

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-55

PROCEDURAL HISTORY

On April 22, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Clover Park 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 April 23, 2020, OSPI received additional information from the Parent to include with her complaint. The same day, on April 23, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 6, 2020, the District requested an extension of time for the submission of its response regarding SECC 20-55. The same day OSPI granted the request and requested the District submit its response no later than May 20, 2020.

On May 20, 2020, OSPI received additional information from the Parent. OSPI forwarded the information to the District the same day.

On May 20, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on May 21, 2020. OSPI invited the Parent to submit a reply.

On May 22, 2020, OSPI received additional information from the District. OSPI forwarded this information to the Parent the same day.

Also on May 22, 2020, OSPI interviewed the Parent by phone.

On May 26, 2020, OSPI received additional information from the Parent. OSPI forwarded it to the District the same day.

On May 27, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on April 23, 2019, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to April 23, 2019 is mentioned for informative, background purposes only.

ISSUES

1. Did the District implement the Student's individualized education program (IEP) during the 2019-2020 school year?
2. Did the District follow procedures regarding the March 30, 2020 prior written notice (PWN)?
3. Did the District provide the Parents with progress reporting consistent with the IEPs in place during the 2019-2020 school year?

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 who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). 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.

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect, the new school district, in consultation with the student's parents, must provide the student with a free appropriate public education (FAPE) including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46,681 (August 14, 2006) (comment to 34 CFR §300.323).

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.

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

FINDINGS OF FACT

Background: 2018-2019 School Year

1. During the 2018-2019 school year, the Student was in second grade and attended an elementary school in another state. The Student qualified for special education services at his school under the category specific learning disability.¹
2. On September 24, 2018, the Student's IEP² team met for his annual review.³ The IEP included three goals in the area of "cognitive" and provided the Student with the following specially designed instruction:

¹ The Student was reevaluated for eligibility in January 2018. The January 2018 eligibility report reflected that the Student was previously diagnosed with attention deficit hyperactivity disorder (ADHD), autism, anxiety not otherwise specified (NOS), an unspecified speech and sound disorder, and an unspecified tic disorder. Based on the available information, the Student's school district qualified the Student for special education services in the areas of autism, specific learning disability, and other health impairment. The Student's primary area of disability on his 2018 individualized education program (IEP) was specific learning disability.

² The September 2018 IEP was developed based on information from the Student's January 2016/December 2017 psychoeducational evaluation and January 2018 eligibility report. On the 2016/2017 evaluation, the Student demonstrated an overall reasoning ability in the "extremely low range" with strengths in short term memory and rapid naming. The Student showed below-age phonological awareness, but performed within grade expectations in all academic areas, except math calculation and written expression. The evaluation concluded the Student showed "moderate level of autism symptomology" and "probable autism;" however, the Student's adaptive behavior scores (ABAS-III) were estimated to be within the normal range.

³ The September 2018 IEP documented the IEP team's consideration of the following placements: "consultative," "co-teaching," and "separate class." The IEP did not indicate what percentage of time the

Instruction/Related Services in General Education Classroom/Early Childhood Setting:

Content Area	Frequency	Category	Service	Primary Provider
Mathematics	5 – 1 Hr 30 Min sessions weekly	Special Education	Co-teaching	Special Education Teacher
Language Arts	5 – 45 Min sessions weekly	Special Education	Co-teaching	Special Education Teacher
Science	5 – 25 Min sessions weekly	Special Education	Co-teaching	Special Education Teacher
Social Studies	5 – 25 Min sessions weekly	Special Education	Co-teaching	Special Education Teacher

Instruction/Related Services Outside of General Education Classroom:

Content Area	Frequency	Category	Service	Primary Provider
Reading	5 – 45 Min sessions weekly	Special Education	Separate Class	Special Education Teacher
Other	1 – 30 Min sessions weekly	Special Education	Special Class	Occupational Therapist

The 2018 IEP also included classroom accommodations: “small group, extend time (if needed), pre-teach vocabulary, read aloud questions and answer choices, decrease spelling word list, retest in alternate format if warranted;” instructional accommodations: “multiple repetitions of critical content, break material down into smaller chunks, provide color coding and highlighting to help organize ideas, provide copies of study guides and notes,” and testing accommodations: small group setting, oral reading of test questions (online only), and repetition of test questions.

3. During the summer of 2019, the Student moved to the State of Washington and on August 5, 2019, the Student’s Parents enrolled him in the District.
4. On August 6, 2019, the District sought documents from the Student’s previous district, including the 2016/2017 psychoeducational evaluation, 2018 eligibility report, and 2018 IEP.
5. On August 9, 2019, the District’s psychologist conducted an initial transfer assessment based on the Student’s records. The District psychologist determined the Student’s incoming test scores were too high to qualify the Student for eligibility under the category “specific learning disability” under the discrepancy standard used in Washington and recommended a new evaluation to determine the Student’s eligibility in Washington state. According to the transfer review summary, the District stated it would provide comparable services in consultation with the Parent, pending completion of the new evaluation.

Student spent in the general education classroom; however, the matrix included in the IEP indicated the Student was in a separate class for reading and “supportive services.”

2019-2020 School Year

6. At the commencement of the 2019-2020 school year, the Student was in the third grade and attended an elementary school in the District.
7. On August 28, 2019, the first day of school, the Parents consented to a new evaluation for the Student. The school psychologist observed the Student and began academic testing of the Student the same day.
8. According to the District's response, during the first four weeks of school, the District provided the Student comparable services based on his September 2018 IEP from his previous district as it completed its evaluation of the Student for eligibility for special education services in Washington.
9. During the first two weeks of school, from approximately August 28-September 13, 2019, the Student received 90 minutes of daily math instruction, which was delivered 60 minutes in a whole group setting and 25 minutes in a differentiated small group setting.⁴ The Student also received 30 minutes daily of math instruction during resource room.⁵
10. From August 28-September 25, 2019, in addition to access to the general education classroom and Tier II intervention support, the Student also received daily instruction from the special education teacher in the resource room. In the resource room, the Student received 30 minutes of writing instruction (with an additional 25 minutes in general education writing) and

⁴ In its response, the District stated it was "highly unlikely that a special education teacher was instructing a general education class," as stated in the Student's incoming IEP, "but more probable that the teacher provided support to allow the Student to access the general education classroom". In her reply to the District's response, the Parent wrote that in the previous district, the Student was in a "self-contained class of kids with only IEPs or 504 plans" and "was not integrated with [students without disabilities] for any part of his academic day." The Parent explained that "This self-contained class was taught by special education teachers," and students "were broken up into small groups within that class per child's ability." The Parent wrote that the format was referred to as a "co-teaching model within the general education setting." While all of the students in the Student's former classroom were described by the Parent as having a disability, it was noted that they may not have all had an IEP and that the class was referred to as a "co-teaching general education classroom." Accordingly, the District's classification in its response of the Student's former placement as a general education classroom with special education push-in supports appears to be accurate.

