

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-64

PROCEDURAL HISTORY

On August 9, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Mercer Island School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On August 10, 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 August 16, 2021, OSPI received additional information from the Parent and modified the issues. On August 18, 2021, OSPI notified the Parent and District of the modified issues.

On August 18, 2021, OSPI received a request from the District to extend the timeline to respond. The timeline to respond was extended to September 7, 2021.

On September 7, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on September 10, 2021. OSPI invited the Parent to reply.

On September 23, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on September 27, 2021.

On September 28, 2021, the OSPI complaint investigator conducted an interview with one of the Student's special education teachers.

On September 29, 2021, the OSPI complaint investigator conducted interviews with the school psychologist, associate principal, and the other special education teacher.

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

SCOPE OF INVESTIGATION

In the complaint, the Parent raised numerous issues regarding the Student's April 2020 evaluation and June 2020 individualized education program (IEP). This decision references these events that occurred prior to the investigation period, which began on August 10, 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 comply with WAC 392-172A-03095 by having the following members attend the Student's individualized education program (IEP) meeting: Parent; special education teacher; general education teacher; a representative of the District who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education; an individual who can interpret the instructional implications of evaluation results; the Student, as appropriate; and at the discretion of the District and Parent, other individuals who had knowledge or special expertise regarding the Student, including related service personnel as appropriate?
2. Did the District review the Student's most recent evaluation to develop the IEP in the area of reading as required by WAC 392-172A-03110(1)(c)?
3. Did the Student's IEP contain a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the Student, and a statement of the program modifications or supports for school personnel that enabled the Student:
 - (i) To advance appropriately toward attaining the annual goals;
 - (ii) To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and,
 - (iii) To be educated and participate with other students including nondisabled students as required by WAC 392-172A-03090(1)(d)?
4. Did the District follow the procedures under WAC 392-172A-02050 to determine that the provision of services to the Student was to the maximum extent appropriate in the general education environment with students who are nondisabled and that removal from general education occurred only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily?
5. Did the District follow the procedures under WAC 392-172A-03090(1)(a) to include a statement of the Student's present levels of academic achievement and functional performance in the Student's IEP?
6. Did the District follow the procedures under WAC 392-172A-03015(1) when responding to the Parent's request for an assistive technology evaluation?
7. Did the District implement the Student's special education services and accommodations (i.e., the graphic organizers and math strategy notebook) in accordance with the IEP as required by WAC 392-172A-03105?
8. Did the District implement the Student's IEP regarding progress monitoring and reporting as required by WAC 392-172A-03090(c) that requires a description of how the District would monitor the Student's progress toward the annuals and when the District would provide periodic reports the Student was making toward meeting the annual goals?
9. Did the District comply with WAC 392-172A-03100 by taking whatever action is necessary to ensure that the Parent understood the proceedings of the IEP team meeting?

LEGAL STANDARDS

IEP Team: An individualized education program (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).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110. Also, a district must ensure that no

single measure or assessment is used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the child. The district must use a variety of assessment tools to gather information to make those decisions. 34 CFR§300.304(b)(2). WAC 392-172-03020 (2).

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1).

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

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).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable

to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

FINDINGS OF FACTS

Background

1. The Student was enrolled in the District during the 2019–2020 school year. At the time of enrollment, the Student was not eligible for special education services but was receiving services under a Section 504 plan. The Student had been previously diagnosed with attention deficit-hyperactive disorder (ADHD) and associated weakness in executive function skills. In spring 2020, the Student was evaluated for special education services and found eligible under the category of other health impairment.
2. The April 20, 2020 evaluation report stated the Student was being evaluated because the Parent had concerns that the previous November 2019 evaluation did not reflect the Student's needs. The evaluation report included the following information.

School History: The report addressed the impact of the Student changing schools. The report stated:

[Student] has transferred to 6 different schools which may have different curriculum, instructional pace, etc. This has included 2 mid year changes in math. Changing schools often means a change of instructional pacing, the standards being taught, forms of assessment, and the moves necessitate restarting relationships with student. Research indicates that more than 3 or more transfers can result in reduced capabilities in math. According to Essentials Cross-Battery Assessment...multiple interrupted schooling, mid-year school changes, and a new teacher for English Language Arts and Math serve as an exclusionary factor that calls into question for using Cross Battery Assessment to determine a Specific Learning Disability. In addition to the many school changes, the determination of special education eligibility is further complicated by the lack of school records indicating a history of grades, history of interventions attempted, and district assessments conducted, and the history of [Student's] response to those interventions, etc. It is further complicated by the lack of knowledge regarding curriculum implemented at the schools, standards being focused on (that can sometimes vary considerably between private school and public school) pace of instruction, etc.

General Education: According to the evaluation, the language arts teacher stated the Student listened and participated in discussions, but she needed more time to complete assignments. She was able to keep up with the class "pretty well." Her language arts skills were within "80%

of her classroom peers." State testing results showed the Student in the average range for both reading and math. Her grades were "approaching standard" and failing math because of missed assignments. Specially designed instruction was recommended in the area of written expression, social/emotional, and organizational skills.

Social/Emotional: In the area of social skills, the Parent rated the Student's self-awareness, social awareness, relationship skills, and responsible decision making well below average. In rating the Student's behaviors that might affect academic performance, the Parent and the Student's teacher's scores were significantly different; the Parent's scores were more in the clinically significant range (the teacher had no ratings in the clinically significant range) and the teacher ratings in the areas of learning problems, adaptability, study skills, functional communication, and adaptive skills were in the at-risk range.¹ Both the Parent and teacher were consistent regarding social skills, adaptive skills, and withdrawal.

Organizational Skills: The teacher reported the Student contributed to discussions and was a good listener. The Student turned in bigger assignments on time and daily work when the Student "is ready." The Student does not always copy down the notes on the board and when offered a PDF copy, she frequently does not take one. The Student was able to complete assignments when additional time is provided.

Cognitive Assessment: The report stated:

The majority of processing areas indicate Average processing skills. The only processing area that appears consistently to be Far Above Average within and between measures is Verbal Knowledge, which is a considerable strength for [Student]. [Student's] Far Above Average ability in this processing area is a considerable strength for [Student]. The processing areas that show concerning mixed evidence is Rapid Automated Naming [RAN] and Orthographic Naming. 53.8% 7 out of 13 scores of Rapid Automated Naming are Below Average. In addition, 50% of [Student] Orthographic Knowledge scores indicate Below Average abilities. Strangely, 91% of [Student] Phonological Awareness scores indicated Average Abilities.

Cognitive Processing: In cognitive processing, the Student's scores were mostly average to above average, except in the areas of RAN and orthographic naming.

Orthographic Processing: The evaluation documented the results of the private evaluation scores, [District] evaluation, and evaluation by another district. The orthographic knowledge results were average in the areas of conventions, spelling speed, word scramble, punctuation, abbreviations, and orthographic ability. Below average results were in the areas of orthographic ability, letter choice, sight spelling, spelling accuracy, orthographic processing, and visual perception.

¹ The report stated, "...Clinically significant range suggest a high level of maladjustment, score in the at-risk range identify either a significant problem that may not be severe enough to require formal treatment or a potential of developing a problem that needs careful monitoring. Average range is considered to be normal and no indication of maladjustment."

Rapid Automatized Naming: The assessment scores ranged from average to below average, most being below average.

Written Expression: The writing results showed average to above average in eight of the subtest scores, including the "Test of Written Language" composite score. Other results, including the "Kauffman Test of Educational Achievement" composite score in written language were below average. The report stated:

[Student's] Written Expression indicates that the majority of her scores indicate average to above average scores; however, the 3 below average scores is made more weighted by the ecological relationship between her orthographic knowledge and RAN processing. Typically, a low RAN would impact written expression fluency. Strangely the score obtained for written expression fluency in the private evaluation was an area of personal strength. In addition, teacher input is that her writing can take longer than the others and is in the 10% in that manner. However, we also have to contend with the diagnosis of ADHD, which frequently results in challenges with written expression. Finally there is the consideration of classroom and corresponding school changes. Regardless, [Student] requires additional time to complete assignments and accommodations should continue to be provided accordingly. What is more difficult to discern is whether or not [Student] would additionally benefit from specially designed instruction. This should be a team discussion; however, from the perspective of the evaluator, there is enough evidence to suggest a plausible challenge with written expression with a plausible processing challenge (with full acknowledgement that evidence is mixed.) A consideration in determining whether or not special education should be provided is to determine if techniques designed to address the writing challenge can be addressed through evidence driven techniques are only available in special education. In terms of [Student's] written expression the district is within its rights to refuse the examiner's recommendation that specially designed instruction due to the majority of the written expression data indicating Average or sometimes even below average written expression. However, the team should make sure that there is consideration of challenges with work completion, requiring additional time in the classroom for written assignments, the link between spelling and orthographic processing, and [Student's] ADHD diagnosis.

