

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-65

PROCEDURAL HISTORY

On August 27, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] 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 August 30, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On September 17, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on September 20, 2021. OSPI invited the Parent to reply.

On September 30, 2021, the Parent requested an extension of time to reply to the District's response. OSPI granted the request and notified the Parent and District the same day.

On October 8 and 13, 2021, OSPI requested that the District provide additional information, and the District clarified information on October 13 and provided the additional information on October 14, 2021. OSPI forwarded the information to the Parent on October 15, 2021.

On October 11, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On October 13, 2021, OSPI requested and received additional information from the Parent. OSPI forwarded the additional information to the District on October 14, 2021.

On October 18, 2021, the OSPI complaint investigator conducted interviews with the associate principal at the Student's school, the Student's special education teacher/case manager, and the District's director of special services.

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

ISSUES

1. Did the District ensure that all required members of the individualized education program (IEP) team, per WAC 392-172A-03095, attended the November 18, 2020 IEP meeting?
2. Did the District send notices in advance of IEP meetings during the 2020–2021 school year that included the elements required in WAC 392-172A-03100?
3. Did the District issue timely prior written notice contain the required elements, as outlined in WAC 392-172A-05010 during the 2020-2021 school year?

4. Did the District properly respond to the Parent's requests to discuss recovery services during the 2020–2021 school year?
5. Did the District follow procedures to monitor and report the Student's progress during the 2020–2021 school year?
6. Did the District develop an IEP reasonably calculated to meet the Student's needs and ensure the Student can be involved in and make progress in the general education curriculum, as outlined in WAC 392-172A-03090, including ensure appropriate IEPs goals supported by present level data during the 2020-2021 school year?

LEGAL STANDARDS

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

IEP Meeting Notice: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. WAC 392-172-03100.

Prior Written Notice: Written notice must be provided to the parents of a student eligible 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.

Prior Written Notice Timing: The Office of Special Education Programs (OSEP) has interpreted a "reasonable time" to be "at least 10 calendar days, although some fact situations were justify a more extended period of time." OSEP has not addressed whether a shorter prior of time would be acceptable. *Letter to Winston*, 213 IDELR 102 (OSEP 1987). The purpose of providing prior written notice a reasonable time before the proposed or refused action is to "provide sufficient information to protect the parent's rights under the Act." *In re the Matter of Mercer Island School District*, OSPI Cause No. 2020-SE-0028 (WA SEA 2020) (quoting *Kroot v. District of Columbia*, 800 F. Supp. 976, 982 (D.D.C. 1992) (finding that "providing [prior written notice] and the final IEP proposing changes to be implemented the following school day, were not issued a reasonable time before the proposed initiation of the changes to the IEP. They were not issue before implementation except in the most minimal sense" and that the "virtual impossibility of filing a request for due process hearing in time to be legally entitle to stay-put (prior to the date of proposed implementation) underscores the inappropriateness of the issuance of the [prior written notice] and final IEP after 5:00 PM on the day before the proposed implementation date."))

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures and pandemic generally and to enable the student to make progress on IEP goals, used if students have not been provided or were unable to access IEP services because of COVID-related reasons. While the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services during the 2020-2021 school year and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during the pandemic on the student's overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

Progress Reporting: IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c). The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). "There is no requirement under the IDEA that IEP progress reports include the actual or underlying data on which any determination vis-à-vis any progress is made." *In re the Matter of Enumclaw School District*, OSPI Cause Nos. 2020-SE-118 and -0166 (WA SEA 2021).

IEP Definition: An IEP must contain, in part, a statement of: the student's present levels of academic achievement and functional performance; measurable annual academic and functional goals designed to meet the student's needs resulting from their disability to enable the student to be involved in and make progress in the general education curriculum; how the district will measure and report the student's progress toward their annual IEP goals; the special education services, related services, and supplementary aids to be provided to the student; the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); and, the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications. 34 CFR §300.320; WAC 392-172A-03090.

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

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.)

FINDINGS OF FACT

Background

1. The Student is eligible for special education services under the category specific learning disability and receives specially designed instruction in math.
2. In the complaint, the Parent alleged the Student's individualized education program (IEP) did not meet "his disability needs to enable him to be involved in and make progress in the general education curriculum and to advance appropriately toward attaining the annual IEP goals," including that the goals were "written without accurate present levels of progress and without collection data as required." The Parent's reply to the District's response clarified that her main objection to the IEP was that the goals were not aligned with the Student's grade level.

