

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-69

PROCEDURAL HISTORY

On June 3, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 6, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 9, 2022, the Parent provided clarifying information, which resulted in OSPI modifying one issue. OSPI notified the Parent and District of this modification on June 9, 2022.

On June 23, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on June 24, 2022. OSPI invited the Parent to reply.

On July 5, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

ISSUES

1. Was the specially designed instruction in reading and writing that was provided to the Student from October 19, 2021 through January 26, 2022 designed and supervised by an individual with a special education certificate per WAC 392-172A-02090(i) and in conformity with the Student's individualized education program (IEP)?
2. From approximately October 19, 2021 through January 26, 2022, did the District follow proper procedures for responding to the Parent's concerns that the Student's specially designed instruction in reading and writing was not adequately addressing the Student's needs resulting from the Student's disability in those areas?
3. For the November 5, 2021 IEP meeting, did the District provide a meeting invitation per WAC 392-172A-03100 and a prior written notice per WAC 392-172A-05010?

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to

implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(i).

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

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; and (2) participate in discussions about the child's need for special education and related services and supplementary aids and services. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, Question 9).

Decisions about Educational Methodology: As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. *In the Matter of Dieringer School District*, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014); *See also, Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (finding parents do not have the right to dictate any

particular educational program and explaining that a school district's denial of a parent's placement request reflected a "difference of educational philosophy with [parent], not a denial of opportunity to participate.")

Generally, districts are not required to include methodology in a student's IEP *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 952 (9th Cir. 2010) (district did not violate the IDEA by not specifying teaching methodology in student's IEP); *R. E. B. v. Dep't of Educ.*, 770 F. App'x 796, 801 (9th Cir. 2019) (not necessary for IEP to specify methodology); *Carlson v. San Diego Unified Sch. Dist.*, 380 F. App'x 595, 597 (9th Cir. 2010) (parent's disagreement with educational methodology insufficient to prove IEP was inappropriate). The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are reasonably calculated to provide him with educational benefit. *See, e.g., Adams v. Oregon*, 195 F.3d 1141, 1149–50 (9th Cir.1999). So long as a district offers a program that can meet the student's individual needs and allows the student to make educational progress, it will meet its obligations under the IDEA. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 208, 102 S. Ct. 3034, 3052, 73 L.Ed.2d 690 (1982); *D.T. and D.T. ex rel. N.T. v. Seattle Sch. Dist.*, 57 IDELR 249 (W.D. Wash. 2011).

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100(3).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of specific learning disability and was in the fifth grade.

2. The District's 2021–2022 school year began on September 1, 2021.
3. At the start of the school year, the Student's December 14, 2020 individualized education program (IEP) was in effect. The IEP noted the Student's disability impacted her reading fluency, decoding of multisyllabic words, ability to comprehend texts, writing mechanics/conventions, and ability to organize thoughts into a structured written composition. The IEP included goals in reading (fluency at a fourth-grade level, comprehension at a fourth-grade level), social/behavior (transitioning, self-regulation, preferred/non-preferred activities), and written language (spelling, writing conventions), with progress reporting at the trimester.

The IEP provided the Student with the following weekly specially designed instruction provided by special education staff, monitored by a special education teacher, in the special education setting: 90 minutes of reading, 60 minutes of social/behavior, and 30 minutes of written language. The IEP indicated the Student would be in the general education setting for 89.86% of her time.

4. On October 13, 2021, the Parents requested an IEP meeting to discuss concerns about a lack of appropriate instruction and to discuss modifying the Student's goals. The Parents requested the team discuss the private neuropsychological evaluation report from a recent private evaluation of the Student.
5. On October 14, 2021, the Parent emailed the District a copy of the private evaluation report. The report included diagnoses for the Student of dyslexia, dysgraphia, autism, attention deficit hyperactivity disorder (ADHD), and anxiety. The report also identified the Student has having a high cognitive ability. The evaluation report included recommendations and other information, with the following highlighted by the Parent in her complaint:

Reading goals be articulated and curriculum that provides phonological support be included. In other words, [Student] requires specially designed instruction (SDI) that meets her complex reading needs. While Fountas & Pinnell provides explicit reading support, [Student] also requires phonological processing support, such as would be found in Orton Gillingham and Wired for Reading.
6. Also, on October 14, 2021, the Parent and the school psychologist emailed about the private evaluation report and next steps. The Parent stated that their goal was to adjust the Student's goals, ensure she is receiving appropriate supports, and discuss whether the Student's eligibility category needed to change.
7. On October 19, 2021, the Student's special education teacher emailed the Parent a copy of her schedule, which identified when the Student received specially designed instruction. The teacher explained that the Student was "pulled out" of her general education class to receive her specially designed instruction: 30 minutes, four times per week, in reading; 30 minutes, once a week, in writing; and 15 minutes, four times per week, in social/behavior. The special education teacher delivered instruction in social behavior and a special education assistant delivered instruction in reading and writing.

