

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-96**

### **PROCEDURAL HISTORY**

On August 17, 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 Peninsula School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On August 17, 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 September 1, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on September 2, 2022. OSPI invited the Parent to reply.

On September 16, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on September 16, 2022.

On October 6, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information from the Parent on October 7, 2022. OSPI forwarded that information to the District on October 10, 2022.

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

### **ISSUES**

1. Did the District follow proper procedures for implementing the Student's individualized education program (IEP) from the start of the 2021–2022 school year through November 21, 2021—specifically to the extent the April 2021 IEP identified certain services as needing to be delivered in a *general education setting*—were these provisions properly implemented?
2. Were proper IEP team composition procedures followed for the November 15, 2021 IEP meeting?
3. Was the prior written notice relating to the November 15, 2021 IEP meeting provided to the Parent a sufficient period of time prior to the District implementing the actions described therein?

### **SCOPE OF INVESTIGATION**

Any factual occurrences discussed herein relating to events taking place prior to August 18, 2021 are for background purposes only, as pertinent regulations limit OSPI's investigation into community complaints to the one-year time period immediately preceding OSPI's receipt of the complaint request form.

## LEGAL STANDARDS

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

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 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.

“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 [child with a disability] and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member’s participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member’s area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member’s area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

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 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. 34 CFR 300.503; WAC 392-172A-05010.

Prior Written Notice Timing: The Office of Special Education Programs (OSEP) has interpreted a “reasonable time” to be “at least 10 calendar days, although some factual situations would justify a more extended period of time.” OSEP has not addressed whether a shorter prior of time would be acceptable. *Letter to Winston*, 213 IDELR 102 (OSEP 1987). The purpose of providing prior written notice a reasonable time before the proposed or refused action is to “provide sufficient information to protect the parent’s rights under the Act.” *In re the Matter of Mercer Island School District*, OSPI Cause No. (WA SEA 2020) (quoting *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992) (finding that “providing [prior written notice] and the final IEP proposing changes to be implemented the following school day, were not issued a reasonable time before the proposed initiation of the changes to the IEP.”))

## FINDINGS OF FACT

### 2020–2021 School Year

1. During the 2020–2021 school year, the Student was in fifth grade, was enrolled in a District elementary school, but according to the District’s response, “was homeschooled...due to the COVID-19 pandemic.”
2. The Student’s IEP team developed a new IEP for the Student on November 24, 2020. The November 2020 IEP provided the Student with the following specially designed instruction in a *special education setting* from July 1 through November 17, 2021:
  - **Reading**: 150 minutes a week (to be provided by a special education teacher)
  - **Written Language**: 150 minutes a week (to be provided by a special education teacher)
  - **Math**: 150 minutes a week (to be provided by a special education teacher)
  - **Social Emotional/Behavioral**: 30 minutes a week (to be provided by a special education teacher)

The November 2020 IEP included the following measurable annual goals:

- **Social Emotional/Behavioral 1** (Executive Functioning): Ability to create a ‘to do’ checklist “improving project planning organization from not able to plan for assignments to generating a plan as measured by provider-collected data.”
- **Social Emotional/Behavioral 2** (Executive Functioning): Ability to use an analog/digital clock “to determine how much time has elapsed or will be needed improving time management from 13<sup>th</sup> percentile on evaluation testing to an average of 80<sup>th</sup> percentile on presented time-based problems as measured by provider-collected data.”
- **Math 1**: Ability to improve “computation skills from 0% to 80% as measured by teacher-collected data.”
- **Math 2**: Ability to “use taught strategies to check his work improving computation accuracy from checking zero completed problems to independently demonstrating the ability to check 50% of completed problems as measured by teacher-collected data.”
- **Reading 1**: “When given grade level reading passages, Student will demonstrate increased decoding improving fluency from 92% to 98% as measured by provider-collected data.”