The Parent alleged the District failed to "invite a representative of the public agency who is knowledgeable about the availability of resources of the school district to November 18, 2020 IEP meeting;" provide the Parent with proper prior written notices; "neglected to send proper notice in advance of IEP meetings" for any meeting during the 2020-2021 school year; and, "refused to address the Student's need for recovery services due to COVID19-related closures and distance-learning."

Regarding meeting notices, the Parent, in her reply, specified this allegation was respect to not being notified of who would attend the meetings; for example, the Parent stated:

Multiple times I had no idea who would attend meetings, or how much time the District had allotted for the meeting. Meetings started without all required team members in attendance, and more than once we did not have enough time to discuss all agenda items because the District had informed me at the beginning of the meeting that they only scheduled 30 minutes for the meeting. It is impossible to prepare for a meeting without knowing who will be present or how long the meeting is scheduled for.

Regarding prior written notice, the Parent noted the District issued prior written notices as follows:

- November 18, 2020 Meeting: no prior written notice issued.
- December 9, 2020 Meeting: Prior written notice issued December 17, 2020, to be initiated on January 8, 2021.
- January 12, 2021 Meeting: Prior written notice issued January 29, 2021, to be initiated on February 4, 2021.
- June 1, 2021 Meeting: Prior written notice issued June 2, 2021, to be initiated June 3, 2021.

The Parent alleged the District's "delays in routinely providing Prior Written Notices up to two weeks following meetings resulted in a delay of the provision of suitable specially designed instruction. Other [prior written notices] were provided with too little notice for me to exercise my procedural safeguards." The Parent stated the District refused to document her repeated objections to the IEP goals and that OSPI guidance notes that prior written notices should be provided "ideally within one or two days after the meeting." The Parent stated that, "Except

the two June 2, 2021, [prior written notices], the District consistently provided [notices] well outside of that guideline, which adversely impacted my parental rights," which included:

- Not sending a prior written notice to inform the Parent of the reevaluation and the areas in which the Student would be reevaluated, and thus she was not given the information necessary to provide informed consent."
- Not always providing the prior written notice with enough time for the Parent to respond before the initiation of actions. For example, the Parent stated: "[Student's] annual IEP meeting was held June 1, 2021. The PWN was issued June 2, 2021. The initiation date for that IEP was June 3, 2021. The IEP meeting was held on Tuesday and the IEP initiated on Thursday. The same is true of the ESY IEP of the same date."

3. On August 29, 2020, the Parent emailed the associate principal, requesting an IEP meeting and "raw data supporting the 2019/2020 progress reports."¹

2020–2021 School Year

4. The District's 2020–2021 school year began on September 2, 2020.
5. The Student continued to be eligible for special education services and was in the sixth grade. The Student's June 2020 IEP was in place at the start of the school year, which identified the Student's present levels and included one annual goal in math, with progress reporting at the trimester:

By 06/03/2021, when given 8 minutes, a paper and pencil math concepts and applications probe at the 5th grade level and a multiplication chart, [Student] will complete the problems improving math skills from earning an average of 8 points to earning an average of 11 points over three consecutive trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.

The IEP noted online/remote learning had been challenging for the Student. The IEP provided the Student with specially designed instruction in math for 48 minutes, five times weekly in the special education setting. The IEP stated the Student would be in the general education setting 85.9% of the time, except when receiving specially designed instruction in math.

6. On September 4, 2020, the special education teacher and case manager (case manager) emailed the Parent regarding the "LAB extensions" sessions: small group sessions facilitated by special education staff where students would receive specially designed instruction. The email also attached a prior written notice, documenting a schoolwide change in general education minutes.

The Parent, in her complaint, noted the prior written notice had an initiation date of September 4, 2020.

¹ In response to this request the District's director of special services (director) responded that they reached out to the previous IEP team to collect data and noted "we do not require staff to keep data past the current school year once they have used it to update the progress reports...Once a teacher grades a paper and records it in the grade book, there is no need to keep the original."

The District stated, in its response, that this prior written notice documented the District's schedule District-wide, which included an increase in total instructional minutes from 1,710 to 1,725 per week. The District stated:

While the actions described...were not based on individual IEP team decisions, the increase in general education minutes by 15 minutes per week could impact the percentage of time students were in the general and special education settings...[However,] the District was not required to issue a [prior written notice] based on the proposed actions...[because] the proposed actions described...did not change Student's identification, evaluation, or educational placement. The increase in general education minutes by three minutes per day had a negligible impact on the percentage of time Student would be in a general education setting. But, it did not change the level of Student's least restrictive environment.