Reading: According to all the reading assessments conducted, twenty-one composite and subtest scores were in the average range and five subtest scores were in the below average range. Reading comprehension was in the average range. Regarding reading fluency, ten subtest scores were in the low average to above range while three subtest scores were below average. The report stated:

Reading Fluency Synopsis indicated that 10 of the scores including private and district evaluations were in the Average range: 83%. Only 2 scores from the private evaluation were below average, and no scores were below average in terms of the district evaluation. The 3 Below Average Reading Fluency scores in the private evaluation could not be substantiated by the current assessment. Again the consideration of the mixed evidence on the RAN and Orthographic Knowledge indicates some evidence of processing challenges that can be associated with Reading Fluency. Although there is some ecological validity between processing, the evidence is mixed. In addition, the teacher input did not feel that [Student] was outside of the norm of her class in terms of her Reading. The teacher was much more concerned about the writing. Lastly, it is concerning that the reading fluency challenges

could not be substantiated with district testing. With Written Expression, there was some evidence of below average scores in the district and private evaluation. However, further team input regarding Reading Fluency by the team is welcome due to the close processing association with [RAN].

Math: The math assessment scores from the previous evaluation and current evaluation showed seven subtests and composite scores in the average range while one was borderline and one below average. The composite math calculation score was 87 while the math problem solving composite score was 98. The report also stated that the math results of the previous private evaluation could not be substantiated, but the Student:

Is clearly having challenges independently managing her school work in math without additional assistance in terms of organizational skills. This of course would become most apparent in an objectively frustrating situation in when there are gaps in instruction due to different standards being focused on at different schools (as [Student] mentioned), but it would be additionally overwhelming for a student with ADHD.

The report noted the following about the Student's difficulty with math:

Past Math teacher (no longer enrolled at [District] for math) noted challenges with math concepts and signs of social emotional signs of distress in internalizing social emotional areas: withdrawal, anxiety, depression. During testing, [Student] mentioned that what is so difficult about math is that it is cumulative. As a result, if one school covered a certain part of math and another school does not, it becomes confusing because everything builds upon each other. She mentioned that if you don't understand one part of the math lesson, you won't understand what comes after it. She mentioned that this can be really overwhelming for her.

Communication: The results of the communication assessments in core language, receptive language, and expressive language were primarily in the average range except in following directions. The report stated:

...In the area of pragmatic language skills, [Student's] performance was in the average range for both receptive and expressive language for identifying social and emotional language needs that students need to interact successfully in everyday situations at home, school, and in the community. However, although [Student's] score met age standards on this task, it is not representative of her pragmatic performance in real life situations. By nature, standardized tests are unable to account for the dynamic, fast-paced nature of social cues and the subtleties an individual is required to perceive and interpret within seconds. Specific areas of difficulty for [Student] included conversational exchanges with peers, gaining attention appropriately, solving higher level social problems in real time, understanding and responding to sarcasm along with understanding conflicting messages and reading facial expressions accurately. These difficulties impact her ability to express herself clearly and effectively in the classroom and converse/socialize with peers.

Therefore, based on the evaluation and input from the team, [Student] requires the support of the Speech-Language Pathologist (SLP) in a related services model, to support her IEP goals in the area of social/emotional. In this model, the SLP provides services on a continuum ranging from least to most restrictive. These services may range from collaboration and consultation with educational team members, small group therapy,

and/or direct 1:1 skill instruction. [Student's] speech services will be determined by her needs and academic environment at the time of each IEP planning period.

Observation: As part of the evaluation, the District conducted an observation of the Student during her instruction and data taken on her behavior. The report summarized the findings as follows:

During the observation, [Student] was on-task and completing assigned work for 83% of the given intervals. During her time off-task, she was engaging in fixing a technology problem for 5% of the intervals and checking her Schoology account for another 5%. In total, [Student] was off-task and non engaged in academic work for only 5% of the observation. Work produced was accurate and legible. When teacher was interviewed post observation, she indicated that the class was a typical performance for [Student].

The evaluation report noted the Student was eligible for special education services under the category other health impairment, and also stated the Student was "not eligible" for specially designed instruction in communication because she did not score 1.5 standard deviations below the mean on two assessments, or 2.0 standard deviations below the mean on one assessment. But the report indicated the Student needed speech/language as a related service to support her goals in the area of social/emotional.

The evaluation group recommended the following areas of service for the IEP team to consider to address the Student's needs:

- Written Expression: "[Student] will benefit from specially designed instruction in Written Expression including orthographic-mapping. Specially designed instruction should also include the components of a sentence and the components of a paragraph. This should include instruction and [Student's] practiced execution with use of graphic organizers, visual samples to refer back to and scaffold the task to allow for practiced labeling and organization of written products on the sentence level (including identification of subject, verb, adverb, adjective for each sentence) and on the paragraph level (interrelating topic sentences, 3 supporting sentences supporting each topic sentence, and three or more supporting sentences) to increase fluency and execution of the skill."
- Organization/Study Skills: "[Student] will benefit from specially designed instruction in organizational/study skills to break down the orientation to the academic task, components of execution of the task, planned execution of the task, and review of execution with an emphasis on quality not quantity for assignments. An organizational system to organize shortened assignments for each class, any remaining questions/concerns/hurdles that need to be addressed for an assignment/topic/etc. and strategies for [Student] to address these challenges with the teacher that are followed up with to ensure success, as well as an organized communication between the home and school delivered on weekly basis with signatures of the teachers, parent, and case manager to ensure that all parties are on the same page in terms of [Student's] current completion of assignments. Finally organization systems should include a reinforcing activity attached to completion of goals on a weekly basis."
- Social/Emotional: "[Student] will benefit from specially designed instruction regarding regular practice of relaxation techniques, replacing negative unrealistic thoughts with coping strategies. Results from this evaluation indicate that she requires specially designed instruction to support her social growth, including skills such as, but not limited to, conversational exchanges with peers, gaining attention appropriately, solving higher level social problems,

understanding and responding to sarcasm, understanding conflicting messages and reading facial expressions and other nonverbal communications accurately.”

3. The prior written notice, dated May 5, 2020, stated the Student was eligible for special education services under the category of other health impairment and would receive specially designed instruction in organizational skills, written expression, social/emotional behavior, and speech/language as a related service. Eligibility in math was also considered, along with the need for specially designed instruction in math, but the team determined that “appropriate scaffolding and support through organizational skills” could meet the needs of the Student.
4. On June 5 and 11, 2020, the team met to develop an initial individualized education program (IEP) for the Student. Team considerations relevant to the Student were as follows:
 - Concerns of Parent – The Student was unable to express her ideas in writing, lacks strategies to manage increasing demands on her executive skills for completing assignments in all academic areas, lacks problem solving strategies “needed for adequate social and emotional functioning and peer interaction.”
 - Communication Needs – “[Student] demonstrates a delay in social/emotional skills that requires the skilled support of a speech-language pathologist in the related service model.”
 - Assistive Technology – “[Student] has access to multiple tools to support her learning, including use of a student iPad and voice to text technology. The team considered if she needs assistive technology to access her education and has determined that [Student] does not require additional tools at this time.”
 - Behavior – No behavior concerns noted.
5. The June 2020 IEP documented the adverse impact of the Student’s disability on her performance, stating her ADHD affected her functioning in multiple areas and that she required specially designed instruction in organization/study skills to break the academic task in components to complete the task, execution of the task, and review her work. The Student also had difficulties in social/emotional behavior that were more apparent at home than school, including social skills, adaptive skills, and withdrawal. She required specially designed instruction in conversations with peers, solving higher level social problems, and nonverbal communication. In writing, the Student had difficulty with spelling, constructing sentences and paragraphs, and grammar.