- **Reading 2:** “When given instructional level reading passages, Student will identify text to answer [the] main idea, [a key] detail, and inferential comprehension questions improving comprehension from 25% to 80% as measured by provider-collected data.”
  - **Written Language 1:** “When given passages containing errors in capitalization and punctuation, Student will edit the passage, improving the rewrite process from 100% support to 80% accuracy independently as measured by provider-collected data.”
  - **Written Language 2:** “When given passages containing sentence fragments and run-on sentences, Student will edit the passage to fix the fragments and run-on sentences, improving sentence writing from 0% to 80%, as measured by provider-collected data.”
3. According to the District, the Student’s IEP team met on April 29, 2021, “to review reported [parental] concerns with Student’s lack of engagement with his special education classes.”

An April 29, 2021 prior written notice read, in part:

The purpose of this prior written notice is to inform you that we are proposing to continue [the Student’s] IEP...The parents were concerned about Student’s lack of engagement in his special education class...We decided as a special education team to deliver the specially designed instruction in the *general education setting* to see if we could re-engage Student in his school work...The team will reach out to the middle school [that Student will attend during the 2021-2022 school year] and set up a meeting before school is out to discuss Student’s schedule for the fall.

In its response, the District stated, “[On April 29, 2021], the team did not agree that [the referenced] intervention would continue into the 2021–2022 school year. Nor did the team agree at that time to amend Student’s November 2020 IEP.”

### **Summer 2021**

4. According to emails, a meeting took place on or about June 22, 2021, between the Parent, the director, and the administrators at the Student’s 2021–2022 school regarding “get[ting] the best schedule in place for Student.”

In her complaint request, the Parent stated, “we did not discuss service minutes” during the June 22, 2021 meeting.

5. The period of time investigated in this complaint began on August 18, 2021.
6. On August 22, 2021, the director emailed the Parent, stating, in part, “Do you want a meeting to go through the schedule [for Student] or you can check-in with the team over the next few weeks during the various back-to-school events, etc. [*sic*].”

According to the Parent’s complaint request, “I did not believe we needed to meet [prior to the start of the 2021-2022 school year]. The Student was to be receiving his special education services in [a] *general education [setting]* per the IEP team decision [on] April 29, 2021.”

### **2021–2022 School Year**

7. The District’s first day of school was September 7, 2021.

8. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of other health impairment, was in the sixth grade, and attended a District middle school. At that time, the Student’s November 2020 IEP was in effect.
9. According to the District’s response, the Student was enrolled in the following classes during the 2021–2022 school year:
  - “What I Need” (WIN) Class<sup>1</sup>;
  - Math;
  - Reading Plus;
  - Language Arts;
  - Science;
  - PE and Health; and,
  - Social Studies.

According to the District’s response, the Student received his specially designed instruction in the following classes: WIN; math; reading plus; and language arts. In its response, the District included a breakdown of the amount of specially designed instruction, by topic, the Student received in the foregoing four classes during fall 2021. See attached **Exhibit 1**.

10. In its response, the District acknowledged the Student was not provided with services in exact conformity with the November 2020 IEP at the start of the 2021–2022 school year. Specifically: “Student’s social-emotional [specially designed instruction] was delivered in both a *general education* and *special education setting*”; “Student [was] overserved in math”; and “Student...was slightly underserved in reading and written language” beginning October 5, 2021.

According to emails, at the beginning of the 2021–2022 school year, the Student received his specially designed instruction in reading in a *special education setting* classroom taught by special education teacher 1, and his specially designed instruction in math in a *special education setting* classroom taught by special education teacher 2.

11. In early October 2021, the Parent emailed District staff regarding concerns she had that the Student was not appropriately engaging with schoolwork.<sup>2 3</sup>

In its response, the District stated:

In reviewing Parent’s concerns, [District] staff learned that Parent believed the April 2021 intervention [was supposed to have] continued into the 2021-2022 school year. Although District staff believed Student was doing well with his transition to [the middle school],

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<sup>1</sup> According to the schedule included in the District’s response, the WIN class met on Tuesdays, Wednesdays, and Fridays. The remaining courses met on Tuesday, Wednesday, Thursday, and Friday.

