

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-007

PROCEDURAL HISTORY

On January 21, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the Parents (Parents) of a student (Student) attending the Mercer Island School District (District). The Parents alleged 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 January 22, 2021, 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 February 5, 2021, the District requested a timeline extension for its response to the complaint. OSPI approved the request and extended the timeline to respond to February 16, 2021.

On February 10 and 11, 2021, OSPI requested additional information from the Parents. The information was forwarded to the District on February 19, 2021.

On February 16, 2021, OSPI received the District's response to the complaint and forwarded it to the Parents on the same day. OSPI invited the Parents to reply by March 1, 2021.

On February 22, 2021, the Parents requested OSPI provide the District response to her in a text-searchable format and unspecified extension of time to reply to the District's response. On the same day, OSPI provided the Parents with a text-searchable copy of the District's response.

On February 25, 2021, the Parents requested an extension of time to March 15, 2021 to reply to the District's response.

On March 1, 2021, OSPI approved the Parents' request to extend the timeline to reply to March 15, 2021. In addition, OSPI informed both the Parents and District that the extension of the Parents' timeline created an exceptional circumstance that required the 60-day timeline be changed from March 22 to April 6, 2021.

On March 10, 2021, OSPI requested additional information from the Parents. On April 12, 2021, OSPI received the information from the Parents and it was forwarded to the District on the same day.

On March 15, 2021, the Parents sent OSPI additional information. OSPI forwarded the information to the District on March 16, 2021.

On March 15, 2021, the Parents also requested additional time to reply to the District's response. OSPI approved the request and asked the Parents to reply by March 22, 2021. In addition, OSPI informed both the Parents and District that the extension of the Parents' timeline created an

exceptional circumstance that required the 60-day timeline be changed from April 6 to April 13, 2021.

On March 22, 2021, the Parents requested an additional extension of time to reply to March 29, 2021. On March 23, 2021, OSPI informed the Parents and District that the request was granted. In addition, OSPI informed both the Parents and District that the extension of the Parents' timeline created an exceptional circumstance that required the 60-day timeline be changed to April 20, 2021.

On March 25, 2021, OSPI requested additional information from the Parents. The Parents provided the information on March 29 and April 5, 2021, and the information was forwarded to the District on March 30 and April 5, 2021.

On March 30 and 31, 2021, OSPI received the Parents' reply. OSPI forwarded that reply to the District on April 2, 2021.

On April 2, 5, 7, 8, and 9, 2021, OSPI received additional information from the Parents. OSPI forwarded the additional information to the District on April 12, 2021.

On April 12, 13, 15, and 16, 2021, OSPI received additional information from the Parents. OSPI forwarded the additional information to the District on April 16, 2021.

On April 15, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on April 15, 2021. The information was forwarded to the Parents on the same day.

On April 16 and 19, 2021, the Parents provided OSPI with additional information. The information was forwarded to the District on April 19, 2021.

On March 31, April 7, and April 16, 2021, the OSPI complaint investigator conducted interviews with the Student's special education teachers, speech and language therapist during the 2019-2020 school year, the high school assistant principal during the 2020-2021 school year, the paraeducator during the 2020-2021 school year, the high school special education department chairperson, and the District special education director.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 22, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District implement the Student's individualized education program (IEP) in the following areas after January 22, 2020:
 - Specially designed instruction;
 - Speech language services delivered in the general education setting;
 - Accommodations;
 - Paraeducator services; and,
 - Progress monitoring?
2. Did the District follow procedures in addressing extended school year services for the summer 2020 and winter 2020-2021 school breaks?
3. Did the District follow progress monitoring and reporting procedures?
4. Did the District review and revise, if appropriate, the Student's IEP to address any unexpected lack of progress towards the Student's annual goals during fall 2020?
5. Did the District follow procedures under WAC 392-172A-05190 in response to the Parents' request for records?
6. Did the Student's IEP team have the necessary participants per WAC 392-172A-03095?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is enough evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

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. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Implementation During Spring 2020 School Facility Closures: During the COVID-19 school facility closures, as students received general education instruction and student support services, districts must provide students with disabilities with the special education services—related

services and specially designed instruction—supporting a free appropriate public education (FAPE). The U.S. Department of Education Office for Civil Rights (OCR) and Office for Special Education and Rehabilitative Services (OSERS) indicated the “exceptional circumstances” presented during the school facility closures caused by COVID-19 “may affect how all educational and related services and supports are provided” to students with disabilities. There is not an expectation that IEP services would be delivered exactly as the IEP states. *Questions and Answers: Provision of Services to Students with Disabilities During School Facility Closures for COVID-19* (OSPI March 24, 2020); *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (OCR/OSERS March 21, 2020) (“It is important to emphasize that federal disability law allows for flexibility in determining how to meet the individual needs of students with disabilities...during this national emergency, schools may not be able to provide all services in the same manner they are typically provided...The determination of how FAPE is to be provided may need to be different in this time of unprecedented national emergency...FAPE may be provided consistent with the need to protect the health and safety of students with disabilities and those individuals providing special education and related services to students.”)

While there was not an expectation that districts implemented a student’s IEP as written during school closures caused by COVID-19 in spring 2020, districts must have had a plan for how students with disabilities were to receive a FAPE, including the provision of special education. *Questions and Answers* (OSPI, March 24, 2020); *Questions and Answers* (OSPI, May 5, 2020). See also, *Questions and Answers on Providing Services to Children with Disabilities During the Coronavirus Disease 2019 Outbreak* (U.S. Department of Education, March 13, 2020) (“SEAs, LEAs, and schools must ensure that to the greatest extent possible, each student with a disability can be provided the special education and related services identified in the student’s IEP developed under the IDEA”). All schools were expected to have begun providing educational services for all students by March 30, 2020, which OSPI termed “Continuous Learning 2020.” OSPI Bulletin 024-20 (March 23, 2020).

The individualized special education services being provided to a student during the school facility closures as part of continuous learning, were to be documented in writing using a student’s annual IEP, IEP amendment (particularly if services to be provided during the closure were significantly different from what the IEP indicated), prior written notice, or optional “Continuous Learning Plan” (CLP) or similar document. Districts had flexibility in how they chose to document decisions made in real-time. *Questions and Answers* (OSPI, April 13, 2020). Districts were encouraged to prioritize parent communication, including discussions of how special education services were to be provided during the closures. *Questions and Answers* (OSPI, May 5, 2020).

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Program Accommodations/Modifications: An IEP must include a statement of the program accommodations/modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

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).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a free appropriate public education (FAPE) to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that

include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110(2). Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Educational Records: Under the Family Educational Rights and Privacy Act of 1974 (FERPA), "education records" are broadly defined as "those records, files, documents, and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 USC §1232g(a)(4)(A); 34 CFR §300.99.3; WAC 392-172A-05180(2). The term "educational records" does not include records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records are in the sole possession of the maker of the records, and are not accessible or revealed to any other individual except a temporary substitute of the record maker. 20 USC §1232g(a)(4). "With regard to parents having access to 'raw data or notes,' FERPA exempts from the definition of education records under 34 CFR §99.3 those records considered to be 'sole possession records.' FERPA's sole possession exception is strictly construed to mean 'memory-jogger' type information. For example, a memory-jogger is information that a school official may use as a reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals." Individuals with Disabilities Act (IDEA), 64 Fed. Reg. 12,641 (March 12, 1999) (comment to 34 CFR §300.562).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding IEP, hearing, or resolution

session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

As a general rule, parents do not have a right under FERPA to review and inspect documents that are not education records, that is, information that is not personally identifiable to the parents' child. 20 USC §1232g(a)(4); 34 CFR §99.3.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

FINDINGS OF FACT

Background: 2018-2019 School Year

1. The Student currently attends a District high school and is eligible for special education services under the category multiple disabilities.
2. On April 2, 2019, the Student's evaluation group met to review a speech/language evaluation that was conducted at the Parents' request to determine the Student's speech and language functioning. The school evaluation provided the following information, in part, gathered from a May 2017 private psychological evaluation:
 - "Intellectual functioning: [Student's] WISC-V performance generated Full Scale and General Ability Index scores in the superior range, ranking in the highest 1-2% of children his age. All of his WISC-V domain composite scores ranked at superior levels with the exception of his mid-average score in the Processing Speed domain. Both of his subtest scores in this latter domain ranked in the average range (34th-50th %ile), but only one other subtest was in the average range (66th %ile). The other six subtests ranked all above average to highly superior levels (84th-99th %ile)."
 - "His disability adversely affects his capacity to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives

from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing..."

- "[Student] did not demonstrate significant problems with focused attention, sustained concentration and effort, impulsivity, motor restlessness, or fidgeting. However, given that he had taken his prescribed medication dosages on the days of the testing sessions. It is not known if this was the result of effective medication and whether he might otherwise display broader symptoms of AD/HD were he not medicated..."
- "In addition, the testing occurred in a highly structured and individualized clinical setting. Still, [Student] often distracted himself into irrelevant or inconsequential tangents. He also displayed a very limited awareness of time and, consequently, managed It very poorly. Combined with his inattention to and poor interpretation of non-verbal cues from his environment and others around him, this resulted in his being out of touch and in making erroneous assumptions or missing obvious conclusions..."
- "[Student] clearly presents with significant problems in planning and maintaining his organization relative to writing. These struggles may be related to his executive functioning (ADHD). He does not exhibit any problems with writing mechanics, grammar, or sentence structure Still, a diagnosis of Disorder of Written Expression is warranted."
- "In contrast to the behavioral descriptions of [Student's] Parents, his classroom teacher from September until his removal from the class in December of 2016 generally described his behavior as normal. The only mild elevation was on the Attention Problems Scale, reflecting problems with distractibility. No concerns were expressed relative to focused or sustained attention, motor restlessness/fidgeting, disrupting others, acting without thinking, verbal or physical aggression, arguing, or misconduct. A mild tendency toward negativity was noted, but otherwise no worries or nervousness, unusual sadness, emotional reactivity, or somatic complaints were indicated. On the Learning Problems and Study Skills scales, significant problems with completing tests and homework and with keeping up with the class were noted as contributing to failing grades, but no concerns with academic skills, organization, study habits or problem analysis were indicated."

The evaluation stated the District evaluated the Student's speech and language using a review of records, a Parent interview, and the "Clinical Evaluation of Language Fundamentals" (CELF-5). The Student demonstrated age-appropriate expressive, receptive, and pragmatic skills. He demonstrated average to above average abilities in language comprehension and understanding. According to the Student's teacher, the Student was slow to begin tasks, which caused him to fall behind or miss details. Checklists and visual reminders were helpful to him.

The evaluation recommended specially designed instruction in the areas of social/emotional behavior, organizational/study skills, and written expression.

3. The prior written notice, dated April 16, 2019, stated the evaluation did not demonstrate a need for speech/language services. All communication functioning fell within "expected ranges."

2019-2020 School Year

4. During the 2019-2020 school year, the Student attended a District middle school, was in the eighth grade, and continued to be eligible for special education services under the category multiple disabilities.

5. The District's 2019-2020 school year began on September 4, 2019.

October 2019 Individualized Education Program (IEP) Meeting

6. On October 17, 2019, the Student's IEP team met and reviewed his IEP. The IEP noted the Parents' concerns as follows:

His Parents are concerned about his abilities to communicate socially, express himself in writing to his intellectual capacity, to self-advocate, and completing complex projects. They are also concerned about his organizational skills and its impact on his access to assistive technology. The C+ grade he currently has in social studies is also of concern.

The IEP stated the Student's disability had the following impact on his participation in the general education curriculum:

According to his current evaluation, [Student] experiences multiple disabling conditions that affect his educational progress in a variety of ways. They limit his alertness to classroom instruction, heighten his awareness of environmental stimuli, and affect his ability to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing and other assignments. [Student] requires specially designed instruction for social/behavior, written language and organizational study skills. It was also recommended that fine motor/OT (occupational therapy) supports be included as accommodations.

The Student's IEP provided for following present levels and annual goals:

- Writing: "By 01/29/2020, when given a prompt, 1 minute to think and 3 minutes to write [Student] will generate 5 or more sentences with correct punctuation, grammar and spelling improving [Student's] ability to generate written content from .83 sentences written to 5 sentences written as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance."
- Social/Emotional: "By 01/29/2020, when given a situation within the classroom where directions are confusing or unknown (i.e., missed instructions while at an appointment, finds assignment parameters hard to understand) [Student] will seek adult assistance/clarification (i.e., raise hand with question, explain to teacher where help is needed, email teacher with question) improving [Student's] ability to self-advocate when in need of academic assistance from 20% of opportunities given to 60% of opportunities given as measured by teacher observation and data collection."
- Social/Emotional: "By 01/29/2020, when given a negative experience or perceived stressor [Student] will independently use a problem solving worksheet (tool) improving [Student's] ability to solve conflicts from 20% of opportunities to 60% of opportunities to successfully utilize problem solving tool to identify a resolution as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance."
- Organizational/Study Skills: "By 01/29/2020, when given a student planner or app (i.e., binder, Google Keep) [Student] will independently write new assignments with needed details and check off completed assignments daily improving [Student's] organizational/study skills from 20% of opportunities given to 60% of opportunities given as measured by teacher observation and daily data collection across five consecutive data collection days."

Progress toward the annual goals would be reported each trimester according to the District's school calendar.