⁵ This was in contrast to the Student's schedule at his previous district, which included 90 minutes of math in a co-teaching placement (general education setting with push-in by a special education teacher).

30 minutes of reading instruction (with 50 minutes in whole group reading).⁶ The Student additionally received 40 minutes daily of specialist instruction during this time.⁷

11. On September 5, 2019, the District's occupational therapist assessed the Student to identify his needs. According to the District's response, the Student received 60 minutes of occupational therapy services during the evaluation.
12. On September 6, 2019, the District provided the Parent notice that an IEP meeting was scheduled for September 19, 2019, to review evaluation reports, determine eligibility, and develop a new IEP based on the results of the current evaluation.
13. According to the District's response, on September 9, 2019, the occupational therapist completed her evaluation, which recommended the Student receive 20 minutes weekly of services.⁸
14. On September 10, 2019, the District held an evaluation meeting to review the results of the new evaluation. The evaluation team reviewed existing documents and considered the classroom observation, medical records provided by the Parents, teacher input, and additional testing. The eligibility team determined the Student was eligible for special education services under the category of autism. The evaluation also documented the Student's diagnosis of attention deficit hyperactivity disorder (ADHD). The team determined the Student qualified for specially designed instruction in written expression, reading, and math, with occupational therapy as a related service. The team determined the Student did not require specially designed instruction in the area of cognitive. The team additionally reviewed information obtained regarding the Student's social-emotional behavior needs.
15. On September 11, 2019, the District issued prior written notice (PWN), recommending the Student continue to receive special education services but that the Student's eligibility category be changed to autism and a new IEP needed to be developed for the Student.⁹ The

⁶ In the Student's previous district, the Student received 45 minutes daily of English language arts in the general education setting and 45 minutes per day in the special education setting (however, in the District's response, the District indicated the Student was not receiving specially designed instruction in writing). In the Student's previous district, the Student also received 25 minutes weekly of science and social studies in the general education setting with push-in support from special education staff.

⁷ The Student received additional minutes of writing and reading outside of the resource room (55 minutes total in writing and 80 minutes total in reading). The Student also received 40 minutes per day of specialist instruction (including physical education, art, and music).

⁸ In her reply, the Parent noted that she never agreed to a decrease in services, and that she never received a PWN, documenting a recommendation for a decrease in services.

⁹ The District's response included a PWN, dated September 18, 2019, with the same information as the September 11, 2019 PWN. It is unclear why there are two identical PWN with different dates.

PWN did not indicate the District recommended a decrease in occupational therapy service minutes from what was on the Student's IEP from his previous district.

16. In its response, the District asserted that from August 28-September 25, 2019, the District "typically exceeded the provision of service minutes in the academic areas and matched the provision of minutes in [occupational therapy]."
17. On September 25, 2019, the Student's IEP team convened to review his initial evaluation and develop a new IEP. The IEP team determined the Student qualified for special education services under the category "autism."

The September 25, 2019 IEP reflected that the Student would spend 74.14% of his time in the general education setting and provided the Student with the following specially designed instruction and related services:

- Math, 150 minutes weekly, to be provided by special education staff in the special education setting;
- Reading, 150 minutes weekly, to be provided by a special education staff in the special education setting;
- Written expression, 150 minutes weekly, to be provided by special education staff in the special education setting; and,
- Occupational therapy, 20 minutes weekly, to be provided by a certified occupational therapy assistant (COTA)/occupational therapist, in the general education setting.

The September 2019 IEP included several accommodations, including:

- 3-lined paper
- Break material into smaller chunks
- Extended testing time (WIDA MAP STAR)
- Human read aloud (MAP)
- Letter strip on desk
- Mathematics manipulatives
- Multiple choice spelling tests
- Pre-teach vocabulary
- Provide color coding and highlighting to help organize ideas
- Provide copies of study guides
- Reading materials/directions/questions verbatim
- Rephrase test questions and/or directions
- Separate setting (during testing)
- Small group
- Text to speech (during testing)
- Use of a pencil grip
- Writing checklist

The September 2019 IEP included three goals in math (regrouping, subtraction of multi-digit numbers, and multiplication of factors within 10), two goals in reading (fluency and sight words), and two goals in written expression (5 sentences with convention, paragraph). The September 2019 IEP also included three occupational therapy goals (correct formation, sizing, and functional grasp; correct sentence structure and orientation and improvement of motor coordination skills). The IEP required progress to be reported to the Parents at the end of each trimester.

18. On September 26, 2019, the District issued PWN, reflecting the changes made by the IEP team to the Student's goals, continuation of previous accommodations, as well as the addition of new accommodations based on the Student's recent evaluation, and that services would be

provided in the resource and therapy rooms. The PWN did not specifically indicate that the recommendation that the Student receive 20 minutes of occupational therapy was a decrease by 10 minutes from the 30 minutes of occupational therapy, which is what the Student had been receiving in another state. In the Parent's reply to the District's response to this complaint, the Parent stated there was never a discussion regarding a decrease in occupational therapy minutes or an agreement to shorten the number of minutes, and that she was not aware the Student's minutes had been reduced from his previous IEP until she received the District's response to her complaint.

19. According to service records maintained by the District's occupational therapist, during the month of September 2019, the Student was provided a total of 120 minutes of occupational therapy.¹⁰
20. According to records maintained by the District's occupational therapist, during the month of October 2019, the Student was provided a total of 80 minutes of occupational therapy.¹¹
21. On November 7, 2019, the Parent requested an IEP meeting via email. An IEP meeting was scheduled for November 18, 2019.
22. On November 8, 2019, the Parent spoke with the resource room special education teacher (special education teacher) regarding her desire for the Student to change teachers. That same day, the special education teacher emailed her supervisor and principal regarding her conversation with the Parent and explained that the Parent had expressed concerns that the Student was not receiving his accommodations and was unable to learn in his current classroom environment. She requested the principal or supervisor attend the next IEP meeting.
23. On November 11, 2019, there was no school due to a holiday.
24. On November 18, 2019, the Student's IEP team convened to discuss the Parent's concerns regarding the accommodations being used in the classroom. According to the PWN issued the same day, the IEP team proposed to add the following accommodations to the Student's IEP: "have worksheets and tests printed single sided; all tests to be taken in the resource room;¹² allowing verbal answers; shortened assignments." The PWN additionally stated that

¹⁰ Occupational therapy attendance records provided with the District's response showed the District provided the Student with 60 minutes of occupational therapy (OT) on September 5, 2019 (evaluation), 20 minutes on September 11, 20, and 27, 2019.