<sup>2</sup> On October 4, 2021, the Parent wrote the special education teacher 2, stating, in part, “Student has not been wanting to go to school. Due to his ADHD, he is...worried about being bored, acting out/talking to other kids and being told he needs to stop, understandably.”

<sup>3</sup> On October 5, 2021, the Parent emailed the director, stating, in part, “the last few weeks Student has spent most morning in tears about going to school because he feels so bored which to a person with ADHD causes a lot of anxiety”; “when he is bored he acts out and then gets in trouble”; and “I will be very eager to hear what the District plans to do to make up for the five weeks lost from the *general education setting*.”

including participation in the *special education settings*, the staff at [the middle school] agreed to resume provision of Student's specially designed instruction services within the *general education setting* pending Student's annual IEP team meeting in November 2021.

12. According to **Exhibit 1**, on or about October 5, 2021, the Student remained in the WIN class, but he was transferred to a *general education setting* reading and writing class; and a *general education setting* math class.

13. An October 19, 2021 prior written notice read, in part:

October 2021: parent communicated with the team that in consideration of her concerns with student struggling to come to school and that Student was successful in the general education classroom with accommodations in place [during] elementary school, parent would like Student to spend as much time as possible in a general education setting moving forward. Therefore, a schedule change was made in response to the request. Instead of having to class periods of resource room support for reading/writing and math, student is now in all general education classes. The team agreed that we would monitor Student's performance in the new settings and discuss what specially designed instruction will look like moving forward at our next scheduled meeting on November 2, 2021.

...

Student performed very well the first five weeks of school in all classes including resource. Throughout the first weeks of school, classes strongly focus on building routines, classroom community, and expectations for middle school. Student picked up on expectations in the classroom quickly and could manage his behavior. His positive classroom behavior was considered as the team considered [a] schedule change. Although we had several weeks of resource classes, it provided Student with the opportunity to make connections with both special education teachers. These connections will strongly support student throughout his time at the middle school.

It should also be noted that in order to support Student in smoothly transitioning to his new classes, we were able to have a paraeducator push into English and math classes occasionally to quickly check-in with Student and ensure he was settling in okay. While the paraeducator was also supporting other students, the team felt it would be beneficial for Student to have an extra person to check-in with considering how promptly changes [were being] made. General education teachers and the paraeducator provide accommodations in the classroom for student.

14. On November 12, 2021, the Parent collaborated with special education teacher 2 in relation to drafting a prior written notice. (Upon knowledge and belief, this draft prior written notice related, at least in part, to an annual IEP meeting scheduled for November 15, 2021.) In a November 12, 2021 email, the Parent clarified, in part:

I was not requesting the change of setting because it was my preference, I was making the request that Student move to [a] *general education [setting]* as soon as possible because that was an IEP team decision and the new [middle school] team was out of compliance [with that previous IEP team decision].

15. On November 15, 2021, the Student's IEP team met to develop a new annual IEP for the Student. The November 2021 IEP provided the Student with the following specially designed

instruction in a *general education setting* from November 22, 2021 through November 21, 2022:

- **Math:** 150 minutes a week (to be provided by a special education teacher)
- **Written Language:** 75 minutes a week (to be provided by a special education teacher)
- **Social Emotional/Behavioral:** 20 minutes a week (to be provided by special education staff)
- **Reading:** 45 minutes a week (to be provided by special education staff)

The November 2021 IEP provided the Student with the following specially designed instruction in a *special education setting* from November 22, 2021 through November 21, 2022:

- **Reading:** 30 minutes a week (to be provided by special education staff)

The November 2021 IEP read, in part:

#### **Social/Emotional/Behavioral**

Student Input: Student shared while working with general education teacher 2 that he feels really great about his progress this year. He is enjoying school and is proud of how he is handling life as a middle schooler. His biggest worry or area he wants to focus on is figuring out how to better control negative emotions when he is given direction or feedback from adults at school and at home. He shares that because of his ADHD, when he receives redirection sometimes it can feel like he is getting in trouble. He wants to learn strategies that help him respond differently to these situations. He also wants his teachers to know that he is trying very hard to do well this year and recognizes when he has more difficult days.