The IEP provided the following accommodations:

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
A visual checklist for multi-step activities	Every Class Period	Special and General Education Classrooms	10/21/2019 to 01/29/2020
Access to a keyboard	Every Class Period	General and Special Education Settings	10/21/2019 to 01/29/2020
Access to breaks	Every Class Period	General and Special Education	10/21/2019 to 01/29/2020
Access to speech to text software	Every Class Period	General and Special Education Settings	10/21/2019 to 01/29/2020
Access to text to speech	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Allow student to verbally supplement written response	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Break material into manageable parts	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Frequent checks for understanding and on-task behavior	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
No work logs	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Prime for upcoming projects	Every Class Period	Special and General Education Settings	10/21/2019 to 01/29/2020
Provide a copy of notes/study guides	Every Class Period	General Education Classroom	10/21/2019 to 01/29/2020
Provide Alternate Test Setting	During Testing	General and Special Education Classrooms	10/21/2019 to 01/29/2020

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
Reduce length of assignments	Every Class Period	General Education Settings	10/21/2019 to 01/29/2020
Regular teacher check-ins to check student understanding of concepts and directions	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Second trumpet for use at school	Daily	General Education	10/21/2019 to 01/29/2020
Speech-to-Text	During Testing	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Teacher checks with student for understanding/clarification of test questions	During Testing	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Up to 25% assignments missing ungraded	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Use of graphic organizer	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020
Use of timer	Every Class Period	General and Special Education Classrooms	10/21/2019 to 01/29/2020

The IEP provided for the following specially designed instruction, related services, and supplemental aids and services:

Services 10/21/2019 - 01/29/2020

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Organizational/Study Skills	Special Education Staff	Special Ed Teacher	12 Minutes / 5 Times Weekly	Special Education	10/21/2019	01/29/2020
No	Social/Emotional Behavior	Special Education Staff	Special Ed Teacher	12 Minutes / 5 Times Weekly	Special Education	10/21/2019	01/29/2020
No	Written Expression	Special Education Staff	Special Ed Teacher	12 Minutes / 5 Times Weekly	Special Education	10/21/2019	01/29/2020
Yes	Organizational/Study Skills	Paraeducator	Special Ed Teacher	30 Minutes / 5 Times Weekly	General Education	10/21/2019	01/29/2020
Yes	Written Expression	Paraeducator	Special Ed Teacher	30 Minutes / 5 Times Weekly	General Education	10/21/2019	01/29/2020
Yes	Social/Emotional Behavior	Paraeducator	Special Ed Teacher	60 Minutes / 5 Times Weekly	General Education	10/21/2019	01/29/2020
Related							
No	Counseling	Counselor	Counselor	60 Minutes / 1 Times Weekly	Special Education	10/21/2019	01/29/2020

Total minutes per week student spends in school: 1710 minutes per week
Total minutes per week student is served in a special education setting: 240 minutes per week
Percent of time in general education setting: 85.96% in General Education Setting

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	OT Consult	Occupational Therapist	Occupational Therapist	30 Minutes / 1 Times Monthly	Special Education	10/21/2019	01/29/2020
No	Speech Language Therapy	Speech and Language Therapist	Sped Teacher	30 Minutes / 1 Times Weekly	General Education	10/21/2019	01/29/2020

The IEP did not provide for extended school year (ESY) services. Regarding placement, the IEP provided the following explanation of the extent he would not participate with nondisabled students in the general education setting:

[Student] will not participate in the general education setting when receiving specially designed instruction in written expression, organization/study skills, and social/emotional behavior in the Resource Program as outlined in the service matrix. Resource Program staff include the teacher, paraprofessional, and related service providers. Specially designed instruction may be provided by any member of the Resource Program staff but is overseen and monitored by the certificated personnel. In addition, specially designed instruction in the areas of written expression, organization/study skills, and social/emotional behavior will be taught in the general education setting concurrent with the general education curriculum. [Student] is able to benefit from the instruction in the regular classroom with non-disabled peers for the remainder of the school day. [Student] will participate in general education lunches, assemblies, and any other extracurricular activities he chooses.

7. The October 17, 2019 prior written notice documenting the IEP meeting stated:

Description of the proposed or refused action:

- Amend the IEP and review student instructional needs including:
- Parents request for Behavior Intervention Plan
- Present levels in Social/Emotional section to be rewritten using CASEL Social/Emotional standards¹
- Social/Emotional minutes increased: additional minutes concurrent in the general education setting
- Consideration of occupational therapy services
- Occupational therapy minutes added to a Supplementary Aids and Services

The reason we are proposing or refusing to take action is:

- Proposed to take action:
- Visual plan for student when feeling anxious to decrease student behaviors related to anxiety/frustration
- Present levels in Social/Emotional portion will be rewritten using 5 CASEL domains: Social Awareness, Self Awareness, Self Management, Responsible Decision Making, and Relationship Skills
- Social/Emotional Behavior minutes will be added to be served concurrently in the general education setting via special education staff (paraprofessional) to integrate more Social/Emotional instruction into multiple settings
- Occupational therapy minutes will be changed from support to school personnel to a supplementary aid/service; the school OT (occupational therapist) will work with special education teacher/staff to meet student's sensory needs

Description of any other options considered and rejected:

- Behavior Intervention plan will not be written at this time but can be considered in the future
- Executive functioning skills will be targeted through specifically designed instruction in Study/Organization as well as Social/Emotional

¹ CASEL addresses five areas of social/emotional competence including self-awareness, self-management, social awareness, relation skills, and responsible decision-making.

The reasons we rejected those options were:

- Student behaviors align with his need for [specially designed instruction] in Social Emotional Learning and Study/Organization
- Executive functioning can be addressed through [specially designed instruction] in social emotional learning and Study/Organization

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

- Visual use of calming strategies to support student behavior CASEL Core SEL (social/emotional learning)
- Outside provider Speech & language evaluation
- Outside provider OT evaluation
- Visual checklists for special education staff to model organization/executive functioning skills for student

Any other factors that are relevant to the action:

Meeting Attendees: [special education director], [associate principal], [case manager/special education teacher], [science teacher], [speech and language therapist], [school occupational therapist], [administrative assistant, special services], [Parents]

Follow up meeting will be scheduled to further discuss/review items listed above including

- Parents concern of validity of assessments used In Speech & Language evaluation of student
- Updated IEP with present levels in Social Emotional Learning to align with CASEL standards

8. In November 2019, the Parents requested a reevaluation for fine motor, communication, and assistive technology. The District declined the request because the District's April 2019 evaluation was still accurate.
9. On December 5, 2019, the special education director emailed the Parents, stating the Student's three-year reevaluation was due in spring 2022. The director proposed a "full reevaluation including speech and occupational therapy conducted by a "new team" and included a "Reevaluation Notification/Consent" form for the Parents to sign. According to the District, the Parents did not respond the reevaluation request.

January to March 2020

10. In January 2020, a private literacy specialist conducted an assessment of the Student's written language. According to the specialist, the Student's writing sample was "extremely basic." The specialist noted spelling was accurate, but the Student's word choice and complexity of sentences were at the 5th grade level. The specialist recommended "explicit writing support to ratchet up his written expression skills and independence to the level of superior cognitive measure..."
11. In December 2019 and January 2020, a private occupational therapist conducted two untimed observations of the Student during instruction at school. The report stated the occupational therapist observed accommodations, such as frequent checks for understanding and on-task

behavior, copy of notes, study guides, visual supports, and prime for upcoming projects. The occupational therapist did not observe any specially designed instruction, access to keyboard, access to text-to-speech software, and regular teacher check-ins to check Student understanding, among others. The occupational therapist provided recommendations for the Student, including "explicit availability of IEP accommodations" during timed writing and providing specially designed instruction in written expression during his English language arts class.

12. On January 21 and 23, 2020, the Student's IEP team conducted the annual review of the Student's IEP. The IEP stated the Parents had the following concerns:

[Student's] Parents are concerned with his progress in writing and self-advocacy. They would like him to have more practice in these areas they see as a relative weakness. His Parents also state that [Student] often displays anxious behaviors at home which they feel are not observable in the school environment. They have expressed concern over [Student]'s ability to prepare for school quickly enough to arrive on time. His Parents have concerns related to [Student's] communication skills and executive functioning. During the meeting on January 21, 2020 Parents reiterated their concerns about [Student's] writing disability and his clinical anxiety and stress.

The IEP continued to state that the Student's behavior did not interfere with his learning or learning of others, but his disability adversely impacted him in the areas of social/emotional behavior, study/organization, and writing. The report from the Student's general education teacher noted:

He is currently taking Spanish, Algebra, Language Arts, Science, Band, and Lab.

MATH: The Math teacher reports that he focuses very well and asks lots of questions. He is a very independent student and works well independently and with peers.

LANGUAGE ARTS: The Language Arts teacher reports that syntax, spelling, and punctuation are all grade level appropriate. The content of [Student's] writing is average to above average. He has a strong command of language, including an above average vocabulary and the ability to write complex sentences using appropriate punctuation. The content of his writing consistently thorough and on topic.

SCIENCE: The Science teacher reports Student is doing well in class. He demonstrates good social interactions while interacting with other students during partner and group activities.

The Student's IEP described the Student's present levels in social/emotional according to the 5 CASEL areas:

- Self-Awareness: Student demonstrates ability to recognize own strengths and describes accomplishments.
- Social Awareness: Student displays behaviors within social and behavior norms in school. Student is kind and emphatic.
- Responsible Decision-Making: Student engages in problem-solving conversation with peers and staff and practices self-advocacy skills. Student will work on achieving a higher level of independence in problem-solving and analyzing social situations.
- Self-Management: Student maintains emotional regulation in school knows how to regulate his behavior through sensory items and breaks.

- Relationship Skills: Student communicates his need for assistance according to his teacher and the Student himself. He socializes with peers and displays appropriate behavior. He is well-liked by his classmates.

As result of his present levels in each CASEL area, the IEP stated the Student's annual goals would focus on responsible decision-making and self-management. His IEP provided for the following goal:

By 01/27/2021, when given a scenario describing a social problem (i.e., disagreement with a peer, feels frustrated by teacher's decision, must seek out missed information) [Student] will generate one or more solutions to presented social problem improving [Student's] problem solving skills from 50% of opportunities given to 80% of opportunities given to generate solutions to social problems during one class period in a targeted setting across 5 consecutive weeks as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

The IEP present levels in writing stated the Student displayed grade-level syntax, vocabulary, and punctuation, but the Student's teacher saw "minimal work production" because of the problem with beginning writing tasks. The IEP noted that when the Student does write, his writing was average to above average. The annual goal was:

By 01/27/2021, when given writing prompt and a graphic organizer [Student] will write an independent response including (a) claim/topic sentence, (b) text-based evidence, and (c) commentary analysis improving written expression from an average 2.79 points (0-4 point rubric based on 8th grade Common Core State Standards (CCSS) for content, language and conventions) to an average of 3.0 points over 3 consecutive trials as measured by classroom-based measurements.

The organization/study skills present levels stated the Student had most difficulty with task initiation, task completion, and on-task behavior. The annual goal was:

By 01/27/2021, when given an academic task [Student] will independently initiate task within 5 minutes improving organizational/study skills from 42% of opportunities given to 80% of opportunities to initiate a task during a class period across 5 consecutive weeks as measured by classroom-based measurements.

Reports about the Student's progress toward the annual goals would be provided each trimester according to the District's school calendar. According to the secondary transition plan, the Student showed interest in attending a four-year college and a career in computer science.

The IEP provided for the following accommodations:

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
A visual checklist for multi-step activities	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Access to "Anchor Papers" or Examples for all writing assignments or questions that require 3 or more sentences	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Access to a standard keyboard	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Access to breaks	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Access to speech to text software	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Access to text to speech	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Allow student to verbally supplement written response	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Break Multi-Part Questions into Seperate Questions/Sections	Daily	Classroom	01/28/2020 to 01/27/2021
Frequent checks for understanding and on-task behavior	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Prime for upcoming projects	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Provide a copy of notes/study guides	Every Class Period	Classroom	01/28/2020 to 01/27/2021
Provide Alternate Test Setting	During Testing	Classroom	01/28/2020 to 01/27/2021

Accommodations	Frequency	Location	Duration m/d/y to m/d/y
Second trumpet for use at school	Daily	Music Classroom	01/28/2020 to 01/27/2021
Use of graphic organizers for writing that requires more than 3 sentences	Every Class Period	Classroom	01/28/2020 to 01/27/2021

The meeting notes referred to a discussion about the speech-to-text accommodation. The Parents asked how the Student was using speech-to-text when the Student did not like it. The District's special education director (director) stated he always had access to it, but it is not always the right accommodation to use. The special education teacher added that the Student always had access to it, but he did not prefer it. The private literacy specialist asked if the Student did not like putting words on the page and does not like assistive technology, what were other accommodations for writing. The special education teacher said she would not force him to use a specific accommodation, which is why there are multiple accommodations related to writing. The special education teacher noted the Student tried them all and consistently used the same ones. When the Parents asked about the accommodation to allow

the Student to verbally respond, the teacher stated it was offered every time there was written work. It was part of his checklist. If the Student struggled, he was reminded to use his checklist.

The IEP provided the following specially designed instruction and related services:

Services 01/28/2020 - 06/19/2020

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Organizational/Study Skills	Special Education Staff	Special Ed Teacher	12 Minutes / 5 Times Weekly	Special Education	01/28/2020	06/19/2020
No	Social/Emotional Behavior	Special Education Staff	Special Ed Teacher	12 Minutes / 5 Times Weekly	Special Education	01/28/2020	06/19/2020
No	Written Expression	Special Education Staff	Special Ed Teacher	12 Minutes / 5 Times Weekly	Special Education	01/28/2020	06/19/2020
Related							
No	Counseling	Counselor	Counselor	60 Minutes / 1 Times Weekly	Special Education	01/28/2020	06/19/2020

Total minutes per week student spends in school: 1710 minutes per week
Total minutes per week student is served in a special education setting: 240 minutes per week
Percent of time in general education setting: 85.96% in General Education Setting

Services 06/20/2020 - 01/27/2021

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Special Education							
No	Organizational/Study Skills	Special Education Staff	Special Ed Teacher	15 Minutes / 4 Times Weekly	Special Education	06/20/2020	01/27/2021
No	Social/Emotional Behavior	Special Education Staff	Special Ed Teacher	15 Minutes / 4 Times Weekly	Special Education	06/20/2020	01/27/2021
No	Written Expression	Special Education Staff	Special Ed Teacher	15 Minutes / 4 Times Weekly	Special Education	06/20/2020	01/27/2021
Related							
No	Counseling	Counselor	Counselor	60 Minutes / 1 Times Weekly	Special Education	06/20/2020	01/27/2021

Total minutes per week student spends in school: 1923 minutes per week
Total minutes per week student is served in a special education setting: 240 minutes per week
Percent of time in general education setting: 87.52% in General Education Setting

The IEP did not provide for extended school year (ESY) services to the Student.

