

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-57

PROCEDURAL HISTORY

On May 1, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On May 4, 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 May 22, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on May 26, 2020. OSPI invited the Parent to reply.

On June 1, 2020, OSPI requested clarifying information from the District and received additional documentation the same day. OSPI forwarded the documentation to the Parent on June 1, 2020.

On June 5, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 8, 2020.

On June 16, 17, and 18, 2020, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 18, 2020.

On June 19, 2020, OSPI requested clarifying information from the District and on June 24, 2020, OSPI interviewed the District's director of special education.

On June 22, 2020, OSPI requested clarifying information from the Parent and spoke with the Parent on June 23, 2020. The Parent also provided additional documentation on June 23, 2020, and OSPI forwarded the additional documentation to the District the same day.

On June 24, 2020, OSPI interviewed the Student's general education math teacher.

On June 25, 2020, OSPI interviewed the Student's special education teacher.

On June 26, 2020, OSPI interviewed the Student's general education English language arts teacher.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 2, 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 implement the Student's individualized education program (IEP), including providing specially designed instruction, accommodations, and modifications?
2. Did the District follow procedures to provide sufficient progress reporting?
3. Did the District provide prior written notices containing all the elements required in WAC 392-172-05010?
4. Did the District follow procedures when conducting the Student's most recent evaluation, including obtaining Parent consent and sufficient data to warrant exiting the Student from services?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district:
a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student; or b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the

provision of FAPE to the student. The notice must include: a) a description of the action proposed or refused by the agency; b) an explanation of why the agency proposes or refuses to take the action; c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; f) a description of other options that the IEP team considered and the reasons why those options were rejected; and g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015(2).

The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services, whether or not they are commonly linked to the disability category in which the student has been classified. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. The District may proceed with a reevaluation, without obtaining consent if it can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond. The District must record its efforts to obtain parental consent. A district is not required to obtain informed parental consent prior to reviewing existing data. 34 CFR §300.300; WAC 392-172A-03000.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. 34 CFR §300.305(a); WAC 392-172A-03025. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional

data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305(d); WAC 392-172A-03025(5).

FINDINGS OF FACT

Background: District General

1. On March 3, 2020, a complaint was filed regarding a District high school student's educational program. Issues alleged in the complaint included individualized education program (IEP) implementation and the provision of progress reports. The complaint decision, issued on April 27, 2020, found the District in violation—related to the specific student—for failing to implement the IEP. The District was also found in violation for failing to provide progress reporting. OSPI required the District to complete a training on progress reporting (among other corrective actions).
2. On March 13, 2020, a second complaint was filed related to multiple students at the high school. The issue alleged in the complaint was whether the District properly implemented the students' IEPs. The complaint decision, issued on May 12, 2020, found that the District inconsistently implemented the IEPs, with some IEPs being implemented and others not, including some students who did not receive the full amount of specially designed instruction required by their respective IEPs. In part, OSPI required the District to conduct training on implementing IEPs, ensuring services providers have access to the IEP, specially designed instruction, and delivery of instruction.

Background: Student Specific

3. In April 2017, the Student attended a District school, was eligible for special education services, and underwent a triennial reevaluation. The reevaluation report noted the Student continued to be eligible for special education services under the category specific learning disability and recommended he receive specially designed instruction in reading, writing, and math.

The evaluation used the discrepancy model for determining eligibility and noted the Student had a discrepancy in reading and writing. The evaluation report noted that while the Student did not have a discrepancy in math, the team used professional judgment to determine a need for specially designed instruction in math as "reading does impact math problem solving and his classroom teacher indicated that [Student's] classroom performance supports the need to continue with a goal in math problem solving."

Complaint Timeline Began May 1, 2019

4. On May 7, 2019, the Student's IEP team met to develop his annual IEP. The Student's adverse impact statement noted the Student's specific learning disability impacted him primarily in the

areas of reading and writing. The team considerations portion of the IEP indicated the Student had a "great understanding of math and is doing well in that class." The IEP also noted the Student's math goal focused on story problems and that the Student did not fully make the previous goal. The Student's IEP present levels included information on his progress and areas of focus, noting:

Reading: In the general education classroom [Student] has been working on novel studies...and the 40 book reading challenge. When given support the novel studies gave him a good understanding of book comprehension and different parts of writing (character, setting...)...book challenge helped him with reading stamina. In special education he worked on reading naturally curriculum. This is a leveled curriculum with fluency and comprehensions questions. They read the text three different times to show improvement on their reading fluency.

...On the last assessment 4/23/19 [Student] got 75% on his comprehension [goal: 70% accuracy]. He missed a hard detail question. He was able to make this goal. On the next goal on the last assessment on 5/3/19 he was able to read on a cold read 33 words per minute with 87% on word accuracy [goal: 90 words per minute and 95% fluency at middle fourth grade level]. He did not meet this goal but he improved his fluency from 20 words per minute and 89% on word accuracy on the assessment on 9/2018 a 4.5 text...

Written Expression: In the general education classroom [Student] has been working on five paragraph essays...He has a good concept of what a five paragraph essay should look like...and has needed less help with creation of ideas and structure as the year went on. He was very motivated in work completion this year. He would ask to work on his general education papers instead of working on our editing work. He also did the editing work on his papers. In special education he worked on editing paragraphs and creating more complex sentences.

...On the first goal [Student] is able to find most of the conventions (end punctuation and will capitalize the first letter in the sentence if it is not already done). He will sometime find the miss spellings. On the last assessment on 5/2/19 he was able to find 30% of the errors that is an improvement but not as much as needed so he did not make this goal [goal: correct 100% of errors.] On the second goal in his IEP; He was able to make this goal. As the year went on he was able to create more complex sentences...He created a complex paragraph with a lot of description. He still needs some help with spelling and general editing still...

Math: In general education [Student] is working on 6th grade math with support. He is doing well in the class and only needs help with reading. In special education we have been working on vocabulary knowledge and pulling out information out of story problems.

...[Student] did not fully make this goal. He was able to successfully understand the words for addition (increase) and subtraction (reduce) but fell short on the words for multiplication (product) and division (divisible by)...He is fluent in this area and just needs help with **reading vocabulary so he can work independently in this area.**

(Emphasis in original).

The Student's IEP included annual goals in reading (non-fiction reading comprehension improving from fourth grade level text at 75% accuracy to late fifth grade level text at 80% accuracy; reading fluency from middle fourth grade level at 33 words per minute and 87% fluency to late fourth/early fifth grade level at 50 words per minute and 95% fluency), written expression (correct writing errors improving editing skills from correcting 30% errors to 90%), and math (independently understanding complex key words in story problems), with progress reported at the semester. The IEP also included the following accommodations and modifications, summarized:

- Accommodation: Check work frequently to ensure understanding and progress (when Student has a hard time with focus in general education, math, [Language Arts] LA, science, social studies);
- Accommodation: Read material to Student (when reading level is above Student's current level in all general education areas);
- Accommodation: Read-Aloud – English (on any testing state and general education when reading level is above the Student's current reading level);
- Modification: Break material into manageable parts (as needed across school settings); and,
- Modification: Reduce length of assignments (when needed in any area that extensive reading and writing are required).

The IEP also included the following specially designed instruction:

- Reading: 30 minutes, 2 times weekly (special education setting, provided by a special education teacher)
- Written Expression: 30 minutes, 1 time weekly (special education setting, provided by a special education teacher)
- Math: 30 minutes, 2 times monthly (general education setting, provided by a special education teacher)
- Written Expression: 30 minutes, 1 time weekly (general education setting, provided by a special education teacher)

The IEP noted the Student would spend 90 minutes per week in the special education setting and approximately 94.8% of his time in the general education setting.

5. The prior written notice attached to the IEP indicated the team discussed the Student's needs for the following school year. The notice stated the reasons for proposing to take action was that the Student "still qualifies in the areas of reading and writing." The options considered included: "the team talked about issues in reading. [General education teacher] expressed a want to concentrate on non-fiction for his reading comprehension goals. We also talked about changing the service hours next year after the start of school." The notice stated nothing was rejected and that the IEP team considered "parent, student and teacher input, state and district tests, and data collect[ed]."
6. According to the Parent's complaint, the prior written notices "do not address all meeting notes, or parents and teachers concerns. Meeting dates and times are incorrect."
7. On June 12, 2019, the District entered progress reporting on the Student's May 2019 IEP annual goals. The progress reporting documented the following progress in reading, written

expression, and math: "SP" (Sufficient Progress) and "6/13/19 There has not been enough time to show progress in this area."