In response, the Parent emailed and stated the Student was “not being pulled out on this schedule” and stated, “as you confirmed over the phone with us today, she has not had any direct reading or writing instruction before today, aside from two meetings with [special education assistant] to assess reading level, correct?” In a second email, the Parent stated that the Student “reported to me that today was the first time she met with [special education assistant] for group reading/comprehensions.”¹

The special education teacher replied that the special education assistant had been “pushing in or pulling out for baseline testing up until now” and stated she understood the Parent’s frustration “with the lag in services.”

8. In their complaint, the Parents alleged the Student was not provided appropriate instruction between October 19, 2021 and January 26, 2022 because the specially designed instruction was not provided by a certified teacher.

The Parents stated in their complaint that beginning October 19, 2021, the Student began receiving instruction through a “pull-out delivery model from an Instructional Assistant (IA) for her reading and writing service minutes” and that she received her reading and writing instruction exclusively from an IA from October 19 through November 29, 2021. The Parent also stated, in her reply to the District’s response, that “no particular program, methodology, or curriculum tailored to [Student’s] disability needs were being used from 10/19/21-11/16/21, and inappropriate curriculum was being used from 11/16/21-1/26/22.”

9. The Parents also raised the concern that the Student’s instruction was not specially designed for her disabilities and that lessons were not in alignment with Washington dyslexia laws or best practices—i.e., that “interventions must be evidence-based multisensory structured literacy interventions and must be provided by an educator trained in instructional methods specifically targeting students’ areas of weakness.”² The Parents stated the IA working with the Student was not trained in these principles and that:

the work done in [Student’s] small groups was activities such as reading paragraphs and answering comprehension questions, and working on her General Education classroom writing assignments. There was no explicit, systematic, sequential instruction delivered. [Student] was not being taught phonics skills or following any type of evidenced based curriculum or program.

¹ The Parents noted in their complaint that the District agreed to reimburse them for “failing to provide a Special Education teacher and required service minutes for the time period of September 1st, 2021 - October 18th, 2021.”

² See RCW 28A.320.260(3)(b) and Washington dyslexia guidance stating, “Teachers who provide instruction to students with dyslexia and related disabilities should be trained on instructional approaches that are explicit, systematic, sequential, and cumulative. Instruction must address the phonology, morphology, orthography, syntax, semantics, and pragmatics of language.” <http://training-ospik12.pantheonsite.io/sites/default/files/public/ela/pubdocs/dyslexiaresourceguide.pdf>

The Parent stated that it was “not possible to fulfill the Student’s IEP, according to dyslexia laws and best practices.”

The Parent further stated in her reply that they asked the IEP team if the “teaching methods were evidence based and appropriate for [Student’s] educational circumstances” and that the Student’s special education teacher “lacked appropriate training and knowledge in dyslexia and dysgraphia and was unable to provide effective [specially designed instruction]”, which, the Parent stated, was reflected in the Student’s lack of progress. The Parent stated she understood that “not all goals will be met with proficiency each time,” but that the Student’s “progress was significantly below expectations, especially considering her cognitive profile.”

10. On October 20, 2021, the special education teacher sent the IEP team, including the Parent, an emailed Microsoft Teams meeting invitation for the IEP meeting scheduled for October 28, 2021. Prior to this, several emails were exchanged between IEP team members, including the Parents, regarding the date and time of the meeting. The Parent subsequently requested the meeting be rescheduled, and it was rescheduled via email discussion for November 5, 2021.
11. On October 29, 2021, the special education assistant emailed the special education teacher and asked, “Did you have something specific for me to work on reading minutes with...[Student]?”
12. On November 5, 2021, the Student’s IEP team met. According to the District, the team reviewed and discussed the private evaluation report and the results, diagnoses, and recommendations contained therein. The team discussed whether it should initiate a reevaluation to consider changing the Student’s eligibility category, but agreed a reevaluation was not needed at that time.
13. The Parents alleged that they were not provided appropriate meeting invitation or prior written notice related to the November 5, 2021 meeting. According to the Parents’ complaint, at the meeting, the special education supervisor (supervisor) stated the meeting was not an IEP meeting and that the team would not discuss the Student’s goals. The Parents stated they were informed during the meeting that the Student would receive instruction through the “SIPPS (Systematic Instruction in Phoneme Awareness, Phonics, and Sight words)” program. The Parents stated they were not part of the discussion regarding using this program and they expressed concerns that the program was not appropriate.
14. Also, on November 5, 2021, a District intervention teacher emailed the special education supervisor and a special education program specialist, stating, “thank you for your work to help [Student] and her parents this afternoon.” The intervention teacher went on to state:

I would like to follow up with you about additional resources ideas for students who do have Dyslexia but are testing out of SIPPs. This is an issue that continues to come up, especially for these older elementary aged students. Can you provide me with any resource ideas to help support these type of students who need help with spelling? I know that we have spell check, text to speech, or scribes but I am looking for resources to help students to be able to get closer to correct spelling so that spell check actually can figure out what word they need and to help them not be so frustrated while writing.

