

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-145

PROCEDURAL HISTORY

On November 30, 2020¹, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Mercer Island School District (District). The Parents alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On December 1, 2020, 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 December 21, 2020, OSPI received the District's response to the complaint and forwarded it to the Parents the same day. OSPI invited the Parents to reply.

On December 29, 2020, the Parents requested an extension of time to reply to the District's response to the complaint. OSPI granted the extension.

On January 13, 2021, OSPI received additional information from the Parents. OSPI forwarded the additional information to the District the same day.

On January 14, 2021, OSPI received the Parents' reply. OSPI forwarded that reply to the District on the same day.

On January 19, 2021, OSPI received an amended version of the Parents' reply and forwarded it to the District on January 20, 2021.

On January 20, 2021, the Parents requested additional time to provide the remainder of their reply to the District's response. OSPI granted this request and the Parents were given until January 27, 2021 to reply. As this presented an exceptional circumstance, the 60-day decision deadline was extended to February 3, 2021, as permitted by WAC 392-172A-05030.

On January 27, 2021, OSPI received the remainder of the Parents' reply and forwarded it to the District on January 28, 2021.

¹ The Parents originally submitted a request for a special education citizen complaint investigation on November 19, 2020. OSPI, in a letter on November 23, 2020, explained that a complaint could not be opened because the complaint did not include facts showing a potential violation of the IDEA. However, OSPI notified the Parents that it would review supplemental information provided to determine if there are allegations of potential violations that could be investigated. On November 30, 2020, the Parents provided supplemental information that did indicate a potential violation of the IDEA, and thus, OSPI opened this complaint investigation.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on December 1, 2019. 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 period.

ISSUES

1. Did the District follow procedures to address the Parent's request to change the Student's middle school schedule so that he was not in a resource room period and would instead spend 100% of his time in the general education setting, either in December 2019² or at the January 2020 IEP meetings?
2. Did the District follow procedures to amend or remove the Student's paraeducator support services in his IEP in January 2020?

LEGAL STANDARDS

Citizen Complaints and Due Process Hearings: If an issue in a citizen complaint has been previously decided in a due process hearing involving the same parties, the hearing decision is binding. 34 CFR §300.152(c)(2); WAC 392-172A-05035(2).

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324; WAC 392-172A-03110. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

² OSPI notes it can only investigate potential allegations that occurred within the past year of receipt of a complete complaint. The Parent provided the supplemental information necessary to open the complaint on November 30, 2020; meaning the investigation timeline begins on December 1, 2019. The Parent's documentation included multiple requests to change the Student's schedule in November 2019; thus, the District *potentially* had an obligation to address the Parent's request in December 2019.

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Prepared in Draft Form Prior to Meeting: School district staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the district must make it clear to the parents at the outset of the meeting that the services proposed by the district are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion, of the student's needs and the services to be provided to meet those needs before the IEP is finalized. School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. An IEP can only be finalized after parental involvement. IDEA, 64 Fed. Reg. 12478 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32).

A district violates the procedural requirement of providing parents the opportunity to participate if it predetermines a student's placement, meaning that it "independently develops an IEP, without meaningful parental participation, and then simply presents the IEP to the parent for ratification." Likewise, a district "may not enter an IEP meeting with a 'take-it-or-leave-it' approach." Parents have the right to meaningful participation, but they do not have veto power over individual provisions or the right to dictate any particular educational program. *Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an

education it considers appropriate, even if the educational program is different from a program sought by the parents.)

FINDINGS OF FACT

Background

1. During the 2018-2019 school year, the Student attended a District middle school and was eligible for special education services under the category multiple disabilities.
2. According to the Parents' complaint, they first requested the Student's schedule and placement be changed at a May 23, 2019 IEP meeting. The Parent stated the IEP team agreed to provide the Student with paraeducator support "initially in just two general education classes and one special education class," and that once the Student was used to the support, "his special education class would be replaces [sic] with a social studies class and the paraeducator would move to the general education setting with him." The Parent stated that, "unfortunately, it seemed like staff did not capture the Team's recommendations and decision with sufficient documentation."

According to the Parent, the Student's IEP team did decide on a timeline to transition the Student into 100% time in the general education setting, but the District failed to capture the agreement in the prior written notice. The Parents stated the plan "was to first allow Student and paraeducator to build up rapport and then eliminate special education class/service to allow Student to access academic classes (in 2019-2020 it was supposed to be Social Studies class) and to receive sufficient 'pushed in' support to participate in general education class with his non-disabled peers."