8. The District's 2018-2019 school year ended on June 14, 2019.
9. According to the Parent's complaint, the Student was not provided specially designed instruction and accommodations/modifications from April 2019 through April 2020.

2019-2020 School Year

10. During the 2019-2020 school year, the Student attended a District middle school and continued to be eligible for special education services under the category specific learning disability. The Student's May 2019 IEP remained in place.
11. The District's 2019-2020 school year began on September 4, 2019. The Student took the following classes during the 2019-2020 school year:
 - Math (general education)
 - U.S. History (general education)
 - Science (general education)
 - Apollo¹: Study Skills
 - Vocational Cooking (general education)
 - English (general education)
 - Physical Education (PE) (general education)
12. In September 2019, according to the District's response, the Student's special education teacher shared the Student's IEP accommodations and modifications with his general education teachers. The District stated the special education teacher also checked in with and worked with the general education teachers at various times throughout the year.
13. As part of the Parent's reply to the District's response, the Parent spoke with several of the Student's teachers, including the general education teachers. Both stated they received paperwork from the special education teacher in the fall of 2019, but that they could not keep the documents because they did not have locking cabinets. One teacher stated she had requested access to the District's online IEP program to read the documents.
14. On October 28, 2019, the District entered progress reporting on the Student's May 2019 IEP annual goals. The progress reporting documented sufficient progress on all the goals and provided the following comments:
 - Reading: "10/28/19: [Student's] last comprehension assessment was 63% 5th grade level. – [special education teacher]."
 - Reading: "10/28/19: Recent assessment [Student] read 37 correct words per minute (cwpm) 6th grade level."
 - Written Expression: "10/28/19: [Student] uses the spell check features when writing on the computer but must be prompted – [special education teacher]."

¹ According to the District in a previous complaint, the Apollo program was a period of wherein some students "accessed an extension or enrichment [opportunity], for many with IEP support, [they were] provided additional [specially designed instruction] [during this period]." Apollo period was scheduled from 12:02 to 12:42 Mondays, Tuesdays, Thursdays, and Fridays.

- Math: "10/28/19: [Student] is quite resistant to support in small group and in the classroom. – [special education teacher]."

15. According to the Parent's complaint, the Student's progress reports failed to address his IEP goals. In her reply, the Parent explained "the progress report comments that are listed are not evidence-based progress as described by the goals in the IEP. [Special education teacher] gives personal and anecdotal notes about her perception of [Student's] commitment." The Parent stated that she believed this was because "no specially designed instruction has been provided to [Student], therefore there is no evidence-based data to report on."
16. On November 25, 2019, at parent teacher conferences, the Parent stated in her reply to the District's response that she met the Student's special education teacher for the first time. The Parent stated this was when she became aware that the Student "wasn't receiving Para and SPED help."
17. In late November 2019, the Parent contacted the District's director of special education (director) and shared concerns about the Student's performance at school. The director recalled that the phone conversation touched on the following, summarized:
 - Parent was concerned about the Student's grades and progress; and,
 - Parent was concerned about services and that the Student's was not receiving the minutes as scheduled in his IEP.

The District's response indicated it agreed with the Parent and that they "wanted to work out a schedule which would accommodate his IEP service minutes." The District stated, "we discussed how schedule adjustments and related services would be explored to accommodate the service matrix within the IEP. A Corrective Schedule was developed with Parent's input."

18. In its response, the District stated procedures were followed to implement the Student's IEP; however, acknowledged that substantively, specially designed instruction *in the special education setting* was not implemented as required in the Student's IEP from September 2019 through December 2019.² The District stated a "corrective plan/schedule was developed as a result, beginning December with the intention to make up lost time from September through November."
19. In an interview with the Student's special education teacher, she stated did not start working with the Student until October 2019. Beginning in October, the special education teacher stated she worked with the Student four days a week during the Apollo period for 30 minutes in a small group pull-out. The teacher described a phonics program she used with the Student,

² The director noted, in an interview with OSPI, that the Student was provided some specially designed instruction September through November 2019 during the Apollo period. However, the study skills period was used to both provide specially designed instruction and as a general education study hall period. The director acknowledged that the District did not have a system in place to track how much specially designed instruction was provided to students and therefore, could not account for how much was provided during this period. The director stated that moving forward, the District is putting in place new procedures to better document what and how much specially designed instruction is provided to students.

the read naturally program the Student used for reading comprehension and fluency, and work they did on his IEP math goals. The teacher stated they worked through math story problems to work on the math goal. The special education teacher stated she provided instruction consistently for about two months. The teacher stated that after winter break, the "format" of the Apollo period changed, and she was no longer able to work with the Student as effectively.

20. Regarding specially designed instruction in the *general education setting*, the District stated specially designed instruction was provided within the general education English language arts (ELA) and math classes. The District also stated accommodations were provided but acknowledged there was limited documentation of the implementation of modifications. For example, the District stated its progress reporting failed to "clearly address the impact & fidelity of the accommodations or / and modifications," except for the following notes in the progress reporting:

- "10/28/19: [Student] is quite resistant to support in small group and in the classroom."
- "1/27/20: [Student] has been quite resistant to support refusing the 'read to' feature in the Winter Maps testing that he is entitled to use. I am exploring new ways to engage him."
- "1/27/20: [Student] still needs prompting to use the spell check features. He does not readily accept help in the classroom."
- "3/10/[2]0: [Student] still needs prompting to use spell check features. He does not produce much."

21. According to the Parent's reply, the Student's general education ELA teacher stated there was a paraeducator in the ELA classroom most of the year, but that the paraeducator "was not providing any services to [Student]." The teacher stated that two weeks before the school facility closures, the paraeducator assigned to the classroom changed and the paraeducator would pull the Student out occasionally to work with him. The teacher stated she worked with the Student but had inconsistent/infrequent communication with the special education teacher.

The Student's general education math teacher stated the Student did not receive specially designed instruction or accommodations in math class, "aside from what I do." The teacher stated she did not receive input from the special education teacher on how to implement the Student's IEP in her class and that while the special education teacher gave her some ELA packets, it was "nothing formal and concrete about math."

Further, the Parent stated that in a conversation with one of the paraeducators, the paraeducator indicated she only worked with the Student in ELA, but was never trained on how to "assist the general education teacher with accommodations and modifications" for the Student.

22. In OSPI's interview with one of the Student's general education teachers, the teacher stated she did not believe the Student received specially designed instruction in her class. She stated the paraeducator in her class did not work with the Student directly as the paraeducator was often working with several other students. The teacher stated the special education teacher

did not communicate with her regarding specially designed instruction and she did not believe the special education teacher provided instruction to or supervised the paraeducator. The teacher also stated she did not feel like teachers had time to collaborate or work together to develop instruction.

The teacher noted the Student was provided some accommodations in her classroom, notably that problems were read aloud to him. Although, the teacher noted this accommodation was often provided by peers as she would pair the Student with another student who had lower math skills, but stronger reading skills, and the other student would read problems out loud.

23. In an interview with the Student's other general education teacher, the teacher noted she was provided with the Student's IEP at the beginning of the year, but did not have a secure location to keep the IEP. She stated that she requested a copy of the IEP several times throughout the year, but did not receive another copy and thus was not sure what the Student's IEP goals and accommodations were. Regardless, the teacher stated she provided the Student with discrete accommodations, such as modified assignments, reading to him, and reading out loud to the class. The teacher stated she had a paraeducator in her class, although the paraeducator did not start until sometime after the start of the school year. The teacher stated the paraeducator did not seem to be trained or know the Student's IEP goals. The teacher stated that later in the school year, the paraeducator changed and the new paraeducator started working with the Student in pull out sessions, one-on-one; however, the teacher stated she did not know exactly what they worked on and that she was concerned because then the Student was missing half of his general education class period.
24. In an interview with the Student's special education teacher, she stated a paraeducator worked with the Student in the general education class, but that the paraeducator supported the Student with the general education math curriculum and did not focus on specially designed instruction. The special education teacher stated she did not provide direct supervision or training to the paraeducator. The special education teacher also noted she felt there was not enough time built into the schedule to train paraeducators or collaborate with general education teachers.
25. On December 13, 2019, the director emailed the Parent, indicated he had tried to connect with her earlier in the week. The director stated, "we have looked at the minutes served and your son has two elements of service: In the classroom with Language Arts and Math. In a 'pull out' model outside of class." The director stated that to make the pull-out model work for additional specially designed instruction, the Student "would be needing to exchange some time for the support." The director stated he looked at the Student's schedule and identified a class period that would have the lowest level of impact.

