

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-15

PROCEDURAL HISTORY

On March 1, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Renton 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 March 1, 2019, 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 April 3, 2019, the Parent and District participated in mediation that resulted in a written agreement. However, the Parent did not agree to withdraw the complaint.

On April 9, 2019, at the request of the Parent and District, OSPI agreed to extend the complaint timeline to allow the Parent and District to engage in negotiating a resolution to the complaint.

On July 11, 2019, OSPI issued a new timeline for the complaint as a result of the Parent and District not being able to resolve the issues in the complaint.¹

On August 5, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on August 6, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On August 19, 2019, OSPI received the Parent's reply to the District's response to this complaint and forwarded it to the District on August 20, 2019.

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

ISSUES

1. Did the District develop an individualized education program (IEP) designed to provide the Student a free appropriate public education (FAPE), including the following:
 - a. Ensuring Parent participation in IEP development; and,
 - b. Reviewing and revising, as appropriate, the Student's annual goal in math?

¹ The IDEA and state regulations allow OSPI to extend the complaint timeline past the 60-day deadline if the complainant and district are participating in mediation or an alternative dispute resolution method through OSPI, and the participants agree in writing to extend the timeline. WAC 392-172A-05030(7)(b). Pursuant to this regulation, OSPI extended the timeline here to allow the Parent and District to attempt to resolve the complaint through an alternative dispute resolution method, which was ultimately unsuccessful.

2. Did the District implement the Student's IEP, including related services and the augmentative and alternative communication (AAC) device?
3. Did the District provide the Parent with special education progress reports towards the Student's annual goals in the areas of speech/language therapy and occupational therapy?

LEGAL STANDARDS

Provision of FAPE: An individualized education program (IEP) is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress," the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

Assistive Technology Device: The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, and/or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device. 34 CFR §300.5; WAC 392-172A-01025.

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. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student attended a District preschool and was eligible to receive special education and related services under the category of developmental delay.
2. On April 4, 2018, the Student's individualized education program (IEP) team, which included the Parent, conducted an annual review and revision of the Student's IEP.² According to the IEP, the Parent stated the following regarding the Student's strengths and concerns for enhancing the Student's education: "[Student] is a hard worker and he seems to love school. He is friendly and cooperative with his peers. He demonstrates confidence and good problem-solving skills when working out simple social problems with other children."

The Student's IEP provided annual goals in the areas of cognitive, social/emotional, adaptive behavior, communication, and fine motor. The IEP stated that progress towards some of the annual goals would be reported to the Parent on a quarterly basis and other goals on a trimester basis.

² The "Parent" is the Student's grandparent, who has guardianship of the Student.

The IEP divided the special education services into two time periods: from April 4, 2018 to June 20, 2018 and from June 21, 2018 to April 3, 2019. The second time period, which is relevant to this complaint, provided the Student with the following specially designed instruction in the special education classroom:

- Fine motor: 30 minutes, 1 time per week (provided by an occupational therapist)
- Communication: 30 minutes, 2 times per week (provided by a speech/language pathologist (SLP))
- Adaptive behavior: 45 minutes, 5 times per week (provided by a special education teacher)
- Social/emotional: 20 minutes, 4 times per week (provided by a special education teacher)
- Cognitive: 40 minutes, 4 times per week (provided by a special education teacher)

The IEP provided the following accommodations: frequent repetitions and direct modeling; pair with a student who can model appropriate skills; visuals of learning expectations and classroom rules and; wait/processing time. Regarding assistive technology, the Student used pictures to express himself and visual supports to help understanding, and the Student also received special transportation.

The prior written notice, dated April 4, 2018, stated a new IEP was developed because the Student now "qualified" for cognitive and continued to be "eligible" for services in the areas of adaptive, social/emotional, speech, and motor.

3. On June 11, 2018, the District documented the Student's progress towards his annual goals. While the Student was making sufficient progress towards some of his annual goals, the Student was not making sufficient progress towards other goals.

2018-2019 School Year

4. During the 2018-2019 school year, the Student attended a District elementary school and continued to be eligible to receive special education and related services under the category of developmental delay.
5. On August 29, 2018, the first day of the 2018-2019 school year began in the District.
6. The District's grading periods during the 2018-2019 school year, which correspond to the timing of the progress reports, in relevant part, were as follows:
 - November 2, 2018: End of 1st trimester and 1st quarter
 - January 25, 2019: End of 2nd quarter
 - March 15, 2019: End of 2nd trimester
 - April 5, 2019: End of 3rd quarter
 - June 20, 2019: End of 3rd trimester and 4th quarter
7. On August 31, 2018, the school principal emailed the Student's special education teacher, school psychologist, SLP, occupational therapist, and District special education director (director), stating, "We need to schedule an IEP meeting with guardian of [Student] as soon as possible..."

8. On September 3, 2018, the Parent emailed the school principal a request to "revisit [Student's] IEP."

9. On September 4, 2018, the Parent emailed the school principal the following:

Per my phone conversation with you, [Student] will go to his private speech therapy as scheduled tomorrow morning at 9:30 and then OT (occupational therapy) at 10:30. He will arrive at school shortly after noon. If you recall this was decided upon so he doesn't miss speech therapy this week pending the SLP coming on board and a therapy session put in place in school. As it is only his second day, he will need someone to walk him to class once he arrives. I replied to [special education clerical worker] about meeting you tomorrow at 3:45. I'm assuming we're meeting to discuss further about [Student] and his needs, however it wouldn't be appropriate to review his IEP until after his meeting with CHS (Seattle Children's Hospital) for his AAC (augmentative and alternative communication) device on the 12th of September.

