

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-150

PROCEDURAL HISTORY

On December 22, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the North Kitsap School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On December 22, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On December 23, 2020, OSPI received additional information from the Parent and forwarded that information to the District the same day. The additional information consisted of the Parent's complaint with referenced documentation linked via Google docs.

On January 11, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on January 12, 2021. OSPI invited the Parent to reply.

On January 25, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On February 5, 2021, OSPI requested clarifying information from the District and received the information on February 9, 2021. OSPI forwarded the additional information to the Parent on February 10, 2021.

On February 11, 2021, OSPI received additional information from the Parent and forwarded that information to the District on February 12, 2021.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on December 23, 2019. 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 follow procedures to implement the Student's individualized education program (IEP) accommodations from December 23, 2019 through June 2020, including the Student's executive functioning accommodation?

2. Did the District follow procedures to provide prior written notices containing the elements required in WAC 392-172A-05010, including but not limited to providing a prior written notice following the January 27, 2020 IEP meeting?
3. Did the District follow procedures to ensure the required members of the IEP team were present at the January 2020 IEP meetings as outlined in WAC 392-172A-03095?
4. Did the District provide the Student with special education services from March 2020 through June 2020, either by implementing the Student's IEP or providing services outlined in a continuous learning plan?
5. Did the District ensure Parent participation in the October 29, 2020 IEP meeting, specifically related to the Student's transition planning as required by WAC 392-172A-03100 and WAC 392-172A-05001?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction 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. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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

the health and safety of students with disabilities and those individuals providing special education and related services to students.”)

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

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

Specially Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural

safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

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

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the 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. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Graduation and Transition Planning: Graduation with a regular high school diploma ends a student's eligibility for services under Part B of the IDEA. Once a student meets all state and local graduation requirements, a district must issue the student a diploma. RCW 28A.230.120. A student has a right to a FAPE and remains eligible for special education until the student meets high school graduation requirements and has graduated from high school with a regular high school diploma. Graduation from high school with a regular high school diploma constitutes a change in

placement, requiring written prior notice. WAC 392-172A-02000. Transition services are not intended to extend past a student's secondary education. Rather, they are intended to end upon graduation with a regular diploma. *Letter to Moore*, 39 IDELR 189 (OSEP 2002).

FINDINGS OF FACT

Background: 2019-2020 School Year

1. During the 2019-2020 school year, the Student attended a District high school and was in the twelfth grade. The Student was eligible for special education services under the category other health impairment and her most recent reevaluation was conducted in February of 2019. The District's 2019-2020 school year began on September 4, 2019.
2. On December 4, 2019, the Student's individualized education program (IEP) team met and developed the Student's annual IEP. The Student's December 2019 IEP included an annual goal in math calculation (bank balance and budget). The present levels section of the IEP indicated the Student's personal finance class was working on "bank accounts and budgets which is a life skill that [Student] will need for the future." The IEP listed the Student's strengths, including that the Student was hard working and a self-advocate. The Student's IEP provided the Student with the following specially designed instruction:
 - Math: 52 minutes daily (to be provided by a general education teacher, in the general education setting)
 - Math: 45 minutes weekly (to be provided by a special education teacher in the special education setting)

The IEP included the following "recommended instructional/curricular practices and student management strategies":

- Instruction and testing should be accompanied with accommodations that provide visual support for all audio communication.
- Reduce number of problems.
- Mandatory use of calculator both in class and on tests.
- Use of all notes for tests/quizzes/assessments (other students are limited on the notes) in math classes only.
- Copy of notes with fill-in-the blanks provided by teacher outlining important steps.
- Separate setting for test taking (conducive to quiet and independent work).
- Extended time for testing.
- Visual aids and cues to facilitate understanding of lessons and assignments.

The IEP indicated the Student had previously passed the English language arts and science assessments and would either retake the math assessment or utilize a locally determined assessment for math for purposes of meeting graduation requirements. The Student's IEP provided the Student with the following accommodations:

- Assessments: Calculator for math and separate setting for math.
- Preferential seating – front of classroom and in close proximity to instructor.
- Reduce/minimize distractions in the environment.
- Provide hard copy lecture notes/ power point presentations prior to instruction daily.
- Provide study guides and review time.

- Instruction and testing should be accompanied with accommodations that provide visual support for all audio communications.
- Test taking should allow for quiet and independent work.
- Extended time for testing and assignments up to two weeks past due date.
- Classwork instructions, projects or tests summarized into short written steps.
- Oral instructions shortened and broken down into steps with written back up instructions.
- Require use of calculator.
- Extended time, if needed, of up to two weeks to complete assignments.
- Take written notes during lectures/presentations whether on previously provided worksheets or note paper.
- Allow longer time for verbal response due to slower processing.
- Additional time to complete tests/projects.
- Focus on class preparedness – reading ahead – so that Student is familiar with material before class.
- Weekly, Student will create a specific list of steps needed to complete homework, tasks and projects.
- Student will self-advocate to her teachers regarding missing work and how she can make-up assignments.

The Student's IEP indicated the Student would spend 97% of her time in the general education setting.

The Student's IEP indicated her anticipated high school graduation date was June 10, 2020, and included an individualized transition plan, recording the following, in part:

- Age appropriate transition assessments were conducted.
- Student's strengths, preferences, interests, and needs ("[specially designed instruction] recommendation for math").
- Measurable post-secondary goals, transition services, and coordinated activities:
 - Education: "After graduation from high school, [Student] will receive further education to become a preschool teacher. [Student] will receive specially designed instruction to improve math skills, primarily in the general education setting, involving collaboration with general education and special education teachers. [Student] has the full resources of the counseling staff at [high school] available to her."
 - Employment: "[Student] will pursue a career as a preschool teacher. [Student] is encouraged to investigate resources offered in the Career Center and opportunities referenced in the daily bulletin."
 - Living: "[Student] will live independently and has the skills to initiate, maintain, or actively participate with self-generated resources with family support. [Student] will explore school activities/sports. To adapt to adult living situations, [Student] will continue to develop self-advocacy skills necessary for post-secondary success. [Student] has age-appropriate daily living skills. She has demonstrated that she has the self-care skills typical for her grade level and is able to expand these on her own without specialized instruction or support."
- Course of study

The transition plan indicated the Student had met with representatives from the Division of Vocational Rehabilitation (DVR) and "will have further opportunity to participate in

presentations made by DVR on interview, employment soft skills and resources available for employment in the area.”

3. According to the Parent’s complaint, the IEP team did not discuss the Student’s transition plan at the December 4, 2019 IEP meeting; although, the DVR representative did share information about how DVR could assist the Student. The Parent noted in the complaint that the Student’s IEP accommodation only gave a two-week extension to complete assignments and that she expressed during the meeting that “giving [the Student] more time is not teaching her to take responsibility.” The Parent also stated she asked the general education math teacher what specially designed instruction looked like for the Student and he could not answer. According to the Parent’s notes from the meeting, the case manager stated a paraeducator provided specially designed instruction during math and that the Student responded, “I don’t have a para[educator] that helps me. There is not a para in the room with us ever.”
4. Based on documentation in the complaint, the Student’s specially designed instruction in math was to be provided by the Student’s case manager in “HSB time” (high school and beyond class period) and her personal finance math class.

December 23, 2019: Complaint Investigation Timeline Began

5. The District was on winter break from December 23, 2019 through January 3, 2020.
6. According to the District’s response, the Student’s accommodations were implemented throughout the school year. This included: “teachers consistently allowing Student extended time to complete work;” and, “special education staff working with Student [to support] her self-advocacy and creation of this weekly list by walking with her to her general education teachers to confer about pending tasks, emailing teachers to confirm assignment details, printing missing assignments for Student, and working with her during her High School and Beyond class [HSB class] period to log into Skyward, the District’s electronic recordkeeping system, and identify what assignments needed to be turned in.”