We are going to work on fostering a growth mindset this year to support Student in reaching his goals and enjoying school along the way! Weekly Character Strong lessons, daily check-ins with his teachers and support staff, and self-reflections will allow Student to find new strategies that work for him.

Task planning and organization is another area we would like Student to make progress in. Student would benefit from support in finding ways to help manage the stress of his workload. WIN class time will focus on setting up an organizational plan specific to Student's needs. Some strategies the team would like to incorporate are: Daily workload tracking (Ready-Do-Done type of checklist), grade checks, task completion tracking tools noting specifics (did he submit on Schoology correctly etc.) Increase use of the Schoology calendar to preview upcoming weekly assignments and due dates, looking into apps available on iPhone or watch.

#### **Math**

Student recently took the iReady Math diagnostic test. His test scores indicate an overall Grade 4 (455) placement. This indicated Student has demonstrated mastery of most grade 4 level math concepts. Student demonstrated understanding of Grade 5 level Algebra and Algebraic thinking concepts and Grade 4 level thinking in Numbers and Operations and Measurement and Data concepts.

Student is able to solve problems involving sharing equal groups, including identifying the remainder; Solve a division problem by rewriting it as an unknown factor problem; Identify factor pairs of whole numbers up to 100; Identify multiples of whole numbers with products to 100. Student needs additional support with geometry concepts in order to solve real-world and mathematical problems involving area, surface area, and volume at the sixth

grade level. The geometry domain addresses attributes of basic two- and three-dimensional shapes, relationships between shapes, and simple geometric terms. Test results indicate that Student may benefit from review of comparing attributes of solid figures and exploring halves, thirds, and fourths in circles and rectangles.

### **Reading**

Curriculum based assessments indicate that Student has not met last year's reading goals and continues to show a need for specially designed instruction in the area of reading.

### **Writing**

Work samples show that Student has not met last year's writing goal to edit for capitalization and punctuation improving the writing process to 80% accuracy independently. Student struggles with capitalization and punctuation. Spelling is a challenge for him. Student will focus on sentence structure and organizing his ideas into paragraphs. He continues to show a need for services in the area of written expression.

The November 2021 IEP included the following annual goals for the Student: **Social Emotional/Behavioral 1** (self-regulation); **Social Emotional/Behavioral 2** (planning and task regulation); **math** (multi-digit math calculation skills); **reading 1** (ability to improve i-Ready reading comprehension skills); **reading 2** (ability to read orally for one minute); and **written language** (ability to write multiple paragraphs).

A November 15, 2021 prior written notice read, in part:

The purpose of this prior written notice is to inform you that we are proposing to continue an IEP.

Description of the proposed or refused action: Student's IEP team met to review his current IEP. The following team members were present at Student's IEP review over a zoom meeting: Parent, Student, Parent's special education advocate, special education case manager, assistant principal, special education teacher 1, director, and general education teachers 1 and 2.

...

The team decided on daily reading specially designed instruction support by the special education staff in the general education classroom along with 30 minutes a week of reading specially designed instruction in the resource room to focus on improving basic reading, fluency, and comprehension skills. The team determined that specially designed instruction in math and written language would be delivered by special [education] staff in the general education classroom.

...

Any other factors that are relevant to the action:...Parent excused the following staff members: special education teacher 1, assistant principal, and general education teachers 1 and 2 for the last 15-30 minutes of the meeting after goals, accommodations, and services had been discussed.

The action [described herein] will be initiated on: November 22, 2021.



In her complaint request, the Parent stated, in part, "At the IEP meeting on November 15, 2021, the entire IEP team was not in attendance at the beginning of the meeting<sup>4</sup> and [some individuals] did not stay for the entire meeting."

In a November 15, 2021 email to special education teacher 2, the Parent stated, in part, "Before you send over the prior written notice, could you please include on it the members that left prior to the end of the meeting?"