January 22, 2020: Complaint Investigation Timeline Began

13. On January 22, 2020, the Parents emailed the Student's special education teacher and director. The Parents provided the following Student report, in relevant part, about the paraeducator services he was receiving:

I have [paraeducator] in both of those classes which is also stressful because she doesn't help me. She doesn't understand my thinking process and she doesn't really help me do things, she just tells me what to do. So I agree to do what she says and then she leaves. ([Student] explained later: 'goes wherever she's sitting') I go back to what I was doing and thinking about. She tells me, 'You are supposed to be writing right now' and that kind of disrupts my thinking.

14. The prior written notice, dated January 27, 2020, regarding the January 21 and 23, 2020 IEP meetings included the following:

Description of the proposed or refused action:

1. Parents requested adding additional Written Expression goals as per the private report from [private literacy specialist].

2. Parents requested adding additional goals based on the CASEL standards so [Student] would have goals in each of the 5 CASEL domains.
3. Parents requested [counselor's] treatment plan for counseling be included in the IEP in the areas of (a) Emotional Awareness and Problem Solving and (b) Organizational Skills.
4. Parents requested the area of Study and Organization be renamed "Executive Function."
5. Parents requested a goal on teaching [Student] how to break down tasks/assignments into smaller steps.
6. Parents do not want him pulled from academic courses to receive his services.

The reasons we rejected those options were:

1. The District rejects the request to add additional goals as it would place unreasonable stress on [Student] to be assessed on multiple written expression goals per week. The team added 2 objectives to the Written Expression goal to measure the subskills of writing a constructed response based on [private literacy specialist's] report.
2. The District rejected the request to add additional goals aligned with the CASEL standards. The teacher delivers instruction in all 5 CASEL domains and will track progress on 2 of them as outlined in the Social Emotional and Study/Org IEP goals.
3. The District rejects this request. [Counselor] is a related service provider and is providing services to support the IEP goals. There is not currently a need for stand-alone goals in Counseling.
4. The District rejects this request. [Student's] evaluation indicates that he qualifies for Specially Designed instruction in Study/Organization.
5. The District rejects this request as this is part of the 8th grade curriculum. All 8th graders are learning this skill. However, the team listed this is an accommodation.
6. The District has determined that [Student] requires specifically designed instruction and that the [specially designed instruction] should take place in the Special Education Setting. The District has determined that the student needs services outside of the general education environment to make progress towards IEP goals. The IEP does not determine what time of day he will receive services.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Recent evaluation, Parents-provided reports, classroom-based measurement, teacher, student and Parents input.

Any other factors that are relevant to the action:

Present: [director, special services], [case manager], [occupational therapist], [associate principal], [general education teacher], [school psychologist], [counselor], [facilitator], [private occupational therapist], [family advocates 1], [Parent], [Parent via phone], [note taker], [private literacy specialist], [family advocate 2], [District attorney]

1. The IEP was scheduled over 2 days, with [agency] providing facilitation.
2. The District provided a note-taker. The IEP Meeting was paused several times over both days to provide family time to review notes and discuss.
3. Family provided the District with a report from [literacy specialist] and a separate report from [private occupational therapist]. The District does not accept these reports as private evaluations.
4. The District Evaluation dated April 2, 20109 states that the student does not qualify for [occupational therapy] and [speech and language] services as [specially designed

instruction], Related, or Supplementary Aids and Services. The IEP Team did not determine that the student currently needed [occupational therapy] or [speech and language] services as a Supplementary Aid or Service to meet IEP goals.

January 2020: Due Process Hearing Stay-Put Begins

15. On January 29, 2020, the Parents filed for a due process hearing (2020-SE-0028). The Parents disputed the substance and timing of the District's prior written notice to the Parents and alleged the District failed to ensure meaningful parental participation by refusing to provide the Parents with necessary accommodations. The Parents did not dispute the elimination of the paraeducator services or the speech and language services in the January 2020 IEP. The District and the Parents agreed that the October 2019 IEP would continue to be implemented pending the due process hearing and decision (known as "stay-put").

March 2020 to June 2020 School Closure

16. On March 3, 2020, the District arranged for the Student to visit the high school and talk about the school's schedule and what courses were available.
17. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
18. On March 19, 2020, the District provided a progress report on the Student's annual goals based on the October 2019 stay-put IEP, which provided the following information, summarized:
 - Written Expression: The report stated the Student made sufficient progress to meet the written expression goal. The Student generating an average of 3.25 sentences. The baseline was .83 sentences.
 - Social/Emotional (Self-advocacy): The Student mastered the social/emotional goal for self-advocacy. The comment stated the Student was self-advocating in 77% of opportunities given. The baseline was 20%. The speech and language therapist noted: "The SLP continues to support [Student's] self-advocacy goal by providing in-class check-in's and support, as well as during supplemental instruction in his social skills class. Strategies that have been taught this trimester include strategies for breaking down and understanding long term assignments and use of personal motivation strategies."
 - Social/Emotional (Problem solving): The Student was making satisfactory progress toward the problem-solving goal. The report stated: "[Student] is currently able to consistently make use of a problem-solving tool with staff prompting and has shown progress in his ability to problem solve independently."
 - Organization/Study Skills: The Student had mastered the goal of 60% from a baseline of 20% of the time. The Student independently recorded new assignments and checked off completed assignment in 78% of opportunities given.
19. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI's

guidance outlined the expectation that “continuous learning” would begin for all students by Monday, March 30, 2020.

Continuity of Learning Plan Began

20. From March 27 to June 6, 2020, the District maintained the Student’s “Continuity of Learning Tracking Log” that tracked when general education and special education instruction and services were provided. The log listed the services provided, including Zoom group, schoology² updates, check-ins, and the accommodations provided, including structured social situations, check-ins, and instructional needs.

21. On April 1, 2020, the Student’s special education teacher developed a continuity of learning plan (CLP) for the Student. The plan was as follows:

Subject Area	Level of Support Needed	Recommended Strategies and Interventions
Band	Access to trumpet	N/A
Math	Check-ins Visual supports	Check in with special education staff 2X weekly Access to visual instructions
Science	Check-ins Visual supports Supplement answers/scribe	Check in with special education staff 2X weekly Access to scribe at student request
Language Arts	Check-ins Visual supports Supplement answers/scribe Graphic organizer	Check in with special education staff 2X weekly Access to visual instructions Provide graphic organizer Access to scribe at student request
Lab	Check ins Organizational supports Supplement answers/scribe Structured social activities	Check in with special education staff 2x weekly Facilitate social opportunities
Other	Counseling	[Counseling] Services will contact family

22. According to the District, the Student’s general education classes provided asynchronous instruction and “check-ins,” or office hours, with the teachers for any additional assistance. Students were expected to attend both asynchronous instruction and check-in/office hours. The class periods were 40 minutes, but teachers would sometimes use 20 minutes for instruction and then follow up with check-ins for an additional 20 minutes with the students, for example. The Student’s lab class (special education setting) provided synchronous instruction and students, individually or in groups, were sometimes placed in breakout rooms to work on individual assignments. The paraeducator was available to assist the Student as needed in the general education classroom. The Student also had access to the paraeducator in the special education classroom, as did all the students in the classroom.

² Schoology was the distance learning platform the District was using to provide remote instruction to students.

23. On April 2, 2020, the special education emailed the Parents a draft "Continuity of Learning Plan" to review, noting that it was not a change to the Student's IEP.
24. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
25. On April 15, 2020, the Parents emailed the Student's special education teacher. The Parents expressed the following concerns:
 - Student is not a self-starter and does not respond to prompts. Reminding him does not work.
 - Student does not know how to work independently, take notes, organize, plan, break up assignments, and "get things done in general."
 - Student shows no desire to work on difficult tasks.
 - Student is missing 12 assignments in Language Arts and refuses to practice his trumpet.
 - Social skills may regress while staying home and has minimal contact with peers.
 - Prompting Student creates tension at home.

The Parents also requested the "raw data" from progress reports because the Parents saw conflicting information from the school about the Student's progress.

26. The Parents provided OSPI with documentation of private counseling the Student received from April 1 to June 17, 2020.
27. Beginning April 30, 2020, the Student began receiving approximately one to two hours a week of applied behavioral analysis (ABA) therapy provided privately by a board-certified behavior analyst (BCBA). This included weekly parent coaching sessions with the BCBA. The therapy continued past January 21, 2021, the date the Parent filed this complaint.
28. In May 2020, the Student was evaluated by a private ABA provider and a report was issued in June 2020. The Student was evaluated with the "Behavior Rating Inventory of Executive Function – Second Edition" (BRIEF-2) and the "Assessment of Functional Living Skills: School Skills." The results showed delays in executive functioning, independent living, and emotional regulation. The report recommended home and community-based ABA therapy.
29. The Parent submitted to OSPI a speech and language evaluation and treatment plan, dated May 21, 2020, completed by a private speech and language therapist to address "delayed written language and social communication skills." The structured writing part of the "Clinical Evaluation of Language Fundamentals-Fifth Edition" (CELF-5) was administered to the Student. The Student's structured writing score was at the 84th percentile, but he showed an "inefficient ability to generate written output." The results of the pragmatics profile were significantly different between the Parent and teachers' scores. The Student's scaled score from each Parent was a "1" while the Student's teachers' scores were "5" and "7," "7" and above being within normal limits. The plan recommended private speech and language therapy. The private speech and language therapist provided weekly therapy, beginning May 21, 2020, and continued past the date the complaint was filed.

30. On May 28, 2020, the Parents requested ESY services because the Student's regression was "already apparent." The Parents stated the circumstances had changed since last year when the Student was denied ESY.
31. On June 1, 2020, the Parents, the Student's general education teacher, the special education teacher, and counselor exchanged emails about the Parents' concerns about the Student. The Parents reported the Student was "struggling." He was behind in most of his assignments and was working on the weekends. "He seems to run out of steam and he is very stressed...[Student] is getting depressed and irritable even over positive things, even those unrelated to school..." The general education teacher responded by limiting his assignments and stating "checks for understanding" could be excused. The general education teacher told the Parents she would follow up with the Student to give him some support and how to access a test. The special education teacher provided the Parents with mental health crisis line and informed the Student's counselor of the current situation. The Student's counselor stated the Student was working on calming and problem-solving strategies the last few weeks. The counselor offered to talk with the Parents at the time or later.
32. On June 3, 2020, the Parents emailed the Student's special education teacher about why the Student was falling behind on his assignments and other concerns and requests, including the following:
- The Spanish teacher was dismissing the AM class early.
 - Student was not responding to the Parents' prompts to practice the trumpet.
 - In math, the Student was getting locked out of timed tests and was not getting extended time to complete the tests.
 - In science, the teacher pre-records instructional videos but the Student needs "immediate feedback and interaction." In addition, he has not received paraeducator support since school closure.
 - In English language arts, there were no writing assignments, only reading a book and discussing it.
 - Lab class (special education class) was students just "chatting."
 - Student was responsive to counseling when provided.
 - Student needed more social contact with his peers.
 - Student needed counseling as an ESY service.
 - Student was not attending group speech and language sessions. Being in a group with other students with disabilities was not helpful.
 - Student was not attending "Gator Time" (homework).
 - Parents input about Student participation was not kept.
 - Parents asked the District for "raw data."
 - Parents requested consultation with occupational therapist about Student's study/organization needs.
 - Parents noted only one email exchange between Student and paraeducator.
33. On June 2020, the special education teacher emailed the Parents the CLP and the draft copy of the January 2020 IEP. On June 13, 2020, the Parents emailed the Student's special education teacher, requesting the following:

- "Data logged for monitoring consistent implementation of recommended strategies and interventions; any tallies documenting prompts and other supports and any raw data/data sheets."
- "Any documentation of progress monitoring and data collection."
- "List of and descriptions of speech and language strategies recommended and or used to see what is/isn't working; curriculum (I'd like to avoid spending time in the meeting to learn about this.)"
- "List and descriptions of recommended strategies and interventions. I'd like to go over it with [Student] before the meeting so that I know his opinion on what's beneficial and how he feels about it. He needs time to process as well."
- "Copies of visual supports for each class."
- "Actual attendance - we know that [Student] has been regularly late to his class meetings even with the much prompting we do and that he's missed classes. This is important information for us to consider when talking about present levels and needs for supports and intervention/placement on Monday."
- "Organizational supports explanation/documentation."
- "Updated treatment plan from [counselor] - hopefully [counselor] can just forward, I'm sure he has one."
- "Copy of document called 'online planner' that was shared via Google Doc, per the letter (I don't know which ones were shared how. Or If we have seen all of them - we know of three different ones.)"
- "Copies of scribed work/documents, if any."
- "Other work samples, especially samples of written work."
- "Name of Speech-to-text software [Student] is recommended to use."

34. On June 6, 2020, the Parents emailed the counselor, stating the Parents were going to send their records request for the counseling records. On June 12, 2020, the counselor replied that he would check with his clinical supervisor on the process to provide the records to the Parents. The documentation provided did not show what follow up occurred.

35. On June 15, 2020, the IEP team met to review the Student's CLP and discussed ESY. In discussing instruction provided that spring, the meeting notes indicated there were 3-5 learning activities for the week, along with an instructional video and online office hours. The assistant principal explained that some teachers want students to participate for the full 45 minutes, some it used it as a check-in, or gave independent work. The special education teacher offered help on completing end of the week assignments, but the Student preferred working on math since it is for high school credit. The Parents expressed concern about the Student turning in assignments which require a lot of prompting ("Did you log in? Did you turn it in? Did you reach out to the teacher?"). The language arts teacher stated the Student attended regularly, but had not completed part of the assignment. The counselor stated the Student was making good progress at social interaction and problem solving, but the Student had a difficult time with organizing and managing assignments. The Student's special education teacher stated the Student attended all lab (special education) classes and he was making progress on accessing schoology. When asked by the Parents if the Student had opportunities to check in with his teachers outside of class, the special education teacher stated the Student had been invited and he had attended "some of them."