3. The notes from the May 2019 IEP meeting, provided by the Parent, indicated the team considered paraeducator support in the general education class and "that [Student] needs one period of [special education] a day, but can be at the end of the day...with an hour or two of para support (under the direction of the [special education] teacher) somewhere in his day...Parent wants [Student] to function in the general ed." The notes included the following:
[Parents] like and agree to having para support in two of his classes, in addition to his lab class at the end of the day...we will start with his schedule this way and see if we are able to eliminate lab later. But, there's a benefit to this schedule so that he can work on his school and/or homework at the end of the day.

The notes further recorded that the Parent wanted the Student to receive all of his specially designed instruction in the general education class so that "he can progress without the lab." The notes indicated the team discussed providing organizational/study skills in the lab class period, that the paraeducator could support written expression, and that the Student would be pulled out of band once a week for counseling. The notes included, "[Parent] would like the minutes divided evenly into the all [sic] supports in two places (gen ed and sped)."

2019-2020 School Year

4. During the 2019-2020 school year, the Student attended a District middle school, was in the eighth grade, and continued to be eligible for special education services.
5. The District's 2019-2020 school year began on September 4, 2019.
6. On September 12, 2019, the Student's IEP team met. Based on the IEP meeting notes, the team discussed, in part, the paraeducator's work with the Student and the notes indicated the paraeducator and teacher have "common time to discuss [Student's] goals on a daily basis where the teacher is modeling instruction for the Para and the Para is modeling the behavior...for [Student] in all 3 services areas." The notes included that the Parent shared that "the overall goal for student is to be in all academic classes and to be independent in his work."
7. On October 17, 2019, the Student's IEP team met and amended the Student's IEP. The amended IEP included goals in social/emotional behavior, writing, and study/organizational skills. The IEP provided the Student with the following specially designed instruction from October 21, 2019 through January 29, 2020:
 - Organizational/study skills: 12 minutes, 5 times weekly (provided by special education staff in the special education setting)
 - Social/emotional behavior: 12 minutes, 5 times weekly (provided by special education staff in the special education setting)
 - Written Expression: 12 minutes, 5 times weekly (provided by special education staff in the special education setting)
 - Organizational/study skills: 30 minutes, 5 times weekly (provided by a paraeducator in the general education setting) (concurrent)
 - Social/emotional behavior: 30 minutes, 5 times weekly (provided by a paraeducator in the general education setting) (concurrent)
 - Written Expression: 60 minutes, 5 times weekly (provided by a paraeducator in the general education setting) (concurrent)

The IEP included counseling as a related service (in the special education setting), and included a monthly occupational therapy consult and weekly speech language therapy in the general education setting as supplementary aids and services. The IEP indicated the Student would spend 85.9% of his time in the general education setting and stated:

[Student] will not participate in the general education setting when receiving specially designed instruction in written expression, organization/study skills, and social/emotional behavior in the Resource Program as outlined in the service matrix...In addition, specially designed instruction in the areas of written expression, organizational/study skills, and social/emotional behavior will be taught in the general education setting concurrent with the general education curriculum.

8. Based on emails included in the Parents' reply to the District's response, on at least October 26, 28 (mentioned a facilitated IEP meeting), and 29, 2019, the Parents requested the District "follow through the IEP team's decision made on 5-23-2019 to transition Student into receiving education and services 100% in a general education setting" or mentioned the May

2019 IEP meeting “plan” to have the Student “in 100% general education classes with push in services and eliminate special education class.”