The Parent responded and thanked the director, letting him know she would be in touch the following Monday.

26. On December 17, 2019, the director emailed the Parent and special education teacher with options for moving forward. The director asked for the Parent's thoughts and stated:

To meet the minutes associated with [Student's] current IEP, and address the gap from Sept – Mid November, 900 plus minutes, here are our options...

1. Continue with APOLLO and access the minutes over the course of the year (bonus additional minutes: 3936 versus 3240) OR...
2. Drop PE from 30 minutes Sixth Period 'as needed' / 'drop in' to support Science or other course work...as part of the READING AND WRITTEN INSTRUCTION support to 30 days; which is about 1.5 days a week from January to June.

27. The District's response summarized the different solutions discussed, including:

- "Continue schedule 'as is' with a more intensive Apollo 4 day a week support schedule; by years end, we would easily meet [Student's] service matrix minutes for his IEP service outside of the classroom highlighted: Reading 2X a week for 30 minutes and Written Expression 1X a week for 30 minutes. **[This was the path agreed upon by parent].**"
- Adjust his schedule, during 6th Period, [Student] would receive [specially designed instruction] in lieu of the General Education Class **[This was rejected by parent].**

(Emphasis in original.)

The District stated, "We did not document this within a [prior written notice] for we wanted to see how this model would work. And the IEP was not amended to reflect changes in the matrix once it was established; this was a matter of communication and documentation." (Emphasis in original.)³ The District also stated:

However, when we addressed the service matrix and minutes, associated with direct [specially designed instruction] outside of the classroom, with the Special Education Teacher [via Apollo], we did not foresee:

- School Closure beginning March 17; which impacted the service matrix and related minutes.
- Though APOLLO is scheduled for 41 minutes on the School Schedule, the actual time implemented was 35 minutes from 12:00-12:35 with an extended break to lunch period. This schedule change was not documented within the IEP.

28. The District was on winter break from December 23, 2019 through January 3, 2020.

29. In its response, the District stated that from December through March 16, 2020, the Student received his specially designed instruction within the "Apollo" schedule from the special education resource teacher. The District stated there were challenges with this schedule, including that the Student was "reluctant at times to engage within the Apollo 'pullout' program."

30. On January 6, 2020, according to the Parent's reply to the District's response and the Parent's conversation with the Student's math teacher—"whose classroom was used for [special

³ In her reply to the District's response, the Parent highlights this in reference to the issue of whether the District's prior written notices contained all elements required in WAC 392-172A-05010. The Parent stated since there was no prior written notice completed here, there could be other instances of changes being made without prior written notice.

education teacher's] study group that [Student] was assigned to"—the Student began receiving "one on one assistance/[specially designed instruction]."

31. On January 13, 2020, the director emailed the Parent, following up to the previous conversations about IEP minutes and stated the Student was "being served in the classroom via Para Support as well as additional support via the Apollo Program (At Noon)."
32. Following this, the director stated, in the District response, that he talked to the Parent a few times over the phone regarding specially designed instruction and that he observed the Student accessing specially designed instruction in the Apollo program.
33. According to the Parent, she told the director, via phone, that she "did not want [Student] pulled from PE or APOLLO, as both classes serve to benefit his educational rights as his same age peers experience."
34. On January 27, 2020, the District entered progress reporting on the Student's May 2019 IEP annual goals. The progress reporting documented the following progress:
 - Reading: "IP" (Insufficient Progress): "1/27/20: [Student] has been quite resistant to support refusing the 'read to' feature in the Winter Maps testing that he is entitled to use. I am exploring new ways to engage him."
 - Reading: "SP" (Sufficient Progress): "1/27/20: Recent late 5th, early 6th grade level was 35 cwpm. 4.5 grade level 52 cwpm. He has met this goal. We have been working a phonics program reluctantly. I wish [Student] would care more about his education."
 - Written Expression: "IP": "1/27/20: [Student] still needs prompting to use the spell check features. He does not readily accept help in the classroom."
 - Math: "IP": "1/27/20: [Student] scored 100% solving multiplication problems! Changing schedules have made math small group difficult to attend to consistently and [Student] is resistant to support. I have hope this semester will be better."
35. On March 3, 2020, the District mailed the Parent a letter regarding the upcoming reevaluation.⁴ The school psychologist included a consent form for the reevaluation, asked for input on any information the Parent wanted considered during the evaluation, and enclosed several other documents (procedural safeguards, developmental history form, and parent response for a behavior assessment scale).
36. Between March 10 and 29, 2020, the District entered progress reporting on the Student's May 2019 IEP annual goals. The progress reporting documented the following progress:
 - Reading: "IP" (Insufficient Progress): "3/29 [Student] has not made progress that I would like to see. I believe part of this due to insufficient instruction and part due to [Student's] lack of engagement and practice. He states his is [sic] happy with his reading ability and does not see any problems."
 - Reading: "SP" (Sufficient Progress): "3/27: Middle 4th grade, 46 cwpm."

⁴ In her reply, the Parent stated she received this letter, but noted the body of the letter was addressed to a different family in the District. The Parent stated she was not clear what the plan was for the evaluation at this point.

- Written Expression: "IP": "3/10/30 [sic]: [Student] still needs prompting to use spell check features. He does not produce much writing."
- Math: [Nothing reported.]

37. Regarding progress reporting, the District stated, in its response, that:

New district policies and practices, within draft *Special Education Handbook* highlight the need for Progress Reports to feature: *'The Progress Report will be shared at each reporting period (semester) in partnership with the General Education Report Card. If the student is not making the projected growth towards meeting his/her annual goals, it is expected that the IEP team will meet to review and, if necessary, revise the student's IEP. Further, school districts must measure student progress using the methods described in the IEP. An evidence-based progress report, highlighting assessment data, work samples, and anecdotal classroom evidence (see SDI Tracking Sheets: Monthly) will be featured in contrast to opinion and unsubstantiated commentary. Also, the Progress Report will highlight the following: Met Goal Sufficient Progress Toward Goal: Insufficient Progress Toward Goal.'*

Our case managers have been directed to follow this guideline for the June 2020 Progress Reporting period.

(Emphasis in original.)

38. On March 17, 2020, the District closed school facilities due to the COVID-19 public health crisis and Governor's "Stay Home, Stay Safe" order.

39. On April 14, 2020, an evaluation meeting was scheduled, but subsequently rescheduled for April 24, 2020. The Student's triennial reevaluation was due April 24, 2020.

40. On April 16, 2020, according to the District's documentation, consent for the evaluation had been signed, but not received by the District. The District stated in its response, "signature for Evaluation Consent was confirmed through phone call and email. And was received following numerous attempts to assure consent on 3/3, 3/19, and 4/09." The "Notice of Meeting," which indicated the purpose of the meeting originally scheduled for April 14, 2020, was to review evaluation reports, review educational progress, and reevaluation considerations, noted:

- March 3: Letter sent to Parent.
- March 17: "Contacted [Parent] by phone" and the Parent "says she received paperwork but has not completed it. She indicates that she will send it back by the end of the week."
- April 9: "Called [Parent] to inquire about the status of the paperwork" and Parent "reports that she has been swamped...has not had time to open the envelope...encouraged her to sign the consent, and offered to pick up forms when complete."
- April 16: "[Parent] indicates that the forms are signed but they need to be picked up at her home."

The consent form (unsigned) included in the District's response noted the reevaluation would include a review of existing data and a review of general education data/progress.

41. On April 24, 2020, a meeting was held with the Parent via zoom. According to the District, the intent of this meeting was to discuss the Student's triennial reevaluation. According to the District's response, "unforeseen" challenges shifted conversation:

- “Due to technical difficulty, the meeting through ZOOM format was unable to start on time; approximately 25 minutes late while we were all waiting in our respective locations.”
- “Parent changed the conversation numerous times from the Evaluation to ‘Services’ including expressed frustrations associated with her son’s progress, lack of minutes within the service matrix, and frustration associated with her son’s progress for the past two years; it was described by IEP members as ‘tense’.”⁵

42. The Student’s reevaluation report—dated April 14, 2020—indicated the District reviewed existing data, including the Student’s 2017 evaluation, information from the Student’s ELA general education teacher, and current standardized test scores.⁶ The reevaluation indicated the Student “has been described as a hard worker who does well in math but has always struggled with reading and written language” and that “at the time of his last evaluation in 2017, he met eligibility standards as a student with a specific learning disability. At his last reevaluation, a decision was made to qualify him for services in mathematics using professional judgment.” The reevaluation found the Student continued to be eligible for special education services under the category specific learning disability and recommended the Student receive specially designed instruction in reading and written expression.