16. In a November 19, 2021 email to the Parent, the director explained, in part, her understanding of the April 29, 2021 IEP team decision to educate the Student in a *general education setting*:

This was a temporary solution to try and re-engage Student and it was a very successful solution based on his relationship with the general education teacher. The team responded very quickly to try and re-engage Student. [The] responses [we came up with in April 2021] were to address the issues at the elementary school and Student's lack of relationship with [a particular teacher there], not to make a permanent change in his specially designed instruction [setting]...When you voiced that you felt the [middle school] schedule of [certain services being provided in a special education setting] was...unsuccessful...in October [2021], [we] made a schedule change and issued a...prior written notice...respond[ing] to your request...The District stance at this point is that Student did have the proper schedule at the beginning of the school year based on his IEP.

In a separate email, dated November 19, 2021, special education teacher 2 told the Parent she was hoping to get the prior written notice related to the November 15, 2021 IEP meeting to her at "the beginning of next week."

17. On December 1, 2021, the Parent emailed special education teacher 2, stating, in part, "I just wanted to reach out because I hadn't received the final [IEP] draft." On December 5, 2021, on the same email thread, the Parent stated, in part, "Please send over a digital copy of the IEP and prior written notice."
18. According to the Parent's complaint request, she did not receive the November 15, 2021 prior written notice and IEP until December 6, 2021.
19. According to the Parent, on December 7, 2021, she emailed District staff a photo of the Student's scalp, which showed the Student had pulled portions of his hair out over anxiety about school.

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<sup>4</sup> During this investigation, the Parent clarified: general education teacher 3 was either not at the November 15, 2021 IEP meeting, or alternatively, general education teacher 3 was not there for the start of the November 15, 2021 IEP meeting. The Parent's complaint request included an unsigned "Excused Team Members" form related to general education teacher 3 that read, in part, "Teacher is unable to attend the rescheduled IEP meeting for Student due to another conflicting meeting. General education teacher 3 will review [the] new IEP and consult the team with any questions." During this investigation, the Parent stated, "I [informed the District] verbally on the phone that I would not sign [the November 15, 2021 Excused Team Member form for general education teacher 3]."

20. The District's response read, in part:

**[Issue 1]** The April 2021 [prior written notice] did not amend the November 2020 IEP and was documenting an agreed-upon intervention only for the spring of 2021 at [the elementary]. Accordingly, Student's IEP team at [the middle school] appropriately sought to implement the November 2020 IEP at the start of the 2021–22 school year.

Nonetheless, [the District did identify some IEP implementation issues during its investigation of this complaint]: Student's social-emotional/behavior specially designed instruction was not delivered fully within a *special education setting*, he received 240 minutes of math specially designed instruction per week rather than 150 minutes per week, and 500 minutes per week of reading and written language specially designed instruction rather than 300 minutes per week.

...

However, [it is significant] that Student was progressing towards his IEP goals and was doing well with the transition to [the middle school].

**[Issue 2]** Under the particular circumstances of this matter, the District does not believe that excusal resulted in any actionable procedural violation.

**[Issue 3]** There was no indication at the time that Parent disagreed with any proposed elements of the November 2021 IEP.

To remedy the violation it found in relation to Issue 1, the District proposed a training in IEP amendment procedures as an appropriate corrective action.

## CONCLUSIONS

**Issue 1: IEP Implementation** – The Parent alleged, from the start of the 2021–2022 school year through November 21, 2021, the District did not implement those portions of the Student's April 2021 IEP that were to be delivered in a *general education setting*.

A student eligible for special education receives a free appropriate public education (FAPE) when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. Additionally, 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.

A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Here, the documentation shows: on or about April 29, 2021—while the Student was still in elementary school—the IEP team chose to provide all of the Student's specially designed

instruction in a *general education setting*; this decision represented a change from what was in the November 2020 IEP, which stated the Student was to receive his specially designed instruction in a *special education setting*; the Student's November 2020 IEP was not amended on or about April 29, 2021. The District believed the decision to provide the Student with specially designed instruction in a *general education setting* was a temporary change, to be implemented for the remainder of the 2020–2021 school year, but not necessarily for the start of the 2021–2022 school year; however, the Parent believed the decision to provide the Student with all of his specially designed instruction in a *general education setting* also applied to the 2021–2022 school year. From September 7 through October 4, 2021, the Student was provided with most of his specially designed instruction in a *special education setting*<sup>5</sup>; on or about October 5, 2021—after the Parent was made aware of the same, and communicated her confusion and frustration to the District—the Student transferred to a *general education setting* reading and writing class and math class; and on or about November 22, 2021, the Student was provided with an additional 30 minutes a week of specially designed instruction in reading in a *special education setting*.<sup>6</sup>