9. On November 8, 2019, the Parent emailed the associate principal and requested the Student’s schedule be changed to remove him from his “Lab class” and place him in a general education class for that period. The Parent stated, in her email, “We have been asking for 100% inclusion...we would like to make sure that [Student] has the opportunity to participate in general education classes instead...” The Parent stated because second trimester was beginning soon, she was requesting the schedule be changed in the next two weeks and asked, “do we need to reconvene the IEP team for change in schedule?”
10. The District, in its response, explained that the “Lab class” was the Student’s 6th period class and was taught by his special education teacher/case manager (case manager). The District noted the Student received his specially designed instruction during the lab class period.
11. On November 14, 2019, the Parent emailed the associate principal and requested an IEP meeting to “add executive function, communication, and writing goals.” The Parent also stated they needed to know the Student’s “class schedule for second trimester” and that the Student needed to spend 100% of his time in the general education setting. The Parent also emailed the District’s director of special services (director) and requested a facilitated IEP meeting.
12. On November 18, 2019, the Parent emailed the District registrar regarding changing the Student’s schedule and stated, “We will need to discuss details of paraeducator supports during [social studies] class with the IEP team, unless the team agrees to amend the IEP without a meeting.”
13. On November 19, 2019, the District issued a prior written notice in response to the Parents’ schedule change request. The director emailed the Parents the prior written notice, stating that as the Student’s “schedule reflects his services that were decided as part of an IEP Team meeting, the IEP Team needs to be involved, unless you are revoking services.” The prior written notice indicated the District was “refusing” to change the Student’s “schedule and services” and included the following:
 - Description of the proposed or refused action:
Parents have requested that the district change the student schedule to eliminate the Lab/Resource class where [Student] receives specially designed instruction.
 - The reason we are proposing or refusing to take action is:
The District is refusing to change the student schedule outside of an IEP meeting that discusses student present levels, goals, and services to meet those goals.
 - Description of any other options considered and rejected:
The District considered and rejected the request to change the student schedule as [Student] still requires specially designed instruction in study/organization, social/emotional/behavioral, and written expression.
 - The reasons we rejected those options:

The IEP Team met twice in October and November 2019 to review and revise the IEP. Although the team may have a long-term goal of eliminating the Lab class, a timeline for this was not decided upon. The annual IEP is due in January. The parent has requested mediation and a facilitated IEP.

A description of each procedure, test, record, or report we used...:

Current IEP Team Meetings (9/12/2019 and 10/17/2019) and classroom based data.

Any other factors that are relevant to the action:

Sound Options Group has been contacted to schedule mediation and a facilitated IEP Meeting. Parent request will be reconsidered by the IEP Team during the next meeting.

The prior written notice included a note, added December 12, 2019, that the director updated the notice to correct an error with respect to the dates of the IEP meetings.

14. On November 20, 2019, the Parent emailed Sound Options Group regarding mediation, availability, and agenda items, including "Inclusion – 100% general education" and paraeducator services.
15. On November 25, 2019, the Parent emailed the District and requested the IEP team meet sooner than January. The Parent noted that they had not finished discussing all issues on the agenda for the September and October 2019 IEP meetings. The Parent stated, in part:
...**Students with disabilities have a right to be educated in the least restrictive environment (LRE) possible and with their non-disabled peers...**[Student] struggles with writing and language processing and in Social studies class. We need to make sure he has more than three or four trimesters of Social Studies before he transitions to high school next school year...Inclusion was the plan all along as discussed with the IEP team... This is somewhat recorded in our May IEP meeting notes taken by school staff. **100% inclusion in general education classes was a long term plan that was supposed to happen in second trimester...**Student's IEP can be reviewed anytime. We should not be waiting for the annual review at the end of January when we already know that, 1. **Goal is to remove special education class to provide access to general education class** and [Student] is ready for it...The para supports him in his 6th period. She can support [Student] during that period whether he has a special education class or **Social studies, which is an academic class [Student] needs!**

(Emphasis in original).

16. On November 27, 2019, the District's first trimester ended.

December 1, 2019: Investigation Timeline Began

17. Based on emails included in the Parents' reply to the District's response, the Parents requested an IEP meeting be held prior to winter break, including on December 6 and 12, 2019 (related to requesting extended school year services over winter break and the Student's progress).
18. On December 20, 2019, the director and Parents emailed regarding scheduling the facilitated IEP meeting and attendees at the meeting.

19. The District was on winter break from December 23, 2019 through January 3, 2020.
20. On January 7, 2020, the case manager provided the Parents with a proposed agenda for the annual IEP meeting. The agenda included the following, summarized:
- Introductions, meeting norms, agenda;
 - Procedural safeguards and signatures;
 - IEP: Transition section (Student-led); and,
 - IEP team considerations: present levels, annual goals, accommodations, testing, service matrix (supplemental aids and services, related services), least restrictive environment.