The IEP team developed goals in the areas of problem solving, social/emotional, and writing that included instructional objectives/benchmarks. The goals were as follows:

- Problem Solving – By 06/10/2021, when given opportunities to process challenging moments [Student] will independently identify at least 3 possible solutions to the problem improving responsible decision making skills from an average of 0 out of 5 of the most recent opportunities to an average of 4 out of 5 of the most recent opportunities as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance. (Objectives: Identifying problems and Determining solutions.)
- Written Expression – By 06/10/2021, when given grade level sentences containing syntax errors (verb-noun agreement, word order, phrase/clause structure, tense, etc.) [Student] will identify and correct the syntax errors improving written expression skills from accurately correcting an average of 1 sentence out of 10 to an average of 9 sentences out of 10 over the 5 most recent

opportunities as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

- Written Expression – By 06/10/2021, when given multi-syllable words containing vowel teams through verbal presentation [Student] will correctly spell the words improving written expression skills from an accuracy of 0 out of 10 words to an average of 9 out of 10 words over the past 5 most recent opportunities as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.
- Organizational/Study Skills – By 06/10/2021, when given a weekly planner graphic organizer [Student] will independently record all upcoming and missing assignments improving organizational and study skills to decrease missing assignments from 11 missing assignments over the most recent 3 weeks to 4 missing assignments over the most recent 3 weeks as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.
- Organizational/Study Skills – By 06/10/2021, when given graphic organizers and a math strategy notebook [Student] will record math strategies presented in her mathematics class improving Self-Management skills from an average of 0% over the 5 most recent weeks to an average of 80% over the 5 most recent weeks as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

The Student's IEP provided for the following accommodations:

- Allow Student to verbally supplement written response
- Audio books
- Calculator
- Exclude spelling from grading criteria
- Extended time (5 school days for assignments)
- Facilitate Student use of iPad to take screen shots of notes/pertinent information
- Present information auditorily and visually
- Provide alternative test setting
- Regular teacher check-ins to check Student understanding of concepts and directions
- Speech to text
- Use graphic organizers
- Use of Student created note card for tests and quizzes

The IEP provided for the following special education and related services:

- Written Expression: 25 minutes, 5 times weekly (provided by the special education staff in a special education setting)
- Social/Emotional Behavior: 15 minutes, 5 times weekly (provided by the special education staff in a special education setting)
- Organizational/Study Skills: 15 minutes, 5 times weekly (provided by the special education staff in a special education setting)
- Speech/Language Therapy: 20 minutes, once a week (provided by the SLP in a special education setting)

The explanation for placement in the least restrictive environment was the Student would not participate in the general education setting while receiving special education services.

6. The prior written notice, dated June 8, 2020, stated the team considered adding pre-teaching as an accommodation to the Student's IEP team, but it opted to provide unit and topic changes

ahead of time. Other factors considered by the IEP team included data collection, communication between home and school, meetings being repeatedly rescheduled, and changing the IEP as necessary based on data.

7. Regarding the development of the June 2020 IEP, based on the results of the evaluation, the complaint stated:

RAN (rapid automatized naming) and Orthographic information should have been used to develop the IEP. The District did not develop the IEP in the area of reading. In its response, the District relies heavily on the Reevaluation, which...was flawed, that [Student] did not qualify for [specially designed instruction] in the area of Reading, and therefore any consideration of supports in Reading was not required by law. This interpretation of the law is limiting and incorrect. In its response, the District conflates reading fluency and reading comprehension with all areas of reading skills...[Student] had scores ranking in the 1st and 2nd percentile in RAN, which meant that she had a 2.3 SD discrepancy in expected scores in RAN. The District should have developed her IEP to include this area, with SDI and supports to address appropriately.

8. On August 9, 2020, the one-year time period for the complaint investigation began.

2020–2021 School Year

9. At the beginning of the 2020–2021 school year, the Student was in seventh grade, attended a District middle school, and continued to be eligible for special education services under the category of other health impairment.
10. On September 2, 2020, the 2020–2021 school year began in the District. According to the District, most students received remote services except for students with disabilities who had significant needs who also received in-person services called "appointment services." The Student received remote instruction.
11. According to the District, students had their required classes in the morning, half of the classes one day and the remaining classes another day. In the afternoon, special education services were provided every day. In an interview with teacher 1 who taught the Student until March 2021, teacher 1 stated he provided whole classroom activities that directly related to what the Student needed and then split up to do individual or small group work. In the afternoon, teacher 1 provided direct instruction to individual students and then had them work independently as needed.
12. After the beginning of the school year, the Student began exhibiting difficulty participating and being engaged in the remote general education and special education instructional time.
13. On October 23, 2020, the District special education director (director) emailed the Parent, proposing an IEP meeting. According to the District's response to the complaint, the District wanted to convene the Student's IEP team to address concerns regarding the Student's attendance. The Parent responded that she was in the process of hiring legal counsel and

wanted to wait until she had an attorney. Through November 2020, the District continued to email the Parent about scheduling an IEP meeting.

14. On November 10, 2020, the Parent emailed the Student’s special education teacher, the director, and the school’s associate principal to express concern about the Student’s planner. The email stated, “We would like to request AT evaluation to help [Student] with managing assignments, organization of homework, executive functioning and address learning disability needs.”
15. On November 19, 2020, the Parent emailed the District, requesting the Student’s special education records, including progress monitoring data and stated that she wanted to review the records at least a week before the IEP meeting. On November 20, 2020, the director responded, stating the records would be sent to the Parent in batches. The director stated the District still wanted to set an IEP meeting date, taking into account a week for the Parent to review the records.
16. On November 25, 2020, the District provided a report on the Student’s progress towards her annual goals. The report provided the following information:

Goal Area	Baseline	Goal	Present Level	Progress Note
Problem solving	0/5	4/5	3/5	Sufficient progress to achieve goal
Written Expression (syntax)	1/10	9/10	10/10	Sufficient progress to achieve goal ²
Written Expression (spelling)	0/10	9/10	8/10	Sufficient progress to achieve goal
Weekly Planner	9	5	9	Attendance has impacted progress towards goal
Note taking	0%	80%	0%	Attendance has impacted progress towards goal ³

17. On December 10, 2020, the Parent emailed the associate principal, requesting the Student’s special education services be provided to the Student by a different teacher. The Parent stated the Student was still “not receiving support or service to help her access curriculum with educators trained in teaching students with learning differences...” On the same day, the director explained that “staffing is district discretion” and the case manager works with the students at any time. The director also asked for dates the Parent was available for an IEP meeting. The Parent responded that she would be available on January 12, 21, and 26, 2021.
18. On December 11, 2020, the Parent requested an IEP meeting between December 14–18, 2020. The Parent reported the Student failed her four general education classes and had 30 missed

² The report noted that limited data was taken because of absences.

³ The progress report stated, “She attended for the full duration of 11 out of 41 afternoon session and partially attended 5 out of the 41 session, during which organization services are scheduled to occur. The IEP team is working to schedule a meeting to problem solve attendance.”

assignments. The director replied that meeting in December was not possible and asked about dates in January.

19. On December 12, 2020, the District public records officer emailed the Parent the link to the Student's records, completing the Parent's request. The Parent and officer exchanged numerous emails about whether all the Student's records were provided to the Parent.
20. On January 4, 2021, the Parent emailed District staff about the Parent's concerns for the upcoming IEP meeting. The concerns included push-in services, specially designed instruction for written expression and study skills, 1:1 help in writing, progress monitoring, homework planner, rewriting goals, math support, and measurable goals. Regarding the math notebook, the Parent stated, "Parents work 1:1 with [Student] and tutor to update the math notebook because the IEP Team does not..."

The Parent stated in the complaint that the Student could not access the general education math curriculum like her peers: "District still refuse even though my child's grade of 1.5 out of a scale of 4, showed she was below standards." The Parent stated the Student continued to not make progress in her regular education math because she was being denied specially designed instruction and other supports.

21. In clarifying the Student's eligibility for math services, the District explained that the Student's 2020 math assessments were inconclusive about having a disability and the lack of access to appropriate instruction in math could not be ruled out because of the numerous school changes in recent years. The overall data did not support the need for specially designed instruction in math, at least at the time.
22. In the complaint, the Parent stated the District continued to fail to identify the Student's disability in reading and appropriately address the Student's needs in reading. In an interview with OSPI, the director clarified that based on the Student's overall reading evaluation results, there was no data that supported a disability in reading or the need for specific reading supports. The Student's needs were in the area of written expression.

The Parent also stated the District threatened truancy action when the Student was not attending classes rather than addressing the Student's needs. The director stated the District did not threaten or pursue any truancy action against the Parent. The District stated the Parent brought up the idea of truancy.

23. In an interview with OSPI, teacher 1 stated one of the biggest challenges with the Student was the "lack of follow through" related to directions that were given, assignments, bringing supplies for the next day, and being unprepared. Teacher 1 stated this related to a combination of factors: lack of understanding, refusal to do the work, and worrying about failing. The teacher stated he provided "lots of systems to ask for help and assistance with an adult and by themselves." The pivotal factor was the Student's sporadic attendance that prevented momentum and consistency in learning skills. Teacher 1 described that as the Student began missing assignments, the District set up individualized help sessions for the

Student, but the Student did not show up. When the Student would not attend, the teacher reached out to the Student. The Student stated, for example, that she could not be on the screen all day, she needed a break, or she had to walk the dog. But the teacher clarified that the Student was “not totally checked out.” The Student’s attendance also affected data collection to develop new goals and monitor progress.