The District noted the Parent’s complaint “appears to object to Student being allowed more time than the two-week specification in Student’s IEP.” The District stated the Student’s teachers “often allow students to turn in and receive credit for work completed more than two weeks after a generally applicable deadline, because teachers prioritize encouraging students to complete work and meet learning targets rather than discouraging work completion by enforcing a deadline that does not contribute to the mastery of a learning target.” The District stated staff allowed the Student the same flexibility given to general education students.

7. On January 1, 2020, the Parent emailed the principal regarding the Student’s IEP. Specifically, the Parent stated the executive functioning accommodation was not being provided and that the executive functioning accommodation that the Parent, case manager, and teachers had discussed was not included in the IEP. The Parent noted the accommodation as follows: “Weekly, case manager will help [Student] create a specific list of steps needed to complete tasks, projects, retake quizzes/tests and plan a timeline for completion of each step.” The

Parent stated that if this was occurring weekly, the Student would not have missing or late assignments emails and the Parent would be better able to support the Student in work completion and self-advocacy. The Parent emphasized this was an important skill the Student needed to learn.

8. On January 6, 2020, the special education teacher and principal emailed regarding the Parent's concern regarding the executive functioning accommodation. The teacher noted the following accommodation was included in the IEP, although it did not specify the case manager would create the list—"Weekly, [Student] will help create a specific list of steps needed to complete homework, tasks and projects and plan a timeline for completion of each step." The teacher noted this could be done with each teacher, at home, or with a paraeducator. The special education teacher stated, "We have already walked her to her teachers multiple times, printed missing assignments, emailed teachers, had paras working with her, and we have worked with her during HSB [class] to look over her Skyward and identify what assignments need to be turned in." The teacher stated they were working with the Student during HSB class and a paraeducator was checking in with the Student during math.
9. Also, on January 6, 2020, the principal emailed the Parent, case manager, and special education teacher regarding the Parent's concerns. The principal stated there seemed to be "some misunderstanding as to what [Student's] current accommodations are." The principal stated he did not see the specific wording the Parent referenced in her email for the accommodation. The principal stated he had concerns as this seemed more like a goal than an accommodation and suggested the IEP team meet to clarify.
10. Subsequent emails between January 7 and 8, 2020 indicate there were different understandings regarding the wording of the executive functioning accommodation.

The Parent stated the wording came from a May 2019 IEP amendment, as May 2019 "Parent/Guardian Notification of Individualized Education Program Amendment" included the following: "Weekly, Case Manager will help [Student] create a specific list of steps needed to complete tasks, projects, retake quizzes/tests, and plan a timeline for completion of each step...enclosed is a copy of your child's current IEP along with the changes..." and the prior written notice stated "the IEP team determined to amend the following Accommodations provisions:...Case manager support of planning functions for quizzes, tests and projects." The Parent, in her reply to the District's response, stated "This is the Executive Functioning Accommodation that the complaint state the District did NOT implement during the 2019-2020 school year."

The District noted the December 2019 IEP accommodation was modeled on the previous IEP (February 2019), which stated: "Weekly, [Student] will help create a specific list of steps needed to complete homework, tasks and projects and plan a timeline for completion of each step." The District also questioned whether the accommodation was reasonable because the Student was "succeeding in her classes and only qualifies in math."

11. On January 16, 2020, the Student's case manager emailed her teachers to check in with the staff. The case manager stated the Parent had concerns about whether the Student was turning in work. The case manager stated they were "working with her to help with more adult executive functioning skills and although accommodations were sent at the beginning of the year, I just wanted to double check and make sure everyone had a copy on file." The case manager noted one of the most important accommodations was to have a copy of notes for the Student in advance or a hard copy of the notes have been presented. The case manager also stated he was "encouraging [Student] to self advocate and ask for her accommodations when needed, but it is a skill she is still working on." The email included a copy of the Student's December 2019 IEP summary.
12. On January 17, 2020, the Student's IEP team—including the case manager, principal, another special education teacher, a general education teacher¹, the Parent, and the Parent's advocate—met to discuss the wording of the Student's accommodations and other supports.

The Parent noted in her complaint that she gave the IEP team a copy of the Student's May 2019 IEP amendment. In her reply to the District's response, the Parent noted she shared the importance of the executive functioning accommodation and how it was related to the Student's needs. According to the Parent's notes, the "principal stated he wanted to gather more information, as teachers did not attend the meeting and he needed time to talk to teachers to know if: Teachers were grading [Student] according to standards or giving her a free pass on assignments so she would pass the course. He also needed to see if they were giving her the accommodations listed in her IEP..."

Based on the Parent's complaint and subsequent emails, District staff felt the Student needed support in organizing and completing tasks, but that the specific accommodation in the IEP should not be categorized as an accommodation. The team determined it would meet again on January 27, 2020.

13. The prior written notice from the IEP meeting, dated January 17, 2020, stated the IEP team would be "meeting to discuss [Student's] current accommodations and concerns" because "Parents would like IEP updated to reflect requested accommodations." The prior written notice did not record any other decisions beyond that the IEP team would be meeting.

In its response, the District acknowledged that the prior written notice was missing required elements.

¹ The Parent stated in her complaint that no general education teachers were present at the January 17, 2020 IEP meeting. However, the District stated a general education teacher attended the IEP meeting. As the IEP was not amended there is no signature sheet confirming attendees.

14. On January 27, 2020, the Student's IEP team—including the case manager, another special education teacher, three general education teachers², the principal, the Parent, the Student, and the Parent's advocate—met.

The Parent, in her complaint, stated that at this meeting, there was discussion about the Student's executive functioning needs. And, in her reply, the Parent stated she shared that executive functioning skills need to be "explicitly taught, not done for the student." The Parent stated she emphasized the importance of the May 2019 IEP amendment wording of the accommodation. The Parent stated she "left with the understanding that the Case managers understood the need and were placing the accommodation back in the IEP."

15. The documentation in this complaint does not include a prior written notice, documenting the January 27, 2020 IEP meeting, nor is there any documentation the IEP was amended.

16. On February 6, 2020, the Parent emailed the case manager, sharing that the Student "came home...yesterday and immediately sat down at the kitchen table to complete 'homework'. We have not seen this type of behavior yet! I encouraged her choices...[Student] is very motivated to do well." The Parent also asked about some of the Student's accommodations (e.g., whether work was being broken into parts per the IEP) and stated, "tomorrow will be the 2 week mark since we met for [Student's] IEP and I have not yet received any paperwork regarding the agreed upon accommodations."

17. On February 9, 2020, the case manager emailed the Parents, stating he had been "working on the best verbiage for [Student's] IEP" and stated he wanted to add: "[Student] will meet with her case worker each week where she will create and follow through with plan for completing and turning in weekly assignments." The case manager asked for the Parents' thoughts and stated he would amend the IEP.

The Parent responded on February 13, 2020, that she thought the wording should be: "[Student] will meet with her case worker each week where **they** will **assist her** to create and follow through with plan (steps needed, and dates for completion) for completing and turning in weekly assignments." The Parent stated the Student "needs to learn HOW to create the plan, HOW to follow through in completing the plan and HOW to follow through in turning it in." (Emphasis in original). The Parent further stated, "I'm not clear on how a 'list' of what she has to do is a 'plan'" and that the Student struggles with how to break down larger assignments into step by step tasks.