Subsequent emails indicated the Parents and District discussed via email the date and time of the meeting and additional agenda items such as progress reporting and parent communication. Emails in advance of the meeting also indicated the Parent and District emailed regarding the Parent's questions (e.g., questions about records requests, transition assessments and planning, etc.), requests for accommodations, and discussed meeting participants.

21. On January 15, 2020, the director emailed the Parents a draft of the Student's proposed annual IEP, per the Parent's request for documents and draft IEPs in advance of meetings.
22. The District, in its response, noted the draft IEP continued to propose that the Student receive specially designed instruction in the special education setting and did not propose the continuation of paraeducator support in his general education class. The District stated, in its response, that the "Parents did not raise any concerns about these proposals in emails prior to the January 21, 2020 IEP team meeting."
23. The Parents, in their reply to the District's response, asserted that the fact that the draft IEP listed the Student's services and setting for the services means the District predetermined that the Student would receive special education services in the special education setting and that paraeducator services would be removed.

Further, the Parents stated, "The District seems to claim that it is the Parent's responsibility to address relevant student needs, keep track of all necessary meeting agenda items, and manage the Student's case."

24. The Student's IEP team met on January 21 and 23, 2020, for facilitated IEP meetings.³ On January 21, 2020, the Student's IEP team—including the Parents and three of the Parents' advocates—met and reviewed the draft IEP. The team reviewed the team considerations

³ OSPI notes that the January 2020 IEP meetings were the subject of due process 2020-SE-0028, filed by the Parents on January 29, 2020. The decision in 2020-SE-0028 discussed the January 2020 IEP meetings extensively. Thus, for purposes of this investigation, the decision will concentrate on the portions of the IEP meeting that discussed topics connected to the issues alleged in the instant complaint. References to other topics of discussion will be included as necessary for continuity and context, but will not be detailed.

section, general education teacher report, adverse impact summary, present levels of performance, and related goals in writing.

25. On January 22, 2020, the Parent emailed the case manager and director, noting the Student had been pulled out of his English language arts class on Friday. The Parent reiterated her understanding that the Student's IEP team in May 2019 had agreed that counseling would be the only time the Student was pulled out of a general education class and that "the purpose for this was so that [Student] could have academic class (Social Studies) in the slot where special ed class was...[Student] was to be pulled out of Band by [counselor] so that he could have an academic class in place of special education class starting in the fall. He does not have an academic class and he still misses Band once a week...still having the special ed class and being pulled out of general ed class defeats the purpose of these agreed upon supports with a plan of transitioning into 100% inclusive educational environment."
26. On January 23, 2020, the Student's IEP team—including the Parents, one of the Parents' advocates, and the Parents' attorney—met again and continued reviewing the Student's IEP. The IEP team reviewed the remaining present levels of performance and goals, accommodations, and other remaining components of the draft IEP. The notes from the meeting indicated the team discussed the service matrix, including why counseling was considered a special education setting. The Parent requested that it be "clarified that we do not want him pulled from academic courses to receive his services" and the notes included, "[Parent] has a different understanding of his services from a different team discussion." The director, in response, stated, "we cannot talk about what his high school schedule will look like at this meeting. The IEP team does not determine when he gets pulled. This will be documented in the [prior written notice]."⁴ The notes also included a statement that the "Family does not agree with [least restrictive environment]. Why isn't the district using inclusive practices?" Then, due to time constraints, the meeting notes stated the team reviewed the notes and concluded the meeting. The Parent's attorney noted that "there are still other points to discuss but these can be done offline between [Parent attorney] and [District attorney]."

⁴ The January 21, 2020 IEP meeting notes also included a concern raised by the Parents that the Student was pulled out of class to participate in the creation of the transition section of his IEP, stating, "Parents are also concerned that he was pull from a [language arts (LA)] class (a class he struggles in) to participate in the interview." The due process decision, issued November 13, 2020, addressed this concern: "The Parents assert the School District should not remove the Student from academic courses (general education) to deliver special education services. Although the School District interpreted this request as being related to the Student's 9th grade/high school schedule, the January 27, 2020, IEP would have controlled his education for the last half of his 8th grade school year...This request appeared to be based primarily on [case manager's] removal of the Student from LA class briefly late in the week ending Friday, January 17, 2020, to gather transition services data." The due process decision concluded there was no evidence the Student was regularly removed from class and noted "it is appropriate to allow the School District to determine when services are provided in the school-day, so long as the IEP is implemented with fidelity." The due process decision did not find any violation related to the Parents' assertion that the District should not remove the Student from academic (general education) courses to deliver special education services. *See*, 2020-SE-0028 conclusions of law, page 29-30.