The program specialist responded and asked about what materials were already available at the school, stating, "Sometimes it is just a matter of making the connection between curriculum you have available and the student need..." The program specialist stated, "All About Spelling is a good program," but that she mostly taught spelling "by using multisensory daily lessons Orton Gillingham style" and created a lot of her own materials so that students could "see it, say it, hear it and write it, whatever the phonetic skill was that was being taught."

15. Later, on November 5, 2021, the Parent emailed the program specialist, special education teacher, and special education supervisor, thanking them for the meeting and expressing frustration that they did not address the Parent's request to discuss the Student's goals. The Parent also expressed concern that the Student was still not being provided the full minutes on her IEP and that there was a "lack of explicit/individualized instruction relating to her IEP goals."
16. On November 9, 2021, the special education teacher emailed the Parents draft IEP goals developed based on information from the private evaluation and the team discussion. The special education teacher stated she would be doing an assessment the following day to help fill in the baselines for the proposed goals.

The Parent responded and requested a meeting to discuss the goals and ask questions.

17. On November 12, 2021, the Parent and the principal spoke on the phone, and in part agreed to schedule a follow up IEP meeting to discuss present levels, IEP goals, and the service matrix.
18. On or around November 16, 2021, the Student started receiving instruction using SIPPS from an IA.
19. Also, on November 16, 2021, the special education teacher emailed the Parent, and stated in part that "getting a copy of the scope and sequence of SIPPS is on my to do-list. We started at SIPPS Plus Lesson 9."

The Parent responded, stating that she still had concerns about SIPPs being appropriate for the Student as the SIPPS website indicated that the "4-12 programs stated they are intended for older students reading at a 1st to 2nd grade level. Since she is near grade level and reading mostly fluently, it doesn't seem like it will appropriately address her struggles (and you had mentioned she tested out of it previously)." The Parent stated, "If anything the Challenge Level seems like it might be more appropriate" and "has a few extra elements aligning it more closely to an Orton-Gillingham approach."

20. Also, on November 16, 2021, the special education teacher and program specialist met with Parents to review and discuss the draft goals and answer any questions.
21. On November 23, 2021, the school psychologist sent the Parents a prior written notice that documented determinations that were made during the November 5, 2021 meeting. The prior written notice indicated the team considered changing the Student's eligibility category and

conducting a reevaluation, but determined this would be considered at the Student's next triennial reevaluation.

22. The Parent, in her reply to the District's response, noted that the prior written notice did not address the Parents' concerns that the goals and specially designed instruction were not appropriate for the Student. The Parent stated she requested the IEP team discuss goals at this meeting.
23. As of November 23, 2021, the Student received pull out reading instruction on Tuesdays and Thursdays from 1:50–2:20 pm from a special education teacher.
24. On November 29, 2021, the District scheduled an IEP team meeting for the Student for December 8, 2021 and contacted the Parents, who responded they could attend.
25. On December 8, 2021, the Student's IEP team met and developed the Student's annual IEP. The IEP noted the Parents' concerns about the Student's progress on her goals and "concerns about whether she is receiving the appropriate instruction (Orton-Gillingham, etc.) in order to meet her unique needs." The present levels section of the IEP was updated with information from the private evaluation and noted the Student's disability impacted her reading comprehension abilities (especially when inferring meaning), skills of writing with proper conventions, and ability to organize thoughts into structured written compositions. Regarding her previous goals, the IEP noted the following with respect to progress on reading and written expression:
 - Reading (fluency): Student reading "128 correct words per minute with 99% accuracy. Goal met, discontinue."
 - Reading (comprehension): Progress "33%. Modify and continue."
 - Written language (spelling): Progress "20%. Modify and continue."
 - Written language (writing conventions): Progress "1/5. Modify and continue."

The IEP included updated goals in reading (non-fiction retell, inferential thinking, evidence evaluation), social/behavior (topic maintenance, self-regulation) and written language (informative paragraph, revision, multisyllabic spelling), with progress reporting at the trimester. The IEP increased service minutes in reading and writing, and provided the Student with the following specially designed instruction provided by provided by special education staff, monitored by a special education teacher, in the special education setting:

- Reading: 120 minutes weekly
- Social/Behavior: 60 minutes weekly
- Written language: 90 minutes weekly

The IEP indicated the Student would spend 84.79% of her time in the general education setting.