Information from the Student’s general education teacher indicated the Student’s “reading deficits carry over into the math class. While he is performing as well as many of his peers in math, he struggles with reading and understanding word problems and with math problem solving.”

In the “learning disability” addendum, the evaluation report noted:

- “...Currently the school is closed due to COVID19 restrictions. The [multi-disciplinary team] determined that it is necessary to complete a full evaluation to include both cognitive and academic testing as soon as safety and wellfair [sic] concerns can be met (I.E., when certain social distancing requirements are lifted).”
- “Professional Judgment: Because current testing is not possible, the team decided to complete this evaluation as a file review, using data from his last evaluation in 2017. The team also determined that the data available is limited and must be augmented with current cognitive and academic assessments as soon as there is an opportunity to do so.”

43. According to the District’s response, it was communicated at the April 24, 2020 meeting that math support would be addressed “within the context of Reading Disability; and this would be addressed within the IEP meeting to follow.” However, the director acknowledged in an interview with OSPI that they did not get to discuss this at the meeting but planned to discuss how the Student would be supported in his math class at the IEP meeting. The director clarified the intent was not to stop supporting the Student in his math class, but to categorize that

⁵ The Parent, in her reply and an April 27, 2020 email to the District superintendent, also expressed concern about how District members of the group acted at the evaluation meeting. The superintendent responded to the Parent’s email and stated he would look into her concerns, and subsequently emailed with follow up and corrective steps the District was taking to address some of the Parent’s concerns.

⁶ The Parent noted in her reply that the date—April 14, 2020—was incorrect as the Parent met with the District on April 24, 2020.

support as specially designed instruction in reading (as the Student's disability primarily impacts reading) provided in the math class or provided to support math.

44. In her complaint, the Parent alleged the Student's reevaluation was completed without her "permission" and that the evaluation "exited [Student] from Math services without data and / or conversation." The Parent stated she did not receive the evaluation report until approximately April 27, 2020 and that she did not know until then that the Student "was being exited from math."

45. The prior written notice, dated April 24, 2020, noted the following:

- **Description of the proposed or refused action:** "The district proposes to continue Specialized instruction for [Student] as a student with a Specific Learning Disability."
- **The reason we are proposing or refusing to take action is:** "The district will continue services because [Student] is in need of and can benefit from specialized instruction in the areas of Reading and Written Language."
- **Description of any other options considered and rejected:** "The option of not continuing services was rejected."
- **The reason we rejected those options were:** "This option was rejected because [Student] qualifies for and will benefit from specialized instruction."
- **A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:** "This action was based on both the reevaluation completed in 2017 as well as the reports and standardized test results from his current teachers."
- **Any other factors that are relevant to the action:** "Based upon earlier conversations with [Student's] mother, [Parent], the Special Education Director...and the I.E.P team, there will be continuing conversations to address the need for compensatory Educational Services."

46. On April 26, 2020, the Parent emailed the director and the Student's evaluation team, stating "I want to thank you all for taking your time today to meet and discuss pre-evaluation planning for [Student's] education." The Parent summarized that she shared her concerns during the meeting regarding the Student not receiving services, and that the director stated the Student would receive compensatory services. The Parent also stated, "I look forward to further discussion on how we move forward with [Student's] eval and IEP in these difficult times. Are there other options to doing the evaluation during the school shutdown? As I am not comfortable bringing [Student] into school at this time as you suggested."

The director responded that the team would look at compensatory services with the Parent and "explore this as an option" after reviewing the Student's evaluation and IEP. The director stated they would be scheduling an IEP meeting.

47. On April 27, 2020, the director emailed the Parent copies of the Student's evaluation, current IEP, and recent progress reports. The director proposed scheduling an IEP meeting to review the IEP, service matrix, and other documents. The director stated they would "address any discrepancies in services if there appears to be" and they would "resolve and develop a specific plan of action if needed...*compensatory services is one option if we are unable to create a service*

model during the school year moving forward" (emphasis in original). The director stated they needed to meet as soon as possible because the Student's annual IEP was due May 7, 2020.

48. On April 28, 2020, the Parent emailed the director and stated she wanted to hold off finalizing the Student's evaluation and IEP based on OSPI guidance, which she paraphrased as "allowing IEP teams to continue students current IEP's [sic] and evaluations and do the annual updates when school resumes." The Parent also requested the director send her the "plan about compensatory services (mentioned in your December email(s) and April 24th meeting)."

49. On April 29, 2020, the director responded to the Parent's April 28, 2020 email, restating the proposed plan moving forward:

IEP MEETING to address SERVICE MATRIX and SERVICES moving forward: We will be scheduling this on MAY 5th at 11:00a[m] per your request...We will specifically address [Student's] services provided throughout the year and if there are gaps, how to proceed through service. We will address Compensatory Services at that time. Both [general education teacher] and [general education teacher] will be invited...

EVALUATE: We will NOT conduct an Evaluation till we see changes in the Covid/School Closure policies and practices which are agreeable for you and your family. [School psychologist] will submit a Prior Written Notice highlighting this...

(Emphasis in original.)

50. The prior written notice, dated April 30, 2020, noted the District was proposing to continue an educational placement and eligibility category, and that the District was "clarifying the joint decision about reevaluation." The prior written notice contained the following information:

- **Description of the proposed or refused action:** "The District proposes to hold an IEP meeting to address the IEP Service Matrix and IEP services moving forward. The IEP team meeting will be scheduled for May 5, 2020 at 11:00 as per [Parent's] request...At this meeting, the team will specifically address [Student's] services provided throughout the year; if there have been gaps in service, the team will discuss how to proceed with the provision of services going forward. The team will discuss Compensatory Service at that time. The District will conduct the needed Reevaluation only after there are changes in the COVID 19 School Closure policies and practices, the schools have reopened and both parents and school staff are comfortable with conducting the needed reevaluation."
- **The reason we are proposing or refusing to take action is:** "The first proposal is being made because the team needs to discuss IEP services and the Service Matrix, and needs to make decisions about how best to serve this student going forward. The second proposal is being made because the last evaluation was conducted in 2017, and most likely does not reflect [Student's] true levels of performance and current academic needs."
- **Description of any other options considered and rejected:** "The option of meeting at the school when the social distancing order is lifted was considered but also rejected."
- **The reason we rejected those options were:** "This option was rejected because the family is not comfortable with having their son come to the school for an evaluation if the school is still closed for regular school functions and students are not on campus."
- **A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:** "The IEP team will review the current IEP Service Matrix and IEP services. Anecdotal General Education class data and General Education standardized

measures will also be used. The evaluation will also use anecdotal classroom information as well as specific parent input and standardized testing to include both cognitive and academic measures. Parents may be asked to participate in a standardized interview to determine how best to assist this student in achieving school success."

- **Any other factors that are relevant to the action:** "None."

51. On May 1, 2020, OSPI received the Parent's request for a special education citizen complaint and subsequently opened this complaint investigation.

52. On May 3, 2020, the director emailed the Parent regarding working together to solve concerns. The director stated that they would continue to reserve time on May 5, 2020 to hold an IEP meeting, and stated "since we completed a re-evaluation on April 14, 2020, we are guided to convene an IEP meeting within 30 calendar days" and "though you moved forward with a Citizens Complaint, we will be scheduling a meeting within that time period and I believe it would be most beneficial if you or [your] husband attended as members of the IEP team."

53. On May 4, 2020, the Parent responded, stating they had shared concerns multiple times and felt concerns had not been addressed. The Parent stated after they shared concerns in November 2019, the District offered compensatory services and after the Student's "regular [specially designed instruction] did not improve in January and we waited to hear what other plans you were facilitating for appropriate implementation of [Student's] IEP." The Parent also expressed concern and confusion regarding the status of the Student's reevaluation, stating the director had said the following:

- "You stated previously: An evaluation was recently completed";
- "And then you stated: 'EVALUATE: We will NOT conduct an Evaluation till we see changes in the...School Closure policies and practices...'" and,
- "And just now you stated: 'Since we completed a Re-Evaluation on April 14, 2020, we are guided to convene an IEP meeting within 30 calendar days...'"

