>Frequency</b>	<b>Location</b>	<b>Duration</b>
Access to teacher notes	Daily	Classroom	01/03/2022 to 12/15/2022
Assembly attendance optional	As needed	School	01/03/2022 to 12/15/2022
Breaks as needed	Daily	Classroom	01/03/2022 to 12/15/2022

<sup>5</sup> The date on the IEP document is: December 16, 2021.

Calculator	As needed	Classroom	01/03/2022 to 12/15/2022
Demonstration of knowledge via standards, reduced problems/examples	Daily	Classroom	01/03/2022 to 12/15/2022
Directions to be short and clear in all areas- check for understanding	Daily	Classroom	01/03/2022 to 12/15/2022
Extra time for assignments and tests	Daily	Classroom	01/03/2022 to 12/15/2022
Paper packets provided	Daily	Classroom	01/03/2022 to 12/15/2022
Planner	Daily	Classroom	01/03/2022 to 12/15/2022
Preferential Seating	Daily	Classroom	01/03/2022 to 12/15/2022
Request help via google hang out	Daily	Classroom	01/03/2022 to 12/15/2022
SBAC General-Separate setting	When needed	Alternative classroom	01/03/2022 to 12/15/2022
SBAC Math & Sci Calculator	As needed	Classroom	01/03/2022 to 12/15/2022
Small Group Presentations	Daily	Classroom	01/03/2022 to 12/15/2022
Speech to Text	Daily	Classroom	01/03/2022 to 12/15/2022
Student notecards available for testing	When taking tests	Classroom	01/03/2022 to 12/15/2022
Testing in alternate quiet location	When taking tests	Office	01/03/2022 to 12/15/2022
Text to speech	Daily	Laptop	01/03/2022 to 12/15/2022

The January 2022 IEP provided the Student with the following specially designed instruction in a general education setting:

- Math: 110 minutes 2 times a week (to be provided by special education staff)
- Math: 40 minutes 1 time a week (to be provided by special education staff)

The prior written notice related to the January 2022 IEP read, in part:

**Description of the proposed or refused action:** Student's IEP team met to propose a reduced schedule and development of a new IEP supporting the evaluation teams decisions and identifying accommodations that are tailored to her success.

**The reason we are proposing or refusing to take action is:** A reevaluation was recently completed that removed speech and language services [and] study skills and added math as an area of service. Student has a new diagnosis of narcolepsy with

cataplexy which has required adjustment to her days, increased her absences for medical appointments and required modification of her accommodations.

31. The first semester ended on January 25, 2022.

32. The Student's second semester schedule was as follows:

- **Biology** – taught by a general education teacher
- **Access/Study Skills** – taught by special education teacher
- **US History** – taught by a general education teacher
- **English Standard** – taught by a general education teacher

Spanish and Geometry were dropped from the Student's schedule for spring 2022.

According to the District, on or about January 22, 2022:

Student [began] receiving [SDI in] math...during her Access Class. Math curriculum was provided via ALEKS online program with specially designed instruction provided by the special education teacher. 110 minutes of specially designed instruction were provided on both Tuesday and Thursday and another 45 minutes were provided on Friday.

33. According to the Parent, in mid-March 2022, the Student experienced another concussion "while at the gym...and [was] extremely sleepy and having headaches."

34. According to the Parent, in April 2022:

- The access teacher expressed concern that the Student had not been engaging in work, the access teacher allegedly reported the Student was "laying around the week before spring break";
- The director expressed concern at the Student's pace of progress in math class;
- The Student reported the access teacher was "pretty good about grade checks and checking in on the students with what needs to happen";
- The Student's grade in science was comparatively low, the Student had to recreate a test, and the Parent believed appropriate IEP supports had not been provided to the Student in relation to the same; and,
- The director commented that the Student needed "to learn to advocate for herself" but the Parent believed the Student "was never equipped with the tools she need[ed] to [advocate for herself]".

35. On April 20, 2022, the principal emailed the Parent, stating, in part:

I am struggling to understand the areas you are wanting us to look at within science and absences. Perhaps meeting in person would help create clarity...As far as science notes, I think we will need to work with case manager 1 to identify where the gaps are between what needs Student has, and what we are providing. Between an instructional assistant in the room and the use of a Google classroom that gives students access to the daily activities, I'm not sure where the disconnect lies with what specific supports we should add to support Student. We could look at the pure notetaker. Years ago, we used to see more teachers that would have PowerPoint they could share that would act as teacher notes, but this is not really how the science class is designed. It is fairly hands-on and lab based. [I] had some initial worry about remaining in a science class when we were looking at reducing Student's schedule months back, but since then, I thought Student has been fairly

successful. I have not heard of concerns until just recently. I would love to know if something has changed.