18. On February 10, 2020, the Parent emailed the case manager and principal, stating she was "waiting on IEP paperwork regarding accommodations from our last IEP meeting...If I don't have the final accommodations – do teachers know the accommodations?"

² According to the Parent's complaint, the general education teachers attended the meeting "sporadically."

19. On February 12, 2020, the special education teacher emailed one of the Student's general education teachers the Student's December 2019 IEP summary document.
20. Also, on February 12, 2020, the case manager emailed the Parent, noting the Student did not have her agenda with her so they instead wrote steps on a separate piece of paper. The case manager also provided an update on some of the Student's assignments.
21. On February 18, 2020, the case manager emailed the Parent and noted they had met with the Student and "gave her a new binder that we put together for her. Within it are agenda pages that list every one of her classes and there are pages for every week left in the school year for her. There are also pages for larger assignments that allow her to break them down into small chunks with target dates...set of pages that plan out studying for tests and how she will study." The email noted the Student worked during HSB class to enter all her assignments, break down two larger English assignments that are due, and the Student and case manager discussed how the Student will need to update the agenda daily as she gets assignments. The case manager also noted the English teacher went over the Student's next assignment with her and explained that the steps for the next assignment are broken down on the board in the class for students to copy down.

The Parent responded that she was hopeful the system would work for the Student and noted she was seeing a change in the Student, in that she was being more proactive about completing assignments.

22. On February 19, 2020, the case manager emailed the Parent, stating, "I am glad that you like the organizational system we are trying to use for [Student]. Regarding the IEP, you do have the most recent version. No changes have been agreed upon by the IEP team. We will keep working with [Student] to address the executive functioning concerns."

The Parent replied, as follows:

What do you mean, 'no changes have been agreed upon by the IEP team'?...At the last IEP meeting, all team members agreed that the accommodation was needed for [Student]. In fact after [principal] and the classroom teachers left the room you, I and the Parent Advocate spent time discussing...the structure of how to word the accommodation and how we can work together to support [Student]...on Feb. 9th [you (case manager) emailed]...I have been working on the best verbiage for [Student's] IEP...In order for [Student] to LEARN HOW to do something she must have assistance/guidance that is why I suggested the word 'assist' be added to the accommodation. Until the IEP team can agree then I respectfully request that an Amendment be made to [Student's] IEP to include her CORRECT accommodations.

(Emphasis in original.)

23. On February 20, 2020, the principal emailed the Parent regarding the IEP meeting, stating the team had not come to a consensus. The principal stated the "accommodation you state was not in the most current, signed IEP" and that he proposed they "continue to monitor the use of binders as a strategy and not necessarily an accommodation."

24. On March 3, 2020, the special education teacher emailed the Student's science teacher to see if the Student had turned work in. The science teacher stated the Student may have absent on the last day assignments were turned in and that she would try to remind the Student.
25. Also, on March 3, 2020, the Parent emailed the case manager with concerns that the Student's assignment agenda was not filled out and that the Student had missing assignments. The Parent stated the Student said she was not being provided notes, except in math class.

The case manager responded that he had not met with the Student the previous week as she was absent and provided an update on the quiz retake and assignments. The case manager also sent a second email with updates on other work the Student was missing, that he checked in with the Student's teachers, and that he supported the Student with turning some assignments in. The case manager also noted they updated the agenda binder and the Student entered steps to break a civics projects into steps.

26. On March 9, 2020, the case manager emailed the principal regarding the Parent's emails and continued concerns regarding the Student not turning in work. The case manager stated he works with the Student weekly and they "go over her assignments, write them down with a plan, and [Student] lets us know if she is okay. I check her grades, and ask her teachers about them." The case manager stated he felt the Parent was "assuming that one item of me writing everything down with [Student] will fix the issue but I am already sitting down with her weekly. These are issues going on in individual classes."
27. On March 10, 2020, the special education teacher emailed the Parent, noting she had met with the Student to go over assignments and print missing assignments. The teacher provided the following updates on classes:
- Science: Student had completed work but needed to turn in items.
 - Civics: The entire semester of assignments was listed with due dates, which would help the Student "pace herself and anticipate assignments."
 - English: The Student was working on an assignment during HSB and "worked through her list of things she needed to get done."

The teacher stated, "I was very proud of the way she took initiative today and started going down her list...She is doing her work and often the 'missing assignments' are not missing at all, just not graded yet." The teacher noted, "the biggest thing is to check directly with her teachers if there are questions...[Student] has really stepped up and is doing what she needs to. It might not be perfect but I am seeing improvement in strides."

The Parent responded that the only reason the Student completed missing work was because the Parent worked with her over the weekend to complete work and the Parent sent an email to all the Student's teachers on March 8, 2020, with an "account of all the work that we did to...try and get them to help remind her to turn in her work." The Parent stated, "is NOT getting her work done without help at home." Regarding the assignment binder, the Parent asked, "How long do we 'monitor the use of binders as a strategy and not necessarily an accommodation' as [principal] suggested, before the school team realizes that [Student] needs

accommodations that help her to organize her assignments and class notes, break projects down into manageable steps and make a plan to complete, and other executive functioning skills to help her be successful within the general education setting?" The Parent noted the first week the binder agenda was filled in, the second week it was blank and the Parent assisted the Student on the weekend, and the third week the agenda was partially filled in and the Parent again assisted the Student on the weekend.

The case manager responded that he was going to implement a daily check-in with the Student, where the Student "has to make a point to come see me each morning before class starts so she can disburse her work to turn in to her teachers. This seems to be the biggest issue and I cannot be in each of her classes with her to remind her daily. This will not prevent [Student] from needing to do work at home but should hopefully help with the work turn in."

28. On March 16, 2020, school facilities closed in the District based on the Washington Governor's March 13, 2020 proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis. Subsequently, school facilities were closed for the remainder of the 2019-2020 school year.
29. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI's guidance outlined the expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
30. Also, on March 23, 2020, the Parent emailed several of the Student's teachers to identify assignments that were missing for the Student.
31. Later, on March 23, 2020, the Student's math teacher emailed the Parents the Student's progress report for math class and noted, "anything that is missing can still be turned in for full credit." The math teacher also provided a link to the classroom lectures and worksheets.
32. On March 31, 2020, the Parent emailed the Student's teachers and noted the Student was caught up on all her work. The Parent stated she expected the Student to monitor Teams and noted the Student "struggles to organize and prioritize her time." The Parent asked that all of the Student's homework ("classwork notes, assignments, lectures, etc.") and graduation requirements be emailed to the Parents. The Parent noted that the Student was 18, but that the Parents were her legal guardians.
33. On April 3, 2020, the Student was accepted into a local community college for fall of 2020.
34. The District was on spring break from April 6 to 10, 2020.
35. On April 5 and 14, 2020, the Parent and science teacher emailed regarding the Student's assignments and missing assignments. The Parent noted it was "vital that [Student] has assistance to get organized and prioritize her work."

36. On April 13, 2020, continuous learning began in the District.
37. During continuous learning, the Parent stated in her complaint that the Student did not receive any specially designed instruction. The Parent stated the Student was invited to two Zoom meetings with the special education department: one was a meeting with students and parents, and another was a meeting with students and case managers.

The Parent stated she spent 4-5 hours a day working with the Student to "identify homework, print worksheets, write emails to teachers to learn how to access websites, motivate the Student, break learning down for the student, take pictures of completed work and submit the work."

38. The District developed a continuous learning plan (CLP) for the Student. The CLP noted the Student required "written instructions accompany activities" and that no changes were made to the IEP goal. The CLP also noted that no changes were made to the Student's accommodations and the Student would receive the following special education services: "Assistance with all academics/specially designed instruction in math: As often as needed, via video chat, Teams, and email (provided on demand by the special education and general education teacher)."