¹¹ Occupational therapy service records provided with the District's response showed the District provided the Student with 20 minutes of occupational therapy on October 4, 11, 18, and 25, 2019.

¹² In her reply to the District's response, the Parent wrote that spelling tests continued to be provided in the general education classroom and not the resource room. She additionally stated that "I also proposed the reading test be sent home prior to taking it so [Student] had time to become familiar with the test. I later had emailed [special education teacher] to stop sending all homework because [Student] was becoming stressed and overwhelmed. They continued to send homework packets home with him after multiple

the team "proposed that the reading tests will be sent home on the Monday before the test, in order for [Student] to be able to spend some time comprehending the story throughout the week," and that "Vocabulary words will also be sent home and worked on in the resource room as well." The PWN documented the Parent's concerns raised at the meeting regarding the Student's progress and the Parent's wishes to possibly retain the Student next year. It was noted that the IEP team also discussed the Parent's request to switch the Student's teacher. It was concluded that a change in teachers would be made by the end of December 2019.¹³

25. On November 28-29, 2019, there was no school due to Thanksgiving break.

26. On November 29, 2019, the first trimester ended.

27. On November 29, 2019, the District provided the Parent with a progress report, which noted the Student was making "sufficient" progress toward his IEP goals in occupational therapy. According to narrative comments provided, he was able to increase his accuracy from 52% to 80% when writing lower-case letters.¹⁴ He was able to write sentences with appropriate spacing when given a verbal reminder to use his finger for spaces, but needed to work on line orientation, and demonstrated better motor coordination development with increased accuracy and precision (demonstrating 80% accuracy, an improvement from 50-75%, but not >80%, which was his goal), as noted in his occupational therapy goals.

In math, the Student was making sufficient progress in regrouping (was able to answer 1/5 answers correctly, an improvement from 0/5), but had not made progress in subtracting multi-digit numbers or multiplication (neither goal had been addressed during the reporting period). The Student also made satisfactory progress on each of his reading goals (was reading 74 words per minutes at the second grade reading level, an increase from 62 words per minute, and 262/300 sight words, an increase from 193/300). The Student made satisfactory progress on his "writing 5 paragraphs" written expression goal (could write 1/5 sentences correctly), but

attempts to have it discontinued." In its response, the District stated that while it agreed to send tests home, it did not agree to not give the Student homework. The District additionally indicated there may have been miscommunication regarding what was homework and what was an IEP accommodation regarding sending information home prior to a test.

¹³ In her reply to the District's response, the Parent wrote that the November 18, 2019 PWN did not fully validate her concerns regarding the Student's teacher.

¹⁴ In her reply to the District's response, the Parent wrote that she took issue with the District's statement that the Student was making progress on his IEP goals because he was still receiving failing grades on his trimester report card. She additionally wrote that while the progress report stated the Student could write a sentence with appropriate spacing but needed work with line orientation, she did not believe the Student could write a complete sentence. The Parent provided writing examples with her reply.

had not yet progressed on his paragraph goal, as it was not addressed in the time period under review.¹⁵

28. On November 29, 2019, the District also issued the Student's first trimester report card¹⁶, which showed the Student demonstrated "high satisfactory" or "satisfactory skills" in fine arts and physical fitness. The Student's report card indicated that based on assessments in reading and math, he had a basic understanding of concepts taught in each class and indicated grade level content was being taught. However, the Parent expressed concern that the Student's IEP was measuring progress based on second grade standards instead of third grade standards. The report also noted the Student's MAP scores were below grade level during the fall trimester (Student scored a 168, grade level goal for fall is 187).
29. According to records maintained by the District's occupational therapist, during the month of November 2019, the Student was provided a total of 80 minutes of occupational therapy.¹⁷
30. During the month of December 2019, the Student was provided a total of 60 minutes of occupational therapy minutes.¹⁸
31. From December 23, 2019 through January 3, 2020, there was no school due to winter break.
32. January 6, 2020 was the first day of the second trimester.
33. On January 10, 2020, the Parent emailed the special education teacher and requested the Student start taking his spelling tests in the resource room with the special education teacher.

¹⁵ In the District's response, when reporting on the Student's progress during the "fall trimester", the District inaccurately combined information from the Student's progress report for both fall and winter trimesters when noting the Student had made satisfactory progress in all academic areas. Fall trimester reporting occurred in November 2019, while winter trimester occurred during February 2020. As stated above, the Student's progress report from fall trimester did not indicate the Student had made satisfactory progress in all academic areas, although it did by winter trimester. The District additionally inaccurately stated in its response that the Student "had demonstrated 'satisfactory' skills in science, speaking and listening, and writing" during the fall trimester report card (which was separate from the trimester progress report). In her reply, the Parent noted the Student did not take science during the fall semester. Upon review, it was confirmed that the Student took science during winter trimester.

¹⁶ In her reply to the District's response, the Parent noted the Student did not take science during the fall trimester. However, it is noted that the Student's report card lists a grade of "S" under "Science: Life, Physical Earth." However, each sub area of instruction indicates content was not taught during the grading period.

¹⁷ Occupational therapy attendance records provided with the District's response showed the District provided the Student with 20 minutes of occupational therapy on November 1, 15, 20, and 26, 2019. The Student did not receive occupational therapy on November 11, 2019, which was a holiday.

¹⁸ Occupational therapy attendance records provided with the District's response showed the District provided the Student with 20 minutes of occupational therapy on December 4, 11, and 18, 2019.