For the review of [Student's] IEP my thoughts are as follows:

I would like to increase his speech therapy to three times a week, have training and practice for his AAC devices included in his IEP, and I would like [Student's] OT placed back into his IEP. He had it last year, and private occupational therapist was surprised it was removed and has stated he absolutely needs it. He has also been tested for sensory processing difficulties which have become increasingly worse over the past three months. There may be a need to reword his potty training goals as well. I'm not comfortable dropping him off at the front door so there may need to be changes made to accommodate a goal of [Student] being able to get in his line before school independently. For speech, [Student] has made progress, and I want to make sure that the recommendations from the intensive speech therapy camp [Student] attended this summer at the University Hearing and Speech Clinic, his private speech therapy goals, and his IEP goals for speech are aligned. I can bring the paperwork tomorrow so you can provide copies to all parties to review prior to any revisions...

10. On September 7, 2018, the Parent emailed the special education teacher to request a list of the Student's activities each day, including: writing skills, what book was being read, song being sung, what happened during recess and lunch, and potty training for that particular day.

11. On September 10, 2018, the Parent emailed the school principal, asking in part, when the speech services would begin. The Parent stated the Student was also receiving private speech and occupational therapy services, and that she needed to schedule these services around the school services. The Parent indicated she had to pull the Student out of school to receive private services. On the same day, the SLP replied she had to first arrange her service schedule and would get back to the Parent. The school principal also replied on the same day and stated:

...I got your question answered. A schedule will be coming out by the end of the week for when SLP services aligned with [Student's] IEP and the session[s] that he has missed in the beginning of the year will be made up. He will not be pulled from PE (physical education), Music, or Library for [speech] service during the school day. I will be working with [special education clerical worker] tomorrow to get a meeting scheduled with the IEP team, of which you are a member, to discuss that data that you have collected and then IEP team will decide if any revisions need to be made.

On the same day, the SLP emailed the Parent, stating she reviewed the Student's paperwork and "will be targeting goals related to CAS (childhood apraxia of speech) as well as incorporating AAC so he can communicate functionally within his educational environment..." The SLP, in cooperation with Seattle Children's Hospital, also planned to introduce an iPad with Proloquo2Go with the Student as a trial to determine if the device was appropriate for the Student. The Parent was in the process of privately acquiring an AAC (iPad with Proloquo2Go) device through Seattle Children's Hospital.

12. On September 10, 2018, the Parent emailed a private SLP at the Washington State College of Medicine, which sponsored a "speech camp" in which the Student previously participated. The Parent requested advice on speech services in school for the Student. On September 11, 2018, the private SLP replied to the Parent. The email stated:

...I am glad you are pushing for speech therapy 3X a week. In regards to how the services are given, there is no one right answer. To train the use of the AAC device, he could be in a group, as it would provide more natural opportunities for him to practice his expressive language skills with peers (e.g., commenting on things, asking for things, etc.) When working on his motor speech to improve speech intelligibility, you are right, one on one therapy is the most ideal. Sometimes kids get resistant to working on speech. Hence, I find it helpful to have a language goal to work on as well. That way, we still have a productive session. About 1/2 or 2/3rds of his individual session could be to work on his speech skills and the other part could be to work on sentence formulation with AAC...

13. On September 11, 2018, in response to the District's emails about scheduling an IEP meeting, the Parent emailed the SLP and asked, "Can we wait to bring an iPad home until after I meet with Seattle Children's and see what they say? I don't want them to say they won't order him one through his insurance if the school is going to provide one..." The SLP and Parent continued to exchange emails about the Student's AAC and shared information from speech camp. The SLP replied to the Parent and agreed to wait to have an IEP meeting, as the Parent requested they wait to meet until after the Parent received the AAC device. The SLP also requested a release of information from the Parent to contact the Student's previous private SLP.
14. From September 4 to 13, 2018, the Parent and District staff exchanged numerous emails regarding scheduling a meeting to share information with the Student's related service providers. The meeting was scheduled for September 20, 2018. While the Parent requested an IEP meeting, some of the emails from the District referred to the meeting as an "IEP meeting" while other emails referred to just a "meeting."
15. On September 13, 2018, the special education teacher emailed the school nurse, stating the Parent "insists that he has a medical condition that requires him to have an adult assist him with toileting hourly." The nurse replied, "[Parent] said he only needs a reminder to go to the bathroom and to make sure he pulls up his pants all the way..."
16. On September 18, 2018, the Parent emailed the special education teacher. The Parent reported the Student told the Parent he had not been taken to the bathroom all day, although the Student said he did not have to go to the bathroom. The Parent stated "no" was his typical

response, even though he did need to go to the bathroom. The Parent insisted the Student should be on a toileting schedule and that toileting be addressed in the Student's IEP.