According to the Parent's complaint, the Parent was told the Student did not have a continuous learning plan and that the first time they saw the continuous learning plan was with the District's response to the complaint.

39. A service log included in the District's response included the follow information:
- March 17, 23, 30: Emailed updates to all special education families
 - April 8: Emailed invitation to special education Q&A meeting
 - April 9: Zoom meeting with Student
 - April 16: Worked with Student via Teams regarding social studies work; Email to special education families
 - April 17: Called Student's father to check in
 - April 21: Worked with Student via Teams regarding MLA formatting
 - April 26: Email to special education families
 - April 28: Sent Student an outline example for an assignment per Student request
 - April 30: Reminded Student via Teams to check in with general education teachers
 - May 1 and 4: Student checked in on Teams
 - May 3: Email to special education families
 - May 6: Worked with Student regarding civic assignment
 - May 11: Spoke with Student's father to check in, Student struggling with a few classes and needed a check in
 - May 12: Checked in with Student via Teams
 - May 14: Emailed Student regarding grading, zoom meeting schedule for Monday with students
 - May 18: Zoom meeting for "social emotional well being"
 - June 1: Email update regarding grading, and book and computer turn in

40. Emails included in the District's response also included emails from April through June, indicating the Student, with support from the Parent, was turning in assignments in her classes. Emails indicated the Student and Parent reached out to teachers with questions, to request assistance, and to set up Zoom meetings with teachers. Emails also indicated the Student's teachers reached out to her to check in, see if the Student had questions about assignments, and provide feedback on work.

The emails also included emails from the special education teacher who checked in with the Student's general education teachers regarding engagement and assignments. The Student's English teacher responded the Student "has logged in every week and is completing all her work so far." The science teacher later replied that the Student was actively engaged and that the teacher would be modifying the final project for the Student.

41. On May 8, 2020, the Parent emailed the Student's teachers, stating the Student "hit a wall...She'd been doing fantastic till this week, and now I can't get her to the table much less to finish an assignment...I think she is feeling overwhelmed with three BIG projects due fairly soon."

The case manager responded and suggested they set up a Zoom or Teams meeting with the Student. The case manager noted he had checked in with the Student on Friday about civics and that the Student "has been interacting with all of her classes so she is completely on track to get A's for every one based on the newest criteria for grading." The case manager stated he would "love to chat and reassure her that she is doing okay."

42. On May 10, 2020, the case manager emailed the Student's teachers that he was meeting with the Student on Monday, and asked if some of her workload could be reduced or assignments simplified.

43. On May 15, 2020, the Student's English teacher nominated the Student for a senior award because she had "shown incredible fortitude to overcome the immense challenges she faced this year to earn a 100% in English 12...She pushed herself each week to do better than the week before and we should all be immensely proud of her hard work."

44. On June 9, 2020, the District recorded that the Student was making sufficient progress on her math goal as she was completing tasks in 2 out of 4 trials (goal was 3 out of 4 trials). The progress reporting indicated the Student would meet her goal. The progress report noted:

At the time of this progress report on site school learning was closed for the duration of the 2019-2020 school year beginning on 4/6/2020, due to the worldwide COVID-19 pandemic and WA State Governor's 'Stay at Home Order.'

This progress report reflects observational feedback done in a remote learning setting outlined by our District Guidelines. [Student] has been actively participating in remote learning and has been doing her school work to the best of her ability. Her teacher expressed that she was doing well in his class and was succeeding in being able to complete assignments that reflected her math goal. The observational data collected through remote learning reflects a continuation of [Student's] goal in personal finance.

45. On June 9, 2020, the special education teacher emailed the Parents and Student her "graduating senior paperwork," which included the Student's most recent IEP, most recent evaluation, and information about DVR.
46. On June 10, 2020, the Parent emailed the case manager, special education teacher, and principal and stated that after talking with the Student's therapist, "they are recommending we request that she walk with her graduating class, but that you hold back credits so that she can attend the transition program." The Parent also stated, "As [District] does not have the appropriate transition program, as we were told at a prior IEP meeting, I am currently looking into [program] with [another district] (as that is recommended)."

The principal responded to clarify that the Parent wanted the District to "withhold credits so that she can be eligible to attend [program]?" and stated, "I don't see a way to do that. We can't intentionally withhold credits. We can talk about transitioning services, but if a student meets the requirements to get a credit, they get the credit."

The Parent replied, stating they were requesting "transitioning services" and stated:

Last year, I asked about transition services and was told that [Student] didn't match [District] services, that she was too high functioning. I wasn't aware that we could request services that fit her needs. [Student's] therapist recommended [program]. I realize that this is late in the game, but I didn't know it was an option...She is not independent to manage her hygiene, medicine, meal prep that requires heat or electric source, budget or any money, time, social relationships, social media, laundry, etc.

The Parent also emailed and stated that it sounded like they needed an IEP meeting so that the IEP team could "agree that this would be best for [Student] and write it in her plan."

47. On June 12, 2020, the Parent emailed the principal, case manager, and special education teacher, regarding graduation and transition services. The Parent stated, in part:
- I am not sure how the entire process works; Transition Services, IEP and graduation prior to the 'end of the school year.' According to the transition plan written in [Student's] IEP, 'she will receive further education to become a preschool teacher, and has the skills to initiate, maintain, or actively participate with self-generated resources with family support independent living skills.' I don't even know what that last line means...What I do know:
- Junior year I requested transition school for [Student]. I was told [Student] was too high functioning for [District] transition. I was never told that there were other options with other districts. I didn't learn that until, Tuesday of this week!
 - I have shared at every IEP meeting that [Student] is unable to: manage her own medication...her daily hygiene habits...money...time, and needs to be monitored with social activities and social media/technology.

...Please help a family identify what comes after high school, and if it isn't [District] transition school could you identify what other options ARE available?

Do we have to make the decision today to move forward with the graduation? Can we wait until I hear back on other options and then we talk as an IEP team? Can we wait until June 19th of June 26th? Or is it already too late?

The principal responded that he had "no legal standing to prevent [Student] from graduating this year."

48. June 17, 2020 was the District's last day of school. In June 2020, the Student graduated from high school with a regular high school diploma after completing graduation requirements.
49. Regarding special education services provided during the school facility closures, the District stated the Student "interacted with all of her general education classes during the school closure and completed the work necessary to earn passing grades in her classes, completing her credits for graduation."

In additional information, the District provided the following information about the Student's specially designed instruction in math, summarized:

- In the special education setting, the Student was retaught concepts individually or small groups. The special education teacher simplified instructions, used relative situations, and used real-world examples that "made it easier for [the Student] to understand and then practice the skills."
- The special education and general education teacher met twice monthly, and more frequently when needed "to ensure [general education teacher] was updated and knew the strategies" that worked for the Student.
- The general education teacher retaught concepts individually and in small groups. The general education teacher stated, "When [Student] needed help, I would work [with] her one on one during small group work times."
- The general education teacher allowed alternatives to class presentations or allowed the Student to present individually.
- Special education teacher supported the Student in self-advocacy and discussions with general education teacher.
- A paraeducator also supported the Student where appropriate.
- The general education teacher noted he "routinely [gave] all students extra time on assessments."
- The general education teacher stated he spoke with the case manager and special education teacher on multiple occasions about the Student needing to make up missing presentations.