Today...I was doing in observation in the classroom [and] I noticed Student seem to be able to advocate well, was engaged in a participate in the dissection, and even worked with the instructional assistant in the room on completing parts of the required assignment. I'm not sure how far she got or how the activity ended per Student, but I certainly could tell she seemed to follow what was being required and was engaged in the assignment alongside the instructional assistant.

Again, I'm sorry I'm not tracking the concerns particularly well at the moment.

36. The District's response included a June 2022 progress reporting related to the math goal (ability to explain each step in a simple equation) in the January 2022 IEP: sufficient progress: "Student has made sufficient progress towards her math goal, earning a B+ in her math class."

37. According to the Student's health advocate:

[During the 2021-2022 school year], Student reported that the IEP process and dealing with some of her teachers has been hard. Student reported she felt sad, mad, frustrated, not wanting to go to school and crying a lot due to anger and being overwhelmed. These feeling came about when teachers didn't offer help and accused Student of not doing work. Feeling as though her life outside school was less important than school especially when teachers emailed case manager 1 saying Student is not doing her work.

...

Math teacher refused to help Student's group after helping the entire class. He was not following the IEP and wouldn't let Student leave class to go to the restroom. He let her go after telling her not to go to the office or anywhere else. Student reported incident in real time to...principal. Student eventually got removed from class all together.

Spanish teacher was not following IEP. Would expect Student to know info she was not present for. Student.... Student was removed from this class.

Science teacher expecting Student to complete all of her work online and that was not doable for her nor following her IEP. Once addressed he did start providing paper packets. He started checking with Student asking if she needed help. This situation was resolved reasonably.

38. The District's response included narratives from several of the Student's providers that detailed their respective provision of IEP supports to the Student from May 10, 2021 through the present (See **Exhibit A**). The District's response also included several work samples from the Student's history teacher, English language arts teacher, and case manager 2.

39. The second semester and District school year ended on June 20, 2022.

40. According to attendance records, between August 30, 2021 and June 15, 2022, the Student had 47.25 days of excused absences and 9.5 days of unexcused absences.

## CONCLUSIONS

**Issue 1: IEP Implementation** – The Parent alleged, beginning May 10, 2021, the District did not follow proper procedures to implement the Student’s individualized education programs (IEPs).

A district must provide 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.

Communication: Spring & Fall 2021

The April 2021 amended IEP provided the Student with the following specially designed instruction (SDI) in a *general education setting* through January 26, 2022: 15 minutes 1 time a month of communication (from a speech language pathologist (SLP)).

In the spring of 2021, according to the District, “Student received speech services once a month on a Wednesday from 12:45 to 1:00”, and SLP 1 provided the Student’s communication SDI in spring 2021. The District provided OSPI with a copy of SLP 1’s spring 2021 schedule, which showed she was scheduled to work with the Student once a month from 12:45–1 pm on Wednesdays. Finally, the June 2021 progress report noted the Student made sufficient progress on the Student’s communication goal. Accordingly, OSPI finds communication SDI services were materially implemented in spring 2021.

In the fall of 2021, though, the story is different—as noted in the December 2021 reevaluation report:

Student has had attempted [SLP] sessions three times since the beginning of the school year. In the first session on 10/05/2021 she was being evaluated and was found to exceed the auditory goal with a standard score of 102 in the area of Auditory memory on the TAPS-4. In the second session on 10/25/2021 she was involved in school state testing, and on the third session on 11/24/2021 she was reported as absent.

It is not clear why the Student did not have a speech session in September 2021. Importantly, as detailed in the December 2021 reevaluation report, the Student had not shown progress in all areas related to her communication SDI goal, as the evaluation showed the Student scored below average in several areas:

The Phonological Processing Index (PPI) subtest showed a standard score of 80, which is in the 9%ile or -1.33 standard deviations below the mean. The Phonological Processing Supplemental part of the PPI showed a standard score of 108, which is in the 75%ile, or .55 standard deviations above the mean. The Auditory Memory Index (AMI) subtest showed a standard score of 102, which is in the 55%ile or .13 standard deviations above the mean. The Listening Comprehension Index (LCI) subtest showed a standard score of 85, which is in the 16%ile or -1.00 standard deviations below the mean. The overall standard score which is a sum of the three subtests showed a standard score of 88, which is in the 21%ile or -.80 standard deviations below the mean.