The Parent stated she was concerned that the evaluation was completed "without my involvement and which removed the math [specially designed instruction] which his math teacher says he still needs" and that this seemed "to be the evaluation from which you believe the IEP would be founded and is in contradiction to the email sent that the old EVAL would continue."

The Parent reiterated that she did not want to "proceed and / or write a new evaluation or IEP right now" and that they wait until "the fall (or when school re-opens)" so the Student "can be assessed on site and we can have the evaluation and IEP meetings in person within his entire IEP team." The Parent stated she did not agree to meet on May 5, 2020.

54. On May 4, 2020, the District issued a prior written notice, proposing to amend the evaluation, which stated:

- **Description of the proposed or refused action:** "Following parent input and additional guidance from the School Psychologist, the district proposes continuing eligibility for MATH (Problem Solving) on the 4/2020 Evaluation."

- **The reason we are proposing or refusing to take action is:** "We are proposing this to assure there is mutual understanding of the instructional services provided and are in alignment with the Evaluation. Based upon the 2017 Evaluation and recent discussions at the 4/2020 Evaluation Team, [Student] continues to struggle with Math. Specifically, skills associated with reading and comprehension of problems (text). According to [school psychologist] and [special education teacher], IEP Case Manager, both [agree] that reading comprehension poses a struggle for [Student] with performance of Math word problems/story problems."
- **Description of any other options considered and rejected:** "We rejected the proposal (as written in the initial 2020 Evaluation) for his eligibility to be in the ELA areas of READING and WRITTEN EXPRESSION alone."
- **The reason we rejected those options were:** "Due to expressed concern by [Student's] parent following the meeting, we are rejecting the...evaluation as written. Both professional judgment and parental consideration guide this amendment."
- **A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:** "The following evidence was highlighted in this decision: [Student's] teacher...reports...His reading deficits carry over into the math class. While he is performing as well as many of his peers in math, he struggles with reading and understanding word problems and with math problem solving...Psychologist, 04/21/2020 Assessment Summary: [Student]...struggles in reading and written language. While his math work is at a level consistent with many of his peers, he struggles with word problems and other math assignments that include reading for content. Significant Findings: [Student] participated in the Winter 2020 National MAP testing. When compared to the national average achievement, his Mathematics score was in the 6th percentile, with Low growth from Fall 2019 to Winter 2020 (12th percentile). His MAP Reading score was at the 1st percentile with Low Average growth from Fall 2019 to Winter 2020."
- **Any other factors that are relevant to the action:** "Due to the School Closure Schedule associated with Covid 19, the School Psychologist facilitated the April 2020 Tri-Annual Evaluation as best as possible given that access to the [Student] was eliminated due to the 'stay at home' policies we are all working with. The recommendation coming from the re-evaluation highlighted the need for a full evaluation: 'Currently the school is closed due to COVID19 restrictions. The [multi-disciplinary team] determined that it is necessary to complete a full evaluation to include both cognitive and academic testing as soon as safety and wellfair [sic] concerns can be met (I.E., when certain social distancing requirements are lifted)'."

"The intent of a FULL EVALUATION is not to determine eligibility, but to use it as a method of understanding so we can create bridges of instructional engagement for [Student]; [psychologist] clearly stated in the April Evaluation meeting that the 2017 Evaluation lacked specificity and clarity such that we could not determine a true understanding of [Student] and the skills associated with reading, writing, and math and processing. This will be scheduled as soon as 1:1 contact is available through school and state policies impacting the School Opening procedures."

"VI. Professional Judgment: 'Because current testing is not possible, the team decided to complete this evaluation as a file review, using data from his last evaluation in 2017. The team also determined that the data available is limited and must be augmented with current cognitive and academic assessments as soon as there is an opportunity [sic] to do so.'"

"Goals and services will be reviewed and amended as necessary within the IEP: The IEP was originally scheduled within 30 calendar days of the Evaluation (4/14/2020). However, due to

parent request to conduct the meeting after an OSPI investigation is conducted, and through guidance by [OSPI]...we will forego the IEP meeting as guided: We will continue to provide support and services, within the School Closure Schedule, as best as we possibly can highlighting parent guidance. The annual IEP Meeting will be scheduled as soon as we are able to do so following the OSPI investigation."

55. On May 5, 2020, the Parent emailed the director and other District staff and requested the "IEP meeting be delayed as the evaluation meeting was not an evaluation team meeting with discussion, signatures, and agreement." The Parent stated she did not agree with the prior written notice and would "not be signing the [prior written notice] you sent today." The Parent stated her only "current educational goal is to simply provide our son with his IEP services as identified in his current IEP...which supports the education he is getting with on-line learning in the best possible manner and fidelity given the Covid 19 situation."

56. Also, on May 5, 2020, the Parent sent a second email to the director and reiterated her concerns about IEP implementation and the evaluation. The Parent asked the District to implement the Student's IEP, "to the best of its ability during the school shutdown," and asked "that the evaluation the school documented on 4/24/20, be put on hold and not considered as a finalized document in [Student's] educational file." The Parent also expressed further specific concerns regarding the evaluation and prior written notice, including the director's statements regarding the evaluation, and:

- "The information I got regarding the 4/24/20 meeting was to have a pre-eval meeting which turned into a compensatory minute discussion, not Evaluation Team meeting. The cover letter for the evaluation I received (that was never discussed) states that the April 24 meeting was an evaluation meeting"; and,
- "It is our understanding that 1 member of an evaluation team can't unilaterally change eligibility and determine the specific [specially designed instruction] in that area of eligibility" in regard to the prior written notice stating "I created a [prior written notice] to amend eligibility to include MATH; specific to reading and comprehension of the text through story problems."

The Parent ended the email by stating that they wanted the Student's services to continue "per his current IEP and current evaluation (2017)."

57. The District's response stated it would conduct a more extensive and thorough evaluation as soon as "safety policies and practices are lifted."

58. On May 15, 2020, the Parent replied to a May 5, 2020 email from the special education teacher regarding setting up remote learning for the Student. According to the email from the teacher, she had sent home a folder on the last day of (in-person) school in March with information about Learning Ally (a reading program), reading comprehension worksheets, and math worksheets; the teacher also sent information about setting up regular zoom meetings to work on specially designed instruction and project based assignments.

59. In a phone call with the Parent, she stated no one from the District contacted her regarding the Student's special education services during the school facility closures until the May 5, 2020 email. The Parent stated educational materials were dropped off, but there were no

instructions, so she was not sure what to do with the materials. The Parent did state that the Student's general education math teacher was assigned to him as his "advisor" during the closures and the math teacher had consistently been working with the Student throughout the closure.

60. On May 29, 2020, the special education teacher emailed the Parent regarding having an IEP meeting. The special education teacher stated, "[Student's] IEP is due. I know in earlier communication you had indicated that you wanted to wait until we all meet in school again to make in person assessments. I just wanted to reach out to see if you had any further thoughts about that." The teacher also stated, "since we haven't met as of yet, I wondered if you had reconsidered [Student] and I Zooming together to work on ELA. Have you decided that is not something you would like him to pursue..."
61. On June 9 and 10, 2020, the special education teacher emailed the Parent and stated she had put a prior written notice in the mail that addressed postponing the Student's IEP meeting. The teacher also stated she was "still available to Zoo[m] with [Student] should you choose to do so." The prior written notice stated that due to Covid-19 and the Parent's preference, they were postponing the Student's "annual IEP review until such time we are all able to meet again safely in person."
62. According to the District's response, since March 2020, the District has worked to address communication in the District between parents and staff, as it acknowledged there was a lack of communication in this particular situation and others. The District stated it had worked on a range of protocols to "enhance communication between staff, parents, and students including consistent implementation of [prior written notice], standardization of a '*specially designed instruction*' Tracking Document' and established protocol within a draft '*District Special Education Handbook*.'" (Emphasis in original).

The District also stated:

Through self-assessment, our district has demonstrated a lack of consistent implementation of *Progress Reports* and *Amended IEP documents*. As a result of internal reviews, as well as two Citizens Complaints, we are requiring our Special Education IEP Case Managers to follow district guidelines which are now consistent with OSPI recommendations. Also, we have reviewed communication strategies and tools between staff and parents, including district policies and practices; and are requiring our Special Education IEP Case Managers to follow guidelines within our District Special Education Handbook (a new document) which engage communication between stake holders.

(Emphasis in original).