For several reasons, the foregoing facts represent a violation of the IDEA: (1) given the wording of the April 29, 2021 prior written notice, it was reasonable for the Parent to believe the Student would be provided all of his specially designed instruction in a *general education setting* at the start of the 2021–2022 school year; (2) despite the fact that the Student's IEP team made a substantive change to the services being provided to the Student in April 2021, the Student's November 2020 IEP was never amended, leading to confusion regarding what services were to be provided to the Student at the start of the 2021–2022 school year; and (3) the November 2020 IEP was itself not implemented with complete fidelity at the start of the 2021–2022 school year—for example, the November 2020 IEP provided the Student with all of his specially designed instruction in a *special education setting*, but at the start of the 2021–2022 school year, the Student did receive some specially designed instruction in social emotional in a *general education setting*. For these reasons, the foregoing facts represent a violation of the IDEA.

Still, for four reasons, it does not appear this IDEA violation impacted the Student's ability to access FAPE: (1) the Student was provided with his specially designed instruction in an improper *setting* for a relatively short period of time, from September 7 through October 4, 2021; (2) even though it did not comport with the text of the November 2020 IEP, from September 7 through October 4, 2021, the Student did receive some specially designed instruction in a *general education setting*, approximately 80 minutes of specially designed instruction in social emotional each week; (3) the District was responsive to the Parent's concerns and frustration soon after it became aware of the same—for example, the Parent appears to have first highlighted these concerns in early October 2021, and the Student was transferred to *general education settings* soon thereafter, on October 5, 2021; and (4) according to both the October 19, 2021 prior written notice and the present levels

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<sup>5</sup> According to **Exhibit 1**, from September 7 through October 4, 2021, the Student did receive approximately 80 minutes of specially designed instruction in social emotional each week in a *general education setting*—the "What I Need" (WIN) class.

<sup>6</sup> The Student continued to receive the *general education setting* specially designed instruction in reading and written language that Student had been receiving starting October 5, 2021.

and new goals found in the November 2021 IEP, despite the District's failure to follow proper IEP amendment and IEP implementation procedures, the Student generally made sufficient progress on many of his November 2020 IEP goals.

Accordingly, the following is an appropriate remedy for the above-stated IDEA violations: the District will be required to provide certain staff members with a training regarding proper IEP amendment and IEP implementation procedures.

**Issue 2: IEP Team Composition** – The Parent alleged the District did not follow proper IEP team member excusal procedures in relation to the November 15, 2021 IEP meeting.

Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting.

Here, the documentation shows special education teacher 1 and general education teacher 1 and 2: attended the November 15, 2021 IEP meeting; left prior to the conclusion of the IEP meeting, but after a discussion of what constituted appropriate "goals, accommodations, and services" for the Student; and, the Parent did not agree *in writing* to excuse the foregoing three staff members.<sup>7</sup>

This represents a violation of the IDEA. Even if an IEP team member has made contributions related to his or her portion of the curriculum or related services, to excuse that IEP team member from any portion of the meeting, a written agreement for such excusal is required under the relevant regulations.<sup>8</sup>

Here, though, the documentation provided to OSPI during this investigation does not suggest this procedural violation impacted the Student's ability to access a FAPE. Again, it is notable the November 15, 2021 prior written notice stated these three IEP team members left only after discussing what constituted appropriate "goals, accommodations, and services" for the Student. Additionally, neither the Parent's complaint request nor the Parent's reply appear to contain an

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<sup>7</sup> The November 15, 2021 prior written notice states the Parent "excused [certain] staff members [from attending the entire IEP meeting]"—presumably orally. But both contemporaneously and with the filing of the instant complaint, the Parent articulated her belief that proper IEP team member excusal procedures were not followed.