17. On September 19, 2018, the Student's SLP emailed another District SLP about the meeting to be held on September 20, 2018. The email stated, "...This meeting will be held by our principal; it is not an IEP meeting. It is a multidisciplinary meeting..."
18. On September 20, 2018, the Parent met with District staff, including the occupational therapist, physical therapist, SLP, Student's special education teacher, and school principal to discuss information from the Parent, although it was unclear to the investigator what information was provided by the Parent. According to the District, this meeting was a "multidisciplinary meeting" (not an IEP meeting) and no changes were made to the IEP, but the District recommended changes to the Student's "instructional practices and interventions," such as using a visual guide. Toileting was a focus of the discussion.
19. Later, on September 20, 2018, the Parent emailed the principal, requesting an IEP meeting to discuss the Student's speech goals, compensatory speech therapy, training for the AAC, goals for classroom behavior, communication between the Parent and the District, and the "instruction and goals for the minutes provided in the special education setting."
20. On September 21, 2018, the Parent emailed the SLP and requested to meet with the SLP to discuss the Student's speech needs. On September 24, 2018, the SLP replied, describing her plan for the Student to interact with his peers and working on functional language, articulation, and the AAC device. On the same day, the Parent replied, asking about Velcro cards on the Student's desk to assist the Student in completing tasks.

In the Parent's reply to the District's response to the complaint, the Parent stated the plan "looked good" but "nothing in the [SLP's] plan was ever implemented for [Student] the entire school year."

21. On September 24, 2018, according to the District, the Parent met with the principal to discuss the September 20, 2018 meeting.
22. On September 26, 2018, the Parent met with the principal and the SLP to discuss speech therapy. The meeting agenda included discussions of the following: communication log with Parent; classroom observations; visuals-too many, not enough; token economy board benefits; targeted goals-educational versus medical goals; treatment strategies; methods for services; and compensatory services. The SLP indicated more speech services were an option but told the Parent "Let's try it and see how it works out..."

In the Parent's reply to the District's response, the Parent stated, "none of the items discussed on the agenda were implemented or discussed with me or the 'team' at any meetings or otherwise."

23. According to the District, the SLP began providing services to the Student during the week of September 24, 2018.
24. On October 2, 2018, the Parent emailed the principal and stated she had a letter from the Student's pediatrician that had recommendations for the Student. On the same day, the Parent emailed the special education teacher and stated she dropped off the pediatrician's letter,³ and the Parent requested an IEP meeting with the District. The Parent and occupational therapist also exchanged emails regarding the Student's pencil grip and sensory issues.
25. The pediatrician's letter, dated September 15, 2018, provided the following recommendations:
- Recommend a paraprofessional educator or other 1:1 aide be provided in class to assist with tasks such as holding a pen, tracing letters, cutting, and other communication needs. [Student] has difficulty with these tasks and additionally may be able to ask for help due to his CAS [childhood apraxia of speech] and developmental delays.
 - Recommend a paraprofessional educator or other designated adult also be provided to assist [Student] with bathroom hygiene. This person should be allowed to take him into the bathroom for scheduled breaks or as needed to assist with changing and wiping. His hypotonia causes poor grip strength and difficulty with these tasks currently.⁴
 - Recommend that a parent or paraprofessional educator be allowed to remain with [Student] in the morning until he enters the classroom. Due to sensory processing difficulties, [Student] may have difficulty staying in line and walking independently with other students.
 - Recommend that [Student's] teacher provide a communication log daily to provide details of this performance, behavior, and any academic work covered during the day.
 - Recommend increasing Occupational Therapy from 30 to 60 min per week and Speech therapy from 2 to 3 times per week (preferably with a dedicated AAC session.)
26. Between October 2 and 18, 2018, the Parent and District exchanged numerous emails, in part, to schedule an IEP meeting to discuss the recommendations from the Student's pediatrician. The meeting was scheduled for October 24, 2018.
27. On October 11, 2018, the Parent emailed the Student's special education teacher and requested the communication form that was being used be changed to provide information about what specific instructional activities the Student participated in each day.
28. On October 24, 2018, the District convened the Student's IEP team, which included the Parent. According to the District, the Parent discussed the Student's sensory needs and the recommendations from the private providers, including additional one-to-one paraeducator support because of behavior "meltdowns" at home. The District indicated that the Student's behavior did not impede his learning or the learning of others at school. The Parent also stated the Student had mastered the goal to count to ten at home, but the District stated there was no indication the Student had mastered the goal at school.

³ It was not clear from the documentation in this complaint who the Parent provided the pediatrician's letter to at the District.

⁴ Hypotonia refers to a physical condition with low muscle tone, often involving reduced muscle strength.

According to the Parent’s complaint, the IEP team did not review the information that was provided by the Parent and addressed only toileting needs. In addition, the occupational therapist or the school psychologist “did not speak once,” according to the Parent. The Parent alleged that the SLP left after five minutes after the start of the meeting.⁵

According to a prior written notice, dated November 30, 2018, the Parent requested additional one-on-one support, additional math goals, and that she be allowed to stand in line with the Student during drop-off in the morning at the October 24, 2018 IEP meeting.⁶ The District refused the Parent’s request for one-to-one support. The notice stated, “[Student] has demonstrated significant progress towards independence with his toileting, hand washing, getting his coat and backpack, and following directions...” Regarding additional math goals, the District stated the Student had not demonstrated mastery at the moment. The notice did not mention the private providers’ recommendations by name, but addressed the recommendation for additional one-to-one support. According to the Parent’s complaint, the prior written notice was inaccurate, as she felt that she did not have an opportunity to discuss any concerns other than toileting.