27. The January 2020 IEP included annual goals in the areas of social/emotional behavior, study/organizational skills, and written expression. The IEP included the following specially designed instruction from January 28, 2020 through June 19, 2020:

- Organizational/study skills: 12 minutes, 5 times per week (provided by special education staff in the special education setting)
- Social/emotional behavioral: 12 minutes, 5 times per week (provided by special education staff in the special education setting)
- Written Expression: 12 minutes, 5 times per week (provided by special education staff in the special education setting)
- Counseling (related service): 60 minutes weekly (provided by a counselor in the special education setting)

The IEP noted the Student would spend 85.9% of his time in the general education setting.

28. The District emphasized in its response that the Student's IEP team met for almost seven hours and that no concern was raised either day regarding the lack of identified paraeducator support in the draft IEP.

29. The Parent noted in her complaint that during the IEP meeting—which she participated in via Zoom—she requested the Student be fully included in general education classes with appropriate supports. The Parent included the January 21, 2020 Zoom meeting chat notes in her complaint and the chat notes included the Parent requesting that: “the many accommodations...be addressed by teaching him those skills so that he would eventually not be needing most of those accommodations, but would gain those skills...We believe that he should be working on these skills within the general education class. Like all other students...[Student] needs to be learning in the environment he struggles in.” At the end of the Zoom meeting chat notes, the Parent also stated, “Denial of LRE has to be addressed.”

The Parents, in their reply to the District's response, argued they were “not afforded the opportunity to meaningfully discuss the District's decision to remove Student's services from his IEP.” The Parents stated the IEP team did not discuss the “requested change of placement” or the removal of paraeducator services. The Parents stated they did raise a concern about the paraeducator in that they raised a concern “about the current paraeducator being appropriately trained to meet [Student's] disability needs” and that the “District moved on.” The Parents stated the District did not “bring up paraeducator's services or its removal during the January IEP meetings” and that they “first found out that the paraeducator services were removed on January 1-27-2020 evening when [director] email [sic] parents their student's amended IEP.”

30. On January 27, 2020, the director emailed the Parent's the finalized IEP and prior written notice. The prior written notice stated, in relevant part:

Description of other options considered and rejected:

...

6. Parents do not want [Student] pulled from academic courses to receive his services.

The reasons we rejected those options were:

...

6. The District has determined that [Student] requires specially designed instruction that the [specially designed instruction] should take place in the Special Education Setting. The District has determined that the student needs services outside of the general education environment to make progress towards his IEP goals. The IEP does not determine what time of day he will receive services.

31. On January 29, 2020, the Parents filed a request for a due process hearing. The District noted that based on the hearing request and the Parents' invocation of stay-put placement rights, the District did not implement the January 2020 IEP and the Student's October 2019 amended IEP remained in place.
32. The District's 2019-2020 school year ended on June 19, 2020.

2020-2021 School Year

33. On November 13, 2020, the administrative law judge (ALJ) issued a decision in the Parents' due process, SE-2020-0028. The issues alleged primarily focused on the January 27, 2020 prior written notice, the related January 21 and 23, 2020 IEP meetings, and the January 2020 IEP. Regarding parent participation in the IEP meetings, the due process found the "Parents, their attorney, their education advocate, and their private consultants, were all active participants in the meetings...They asked questions and made requests, voiced their opinions, and caused the draft IEP to be changed." The due process noted that the "participation of the Mother and Father brought about changes to the IEP [and] although their proposed changes were not adopted 100% by the School District, that is not required by the plain wording of the regulation." The due process decision found that the Parents had both actual and meaningful participation in the IEP meetings and found no procedural or substantive violation as the "District did not deprive the Parents of meaningful participation in the January 2020 IEP meetings."
34. On November 30, 2020, OSPI received and opened this complaint. The Parents alleged the District "denied to fully include our son in general education setting...despite the IEP team's previous decision to phase [Student] into general education classes with additional support (paraeducator)." The Parent further stated, "Paraeducator support in special education class was until [Student] is ready to transition into Social Studies class in the fall of 2019. Unfortunately the...[case manager] did not completely record the Teams' decision of future plan in the IEP other than adding paraeducator services for 2 hours a day." The Parent stated that in the fall of 2019, the District "reversed the team's decision...and eventually removed [Student's] supports on his IEP, including...paraeducator." The Parents' complaint indicated this all came to center around their request to change the Student's schedule, the District's "dragging an IEP meeting out two months," and the District's refusal to change the Student's schedule.