Summer 2020

50. On June 19, 2020, the Parent emailed the case manager and requested an IEP meeting. The Parent stated the Student "has not met her needs in preparing for life beyond high school and we need to discuss how we (the IEP team) can help her, as I stated in my June 10, 2020 email. As a team we need to look at transition services that are available to help her...to help her become independent at home, socially and in the work environment."
51. On June 22, 2020 a "summary of academic achievement and functional performance" was prepared. The summary included:
 - The Student's postsecondary goals and recommendations to assist the Student in meeting postsecondary goals.
 - A summary of her progress on her math goal: "[Student] will accurately calculate a bank balance and build a working budget for living expenses. [Student's] math teacher expressed that she was able to successfully complete these types of assignments in 3 out of 4 opportunities with

extended time allowance to complete her assignments. She does need extended time, but is able to work through the math independently and ask questions for clarification.”

- Essential accommodations utilized in high school: extended time, test retakes, resubmit assignments, explicit instructions, calculator, longer response time, and create a list of steps to complete assignments.

The summary also noted the Parent had suggested the Student receive adaptive skills training, but that, “so far, all assessments done by our school psychologist, and [developmental disabilities administration] DDA reflect that [Student’s] scores are too high to qualify for these services.”

52. On June 29, 2020, the Parent and the District’s director of special education (director) discussed the Parent’s concerns regarding the Student’s transition plan. The Parent stated, “thank you for deciding that [Student] will be allowed to continue within the school district till the age of 21 for more transition services/life skills courses.” The Parent stated she had contacted DVR and would be meeting with DVR on July 1, 2020.

The director responded and clarified that she had stated that “all students with IEPs can receive services until age 21,” but that the Student’s IEP team would need to make that decision for the Student: “The IEP team will determine what services she would need and what that would like moving forward.” The director stated, “We will be having the preliminary conversations on Wed with DVR however none of these conversations, including ours on the phone this morning, constitute and [sic] IEP revision as we need the IEP team to meet and make any changes.”

53. On or around July 1, 2020, the director and Parent met with a representative from DVR to discuss supports and services from DVR, and the Student’s potential qualification for programs through Developmental Disabilities Administration (DDA). Based on the Parent’s notes from the meeting, they discussed services the Student could access if the Student continued with an additional year of school and similar services if the Student did not continue with school.

2020-2021 School Year

54. During the 2020-2021 school year, the Student was not enrolled in the District as she had graduated in June 2020.

55. On September 21, 2020, the Parent emailed the director and asked to schedule an IEP meeting in October. The Parent stated the Student was being assessed at an autism clinic for transition services. Subsequent emails indicated the Parent and the director discussed dates to schedule the meeting, agreeing on October 29, 2020—a date that a representative from DVR was also available. Emails indicated the DVR counselor planned to discuss what DVR could offer the Student at the meeting.

56. In October 2020, the Parent, director, and DVR counselor exchanged emails, finalizing the date for the IEP meeting and clarifying the meeting attendees. The District invited several additional individuals requested by the Parent, including an advocate.

57. An October 6, 2020 email to the director indicated the Student was found eligible for DVR services in January 2019, and had been provided pre-employment transition services (including a job shadow).
58. On October 26, 2020, the Parent emailed the director, stating in part that she had requested the IEP meeting because the District “did not meet the legal obligation of designing an appropriate transition program unique to [Student’s] needs” and that she was requesting compensatory services for the “lack of meeting the legally required mandated services for special education during the 2019-2020 school year.”
59. The District, in its response, noted that in October 2020, it discovered the District had not provided the Student with a prior written notice, documenting her graduation and exit from special education eligibility.

The District acknowledged the errors with respect to providing prior written notice and proposed that the high school special education staff received training on prior written notice requirements.

60. On October 28, 2020, at 8:30 pm, the Parent emailed the director a copy of a private evaluation of the Student conducted by a psychologist.

The evaluation report stated the Student “most recently completed 12th grade (2019-2020) and subsequently transitioned to work in a daycare center where she now works full-time.” The evaluation reviewed the Student’s medical history, reviewed school evaluations and services, included behavioral observations, and conducted new assessments (cognitive, academic, social, adaptive, and behavioral and emotional functioning). In interviews with the Student as part of the evaluation, the Student stated that she did not receive accommodations which she understood to be in her IEP, including “quiet rooms for testing, notes before tests/cheat sheets and a lack of accommodations.”

The evaluation report included several recommendations including the following, summarized:

- That the Student continue to receive services from District to support transition needs.
- Specific instructional goals and supports.
- Mental health counseling.
- Applied behavior analysis (ABA).
- Social skills instruction.
- Parent education and support.
- A transition program for young adults.
- Self-advocacy, college planning, state/federal resources (including DDA and DVR).
- Extended school year (ESY) or year-round programming.
- Medication management.

61. On October 29, 2020, at 8:00 am, the Student’s IEP team—including the DVR counselor, Parents, and Parents’ advocates—met. The October 29, 2020 prior written notice noted the IEP team met to discuss the Parent’s request to rescind the Student’s high school graduation and continue providing IEP transition services in life skills and money management. The prior

written notice recorded that the Student passed all her classes and met graduation requirements, graduating in June 2020 with a regular high school diploma. The notice acknowledged that a prior written notice was not issued at that time.

The prior written notice stated the District "is declining to rescind [Student's] high school diploma" because after reviewing records and IEP team discussion, "the District affirms that [Student] has met all graduation requirements and will not rescind credits or her diploma...which is important for achievement of her post-secondary goals."

The prior written notice also included that the Parents' requested compensatory services because they believed the Student did not receive special education services during the spring 2020 school facility closures. The notice recorded that the District was willing to schedule another meeting to discuss compensatory services.

The prior written notice also included the following:

The team discussed the history of IEP services including the Feb 2019 reevaluation. Team also discussed graduation requirements and how [Student] has passed her class and has met all graduation requirements. Prior to graduation, [Student] had been accepted to [...College] and had a part time job. Because of her acceptance at...College, Department of Vocational Rehabilitation (DVR) could continue Pre-Employment Transition Services that could include additional independent living services.

In its response, the District stated the Student met graduation requirements and that her "deterioration in functioning happened after" she graduated. The District stated that District members of the IEP team "did not feel that rescinding Student's earned diploma in order to continue her eligibility for special education based on this subsequent decline in functioning was appropriate."

62. In her reply to the District's response, the Parent stated that at the IEP meeting, she shared how the Student has struggled since March 2020 and the transition needs the Student has, including adaptive, social/emotional, and mental health needs. The Parent shared: "workplace issues are occurring, and parent had to attend work with student this summer to model how to interact with children, how to discipline children, and how to observe/watch children."

63. Later, on October 29, 2020, the Parent responded to an email from her advocate and expressed concern that the director "had no basis to render her decision given the fact that she did NOT even read the assessment [private evaluation]." The Parent stated the director's question to the Parent (in an October 28, 2020 phone call) was, "What am I looking for in Transition Services" and the Parent stated:

What she should have asked me is why do I feel that [Student] was not provided proper transition services. That is a different set of evidence. Based on the conversation I had with her previously, I was given the impression she was open to identifying the services needed and how the school would support. When in fact, my job was to prove to her that the school did not provide an adequate transition plan.