When asked if the teacher provided the math strategies notebook and graphic organizers, teacher 1 explained that graphic organizers were used in all the Student’s notes, which were developed by her general education teachers. The graphic organizers were the “fill in the blank” style using vocabulary, example problems, and practice problems for the Student. It was a virtual document that the Student and teacher had access to. The strategy was to take the math notebook that had all the strategies and the video and use “Noteability,” a digital editing program, to create a file specifically for math that the Student could use for learning math concepts. There was a complication that the program was set up on the District iPad that was provided to the Student, but the Student often used the family laptop. As a result, the Student would often say they could not use the graphic organizer because she was not using her iPad. The teacher stated he tried to adapt the instruction to “get some learning in.” The teacher also believed there was confusion regarding math instruction in that the Parent and Student might have believed that the teacher was providing math instruction, but the teacher was actually providing organization instruction by using a math graphic organizer notebook to provide the organization structure.

When asked about the Student’s placement, the teacher stated the skills that were being worked on with the Student were “varied and multiple” and the resource room would be an appropriate support to the Student in her general education classes.

Regarding progress monitoring, the teacher stated he collected data bi-weekly to monitor students’ progress, but the Student’s absences and being repeatedly tardy made progress monitoring for the Student very difficult or impossible.

24. OSPI also interviewed the school’s associate principal who was one of the District’s representatives in the IEP team and held the responsibility to ensure that services on the IEP were implemented as written. The associate principal stated he “dropped in the classroom to observe” and did not directly observe the teacher implementing services to any one student, “but did know the teacher was implementing services” based on communication with the teacher and evidence of assignments on “NoRedInk.”⁴ The associate principal also noted that the communication from the Parent indicated that services were being provided, but the Parent did not like them.

25. On January 6, 2021, the District held a meeting to review the Student’s June 2020 IEP. The following participants attended the meeting:

- [Parents]
- [Special education director] – Administrator

⁴ NoRedInk is a digital writing curriculum used for teaching grammar, usage, mechanics, and style.

- [Principal] – Administrator
- [General education teacher] – General Education Teacher
- [Case manager] – Special Education Case Manager
- [Speech/Language Pathologist] – Speech and Language Pathologist
- [District’s Attorney]
- [Parent’s Attorney]
- [Special Education Coach]

The team discussed the Student’s sporadic attendance. The Parent, who described herself as the Student’s “one-to-one aid in LAB and [specially designed instruction],” stated the problem was not attendance, but that the Student was not receiving the correct support to access the curriculum which created anxiety in the Student. The District explained the difference between specially designed instruction, which is to build skills, and individual tutoring, which was to help students with their general education assignments. The District also offered to provide the Student in-person services to improve engagement and attendance. The Parent requested information on which staff would be providing the service and if they had the background and sufficient training to be appropriate for the Student.

26. According to the January 12, 2021 prior written notice, the District proposed adding goals in the areas of spelling, self-advocacy, and syllable marking along with amending the data measurement for the weekly planner goal. The District refused adding accommodations for locating assignments; a goal for restating directions; changing the note taking goal; changing special education services to a push-in model with 1:1 support; and “other goal suggestions from the family which were mailed to the school team.” The notice provided the reasons why the District refused the Parent’s proposals. The notice provided the following additional factors relevant to the action:

- Meeting Date: “January 6th, 2021. This meeting was scheduled after a family cancelation for the scheduled October 1st, 2020 meeting. The school team reached out to re-schedule the meeting offer [sic] multiple options (including: 10/30/2020, 11/6/2020, 11/10/2020, 11/12/2020, 11/13/2020, 11/17/2020, week of Nov. 23, 2020).”
- “The School Team offered in-person, small group, services during this time of Online Learning due to the COVID-19 pandemic, to support [Student] in her skill development. Through Team discussion, the Family indicated they are neither agreeing to nor declining at this time as they want to review the IEP amendment before making a decision.”
- “The School Team raised the concern of inconsistent attendance. Data review and discussion showed an improvement of attendance since the Thanksgiving Break and the Family shared that [Student] will refuse to attend special education services. In-person services, during this period of Online Learning, were offered and discussed in relation to skill development need and attendance concerns.”

27. On January 25, 2021, the director emailed the Parent that the District agreed to evaluate the Student in the areas of math, conduct a functional behavioral assessment (FBA), and conduct an assistive technology (AT) evaluation.

28. On February 24, 2021, the Parent emailed the school psychologist and director, requesting the Zoom meeting regarding the reevaluation be closed captioned as an accommodation. The Parent also forwarded a neuropsychologist’s report that included a math assessment and recommendations to the District.

29. In March 2020, the Student’s special education teacher was changed to a different teacher (teacher 2) at the request of the Parent. Teacher 2 exchanged emails with the Parent to schedule an IEP meeting.
30. OSPI interviewed teacher 2 and asked how the Student’s special education services were implemented. In writing, teacher 2 stated the Student struggled to get her words on paper in a timely manner, her sentences missed words, capitalizations were missed, and she did not frame quotes properly. The teacher used the encoding component of the “Wilson Reading Program” to implement the specially designed instruction in written expression and spelling. Teacher 2 stated she was working with the Student on the “schwa sound” to be able to hear and say the word before writing it. The teacher also stated the Parent expressed concern about the Student being behind in her writing assignments in her general education classes and wanted the teacher to help her make up assignments, which occurred at the expense of providing the specially designed instruction. When the Student attended online, the Student would frequently be late for instruction, which further complicated progress, and the Student attended her language arts and social studies classes every other day.⁵

To address her missing assignments, the Student used a planner. But teacher 2 stated the Student had difficulty with the planner and would sometimes use half the class period trying to figure it out. The teacher would give the Student an opportunity to do it herself and then would intervene by going through the steps with the Student. The teacher would also help the Student negotiate timelines for assignments in general education classes. The District used different planners before finding a planner that the Student could use effectively.

Teacher 2 stated the Student did display some anxiety, which she said was understandable because the Student would not attend regularly, resulting in missed assignments. The Student then became anxious about facing the work that needed to be completed.

31. On March 9, 2021, at the request of the Parent, the District proposed adding an audiological and communication assessment to the evaluation to be completed.
32. On March 18, 2021, the District provided a report on the Student’s progress towards her annual goals. The report provided the following information:

Goal Area	Baseline	Goal	Present Level	Progress Note
Problem solving	0/5	4/5	3.75/5	Sufficient progress to achieve goal
Written Expression (syntax)	1/10	9/10	Not reported	Attendance has impacted progress towards goal
Written Expression (spelling)	0/10	9/10	Not reported	Attendance has impacted progress towards goal

⁵ The teacher noted that since the Student has been attending in-person in the 2021–2022 school year, the Student’s engagement has improved dramatically.

Written Expression (syllables)	Not reported	80%	Not reported	Attendance has impacted progress towards goal ⁶
Weekly Planner	Not reported	5	Not reported	Attendance has impacted progress towards goal
Note taking	Not reported	80%	No reported	Attendance has impacted progress towards goal ⁷
Self-Advocacy	Not reported	3/4	1.5/4	Sufficient progress to achieve goal

33. On March 29, 2021, all students in the District began attending school in a hybrid schedule to receive in-person instruction along with remote instruction. At the same time, the Parent unilaterally enrolled the Student in a private school for math and attended the District under partial enrollment. The Student did not attend the math class in the District. The Student did not attend school in the District during the following periods:

- Monday and Thursday: Fourth period and 12:20 to 2:30 pm
- Tuesday, Wednesday, Friday: Fourth period

34. According to the District, there was some confusion over what the Student would be responsible for in her general education classes, which were going to be missed because the Student was attending the District as a part-time enrolled student. The Student's IEP was later amended to provide an accommodation for "reduced workload with either fewer assignments or reducing the length of assignments when mastery of targeted standard can be achieved and demonstrated with reduction."

35. On April 1, 2021, the District conducted a review of the Student's January 2021 IEP. The following participants attended:

- [Parent]
- [Special education director] – Administrator
- [Principal] – Administrator
- [General education teacher] – General Education Teacher
- [Case manager] – Special Education Case Manager
- [Parent Advocate]

The Student's April 2021 IEP provided annual goals in the areas of social/emotional behavior, organizational/study skills, and written expression, with amendments made as outlined in the prior written notice. The IEP continued to provide for specially designed instruction in the same areas and speech/language therapy as a related service.

36. The prior written notice, dated April 1, 2021, stated the following, in relevant part:

Description of the proposed or refused action:

⁶ For each written expression goal (syntax, spelling, and syllables), the progress report stated the Student had not attended special education services for writing since January 6, 2021. The report stated the IEP team "is working to increase [Student's] engagement."