26. During the meeting, the team discussed the Student's progress on her goals. According to the Parents, the "progress on two of her written language goals was only at 20% proficiency level, rather than the target of 80%, and one of her reading goals was met at only 33%, significantly

below the target of 80%, especially considering the factor of [Student's] high cognitive potential."

27. As of December 9, 2021, the Student was getting reading instruction from the special education assistant at 1:50 pm on Mondays.
28. On December 9, 2021, the special education teacher emailed the Parents a copy of the final IEP and prior written notice. The prior written notice recorded that the team discussed:
1. The inclusion of [Student's] diagnoses of autism, anxiety, dyslexia, dysgraphia, and ADHD in general background and the adverse impact summary.
 2. [Student's] decoding skills are strong, however, her reading comprehension skills are not yet at grade level. Parents also requested the team monitor how [Student] performs with correct words per minute. At this time, the team agreed not to make CWPM an IEP goal.
 3. [Student's] parents reiterated concerns that the phonics instruction being used by the special education team is not addressing [Student's] needs. The team decided to move forward with the IEP. Ongoing discussions will be had between [Student's] parents and [District] staff regarding curriculum decisions.
 4. [Student's] writing skills have improved to where she is able to write many sentences (especially with speech to text), though she still needs support around consistently using conventions, particularly spelling. [Student] is successful with graphic organizers.
 5. Clarifying language around the topic maintenance goal...
 6. Accommodations...
 7. Increasing reading and writing minutes in the special education setting. Parents also raised concerns around how much time [Student] was receiving [specially designed instruction] from an instructional assistant rather than certificated staff.

The teacher also provided the Parents with the schedule of the Student's specially designed instruction, which noted:

- Social/behavior (60 minutes): Provided the special education teacher on Mondays from 7:55 to 8:10, Wednesdays from 12:15 to 12:45, and Fridays from 7:55 to 8:10.
 - Reading (120 minutes): Provided by the special education teacher, special education teacher 2, and special education assistant four days a week from 1:50 to 2:20.
 - Writing (90 minutes): Provided by the special education assistant on Mondays from 12:40 to 1:10 and by the special education teacher on Tuesdays and Thursdays from 12:40 to 1:10.
29. On December 10, 2021, the principal emailed the Parent, thanking her for the robust discussion at the Student's IEP meeting about "methodology and curriculum." The principal stated she had gathered a list of "potential curricular resources that meet the needs of students with dyslexia" and stated she wanted to "open up this conversation to a small team of teachers, parents (including yourself), and district support staff to dig into these resources..." The principal proposed piloting a curriculum or program in the resource room this year and then planning strategically how to support the wider group of students. The principal stated she anticipated bringing together a group to meet in January to go over next steps and invited the Parent to join. The Parent responded that she looked forward to meeting.
30. On December 13, 2021, the District reported on the Student's progress on her goals. All the goals were noted as "little or no progress made"; however, the report also indicated the goals

were new and that the IEP had just been updated and included some notes about the Student's baselines.

31. On December 14, 2021, the Parent emailed the program specialist, special education supervisor, special education teacher, and principal regarding her concerns about SIPPS not being appropriate for the Student. The Parent's stated:

...Can you provide the evidence based research showing that SIPPS is appropriate specifically as a dyslexia intervention? There is evidence on their website showing effectiveness for struggling readers and ELL, but I could not find evidence showing effectiveness for dyslexic students like [Student]. In addition, this is said about students with dyslexia: 'While SIPPS was not specifically studied with dyslexic students, SIPPS was designed to support ALL students in learning how to read.'

Again, [Student's] literacy needs are specific and unique. We have documentation from the neuropsychologist that details these needs. They cannot be met with a generalized program that doesn't specifically target her areas of weakness, and especially without appropriate teacher background knowledge on dyslexia remediation.

The SIPPS 4-12 programs state they are intended for 4-12th grade students reading at a 1st to 2nd grade level. Since [Student] is near grade level and reading mostly fluently, how would it appropriate address her struggles (also considering she tested out of SIPPS), in particular her 2e/highly capable profile with fluence reading but struggles with processing speed, rapid naming, orthography, syntax etc.?

[From the SIPPS website] 'Note that SIPPS may not be the appropriate intervention for some students who struggle with reading. Students may already have the foundational skills taught in the SIPPS program and need a different type of reading intervention instead. You should always administer the placement assessment before starting the SIPPS program, not only to determine where to place students within the program but also to determine when SIPPS is not needed for students (as indicated by passing all of the sections of the SIPPS placement assessment).'