34. On January 13, 2020, the Parent provided the District a medical note from the Student's pediatrician, stating the Student no longer had a diagnosis of autism. The Parent also requested an IEP meeting because the "student was upset with his homework, was having anxiety, and the IEP was not being followed correctly." The Parent additionally alleged the spelling tests were not being provided in the resource room as required in the IEP. The Parent added that she believed the IEP required the Student not receive homework outside of spelling. According to the District's response, "The IEP reflected that the Student would get shortened or reduced assignments, not that he would receive homework in only one subject."
35. On January 15, 2020, the IEP team met to discuss the Parent's concerns. At the meeting, the Parent verbally requested a reevaluation because the Student's medical diagnosis had changed, provided the District with a note from the Student's doctor with the new diagnosis, and said she would email the District to make a formal request for a reevaluation. Notes from the meeting documented the Parent's concerns that while two weeks prior, the Parent had requested the Student begin more difficult words on his spelling tests, that the ones he was now receiving were too difficult. It was agreed that the Student would select words with the teacher and that the test would be read to the Student. The Parent additionally expressed concerns regarding classroom assignments, particularly math, and that the Student was finding them to be overwhelming. The notes documented strategies discussed by the IEP team to be used collaboratively with the Parent to try and help the Student move forward. The meeting notes also documented the Parent's request for additional minutes of occupational therapy and her agreement to wait until the Student's reevaluation was completed.
36. On January 16, 2020, the Parent emailed the special education teacher and formally requested a reevaluation. The special education teacher forwarded the email to the school psychologist the same day. In response, the school psychologist emailed the supervisor, principal, and special education teacher, stating that he spoke with the Parent to ask if she wanted a change in services, and that the Parent indicated she did not. He stated he told the Parent a reevaluation was not warranted and that they could do a revision of the IEP instead to change the eligibility category. Accordingly, the District initially denied the Parent's request for a reevaluation because it believed the District could change the Student's eligibility category with a revision. Upon further investigation, the District determined a change in eligibility could not occur via an IEP revision and agreed to conduct a new evaluation, considering the change in diagnosis.
37. On January 16, 2020, the District emailed the Parent PWN (dated January 15, 2020) that it was proposing to initiate a reevaluation or assessment revision. The PWN also documented the IEP team's proposal to increase the Student's resource and occupational therapy minutes "after the re-eval or assessment revision is completed." The PWN further documented the Parent's concerns about the Student's grades, difficulties with spelling, and anxiety due to needing more help in classroom.
38. On January 20, 2020, there was no school due to a holiday.

39. On January 21, 2020, the Parent emailed the special education teacher that the assigned spelling words were still too difficult.
40. On January 22, 2020, the special education teacher emailed the Parent that it was her understanding from a meeting the previous week that the Parent wanted to try grade level standard words with the Student again. Later that same day on January 22, 2020, the Parent responded by email that "It must have been a mix up" and that she "though we talked about spelling words but decided that some weeks they were to [sic] hard so we would do a happy medium."
41. According to the District's response, on January 22, 2020, the special education teacher emailed the school psychologist and stated that she had spoken with the Parent and that the Parent told her she was considering homeschooling the Student for the remainder of the school year.
42. On January 23, 2020, the special education teacher emailed the Parent to notify her that while she would be absent during the spelling test, the Student's accommodations would be implemented.
43. On January 28, 2020, the special education teacher provided the Parent with the spelling tests for the remainder of the school year to ensure the Parent had a copy, as well as providing books.¹⁹
44. On January 28, 2020, the Parent made a request that another school psychologist complete the reevaluation of the Student. The District agreed and assigned the reevaluation to a different District psychologist.
45. On January 29, 2020, the Parent requested an increase to the Student's service minutes.
46. During the month of January 2020, the Student was provided a total of 80 minutes of occupational therapy.²⁰
47. On February 3, 2020, the Parent emailed the special education teacher that the Student had received excess homework. She wrote, "I did receive a reading comprehension package again today. The first thing [Student] said when he got in the car was he got home more homework. Please only send what we discussed." The Parent added that she believed the Student should only be receiving spelling words and reading books.

¹⁹ In her reply, the Parent wrote that when she met with the special education teacher on January 28, 2020, the special education teacher also stated she had given the Student the wrong spelling test on two different occasions.

²⁰ Occupational therapy attendance records provided with the District's response showed the District provided the Student with 20 minutes of occupational therapy on January 8, 15, 22, and 29, 2020.

The special education teacher responded that she was providing the reading passage to assist the Student in preparing for a test later in the week, per the Student's IEP, and added that "[Student's] IEP states to provide study guides and notes for upcoming tests as an accommodation." She explained that the "reading passage" was for "the weekly reading test [Student] takes on Fridays," and stated: "If you do not want this accommodation to be made, we can discuss it further at the IEP meeting on Wednesday." The District's response noted the Student's math teacher also sent materials home with the Student to assist with upcoming tests.

48. On February 4, 2020, the Parent spoke to the special education teacher and expressed concern about the Student's grades and the implementation of the Student's IEP during tests.

49. On February 5, 2020, the Student's IEP team convened. The IEP team reviewed the Student's MAP test scores, which showed a fall score of 161 in the fall and 181 in the winter for reading, and a fall score of 168 and 181 in the winter for math.²¹ The IEP team recommended an increase in specially designed instruction in all areas and an increase in occupational therapy minutes as follows:

- Math, 225 minutes weekly, to be provided by special education staff in the special education setting;
- Reading, 225 minutes weekly, to be provided by special education staff in the special education setting;
- Written Expression, 225 minutes weekly, to be provided by special education staff in the special education setting; and,
- Occupational therapy; 40 minutes weekly, to be provided by a Certified Occupational Therapy Assistant (COTA)/OT in the special education setting.²²

The February 2020 IEP stated the Student would spend 61.21% of his time in the general education setting.²³

²¹ According to the District's response, the scores showed that compared to other third graders with an original score of 172 in reading, the Student made 67% more progress than similarly situated peers. In math, the Student made 85% more progress than his peers. In her reply, the Parent stated she still had concerns because despite the Student's reported growth, his overall scores still showed him at low achievement scores that were below grade levels in areas in which he was receiving special education supports.

²² In the District's response, the District wrote the Student was receiving 45 minutes of occupational therapy per week per the February 5, 2020 IEP. In her reply to the District's response, the Parent correctly pointed out that the Student's IEP was amended to provide 40, not 45 minutes of occupational therapy per week.

²³ In her reply to the District's response, the Parent stated that at the February 5, 2020 IEP meeting, she requested the Student's IEP be amended to add push in special education time in the general education class, but instead, the IEP team agreed to increase resource room time and the Student's occupational therapy services.