CONCLUSIONS

Issue One: Request to Change Student's Schedule – The Parents alleged the District failed to change the Student's schedule to include him in a general education setting 100% of his day, despite—according to the Parents—a previous IEP team decision to phase the Student in a schedule with all classes in the general education setting. Specifically, the Parents alleged the District delayed in scheduling an individualized education program (IEP) meeting to discuss the Parents' request and then at the IEP meeting, did not discuss changing the Student's schedule.

A student's IEP must be reviewed and revised periodically, but not less than annually. However, when a parent requests an IEP meeting because the parent believes that a change is needed in the provision of a free appropriate public education (FAPE) to the student or the educational placement of the student, and the district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

As background, during the 2019-2020 school year, the Student's IEP team met in September and October 2019 to review and amend the Student's IEP. The Student's October 2019 IEP included minutes of specially designed instruction delivered by special education staff in the special education setting and minutes delivered by a paraeducator in the general education setting. The IEP noted the Student would spend approximately 86% of his time in the general education setting. The Student received part of his specially designed instruction in his "Lab class" period, which was a special education setting.

IEP Meeting Scheduling

Based on emails reviewed during the investigation, on at least October 26, October 28, October 29, November 8, November 14, and November 18, 2019, the Parents requested an IEP meeting or to amend the IEP without a meeting. Various reasons for meeting were given, including requests that the IEP team "follow through the IEP team's decision made on 5-23-2019 to transition Student into receiving education and services 100% in a general education setting;" requests to change the Student's schedule to remove the lab class and replace it with a class in the general education setting; requests to add goals to the Student's IEP; and requests for a facilitated IEP meeting.

On November 19, 2019, the District provided the Parents with a prior written notice stating the District would not change the Student's schedule outside of an IEP meeting as the requested schedule change impacted the provision of specially designed instruction and the IEP team would need to discuss. The prior written notice indicated that given that the IEP team had already met in September and October 2019, and the annual IEP meeting was being scheduled for January 2020, the Parents' request would be discussed at the next IEP meeting. The prior written notice indicated the team "may have a long-term goal of eliminating the Lab class, [but] a timeline for this was not decided upon."

The Parent noted second trimester was beginning soon—the District’s first trimester ended on November 27, 2019—and requested the Student’s schedule be changed or the IEP team meet prior to winter break. Following the November 19, 2019 prior written notice, the Parents again requested an IEP meeting be scheduled in emails sent on November 25, December 6, and December 12, 2019. In these emails, additional topics—in addition to the schedule change—were raised, including a request for extended school services and concerns related to the Student’s progress.

The Parents’ request to meet closer to when first trimester ended, and second trimester began, is understandable given the requested schedule change would potentially impact the Student’s second trimester class schedule. At the same time, the District’s position that the request would be addressed at the January 2020 IEP meeting was reasonable. Given that the IEP team had already met twice during the first trimester, given the variety of topics the Parents wanted to meet about—indicating the meeting would likely be longer and potentially include more participants—given the request for a facilitated IEP meeting that introduced another organization to coordinate scheduling with, and given that the Student’s annual IEP was due in January 2020, OSPI finds it was reasonable to notify the Parents that the schedule request would be discussed at the January 2020 IEP meeting, even given the Parents numerous requests to meet. Further, the District followed procedures outlined in special education regulation by responding to the Parent’s request for an IEP meeting with a prior written notice, explaining why the Student’s class schedule would not be changed outside an IEP meeting and noting the request would be discussed at the January 2020 IEP meeting it was already in the process of scheduling. OSPI finds no violation with respect to the scheduling of the IEP meeting and does not find the meeting to have been unreasonably delayed.

January 2020 IEP Meetings

On January 21 and 23, 2020, the Student’s IEP team met for facilitated IEP meetings to develop the Student’s annual IEP. When developing each student’s IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation, and the academic, developmental, and functional needs of the student.