According to the meeting notes, the Parents asked about how the paraeducator was providing support to the Student. The special education teacher stated this was discussed during resource time (lab class). These times were set up for all students in the resource rooms with breakout rooms. They were optional. The paraeducator attended lab and extra support sessions.

Regarding ESY, the Parents expressed concern about the Student not making progress; he was missing 23 assignments in schoology and did not work independently. The special education teacher stated she offered help, such as a scribe, to the Student to complete assignments, but he did not want to work on assignments during their check-in. The Student preferred to work on math since it was for high school credit. The Parents mentioned an emerging skill before school closure and now the Student is regressing (it was not clear from the notes what skill the Parents were referring to). The Parents requested ESY services for study/organization, social/emotional, writing, speech and language therapy, and counseling. The Parent reiterated her request for the raw data during the meeting. Regarding counseling, the counselor stated there would be no irreparable harm to the Student if he did not receive counseling during the summer. The special director stated the data did not support the need for ESY, as there was no significant regression or data supporting unexpected or delayed recoupment in any of the areas requested by the Parents.

36. The Parents stated in their reply to the District's response that the progress reports did not include sufficient information/data to determine ESY and that the District did not share the data with the Parents.

37. The prior written notice, dated June 19, 2020, documenting the June 17, 2020 meeting, stated the following:

Description of the proposed or refused action:

The IEP team met to review Student's current progress and discuss Parents' questions about the Continuity of Learning Plan (CLP) and their request for Extended School Year (ESY) services. Based upon the team discussion of these issues, the District is refusing to change the CLP, Student's placement, or offer ESY services this summer.

The reason we are proposing or refusing to take action is:

Student data and team input does not demonstrate that changes to the CLP are necessary. Similarly, the school team did not agree that ESY services are necessary for the provision of [free appropriate public education (FAPE)] and data did not support any significant regression/recoupment and/or emerging skills after school breaks prior to the school building closures.

Description of any other options considered and rejected:

Changing the [continuity learning plan].
Providing [ESY] services in all IEP service areas.
Facilitating further discussion of the equity-based concerns identified by the general education teacher during the school building closures.

The reasons we rejected those options were:

Student has been participating in school work and opportunities through the CLP during the school building closures. Although work completion is lower than during in-person instruction, he is making progress with the remote learning opportunities during the school building closures. The school experience and expectations for all students are different due to the school building closures.

Student data does not demonstrate social/emotional regression or irreparably slow recoupment after school breaks that would justify ESY services. Although Parents were concerned about their observations of regression during the school building closures, the District identified that the more accurate data source for ESY determinations is the pre-closure time period. Numerous factors are impacting students during the school building closures and the comparability of data during that period is impacted. The District explained that the team will be able to examine any need for compensatory education services following the re-opening of the school buildings during the 2020-21 school year. The staff member and Parents had a discussion about the equity-based concerns for all students during the school building closures and further discussion was discontinued by the District in favor of continuing to address the meeting agenda topics.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

CLP, October 2019 IEP, verbal reports of Student's progress, trimester progress reporting, Parents' input, staff input, [counseling agency] input.

All other factors that are relevant to the action:

Meeting Participants: [case manager], [principal], [general education teacher], [mental health counselor], [speech and language therapist], [note taker], [special education director], [District attorney], [Parents], [family attorney], [private occupational therapist], and [private BCBA].

District provided a note taker and paused to allow time for the notes to be read and adjusted if necessary. District provided Parents a copy of notes on June 16, 2020, as well as a copy of notes placed in the Zoom Chat.

Parents had previously given written notification of their intent to unilaterally place Student in private school services. Given the team discussion on Student's progress this spring, the District is declining to fund any unilateral change in placement of Student at this time.

38. Regarding extended school year services, the Parents alleged the following in their complaint:

- "ESY for summer 2020 break and winter 2020 break were not discussed as part of January 21 and 23, 2020 IEP meetings."
- "[District] didn't consider ESY for this current IEP for Winter break - 2020 as well as failed to appropriately discuss and consider the need for ESY services for Summer 2020. The District delayed convening an IEP meeting until after the winter break."
- "We requested ESY again prior 6/16/2020 IEP meeting. There was lack of discussion of appropriateness of ESY during 6/16/2020 IEP meeting among the IEP team. The District used 'irreparable harm' standard for determination of need for ESY services for our son to receive FAPE."
- "The District didn't inform us of the criteria for determining the need for ESY that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging

skills, with evidence to support the need. In fact, the District administrator denied that 'emerging skills' need to be considered when making a decision about ESY services."

- "Mental health impact and history of suicidal ideation on the student was not considered."

39. The June 19, 2020 progress report provided an update on the Student's progress toward his annual goals based on the October 2019 stay-put IEP as follows:

- Written Expression: "Goal not measured during this period."
- Social/Emotional (Self-advocacy): The report indicated the Student mastered the social/emotional goal for self-advocacy. The comment stated: "[Student] has previously met this goal. During this period of Learning Forward due to the COVID pandemic, [Student] has attended 10 out of 10 class sessions. He has demonstrated difficulty completing and turning in assigned work on time; however, special education staff have worked with him regarding advocating needs to teachers online. For example, during a check-in [Student] suggested that he should be working more with his Math teacher. [Student] was able to articulate time slots and his availability. He was also able to advocate for himself by explaining to special education staff why he wanted to prioritize his Math work over other assignments. [Student's] Parents report that he has struggled with feelings of anxiety and depression during the online learning period. [Student] has met weekly with a counselor to address these needs. Special education staff have offered 2x weekly 30 minute check-ins to support him with his social/ emotional health and schoolwork. [Student] has attended 2 of these check-ins offered as of June 9th, 2020."
- Social/Emotional (Problem solving): The report noted the Student made satisfactory progress towards the problem-solving goal. The report repeated much of the same comment from the above self-advocacy goal regarding progress on the problem solving goal as well. The report regarding the social/emotional goals also included a statement from the speech and language therapist: "the therapist provided support for social/emotional goals by working with the Student's case manager to improve executive functioning, specifically task initiation, sustained attention, and task completion in the virtual setting."
- Organization/Study Skills: The report stated: "[Student] has met this goal. During this period of Learning Forward due to the COVID pandemic, [Student] has attended 10 out of 10 class sessions. He has demonstrated difficulty completing and turning in assigned work on time. Special education staff have offered 2x weekly 30 minute check-ins to assist [Student] with his organization and schoolwork. [Student] has attended 2 of these check-ins offered as of June 9th, 2020."

40. The Parents alleged in their complaint that the District failed to include a "highly capable program specialist" as an IEP team member for the Student. The Parents stated no one on the IEP team had expertise about twice-exceptional students.

41. June 19, 2020 was the last day of the 2019-2020 school year for the District.

Summer 2020

42. Starting in June 2020, according to the Parents, the Student attended a private summer tutoring program. The Student attended six classes a week for six weeks, which focused on writing instruction and study/organization skills.

43. In July and August 2020, the director of the tutoring program exchanged emails with the Parents. The director stated the Student wants his writing to be perfect the first time, which leads to his work production stagnating. The Student's quality of writing aligned with 7th and 8th grade common core standards. The tutoring agency was working on preparing the Student for 9th grade.

2020-2021 School Year

44. The District's 2020-2021 school year began on September 2, 2020.

45. According to the District, at the start of the school year, the District offered the Parents the option of the Student continuing to receive remote instruction or receiving in-person instruction. The Parents and the Student preferred remote instruction, although the Student is coming to school to attend band practice.

46. At the beginning of the school year, the principal stated that all the Student's teachers were provided with a copy of the Student's "IEP-At-A-Glance" that lists the accommodations in the Student's IEP, among other IEP information.

47. Beginning August 27 and continuing through October 22, 2020, the Parent exchanged emails with the school counselor and special education teacher about the Student's need for private BCBA services in the afternoons, which would mean that the Student would not be attending District classes at that time. The District provided the Parent information on dual enrollment. On October 22, 2020, the Parent emailed the special education teacher, in part:

[Student] started the school year without the supports he needed and was behind as he started. He has not been able to keep up, unfortunately, even with the substantial supports we give him at home and with the help of our private experts. He is perfectly capable of that. We took [Student] for AT/AAC (assistive technology/alternative augmentative communication) evaluation at [hospital] and the SLP said that all he needs is up there (in his brain), he just needs help getting it all out. He needs more or different support at school than he has been getting. Those that are on his IEP, for example. We should not be excluding [Student] from programs he qualified for (Highly Capable education) and lowering the bar to pretend everything is fine and he doesn't need help and his needs are not typical as his nondisabled peers' needs...

48. Beginning September 8, 2020 through January 21, 2021 (and beyond when the complaint was filed), the District kept a "Tracking Log (2020-2021)" that documented when the paraeducators provided specially designed instruction to the Student in general education classes. (See Appendix A). The log showed the paraeducators consistently provided "support in Gen Ed" (general education) in two classes a day, although the log showed the paraeducators occasionally provided support in one class rather than two classes in a day.

49. According to the complaint, specially designed instruction by the paraeducators was not provided in either the general education or special education setting. The Parents observed the Student's Zoom classes and the Student reported the paraeducators were in the online

Zoom class with their cameras off and services were not provided as required by the Student's October stay-put 2019 IEP.

50. On October 2, 2020, the Parents exchanged emails with the District speech and language therapist. The Parents stated the Student needed help with every step when writing. The Parents stated the Student would ask a question, but the teacher or group would have moved on. He spent "a lot of his resource room class alone in a breakout room." The Parents stated the Student received direct service minutes ranging from seven to sixteen minutes, and mostly under ten minutes. The Parents stated: "...We need help with his engagement. Just because he's logging in doesn't mean he's engaging. In fact he's often not and we do what we can but we still can't help him..."

51. On October 12, 2020, a hospital conducted an augmentative and alternative communication (AAC) evaluation and assistive technology (AT) evaluation. The evaluation summary stated:

[Student] is a verbal communicator who uses speech to communicate wants and needs. Today, strengths were noted for good engagement and effort to participate in various spoken and written language tasks. Challenges were noted for reduced speed of production for both oral and written language. [Student] needed extra time to gather his thoughts before responding verbally or writing something down. While he did not report that the tasks completed today were particularly challenging, he expended a lot of mental energy to get his ideas down in written form. He presents as doing a lot of the brainstorming process in his head rather than just writing down notes (words/phrases) on paper and then when writing, tries to get it exact on the first draft. With a concept map, I was able to scribe his ideas to key words/phrases (a process he can learn to do) such that he could use speech to text to then get his ideas written down.

The report recommended speech and language therapy to address speech, language, and social communication difficulties "both as part of his school program and outside of the educational placement. Speech and language therapy should focus on oral and written language for higher level language formulation such as complex sentence forms and then organizing his sentences into different types of paragraphs." The report stated the Student would benefit from using speech-to-text, word banks, concept web/outlines (visual organizers), and writing templates. The Student would need explicit instruction in using writing templates. There was no indication the evaluator talked with the Student's teachers or observed the Student at school.

52. Both the Parents and the District expressed concerns about the demands on the Student in his honors English class. On October 13, 2020, the Parents emailed the Student's honors English teacher the October 2020 AAC/AT evaluation results about the Student's difficulty with writing. The honors English teacher replied:

...I read it thoroughly and can understand why he is having such difficulty in an honors level course. The Evaluator stated, 'His paragraphs were extremely basic and while spelling was accurate, the word choice and complexity of the sentences was at a 5th grade level' but then contradicted itself saying, 'The [previous district] progress report from 6th grade indicated that he was on grade level for his goal of essay writing, but not whether he was fully independent, and whether his writing was aligned to the variety of forms in Common Core

for middle school.' Based on this evaluation as well as the student's IEP, it seems that accommodations in an honors course would not be enough to support [Student] when he needs specially designed direct instruction.

I am working closely with the case manager and met with [Student] in office hours to provide multiple accommodations that might assist him in moving forward; however, [Student] has not been able to verbalize or produce any writing that would indicate understanding of analysis of theme or the literary concepts we're working on in class. Typical students can do this without support.

In 9th grade Honors English the expectation is that students know the basic components of a paragraph writing without sentence stems and scaffolding. The pace of the course is rigorous and students are expected to be self-motivated. In the regular English 9, paragraph writing is scaffolded and broken down and the pace is more manageable. Due to his performance and stress level that [Student] admitted to me, it might be best to consider that as an option.

On October 22, 2020, the Parents responded, stating the Student would remain in the honors English class. The Parents stated: "We believe that with the right supports he can succeed in that class..."