⁷ For both the weekly planner and note taking goals, the progress report stated the Student had not attended special education services for organization since January 6, 2021. The report stated the IEP team "is working to increase [Student's] engagement."

- Updating Annual Organizational/Study Skills: Note Taking Goal: discontinue the Note Taking goal focused on math notebook; add Note Taking: goal focused on developing student created notecard for tests in a targeted class.
- Addition of the following accommodations: preview key vocabulary; add extend time for test 150%; print demand for testing; reduction for workload; and use of multiplication chart (testing).

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

- [Student] is no longer taking math at [District middle school]. Because of this the IEP team decided to change the focus of [Student's] instruction.
- The IEP team agreed it is appropriate to add these accommodations because [Student] requires them to fully access her education.

Description of any other options considered and rejected:

- Updating additional goals
- Rewriting last Progress Report
- Offered 4 days of in-person
- Adding an accommodation for continuous testing time or with 24 to 48 hours

The reasons we rejected those options were:

- The team agreed to wait until after the new evaluation and the annual IEP to give the case manager time to build a relationship with [Student] and to collect new baseline data before changing any other goals.
- The team decided to collect new baseline data on current goals and update the Progress Report in about 3 school weeks.
- Parent turned down the option on more in-person learning as student is partially enrolled and is using the other 2 days for private tutoring.
- The IEP team decided to see if [Student] needed a set time for her additional time for testing to occur with 2 days of in-person learning and the additional accommodations being added. The team will review this at our next team meeting.

Other factors:

- The team also addressed the parent's question about what does [specially designed instruction] in LAB look like for [Student]: Working on the planner to decrease number of missing assignments, establish relationship and trust prior to taking baseline data; establish baseline data; Focus on study-org and then writing - developing her ability in syntax and encoding (using Wilson Reading – WADE assessment using the post-test as a pre-test assessment); Progress Monitoring

37. According to the complaint, the Parent also requested the Student's special education services be provided in the general education classroom. The Parent expressed concern about the "LAB" class, which was the special education resource room, because services were "treated as a class assignment" and the Student was "graded against her disabilities." The Parent stated, "If push in services can provide better support and results, let that be an option."

38. On May 13, 2021, the team reviewed the reevaluation, including assessments that were conducted in the areas of audiology, social-emotional behavior, math, communication, fine motor, occupational therapy, and AT.

Audiology: In remote and in-person listening results, the Student scored 94% to 100%, but the Student did report some difficulty with hearing during online learning and understanding peer comments. The report noted a concern about the Student's ability to follow directions in academic settings and at home. Accommodations were provided to address her need by presenting information both auditorily and visually, previewing key vocabulary, and graphic organizers. Use of microphone was also considered.

Math: The "Fiefer Assessment Mathematics" was administered to the Student. The Student performed in average range in the ability to count, order, and sequence numbers and steps to perform math operations. In automatic fact retrieval skills, the Student performed in the below average range. In visual-spatial and conceptual parts of math, the Student scored in the average range.

Communication: The Student performed in the average to above average range in the area of core language, the average range in receptive language, and above average range in expressive language. The report noted the Student continued to have difficulty self-advocating in "real-time in the classroom" which the Student's IEP was addressing.

Fine Motor: According to the results from the "DeCoste Writing Protocol," the Student demonstrated "challenges in the area of writing, specifically work production, work speed, and orthographic processing (spelling and the use of writing conventions)." The evaluator listed recommendations, including word predication software, graphic organizers, step-by-step checklists, and speech-to-text applications.

Assistive Technology: The report stated the following:

As part of this assessment revision an Assistive Technology (AT) Assessment was completed as per parent request. In completing this AT assessment, the following tools were used to gain information to include but not limited to; SETT Scaffold for Consideration of AT needs, WATI (Wisconsin Assistive Technology Initiative) Classroom Observation 11 Guide, WATI Assistive Technology Decision Making Guide, and WATI Assistive Technology Consideration Guide. Findings from this information have been reported in the areas in which AT considerations were recommended.

The following accommodations were recommended for the Student:

- speech-to-text applications
- graphic organizers
- step-by-step checklists
- color coding
- calendars
- note taking tools
- visual schedules
- task management and information organization applications
- educational apps in the area of executive functioning

Observation: The Student was observed by the school psychologist during a language arts class. The Student followed along with the class routine including asking questions.

The reevaluation included a report from the District board-certified behavior analyst (BCBA) who reviewed the Student's records, conducted an observation of the Student, and assessed the Student using behavior ratings from the Parent, Student, and some of the Student's teachers. The BCBA stated the Student's behavior was consistent with ADHD and recommended a "strengths-based perspective" that included organizational systems, strategy instruction, school schedule/access, maintenance of effort/task completion, social skills support, self-advocacy skills, and counseling. Regarding school schedule/access, the report included a significant statement:

It is clear that [Student's] week has been altered in terms of time and instructional access by removing 4th period. Unfortunately, it appears that she is also not attending part of other classes, which is impacting her ability to gain instructional content, make connections, and stay caught up. It is not clear how these decisions have been made. Students with her profile thrive on and benefit from routinized systems. Routines and predictability help to decrease the cognitive overload that can overwhelm children and adults with AD/HD's. All efforts should be made to promote access to school and to eliminate the inconsistency in attendance. Increased attendance may also lead to the development of peer relationships. Remote learning is often not AD/HD friendly. In-person learning provides context and builds relationships. It also helps to eliminate the tendency to veer off-track when a piece of technology is paired with the many, many things that can distract at home.⁸

The eligibility group determined the Student continued to be eligible under the category of other health impairment. The report stated, "In addition the written expression, organization/study skills, and social/emotional behavior, [Student] requires support specially designed instruction in the area of math as well as assistive technology accommodations, accommodations to support the effects designed of ADHD, dyslexia, and dysgraphia, and related services in the area of communication."

39. OSPI interviewed the school psychologist who managed the reevaluation and asked if the members of the evaluation team lacked any expertise in the Student's disability that would prevent them from appropriately identifying the Student's needs. The school psychologist replied "no." The school psychologist stated the evaluation addressed the Parent's concerns in math, the FBA, and AT and provided recommendations to address each area. The school psychologist also shared that representatives from the Special Education Technology Center

⁸ Regarding the evaluation by the BCBA, the Parent's complaint stated, in part: "FBA report was not provided to parents before FBA findings meeting, and did not allow for meaningful parental participation. [BCBA] withheld supporting documents despite parental requests for these records. Documentation available upon request. FBA was not conducted with ethics, did not include all relevant information and factors. [BCBA's] conclusions were biased, in favor of district instead of student's needs, and did not align with protocols a BCBA is required to follow....[BCBA's] biased report did not identify [Student's] areas of needs, or accurately record information and data that were known. This resulted in denial of supports/services that would allow [Student] access to essential social, emotional, and behavioral support that could prevent further impact of depression and lack of pragmatic communication skills she needs to self-advocate and communicate with peers and absolves the district of the resulting effect of trauma from being denied appropriate services and support."

(SETC) reviewed the evaluation results and made recommendations for the Student, which were incorporated into the proposed IEP.

40. On June 3, 2021, the Student's team met to develop a new IEP. According to the District's meeting notes, the following participated in the meeting:

- [Parent]
- [Special Educator Director]
- [Associate Principal]
- [Speech/Language Pathologist]
- [Case Manager]
- [General Education Teacher]
- [Occupational Therapist]
- [District Consultant]

41. The June 14, 2021 prior written notice regarding the June 3, 2021 meeting provided the following information:

Description of the proposed or refused action:

- 1) The District is proposing to update the dates of reports referenced in [SLP] section of the Evaluation.
- 2) The Parent is requesting access to data.

Description of any other options considered and rejected:

- 1) The District is refusing to add twice exceptional language to current reevaluation dated May 13, 2021. See notes in the Other Factors below for additional data.
- 2) Revising [BCBA] Evaluation report.

The reasons we rejected those options were:

- 1) There is no working definition in IDEA or the WAC that defines Twice Exceptional. See Other Factors below for additional data.
- 2) [BCBA's] report is an accurate representation of her review of records, classroom observation and interpretation of data. Parent's email will be attached to the official records attached to this Prior Written Notice.

Other factors relevant to the action:

Partial Enrollment: Student is partially enrolled as of 3/29/2021. The Partial Enrollment form states that [Student] will miss 4th period every day as well as on Monday & Thursday will be absent from 12:20 to 2:30.

Although [Student's] cognitive scores have been provided previously, a brief overview of her Full-Scale IQ is being provided.