In advance of the meeting, on January 15, 2020, the director emailed the Parents a draft of the Student’s proposed annual IEP, in response to the Parent’s request for draft copies of documents.⁵

⁵ The Parents, in their reply to the District’s response, alleged that the fact that the draft IEP listed the Student’s services and setting for services meant the District predetermined that the Student would receive special education services in the special education setting and that paraeducator services would be removed. However, the existence of a draft IEP does not alone indicate predetermination. District staff may come to an IEP meeting with recommendations and proposals regarding IEP content, as long as there is a full discussion—with parent participation—of the student’s needs and services before the IEP is finalized. Thus, the key is the IEP meeting, not just the existence of a draft. Further, here the Parent requested drafts of all documents prior to meetings, which the District in this case provided *in an effort to help ensure Parent participation*.

The draft IEP proposed the Student receive his specially designed instruction in the special education setting. The District stated in its response that the "Parents did not raise any concerns about these proposals in emails prior to the January 21, 2020 IEP team meeting." However, this is not entirely accurate. As discussed above, prior to the January 2020 IEP meetings, the Parents asked to change the Student's schedule and asked the IEP team to address the Student's least restrictive environment (LRE); and, in the November 2019 prior written notice, the District stated the Parents' request would be addressed at the January IEP meeting. Further, between the two IEP meetings, the Parent emailed on January 22, 2020 and again mentioned her goal to have the Student transition into an "100% inclusive educational environment."

Thus, the discussion at the IEP meeting becomes the focus; however, it is not clear how specifically the IEP team discussed the requested change to the Student's class schedule. The meeting notes record that the team discussed the Student's service matrix, the Parent's questions about counseling being a special education setting, and noted the "[Parent] has a different understanding of his services from a different team discussion," which likely alludes to the Parent's understanding of the May 2019 IEP team "plan" to transition the Student into 100% time in the general education setting. The team discussed an instance when the Student was pulled out of his English class to participate in transition planning for the IEP and discussed that the middle school IEP team could not dictate the Student's high school class schedule. The due process decision addressed the last two points, finding no violation related to the Parents' assertion that the District should not remove the Student from academic (general education) courses to deliver special education services. The due process decision did note that the District interpreted this request as being related to the Student's high school schedule, but noted the January 2020 IEP would have controlled the Student's education for the last half of his 8th grade school year.

The meeting notes do not specifically mention the Lab class. Based on the notes, it is not clear if the District misunderstood the Parents' requests during the IEP meeting or if the discussion just naturally went in a different direction. Interestingly, when the District stated the team could not discuss the high school schedule, the Parents do not appear to have clarified that they were actually asking to change the Student's *middle school* class schedule.

The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services a student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Here, the District issued a prior written notice, which included the following:

Description of other options considered and rejected:

6. Parents do not want [Student] pulled from academic courses to receive his services.

The reasons we rejected those options were:

6. The District has determined that [Student] requires specially designed instruction that the [specially designed instruction] should take place in the Special Education Setting. The District has determined that the student needs services outside of the general education

environment to make progress towards his IEP goals. The IEP does not determine what time of day he will receive services.

While again the prior written notice does not specifically refer to the request to change the Lab class, it does address the Parents' general concern regarding the setting the Student receives services in and notes that the District members of the IEP team believe the Student required specially designed instruction in the special education setting. When the IEP team cannot reach consensus, the District has the responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE and did so here.

Again, OSPI reminds the parties that disagreement over an outcome, while understandably frustrating, does not always mean the IDEA has not been followed. Here, the Parents did file a due process, which found that the "participation of the Mother and Father brought about changes to the IEP [and] although their proposed changes were not adopted 100% by the School District, that is not required by the plain wording of the regulation." The due process decision found that the Parents had both actual and meaningful participation in the IEP meetings and found no procedural or substantive violation as the "District did not deprive the Parents of meaningful participation in the January 2020 IEP meetings."