53. The Parents submitted counseling notes to OSPI from the Student's sessions, dating from October 5, 2020 through February 22, 2021, with the Student's counselor. The progress notes included the following, in part:

- October 5: Discussed what he enjoys. Discussed his social/emotional goals.
- October 12: Did not attend
- October 13: Did not attend
- October 14: Discussed his school performance. Fell behind and has been catching up since. Discussed strategies for homework completion.
- October 16: Student continued to discuss falling behind and that other peers felt the same way. Teachers set the workload and they do not think it is too much. He reported unsupported at school.
- October 19: Student reported he has never had as many missed assignments. Was working on prioritizing his homework.
- October 26: The notes described when the Student logged into school remotely: "[Student] reported that after poll and group check in, 15-40 minutes are spent in break out rooms working on individual work. He reported that he is not always sure when he will have assistance, nor is he sure what he should focus on. [Counselor] asked if teacher/para provide expectations for time spent in breakout rooms. [Student] reported that at times he has an identified assignment and other times the instructions are to review planner and identify what task/assignment to focus on. [Student] also expressed frustration with the assistance he receives when he does have time with a teacher/paraprofessional. An example he provided is when receiving assistance in writing, often the question asked is, 'do you have a question about the question.' Contrasted support he receives from [private BCBA], BCBA. [Student] identified

learning the pomodoro technique. [Student] reports [private BCBA] asked him to track distractions when utilizing pomodoro technique."³

- October 30: The notes stated the Student worked on homework that he could complete to motivate himself, but it left the more difficult assignments when he was more tired and less motivated.
- November 2: The notes stated the difference between the assistance he received in English class and resource room. Prompts provided by his English teacher were helpful. When in the breakout room, he needed to first get directions on what to do.
- November 9: Student discussed why some classes such as math were easier than others. Math is concrete with definitive answers; other classes are complicated.
- November 16: Talked about differences between tests and homework which seemed redundant or busy work. Has difficulty with motivation when there is too much homework and is not learning from it.
- November 23: The notes stated: "...English is difficult for me. Part of it is comprehension but part has to do with interest and lack of motivation."
- November 30: Student identified what classes to focus and would talk with the English teacher about it.
- December 7: Student is having difficulty with length of assignments which are longer than middle school. Expectations are higher.
- December 14: Student stated that when he is stressed it was hard for him to learn or act on identified tasks.
- January 4: Student talked about significant differences between middle school and high school. High school is much harder: different expectations, time commitments, and less free time.
- January 11: New planner from BCBA works better than previous one from District. Overwhelmed with workload.
- January 18: No session
- January 20: No session
- January 22: Met with Student and Parent. Student was tired but had more homework to complete.
- February 1: Student identified a productive work schedule. Was proud of his English grade but frustrated with his geometry final. He emailed the teacher but there was no response. Asked his parents for support.
- February 8: Student discussed in-person services in general and in-person counseling. Student was to remain in remote learning for the rest of the school year because of health concerns.
- February 22: Student reported being frustrated with recommendation for in-person services. Contradicted his health concern and not wanting to be in the resource room.

54. Beginning October 21, 2020 and continuing through March 11, 2021, the speech and language therapist, the Student's special education teacher, and paraeducator met weekly to review strategies that were being used to support the Student and evaluate their effectiveness. The following examples were noted in the documentation:

- "Teachers have not noticed any difficulties with peers in class, report that [Student] is doing well, but continues to struggle with initiating and completing work independently."
- "Overall super positive interactions observed, keep up the inclusive environment and see if we can make sure he gets that other student's number without him getting embarrassed."

³ The pomodoro technique is a time management method of breaking down work into intervals separated by short breaks.

- "Follow up with teachers again about partners."
- "Verify that he has contact and that he is able to text them."
- "Watch for problem solving in the moment, is he self-advocating?"
- "Self-advocacy lesson was agreed to be productive."
- "Great job of para to support the students by modeling, sharing information in a candid and vulnerable way – student followed her lead. Continue this!"
- "Watch for work to slow down or stop, that could be a sign that he's getting overwhelmed. If this happens, break the work down into parts and make a checklist."

55. On November 2, 2020, the Parents requested an independent educational evaluation (IEE). The last District evaluation of the Student was dated April 2, 2019.

56. The November 4, 2020 progress report provided an update on the Student's progress towards his annual goals based on the October 2019 stay put IEP.

- Written Expression: While in distance learning, Student had access to a scribe and has been able to meet this goal with this accommodation over 50% of given opportunities.
- Social/Emotional (Self-advocacy): [Student] is currently self-advocating when in need of adult assistance / clarification in 92% of opportunities given.
- Social/Emotional (Problem solving): Student is currently able to consistently make use of a problem-solving tool with staff prompting and has shown progress in his ability to problem solve independently. This goal is no longer appropriate as the Student is consistently able to make use of problem-solving tools.
- Organization/Study Skills: Goal previously mastered.

57. On November 12, 2020, the Parents requested the following progress information from the District: "Any and all data that was considered in the progress reports; Raw data/data collection sheets; Work samples; [and], Any other related records."⁴

58. On November 13, 2020, the administrative law judge issued the decision in due process 2020-SE-0028. The issues alleged primarily focused on the January 27, 2020 prior written notice, the related January 21 and 23, 2020 IEP meetings, and the January 2020 IEP. In resolving the IEP issues, the administrative law judge addressed the annual goals:

The Student's IEP provides goals in each of the areas for which his evaluation recommends [specially designed instruction]. The goals are measurable and were developed considering the Student's present levels and progress on prior goals. The goals selected by the School District are modest, which is consistent with the limited progress he has demonstrated. They also recognize his language abilities significantly exceed his written production. The goals are aimed specifically at the basis, or foundation, of his difficulty. It would not appear appropriate to instruct him to the level of a finished essay when he struggles to write single sentences.

59. In its response, the District stated the hearing decision then provided an opportunity to review and develop a new IEP for the Student, but that it agreed to continue to implement the

⁴ It was not clear whether the Parent requested information under the Family Education Rights and Privacy Act (FERPA), a Public Records Request, or was generally requesting the information.

October 2019 IEP for the time being, despite the November 2020 hearing decision resolving the dispute regarding the implementation of the January 2020 IEP.

60. Also, on November 13, 2020, the District filed for a due process hearing (2020-SE-0181) in response to the Parents' request for an IEE.
61. On November 17, 2020, the District's public records officer replied that the District anticipated it would be able to provide the records the Parents requested on or before December 11, 2020.
62. On November 18, 2020, the Parents emailed the special education teacher about her records request. The Parents clarified the records being requested were those records used in the development of the progress reports. The Parents noted they have previously asked for the raw data.
63. According to the Parents, the Student began receiving weekly private occupational therapy services from November 24, 2020 to March 31, 2021.
64. The Parent provided OSPI with a screenshot of the Student's gradebooks for each course the Student was taking in November 2020, which showed the Student failing some courses and missing numerous assignments. For example, his grade in math was 55% or an "F." In honors English class, he was missing seven assignments out of fourteen and his current grade was 58% or an "F." But his grade card stated there was an opportunity to improve by submitting the missing assignments.
65. On November 30, 2020, the Parents filed a complaint with OSPI (SECC 20-145) regarding the Parents' request to change the Student's schedule to remove his resource room/"lab" class and removing paraeducator services from the Student's January 2020 IEP. No violations were found in the SECC decision.
66. Also, on November 30, 2020, the Parents emailed the special education teacher about the Student's grades: Chemistry – D; Band – A; Music – D; Geometry – F; English - F; and Spanish – B+. The Parents stated the Student had excellent grades for assignments he finished. The Parents also had the following concerns:
 - The lack of self-advocacy is impacting the Student's grades. The Student does not contact his teachers about assignments "without our substantial support."
 - Student will not be ready for college if he does not receive sufficient support.
 - His grade in the special education resource was an "A." Resource room is not an actual course.
 - Points in citizenship in band class are being taken away because he is not turning on his camera.
 - In music, the Student talked with the teacher about missed assignments and whether he will get credit for them.
 - The November 2020 progress report was inaccurate. Student has regressed "no matter what previous reports say." He could previously write a five-paragraph essay but has not finished one essay since seventh grade.
 - Student requires support in general education classes. Parents has not seen any paraeducator in any of his remote instruction classes.

- Student spends “extensive amounts of time in a breakout room alone.” He is unable to work independently.
- Parents need all raw data that the progress report was based on to “have an accurate picture of Student” and what general education teachers report.
- Student is not meeting grade-level expectations or meeting IEP goals “as would be expected of a student who is highly capable.
- Teachers are not providing accommodations; Student must request them, such as in Spanish where he must fill out a form to request extended time. Student is not independently self-advocating for himself.

67. On December 8, 2020, the Parents emailed the special education teacher to request an IEP meeting to discuss the need for ESY for “his writing and organizing as well as social/emotional/counseling and promptly amend [Student’s] IEP to meet his needs.” The Parents also added that they had not received “all records with data we have requested.” On December 9, 2020, the special education teacher replied there were no mutual dates that the IEP team and the IEP facilitator could meet in the remaining seven school days before winter break. The director proposed meeting on January 11 and 12, 2021.

68. On December 10, 2020, the Parents emailed the special education director, requesting an IEP meeting to discuss the supports the Student needed because the Parents stated no specially designed instruction or services were provided to the Student last spring. The Parents stated a twice-exceptional student failing two classes and missing over 40 assignments was a clear indication of a lack of support. The Student received excellent grades when he was able to “work on, finish, and turn in” assignments.

69. On December 16, 2020, the District public records officer emailed the Parent, providing her with a link to the records the Parent requested. The officer followed up with an email on December 19, 2020, to confirm the Parent received the previous email.

70. From December 21, 2020 to January 4, 2021, the District was on winter break.

71. On December 21, 2020, the Parent replied to the District public records officer, stating the records the District provided pertained to November 12, 2020 and before. The Parent now asked for records up to December 21, 2020. On December 22, 2020, the District public records officer replied she would consider the Parent’s new request for records from November 13, 2020 to December 22, 2020, and would comply by January 29, 2021. On December 23, 2020, the Parent replied, requesting the District “respond to my specific requests and each time to identify which records request (wording) you are responding to...” The Parent requested she receive the records by January 4, 2021, which was seven days before the scheduled IEP meeting. The Parent stated she needed time to review the records before the meeting. If that was not possible, the Parent requested the IEP be rescheduled.

72. On December 28, 2020, the Parent emailed the District public records officer and requested she receive “all data collected on [Student’s] progress on his IEP goals to review prior to the IEP meeting.” On the same day, the District public records officer replied and informed the

Parent the District was on winter break, but they would attempt to send the records as quickly as possible. The IEP was scheduled for January 11, 2021, but occurred on January 22, 2021.

73. On January 3, 2021, the Parents emailed the District public records officer, requesting a “new copy and handwritten notes transcribed/typed and in text searchable file... accommodations” to have access to the records. On January 9, 2021, the officer replied the District would accommodate the Parents by having the creator of the record available to the Parents for answering questions. On January 21, 2021, the Parents specifically requested the Student’s “Weekly Schoology Reports.”

74. Related to the records request, the Parents’ complaint also alleged the District failed to give the paraeducators’ credentials to the Parents.

75. On January 20, 2021, the Parents emailed the Student’s chemistry teacher about the Student struggling with a chemistry project. The Parents asked if the teacher would consider letting the Student complete the assignment past the deadline, although the October 2019 IEP did not call for extended time to complete assignments. On the same day, the chemistry teacher replied:

[Student] did submit the Periodic Trends Project and it has been added to Skyward. He did a nice job with it. Additionally, I've updated other grades as per his accommodations. I think he has done well in Chemistry. I know it's been a difficult transition but I've seen some really good work from Student this semester.

76. The Parents provided OSPI with a copy of the Student’s attendance sheet, dated January 3, 2021, which showed the following times the Student was tardy:

Date	Attendance	Period	Class
Fri Dec 18, 2020	UNEXCUSED-WEB	ABSENT 2 & 8	View Classes
Fri Dec 18, 2020	TARDY	ABSENT 10+ MIN 6	SPANISH 2 A
Thu Dec 17, 2020	TARDY-WEB	3	CHEMISTRY 1
Thu Dec 17, 2020	TARDY	ABSENT 10+ MIN 7	GEOMETRY A
Tue Dec 15, 2020	TARDY-WEB	3 & 5	View Classes
Tue Dec 15, 2020	TARDY	ABSENT 10+ MIN 7	GEOMETRY A
Mon Dec 14, 2020	UNEXCUSED-WEB	ABSENT 1-2	View Classes
Mon Dec 14, 2020	TARDY-WEB	3	CHEMISTRY 1
Fri Dec 11, 2020	UNEXCUSED-WEB	ABSENT 2	RESOURCE ET A
Fri Dec 11, 2020	TARDY-WEB	8	ISLANDER HOUR 2024
Thu Dec 10, 2020	TARDY	ABSENT 10+ MIN 7	GEOMETRY A
Wed Dec 9, 2020	TARDY	ABSENT 10+ MIN 2	RESOURCE ET A
Tue Dec 8, 2020	TARDY-WEB	3	CHEMISTRY 1
Mon Dec 7, 2020	TARDY-WEB	7	GEOMETRY A
Thu Dec 3, 2020	TARDY-WEB	3 & 5	View Classes
Thu Dec 3, 2020	TARDY	7	GEOMETRY A
Tue Dec 1, 2020	TARDY-WEB	3	CHEMISTRY 1
Mon Nov 30, 2020	UNEXCUSED-WEB	ABSENT 1	MUSIC TECHNOLOGY
Mon Nov 30, 2020	TARDY-WEB	2 & 6	View Classes
Tue Nov 24, 2020	TARDY	ABSENT 10+ MIN 3	CHEMISTRY 1
Tue Nov 24, 2020	UNEXCUSED-WEB	ABSENT 5	HONORS ENGLISH 9 A
Mon Nov 23, 2020	TARDY-WEB	2-3 & 7	View Classes
Mon Nov 23, 2020	TARDY	ABSENT 10+ MIN 6	SPANISH 2 A
Fri Nov 20, 2020	TARDY-WEB	2	RESOURCE ET A
Thu Nov 19, 2020	TARDY-WEB	3	CHEMISTRY 1
Wed Nov 18, 2020	TARDY-WEB	2 & 6	View Classes
Tue Nov 17, 2020	TARDY-WEB	3 & 5	View Classes
Mon Nov 16, 2020	TARDY-WEB	2-3	View Classes
Thu Nov 12, 2020	TARDY-WEB	3 & 5	View Classes
Tue Nov 10, 2020	TARDY-WEB	3	CHEMISTRY 1
Mon Nov 9, 2020	TARDY-WEB	2 & 6	View Classes
Fri Nov 6, 2020	UNEXCUSED-WEB	ABSENT 2	RESOURCE ET A
Thu Nov 5, 2020	TARDY-WEB	3	CHEMISTRY 1
Tue Nov 3, 2020	TARDY-WEB	3 & 5	View Classes
Mon Nov 2, 2020	TARDY-WEB	2	RESOURCE ET A
Fri Oct 30, 2020	TARDY-WEB	2	RESOURCE ET A
Thu Oct 29, 2020	TARDY-WEB	3 & 5	View Classes
Wed Oct 28, 2020	TARDY-WEB	6 & 8	View Classes