Is SIPPS Intensive being used? Was SIPPS Challenge level considered? What is the extent of training that [special education instructional assistant and special education teacher 2] have in delivering the SIPPS curriculum?

You mentioned that SIPPS is a tool in the toolbox and that the teachers' background knowledge of instructional methods specifically targeting students' areas of weakness is necessary for providing the appropriate interventions to students, so how can we ensure the teachers at [school] are equipped with the tools they need...

Is it expected that [Student] will finish the program in its entirety by the end of the school year, therefore (ideally) gaining the complete sequence of skills intended to achieve maximum effectiveness? If not, is there a middle school that [Student] can attend that will ensure she can continue where she left off?

The special education supervisor responded to the school staff, asking whether they looked into the curriculum she suggested and stated, "There is no point continuing to argue with her about if SIPPS is appropriate or not. If she tested out of the SIPPS curriculum then it isn't

appropriate." The supervisor further stated, "we don't let parents dictate the curriculum we use. They have input on goals, etc., but not the actual teaching methods. So, let me know what you have found, or if you need help in finding the right curriculum."

32. On December 19, 2021, the supervisor emailed the Parents that the District has "decided to find a spelling curriculum that will meet [Student's] needs. So no need to worry about SIPPs."

The Parent responded to the supervisor on January 5, 2022 and asked if the IEP team could discuss and "decide as a team what will work best for [Student's] needs?"

33. From December 20, 2021 through January 2, 2022, the District was on winter break.
34. As of January 3, 2022, special education teacher 2 was working with the Student on Tuesdays from 1:34–2:05 pm and Thursdays from 1:50–2:20 pm in a pull-out reading session.

35. On January 5, 2022, the Parents emailed and set up a phone call with the school principal and the Student's case manager. In their complaint, the Parents stated:

Together, the three collaborated on a solution and determined that the program Logic of English would be an appropriate fit for [Student] to meet her current educational needs. The parents were using Logic of English to tutor [Student] at home with much progress and success during the 2020/21 and 2021/22 school year. The program addresses [Student's] specific needs...in a systematic and explicit way. The school purchased the materials, and on Jan 27th, 2022, the special education teacher began teaching [Student] implementing the Logic of English two times per week for 30 minutes each.

36. As of January 10, 2022, the special education teacher was working with the Student on Tuesdays and Thursdays for a 30-minute reading pull-out.
37. On January 11, 2022, the Parent and special education teacher emailed regarding starting the use the "Logic of English" curriculum with the Student, and that the curriculum had been ordered.
38. On January 13, 2022, the principal emailed the Parent and others regarding pulling together a team of thought partners around reading instruction for elementary students, including students receiving special education services, and examine curricular resources in addition to the District adopted SIPPS curriculum. The principal noted the group may take a look at "Logic of English," "All About Spelling," and "Barton."

The Parent responded that she would be at the meeting and suggested the group also look at "Wired for Reading." The Parent also noted it would be important to consider teacher training as well and stated her "wish would be that teachers are provided a deeper understanding through training (in Structured Literacy, Orton-Gillingham, etc.)" to support the delivery of curriculum, and ensure that concepts can be transferred across programs and classrooms.

39. On or around January 27, 2022, the special education teacher began using the “Logic of English” curriculum with the Student.
40. Regarding the Student’s progress, the Parent’s stated in their complaint that the Student did not meet her goals at proficiency, which indicates that the SIPPS and instruction prior to SIPPS was not adequate.
41. On March 24, 2022, the District reported on the Student’s progress as follows:
- Reading (non-fiction retell): Some progress made – “[Student] is usually able to state the main idea and maybe one additional detail, unless it is a non-fiction text that she is especially interested about (like snakes). We will continue to work on this.”
 - Reading (inferential thinking): Some progress made – “2/3 [Student] has made great growth in understanding the author’s purpose in fictional passages. She did well with our Greek myth mini-unit on author’s purpose. We will continue to work on this.”
 - Reading (evidence evaluation): Some progress made – “2/3 [Student] has made good growth in picking out evidence from a text to support her answer. She (understandably) has more difficulty in doing this when the texts are longer, so this is an area for us to support going forward.”
 - Written language (informative paragraph): Significant progress made – “[Student] is doing a great job following the hamburger format in my room, as well as other graphic organizers or sentence stems from ELA and Science. She sometimes takes a few minutes to get her ideas together, but she always finishes without out time together. We will continue to monitor this goal. Nice job!”
 - Written language (revision): Significant progress made – “I am so impressed with [Student] based on this goal. She really rocked her most recent Black history figure essay where she had to write 5 5-sentence paragraphs. On her final, I only counted 3 errors! I remember I did help her fix ‘woman’ to ‘women’, but I tried to be more hands off. She seems to really benefit from using Word to help her edit her work. Nice job [Student]!”
 - Written language (multisyllabic spelling): Significant progress made – “[Student] scored 17/20 (85%) on a spelling test using pre-taught affixes from LOE. We’ll keep monitoring this goal as she progresses through more affixes. Nice job.”