64. In her complaint, the Parent stated the director said that “there was not sufficient evidence to support that [Student] was not provided an adequate transition program” and the Parent stated, “the Director made her decision without reading the report, stating that DVR could fulfil the needs that [Student] presented. How could the Director know that when even DVR didn’t know if they were able to fulfill the specific needs that [Student] has.”
65. In its response, the District stated that both the Student’s Parents attended and participated in the IEP meeting, with the “majority of the meeting time spent listening to Parents’ concerns.”
66. On November 3, 2020, the Parent emailed the director regarding the IEP meeting and stated, “I was completely caught off guard when you spoke to not seeing any evidence of [Student] not being provided a sufficient transition plan.” The Parent stated she looked forward to the next meeting and requested that the team review the psychiatrist’s report so they can be “fully informed in what is best for [Student].”
67. On November 12, 2020, the District provided the Parent with prior written notice, documenting the Student’s graduation. The director asked the Parent when she would like to schedule time to discuss compensatory services.
68. On December 22, 2020, OSPI received the Parent’s complaint and opened this investigation. The complaint alleged the District failed to implement the Student’s IEP through June 2020, including the IEP accommodations and specially designed instruction; failed to provide prior written notices; that the District failed to create a continuous learning plan; and, that the District failed to ensure parent participation in the October 2020 IEP meeting.

In their reply to the District’s response, the Parent detailed that the following accommodations were not consistently provided:

- Daily hard copy of lecture notes/power point presentation prior to instruction, or copy of notes with fill-in-the blanks provided by teacher outlining important steps.
- Weekly, the Student will create a specific list of steps needed to complete homework, tasks and projects.
- Parents did not receive weekly communication (email) from teachers to confirm assignments needing completion and assessment of week.

CONCLUSIONS

Issue One: IEP Implementation – Accommodations – The Parent alleged the District failed to implement the Student’s individualized education program (IEP) accommodations, and specifically accommodations related to executive functioning, from the date the complaint was filed through June 2020. A district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. Here, the Student’s December 4, 2019 IEP was in place during the relevant time period and included several accommodations and “recommended instructional/curricular practices and student management strategies.”

The District stated the Student’s accommodations were implemented throughout the school year, including allowing the Student extended time to complete work and that the special education

teachers worked with “the Student to support her self-advocacy and creation of this weekly list by walking with her to her general education teachers to confer about pending tasks, emailing teachers to confirm assignment details, printing missing assignments for Student, and working with her during her High School and Beyond class [HSB class] period to...identify what assignments needed to be turned in.” Yet, throughout the time period investigated, the Parent sent many emails to the case manager, teachers, and principal, stating she believed the Student’s accommodations were not being provided. The Parent frequently emailed teachers regarding the Student’s assignments, assignments that were missing, and grades. The Parent argued that if the IEP accommodations were being provided, the Parent would not have had to send these emails.

Ultimately, the documentation reviewed in the investigation is mixed: there are emails that indicate teachers were providing accommodations and emails and documentation from the Parent implying accommodations were not provided. It is likely that accommodations were provided to some degree, but inconsistently. Thus, OSPI highlights some examples as follows:

Extra Time: Based on the documentation, the Student received the accommodation of extended time to complete assignments, although the Parent raised a concern that the Student received more than two weeks to complete assignments and that this was not helpful because it did not teach the Student to focus on a deadline. However, the District noted teachers “often allow students to turn in and receive credit for work completed more than two weeks after a generally applicable deadline, because teachers prioritize encouraging students to complete work and meet learning targets rather than discouraging work completion by enforcing a deadline that does not contribute to the mastery of a learning target.” The District stated staff allowed the Student the same flexibility given to general education students.

Weekly Assignment List/Plan: The documentation in the complaint indicated there was a lack of agreement about the wording with respect to the weekly list or plan for completing assignments accommodation, disagreement regarding whether this support should be called an accommodation or a strategy, and whether the Student even required this support. Despite two IEP meetings and many emails, the Student’s IEP was not amended. Therefore, for purposes of determining whether the IEP accommodation was *implemented*, the operative IEP was the December 2019 IEP, which included the accommodation: “Weekly, Student will create a specific list of steps needed to complete homework, tasks and projects.”

In general, email documentation supports that the Student’s special education teacher and case manager supported her in assignment completion and general self-advocacy. For example, in emails, the teachers stated, “We have already walked her to her teachers multiple times, printed missing assignments, emailed teachers, had paras working with her, and we have worked with her during HSB [class] to look over her Skyward and identify what assignments need to be turned in.” The case manager stated he works with the Student weekly and they “go over her assignments, write them down with a plan...I check her grades, and ask her teachers about them.”

Further, email documentation in the complaint indicates the weekly plan accommodation was implemented to some degree. A February 12, 2020 email indicates the Student wrote “steps on a separate piece of paper” because she did not have her agenda. And, on February 18, 2020, the

team began using a new binder strategy with the Student to track assignments and plan for larger assignments. The binder had “agenda pages that list every one of her classes and there are pages for every week left in the school year for her. There are also pages for larger assignments that allow her to break them down into small chunks with target dates...set of pages that plan out studying for tests and how she will study.” However, subsequent emails only show the case manager helped the Student fill out this agenda for a few weeks. For example, on March 3, 2020, the Parent emailed the case manager, noting the Student’s assignment agenda had not been filled out. The case manager acknowledged this and stated they updated the agenda binder that day and the Student entered steps to break a civics project into steps. On March 8, 2020, the Parent noted in an email—and sent pictures of the agendas—that the first week the binder agenda was filled in, the second week was blank, and the third week the agenda was partially filled in. The Parent also documented the time she spent on the weekends helping the Student catch-up, complete assignments, encouraging the Student to turn the assignments in, and emailing teachers to ask them to remind the Student to turn in assignments. Following that, the case manager stated he would implement a daily check-in with the Student.

While the District staff categorized this as a “strategy” or “organizational support” for the Student, the binder was essentially doing what the IEP accommodation stated by providing the Student a template to create a weekly list of steps needed to complete homework, tasks, and projects. However, prior to the school facility closures, this accommodation was inconsistently provided. While the case manager and special education teacher were supporting the Student in this area, the documentation does not support that the accommodation was consistently provided weekly in the form written in the IEP: “Weekly, Student will create a specific list of steps needed to complete homework, tasks and projects.”

Further, after the COVID-19 school facility closures, there is no documentation this accommodation was provided to the maximum extent possible. Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning in spring 2020. Yet, districts must ensure that IEPs were implemented to the maximum extent possible.

OSPI notes this is surprising for two reasons; one the Student’s continuous learning plan (CLP) specifically noted that no changes were made to the Student’s IEP accommodations—indicating the accommodations should have been provided as written. And, second, this would have been an accommodation that should have been straightforward to provide in a remote teaching model. There is no indication of a daily check-in with the case manager, as the case manager proposed in an email in early March, and there are no further filled out pages of the Student’s agenda. The District did provide documentation that the case manager checked in with the Student during the closure; however, there does not appear to have been a weekly check-in and the check-ins that did occur do not appear to have included working with the Student to create a weekly list of plan of assignments and steps to complete them (instead, there was a check-in about a civics assignment and a check-in about MLA citations, for example). The documentation in the complaint does include emails throughout the school closures from the Parent, asking teachers

to support the Student because she “struggles to organize and prioritize her time” and emails from the Parent organizing and submitting the Student’s assignments, indicating that this accommodation was largely provided by the Parent during the closure.

Overall, OSPI finds that the implementation of the Student’s accommodations was inconsistent. Some accommodations were provided, while others were provided inconsistently or with prompting from the Parent. Further, the Parent provided the Student a great deal of support managing her assignments, especially after school facilities closed due to the COVID-19 pandemic. While the special education staff did work to support the Student, OSPI finds the IEP was not consistently implemented as written with respect to accommodations and accommodations were not provided to the maximum extent possible during the school facility closures. Thus, OSPI finds a violation. The District will be required to provide training related to the provision of accommodations and best practices for providing accommodations in a remote or hybrid setting. However, because the Student made progress and passed all her classes, no Student specific corrective actions are necessary to remedy this violation.