29. On November 2, 2018, the Parent emailed the SLP, stating the Student’s personal AAC device arrived and the Parent would be receiving training from Seattle Children’s Hospital to program the device.

30. Beginning November 6, 2018 to December 28, 2018, the District provided the following documentation of the Student’s progress towards his annual goals:

Goal	Date	Progress
Reading 1	November 6	Sufficient progress to meet goal
Reading 2	November 6	Sufficient progress to meet goal
Math	November 6	Sufficient progress to meet goal
Written Language	November 6	Emerging skill but may not meet the goal
Social/Emotional 1	November 6	Sufficient progress to meet goal
Social/Emotional 2	November 6	Emerging skill but may not meet the goal
Adaptive Behavior 1	November 6	Sufficient progress to meet goal
Adaptive Behavior 2	November 6	Sufficient progress to meet goal
Adaptive Behavior 3	November 6	Insufficient progress towards goal
Communication 1	November 29 ⁷	Sufficient progress to meet goal
Communication 2	December 28	Sufficient progress to meet goal

⁵ According to the District, the District believes the Parent was confusing the September 20, 2018 and October 24, 2018 meetings and what occurred during these meetings.

⁶ The Parent disagrees with the prior written notice, and stated in her reply that she did not request this at the October 24, 2018 IEP meeting.

⁷ The relevant progress report stated, “[Student’s] communication device is assisting him with the production of these phrases. He continues to present refusals when asked to repeat the phrase more than once.” OSPI notes that the progress report included comments on other goals; this specific comment is included as it is most relevant to the specific issues alleged in the complaint.

Communication 3	November 28	Sufficient progress to meet goal
Fine Motor 1	Not reported	Not reported
Fine Motor 2	Not reported	Not reported

31. According to the Parent, she did not receive the progress reports until December. The documentation included a December 12, 2018 email from the District to the Parent that included the progress reports (although, this email did not include progress reporting for the fine motor goals).
32. On November 6, 2018, the Parent emailed the SLP and stated the Student was receiving a new AAC device from Seattle Children’s Hospital. The Parent requested the District have the Student use this device during school.
33. On November 8, 2018, the Parent emailed the Student’s special education case manager and requested an IEP meeting to address the Student’s AAC device, the Student’s pediatrician’s recommendations, and compensatory speech services.
34. Between November 8 and November 16, 2018, the Parent and SLP exchanged emails about who could program the AAC device and when the Student would use it. The Parent also stated the Student needed a new toileting goal.
35. On November 16, 2018, the District held an IEP meeting with the Parent to address adding the AAC device to the Student’s IEP, which was in effect from November 16, 2018 to April 3, 2019. According to the Student’s IEP, the Student’s communication needs were updated as follows: Student requires visual picture supports, fine motor services, his AAC device (iPad P2Go), and extended time complete assignments. Assistive technology devices and services included the iPad P2Go. The IEP added “use of communication device (AAC) for assistance with verbal output” five days a week in all settings as an accommodation and “AAC monitoring and assistance” as a support for school personnel.⁸
36. The District’s prior written notice, dated November 15, 2018, stated the IEP meeting was to address the addition of the AAC device to the Student’s IEP.⁹ The notice was not clear whether the proposal was accepted or rejected by the District, although as the device was added to the IEP, it seems that it was accepted. The District provided an additional prior written notice, dated November 30, 2018, for the same meeting. The two notices were nearly identical, except for different dates and one notice used the term “AAC device,” while the other used “device.”
37. On November 16, 2018, the Parent emailed the SLP and case manager, stating the Student was able to count up to 50 without assistance. The Parent provided the District with a video of the Student, at home, counting past ten.

⁸ The “5Xweek” on the IEP will be interpreted to mean five days a week.

⁹ It was unclear whether the November 15, 2018 date was a misprint or if the prior written notice was written the day before the IEP meeting.

38. On November 29, 2018, the Parent's private special education consultant (consultant) wrote a letter to the District. The letter, in part, requested the following:

- Information about the visual supports being used with the Student;
- Progress monitoring data, including why the Parent did not receive progress monitoring data in the areas of social/emotional, adaptive, and communication;
- Information about how homework is designed based on the Student's unique needs;
- Inconsistent information between the Parent and District as to "how the [Student's] day has gone";
- Having an IEP meeting; and,
- Having the private special education consultant observe the Student during the school day.

The letter cited the following incidents as examples "regarding [Student's] needs based on his disability lack of supports and specially designed instruction:"

- Teacher stated a communication folder is not necessary. Student should be communicating daily activities with his AAC device.
- Because of the Student's hypotonia, the teacher suggested placing Velcro on coat to encourage independence.
- When the Student was observed during lunch, the Student received no assistance with opening his milk or plastic ware.¹⁰

39. On November 29, 2018, the Student's private occupational therapist emailed the Parent, stating the following:

I am the outpatient occupational therapist for the above reference patient. I am requesting that [Student's] current minutes for occupational therapy at school to be increased to 60 minutes per week. Although [Student] has made a tremendous amount of progress and has grown developmentally in many ways, he continues to struggle with motor planning, fine motor coordination, visual motor integration, and visual perception which impact his functional independence during academic tasks in the classroom. These challenges directly impact [Student's] ability to write letters of the alphabet, draw simple shapes, use scissors to cut out lines and shapes, color in the lines of a shape, sequence a craft project, etc. Additionally, I will be leaving my clinic on 12/7/2018 and [Student] will be placed on a waitlist until another occupational therapy slot becomes available. Due to the absence of private occupational therapy services, it is imperative that he continue to receive occupational therapy services preferably 60 minutes rather than 30 minutes.