The progress reporting also included the Student’s progress on her social/behavior goals.

CONCLUSIONS

Issue One: Individualized Education Program Implementation – The Parent alleged the Student was not provided instruction between October 19, 2021³ and January 26, 2022 because the specially designed instruction was not provided by a certificated teacher—instead, instruction was provided by an instructional assistant—and because the District was not using an appropriate curriculum, program, or methodology. The Parent stated that it was “not possible to fulfill the

³ The documentation indicated that there were gaps in the provision of specially designed instruction at the start of the year, but that the District had already agreed to reimburse them for “failing to provide a Special Education teacher and required service minutes for the time period of September 1st, 2021–October 18th, 2021.” Thus, the Parent specifically made this complaint with respect to the time period beginning October 19, 2021.

Student's IEP, according to dyslexia laws and best practices." The Parent did not raise any concerns about the Student's social/behavioral instruction.

Here, the Student's December 2020 IEP was in effect October 19 through December 9, 2021 and provided the following weekly specially designed instruction: 90 minutes in reading and 30 minutes in written language. The Student's December 2021 IEP was in place December 10, 2021 through January 26, 2022 and provided the following weekly specially designed instruction: 120 minutes in reading and 90 minutes in written language. Both IEPs included specially designed instruction delivered by special education staff in the special education setting, with instruction monitored by a special education teacher. The IEPs did not specify a particular curriculum, program, or methodology.

Instruction Provided by an Instructional Assistant: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate.

Here, the Student received specially designed instruction, in pull-out sessions in the special education setting from both special education teachers and a special education assistant. Initially, the special education assistant delivered the reading and writing instruction, and later the reading and writing instruction was delivered by both the assistant and special education teachers. The Student's schedule permitted her to receive the full minutes of specially designed instruction in her IEP. Emails indicate the Student's primary special education teacher was communicating with the special education assistant and other teacher regarding the instruction they should provide the Student.

Overall, the Student's specially designed instruction was provided in the special education setting and delivered by special education staff—as specified in the IEP—which included two special education teachers and a special education assistant. As permitted by the state regulations and as outlined in the Student's IEP, a non-special education teacher can assist with the delivery of specially designed instruction as was the case here. While the substance of the instruction is addressed below, the fact that the assistant was delivering some of the instruction is not a violation.

Curriculum/Program Methodology: Generally, districts have discretion as to the curriculum and educational methodology used to provide students instruction. Further, districts are generally not required to include methodology in an IEP. However, a district is required to provide an instructional program that meets the individualized needs of a student and allows the student to make progress.

Here, the Student's December 2020 and 2021 IEPs noted that the Student's disability impacted her reading fluency, decoding of multisyllabic words, ability to comprehend texts, writing mechanics/conventions, and ability to organize thoughts into a structured written

composition. The 2020 IEP included goals in reading fluency and comprehension, spelling, and writing conventions. The December 2021 IEP noted the Parents' "concerns about whether she is receiving the appropriate instruction (Orton-Gillingham, etc.)." The 2021 IEP included goals in non-fiction retell, inferential thinking, evidence evaluation, informative paragraph, revision, multisyllabic spelling. Neither IEP specified a curriculum, program, or methodology. Thus, alone the fact that the District was not implementing a specific methodology was not a failure to implement the IEP as written.

However, communications from the District indicate the team agreed the "SIPPS (Systematic Instruction in Phoneme Awareness, Phonics, and Sight words)" program they began using around November 16, 2021 to provide specially designed instruction to the Student was not appropriate. Prior to and after SIPPS was implemented, the Parent shared concerns with the program, noting the program stated it was "intended for older students reading at a 1st to 2nd grade level. Since she is near grade level and reading mostly fluently, it doesn't seem like it will appropriately address her struggles (and you had mentioned she tested out of it previously)." On December 14, 2021, the special education supervisor noted that if the Student "tested out of the SIPPS curriculum then it isn't appropriate." Thus, the District acknowledged, at least implicitly, that the instruction the Student was being provided was not appropriate. Around January 27, 2022, the special education teacher began using the "Logic of English" curriculum with the Student. While the Student was receiving instruction during this period, the District acknowledged that the curriculum being used to provide instruction was not appropriate. During this period, the Student's progress was mixed—she mastered her reading fluency goal—but her IEP noted the following for her reading comprehensions, spelling, and writing conventions goals respectively: "33%. Modify and continue;" "20%. Modify and continue;" and "1/5. Modify and continue." OSPI notes that some of the lack of progress could be related to the first month and a half of school wherein it was acknowledged the Student received little to no reading and writing specially designed instruction. Importantly, the Student's March 2022 progress report, issued after beginning the new curriculum, indicated the Student's rate of progress was increasing; although the report addressed the new December 2021 IEP goals, the Student was making some progress to significant progress on all of her reading and writing goals.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP. In this case, given that the Student made little progress on three of her four reading and writing goals, and most importantly, given the District's acknowledgment that the program/curriculum being used was not appropriate to meet the Student's needs, OSPI finds a violation. The IEP was not being fully implemented as the instruction was not appropriate.