[Student's] first neuropsychological evaluation was conducted by [private psychologist 1], PhD, in October/November of 2015 and her cognitive abilities were assessed using the WISC-V. [Private psychologist 1] did not report her Full Scale IQ (FSIQ) score and stated that it was "not considered a valid representation of her abilities" due to the "significant variability in her cognitive abilities" (VCI=133, 99th percentile; VS1=92, 30th percentile; FRI=103, 58th percentile; WMI=SS, 16th percentile; PSI=95, 37th percentile).

The second evaluation was conducted in May/June of 2019 by [private psychologist 2], PhD, and [Student's] cognitive abilities were assessed with the Leiter, KABC, and WISC-V (6 out of 10 subtests administered). The Leiter is an assessment that is used to evaluate only Nonverbal Intelligence and [Student's] score (NVIQ=127, 96th percentile) indicates that she has "High" abilities in solving problems using visual or hands-on reasoning, however, this is not considered a FSIQ. The KABC is a cognitive assessment that, when all subtests are

administered, results in a Fluid Crystallized Index (FCI is comparable to a FSIQ); [Student's] score (FCI=112, 79th percentile) is the Average range. Her other scores GSM (sequential)=109, 73rd percentile; Gf (planning)=111, 77th percentile; Glr (learning)=100, 50th percentile; Gv (simultaneous)=100, 50th percentile; Gc=127, 96th percentile) are in the Average and Above Average range. The WISC-V was also administered, but the Working Memory and Processing Speed Indices were not included, and, as a result, a FSIQ was not obtained, however the General Ability Index score (GAI=109, 73rd percentile) is in the Average range. [Student's] scores on the other indices (VO=127, 96th percentile; VSI=100, 50th percentile; FRI=100, 50th percentile) are in the Superior (VO) and Average (VSI and FRI) range. As a result of all of the scores collected, [private psychologist 2], states, "[Student's] overall intellectual ability is estimated to fall in the High Average range; however, there is significant variability in her performance."

The third evaluation was conducted by [District school psychologist]...March 2020. In the evaluation report, [District school psychologist], states, "On the KABC-2, [Student] has an Average Cognitive ability in all areas except for her Verbal Comprehension Index, which is Far Above Average. She does not demonstrate any areas of cognitive weakness. Instead she demonstrates consistent Average ability in all areas except her Verbal Comprehension Index. Due to the range in scores between all other areas but Verbal Comprehension, a General Ability Index should be interpreted with caution."

Based on these three reports, [Student] has significant normative strengths in her Verbal Comprehension (Crystallized Knowledge), however, her FSIQ falls within the High Average range (110-119).

42. The Parent stated in the complaint that the IEP team "will offer services and support, but the services never come to fruition." According to the Parent, in the April 1, 2021 and later June 5, 2021 IEP meetings, the District proposed implementing the "Kurzweil 3000," which was a software program for written expression, for the Student. The Parent stated the Kurzweil 3000 was never provided to the Student. The director explained to OSPI that the Kurzweil was one of many methodologies the teacher could use to provide specially designed instruction in written expression to the Student. Since it was not the only written expression methodology that met the Student's needs, it was not specifically written into the Student's IEP.
43. The documentation reviewed in the investigation showed the Parent continually requested that the assistant director of learning services in the District attend the Student's IEP meeting. The Parent stated the assistant director was an expert in dyslexia who could identify the Student's needs in reading. The Parent did not believe the Student's IEP team had sufficient expertise in dyslexia to develop an appropriate program for the Student.
44. The District declined to invite the assistant director to the meetings and on June 21, 2021, the assistant superintendent emailed the Parent, reiterating "you may bring additional people to the IEP meeting should you wish to..."
45. On June 3 and 18, 2021, the District provided another Student progress report. The June 3 progress report noted:

Goal Area	Baseline	Goal	Present Level	Progress Note
Weekly Planner	9	4/5	8	Made progress but did not meet goal
Note Taking	0%	20%	0%	Made progress but did not meet goal
Written Expression (syntax)	1/10	9/10	2/10	Made progress but did not meet goal
Written Expression (spelling)	0/10	9/10	7/10	Made progress but did not meet goal
Written Expression (syllable)	Not reported	80%	80%	Mastered goal
Social/Emotional (problem solving)	0/5	4/5	4/5	Mastered goal
Self-Advocacy	Not reported	3/4	3.4/4	Mastered goal

The June 18 progress report was very similar to the June 3, 2021 report.

46. On June 30 and July 26, 2021, the Student's team continued to meet to develop the new IEP. The District meeting minutes showed the following participants attended:

- [Parent]
- [Deputy Superintendent]
- [Special Education Director]
- [Special Education Teacher]
- [Associate Principal]
- [Speech/Language Pathologist]
- [General Education Teacher]
- [Parent Advocate]

According to the Parent, she again requested the "dyslexia expert" attend the July 26 meeting.

47. Regarding the July 26, 2021 meeting, the complaint stated:

The team refused to allow the accommodation of closed captioning with live transcription to me, the parent. In order for me to meaningfully participate in the IEP meeting, I need this accommodation. This accommodation has been available to me in prior IEP meetings with the team. The refusal created a barrier to my ability to meaningfully participate in the meeting and the team could not provide me with the district policy or any rules and regulations which informed their refusal of the accommodation when I requested it. My child's IEP continues to not be completed as a result of the IEP meeting needing to be cancelled and reconvened once the accommodation is available to me prior to the meeting.

48. The Parent also requested the District replace specific IEP team members with other District staff because of the acrimony allegedly displayed in the IEP meetings. The District declined the Parent's request.

49. On August 6, 2021, the District provided the Parent with a prior written notice based on the IEP proposed at the meetings on June 3, June 30, and July 26, 2021. The District proposed implementing the recommendations from the SETC, including word prediction software, step-by-step checklists, and visual schedules. Other supports proposed included speech-to-text software, an auxiliary microphone, and consultation with the occupation therapist and District

technology coaches for supports for school personnel. In addition, changes in annual goals were proposed.

50. On August 9, 2021, the Parent filed this complaint. According to the District, the Student's team still has not reached consensus with the Parent about the IEP.

51. The complaint, in part, stated:

The IEP draft remains incomplete and does not reflect [Student]'s current needs or [specially designed instruction] qualifications, despite attending numerous meetings in 2020: August 28, October 1, October 7, and 2021: January 6, April 1, April 8, May 24, June 3, June 30. On June 2, [teacher 2] stated: for compliance an IEP meeting has to happen before June 5 and be implemented by June 10. It is now August and the IEP is not implemented; no recovery services agreed upon or provided over an entire summer. The IEP process is continuously stalled by the IEP Team using systematic and intentional tactics like not updating goals and SDI from previous meetings, citing technical difficulties, forgetting to include home team in meeting invite emails, forgetting notes that need to be included, not sending IEP drafts in time for the home team to review. For example, edits made to goals and services were not added in entirety to the IEP draft, so family would have to ask the IEP Team to update all changes to goals and services, then the IEP Team would not, family would then request another meeting, then the meeting would be used to add the edits from the previous meeting. The IEP Team continuously stalled the implementation of IEP services, support and updated goals, by not adding edits properly from each meeting, whereby parents had to continue requesting the draft to be updated per what was agreed to in the IEP meeting by the team. This prevented [Student] from accessing services and support identified by parents and staff in IEP meetings, so [Student] did not receive these supports at all, and not in a timely manner.

52. According to the Student's attendance record, the Student was absent approximately 22 days (both excused and excused) and tardy 40 times. The District reported that these numbers did not account for other times the Student was not available for instruction during school hours.

CONCLUSION

Issue 1: IEP Team – In the complaint, the Parent stated she had the right to have experts in dyslexia and "twice-exceptional" students attend the Student's individualized education program (IEP) team meetings. The Parent stated these experts were necessary to interpret the results of the evaluation and develop an appropriate IEP for the Student. The dyslexia expert the Parent wanted to attend was a District staff member and it was unclear who the expert was in twice-exceptional students.

A district is required to ensure that an IEP team for a student with a disability includes: the parents of the child; no less than one general education teacher of the child; no less than one special education teacher of the child or, where appropriate, no less than one special education provider of the child; a district representative who: i) is qualified to provide, or supervise, the provision of specially designed instruction to meet the unique needs of children with disabilities; ii) is knowledgeable about the general education curriculum; and iii) is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of

evaluation results; at the discretion of the parent or the district, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and whenever appropriate, the student.

Here, at the two IEP meetings held in June 2021 and July 2021, the Parent repeatedly requested an expert in dyslexia and twice-exceptional students attend. The Parent believed the existing IEP team lacked the expertise necessary in these areas to determine the Student's needs. It is the District's responsibility to ensure the proper composition of the IEP team, but the Parent could have invited others who had knowledge or special expertise of the Student, which the District communicated to the Parent. The District ensured that the required members of the Student's IEP team attended the three IEP meetings, but declined the Parent's request to invite the experts in dyslexia and twice-exceptional disabilities, as it had the discretion to do so if these were not necessary members of the team or the existing team had the necessary expertise. There is no documentation or information in the complaint that indicated the IEP team members did not have the expertise necessary to develop a sufficient IEP for the Student. The Parent may have preferred to have such experts attend the meetings, but there was no legal requirement that the District have them attend the meetings. No violation is found.