The draft "Special Education Handbook" also included protocols for more regular communication between the special education case managers, general education teachers, and paraeducators on topics such as classroom performance, assignments and related task completion, grades and assessments, accommodations and modifications, and review of specially designed instruction to ensure goals are monitored.

CONCLUSIONS

Issue One – IEP Implementation: The Parent alleged the District failed to implement the Student’s individualized education program (IEP) from April 2019 to April 2020. 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. A district must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP.

IEP Implementation: May and June 2019

According to the Parent, the Student’s IEP was not implemented during the 2018-2019 school year. The timeline for the complaint investigation began on May 2, 2019 and the Student’s annual IEP was developed on May 7, 2019. The May IEP included the following specially designed instruction: 1 hour a week of reading, 1 hour a week of writing, 1 hour a month of math.

The May 2019 IEP present levels included information about the specially designed instruction the Student had received, his progress, and areas of focus (e.g., novel studies, reading comprehension, reading stamina, reading naturally curriculum for fluency and comprehension, writing essays, editing work, crafting complex sentences, and math vocabulary and story problems). The Student’s IEP included updated goals as he had met some—but not all—of his previous goals. This indicates the Student received some amount of specially designed instruction during the 2018-2019 school year. However, the District provided no other documentation that the IEP was implemented in May and June 2019, and the Student’s progress reporting indicated that while the Student was making sufficient progress on all his goals, “there has not been enough time to show progress in this area.” It is unclear how the Student could be making sufficient progress if there was not enough time to show progress. Based on the limited documentation, OSPI finds it is likely the Student received some—but not necessarily all—of the minutes outlined in his IEP for the remaining 5 weeks of school after the May 2019 IEP was developed. Thus, OSPI finds a violation. The District will provide the Student with 1/4 of the missed time: 1.25 hours reading (1/4 of 5 hours), 1.25 hours writing (1/4 of 5 hours), and 15 minutes of math (1/4 of 1 hour).

IEP Implementation: 2019-2020 School Year

Specially Designed Instruction: Special Education Setting

The Student’s May 2019 IEP included the following specially designed instruction in the special education setting: 1 hour of reading per week and 30 minutes of writing per week.

The District stated in its response that the Student was not provided specially designed instruction in the special education setting, as required in the Student’s IEP, from September 2019 through sometime in November 2019. After the Parent raised concerns, the District and Parent began developing a corrective plan/schedule with the intent to make up the missed minutes. There was not a clear meeting of the minds on the plan to make up the missed minutes of specially designed

instruction⁷ and it is not clear how many minutes of specially designed instruction the Student was provided or missed in the fall, or how many “make-up” minutes were actually provided. The District acknowledged it did not have written documentation of the services provided and did not have a method for tracking minutes; although, the District stated that moving forward, it is putting in place procedures and practices to better document what and how much specially designed instruction is provided to students generally.

Regarding the provision of specially designed instruction, the investigation indicates the Student’s IEP was inconsistently implemented during the 2019-2020 school year:

- The District’s director of special education acknowledged the IEP was not implemented as written, that the Student missed 900 plus minutes of services.
- In December 2019, the District and Parent discussed plans to make up missed minutes.
- The special education teacher stated she did not begin working with the Student until October 2019, as she was previously assigned to an elementary school caseload.
- Beginning in October, the special education teacher stated she worked with the Student for 30 minutes a day, 4 days a week, in a small group pull-out during the Apollo period. The teacher described the specially designed instruction she provided.
- The District stated the Student received specially designed instruction during the “Apollo” period from December through March 16, 2020; however, the District stated there were challenges with this schedule, indicating the IEP was still not implemented as written.⁸
- The special education teacher stated that after winter break, the format of the Apollo period changed and she no longer worked with the Student in a pull-out, small group and thus, she was no longer able to work with the Student as effectively.
- In January 2020, the director communicated to the Parent that he had observed the Student receiving specially designed instruction during the Apollo period.
- The Parent stated the Student’s math teacher indicated the Student began receiving “one on one assistance/[specially designed instruction]” in January 2020.
- The Parent later expressed that she felt “regular [specially designed instruction] did not improve in January.”

The information provided in this complaint indicates that prior to and after the corrective plan was developed the Student’s IEP was inconsistently implemented in the special education setting, and while some specially designed instruction was provided, the District did not provide sufficient documentation that the Student received the full number of minutes he was entitled to under the IEP. This is a violation. Thus, OSPI finds that the Student did not receive specially designed

⁷ The District stated the Parent agreed to a plan to provide the missed minutes of specially designed instruction during the Apollo period and that this plan would have resulted in the Student receiving additional minutes of specially designed instruction had the school facilities not been closed due to COVID-19. The Parent stated she told the District she did not want the Student pulled from his Apollo period or PE to receive specially designed instruction. This in itself is somewhat confusing, given that the Apollo period appears to have been the time when the Student should have received his specially designed instruction in the special education setting anyway.

⁸ Given that the special education teacher reports she was already working with the Student during the Apollo period, it is not clear whether any minutes implemented after December 2019 were additional “make-up” minutes or the “original” minutes on the Student’s IEP.

instruction in the special education setting from September 4, 2019 through April 2020⁹, a period of approximately 31.5 weeks (excluding District breaks). The Student therefore missed up to 1,890 minutes (31.5 hours) of specially designed instruction in reading and 945 minutes (15.75 hours) of specially designed instruction written expression.

Given there is documentation that the Student did make some progress on his IEP goals throughout the year¹⁰ and it is likely the Student received some—but not the full amount of—specially designed instruction, the District will be required to provide approximately 1/4 of the missed time: 8 hours in reading and 4 hours in writing.

Specialty Designed Instruction: General Education Setting

The Student's May 2019 IEP included the following specially designed instruction in the general education setting: 30 minutes of writing per week and an hour of math per month.

According to the District's response, the Student's special education teacher shared the Student's IEP accommodations and modifications with his general education teachers and the Student's IEP was implemented in the general education classroom. However, the Student's general education teachers stated their observation was that the Student was not provided specially designed instruction in their classes. The teachers stated the paraeducator in the classroom did not provide the Student with special education services, and in one class, the paraeducator more frequently worked directly with several other students. The special education teacher stated that in the math class, the paraeducator supported the Student with the general education curriculum and that she did not provide direct supervision or training to the paraeducator. One teacher did share with the Parent that in the weeks before the school facility closures, the paraeducator assigned to the classroom switched and the paraeducator would pull the Student out to work one-on-one.

All the teachers, including the special education teacher, stated there was inconsistent and infrequent communication between special and general education—in part due to a lack of organization and built in collaboration and planning time. Further, all the teachers expressed a need for additional training, including training for paraeducators, and time to work with paraeducators.

⁹ Once school facilities closed, it is not clear the Student received any special education services during the end of March or April 2020 (OSPI received the Parent's complaint on May 1, 2020). The Parent stated some educational materials were dropped off, but there were no instructions, so she was not sure what to do with the materials, and that she was not contacted about special education services during the closure until May 5, 2020. While there is no expectation that a student's IEP be implemented exactly as written during the COVID-19 related closures, given the inconsistent implementation of the Student's IEP throughout the school year and lack of contact until May 5, this period will be considered in terms of a compensatory award.

¹⁰ In October 2019, the Student had made sufficient progress on all his goals; in January 2020, the Student made insufficient progress on several of his goals and sufficient progress on one reading goal; and, in March 2020, the Student made insufficient progress on his reading and written expression goals, sufficient progress on his reading goal, and nothing was listed for the math goal. Importantly, one progress report indicates a lack of progress was, at least in part, due to insufficient instruction.

Thus, OSPI finds that the Student did not consistently receive specially designed instruction in the general education setting from September 4, 2019 through April 2020, a period of approximately 31.5 weeks. This is a violation. The Student therefore missed up to 945 minutes (15.75 hours) of specially designed instruction written expression and 480 minutes (8 hours) of specially designed instruction in math. Given there is documentation that the Student made some progress on his IEP goals throughout the year and it is likely the Student received some—but not the full amount of—specially designed instruction, the District will be required to provide approximately 1/4 of the missed time: 4 hours in writing and 2 hours in math.

Accommodations

The Student's IEP also included several accommodations and modifications, which the District stated were implemented (although the District acknowledged there was limited documentation of implementation). The District pointed out that the Student's progress reporting included some references to accommodations, including small group support, the "read to" feature for testing, and spell check—although the progress reporting primarily documented that the Student was resistant to support and needed prompting. One general education teacher noted that other students would read math problems aloud to the Student during partner work. The other general education teacher stated she modified the Student's assignments and read aloud in class. However, the general education teachers also noted that while they were provided a copy of the IEP at the beginning of the school year, they did not have a secure place in the classroom to keep documents; thus, the teachers did not have the IEP throughout the school year to reference despite requests to review the IEP throughout the year.