Tue Oct 27, 2020 TARDY-WEB 3 & 5 View Classes
Mon Oct 26, 2020 TARDY-WEB 2-3 View Classes
Fri Oct 23, 2020 TARDY-WEB 2 RESOURCE ET A
Thu Oct 22, 2020 TARDY-WEB 3 CHEMISTRY 1
Thu Oct 22, 2020 UNEXCUSED-WEB ABSENT 7 GEOMETRY A
Thu Oct 15, 2020 TARDY-WEB 3 CHEMISTRY 1
Mon Oct 12, 2020 EXCUSED ABSENT (INJURY/MEDICAL/DENTA) 2-7 View Classes
Thu Oct 8, 2020 TARDY-WEB 3 CHEMISTRY 1

- 77. On January 21, 2021, the Parents filed this complaint with OSPI.
- 78. Also, on January 21, 2021, the Parents emailed the Student’s counselor, stating they requested therapy notes the previous week and had not received them. The Parents told the counselor the District did provide a log of the previous sessions according to the email.
- 79. Also, on January 21, 2021, the Parents emailed the District special education director about the January 22, 2021 IEP meeting. The Parents requested the attendance of a person with expertise of highly capable students and someone who had “practical knowledge of push in services” at the IEP meeting.
- 80. On January 22, 2021, the team met to review the Student’s IEP.
- 81. The January 22, 2021 progress report provided an update on the Student’s progress towards his annual goals based on the October 2019 stay put IEP.
 - Written Expression: While in distance learning, Student had access to a scribe and has been able to meet this goal with this accommodation over 50% of given opportunities.
 - Social/Emotional (Self-advocacy): Goal was previously mastered.
 - Social/Emotional (Problem solving): [Student] is currently able to consistently make use of a problem solving tool with staff prompting and has shown progress in his ability to problem solve independently. This goal is no longer appropriate as [Student] is consistently able to make use of problem-solving tools.
 - Organization/Study Skills: Goal previously mastered.
- 82. According to the Parent, a private tutor worked with the Student on the following dates for a total of 23.5 hours:

<ul style="list-style-type: none"> • January 11, 2021 – 3 hours • January 12, 2021 – 2.5 hours • January 16, 2021 – 2.5 hours • January 17, 2021 – 1.5 hours • January 18, 2021 – 3 hours 	<ul style="list-style-type: none"> • January 19, 2021 – 2.5 hours • January 20th, 2021 – 2.5 hours • January 21, 2021 – 2.5 hours • February 1, 2021 – 1.5 hours • February 7, 2021 – 1 hour
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- 83. On March 31, April 7, and April 16, 2021, OSPI conducted interviews with the Student’s 2019-2020 and 2020-2021 special education teachers, speech and language therapist, assistant principal, one of the paraeducators, high school special education department chairperson, and the special education director. The information provided in the interviews was as follows:
 - Student is very intelligent with an exceptional vocabulary. Initiating and completing writing projects has been difficult. Student has difficulty initiating tasks on his own and waits for adult direction while at the same time resisting excessive prompting, which might explain why the Parents have express considerable difficulty in working with the Student and why he has a self-

- advocacy goal. The special education teachers stated the Student needs to be more independent and less dependent on adult direction and adult prompting.
- The Student's synchronous classes were scheduled in the morning including the special education class in the resource room. The Student received specially designed instruction in the morning while in the resource room and during the asynchronous instruction in the afternoon also known as "check-ins." All students were expected to participate including students with disabilities. The paraeducators provided specially designed instruction during check-in times individually or as a group. During resource room, sometimes the Student was placed in a breakout room with others or by himself to work on tasks independently or as a group. In the general education classroom, the Student would also be provided specially designed instruction and assistance in the break-out room and always with two or three general education students.
 - The Student rarely attended the asynchronous instruction in the afternoon that included specially designed instruction. The District followed up with the attendance problem and contacted the Parents. The Parents did not respond to requests that the Student attend the afternoon asynchronous instruction.
 - The paraeducators attended two general education classes a day depending on the Student's need. The paraeducators were always present and rarely had their camera off. The paraeducators contacted the Student before classes started by sending invites, but the Student was consistently ten to twenty minutes late in attending. Sometimes it took numerous contacts with the Student to get him to attend. But he did attend regularly for the morning synchronous instruction.
 - The Paraeducators provided specially designed instruction for organization skills by going over the "Week at a Glance" that previewed the upcoming week. They also helped the Student complete his planner, clarified his assignments, and facilitating him meeting with teachers, all in an effort to lower his anxiety and help him to advocate for himself. The paraeducators provided specially designed instruction in written expression such as helping the Student to scaffold writing assignments and helping him to write things down.
 - The special education teachers stated the Student does not demonstrate a problem with mechanics of writings. The Student has shown some great writing and he is capable of writing well, but the Student is a perfectionist. But he wants to work out everything in his head, first, and then put it to paper. This causes delays in initiating writing projects, he loses track of assignments, and then he does not complete his assignments. He gets behind which raises his anxiety and leads to avoiding the work even more. The special education teachers attempted to provide a planner to track assignments that worked for Student, but the Student used a planner developed by the private BCBA and Student. The special education teachers and paraeducators provided writing supports such a graphic organizer to help break down writing tasks, but the Student was still resistant to using a writing process to put his thoughts on paper and overcoming his perfectionistic tendencies.
 - Parents stated they do not understand how to prompt the Student to complete assignments. The special education teachers offered the Parents support through emails.
 - The occupational therapist and speech and language therapist provided social/emotional and organizational help to the Student. It was not traditional occupational therapy or speech therapy.
 - Paraeducator assistance was available for the Student to access both in general education and special education classes. The paraeducator would check on assignments and remind the Student he had access to a scribe. But Student does not like working with paraeducators

because they do not understand his thinking process. The paraeducators were careful not to single the Student out because the Student was sensitive to receiving assistance.

- Prompting would sometimes cause a negative reaction.
- Accommodations were regularly offered but often refused them if they are inconsistent with the way he thinks. For example, the paraeducator would go over the list of accommodations before a test and the Student would let the paraeducator know which accommodations he wanted and which he refused to accept.
- The Student received specially designed instruction in the resource room "lab" classroom from the special education teacher in each area. The paraeducator observed how the instruction was being provided to the Student. The paraeducators attended the general education classroom. The paraeducator regularly pulled the Student into the zoom break out room to provide the specially designed instruction in all areas. For instance, if the Student was working on a writing assignment, the paraeducator provided specially designed instruction in writing and gave the Student opportunities to work on his writing. The paraeducator concurrently provided specially designed instruction in organization.
- Self-advocacy has improved. Has contacted his teachers on his own about assignments and stayed after class to consult with the teacher.
- Student regularly attended AM general education and special education classes but, he would not regularly attend check-ins for individual help. Outside appointments may have been interfering with his attendance in the afternoon.
- Speech and language therapist: Held speech group and social group (drop-in), and intermittently sat in on general education classes. Provided help with social skills and organization. Student did not have speech or language issues. The speech and language therapist provided instruction on how to initiate and carry on a discussion with person the Student just met.
- The special education teachers explained the purpose of each accommodation using examples of how they were implemented. They stated some accommodations like frequent checks, prime for upcoming projects, and graphic organizers were consistently used because the Student needed to time to process while other accommodations were available on an as-needed basis such as alternative setting for testing and modifying the length of assignments. Although all accommodations were available to the Student, the Student did not want some accommodations because the Student did not believe they really helped him. The special education teachers did not insist the Student use the accommodations because they were aware that he was sensitive to being perceived as different from his classmates when he used them. This was part of the self-advocacy goal for the Student to request the assistance that he needed.
- The special education teachers and District special education director expressed concern that the annual goals were outdated for the Student. The Student had mastered the self-advocacy goal, for example, but could not revise the goal because of the October 2019 stay put IEP.
- The math teacher offered to not require homework assignments if the Student could demonstrate he was able to do the work. Student and Parents did not agree to either bringing him to school to take the test or have a familiar adult observe by remote taking the test.
- When asked if the Student's problem with writing was a problem with the mechanics of writing, the Student's perfectionistic tendency, or both, the District special education director acknowledged it was not clear and that was why the District requested to reevaluate the Student.
- Parents and Student were offered in-person, hybrid, or remote for fall 2020. Parents and Student to continue remote instruction. The Student's IEP team did not address the need for

in-person services to receive a FAPE but reported that remote instruction was less than ideal and impeded his progress. With in-person instruction, the teachers could more effectively ensure the Student was engaged in instruction.

84. When asked by OSPI what IEP was being implemented between the hearing decision on November 13, 2020 and the date of the complaint on January 21, 2021, the District stated the October 2019 stay-put IEP continued to be implemented, despite the hearing decision that the January 2020 IEP provided the Student with a FAPE.

CONCLUSIONS

Issue One: IEP Implementation – The Parents alleged the District did not implement the Student’s independent individualized program (IEP) as written regarding specially designed instruction, speech and language services not being provided in the general education setting, accommodations, paraeducator services, and progress monitoring.⁵

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning in spring 2020. However, districts still had an obligation to provide students with special education services during the school facility closures and districts were expected to implement the IEP to the greatest extent possible. On March 23, 2020, OSPI communicated the expectation that districts would begin providing educational services to all students by March 30, 2020 (“continuous learning”); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a free appropriate public education (FAPE), which consists generally of specially designed instruction and related services.

In spring 2020 and continuing into the 2020-2021 school year, because services were provided remotely, services might look different than if provided in person. If certain services were impossible to provide because of remote instruction, a district needs to consider recovery/compensatory services to address the failure to provide a FAPE to address regression in the goals due to lack of services. Ultimately, in fall 2020, districts were expected to implement the special education services in conformity with the IEP. A district is in violation of the IDEA when there is a material failure to implement the IEP.

Specially Designed Instruction & Paraeducator Services: The Parents’ complaint stated the Student spent “extensive amount of time alone in a Breakout Room” during resource room instruction and did not receive his specially designed instruction from the paraeducators. The Parents’ stated:

Paraeducator services not provided in either setting, not in special education setting or general education setting since January 27, 2020 to present. There is a paraeducator present in Student’s special education class but she does not interact with Student other than greeting. Most of the time the paraeducator is in an online Zoom class with her camera

⁵ This complaint includes a separate issue on progress monitoring and reporting. Thus, this issue will be addressed in the subsequent conclusion and not addressed in issue 1 to avoid duplicative information.

off. Paraeducator services are not provided in general education setting at all per family observation and student report.

March to June 2020

Between March and June 2020, the Student's October 2019 IEP was implemented (the October 2019 IEP was the Student's "stay put" IEP—the result of a due process hearing filed by the Parents in January 2020). The IEP provided for 12 minutes a day of specially designed instruction in each of the following areas, in the special education setting: organization/study skills, social/emotional behavior, and written expression. The IEP also included specially designed instruction in the general education class provided by paraeducators. The IEP called for the paraeducators to provide 30 minutes a day of organization/study skills, 30 minutes a day of written expression, and 60 minutes a day of social/emotional instruction.⁶

The Parents expressed concern throughout spring 2020 about the Student's difficulty with written work, especially written essays and completing his assignments for his courses. According to multiple sources, including the Student's teachers and private providers, the Student could write very well when given enough time. However, teachers and providers shared that the Student was a perfectionist and wanted to work out everything in his head before writing anything, which led to challenges beginning writing assignments that in turn lead to the Student falling behind and becoming overwhelmed. As the demands grew in writing, including longer writing assignments, the Student struggled with this strategy. The Student slowly completed assignments while other assignments accumulated. The Student resisted learning strategies that might have helped with his writing. The Student also resisted prompts that were not consistent with his learning strategy. The Parents acknowledged the difficulty with prompting the Student.

Beginning March 2020 when school facilities closed, the District implemented the Student's "continuity of learning plan" that provided for synchronous instruction for all classes, including the special education resource or "lab" class. In addition, students were expected to attend the asynchronous instruction (or check-ins) in the afternoon. Students with disabilities were expected to attend to receive additional specially designed instruction according to their IEPs and other assistance from the general education teachers. Based on the document, the paraeducators consistently attended two of the Student's general education classes each day. The paraeducators provided both accommodations and specially designed instruction in the areas of written expression, organizational/study skills, and social/emotional behavior to the Student. The Student's special education teacher stated the Student attended all lab (special education) classes and he was making progress on accessing schoology. Documentation indicated that while in the resource room, the Student was sometimes placed in a breakout room to work on an assignment with a small group or individually. The Student's special education teacher reported that in addition to academic support, the teacher was working with the Student to become more independent and advocate for himself because the Student would not initiate tasks unless an

⁶ The District clarified that the special education services were provided concurrently with each other in the general education classroom. Thus, the Student could have received specially designed instruction in written expression, study/organizational skills, and social/emotional behavior during the same block of time.

adult was present. This breakout time was also part of the specially designed instruction the Student was receiving to become more independent and learn to self-advocate. The documentation also showed the teacher provided instruction in written expression and organization/skills during resource room time and check-in time. Although the Student may not have received all the IEP minutes in his IEP that he would have received in person at school prior to the COVID-19 pandemic, the documentation supports that the Student was provided specially designed instruction during spring 2020 and there was no material failure to implement the specially designed instruction. OSPI finds no violation.

September to June 2020

According to the District, the Parents and Student were offered three options for instruction in fall 2020: 1) continued remote instruction; 2) in-person; or, 3) a hybrid model between remote and in-person. The Parents and Student chose to continue receiving remote instruction. Although the Student's IEP team did not address the need for the Student to receive in-person instruction to receive a free appropriate public education (FAPE), District staff reported that remote instruction was difficult for the Student given the circumstances and that he would likely do better with in-person instruction. The Student's October 2019 "stay-put" IEP continued to be in place during the 2020-2021 school year, which included 12 minutes a day of specially designed instruction in organization/study skills, social/emotional behavior, and written expression (in the special education setting); and, 30 minutes a day of organization/study skills, 30 minutes a day of written expression, and 60 minutes a day of social/emotional instruction delivered by a paraeducator in the general education setting.