7. On September 30, 2020, the associate principal asked the Parent if she was available for an IEP meeting on October 6 or 8, 2020. The Parent responded, stating she would like to review data and assessments from the case manager at least a week before the meeting and asked if the IEP meeting could be held on October 15, 2020.
8. On October 7, 2020, the associate principal emailed the Parent and notified her that "work and data" and an assessment taken by the Student were available to be picked up or reviewed at the school. The Parent indicated she would come in the following day to pick up and review the data. Subsequently, the Parent and the Student's case manager emailed regarding context for the assessment the Student took (e.g., the assessment was based on fifth grade concepts and the Student's score fell in the 13th percentile). The case manager also provided the Parent with the "norms" tables for fourth and fifth grade level assessments.
9. On October 29, 2020, the case manager asked if the Parent was available for an IEP meeting on November 10, 2020, and the Parent responded with her availability. The case manager replied, offering to schedule the meeting for November 10, to which the Parent responded they would need to schedule the meeting a different date. In subsequent emails, the case manager and school counselor provided the following options for an IEP meeting: November 13, 16, or 18, 2020. The Parent responded, selecting November 18 at 3:00 pm.
10. On November 18, 2020, the Student's IEP team met. The meeting was attended by the Parent, associate principal, case manager, counselor, and the Student's general education math teacher.² According to the District's response, the team discussed the Parent's concerns regarding the Student's attendance at office hours and about turning in homework. The team discussed revising the Student's IEP goal in math to align with sixth grade content standards and the Parent requested the IEP team consider recovery services. According to the District, the IEP team explained the team would make a decision about recovery services after in-

² According to the Parent's reply to the District's response to the complaint, the teacher the District stated was the Student's general education math teacher was his special education teacher. The District response initially identified this teacher as the general education teacher. The District later clarified that this teacher was a special education teacher and was incorrectly listed as the Student's general education teacher in the District's response.

person instruction resumed and agreed to reconvene to discuss revising the Student's math goal.

11. In the complaint and reply to the District's response, the Parent stated she requested the team discuss recovery services and that the associate principal stated they could not discuss recovery services because the director was not present.
12. The District stated the associate principal served as the District representative at the November 18, 2021 IEP meeting and was "qualified to supervise the provision of [specially designed instruction] to special education students, knowledgeable about the general education curriculum, and knowledgeable about the availability of District responses."

The District stated it deferred consideration of recovery services until the Student returned to in-person instruction and the team could collect additional data, and "not based on [associate principal's] knowledge about the availability of District resources or authority to make decisions, nor was it because [director] was not present." The District stated, "nonetheless, [associate principal] invited [director] to attend the follow-up IEP team meeting...to further address Parent's questions related to recovery services." The District stated that when the Parent requested the team consider recovery services (during the November 18 and subsequent December 9, 2020 IEP meetings), the Student was in a fully remote learning environment and was not accessing all of the specially designed instruction on his IEP. Thus, the District stated the IEP team, "reasonably deferred its recovery services determination until in-person instruction resumed and data could be collected regarding Student's progress."

The District added in an interview that during the 2020–2021 school year, there were concerns with the Student's lack of attendance and that for the Student—like for all students with IEPs—the District wanted to get the Student back to attending in person, to increase the data they could gather, and then discuss the specifics of recovery services. The associate principal stated he did not recall the specific statements at the meeting, but that he may have stated the director would be a good person to include the recovery services discussion and that they did not want to make a specific determination until the Student was attending in person. The District maintains that it never refused to address the topic with the Parent.

Regarding prior written notice, the District stated the team discussed potential changes to the Student's IEP but did not make any decisions at the November 18, 2020 meeting, instead agreeing to meet again. Thus, the District stated no prior written notice was necessary.

13. On November 20, 2020, the Parent emailed the Student's IEP team her IEP meeting notes, indicating they discussed the Student's attendance at office hours, challenges turning in homework, and aligning the math goal with sixth grade content. The Parent stated the team was unable to discuss recovery services as the director was not at the meeting.

The Parent also stated she thought it would be appropriate for the Student to have a goal in each of four areas: 1) connecting ratio and rate in multiplication and division; 2) division of

fractions and rational, including negative numbers; 3) writing, interpreting, and using expressions and equations; and, 4) statistical thinking.