Each district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. Here, the IEP was not accessible to all staff responsible for its implementation; therefore, it is unlikely teachers would have been able to consistently provide the Student accommodations throughout the school year when they did not have access to the IEP for reference. Further, as discussed above, there was very limited collaboration between special and general education staff to discuss, providing direction on, and plan for implementation of the Student's IEP.

Thus, OSPI finds the District failed to consistently implement the Student's IEP, in large part because not all necessary staff had access to the IEP, and staff did not have time to collaborate around implementation. The District will be required to develop a plan to ensure all necessary staff have access to relevant IEPs if they are expected to implement components of the IEP. The District will also be required to schedule a staff meeting prior to the start of the 2020-2021 school year for all staff who will be working with the Student to meet and discuss the Student's needs, IEP implementation, and instructional strategies.

Issue Two – Progress Reporting: The Parent alleged the progress reporting provided by the District was insufficient. According to the Parent's complaint, the Student's progress reports failed to address his IEP goals and the comments are not "evidence-based." While the IDEA does not define what progress reporting must include, the purpose of progress reporting is to inform

parents of the amount of progress a student has made toward his annual IEP goals. In September 2018, OSPI published guidance with best practices for descriptive progress reporting. OSPI recommends against using only codes (e.g., SP, IP, etc.) to report progress and recommends, including information/data, as stated in the goal, about the student's progress. OSPI also recommends the progress report include some analysis of the data in the form of a narrative comment and that this analysis could include the student's progress, data points, any instructional changes occurring during the grading period and the relevance of those changes, an explanation for significant decreases or increase in progress, etc.

The District provided the Parent progress reports on June 12, 2019, October 28, 2019, January 27, 2020, and in March 2020. The progress reports included varying levels of detail. For example:

- The *June 2019* progress reporting stated the Student made sufficient progress on all his goals, but also that "there has not been enough time to show progress in this area." Therefore, it is unclear whether this is an accurate reflection of the Student's progress.
- The *October 28, 2019* progress reporting noted the Student made sufficient progress on all his goals, provided data on the Student's reading goals, noted the Student needed to be prompted related to his written expression goal, and noted the Student was resistant to support related to his math goal. Overall, this progress report provides clear information regarding the Student's progress on his reading goals but does not clearly give the Parent a sense of the Student's actual progress in written expression and math.
- The Student's *January* and *March 2020* progress reporting noted the Student made insufficient progress on one reading goal, his written expression, and his math goals,¹¹ and made sufficient progress on his other reading goal. The progress reporting included some data about the Student's progress on his reading goal and his math goal (January reporting only), but the remainder of the comments related to the Student's reluctance to work, need for prompting, and resistance to support.

Comments related to a need for prompting can be included in a progress reporting and do give some information about the Student; however, alone such comments do not give the Parent a clear sense of what and how much progress the Student was making on specific goals. Here, the progress reporting inconsistently provided the Parent with information about the Student's progress on his IEP goals. Most of the reports had data related to his reading goals, but there was little data on the Student's progress on his written expression and math goals, and no information on the math goal in March 2020. Thus, while the IDEA does not specify what progress reports must include, OSPI finds the District in violation for failing to provide the Parent with progress reports that sufficiently addressed the Student's progress.

The District, in a previous complaint, was required to complete a training module on progress reporting.¹² Additionally, the District stated it provided teachers with guidance on new District policies related to evidence-based progress reporting that asks case managers to measure and report student progress using methods described in the IEP, and include data, work samples, and

¹¹ The March 2020 progress reporting did not include any information regarding the Student's math goal.

¹² The District informed OSPI that special education staff who worked with the Student in this complaint attended the trainings required by the two previous corrective actions. Additionally, the District noted it was scheduling another training, which will take place in August 2020.

anecdotal classroom evidence, along with whether the student met the goal, made sufficient progress, or made insufficient progress. IEP teams are directed to meet if a student is not making expected progress and case managers have been directed to follow the new guidelines for June 2020 progress reporting. Thus, given that the District has already taken corrective steps to improve its progress reporting practices and the Student will be provided a final 2019-2020 progress report based on these new guidelines, OSPI requires no further corrective actions.

Issue Three – Prior Written Notice: The Parent alleged the District’s prior written notices did not meet the requirements of WAC 392-172A-05010. According to the Parent’s complaint, the prior written notices, in general, “do not address all meeting notes, or parents and teachers concerns. Meeting dates and times are incorrect.” Prior written notice is provided when a district either propose to or refuses to initiate or change the identification, evaluation, educational placement of a student, or the provision of a free appropriate public education (FAPE) to the student. A prior written notice must include several required elements, as outlined in the regulations.

In general, the majority of the District’s prior written notices included the required elements. There were several incorrect dates on notices; however, while districts should strive to ensure prior written notices are accurate, an incorrect date alone is not a violation. However, there is one item of concern regarding the April 24, 2020 prior written notice, which followed the review of existing data reevaluation. The prior written notice does not address the Student’s math services. The notice stated the District proposed to continue specially designed instruction for the Student and the eligibility category of specific learning disability, as the Student needed instruction in reading and written language. The notice does not clearly state that the Student will be provided specially designed instruction in math or that the Student would be “exited” from math services. Given that the Student previously received services in math and that the April 2020 evaluation did not recommend specially designed instruction in math, the prior written notice should have documented the proposed change to the provision of a FAPE for the Student. Thus, OSPI finds the District in violation. However, the District corrected this error and subsequently addressed the Student’s evaluation and math services in the May 4, 2020 prior written notice.

Additionally, the District should have provided prior written notice following discussions with the Parent about a plan to provide additional special education instruction to make up for missed services. Between late November 2019 and January 2020, the Parent and director discussed the Parent’s concerns that the Student’s IEP was not being implemented and potential plans to ensure the Student was provided the full number of minutes of specially designed instruction in his IEP. The District noted it did not document the proposed model for providing additional minutes in a prior written notice as the District “wanted to see how this model would work. And the IEP was not amended to reflect changes in the matrix once it was established; this was a matter of communication and documentation.” Because the District acknowledged specially designed instruction was not being provided as written in the IEP and proposed a plan to provide additional special education services for the remainder of the year, they were proposing a change to the Student’s schedule and the provision of FAPE. A prior written notice should have documented the plan. Thus, OSPI finds the District in violation for not providing a prior written notice to document

the proposed change to the Student's special education services. The District will be required to develop and distribute written guidance on prior written notice.

Issue Four – Evaluation Procedures: The Parent alleged the District failed to follow procedures for the Student's triennial reevaluation, including conducting the evaluation without consent and exiting the Student from specially designed instruction in math without sufficient data.

Consent

The Parent stated that the April 2020 reevaluation was completed without her permission. A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. However, a district is not required to obtain informed parental consent prior to reviewing existing data.

The District contacted the Parent on March 3, 2020 regarding the upcoming reevaluation and included a consent form in the letter mailed to the Parent. According to the District's notice of meeting and contact attempt report, the District made several attempts to connect with the Parent and obtain consent. According to the notes, the Parent stated she signed the consent form; however, based on the documentation provided in this complaint, the signed consent form was not provided to the District. Ultimately, the District only completed a review of existing data. The District did not conduct any new assessments. Thus, the District was not required to obtain the Parent's consent prior to reviewing existing data. OSPI finds no violation related to consent.

Triennial Reevaluation Based on a Review of Existing Data

As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student.