40. On December 12, 2018, the director emailed the Parent the Student's special education progress reports with information on his progress toward his annual IEP goals.

41. On December 13, 2018, the consultant emailed the director to state that many of the progress reports had no measurable data, including no fine motor progress reporting, and no occupational therapy update. On the same day, the director replied that the consultant's concerns would be addressed in the next IEP meeting.¹¹

¹⁰ It was unclear who observed the Student.

¹¹ OSPI notes that as of the date the complaint was filed—March 1, 2019—an IEP meeting had not yet been scheduled.

42. On December 19, 2018, the principal emailed the Parent, stating among other things, that “yesterday I observed while [Student] was working with the paraeducator. He was communicating with words and picture as well as his AAC device without prompting!”

43. From December 24, 2018 through January 4, 2019, the District was on winter break.

44. Between January 11 and January 25, 2019, the principal, the Parent, and Parent’s consultant exchanged numerous emails about book reports, scheduling private and school speech services, the use of the ACC, the literacy block of time, and compensatory speech time, among other issues.

45. On January 25, 2019, the special education director emailed the Parent about compensatory speech services. The email stated:

The SLP began serving students the week of Sept. 24th. We will therefore be providing 3 hours (30 minutes, twice a week, for 3 weeks) of services for the missed services at the start of school. Would you like for these to occur after school, or would you like him to be pulled an extra half hour per week during school for 6 weeks. I know there is concern about what he is currently missing during services, but I wanted to offer both options available.

46. On January 30, 2019, the SLP emailed the director the dates the Student received speech services, which began on September 27, 2018. According to the SLP, each session lasted 30-32 minutes. The following dates were listed (* indicates the Student was absent):

9/27	10/25	11/13	12/6
10/2	10/26*	11/15	12/7
10/4	10/30	11/20	12/11
10/9	11/2	11/22	12/13
10/11	11/6	11/27	12/14
10/16	11/8	11/29	
10/18*	11/9*	12/4	

47. From January 25 to February 6, 2019, the principal, director, Parent and the Parent’s consultant exchanged numerous emails about the Parent’s concerns.

48. On February 6, 2019, the director emailed the Parent and the Parent’s consultant and summarized the issues presented in the past two months. The email included the following:

- The District will assemble all the documentation, notes, and data from the Student’s teacher, speech therapist, and occupational therapist.
- The District will provide four hours of compensatory speech services based on the services missed at the beginning of the school year.
- The District will permit the Parent’s consultant to observe the Student at school.
- The District clarified IEP language regarding the backpack goal.

The email also listed questions that would be addressed regarding classroom instruction, the AAC device, and the backpack goal.

49. From February 7 to 14, 2019, the principal and Parent’s consultant exchanged emails to schedule the observation by the consultant.

50. On February 15, 2019, the principal emailed the Parent and the Parent’s consultant about scheduling the observation. In the email, the principal also stated because the occupational therapist was out on leave, the District would provide the Student with three hours of compensatory services.

51. The occupational therapy services log showed that services were provided on the following dates (* indicates the Student was absent or attended part of the day):

9/7/18	10/17/18*	11/7/18	11/28/18
9/19/18	10/24/18	11/13/18*	12/5/18
9/26/18	10/30/18*	11/14/18	12/12/18
10/3/18	10/31/18	11/15/18	2/14/19
10/10/18	11/1/18	11/16/18	

52. On March 1, 2019, the Parent filed this complaint.

53. On March 6, 2019, according to the District, the District and the Parent met to begin a reevaluation of the Student.

54. On March 6, 2019, the director replied to the Parent regarding the video of the Student counting. The email stated:

Though we appreciate knowing what the student is able to do at home, we create goals and design instruction around what we see in the educational setting. As you both know, the home environment is very different than the school one – different expectations, supports, and environmental influences.

55. On April 4, 2019, the Parent and the District participated in mediation available through OSPI. The mediation resulted in a written agreement between the Parent and the District. The provisions of the agreement were as follows:

1. District acknowledges that the three year evaluation for [Student] has begun and that Guardian has given consent to perform the evaluation.
2. Parties agree to extend expiration date of [Student’s] three year evaluation to May 6, 2019.
3. District agrees to schedule and hold feedback meeting no later than May 6, 2019.
4. District agrees to submit a draft of the evaluation to Guardian no later than three days prior to scheduled feedback meeting.
5. District agrees to three hours of compensatory O.T. service; Service will be provided as a push-in service during the regular school year 2018-2019 class schedule. If regular school year push-in service is not possible, District agrees to three hours of compensatory O.T. service delivered during the 2019 ESY (extended school year) schedule.
6. District will confirm O.T. compensatory service delivery schedule no later than April 5, 2019.
7. District agrees to four hours of compensatory SLP service during the 2019 ESY schedule.
8. District agrees to provide a one or two hour training for classroom staff members regarding [Student’s] AAC device by April 26, 2019. District will provide similar AAC training and materials to Guardian within two weeks after staff training.
9. District agrees that no changes to content or applications will be made to [Student’s] AAC device without agreement from Guardian.
10. Email communication to [Student’s] team will be conducted between [Parent] and [principal].