OSPI finds that while the notes do not include a specific reference to changing the middle school schedule for the remainder of the 2019-2020 school year, the documentation does support that the team generally discussed the Student's special education services and settings, and the IEP team discussed the Parents' concerns about pulling the Student out of general education (with respect to the Student being pulled out of Band class for counseling and being pulled out for the transition services interview). There is no indication the Parents clarified during the meeting that they really wanted to talk about changing the Student's Lab class. The District documented disagreements in the prior written notice, and the District ultimately offered what it believed to be FAPE when the IEP team could not reach consensus on all points. The Parents disagreed with the outcome and subsequently accessed their due process rights. Overall, OSPI finds the District follow procedures to address the Parents' concerns and requests in the IEP meeting and followed procedures to document disagreement. OSPI finds no violation with respect to the fact that the District did not change the Student's schedule.

Issue Two: Removal of Paraeducator Support – The Parents alleged the District improperly removed the paraeducator support on the Student's IEP. When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation, and the academic, developmental, and functional needs of the student.

On January 15, 2020, the director emailed the Parents a draft of the Student's proposed annual IEP in advance of the meeting, in response to the Parent's request for draft copies of documents. The draft IEP did not propose the continuation of paraeducator support for the Student in his general education class, unlike the Student's previous IEP (October 2019 amended IEP), which included a paraeducator delivering specially designed instruction in the general education setting, in addition to the Student's receipt of specially designed instruction in a special education setting.

According to the District's response, the Parents did not raise a concern prior to the meeting when constructing the meeting agenda or during the IEP meeting about the lack of identified paraeducator support in the draft IEP. The Parents, in reply, stated it was not their responsibility to "address relevant student needs, keep track of all necessary meeting agenda items, and manage the Student's case." While it is not the Parents' sole responsibility to set the agenda and manage all aspects of the Student's program, parents do have a right to participate in the development of a student's educational program. One way to facilitate parent participation is to involve the parent in the creation of the meeting agenda in order to help ensure the parent's concerns are addressed. Here, emails in advance of the January 2020 IEP meetings indicate the District proposed an agenda, including introductions and meeting norms, procedural safeguards and signatures, IEP transition section, and IEP considerations (present levels, annual goals, accommodations, testing, service matrix (supplemental aids and services, related services), and least restrictive environment. Emails also indicate the Parent sent several questions to the District (e.g., questions about records requests and transition assessments and planning), requests for accommodations, and questions about meeting participants in advance of the meeting. As the Parents had a draft copy of the IEP prior to the meeting, which no longer included paraeducator support, it is not unreasonable to think the Parents may have raised a concern about this or asked to add it to the meeting agenda in advance of the meeting.

Just because paraeducator support was not specifically on the meeting agenda does not mean it could not come up as a topic of discussion at the IEP meeting. However, the documentation does not support a finding that a concern was raised at the meeting about the removal of paraeducator support from the IEP. The meeting notes indicated that the team discussed the IEP service matrix, which previously included specially designed instruction delivered by a paraeducator in the general education setting and the draft January 2020 IEP did not. There is no indication that a concern was raised at this point regarding the lack of paraeducator support on the IEP—and, OSPI notes—this would have been the logical point to raise this question. The Parent, in Zoom meeting chat notes she provided, indicated she raised a concern "about the current paraeducator being appropriately trained to meet [Student's] disability needs" and the District just "moved on." However, OSPI can see why the District may have moved on from this point if the paraeducator was no longer included in the IEP.

While OSPI recognizes that there were many topics discussed during the meeting and the specifics of paraeducator support may not have been discussed, an IEP team cannot discuss something if it is not raised by a member of the IEP team. The Parents stated the District did not bring up the paraeducator services, but the documentation shows that neither did the Parents. The Parent stated the removal of paraeducator services was not discussed by the team and that the Parents first learned of this change when they received the final version of the IEP on January 27, 2020. OSPI does not understand how this can be so, given that the Parents received a draft copy of the IEP prior to the meeting and spent two facilitated IEP meetings going through the details of the draft IEP with the IEP team.

Ultimately, it is clear the Parents disagree with the decision. While IEP teams should work toward consensus, the district has the ultimately responsibility to ensure an IEP includes the services a

student needs in order to receive FAPE. Further, disagreement with a decision does not always mean procedures were not followed. Here, it appears the specific change with respect to paraeducator services was not necessarily discussed—although, again, the IEP service matrix was discussed—and it appears the Parents did not raise a concern about this during the IEP meeting. Therefore, OSPI finds no violation. If the Parents still believe the Student requires support from a paraeducator, they are encouraged to specifically raise this concern with the Student’s IEP team.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ___ day of February, 2021

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.)