Issue Two: Prior Written Notice – The Parent alleged the District failed to provide sufficient prior written notices and specifically noted a prior written notice was not provided following a January 27, 2020 IEP meeting. Written notice must be provided to the parents of a student eligible for special education a reasonable time before the school district either proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. When a student graduates from high school with a regular high school diploma, this constitutes a change of placement requiring prior written notice.

Here, there were several points at which the District should have provided prior written notice: following the January 17 and January 27, 2020 IEP meetings, and in conjunction with the Student’s graduation.

Related to the January 2020 IEP meetings, a “prior written notice”, dated January 17, 2020, was created; however, the prior written notice only documents that the IEP team would be meeting to discuss the Student’s accommodations and the Parent’s request that the IEP be updated to reflect requested accommodations. The District acknowledged the prior written notice was missing required elements. Here, the District’s January 17, 2020 prior written notice appears to function more as a meeting notice or invitation; although, it is also missing elements required in a meeting notice. The District is reminded that a prior written notice is not required before an IEP meeting but is required after the meeting prior to the District proposing or refusing to initiate a change.

Further, no prior written notice was provided after the second IEP meeting. Notably, the January 17, 2020 prior written notice is missing any decisions made at the January 2020 IEP meetings (in part because it was created before the January 27 IEP meeting and a second prior written notice was not created for this meeting). Because there was not a sufficient prior written notice, it is not clear whether the District proposed to amend the Student’s IEP or refused to amend the IEP per the Parent’s requests. Ultimately, the IEP was not amended, meaning the District refused to amend the IEP; however, emails subsequent to the meeting indicate a lack of consensus around whether and what decision was made at the IEP meetings (e.g., February 9 email from the case manager

stated he would amend the IEP; February 13 email from the Parent suggested language for the amendment; February 19 email from that case manager stated that “no changes have been agreed upon by the IEP team”; February 19 email from the Parent, expressing confusion and stating her understanding from the meeting was that the IEP would be amended; and February 20 email from the principal, stating the IEP team had not reached a consensus).

This situation illustrates the importance of a prior written notice in that it records the IEP team’s decision—either to take action or refuse to take action—and, in recording that decision, offers parents an opportunity to take further steps if they disagree with the decision. Here, that did not occur as the Parent left the IEP meeting with one understanding and was not provided prior written notice, indicating the District members of the IEP team disagreed. Had the Parent been provided prior written notice, documenting the decision to not amend the IEP, the Parent would have been able to take further steps, such as asking for another IEP meeting or accessing special education dispute resolution options. Thus, OSPI finds the District in violation for failing to provide prior written notice and notes that this violation impeded the Parent’s ability to fully participate in the Student’s educational program. The District proposed training to correct the violation, which OSPI accepts as outlined below.

The District also acknowledged it failed to provide the Parent with prior written notice documenting the Student’s graduation and thus the end of her eligibility for special education. OSPI finds the District in violation for failing to provide this prior written notice. No further corrective actions are necessary; however, as the District corrected this error and following an October 29, 2020 IEP meeting, provided the Parent with prior written notice documenting the Student’s graduation and exit from special education eligibility.

Issue Three: IEP Team Membership – The Parent alleged there was no general education teacher present at the January 2020 IEP meetings. An IEP team has several required members, including at least one general education teacher of the student if the student is, or may be, participating in the general education environment.

According to the Parent, no general education teacher was present at the January 17, 2020 IEP meeting; and at the January 27, 2020 IEP meeting, the general education teachers attended “sporadically.” The District, in its response, stated a general education teacher attended the January 17 meeting and three general education teachers attended the January 27 IEP meeting. Because the IEP was not amended, there was no sign-in sheet for the meeting and because there was insufficient prior written notice to document the meetings, the prior written notice did not document who attended either. The Parent’s complaint included her notes from the January 17 meeting, which included that the “principal stated he wanted to gather more information, as teachers did not attend the meeting and he needed time to talk to teachers” regarding the Student’s accommodations. The Parent’s notes indicate that no general education teacher was present at the meeting. Thus, given that no other documentation was provided regarding the IEP meetings, OSPI finds it more likely than not that there was no general education teacher at the January 17 meeting, but there were general education teachers at the January 27, 2020 meeting.

OSPI finds a violation and the District will be required to conduct training related to required IEP team membership and excusal procedures.

Issue Four: IEP Implementation – Spring 2020 School Facility Closures – The Parent alleged the District failed to create a continuous learning plan or provide specially designed instruction and accommodations during the COVID-19 school facility closures from March to June 2020. As accommodations have been discussed in issue one, this conclusion will focus on the implementation of the Student’s IEP with respect to specially designed instruction.

The Student’s December 4, 2019 IEP included 305 minutes per week of specially designed instruction in math. Prior to the school facility closures, the Student was scheduled to receive her specially designed instruction in math in her personal finance class (general education) and “high school and beyond class period” (special education setting).

Given the exceptional circumstances of the COVID-19 global pandemic, the federal Department of Education and OSPI recognized that IEPs could not be implemented as written as school facilities closed and districts transitioned to distance learning in spring 2020. Yet, districts must ensure that IEPs were implemented to the greatest extent possible. After the District closed school facilities on March 16, 2020, the Student’s IEP was not implemented as written, which during this time alone does not represent a violation of the IDEA. However, that does not end the analysis as the District still had an obligation to provide students with special education services during the school facility closures. On March 23, 2020, OSPI communicated the expectation that districts would begin providing educational services to all students by March 30, 2020 (“continuous learning”); and, as instruction was being provided to all students, districts must have a plan for how students eligible for special education services would receive a free appropriate public education (FAPE), which consists generally of specially designed instruction and related services.

On April 13, 2020, following spring break (April 6-10, 2020), continuous learning began in the District. The District developed a continuous learning plan (CLP) for the Student—although, the Parent stated she was unaware of the CLP until receiving the District’s response to this complaint. The CLP noted that no changes were made to the Student’s IEP goal and the Student would receive specially designed instruction in math and assistance with academics “as often as needed, via video chat, Teams, and email (provided on demand by the special education and general education teacher).”

The District, in its response, stated the Student “interacted with all of her general education classes during the school closure and completed the work necessary to earn passing grades in her classes, completing her credits for graduation.” The documentation provided in the complaint indicates the Student was engaging in her classes, completing work, checking in with teachers, and turning work in—with support from the Parent (see e.g., emails from the Parent to the Student’s teachers from March through June 2020, checking on missing assignments, reminding teachers of the Student’s needs and accommodations, submitting assignments, asking for assistance for the Student, etc.). Further, the Parent stated she spent 4-5 hours a day working with the Student to “identify homework, print worksheets, write emails to teachers to learn how to access websites, motivate the Student, break learning down for the student, take pictures of completed work and

submit the work.” The documentation also indicates the special education teacher/case manager checked in with the Student—although the documented check-ins with the Student related to an English assignments, civics, grading, and social emotional needs. The case manager also connected with teachers regarding the Student’s engagement with school and assisted with modifying assignments.

However, there is little documentation that the Student was provided *specially designed instruction in math*. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student’s disability. There is no documentation that any specially designed instruction in math was provided by the case manager during the closures, and it is unclear if the general education teacher was delivering specially designed instruction. When asked to describe the specially designed instruction in math provided, the District largely provided information that seemed to describe services prior to the school facility closures (e.g., retaught concepts individual or in small groups) or accommodations provided (e.g., extra time or alternative methods of presenting). The special education teacher did work with the general education teacher “to ensure [general education teacher] was updated and knew the strategies” that worked for the Student. Yet, the District provided little information about how the content, methodology, or delivery of instruction for math was adapted specifically for the Student. And, given that the CLP required the Student to ask for her specially designed instruction, it is clear the District had no plan for how to provide the Student her special education services during the school facility closures.