50. On February 5, 2020, the District issued PWN that the IEP team proposed to increase the Student's minutes of service in all areas. It further stated the IEP team reviewed the accommodations and discussed how each were to be used in the classroom.
51. On February 6, 2020, the general education teacher emailed the Parent, expressing concerns about the Student's behaviors in her class. Specifically, she noted the Student was resisting using his accommodations in reading and math and not wanting to participate.
52. On February 7, 2020, the Parent emailed the special education teacher to "check in" after the Student had reported he did not know how to do the work being provided to him at school and no longer wanted to try. The Parent expressed concerns that the Student would "start giving up." The special education teacher responded the same day that the Student had participated in group that day at school and that she did not believe there were any issues.
53. February 28, 2020 was the last day of the second trimester for the 2019-2020 school year in the District.
54. On February 28, 2020, the District completed a second trimester progress report for the Student. According to the progress report, the Student demonstrated sufficient progress towards all IEP goals. In one instance, writing a sentence, the Student was able to demonstrate he had met his goal ability; however, he was not yet demonstrating it in all settings. The Student also met his sight reading goal. The Student was able to complete basic fine motor tasks with 80% accuracy or more (the target goal), but continued to demonstrate difficulty with more complex tasks. The Student was additionally able to answer 5/5 two-digit addition questions and 4/5 three-digit problems with regrouping (an increase from 1/5 correct during the first trimester progress report), could solve 1/5 multi-digit subtraction problems correctly, and was answering 3/5 multiplication questions correctly. In written expression, the Student was able to write 3/5 sentences correctly with adult prompting (an improvement from 1/5). The Student had scores of 85, 66, and 72 word count per minute (wcpm) in reading fluency and was still working on writing sentences as necessary to construct a paragraph. However, in both areas, the written commentary supported a conclusion that the Student was making sufficient progress on his IEP goal.²⁴
55. Also on February 28, 2020, the District provided the Parent with a second trimester report card. The report card indicated the Student was not making satisfactory progress in math, speaking and listening, or reading. However, it also noted the Student was exempt from grade level standards in reading. The Student was making low satisfactory progress in science and behavior and satisfactory progress in writing, and fitness and health. The report card noted the Student "has multiple accommodations to help him during this time in the general education classroom...[including] a reminder note taped to his desk, helping him to remember

²⁴ In the Parent's reply to the District's response, the Parent provided a document in which the Student's teacher wrote a response to a written prompt for the Student instead of the Student writing the answer himself. The Parent stated she believed these responses indicated the Student was still unable to meet his IEP writing goals.

to take out his tools (manipulatives/special paper).” It also stated he sat next to the teacher so she could check in with him on the lesson.

56. According to records maintained by the District’s occupational therapist, during the month of February 2020, the Student was provided a total of 60 minutes of occupational therapy minutes.²⁵
57. In her reply, the Parent stated that in February, she emailed and stated she was unhappy with the Student’s grades on his report card. She also asked why the Student only had one “S” or “Satisfactory” in one area with “Ns” or “Needs Improvement =” in other areas. She stated the Student’s report card for the second semester further demonstrated the Student had not met state standards in many areas, including math. The Student also received an “S” in math, speaking and listening, writing, and learning behaviors as well as “Ns” in some of those areas. She wrote that she believed the Student’s report card reflected the Student was not receiving special education supports.
58. On March 2, 2020, the third trimester began.
59. On March 13, 2020, the Washington State Governor directed that all school facilities within 3 counties be closed due to COVID-19.
60. On March 16, 2020, the Governor expanded that directive to close all school facilities in the State.
61. On March 17, 2020, the special education teacher contacted the Parent with tutoring resources available to the Student during the shutdown to assist with continuous learning.
62. On March 25, 2020, the Student’s evaluation team met to review the Student’s reevaluation. The reevaluation included a review of existing data and assessed the Student in the areas of social/emotional behavior, general education, academic, medical-physical, cognitive, fine-motor, and included an observation. The team changed the area of identified disability to “Other Health Impairment” and qualified the Student for special education services in the areas of social/emotional/behavior to address, among other things, “organization, initiation, and completion of response to academic demands.”²⁶

²⁵ Occupational therapy attendance records provided with the District’s response showed the Student was to begin receiving 40 minutes weekly of occupational therapy in February 2020 and that the District provided the Student with 20 minutes of occupational therapy on February 7, 26, and 28, 2020. Attendance records indicated the Student did not receive minutes of therapy due to the Student being absent on February 5, 12, 19 and 21, 2020. The Student was marked as “Student unavailable” on Friday, February 14, 2020.

²⁶ In her reply, the Parent wrote that she felt the Student’s IEP did not reflect the seriousness of the Student’s learning disability, which she stated the Student’s doctor characterized as “having borderline cognitive

63. On March 27, 2020, the Student's IEP team convened virtually to consider the recommendations of the evaluation team. The team developed new goals based on the evaluation. The new social/emotional/behavioral goals included initiating academic tasks independently, completing tasks, and asking for help with unfamiliar tasks. Academic goals were updated to reflect the Student's progress. Occupational therapy goals were also updated to incorporate new assistive devices, including a keyboard, which was added to improve class participation and writing legibility. The team also updated the Student's accommodations to include text-to-speech software during testing. During the meeting, the Parent expressed concerns that the Student was not making progress and requested 1:1 or extra assistance for the Student in the general education setting. The team discussed providing push-in resource support to help break down information in lieu of full time 1:1 adult support.

The IEP included the following amount of specially designed instruction and related services:

- Social/emotional, 150 minutes weekly, to be provided by special education staff in the special education setting;
- Reading, 150 minutes weekly, to be provided by special education staff in the special education setting;
- Math, 150 minutes weekly, to be provided by special education staff in the special education setting;
- Written expression, 150 minutes weekly, to be provided by special education staff in the special education setting;
- Social/emotional,²⁷ 225 minutes weekly, to be provided by special education staff in the special education setting; and,
- Occupational therapy, 40 minutes weekly, to be provided by a COTA/OT in the special education setting.

The Student's IEP stated he would spend 74.14% of his time in the general education setting.

64. On March 30, 2020, the District issued a PWN, documenting that the IEP team had met to review the Student's new evaluation, dated March 27, 2020, and it had created new goals in reading, writing, math, social/emotional skills, and fine motor skills to align with the new evaluation.

The PWN stated the IEP team:

discussed the need for a 1:1 and/or extra assistance in the classroom. **The school team did not agree on the need for a 1:1**; however, the team proposed to provide push-in resource services for 45 minutes each day, in order to help break down the information during independent work time in the general education classroom setting. The team also proposed the continuation of resource services in the areas of reading, writing and math be provided in a pull-out model in the Special Education Resource room. The team proposed the continuation of all accommodations from previous IEP and proposed to add

skills." The Student's IEP team indicated they believed his diagnosis and needs were best reflected in his eligibility category of "other health impairment."

²⁷ This service appears on the IEP twice with two different amounts.

in a positive incentive point system in order to **motivate [Student] more in the classroom**²⁸ (emphasis added).