11. Parties agree that a daily communication log between home and classroom will commence on April 15, 2019.

56. The District provided the following progress reports based on the Student's April 4, 2018 IEP:

Goal	Date	Progress
Communication 1	March 28	Sufficient progress to meet goal
Communication 2	March 28	Mastered goal
Communication 3	March 28	Mastered goal
Adaptive Behavior 1	March 28	Mastered goal
Adaptive Behavior 2	March 28	Mastered goal
Adaptive Behavior 3	March 28	Mastered goal
Adaptive Behavior 4 (Fine Motor)	March 28	Sufficient progress to meet goal
Adaptive Behavior 5 (Fine Motor)	March 28	Insufficient progress to meet goal
Cognitive 1	March 28	Mastered goal
Cognitive 2	March 28	Insufficient progress to meet goal
Cognitive 3	March 28	Mastered goal
Cognitive 4	March 28	Mastered goal
Social/Emotional 1	March 28	Mastered goal
Social/Emotional 2	March 28	Mastered goal

57. In the Parent's reply to the District's response, the Parent provided screenshots of the AAC device, showing that the device was used on a limited basis on March 26, April 26, May 31, June 10, and June 14, 2019. These dates were after the complaint was filed on March 1, 2019.

CONCLUSIONS

Issue 1: Individualized Education Program (IEP) Development & a Free Appropriate Public Education (FAPE)

Parent Participation – The complaint alleged the District failed to consider information from the Parent regarding the Student's needs and that members of the Student's IEP team provided little or no input into developing the Student's IEP on October 24, 2018. A district must ensure that the parents of children with disabilities have an opportunity to participate and provide input in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. The IEP team must consider, among other things, the concerns of the parents for enhancing the education of their student. A district must respond to a parent's request for an IEP by either convening the IEP team or providing the parent with prior written notice of its refusal, including the reason for refusal. If an IEP meeting is necessary, a district should schedule an IEP meeting as soon as possible; although, if a parent is making continual requests to meet, a district may consider whether additional IEP meetings are necessary to provide FAPE. Not every request from a parent for a meeting must result in an IEP meeting; for example, a district may determine that a meeting is not necessary to ensure the student is provided a FAPE or that no change is necessary to provide a FAPE. In such cases, the district must provide the parent with prior written notice of its refusal and reasoning.

Here, on September 3, 2018, the Parent requested an IEP meeting to address a litany of concerns. Rather than convening the IEP team, the District held a "multidisciplinary" meeting on September 20, 2018 with the Parent, the principal, the special education teacher, and the Student's service providers at which, according to the District, they mostly discussed instruction and toileting issues with the Student. The Parent's other concerns, such as speech services and the AAC device, were not discussed. There was no explanation in the documentation why the District held a multidisciplinary meeting in lieu of an IEP meeting as requested by the Parent. The District did not provide the Parent with prior written notice, refusing the Parent's request for an IEP meeting or explaining why an IEP meeting was not necessary. OSPI reminds the District that if it determines an IEP meeting is not necessary, following a parent's request, the District should document the refusal and an explanation of why a meeting is not necessary in a prior written notice. Likewise, agreeing to meet but drawing out the scheduling of the IEP meeting over an unreasonable period of time can be tantamount to a refusal to meet; although, here, the Student's IEP team did ultimately meet in late October 2018.

On September 24, 2018, the Parent met with the principal, and on September 26, 2018, the Parent, the principal, and SLP met to further discuss the Student's speech services. The Parent requested speech services three times a week; the SLP informed the Parent that while more speech was an option, she suggested "Let's try it and see how it works out..." Following these meetings, the Parent continued to request an IEP team meeting in emails to the District.

On October 2, 2018, the Parent informed the District about the recommendations from the Student's pediatrician, which were to be discussed at an IEP meeting scheduled for October 24, 2018. On October 24, 2018, the IEP team, which included the Parent, discussed the recommendations from the Student's pediatrician for additional one-to-one paraeducator support and the Parent's concern about the math goal. The District stated the Student's behavior was not a concern at school and was not impacting his education. Despite the Parent's allegations regarding the IEP meeting, there were no indications that the SLP left early or that the service providers did not speak at the meeting. There was also no indication from the documentation, including the later prior written notices, that the recommendations from the private SLP were introduced by either the Parent or District, discussed, or decided upon during the October 24, 2018 IEP meeting. However, the request for three days a week of speech services based on the private SLP's recommendation was previously addressed at the September 26, 2018 meeting with the principal and SLP.