Despite the Parents' allegations that the Student received no services from a paraeducator and that the paraeducators were in Zoom class, but with their cameras off, the documentation indicates the paraeducators regularly attended two of general education classes on the Student's schedule. The paraeducator interviewed by OSPI stated the paraeducators were always present in the two general education classes and were rarely off-camera. They provided the Student specially designed instruction in the written expression, organizational/study skills, and social/emotional behavior. They tried to keep the Student organized and on-task and provided instruction in such things as scaffolding and breaking down written assignments, keeping the Student organized and on-task, and self-advocating for himself. Sometimes the general education teachers assigned students to breakout rooms to work on assignments. When the Student was assigned to a breakout room in general education, the paraeducator always accompanied the Student to assist the Student and provide specially designed instruction. The paraeducator met with the Student's special education teacher to discuss strategies, instruction, and supports. While the Student reported not liking working with the paraeducator because she did not understand how he thought, that does not necessarily indicate the paraeducator was failing to implement the IEP. In notes from the paraeducator and special education teacher's meetings, they discussed successes in instruction, including productive self-advocacy lessons, effective strategies to use when the Student is overwhelmed (e.g., "break the work down into parts and make a checklist, and this example: "Great job of para to support the students by modeling, sharing information in a candid and vulnerable way – [S]tudent followed her lead. Continue this!")

The Student regularly attended the morning synchronous instruction in the general education classes, but he rarely attended the afternoon asynchronous learning, which was required in the afternoon. OSPI notes, the challenges with attendance and attending afternoon asynchronous instruction, may account for some of the Parents' allegations that the Student was not provided paraeducator support, the Student's slow progress according to the Parents, and his difficulty with completing assignments, as the paraeducator was available for support and instruction during these asynchronous periods. The documentation showed the Student regularly attended the special education resource room and general education classes in the mornings, but the District expressed concern about the Student not attending in the afternoon and said they attempted to contact the Parents. According to the District, the Parents did not respond. There is some indication that the Student was attending appointments in the afternoon, which caused him to miss instruction. If this pattern continues, OSPI encourages the Student's IEP team to discuss barriers to attendance.

The documentation showed the Student needs specially designed instruction to learn writing strategies, organize and complete his planner, and self-advocate for himself, all of which were challenges for the Student. In writing, there are strategies to help the Student better put his thoughts to paper, which the District has employed, but were met with some resistance from the Student. His preferred strategy was to first work everything out in his head. The District has continued to work with the Student to find strategies for writing that the Student will buy into. The planner was another example of individualizing the instruction based on the Student's unique needs. It took going through different versions of a planner and the help of the private board-certified behavior analyst to find a planner that the Student would accept. In this case, finding the appropriate specially designed instruction that the Student would engage in continued to take time. Still, while perhaps progress has been slow, the Student's progress reporting indicates the Student has mastered some of his goals and made progress on others from his October 2019 IEP. Progress, even slow progress, indicates that specially designed instruction has been provided during the period of time investigated in this complaint.

The Parents chose to enroll the Student in an honors English course because of his intellectual potential despite the Student's considerable difficulties with writing and low engagement. Because of the slow progress towards meeting the Student's potential, the Parents appear to conclude that the Student was not receiving the appropriate specially designed instruction according to his IEP. The Parents also focused on his grades and missed assignments as indicators of his progress. The more likely reason the Student had difficulties in keeping up with assignments and was reluctant to engage was placing him in a honors English class that demanded a high level of writing that overwhelmed him, even with the support of specially designed instruction and accommodations, rather than placing him in English class that was more at his level of writing where he could experience some success and be less anxious. While the Student may eventually be successful in an honors level class, it is also possible that FAPE could be provided, and the Student could experience success in the 9th grade English class. The November 2020 due process hearing decision alluded to this: "...It would not appear appropriate to instruct him to the level of a finished essay when he struggles to write single sentences." Even when the honors English teacher said the class was too difficult for the Student, the Parents chose to keep the Student in

honors English. The Parents stated the Student would be doing fine if he had received appropriate instruction. As the Student fell behind in his writing assignments, other missed assignments accumulated because of the Student's task avoidance, the Parents and District were rightly concerned about the impact on the Student's anxiety and general mental health status; however, again, grades and missing assignments do not necessarily mean the IEP was not being implemented.

The special education resource room model of instruction is designed for the Student to receive minute-for-minute instruction. The push-in general education model is not necessarily minute-for-minute instruction; instruction is provided as needed. Even under ideal circumstances and in-person services, coordination and communication between the Student, special education teachers, general education teachers, and paraeducators for push-in services is challenging. Here, those circumstances included, among others, the tenuous relationship between the Student and paraeducators, the Parents' difficulty with engaging the Student, and the Student's lack of attendance in the afternoon instruction, which rendered push-in services difficult. Even though the documentation showed it was not perfectly executed, the Student still made progress towards his annual goals. The documentation in this complaint supports that the IEP was materially implemented, and any deviations from the IEP were minor.

Based on the documentation, there was insufficient evidence to find a violation that the District failed to provide specially designed instruction to the Student. OSPI finds no violation.

Speech and Language Therapy in the General Education Classroom: The Parents' complaint stated the Student's speech and language therapy was not provided until October 2020 and was not provided in the general education classroom. The October 2019 IEP provided for speech and language therapy once a week for 30 minutes in a general education setting. In the January 2020 IEP meeting, the District proposed discontinuing speech and language therapy because the previous evaluation did not indicate the need for speech and language therapy. The Parents filed for a due process hearing and although speech and language therapy was not an issue in the hearing, because of the October 2019 stay-put IEP, the District continued to implement the speech and language therapy.

The District stated the speech and language services focused on socializing with other students, organization, and self-advocacy. As part of the therapy during the 2019-2020 school year, the speech and language therapist had a socialization group that included the Student and other students, both students with disabilities and without disabilities. Most of the students who attended the socialization group were students with disabilities, which the District had no control over since participation was voluntary. In addition, the speech and language therapist provided remote assistance to the Student at times during general and special education instruction and check-ins. During the 2020-2021 school year, the speech and language therapist provided documentation that services were consistently provided, although the documentation did not indicate where the services took place. Thus, although it is likely some speech therapy was provided in a special education setting at times, given that services were provided, there is no material failure to implement the IEP. No violation is found.

Accommodations: The Parents' complaint alleged that thirteen of the twenty accommodations listed in the Student's October 2019 IEP were not implemented during spring 2020 and fall 2020. The Parents also included instances of the District not implementing the accommodations that occurred after January 21, 2021, the date of the complaint. These specific instances will not be addressed in this complaint, as they were not yet potential violations when the complaint was opened. The missing accommodations identified by the Parents included a visual checklist, access to speech-to-text software, alternative setting for testing, regular check-ins, and graphic organizers, among others. The Parents' allegation was primarily based on the Parents' observation, Student reports, and to a lesser extent, the observations of the Parents' private providers. The documentation from 2020-2021 school year indicated the Parents and Student often requested extended time on assignments. But the extended time was not an accommodation on the Student's October 2019 stay-put IEP and thus, not an implementation issue.

The District stated the Student's teachers were informed of the Student's accommodations and they were implemented accordingly. The Student's special education teachers during the 2019-2020 and 2020-2021 school years stated in interviews that the accommodations were implemented as necessary, were able to explain the purpose of each accommodation, and how each accommodation was used with the Student and when. The teachers stated the accommodations were available, but sometimes the Student would refuse them, such as text-to-speech. The teachers had to account for the Student being very sensitive to receiving supports that others in his general education classroom were not also receiving. The District kept no documentation of when accommodations were provided to the Student; however, this does not necessarily indicate accommodations were not provided as there is no specific requirement to document every time an accommodation is used. The Parents' private providers, while stating certain accommodations were not provided during the time they observed, also stated that other accommodations were provided.

The conflicting accounts about the implementation of the accommodations from the Parents and teachers may be attributed to disagreements about when the accommodations would be available to the Student and permitting the Student to have choice about his accommodations, keeping in mind that the Student did not respond well when prompted either by the teachers or Parents. Based on the documentation provided, it appears the IEP intentionally included a menu of accommodations, as there were certain accommodations the Student felt comfortable with and consistently used and others he resisted. Thus, for example, the IEP had multiple accommodations related to writing, with the idea that the Student would use the needed accommodation *but not* that each and every accommodation would be implemented all the time. For example, related to timing of accommodations, the District waited until the end of the trimester to reduce the number of missed assignments. The Parents stated the 25% reduction should have occurred before the trimester ended, but not that the reduction did not occur. Regarding the accommodation to break up material into manageable parts, both the Parents and Student reported it was not provided. The special education teachers reported they broke down the writing tasks, for example, into manageable parts. But, the Student resisted working on writing tasks in parts because he wanted to first work it all out in his head. The Parents can certainly ask for further clarification about when accommodations are to be provided, remembering that needing clarification is not tantamount

to non-implementation. OSPI also recommends the Student's IEP team discuss at a future IEP meeting whether there are any accommodations that need to be clarified. Thus, while there is evidence that some accommodations were not consistently implemented, the District implemented other accommodations consistently and the documentation supports that the Student was provided accommodations to meet his needs from the menu of accommodations available on his IEP. Based on the documentation, there was insufficient documentation to demonstrate a *material failure* to provide the Student with the October 2019 IEP accommodations. OSPI finds no violation.

Issue Two: Extended School Year – The Parents alleged the District failed to adequately consider the Student's need for extended school year (ESY) services, including during summer and winter breaks. The Parents alleged the following:

- "ESY for summer 2020 break and winter 2020 break were not discussed as part of January 21 and 23, 2020 IEP meetings."
- "[District] didn't consider ESY for this current IEP for Winter break - 2020 as well as failed to appropriately discuss and consider the need for ESY services for Summer 2020. The District delayed convening an IEP meeting until after the winter break."
- "We requested ESY again prior 6/16/2020 IEP meeting. There was lack of discussion of appropriateness of ESY during 6/16/2020 IEP meeting among the IEP team. The District used 'irreparable harm' standard for determination of need for ESY services for our son to receive FAPE."
- "The District didn't inform us of the criteria for determining the need for ESY that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based upon the professional judgment of the team and consideration of factors including the nature and severity of the student's disability, rate of progress, and emerging skills, with evidence to support the need. In fact, the District administrator denied that 'emerging skills' need to be considered when making a decision about ESY services."
- "Mental health impact and history of suicidal ideation on the student was not considered."

School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP.

The Parents alleged the District failed to address ESY services for winter 2020 (2020-2021 school year) and summer 2020 (2019-2020 school year) at the January 21 and 23, 2020 IEP meetings. According to the January 2020 prior written notice regarding the IEP meeting, ESY was not discussed. The January 2020 IEP team was not necessarily obligated to discuss ESY for winter 2020 break or summer 2020 at the time, as long as the Parents' request was addressed subsequently. Often, ESY decisions are made in the spring or closer to the break to better assess the possibility of regression during the school year. In this case, the Student's IEP team subsequently met in June

2020 to determine ESY services for summer 2020.⁷ The IEP team determined there was not sufficient data to meet the regression/recoupment criteria. The District made the decision based on pre-COVID data, which it stated was more accurate than observations made during school closure, given that there were other factors impacting the Student during the COVID-19 school facility closures. The Parents disputed the team's criteria for making the ESY decision. The Parents pointed out the counselor used "irreparable harm" as the criteria and the existence of an emerging skill(s) was not considered. The counselor's use of "irreparable harm" was incorrect as a standard, but it is the IEP team that makes the decision, not the counselor, and the team used the proper regression/recoupment standard. The Parents also wanted the IEP team to consider an emerging skill, such as self-advocacy. The special education director did not dismiss emerging skill as a factor in the determination, but the team still determined the Student did not meet regression/recoupment standard and that ESY was not necessary to ensure FAPE.

The Parents also claimed the District did not inform them of ESY procedures. However, the documentation indicates the Parents were sufficiently informed to engage in the ESY discussion in June 2020. The Parents also claimed the ESY decision did not take into account the Student's mental health and suicidal ideation. These concerns certainly should have been taken seriously, but there was no documentation from mental health professionals that the Student's mental health was at risk because he would not receive ESY counseling services. While the Parents may disagree with the overall decision on ESY, based on the documentation that the IEP team followed procedures to consider ESY and the fact that the decision was based on Student-specific information, no violation is found related to ESY for summer 2020.

Regarding winter 2020, on December 8, 2020, the Parents requested a meeting to propose ESY services specifically during the 2020 winter break. The District responded there was insufficient time to schedule a facilitated IEP meeting before winter break, which was a reasonable response given the short window of opportunity to meet. The District should have given the Parents the option to meet without the facilitator at the meeting. The Parents might have declined to meet without the facilitator, but the District would have fulfilled their obligation to try to meet by offering the Parents the opportunity to address ESY during the winter break. A violation is found regarding the request for an IEP meeting in December 2020 to address ESY for the Student. The District will be required to provide written guidance to the 2019-2020 and 2020-2021 IEP teams regarding responding to IEP meeting requests. Given the Student was not eligible for ESY according to the June 2020 meeting, and the October 2019 stay-put IEP provided no ESY services, there was insufficient documentation that the Student required ESY during the winter break in 2020; thus, no Student specific corrective actions are necessary.

Issue Three: Progress Monitoring and Reporting – The Parents' complaint alleged the District failed to follow IEP procedures related to progress reporting in that: 1) the progress reports did not provide sufficient information; 2) progress reporting to the Parents quarterly was not

⁷ It should be noted by addressing ESY at the time, the District continued its obligation to offer a free appropriate public education (FAPE) to the Student rather than simply relying on the October 2019 stay-put IEP, which provided no ESY to the Student. See *Letter to Watson*, OSEP, April 12, 2007.

sufficient; 3) the progress reports were not reflective of the Student's lack of progress; and, 4) the District would not provide the Parents with the raw data that the progress reports were based on.