The PWN also stated, "The school team did not agree on the need for a 1:1 based on the current evaluation, data, and Independence Indicator Matrix. [Parent] feels that [Student] needs constant 1:1 support in the general education classroom." The PWN also noted that the Parent had expressed concern that the Student should be retained for the 2020-2021 school year.

65. On March 30, 2020, after receiving the PWN, the Parent, special education teacher, and special education supervisor exchanged emails regarding the Parent's concerns with the PWN.

At 11:12 am, the Parent emailed the special education teacher and requested the PWN indicate that she would be retaining the Student because she did not agree with the team regarding the 1:1 in the classroom: "That is why I am choosing to keep [Student] home. It was a lot of back and forth about how to schedule it..."

At 12:24 pm, the special education supervisor responded to the Parent:

As we worked the process of the service matrix as a team, we discussed multiple avenues to meet [Student's] needs; this included a conversation around your request of a 1:1. You shared that you wanted to continue pulling him out for the academic portions (math, reading, and writing) and as the team collaborated around meeting [Student's] specific needs... you shared that you agreed with the push-in services to the general education classroom. Did we misunderstand this? After completing the service matrix collaboration, you inquired about retention. It was shared that schools typically recommend that students move on to the next grade, however, it was ultimately the parent's decision. You also shared that if you were going to retain him, you would send him to a different school. At the end of the IEP meeting you then shared that you were going to homeschool him...Would you like to reconvene the team to discuss further?

At 4:30 pm, the parent responded to the special education supervisor:

Yes, the 'team' did agree about the 1:1...I said I didn't agree (on the 15 minutes per subject of special education assistance in the general education classroom) and [Student] needs the 1:1 special education teacher for the entire time in the general education class. I mean the team was going back and forth about how to even do the schedule. That is when I made the decision to not send him back because nobody on the team wanted to speak up and admit that for [Student] to be provided [a free appropriate public education] FAPE he needs constant support while in the general education classroom. Which would be the [least restrictive environment] LRE. At the end of the meeting I clearly did state I would be home school him IF the school was starting back on time until we could move to a different state. [Special education teacher] sent me this email and ask me if she missed anything so I reply with what was left out of the prior written notice. I signed the meeting paper stating

²⁸ The Parent submitted a copy of the PWN to the District with handwritten notes which she indicated that her understanding of the meeting was that the IEP team "agreed 1:1" but did not agree on amount of time. She also wrote, "He needs constant engaging assistance in class."

I had attended the meeting. I'm not signing off on this IEP without the prior written notice.
[sic]

66. During the month of March 2020, the Student was provided a total of 60 minutes of occupational therapy minutes.²⁹
67. From March 30 through April 3, 2020, the District was on spring break.
68. On April 6, 2020, the District issued an updated PWN.
69. On April 7, 2020, the Parent emailed the District written comments on the updated PWN she received.
70. On April 8, 2020, special education teacher called the Parent to discuss the Parent's concerns. Following the phone call, the special education teacher emailed the Parent, principal, and supervisor, documenting her understanding of the call. In her email, she noted the Parent did not agree with the amount of time for the push-in services and was "frustrated that no one could agree that [Student] is in need of a 1:1 during ALL general education instructional time." She also stated the Parent had clarified that the Parent believed the Student required 1:1 special education assistance in the classroom during all general education instructional time. When asked about the 2020-2021 school year, it was noted the Parent was informed that students typically move forward based on research, but that it was her decision regarding whether she wanted to retain the Student. The email documented that the special education teacher had discussed the grade level packets that were being provided to the District and that the special education teacher was recommending that she grab both the 2nd and 3rd grade packet and use both for the Student moving forward. Finally, the email noted the Parent would like to meet with the IEP team to discuss the Student's social/emotional goals. The email concluded: "We agreed that we will finish up and lock the current IEP document and schedule a meeting for next week...to discuss the goals with the possibility of changing the wording, if necessary."
71. On April 9, 2020, the District issued an updated PWN to the Parent. The PWN stated, in relevant part: "The team discussed the need for a 1:1 and/or extra assistance in the classroom. **The school team did not agree on the need for a 1:1 in all general education instruction**, (emphasis added) however, the team proposed to provide push-in resource services for 45 minutes each day, in order to help break down the information during independent work time in the general education classroom setting." It also stated, "The team proposed the continuation of all accommodations from the previous IEP and proposed to add in a positive incentive point system in order to **motivate and help [Student] become more engaged in the classroom**" (emphasis added).

²⁹ Occupational therapy attendance records provided with the District's response showed the District provided the Student with 20 minutes of occupational therapy on March 4, 6, and 11, 2020. The attendance record showed the Student was unavailable on March 13, 2020, and that school facilities were closed due to COVID-19 on March 17, 2020, which impacted the delivery of occupational therapy services.

The updated PWN also noted the Parent was informed that it was ultimately her decision regarding whether to retain the Student or homeschool the Student if she disagrees with the District's decision regarding 1:1 support.

72. According to the District's response, the Parent's requests for changes were "inconsistent with the District's understanding of the discussion." Specifically, the District believed the "Parent had agreed during the meeting that 45 minutes of push-in services were appropriate supports." In its response, the District further asserted it had believed it made clear during the meeting that a decision to retain a student was ultimately the Parent's decision. The District noted once the Parent objected to the wording in the original PWN, it updated the PWN "to reflect the Parent's requested changes and issued the revised version one week later, on April 6, 2020. Upon further requests for changes, the District responded and issued an updated version within three days."
73. On April 17, 2020, the Student's IEP team convened to discuss the Student's social/emotional goals. The IEP team proposed to change the wording of the social emotional goals from "independently" to "and provided reinforcement." The team additionally proposed adding an accommodation that provided frequent check ins by the teacher to ensure understanding of the task and to ensure the Student has started the task. The IEP also discussed different ways to motivate the Student, including different reward system.
74. Also on April 17, 2020, the District issued PWN, which reflected the change to the Student's social/emotional goals. The PWN documented the Parent's disagreement with the 45 minutes of push-in time per day and noted that she felt it was not enough time. The PWN stated the team agreed to discuss this issue at the beginning of the following school year.
75. On April 23, 2020, the Parent emailed the special education teacher, saying "I know I said I agreed with the PWN from the April 17, meeting but after reviewing it again I did notice that it wasn't included that the team stated [Student] wouldn't qualify for Summer school because he reached 2 goals. I would like to have to changed please [sic]."
76. On April 24, 2020, the special education teacher forwarded the Parent's email to the supervisor for guidance on how to respond. The supervisor responded that the options were to edit the current PWN or create a new one. She added that "the previous PWN stated that you would look into [extended school year]. It's difficult to answer with a definitive answer because she previously responded that she was in agreement with the PWN..."
77. On May 5, 2020, the IEP team met virtually with the Parent to develop a continuous learning plan for the Student during the school closures that resulted from COVID-19. The IEP team determined the Student should receive the following services during the school closure:
 - Occupational therapy, 10 minutes weekly;³⁰

³⁰ The continuous learning plan documented the IEP team's recommendation that OT services be provided through consultation/collaboration services to support access through remote learning curriculum. The continuous learning plan further stated that the Student will "participate in reading, writing, and math

- Math, 30 minutes weekly;
- Reading, 30 minutes weekly; and,
- Written Expression, 30 minutes weekly.