Following a subsequent IEP meeting on November 16, 2018, the District issued two prior written notices, dated November 15 and 30, 2018 (the two notices were nearly identical, apart from the date and a reference to the "AAC device" in one notice and the "device" in the second notice). The prior written notices appear to relate to both the October 24 and November 16, 2018 IEP meetings. It is not clear why the District did not provide a prior written notice more immediately following the October 24 meeting. Although delayed, the prior written notice, dated November 30, 2018, confirmed that the IEP team discussed the Parent's request and recommendation for one-to-one support and the math goal, and refused the proposals because there was no need for one-to-one support and the Student was not demonstrating mastery of the math goal (discussed

further below). The District is not necessarily required to implement the recommendations by private providers, but it is required to consider them. If the District refuses to implement the recommendations, the District must provide the Parent with prior written notice, explaining the refusal. The prior written notices, dated November 15 and November 30, 2018, were provided to the Parent.

However, the delay in providing the prior written notice following the October 24, 2018 IEP meeting amounts to a procedural violation. Essentially, the District failed to provide prior written notice for the October 24 meeting and instead, provided two prior written notices (dated November 15 and 30, 2018) related to the November 16, 2018 IEP meeting. The District will be required to address the violation through correction action. However, based on the continual emails, informal meetings, and IEP meetings between the Parent and the District, the failure to provide prior written notice did not significantly impede the Parent's ability to participate in the development of the Student's educational program; thus, there was no denial of FAPE and no Student specific corrective actions are necessary.

Revision of Math Goal – The complaint alleged the District failed to revise the Student's math goal of counting to 10 because the Student had mastered the goal. IEPs must be reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances and the annual goals should present students with an opportunity to meet challenging objectives.

Here, the Student had an IEP goal to count to ten. At the October 24, 2018 IEP meeting, the Parent alleged the Student could count much higher. At the time of the meeting, the District stated the Student had not yet met the goal at school. This was confirmed by the November 6, 2018 progress report that stated the Student was making sufficient progress towards the goal but had not yet achieved it. Later, the Parent provided a video of the Student counting past 10 at home. However, it is not unusual for students to perform differently at school than at home—as the District explained to the Parent. While the fact that the Student is able to count past ten at home is important, a goal of having him count to ten at school remained viable if he would not or was not able to count to ten at school yet. OSPI finds the District's rational in leaving the goal unchanged reasonable and the IEP team's decision to leave the goal unchanged did not deprive the Student of a FAPE. Based on the documentation, the Student's goal remained appropriate at the time of the IEP meeting. OSPI finds no violation.

Issue 2: Implementation of Related Services and AAC Device

Related Services – The complaint alleged the District failed to implement the related services according to the Student's IEP. Specifically, the complaint alleged the District did not implement speech services at the beginning of the school year and that the Student did not receive occupational therapy (OT) when the occupational therapist was absent for six weeks during the school year. A district is required to implement the IEP as written.

Here, the Student's IEP (from June 21, 2018 to April 3, 2019) provided for OT services 30 minutes per week, and speech services 30 minutes twice a week. The District acknowledged that OT was not provided for 5.25 weeks in December 2018 and January 2019. The District also acknowledged

that the Student's speech services did not begin until September 27, 2018. Thus, per the District's admission, the Student's IEP related services were not provided and his IEP was not implemented for a period of time. A violation is found. It should also be noted that despite the failure to provide some services according to the IEP, the Student mastered most of his annual goals according to the April 4, 2019 progress reports.

After the complaint was filed by the Parent, the Parent and District participated in mediation on April 4, 2019. The written mediation agreement between the Parent and the District provided three hours of OT and four hours of speech services to the Student, among other agreements. Because the mediation agreement is binding on the Parent and District, the District is required to provide three hours of OT and four hours of speech services based on the failure to provide the services to the Student. However, according to the District, all three hours of compensatory OT have been provided to the Student and the Parent declined the four hours of speech services. Until the District provides documentation that the compensatory OT services has been provided and the Parent refused the speech services, the corrective action regarding the compensatory services will proceed. (See the corrective action below.)

AAC Device – The complaint alleged the District failed to implement the Student's AAC device. The complaint stated the classroom paraeducator who worked with the Student did not know how to use the AAC device. A district is required to implement the IEP as written.

Here, the Student's April 2018 IEP did not include an AAC device. The Parent privately secured an AAC device (iPad with P2Go) in November 2018 and requested the District use it so the Student would have consistency between home and school. The Parent also requested the Student's IEP include the AAC device. The District obliged by including the device in the November 16, 2018 IEP, as an accommodation to be implemented five times a week. However, according to the Parent, due to issues regarding the programming between home and school and who was capable of programming the device, the initial implementation of the device was not smooth.

The Parent alleged the District failed to implement the AAC device because the classroom paraeducator who also worked with the Student did not know how to use the device. However, the Parent's allegation conflicts with the December 19, 2018 email from the principal to the Parent, stating that she observed the paraeducator working with the Student using the AAC device and the November 29, 2018 progress report stating the AAC device was assisting the Student in his production of functional words. In addition, the SLP stated in a September 10, 2018 email to the Parent (prior to the inclusion of the device on the IEP) that she was running trials with the Student on the device to support using the device in the classroom. The mediation agreement did provide for training to District staff on the Student's AAC device. However, the agreement itself is not probative that a violation occurred regarding the implementation of the AAC device. Overall, the documentation indicates the AAC device was implemented and OSPI finds no violation.