Issue 2: Reading Services – The Parent alleged the District failed to identify the Student as having a learning disability in the area of reading and thus failed to provide specially designed instruction in the area of reading. The complaint alleged the following:

RAN (rapid automatized naming) and Orthographic information should have been used to develop the IEP...In its response, the District relies heavily on the Reevaluation, which...was flawed, that [Student] did not qualify for [specially designed instruction] in the area of Reading...In its response, the District conflates reading fluency and reading comprehension with all areas of reading skills...[Student] had scores ranking in the 1st and 2nd percentile in RAN, which meant that she had a 2.3 SD discrepancy in expected scores in RAN. The District should have developed her IEP to include this area, with SDI and supports to address appropriately.

In developing an IEP, a district must consider, among other things, the results of the initial or most recent evaluation of the student. Also, a district must ensure that no single measure or assessment is used as the sole criterion for determining whether a student has a disability and for determining an appropriate educational program for the child. The district must use a variety of assessment tools to gather information to make those decisions.

The decisions from the Student's April 2020 eligibility determination and June 2020 IEP are outside the one-year time limit for this complaint to investigate (the instant complaint investigation looked at a time period beginning August 10, 2020). Thus, OSPI makes no conclusion on the sufficiency of the Student's initial evaluation or initial June 2020 IEP.

Regardless, the District had a continuing obligation to, at minimum, consider the Student's potential needs in reading if the Parent requested this consideration or data indicated the Student's needs had changed. As the 2020–2021 school year began and progressed, the District reconsidered the results of the April 2020 evaluation, as well as the Student's academic performance in school, to determine the Student's reading performance did not significantly

change or warrant reading services, according to the Student's special education teachers. While the Parent placed all emphasis for eligibility and the need for reading services on the one low score for RAN (rapid automatized naming) in reading in the Student's April 2020 evaluation, the evaluation correctly looked at all the Student's reading scores and did not rely on just one score in making the eligibility and services decision. It would have been contrary to the IDEA to make a decision based solely on the RAN score; and further, the evaluation did not ignore the low RAN score, but put it in context in relation to the other scores. Overall, there is no indication information about the Student and data from period investigated in this complaint warranted the addition of specially designed instruction in reading. No violation is found.

Issue 3: Special Education and Related Services – The Parent alleged the District did not develop an appropriate IEP or adhere to annual IEP timelines. The complaint stated:

The District did not properly identify or address [Student's] anxiety which resulted in some school absences and instead threatened truancy action. Although the District reports that [Student] was not in attendance for 20 days in January and February of 2020, and also that her progress was recorded as AB (absent) in her LAB class, the district did not comply with OSPI guidelines to contact the family and partner with them to find solutions to nonattendance. Instead, the district in a January IEP meeting, threatened truancy action as a way to penalize the student. As the parents explained numerous times, [Student] has visual and working memory deficits that made it very difficult for her to fill out a homework planner. When [Student] refused to attend LAB because her LAB teacher at the time...would not provide her [specially designed instruction] and support unless she could fill out a homework planner. [Student] could not fill it out, and developed severe anxiety such that she refused to attend his class. [Teacher 1] did not contact the parents for over 20 school days to set up a meeting to partner with parents on solutions.

A district is required to ensure that each IEP includes a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual goals; to be involved in and make progress in the general education curriculum in accordance with this section and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other students with disabilities and nondisabled peers in the activities described in this section.

A district must also review a student's IEP periodically, but not less than annually, to revise the IEP as appropriate. If the team cannot reach a consensus regarding the IEP, the district must determine appropriate services and provide parents with prior written notice of the offer and of the parents' right to seek resolution of any disagreements by initiating dispute resolution.

Here, the Student's June 2020 IEP and subsequent revisions provided for a social/emotional goal that was, in part, to reduce the Student's anxiety. The IEP also provided for specially designed instruction in social/emotional that involved problem solving challenging situations for the Student. In addition, the IEP also included a number of accommodations meant, in part, to reduce the Student's anxiety. In October 2020, the District requested an IEP meeting to address, in part, concerns regarding attendance that may have been linked to the anxiety. Despite the efforts to

hold the meeting earlier—including numerous communications from the District proposing meeting dates—the meeting was not held until January 2021, at which time the District offered in-person services to address attendance and anxiety issues. Later, in May 2021, the BCBA conducted a FBA and made recommendations that were included in the proposed IEP that has yet to be implemented. Regarding a truancy action, OSPI was unable to confirm that the District “threatened” truancy.. Given the IEP goals, specially designed instruction, accommodations, and District attempts to schedule a meeting, along with the eventual IEP meeting and FBA, the District has reasonably attempted to address the attendance issues (although with little success.) No violation is found.

Regarding the IEP timeline, the IEP team was required to review the Student’s June 2020 IEP within a year. The IEP team met on June 3 and 30, 2021, and July 26, 2021, but consensus on the proposed IEP has not been reached. While consensus between the IEP team is encouraged, it is ultimately the District’s responsibility to ensure the IEP includes the services that the Student needs in order to receive a free appropriate public education (FAPE). In the event the IEP team cannot reach consensus, the district must provide the parents with prior written notice of the district’s proposals or refusals, or both, regarding the student’s educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

Although the IEP team met within a year of the initial IEP for the annual IEP meeting, the Student’s IEP has not been completed and the new annual IEP has not been implemented.⁹ Thus, the District failed to meet the annual IEP timelines and OSPI finds a violation. For corrective action, the District must hold an IEP meeting to propose the Student’s IEP, get Parent input, attempt to reach consensus, and then make the necessary decisions to finalize and implement the Student’s IEP.

Issue 4: Least Restrictive Environment – The complaint alleged the District refused the Parent’s request to provide the Student’s special education services in the general education classroom. The Parent expressed concern about the “LAB” class, which was the special education resource room, because services were “treated as a class assignment” and the Student was “graded against her disabilities.” The Parent stated, “If push in services can provide better support and results, let that be an option.”

A school district must ensure that the provision of services to each student eligible for special education 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.

Here, the Student’s June 2020 IEP provided the special education services in a special education setting. Since the June 2020 IEP decisions were beyond the one-year complaint timeline, OSPI does not have the authority to address the initial placement decision the IEP team made in June

⁹ The June 2020 IEP and amendments continued to be implemented.

2020. However, OSPI will consider if there were any reasons for the IEP team to reconsider the placement decision during the 2020–2021 school year.

The Parent's issues with the resource room, or LAB class, being a class period and being graded are administrative decisions that lie with the District. Whether the resource room is considered a class by the District is not material to whether the students received their specially designed instruction in the least restrictive environment. Regarding grading, the Parent was correct when she said that students should not be graded against their disability, but students with IEPs should receive credit for what they learn in a resource room class period. To receive credit, the students must be graded at some level. Further, the purpose of many accommodations, like extended time, are to help prevent "grading against the disability".

Regarding changing the Student's placement to increase time in the general education setting during the school year, the IEP team could have considered the Student's progress in some of her goals despite the absences. But according to her special education teachers, the Student would have lost opportunities to build essential skills rather than just getting help with her general education assignments, and the remote instruction would have made it even more difficult for the Student. Based on the documentation, there were legitimate reasons, based on the Student's needs, to not change the Student's placement to increase time in the general education setting. No violation is found. However, placement should be considered during the next IEP meeting.

Issue 5: Present Levels – The complaint alleged the District failed to develop accurate present levels of the Student's academic achievement and functional performance. For example, in a writing assessment, the District stated the Student was able to find syntax errors and correct them ten out of ten sentences, and that the Student was correcting an average of eight out of ten words. The Parent stated the Student completing ten out of ten was due to the teacher giving the Student the same sentence for three weeks and failing to make it more challenging for the Student. The Parent also stated the spelling words given to the Student were "at least 1 or 2 grade levels below her current spelling level..." The Parent disputed the present level regarding the organizational goal to fill out a planner, which the Parent stated was a more significant problem than the District stated at the January 2021 IEP meeting.

A district must ensure that a student's IEP must include a statement of the student's present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum (the same curriculum as for students without disabilities).