78. On May 19, 2020, the director of special education met with the Parent by phone to offer 40 minutes of compensatory services in occupational therapy. Following the meeting, the District emailed the Parent, confirming the District “found a slight difference in OT minutes at the beginning of the school year compared to previous services in [Student’s] former school district.” The director stated the difference in services occurred prior to the development of a new IEP at the current District. The District offered to provide the services during the current period of continuous remote learning, during remote summer learning, or once school resumed in the fall of the 2020-2021 school year.

79. On May 20, 2020, the District submitted its response to the Parent’s complaint. In its response, the District asserted that from August 28, 2019 through March 13, 2020, the District “properly implemented the incoming Transfer IEP from [previous district] and each of the subsequent IEPs from September 25, 2019, to November 18, 2019, to February 5, 2020.” It stated that “complaints made by the Parent were typically the result of a misunderstanding about what was included in the IEP (i.e., spelling as the only homework) or how the accommodations would be implemented (i.e., provision of reading comprehension materials for study.)” The District further noted that even if it made any errors in the implementation of the IEP, any error would have been immaterial, as it believes the Student demonstrated progress toward his IEP goals and demonstrated “significant, objective improvement,” as demonstrated by his performance on MAP.³¹

80. On May 27, 2020, the Parent submitted her reply to the District’s response. In her reply, the Parent wrote she had concerns that the Student was “stuck on the 2nd grade level but in the general education class they are teaching 3rd grade curriculum. Which he does not understand.” The Parent also wrote that she would like her inquiries, meeting requests, and emails be acknowledged, as she stated all of them had been made “in an effort to help [Student] receive a FAPE.” The Parent also stated she was told by the general education teacher that the Student was not receiving all of his tests in the resource room, was not having his spelling tests read to him, per the accommodations on his IEP. She additionally stated she was told by the special education teacher that the special education teacher was not using the highlighter. She indicated that she believed the Student was experience significant anxiety due to not having the accommodations on his IEP implemented.

support via Microsoft Teams. Learning opportunities may include packets, online opportunities such as Reading A to Z, Epic, and Happy Numbers.” Notes maintained during the meeting indicated the Parent was doing packet work with the Student during the school closure. Notes further stated the Parent indicated that she did not want online learning for the Student, as she felt it was too difficult for him and very distracting, and instead chose paper materials, which are being provided by the resource room teacher.

³¹ The District argued that the Student’s rate of growth was 85%, which was faster than the 50% rate expected by general education peers.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged the District failed to implement the Student’s individualized education program (IEP) during the 2019-2020 school year. From the documentation provided by the Parent, the time period of the Parent’s allegations occurred from the commencement of the 2019-2020 school year up until the school facility closures in March 2020.

If a student eligible for special education services transfers from a school district located in another state to a school district in Washington state and has an IEP in effect, the new school district, in consultation with the student’s parents, must provide the student with a free appropriate public education (FAPE), including services comparable to those provided in the IEP from the prior serving district, until the new district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. “Comparable services” means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student’s new district. Once the district has developed a new IEP for the student, 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.

August 28 through September 25, 2019

The Student transferred from a school district located in another state during the summer of 2019 and was enrolled in the District by the first day of school on August 28, 2019. According to the Parent, in the Student’s previous district, the Student was in a general education class with students who had IEPs and 504 plans and received push-in services from a special education teacher using a co-teaching model. The Student received the following amount of push-in services daily: 90 minutes math, 45 minutes language arts, 25 minutes science, and 25 minutes social studies. The Student additionally received the following specially designed instruction and related services in a special education setting by a special education teacher: 45 minutes daily of reading instruction and 30 minutes weekly of occupational therapy.

From August 28 through September 13, 2019, the Student was provided comparable services to what the Student was receiving in his previous district. The Student received 90 minutes total of math daily (60 minutes of whole group math in the general education setting, 20 minutes of small group differentiated math, and 30 minutes of daily of math support during in resource room). Similarly, the Student received a total of 80 minutes daily in reading (30 minutes per day in resource room and 50 minutes per day during whole group reading in the general education setting). The Student received 55 minutes per day in writing (35 minutes in general education and 30 minutes in resource room). While the Student did not receive any support in science, he did receive 40 minutes of specialist time (including art and physical education) and it is noted the Student did not take science during the first trimester at school, as it was provided during the second trimester.

During the investigation period, the District made an offer to the Parent of 40 minutes of compensatory services in occupational therapy for services it said were not provided during the first four weeks of school. During the first week of school, the District provided 60 minutes of occupational therapy during an initial occupational therapy assessment. The evaluation recommended 20 minutes of services weekly and accordingly, the second week of school, the District began providing 20 minutes of services weekly instead of the 30 minutes the Student had been receiving under his previous IEP. Based on the Student's previous IEP, OSPI finds the provision of 20 minutes weekly was comparable until the District was able to meet and develop a new IEP, as there is no obligation for the District to provide the exact services on the Student's IEP while it is providing comparable services. OSPI accordingly finds no violation. However, because the District has offered to provide the Parent with 40 minutes of occupational therapy to make up for the 10 minutes difference per week from August 28 through September 25, 2019 from what it provided the Student and what was on the Student's previous IEP, OSPI recommends the District continue to make it available to the Parent as a sign of good faith. OSPI will not, however, be monitoring the implementation of the compensatory services in occupational therapy offered by the District.