Issue 3: Progress Reports

The complaint alleged the District did not provide progress reports to the Parent. The complaint stated the Parent did not receive the November and December 2018 progress report. The

complaint also alleged the SLP did not provide any progress notes for each session with the Student and no occupational therapy progress reporting was provided. The IEP must include a statement stating how progress towards the annual goals will be measured and when a district will provide the parent a report on the student's progress.

Here, the Student's April 2018 annual goals stated that some progress reports would be provided to the Parent quarterly or while others would be provided on a trimester basis. The District's first quarter and trimester ended on November 2, 2018. The documentation included progress reporting for the Student's cognitive, social emotional, and adaptive behavioral goals that was recorded on November 6, 2018. Later, progress on the Student's communication goals was recorded on November 28, November 29, and December 28, 2018. The documentation indicates the Parent received this progress reporting on December 12, 2018, when the District emailed the reports to the Parent. There was no progress reporting provided at that point for the Student's fine motor goals.

Further, the District's second quarter ended on January 25, 2019, and the District's response did not include any progress reporting on any goals, indicating progress reporting was not provided to the Parent at that point, despite being required for some goals (e.g., speech) per the Student's IEP. The District's response did include progress reporting, dated March 28, 2019, on the Student's cognitive, social emotional, communication, and adaptive behavior goals. This time, progress on the Student's fine motor goals was provided, but labeled as adaptive behavior. While this second period (and the end of the District's remaining quarters/trimesters of the 2018-2019 school year), occurred after the complaint was filed—meaning the District was not yet required to provide progress reporting for those periods when the complaint was filed—overall, the District did not provide progress reporting as required by the Student's IEP for at least part of the year. The District did not ensure that progress reporting was provided to the Parent at the frequency specified in the Student's IEP and the District failed to provide progress reporting on all of the Student's IEP goals. OSPI finds the District in violation and the District will be required to complete corrective actions.

Regarding the Parent's allegation that the District failed to provide progress notes for each speech session, the Student's April 2018 IEP stated that the communication goals would be measured by clinical data collection and reported quarterly to the Parent. The IEP did not require progress notes or reports for each session as requested by the Parent and thus, the District is not in violation for failing to provide notes for each of the Student's sessions.

CORRECTIVE ACTIONS

By or before **September 3, 2019, September 6, 2019, September 20, 2019, October 7, 2019,** and **January 10, 2020,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Based on the mediation agreement between the District and Parent, dated April 4, 2019, by or before **September 13, 2019,** the District and the Parent must development a schedule to provide

four hours of compensatory speech services and three hours of compensatory occupational therapy to the Student. The implementation of the compensatory services must be completed by **December 20, 2019**. The services will be provided outside of the District's regular school day (services may be provided on weekends or during school breaks). The services will be provided to the Student on a one-to-one basis. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule.

If the District has already provided the compensatory OT services and has documentation that the Parent refused compensatory speech services, the District is required to provide OSPI with the documentation by **September 3, 2019**.

By or before **September 20, 2019**, the District must provide OSPI with the compensatory services schedule.

By or before **January 10, 2020**, the District must provide OSPI with documentation of the compensatory services provided to the Student.

DISTRICT SPECIFIC:

Prior Written Notice Training

By or before **September 27, 2019**, the District special education administrators and the members of the Student's 2018-2019 IEP team will complete training on prior written notices through either a training module or a District created training plan. The training module has been developed by OSPI Special Education Division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas will be available by September 10, 2019, and OSPI will send you additional information regarding how to access and complete the module, should the District elect to use this option. The District has the option of using the OSPI training module or the District, in collaboration with the Educational Service District, will provide the training.

By **September 3, 2019**, the District will notify OSPI of the plan to train the staff. At that time, if the District is not opting to use the training module, a timeline for the training plan will be developed.

By or before **October 7, 2019**, the District will submit documentation that required staff have completed training.

Written Training (Guidance)

By or before **September 27, 2019**, the District will provide written training (guidance) to the Student's 2018-2019 IEP team on holding an IEP meeting at the request of a parent and progress reporting. The written guidance will include references to District policies, examples, and best practices. The guidance on meetings should include best practices to respond to parents in a

timely manner, schedule meetings in a timely manner, and guidance on what to do if the team determines an IEP meeting is not necessary to ensure a student receives a free appropriate public education (FAPE). The guidance on progress reporting will address the findings of this complaint, requirements for progress reports, and steps and best practices to ensure compliance.

By or before **September 6, 2019**, the District will provide OSPI with a draft of the written guidance to be approved. OSPI will review the draft guidance and will approve or provide additional dates for review by September 13, 2019.

By or before **October 7, 2019**, the District will provide OSPI with documentation that the required staff have received and reviewed the written guidance. This documentation should include a list of the required staff and documentation that they have 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.

RECOMMENDATIONS

The District provided the Student's progress reports on both a quarterly and trimester basis—some goals on a quarterly basis and other goals on a trimester basis. OSPI notes that it can be confusing to have different reporting periods for different goals in a student's IEP and that this can lead to errors in the provision of consistent progress reporting. While this may have been an oversight, OSPI recommends that the Student's IEP team consider whether all the Student's progress reports should be provided at the same interval. OSPI also recommends that the District review OSPI's tip on progress monitoring available in the September 2018 monthly updated: <https://www.k12.wa.us/sites/default/files/public/specialed/monthlyupdates/sept2018updates.pdf>.

Dated this ____ day of August, 2019

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.)