Here, the Student's June 2020 IEP provided the Student's present levels of achievement and functional performance. The Parent expected the present levels to include where the Student was performing compared to others her age or grade. Although this is good information and is provided in the evaluation reports and on some goals, the present levels in the Student's IEP used to develop goals and report progress are based on the Student's own individual performance, not necessarily the performance of others. Thus, exclusion of this information does not render the present levels insufficient. Regarding her disagreements with what the Student's challenges were or how progress monitoring and data collection were conducted, there was insufficient evidence

to show the IEP's present levels were inaccurate. Overall, the Student's IEPs included present levels based on data from the Student's evaluations and other progress information. No violation is found.

Issue 6: Assistive Technology – The complaint stated, “We requested an assistive technology [AT] evaluation in January of 2021. The District belatedly did provide an assistive technology evaluation in May of 2021, but would not allow the team to consider the recommendations made by the consultant.”

If the district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the child's parent or teacher requests a reevaluation, a district should complete a reevaluation. A district must complete a reevaluation with 35 school days after the date of consent for an evaluation has been provided to the school district by the parent. While there is no specific timeline between the time of the referral and when consent is obtained, it must be a reasonable time. If the District determines a reevaluation is not warranted, it must provide the parent with prior written notice.

On November 10, 2020, the Parent emailed the associate principal, the director, and the special education teacher to request an AT evaluation to assist the Student in managing assignments, organization of homework, executive functioning, and learning disability needs. The documentation did not indicate any follow-up on the request until after January 11, 2021, when the Parent emailed the District staff a list of her concerns and reiterated her request for an AT evaluation. On January 25, 2021, the director replied that the Parent's request for an AT evaluation was granted. The District noted the school psychologist would be contacting the Parent to schedule a meeting. On March 3, 2021, the Parent signed the consent to evaluate. On May 13, 2021, the evaluation team met to review the reevaluation results. The AT part of the reevaluation made recommendations that included word prediction software, word banks, and speech-to-text applications. Although the Parent alleged the District refused to discuss the recommendations, the District's August 6, 2021 prior written notice stated, among other things, the District proposed implementing all of the AT recommendations provided by the Special Education Technology Center (SETC).

In following the reevaluation procedure, the District failed to timely respond to the Parent's November 10, 2020 request for an AT evaluation, either by granting the request or providing prior written notice of its refusal. The District's evaluation also exceeded the 35-school day timeline as 43 school days elapsed between the date of consent on March 3, 2021, and the evaluation meeting. A procedural violation is found. The corrective action will require the Student's IEP team to review the District's evaluation timeline procedures.

Regarding the recommendations from the AT assessment, the District proposed including all of the recommendations in the proposed IEP. No violation is found.

Issue 7: Service Implementation – Regarding IEP implementation, the complaint specifically stated the District did not provide the math strategy notebook that they agreed to provide along

with graphic organizers. In addition, the Parent alleged the District failed to provide specially designed instruction in written expression, including the Kurzweil 3000. The Parent stated the Student could not spell or edit a paragraph "that is legible for teachers to read and grade" and she is "failing all four general education classes."

A district is required to implement the special education services in conformity with the student's IEP. Here, the Student's June 2020 IEP provided for specially designed instruction in the areas of written expression, social/emotional, and organizational/study skills, as well as speech/language therapy as a related service. The January 6, 2021 and April 1, 2021 IEP services were the same.

Despite the Parent's claim that services were not provided to the Student, the Student's special education teachers described in detail how services were implemented with the caveat: the Student had to attend. The documentation showed a pattern of attending the special education instructional sessions only on a very intermittent basis that prevented full implementation of the Student's services. When the Student did attend, the teachers described how they implemented graphics organizers and the math strategies notebook for organization and used parts of the Wilson Reading Program to address the Student's needs in written expression.

The Parent stated the Student would not attend because she was not receiving the right instruction. The Parent was supporting the Student during remote special education instruction, and the Parent deserves some deference in determining when the Student was having problems with instruction as the Parent observed the delivery of instruction. But, the Parent was either unable or unwilling to compel the Student to attend. Given all the documentation reviewed in this complaint, rather than an issue with receiving inappropriate instruction, it is more likely that when the Student did not attend, she fell behind in her assignments and then became stuck in a cycle of accumulating missed assignments, causing increased anxiety, which in turn led to more absences, missed assignments, and anxiety. The Student's teachers acknowledged that services were not provided according to the IEP, but they could not provide services if the Student did not attend class. The documentation showed the District made considerable effort to address the attendance issues, including offering in-person services, but because it had little control over the Student at home, improving attendance was slow to emerge. Teachers reported that this school year, with a return to in-person instruction, the Student's attendance and engagement has improved. The documentation supports that the District did implement the Student's IEP when she attended and made reasonable efforts to address the attendance concerns. OSPI finds no violation.

Issue 8: Progress Monitoring – The complaint stated, "Progress reports for the entirety of Grade 7 provided little data, and at times, no monitoring goals for various reason. This lack of data prevented the team, including the parents, from making data-informed decisions."

A district must ensure that a student's IEP includes how the district will measure the student's progress toward meeting the annual goals and when the district will provide periodic reports on the progress the student is making toward meeting the annual goals.

The Student's IEP provided for progress reports each trimester and that progress would be measured by data collection. The documentation showed the District provided the Parent with progress reports on November 25, 2020, March 18, 2021, June 3, 2021, and June 18, 2021. The reports stated some data was missing because of the attendance issues. The Student's special education teachers acknowledged that data collection and determining baselines for goals was difficult because of attendance. But the reports did provide sufficient data to determine that the Student progressed in some of goals, including mastering some of the goals. The District also provided the Parent information about progress through the data from the May 2021 reevaluation and the data that was talked about at the June 2021 and July 2021 IEP meetings. Thus, while some of the progress reports may have included minimal data; overall, the Parent was provided data about the Student's progress through a variety of formats and meetings. Given the circumstances, the District made reasonable attempts to measure and report progress to the Parent. No violation is found.

Issue 9: Parent Participation – The complaint alleged the District failed to provide reports and draft IEPs to the Parent in sufficient time to review before the IEP meetings. In addition, the District failed to provide the Parent with closed captioning at the July 26, 2021 IEP meeting.

A district must provide a parent with the opportunity for meaningful input into the IEP process. To ensure the IEP team considers the parent's input, a district may need to provide accommodations to allow a parent to meaningfully participate and provide input.

Here, the Parent alleged the District failed to send her draft IEPs, reports, and other documents with sufficient time to review before the IEP meeting. The IDEA and Washington special education regulation does not address draft documents or require that drafts be provided prior to meetings; there is also nothing in the regulations that would prevent the District from presenting a draft before a meeting. But providing draft documents to the Parent before the meeting is at the discretion of the District and is recommended, when possible. If the District does not provide drafts, it still must ensure meaningful input from the Parent. Thus, the District may need to consider other options, such as lengthening the meeting time to give the Parent enough time to review the documents or having multiple meetings, which would give the Parent time to review the documents between the meetings. Here, the District provided some drafts in a timely manner, while other times, the drafts were delayed or not provided.

Despite not receiving drafts at times, the Parent actively participated in the IEP meetings and provided considerable input at the meetings and through emails in developing and reviewing the Student's special education program. There is no indication that the lack of draft documents prevented meaningful parent participation. No violation is found.

Regarding the request for closed captioning, the complaint stated the District denied the Parent's request for captioning, although she was provided it in previous meetings. The Parent stated she needed captioning to participate but provided OSPI with no indications that without it, the Parent would not be able to meaningfully participate. The District had an affirmative duty to address the Parent's need for closed captioning. But there was insufficient evidence to show that the Parent did not actively participate or give input into the decisions made. While the Parent disagreed with

IEP team decisions, disagreement was not tantamount to denying the Parent input. No violation is found.

CORRECTIVE ACTIONS

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

STUDENT SPECIFIC:

IEP Meeting & Implementation

By **October 29, 2021**, the District is required to convene the Student's IEP team to review the proposed IEP, provide the Parent with meaningful input, and attempt to reach consensus. The IEP must be implemented by November 1, 2021. If the IEP team cannot reach consensus, the District is responsible for ensuring that the IEP includes the services that the Student needs in order to receive FAPE and provide the Parent with prior written notice of the District's proposals or refusals, or both, regarding the Student's educational program and the Parents have the right to seek resolution of any disagreements by utilizing special education dispute resolution options.

By **November 5, 2021**, the District will provide OSPI with a copy of the Student's finalized IEP, meeting notice, and prior written notice from the IEP meeting and verification that the Student's IEP is being implemented as written.

DISTRICT SPECIFIC:

Written Guidance

By **October 29, 2021**, the District will provide written guidance to the Student's 2020–2021 IEP team regarding timelines in responding to evaluation requests, including providing prior written notice to parents.

By **November 5, 2021**, the District will provide OSPI with verification that the IEP team received the 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.

Dated this ___ day of October, 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.)