September 25, 2019 through March 2020

The Student's IEP team met on September 25, 2019 to develop a new IEP for the Student. The IEP developed included three goals in math, two goals in reading, and two goals in written expression. The Student's IEP additionally included three occupational therapy goals. To help meet the IEP goals, the Student's IEP provided for 150 minutes weekly of specially designed instruction in math, reading, and written expression, which were to be provided in the special education setting (resource room), as well as 20 minutes weekly of occupational therapy. The IEP team determined the Student would spend the remainder of his time in the general education setting, but would receive several accommodations, including 3-lined paper, pencil grip, larger spaced planner, letter strip at his desk, manipulatives (math), multiple choice spelling tests, pre-teach vocabulary, color coding and highlighting, and copies of study guides. The Student was also supposed to take tests in a separate, small group setting. The Parent's complaint and documentation provided did not appear to allege the Student did not receive his specially designed instruction, but rather that the Student did not receive his accommodations, which the Parent alleged resulted in a lack of progress.

The Parent first alleged the Student was not receiving his accommodations in November 2019 and requested an IEP meeting to discuss her concerns. At the meeting, the Parent did not state what accommodations the Student was not receiving, but instead expressed concerns about the Student's performance, including that he was not performing at grade level, and concerns that the Student was overwhelmed. While there was no documentation to substantiate an allegation that the Student had not been receiving his accommodations prior to the November IEP meeting, the PWN from the meeting showed the IEP team acknowledged the Student's need for additional support in the general education classroom and the Parent's concerns by amending the IEP to add the following accommodations: single-sided worksheets, permitting all tests to be taken in the resource room, allowing of verbal answers on tests, and shortened assignments. It was also

agreed by the IEP team that reading tests would be sent home the week before the test to enable the Student to learn the story, with vocabulary words to be sent home and to the resource room.

In January 2020, the Parent expressed concern that the Student was given the wrong test because the words were too difficult, that the Student was not given a highlighter to color code reading (Student's IEP includes the accommodation of "provide highlighting and color coding to organize ideas in reading"), and that tests were not being read to the Student. The Parent additionally alleged the Student was having homework packets sent home in violation of the IEP, which she said required the Student not receive additional homework.

The IEP team met twice in January 2020 to address the Parent's concerns. Notes from the January 15, 2020 meeting showed there was a misunderstanding regarding spelling tests as the Parent and the Student's teachers previously discussed using more challenging grade-level words, which the Parent then explained were too difficult. The Parent and special education teacher agreed that moving forward, the Student and teacher would pick words together for the spelling test and that the words would be sent home with the Student in advance of the test. It also appeared to be unclear if spelling tests were to be read to the Student the way test directions for other tests were to be read to the Student. At the IEP meeting, the team agreed that moving forward, spelling tests would be read. This misunderstanding appears to be genuine as the IEP did not clearly indicate before that spelling tests were to be read aloud, as the Student's IEP stated he should receive multiple choice spelling tests. Accordingly, OSPI finds no violation.

Later in January 2020, the Parent again raised concerns about implementation of the Student's accommodations, again expressing that spelling words were too difficult and that she believed homework packets in reading and math were being sent home when the IEP indicated they shouldn't. The special education teacher clarified with the Parent how spelling words were being selected and explained that the packets being sent home with the Student were not homework, but rather study material for upcoming tests, per the Student's IEP accommodations. It is additionally noted that the Student's IEP does not indicate the Student is not to receive homework, only shortened assignments. OSPI finds no violation.

In February 2020, the Parent expressed similar concerns and requested an IEP meeting. The Parent indicated the Student was not making the progress she expected and stated her understanding that the Student would likely be making greater progress if IEP accommodations were being implemented. The District denied this allegation and noted that while the Student continued to perform below grade level on standardized tests and when compared with general education peers, the Student was making progress on his individual IEP goals, which were developed with Parent input and based on the Student's individual needs. OSPI agrees with the District's assertion. In response to the Parent's concerns, the IEP team agreed to increase service minutes in math, reading, and written expression in February 2020.

While there may have, on occasion, been individual errors where the Student's accommodations were not implemented per the Parent's recollection, the Parent's allegation that the Student's accommodations were not implemented in any material way is not substantiated based on the documentation provided by the District and Parent. OSPI finds no violation.

Issue 2: Prior Written Notice – The Parent alleged the District did not follow procedures regarding the March 30, 2020 prior written notice (PWN).

PWN 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 PWN should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. PWN 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.

The Student's evaluation team met virtually on March 25, 2020 to discuss the Student's reevaluation following an updated diagnosis by the Student's physician. On March 27, 2020, the Student's IEP team met virtually to consider the evaluation and updated the Student's IEP. On March 30, 2020, the special education teacher emailed the Parent a copy of the March 27, 2020 IEP and PWN (to be implemented on March 30, 2020), which reflected the District's understanding of what was agreed to during the IEP meeting. Upon receiving the PWN, the Parent immediately notified the District that she did not agree with the language of the PWN. In particular, the Parent indicated she disagreed with the language of the PWN regarding how it described the decision made about the denial of 1:1 support in the general education classroom, which was discussed during the meeting. The Parent further objected to language in the PWN, describing her desire to possibly retain the Student and wanted the PWN to clearly indicate that she, as the Parent, had the final say on retention. In light of the Parent's concerns, the special education teacher called the Parent to discuss her understanding of what was agreed to during the IEP meeting. On March 30, 2020, an amended PWN was sent out to the Parent, reflecting the changes she requested.

The changes included in the amended PWN did not materially alter or affect the implementation of the IEP. Further, the PWN was sent within a reasonable amount of time prior to the District proposing to initiate or refusing to initiate a particular action, which enabled the Parent to resolve her concerns with the District and which resulted in an amended PWN that included the Parent's requested changes. OSPI finds no violation.

Issue 3: Progress Reporting – The Parent alleged the District did not provide the Parent with progress reporting consistent with the Student's IEPs during the 2019-2020 school year.

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards.

The Student's IEPs indicated the Parents were to be provided reports on the Student's progress at the end of each trimester. The District timely provided the Parents with progress reports at the end of each trimester that documented the Student's progress on his IEP goals. The progress reports included both relevant data collected in accordance with the method indicated in the IEP, and narrative statements to explain how the data was being used. OSPI finds no violation.

OSPI notes that there appeared to be a genuine misunderstanding between the Parent and District regarding how "progress" is defined in the special education context and what is required when districts measure progress of students with IEPs. While the District may have followed special education procedures for conducting progress monitoring of the Student's IEP, the Student was still performing below grade level on standardized tests and his report card indicated he was not consistently making satisfactory progress in his general education classes. IEPs are distinct from report cards because while report cards show how a student is performing according to general education standards, the goals included in a student's IEP are individualized to the student's needs and based on what an IEP team determined a student required to receive a FAPE.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of June, 2020

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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