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.

Here, the Student's October 2019 stay-put IEP were being implemented. The IEP goals stated that progress reports would be provided at the trimester and progress would be measured by the following:

- Written Expression: "...data collection on goal performance probed at time of progress reporting and/or previously observed performance."
- Self-Advocacy: "teacher observation and data collection."
- Problem-Solving: "...data collection on goal performance probed at time of progress reporting and/or previously observed performance."
- Organizational/Study Skills: "...teacher observation and daily data collection across five consecutive data collection days."

The Parents stated progress reports should have been provided more frequently. During the relevant time period in this complaint, the District implemented the October 2019 stay-put IEP that stated progress reports were provided each trimester. The proposed January 2020 IEP also provided reports each trimester. The January 2020 prior written notice indicated that there was no disagreement regarding the frequency of the progress reports in the meeting. The Parents could also have addressed the frequency of the progress reports in the due process hearing regarding the adequacy of the proposed goals, but the Parents did not raise the issue. The November 2020 due process decision found the January 2020 IEP goals, including when the progress reports would be provided, to be appropriate. Thus, given that the IEP stated progress reports were to be provided at the trimester, there is no violation that the District did not provide the reports more frequently. If the Parents continues to have a concern about the frequency of progress reporting, OSPI encourages the IEP team to address this at a future IEP meeting.

Regarding the Parents' complaint that the progress reports did not provide adequate information, the progress report for each goal identified the baseline performance, along with the Student's progress relative to the baseline. In this case, the Parents also disagreed with the data because it was not consistent with what the Parents observed and the Student's grades. But the annual IEPs' goals did not address the Student's grades or missing assignments; thus, the fact that the progress reporting did not address the number of missing assignments or the Student's class grades does not indicate the progress reporting on the IEP goals was insufficient. The documentation showed the Student made progress, albeit slow progress, and the progress reports adequately captured this.

The Parents also claimed it was a violation by the District when the District failed to provide the "raw" performance data as part of the progress reports according to the Parents request for the raw data. The Parents disagreed with the progress reports and wanted to examine the underlying

performance data. Although this might be a reasonable request given the Parents' disagreement with the progress reports, the District was not obligated to provide the Parents with their request. Parents have a right to review student records but not documents that are not educational records. Documents such as raw data are not considered educational records under 34 CFR §99.3 of the Family Education Rights and Privacy Act. Based on the request was documents that were not considered educational records, no violation is found.

During spring 2020, the District provided the Parents with progress reports. But the June 2020 progress report for written expression stated progress was not measured because of the COVID pandemic. OSPI was clear that even during the spring 2020 COVID pandemic, school districts were required to monitor progress towards the goals, especially if they were providing special education services as the District was here. Thus, a violation is found related to the June 2020 progress report only. The District will be required to provide the Student's 2019-2020 and 2020-2021 IEP team with written guidance regarding progress monitoring. Since the Student has mastered some of his goals and made progress on others and the District provided sufficient progress reporting in all instances except the June 2020 report, no Student specific corrective actions are required.

Issue Four: Review and Revise the IEP – The Parents' complaint alleged the District failed to address the Student's lack of progress in completing assignments.

A district is required to convene the IEP team to address any unexpected lack of progress towards the goals and in the general education curriculum. During a due process hearing with stay-put invoked, a district must still ensure FAPE is made available to a student. A district continues to be obligated to review and revise an IEP as appropriate, including the present levels and the annual goals while implementing the stay-put IEP, unless the district and parent agree otherwise.

The Student's October 2019 stay-put IEP identified annual goals in the areas of written expression, organization/study skills, problem-solving, and self-advocacy. The IEP team developed a new IEP in January 2020 that addressed some of the Parent's concerns about the number of missing assignments beginning with updating the present levels, annuals goals, and services, accordingly. Because the Parents filed for a due process hearing and stay-put was invoked, the District could not implement the January 2020 IEP. As early as March 2020, the Student had made sufficient progress on goals and he mastered his October 2019 self-advocacy and organization/study skills goals. Despite the lapse in progress monitoring in June 2020 described above, the Student made sufficient progress to meet his October 2019 written expression goal by November 2020. If the stay-put IEP was not in place, OSPI would expect the District to have updated the Student's IEP in early fall 2020.

Although the Student mastered some of his goals and made progress in others, the Student continued to miss assignments in part due to his challenges with initiating writing assignments. The documentation showed that once the Student got behind in his writing assignments, other assignments were missed, and then assignments would accumulate, putting the Student further behind. The Student's IEP accommodation for a 25% reduction of assignments helped reduce the number of missed assignments but did not address the underlying problem. The District

acknowledged the conflicting information about the Student's writing: under unlimited conditions, the Student could produce excellent written work at times, but with timelines, the Student had great difficulty completing writing assignments. It was unclear whether there was a problem with the writing process (i.e., the Student's academic understanding related to writing), a behavioral or anxiety issue that the Student avoided the tasks, or both.

The Student did make slow progress on his writing goal—which in the October 2019 IEP related to sentence writing—and thus, it was not necessarily a matter of the amount of services the Student received. The documentation supports that the Student likely needed different or perhaps increased support to address this challenge. The Student continued to avoid writing while receiving general education and special education services at school and while receiving considerable private support, such as occupational therapy, speech and language therapy, applied behavioral analysis therapy, and tutoring.⁸ The Parents acknowledged the Student was receiving all this support and still had difficulty with completing his assignments. According to the District, the District pursued a reevaluation in 2019, but received no response from the Parents with respect to the consent form the District sent for the reevaluation.

The Parents also expressed their frustration to the District about their inability to engage the Student in his remote learning by prompting him to stay on task and complete assignments. The Parents stated their prompting caused a negative effect on the Student. It was unclear if this was the reason for the Student not regularly attending afternoon instruction. The circumstances now warrant consideration of a new evaluation to address the Student's needs, along with the Parents' potential need for parent training, to work more effectively with the Student during remote instruction. This issue is now being addressed in the current due process hearing. Because the District proposed to conduct a reevaluation, which the Parents declined, and proposed to revise the October 2019 IEP, no violation is found.⁹

Issue Five: Request for Records – The Parents alleged the District failed to respond to the Parents' request for Student educational records. The Parents stated the records that were provided were incomplete, not within the 45-day timeline, and not provided before the IEP meeting. The Parents also alleged the records provided by the District did not disclose the paraeducator credentials, but it was the "Parents' Right to Know" the credentials.

A district must allow a parent to review and inspect any educational record maintained by the school district. A district must promptly comply in no more than 45 calendar days from the request or before any IEP meeting.

⁸ OSPI reminds the District that private services needed to be taken into consideration in assessing the rate and source of the Student's progress. These determinations can be difficult to make, but are relevant as part of the Student's circumstances. It is also important for the IEP team to discuss the private services to see whether there are specific strategies that could be adopted or to discuss consistent use of strategies and supports across services.

⁹ The current due process hearing filed by the District (2020-SE-0181) is addressing the reevaluation issue and the Parent's request for independent educational evaluation.

The District's response stated:

The District denies that it has failed to comply with the IDEA's applicable requirements for allowing Parents to access Student's education records during the relevant time period...Here, in November and December 2020, Parents sought through the District's Public Record Officer copies of Student's records, both education records of Student and otherwise, as well as information on Student potentially maintained by the District. The District appropriately responded to Parents' requests, including making multiple attempts to clarify and produce the particular records being sought by Parents, including over the District's winter break.

Between November 12, 2020 and January 3, 2021, the Parents and the District public records officer exchanged emails about the Parents' request for student records. The request for records was about the November 2020 progress report; the request included: 1) any and all data that was considered; 2) raw data/data collection sheets; 3) work samples; and, 4) any other related records. Schoology reports were not specifically mentioned. On December 16 and 19, 2020, the officer sent the Parents a link to the requested records as of the date of the original request, November 12, 2020. On December 21, 2020, the Parents made a new request for records pertaining to the period from November 13 to December 22, 2020. The officer responded, stating the District would comply by January 29, 2021. The Parents requested the records before the IEP meeting, initially scheduled for January 11, 2021. The Parent stated that if she could not receive the records before the IEP meeting, she would request the IEP be rescheduled. On December 28, 2020, the Parents requested "all data collected on [Student's] progress on his IEP goals to review prior to the IEP meeting." (OSPI notes the request for raw data is addressed above as part of the progress reporting conclusion.) The public records officer replied, stating that the requested records would be sent as quickly as possible. By January 3, 2021, the Parents received the records and requested a "new copy and handwritten notes transcribed/typed and in text searchable file... accommodations" for the Parents to have access to the records. On January 9, 2021, the officer replied that the Parent would be accommodated by having the creator of the record available to answer questions. On January 21, 2021, the Parents specifically requested the Student's weekly schoology reports. Also, on January 21, 2021, the Parents filed this complaint.

According to the documentation, the District timely responded to each of the Parents' requests during the complaint investigation period—either within 45 days or prior to an IEP meeting—when it provided records on December 16 and 19, 2020 (responding to the November 12, 2020 request) and on January 3, 2021 (responding to the December 21, 2020 request). According to the District, the January 11, 2021 IEP meeting was postponed and rescheduled for January 22, 2021, meaning the Parents received records prior to the IEP meeting. The Parents also made a request for records on January 21, 2021, the same day the complaint was filed. Because the period to respond to this last record request had not yet elapsed when the complaint was filed, there was also no potential violation when the complaint was filed; and, as such, OSPI did not open the complaint with respect to the January 21, 2021 request and will not make a conclusion about this request.¹⁰ Overall, OSPI finds the District appropriately and timely responded to the records requests and no violation is found.

¹⁰ The IEP meetings eventually occurred on January 22, February 12, and March 26, 2021.

The Parents also alleged the District failed to provide the Student's counseling records. The Parents' complaint did not indicate when they made the request. The documentation showed that on June 6, 2020, the Parents stated they were going to request the counseling records and the counselor told them he would check into how that was done. No further documentation was provided regarding the Parents' June 2020 email. According to the January 21, 2021 Parents' email to the counselor, the Parents requested the counseling records a week before and had not received them. This email appears to be confirmation of the Parents' request for the counseling records. Because the complaint was filed on January 21, 2021 and there was only a week since the Parents' confirmed request, the potential window to produce the records had not yet elapsed. As discussed above, when the complaint was filed, there was no potential violation to investigate and thus, OSPI makes no conclusion about the counseling records. OSPI reminds the District of the requirement to respond to parent request to access school records in a timely manner.

Regarding the request for the paraeducator's credentials, OSPI Special Education Division has authority over student educational records through the special education complaint process, not other records that may constitute public records. A paraeducator's credentials are not a student educational record. The Parents' request constitutes a public records request over which OSPI Special Education Division has no authority through the special education complaint process to address. Thus, OSPI makes no conclusion in this decision with respect to the Parents' request for paraeducator credentials.

Issue Six: IEP Team Participants – The Parents alleged the District failed to include a “highly capable program specialist” as an IEP team member for the Student. The Parents stated no one on the IEP team had expertise about twice-exceptional students.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. A parent or a district may invite other individuals to an IEP meeting beyond those required if that person has knowledge or special expertise about the child. The district or the parent determine who has knowledge or special expertise about the child.

Here, the Parents can only mean the June 2020 IEP team meeting since the January 2020 IEP was addressed by the November 2020 due process decision, which found that the IEP was appropriate. The June 2020 IEP meeting participants were as follows: case manager, District occupational therapist, principal, general education teacher, counselor, District speech and language therapist, note taker, special education director, district attorney, Parents, family attorney, private occupational therapist, and private board certified behavioral analyst (BCBA). All the required

members of an IEP team participated in the June 2020 IEP meeting and there was documentation that all the participants (minus the note-taker) had knowledge of the Student. In addition, there were members, such as the special education director, case manager, District occupational therapist, and District speech and language therapist that had special expertise about the Student's needs. A parent or a district may invite other individuals to an IEP meeting beyond those required if that person has knowledge or special expertise about the child; so, the Parents could have invited someone with expertise about twice-exceptional students and was knowledgeable about the Student. Based on the documentation showing the June 2020 IEP meeting had the required participants who were knowledgeable of the Student, no violation is found with respect to IEP team membership.

CORRECTIVE ACTIONS

By or before **May 5, 2021** and **May 27, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **May 19, 2021**, the District will provide written guidance to the Student's 2019-2020 and 2020-2021 IEP teams regarding the need to conduct progress monitoring *at all times* and responding to parent requests for an IEP meeting. The guidance must first be approved by OSPI.

By **May 5, 2021**, the District will provide OSPI with draft guidance that describe the progress monitoring and reporting and IEP meeting requests requirements and address the findings in this complaint regarding progress monitoring and holding an IEP meeting. OSPI will provide the District with any necessary feedback on the draft document.

By **May 27, 2021**, the District will provide documentation that the Student's 2019-2020 and 2020-2021 IEP teams received the written guidance.

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.

RECOMMENDATION

Although the Parents did not raise this issue of recovery services in their complaint, OSPI expects the District to address the Student's potential recovery services need due to potential instructional loss and a lack of progress because of the COVID-19 pandemic and spring 2020 school facility closures. OSPI strongly recommends the Student's IEP team meets, reviews the Student's needs and progress, and determines whether additional or different supports and services are needed to mitigate the impact of the school facility closures in spring 2020. There is not a specific, required timeline to address recovery services for students. However, now that the 2020-2021 school year

is nearing an end, IEP teams should be in a better position to measure progress and address the impact of the COVID-19 school facility closures on the Student. OSPI recommends the Student's IEP team meet as soon as possible to discuss how the team will assess the Student's present levels and determine what recovery services might be needed.

Dated this ____ day of April, 2021

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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