The Student's evaluation group—including the Parent—met on April 24, 2020 to discuss the reevaluation. Due to challenges presented by the COVID-19 public health crisis, Washington school facility closures, and the Parent's desire to wait until assessments could be completed in-person, the District only completed a review of existing data and wrote an evaluation report based on that review. The April 2020 reevaluation report included information from the Student's 2017 evaluation, current standardized test scores, and information from one of the Student's general education teachers. The group determined the Student continued to be eligible for special education services under the category specific learning disability. The evaluation report noted the District believed it was necessary to complete a full reevaluation when social distancing requirements are lifted, including new assessments to update cognitive and academic information. The Parent requested, and the District agreed, to complete a full reevaluation in the fall of 2020—as documented in the District's April 30 and May 4, 2020 prior written notices.¹³

¹³ The Parent, in emails, characterized this as a request to hold off finalizing the Student's evaluation, and also expressed confusion that the director, in several communications, had both said "an evaluation was recently completed" and that they would "NOT conduct an Evaluation till we see changes in the...School Closure policies..." While OSPI understands the Parent's confusion given her disagreement with the April

Overall, while OSPI acknowledges this process has been somewhat unusual given the impact of COVID-19, OSPI finds no violation as to how the District has chosen to proceed with this reevaluation regarding timelines and procedures. OSPI does recommend the Parent and District staff involved in the reevaluation meet prior to the start of the 2020-2021 school year to develop a plan for the reevaluation and obtain written, informed consent from the Parent. This will ensure there is no delay in the fall. The District and Parent are also encouraged to consider beginning this process during the summer as appropriate and feasible given public health guidance on social distancing.

Math Services

A reevaluation determines whether a student continues to be eligible for special education and the content of a student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all the student's special education needs and any necessary related services, whether commonly linked to the disability category in which the student has been classified or not. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student.

The Student's 2017 reevaluation found that the Student continued to be eligible for special education services under the category specific learning disability and recommended he receive specially designed instruction in reading, writing, and math. The evaluation report noted that while the Student did not have a discrepancy in math, the team used professional judgment to determine a need for specially designed instruction as "reading does impact math problem solving and his classroom teacher indicated that [Student's] classroom performance supports the need to continue with a goal in math problem solving." The Student's most current IEP included specially designed instruction in reading, written expression, and math.

The Student's April 2020 reevaluation, based on a review of existing data, found the Student continued to be eligible for special education and recommended specially designed instruction in reading and written expression. The Student's general education teacher indicated the Student's "reading deficits carry over into the math class. While he is performing as well as many of his peers in math, he struggles with reading and understanding word problems and with math problem solving." The District's response stated math support would be addressed "within the context of Reading Disability; and this would be addressed within the IEP meeting." The Parent stated the evaluation group "exited [Student] from Math services without data." The Parent subsequently expressed disagreement with ending math services and stated she did not want to develop an IEP based off the April 2020 reevaluation.

Based on the information in this complaint, the Student's disability impacts his reading and writing abilities, which in turn impacts him in math class—specifically solving word problems. The IEP

2020 evaluation, OSPI notes it would be accurate to say the District completed an evaluation based on a review of existing data in April 2020. *And*, that the evaluation group determined additional data was needed and thus agreed to conduct a second, new reevaluation in the fall of 2020.

team could—theoretically—characterize the Student’s instruction as specially designed instruction in math or specially designed instruction in reading, provided in a math class. Regardless, the April 2020 reevaluation did not have sufficient data to recommend either exiting the Student from math or significantly changing this service. The reevaluation was based primarily on a review of the Student’s 2017 evaluation and feedback from the Student’s English language arts teacher. Notably, the reevaluation did not include information from the Student’s math teacher. Thus, OSPI finds a violation that the District proposed to change the Student’s math services based on the April 2020 reevaluation, which contained insufficient data to support such a change.

The Student’s IEP was never updated based on the reevaluation and math continues to be an area of service on the IEP. Thus, there was no substantive impact on the Student. Further, after the Parent raised concerns, the District reviewed the data and reevaluation. The District noted in the May 4, 2020 prior written notice that, “Following parent input and additional guidance from the School Psychologist, the district proposes continuing eligibility for MATH (Problem Solving) on the 4/2020 Evaluation.” The District also recognized the need to conduct a full evaluation with new assessments and plans to complete this evaluation in the fall. Thus, no further corrective actions are needed.

CORRECTIVE ACTIONS

By or before **August 14, 2020, September 4, 2020, September 30, 2020, October 15, 2020,** and **January 8, 2021,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Services

By **August 31, 2020,** the District will coordinate with the Parent to develop a schedule for a total of 20.75 hours of compensatory services (9.25 hours in reading, 9.25 hours in written expression, and 2.25 hours in math). Services will occur in a one-on-one setting and instruction will occur outside of the District’s school day and may be accessed over District breaks. Services will be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **September 4, 2020.**

OSPI strongly encourages the District and Parent to consider beginning the compensatory hours over the summer, either using distance technology or in-person services with appropriate health and social distancing measures. However, OSPI has provided later deadlines for scheduling in order to give the District and Parent flexibility.

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. Regardless of any rescheduling, the services must be completed no later than **December 31, 2020.**

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **October 15, 2020** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **January 8, 2021**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **January 8, 2021**.

Staffing Meeting

By **August 31, 2020**, the District will schedule and hold a staffing meeting with all staff—including special education, general education, and paraeducators—who will be working with the Student in the 2020-2021 school year. The group will meet and review the Student's IEP. The group will discuss the Student's needs, plans for how the Student's IEP will be implemented, and plans for ongoing communication. OSPI encourages the group to collaborate on instructional strategies and to set up further opportunities to meet.

By **September 4, 2020**, the District will provide OSPI with the following documentation: 1) a sign in sheet for meeting attendees; 2) an agenda or notes on topics discussed at the meeting; and, 3) and documentation of next steps discussed by the group.

DISTRICT SPECIFIC:

Written Guidance: Progress Reporting

The District will develop written guidance to be provided to all District certificated special education staff, school psychologists, principals, and District special education administration staff, which will address procedures for providing prior written notice. The guidance will include examples. By **August 14, 2020**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by August 28, 2020, and provide additional dates for review, if needed.

By **September 30, 2020**, the District will provide OSPI with documentation showing that it provided the above required staff with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

IEP Access

By **August 31, 2020**, the District will be required to develop a plan to ensure all necessary staff have access to relevant IEPs if they are expected to implement components of an IEP. This could

include access to the District's online IEP program, methods to secure physical copies of IEPs in the classroom, and/or built in, regular planning time for special and general education staff to collaborate to ensure IEPs are being implemented. OSPI strongly encourages the District to engage relevant staff in the development of the plan to ensure the system is workable and meets the needs of staff.

By **September 4, 2020**, the District will provide OSPI with a copy of the proposed plan for review. OSPI will provide feedback on or approve the plan.

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.

RECOMMENDATIONS

Reevaluation

OSPI recommends the Parent and District staff involved in the reevaluation meet prior to the start of the 2020-2021 school year to develop a plan for the reevaluation and obtain written, informed consent from the Parent. This will ensure there is no delay in beginning the reevaluation in the fall. The District and Parent are also encouraged to consider beginning this process during the summer as appropriate and feasible given public health guidance on social distancing.

IEP Meeting

The Parent also requested the District delay the Student's IEP meeting, in part because she disagreed with the April 2020 reevaluation and the proposed change to the Student's math services. After scheduling an IEP meeting for May 5, 2020 and encouraging the Parent to attend, the District agreed to delay the IEP meeting. This was acceptable, given the COVID-19 public health crisis and guidance from OSPI that in some cases, it would be allowable to delay updating an IEP if the district and parent agree to wait until school resumes. IEP development was not an issue alleged in this complaint and as such, OSPI makes no conclusion regarding IEP development procedures.

At this point, OSPI notes the Student's IEP is now out of date as his annual IEP was due in May 2020. OSPI recommends the District schedule an IEP meeting between now and the end of August to create the Student's annual IEP. However, OSPI recommends the IEP team not make significant changes to services without sufficient data. OSPI therefore expects the Student's specially designed instruction would look similar to the May 2019 IEP (e.g., specially designed instruction in reading, written expression, and math). OSPI encourages the IEP team to consider any current data that exists and whether the Student needs additional or different services and supports to mitigate both the impact of the COVID-19 closures and the fact that the Student's IEP was largely not implemented as written prior to the closures. Additionally, the Student's IEP team will likely need to schedule a subsequent IEP meeting following the completion of the reevaluation as well

to further update the IEP based on the most up-to-date data on the Student's disability related needs.

General & Special Education Collaboration and Communication

Additionally, the District noted in its response that it was developing a draft "Special Education Handbook" with protocols for more regular communication between the special education case managers, general education teachers, and paraeducators. OSPI supports work to increase communication and collaboration between special and general education staff as there seemed to be a communication gap and a lack of structure around collaboration in the District. OSPI strongly encourages the District to solicit stakeholder feedback from staff (e.g., general education teachers, special education teachers, paraeducators, etc.) regarding the Handbook and consider other recommendations staff may have. Additionally, OSPI is willing to review the Handbook and provide feedback at the District's request.

Dated this ____ day of June, 2020

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.)