The District will be required to provide compensatory education. This period, excluding winter break, represents 12 weeks during which the Student was scheduled to receive 1,230 minutes (20.5 hours) of reading instruction and 660 minutes (11 hours) of writing instruction. Given that the Student made some progress and was provided instruction even though it was not

appropriate instruction, the District will be required to provide approximately one quarter of the instruction as a remedy or five hours of reading and three hours of writing.

Issue Two: Concerns Regarding Reading – The Parent alleged she raised concerns about the Student’s reading instruction and the curriculum or program used with the Student and that the District did not provide the Student instruction using an appropriate curriculum, program, or methodology. The Parent stated that the District’s lessons were not specially designed for the Student’s disabilities and lessons were not in alignment with Washington dyslexia laws or best practices—i.e., that “interventions must be evidence-based multisensory structured literacy interventions and must be provided by an educator trained in instructional methods specifically targeting students' areas of weakness.”

A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. When developing each child’s IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child.

In the fall of 2021, the Student underwent a private evaluation, diagnosing the Student with dyslexia and dysgraphia. The evaluation report recommended the Student’s “reading goals be articulated and curriculum that provides phonological support be included” in the IEP. In other words, “[Student] requires specially designed instruction...that meets her complex reading needs...[Student] also requires phonological processing support, such as would be found in Orton Gillingham and Wired for Reading.” Following this, the Parent requested an IEP meeting, which occurred on November 5, 2021 at which the IEP team reviewed the private evaluation, and on December 8, 2021 at which the IEP team updated the Student’s goals and increased her minutes of specially designed instruction. The documentation indicated the Parents provided input into the Student’s new IEP goals, discussed her progress, and were involved with the discussion to increase service minutes. While the IEP team did not agree with all the Parents’ requests, for example, did not include a “correct words per minute” goal, it was clear the Parents participated actively in the IEP meeting and IEP development.

During this period, the Parent raised concerns about the specific curriculum/program being used to provide the Student’s instruction. The District began using the SIPPS program, which the Parent expressed concern about—notably that the Student tested out of SIPPS and was at a higher level than the program addressed. As discussed above, the District acknowledged that SIPPS was not appropriate for the Student in mid-December and beginning January 27, 2022, began using a different curriculum to provide the Student instruction. The prior written notice documenting the December 8, 2021 IEP meeting indicated the Parent and District staff would have continued discussions about curriculum decisions, and the Parent was involved in discussions related to using the “Logic of English” curriculum with the Student at school.

Generally, parents do not have the right to make decisions about methodology and educational philosophy. However, a district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. Here, the District did just that when it scheduled IEP meetings in response to the Parent's request, involved the Parents in the annual IEP development, discussed concerns about the SIPPS program, and engaged in discussions around curriculum. OSPI finds the District addressed the Parents concerns about the Student's reading needs and OSPI finds no violation.

Issue Three: Meeting Invitation & Prior Written Notice – The Parent alleged she was not provided a meeting invitation for the November 5, 2021 IEP meeting and that the prior written notice documenting the IEP meeting did not address the Parents' concerns that the goals and specially designed instruction were not appropriate for the Student.

Meeting Invitation: A district must ensure that parents are notified of meetings early enough to ensure they can attend. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student.

On October 13, 2021, the Parent requested the IEP team meet to discuss the Student's goals and whether the Student was receiving appropriate instruction as the Student had recently undergone a private neuropsychological evaluation. On October 14, 2021, the Parent clarified that her goal for the IEP meeting was to adjust the Student's goals, ensure she was receiving appropriate supports, and discuss whether the Student's eligibility category needed to change. After several emails discussing scheduling, the IEP meeting was scheduled for October 28, 2021 and the special education teacher sent the Parent and IEP team members a Microsoft Teams invitation on October 20, 2021, which included the date, time, and remote location of the meeting. The Parent then requested the IEP meeting be rescheduled and it was rescheduled for November 5, 2021.