<sup>8</sup> The documentation also suggests general education teacher 3 was not present for a portion of the November 15, 2021 IEP meeting. As general education teachers 1 & 2 both attended most of the November 15, 2021 IEP meeting, though, this does not represent a violation of the IDEA—at least one general education teacher was present for the meeting.

allegation that the Student's access to FAPE was negatively impacted by the District's failure to follow proper IEP team member excusal procedures in this instance.

Accordingly, an appropriate remedy for this violation is as follows: the District will be required to provide a training to certain District staff members regarding proper team member excusal procedures.

**Issue 3: Timeliness of November 15, 2021 Prior Written Notice** – The Parent alleged the District did not provide her with a copy of the November 15, 2021 prior written notice in a timely manner, specifically that the District did not provide the Parent with a copy of the prior written notice a reasonable time before the District proposed to initiate the actions described in that prior written notice.

Written notice must be provided to the parents of a student eligible 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 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 Office of Special Education Programs (OSEP) has interpreted a "reasonable time" to be at least 10 calendar days, although some fact situations would justify a more extended period of time. OSEP has not addressed whether a shorter prior of time would be acceptable. The purpose of providing prior written notice a reasonable time before the proposed or refused action is to provide sufficient information to protect the parent's rights under the IDEA.

Here: the November 15, 2021 prior written notice detailed certain implementation changes that were to take effect starting November 22, 2021; but the documentation provided to OSPI during this investigation suggests the November 15, 2021 prior written notice was first provided to the Parent on or about December 6, 2021, a date after the changes described in the prior written notice were to take effect. This represents a violation of the IDEA.

Notably, though, it does not appear this violation impacted the Student's ability to access FAPE. For example, as OSPI understands it: on or about October 5, 2021, the Student transferred to a *general education setting* reading and writing class and math class. Importantly, the documentation provided to OSPI during this investigation suggests the Parent was both aware of this change, and involved in determination of the same. Therefore, the principal scheduling change that was implemented on or about November 22, 2021 was: the Student was provided with an additional 30 minutes a week of specially designed instruction in reading in a *special education setting*.<sup>9</sup> See, in part, **Exhibit 1**. It is also significant that the documentation shows the Parent attended the November 15, 2021 IEP meeting, and emails show the Parent collaborated with District staff—to some extent, at least—in drafting the contents of the prior written notice the Parent received on or about December 6, 2021. In other words, the documentation does not suggest the Parent was unaware the IEP team was proposing to provide the Student with an

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<sup>9</sup> The Student continued to receive the *general education setting* specially designed instruction in reading and written language that the Student had been receiving starting October 5, 2021.

additional 30 minutes a week of specially designed instruction in reading in a *special education setting*. Finally, neither the Parent's complaint request nor the Parent's reply appear to contain an allegation that the Student's access to FAPE was negatively impacted by the untimely provision of the November 15, 2021 prior written notice.

Accordingly, for the violation identified above, an appropriate remedy is: the District will be required to provide a training to certain District staff members regarding proper prior written notice procedures.

### **CORRECTIVE ACTIONS**

By or before **October 21, 2022, November 4, 2022, and December 2, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

##### **Training**

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including special education teachers and educational staff associates (ESAs), at the school that the Student was enrolled in during the 2021–2022 school year. The training will cover the following topics:

1. IEP amendment procedures (WAC 392-172A-03110);
2. IEP implementation procedures (WAC 392-172A-03105);
3. Prior written notice procedures (WAC 392-172A-05010); and,
4. Team member excusal procedures (WAC 392-172A-03095).

The training will include examples.

The District, in cooperation and collaboration with a non-District employee (e.g., a Puget Sound Educational Service District staff person or other trainer), will develop and conduct a training on the above topics.

The District will provide the trainer with a copy of this decision, SECC 22-96.

By or before **October 21, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **November 4, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by November 9, 2022.

By **November 18, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **December 2, 2022**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 12th day of October, 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.)