The documentation does indicate the Student made progress on her math goal. A June 9, 2020, progress report indicated the Student was making sufficient progress, was completing the goal at a rate of 2 out of 4 trials (goal was 3 out of 4 trials), and noted the Student’s teacher “expressed that she was doing well in his class and was succeeding in being able to complete assignments that reflected her math goal.” And, a June 22, 2020, “summary of academic achievement and functional performance” indicated the Student ended the year able “to successfully complete these types of assignments in 3 out of 4 opportunities with extended time allowance to complete her assignments. She does need extended time, but is able to work through the math independently and ask questions for clarification.”

Given that the Student made progress and passed her personal finance class, OSPI finds the Student was likely provided some specially designed instruction in math during the school facility closures. However, the Student’s IEP included 305 minutes of specially designed instruction in math per week and the CLP provided math “as needed.” Thus, given the lack of documentation indicating specially designed instruction in math was consistently provided, OSPI finds that special education services were not provided to the Student to the maximum extent possible. Putting the burden on the Student to ask for specially designed instruction is inappropriate, as it is the District’s obligation to offer and provide a FAPE. Thus, OSPI finds the District in violation for failing to provide specially designed instruction in math to the maximum extent possible during the school facility closures. The District will be required to provide the Student compensatory services.

The District was closed, but obligated to provide continuous learning, for approximately 10 weeks (not including spring break) in spring 2020. Thus, the Student was entitled to 3,050 minutes or almost 51 hours of specially designed instruction in math during this time. Given that the Student made progress on her goals and passed her math class—indicating she was provided some specially designed instruction—the District will be required to provide approximately one quarter of the missed time or 13 hours.

Issue Five: Parent Participation – The Parent alleged the District failed to ensure the Parent’s participation in an October 2020 IEP meeting related to the Student’s transition planning.

Parents of students with disabilities should play an active role in IEP meetings and provide critical information regarding the strengths of their child, express their concerns for enhancing their child’s educational program; participate in discussions about their child’s need for special education, related services, and supplementary aids and services; and join with 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. An IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a FAPE. If the 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.

Here, the October 2020 IEP meeting was the culmination of the Parent’s request for an IEP meeting in June 2020, after the Parent stated her disagreement with the Student’s transition services and her request that the Student not graduate in order to participate in a transition program. Over the summer of 2020, the Parent communicated with the District’s director of special education (director) regarding her concern that the District had not provided sufficient transition services and her request that the Student continue to receive services from the District until age 21. On September 21, 2020, the Parent emailed the District and asked to schedule an IEP meeting in October, following the completion of a private evaluation of the Student. Ultimately, a meeting was scheduled on a date agreed upon by the Parent and District—October 29, 2020—and the Division of Vocational Rehabilitation (DVR) was invited, in addition to the Parents, parent advocate, and other IEP team members.

On October 28, 2020, the evening before the IEP meeting, the Parent emailed the director a copy of the private evaluation recently completed for the Student. The private evaluation included recommendations that the Student continue to receive services from the District to support her transition needs. Based on subsequent documentation, the director and other members of the IEP team did not review the private evaluation prior to the IEP meeting.

On October 29, 2020, the Student’s IEP team met. At the meeting, the Parent shared her concerns that the Student received an insufficient transition program at the District, discussed what transition services she believed the Student required, and requested the Student’s graduation be rescinded. The District members of the IEP team disagreed and the prior written notice

documented that the District “is declining to rescind [Student’s] high school diploma” because after reviewing records and IEP team discussion, “the District affirms that [Student] has met all graduation requirements and will not rescind credits or her diploma...which is important for achievement of her post-secondary goals.” However, the District indicated it was open to further discussing compensatory services. The District, in its response, stated that both Parents attended and participated in the IEP meeting, and that the majority of the meeting was “time spent listening to Parents’ concerns.”

The Parent shared, following the meeting in emails and in the complaint, that her participation in the meeting was limited because the District staff had not reviewed the private evaluation and because the director made the determination that “there was not sufficient evidence to support that [Student] was not provided an adequate transition program.” The Parent also stated that in a phone call prior to the meeting, the director asked the Parent to share what she was looking for in transition services, which made the Parent think the District was open to providing transition services and that when the director stated the Student had been provided an adequate transition program at the end of the meeting, the Parent did not have the opportunity to refute that and share why she believed the Student did not receive an adequate transition program. While ideally, the District should have considered the information in the private evaluation, given the fact that the Parent only sent it to the director the evening before the meeting and the fact that the Parents still had the opportunity to share their concerns, the failure to consider the private evaluation does not alone create a violation of the IDEA.

It is clear the Parent disagrees with the outcome of the IEP meeting and disagrees with the District’s position that the transition plan was sufficient. However, in her original complaint, the Parent did not make allegations regarding the implementation of the Student’s transition plan or the sufficiency of the transition plan; instead, the Parent specifically alleged that her participation in the October 29, 2020 IEP meeting was limited.³ Disagreement with the outcome of a meeting does not necessarily mean that procedures were not followed. Ultimately, the District met the requirements to ensure Parent participation: The Parent requested the meeting, it was scheduled at a mutually agreeable time, the Parents and their advocate attended, and the Parents participated in the meeting. The District documented the decisions in a prior written notice, which provided the Parents information about their due process rights. Further, there is no legal mechanism to rescind the Student’s graduation, given that she met all graduation requirements and graduated with a regular diploma, which ends the entitlement to a FAPE.

The District could provide compensatory transition services and has indicated it is open to discussing this. OSPI encourages the Parent and District to meet again to discuss potential compensatory services (in addition to the math services ordered below), at which time the District is considered to review the private evaluation conducted in fall 2020.

³ If the Parent continues to be concerned that the Student’s transition services were insufficient and/or not implemented, the Parent can access further dispute resolution options to address these concerns, including requesting a due process hearing, which has a two-year statute of limitations for allegations.

Overall, OSPI finds that the District followed procedures to ensure the Parent's participation in the meeting and that the Parent did participate, despite disagreement with the outcome. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **March 12, 2021, March 19, 2021, April 23, 2021, and July 7, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Services

By or before **March 5, 2021**, the District and Parent will coordinate to develop a schedule for a total of 13 hours of compensatory services in math. Services will occur in a one-on-one setting—either in-person or via direct/synchronous remote instruction. Services will be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **March 12, 2021**.

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. The services must be completed no later than **June 30, 2021**.

By or before **July 7, 2021**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parents for the cost of providing transportation for these services. If the District reimburses the Parents for transportation, the District must reimburse the Parents for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **July 7, 2021**.

DISTRICT SPECIFIC:

Training

By **April 16, 2021**, the District will conduct training for District special education administrators and special education certificated staff and principals/assistant principals at the high school. The training will include the following topics, and include examples:

- Prior written notice – required elements, difference between prior written notice and meeting notices, and prior written notice at graduation.
- IEP team membership – required members, excusal procedures, and best practices for documenting meeting attendees.

- IEP implementation – providing accommodations and best practices for accommodations in a remote or hybrid setting.

Note: The District may use the prior written notice training module developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system, for the prior written notice component of the training. The free module can be found at <https://www.evergreen.edu/elearningforeducators/elearning-educators>.

OSPI encourages the District to work with ESD 114 to develop the training materials. By **March 19, 2021**, the District will submit a draft of the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by March 26, 2021 and additional dates for review, if needed.

By **April 23, 2021**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet or screenshot of zoom attendees and 2) a roster of who should have attended so OSPI can verify that staff participated.

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 February, 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.)