Accordingly, as the Student was supposed to receive four speech sessions between September and December 2021, and only received one that focused on testing, OSPI finds a material implementation failure in relation to fall 2021 communication SDI and the District will be required to provide the Student with a half hour of communication SDI as compensatory education.

#### Study Skills: Fall 2021

Beginning with the fall 2021 semester, the April 2021 amended IEP provided the Student with 264 minutes a week of specially designed instruction in study skills.

Here, the documentation provided to OSPI during this investigation shows this portion of the April 2021 amended IEP was materially implemented. For example: in the fall 2021 semester, the Student was enrolled in the Access/Study Skills class, which was taught by a special education teacher and which met for 265 minutes a week; during this investigation, the Access/Study Skills teacher provided the following statement to OSPI, "I teach and access class where we have short lessons on study and social skills, with no homework, and the rest of the period is spent providing support for [Student's] other classes"<sup>6</sup>; it appears the District was paying particular attention to how many minutes of specially designed instruction in study skills the Student received in fall 2021, as the Student's IEP was amended in November 2021 to account for a four to five- minute change in the bell schedule; the December 2021 evaluation report noted the Student was friendly, engaged, and a good advocate in the Access/Study Skills class; and the December 2021 evaluation report noted the Student had made progress on the Student's study skills IEP goals.

In sum, OSPI finds the District materially implemented the study skills specially designed instruction in the April 2021 amended IEP.

#### Math: Spring 2022

Beginning with the January 2022 IEP, the Student was to receive 260 minutes a week of specially designed instruction in math.

Here, the documentation provided to OSPI during this investigation shows that this portion of the January 2022 IEP was materially implemented. For example: in the spring 2022 semester, the Student was enrolled in the Access/Study Skills class, which was taught by a special education teacher and which met for 265 minutes a week; during this investigation, the Access/Study Skills teacher provided a detailed description of the type of math work he assisted the Student with during the class; the Access/Study Skills teacher also detailed the specific online math program the Student utilized; and the June 2022 progress report noted the Student had made sufficient progress on the Student's math IEP goal.

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<sup>6</sup> OSPI does acknowledge: the Parent stated substitutes were somewhat regularly provided in fall 2021 for the Access Class and/or the location of the Access Class changed on occasion. But the documentation provided to OSPI does not show that these changes, to the extent they did occur, were of such a nature as to materially interrupt the intended provision of SDI services to the Student in the Access Class.



In sum, OSPI finds the District materially implemented the math specially designed instruction in the January 2022 IEP.

#### Accommodations

Each of the Student's three IEPs relevant to the time period beginning May 10, 2021 provided the Student with numerous accommodations. Here, emails show that, at least occasionally, when certain accommodations should have been provided, they possibly were not. However, during this investigation, many of the Student's teachers—from both school years—provided detailed statements explaining the accommodations they each provided to the Student, as well as the context in which they applied them. See **Exhibit A**. Accordingly, OSPI finds the District materially implemented the accommodations in the Student's various IEPs.

#### Other Matters

Finally, OSPI observes: numerous email communications reviewed during this investigation detailed the Parent's concern that certain staff were not approaching the Student in a manner conducive to the Student's learning; on January 18, 2022, the private counselor relayed to case manager 2 that the Student was having maladaptive thoughts and anxieties related to the school environment; with the January 2022 IEP, the IEP team reduced the Student's academic schedule; and in a statement, the Student's health advocate noted, in part, "Student reported she felt sad, mad, frustrated, not wanting to go to school, and crying a lot due to anger and being overwhelmed." To OSPI, these facts show the Student, potentially, has a need either for a social-emotional-behavior IEP goal, a behavioral intervention plan, supplementary aides and supports for District staff, and/or some combination of the same. To the extent needed, OSPI encourages the Student's IEP team to consider whether the Student's needs resulting from the Student's disability require the Student be provided with the same.

### **CORRECTIVE ACTIONS**

By or before **July 22, 2022** and **September 30, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **September 30, 2022**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 30 minutes of specially designed instruction in communication.

The District will provide OSPI with documentation of the schedule for services by or before **July 22, 2022**.

The compensatory education 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 occur on weekends or during District breaks. Because of the COVID-19 pandemic, the compensatory education may be provided remotely.

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 **September 30, 2022**, including those needing to be rescheduled.*

No later than **September 30, 2022**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. 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.

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 reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 30, 2022**.

**DISTRICT SPECIFIC:**

None.

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 July, 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.)