Special education regulations do not require a specific format or form be used for a meeting invitation; instead, the regulations outline the required elements of the meeting notice. Here, the Parents were provided a Microsoft Teams invitation via email, which included the time and location of the meeting, and the email included the invited attendees. In addition, the Parents invited the private psychologist who conducted the evaluation. The Parents requested the IEP meeting and thus outlined the purpose. The invitation sent on October 20, 2021 was sufficient to inform the Parents of the time, location, attendees, and purpose of the meeting. Given that the Parent requested the meeting be rescheduled and this was agreed to via email, the previous invitation was sufficient, and the District is not in violation for not providing an updated IEP invitation. Further, the Parents attended and participated in the November 5, 2021 meeting, so the fact that there was not an updated invitation did not impact the Parents' ability to participate in the complaint process. Overall, OSPI finds no violation with respect to the meeting invitation.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's

educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and clearly describe what the district proposes or refuses to initiate.

The Parent requested the IEP team discuss the Student's IEP goals and services at the November 5, 2021 IEP meeting, along with the private evaluation. The team discussed the private evaluation report and whether to initiate a reevaluation to consider changing the Student's eligibility category. The team did not discuss the goals and services and this lack of discussion was not documented in the prior written notice. The Parent also stated that at the IEP meeting, they received information that the Student would be receiving instruction through the SIPPS program, and that the Parents were not part of the discussion regarding using this program and expressed concerns that the program was not appropriate.

On November 23, 2021, the school psychologist sent the Parents a prior written notice, documenting the November 5, 2021 meeting and the notice indicated the team considered changing the Student's eligibility category and conducting a reevaluation, but determined this would be considered at the Student's next triennial reevaluation. Because the IEP team did not end up talking about the goals and instruction, there was not a clear proposal to initiate new goals or a refusal to amend the goals that would necessitate documentation in a prior written notice. The prior written notice adequately captured the discussion that did occur during the meeting. It is clear the Parent requested the IEP team discuss the goals and Student's instruction; however, it is not clear whether the IEP team ran out of time to discuss this or whether they purposely did not address these topics at the meeting.⁴ Thus, even though it appears that no decision was made related to goals or instruction, best practice would be to include in the prior written notice that the Parent requested certain topics be discussed at the meeting, that these topics were not addressed, and indicate whether a follow up meeting was needed or planned.

Here, the impact of the failure to include this information in the prior written notice was limited. On November 5, 2021, after the meeting, the Parent emailed, expressing concern that they did not discuss goals or instruction at the meeting. The special education teacher followed up by sending proposed draft goals based on the private evaluation and the IEP team's discussion at the meeting. The Parent responded and requested the IEP team meet, and subsequently the Parent spoke with the principal on the phone about scheduling an IEP meeting; the Parent met with the special education teacher and program specialist on November 16, 2021, to go over the

⁴ OSPI notes the Parent's complaint stated that at the meeting, the special education supervisor said the meeting was not an IEP meeting and that the team would not discuss the Student's goals. While it is not clear exactly what was stated at the meeting, if the supervisor said something like this, it would be a concern. The meeting was attended by the required IEP team members, discussed the Student's private evaluation and implications for the IEP, the Parent requested that the team discuss goals, and the meeting was documented in a prior written notice. There is no question it was an IEP team meeting. It is possible that the team ran out of time to discuss the goals or determined it was more appropriate to discuss the goals at the annual IEP meeting. Regardless, as discussed in this conclusion, it would have been best practice to address the discussion, lack of discussion, or tabling of discussion of goals in the prior written notice so that everyone was clear on what occurred at the meeting.

draft goals and discuss questions; and another IEP meeting was schedule for and held on December 8, 2021, at which the IEP team developed the Student's annual IEP, including updated the Student's goals and increasing minutes of instruction. Thus, OSPI finds no violation related to the prior written notice.

CORRECTIVE ACTION

By or before **August 19, 2022** and **November 18, 2022**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

Compensatory Education

By or before **August 15, 2022**, the District and Parent will develop a schedule for the compensatory education hours: 5 hours of reading instruction and 3 hours of written language instruction.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher. Services will be provided in a 1:1 setting. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The District will provide OSPI with documentation of the schedule for services by or before **August 19, 2022**.

*The Parent and District may also agree to a reimbursement for private services or tutoring already provided in lieu of the compensatory education hours. The reimbursement would be for eight hours of instruction. If the Parent and District agree to reimbursement, the District should notify OSPI by **August 19, 2022**.*

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 or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **November 15, 2022**.

By or before **November 18, 2022**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. The documentation should include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **November 18, 2022**.

DISTRICT SPECIFIC:

None.

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

Dated this ____ day of July, 2022

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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