14. On November 30, 2020, the associate principal responded to the Parent's November 20 email. The associate principal proposed dates (December 7 or 8, 2020) for a subsequent meeting to discuss the math goal and a math assessment for additional information. The principal stated he would invite the director to discuss recovery services. The Parent and District subsequently agreed to meet on December 9, 2020.
15. On December 4, 2020, the case manager provided the Parent with the Student's first trimester progress report. The progress report noted the Student had made insufficient progress on his math goal: "11/25/2020-when given 8 minutes, a paper and pencil math concepts and applications probe at the 5th grade level, [Student] scored an average of 6 points over three consecutive trials."
16. On December 9, 2020, prior to the IEP meeting, the Parent emailed the associate principal, director, and case manager an agenda for the IEP meeting and assessment results she wanted the team to consider. The agenda included:
 - Recovery services: "[Student's] assessment baseline has dropped from 8 points (March 2020) to 6 points. [Student] requires recovery services to recoup learning loss due to summer and COVID."
 - IEP goals: "[Student's] current IEP goal is insufficient to allow them to make progress. New goals need to be appropriately ambitious and tied to sixth grade math standards."
 - IEP minutes: "LAB" class not meeting the Student's needs or providing sufficient specially designed instruction in math.

The case manager responded, notifying the group which general education teacher would be attending the meeting.

17. On December 9, 2020, the Student's IEP team, including the Parent, director, associate principal, case manager, and general education teacher met. At the meeting, the team discussed and agreed to discontinue the current math goal, replacing it with two new math goals and increasing the Student's specially designed instruction in math to 96 minutes, five days per week. The team discussed how specially designed instruction would be delivered. The Parent requested the team discuss recovery services, and according to the District's response, the District members of the team explained they would consider recovery services after in-person services resumed and they were able to gather updated data on the Student's progress.
18. On December 15, 2020, the Parent emailed the IEP team her notes from the December 9, 2020 IEP meeting. The Parent's email documented the team's discussion regarding the Student's goals and the Parent's disagreement with the goals proposed by the director: "[director] felt that [Student's] current IEP goal and aimsweb measurement is appropriate. I disagreed." The Parent noted the director proposed goals in number sense and math fluency, and that the Parent disagreed, proposing goals in each of four "main common core critical areas for sixth grade math." The director also proposed gathering more data on present levels. The team

discussed the Student's service matrix and how specially designed instruction was and could be provided. The Parent noted that no follow up meeting had been scheduled to discuss recovery services and new goals, stating that despite multiple requests and IEP meetings, the team had not discussed recovery services.

19. Regarding recovery services, the District, in its response, disagreed, noting the team considered the Parent's request and "continued to agree that it was appropriate to defer the decision about recovery services until after in-person instruction resumed and they could collect updated data on Student's progress."

20. On December 18, 2020, the associate principal emailed the Parent a prior written notice, dated December 17, 2020. The District stated this addressed the proposed actions based on the IEP team's November 18 and December 9, 2020 IEP meetings. The prior written notice included the following information, with an initiation date of January 8, 2021:

The IEP team is proposing to make the following changes:

-Amend the current math goals to the following:

[Student] will solve addition and multiplication problems using teacher taught strategies (ex. using doubles, doubles plus 1, etc.).

[Student] will read and write multi-digit whole numbers using base-ten numerals, number names, and expanded form improving number and operations in base ten skills.

The service matrix needs to be updated to the following: Math-Special Education Setting- 96 minutes per day, 5 days a week (480 minutes per week).

The reason we are proposing or refusing to take action is: Per team conversations on 11/18/20 and 12/9/20, the IEP team agreed that the current math goal needed to be amended to more accurately reflect [Student's] academic performance. The service matrix needs to be updated to reflect the two periods of specially designed instruction that [Student] receives.

Description of any other options considered and rejected: To keep the current math goal...The IEP team agrees that the current math goal is not appropriate.

[Based on]...Teacher reports, progress reports, parent reviews, progress monitoring.

Any other factors...[Student] is not currently attending extensions in the afternoons to receive the math instruction that is being offered. Parent has requested the team consider recovery services. The team will consider recovery services upon the return of in-person learning.

21. The Parent stated in her complaint that the December 17, 2020 prior written notice incorrectly documented the meeting, stating she "requested changes to the [prior written notice] but none were made" and that she was told that "a separate [prior written notice] would be issued regarding the denial of recovery services, but this was never done."

Further, in her reply to the District's response, the Parent stated the December 17, 2020 prior written notice was the "first time recovery services were mentioned by the District during the 2020-2021 school year."

22. The District was on winter break from December 21, 2020 through January 1, 2021.
23. On January 2, 2021, the Parent emailed the IEP team, requesting the District revise the prior written notice and that the IEP team meet again (and provided her availability in January 2021). The Parent requested the following revisions to the prior written notice:
- 1: Revisions to the Student's name and pronouns;
 - 2: Provide details and supporting documentation on how the IEP would be implemented;
 - 3: Update the percentage of time the Student would be in the general education setting;
 - 4: Change the reason the District was proposing the new math goals³; and,
 - 5: Provide details regarding why the IEP team would not consider recovery services.

The Parent also asked questions regarding the proposed goals, noting the proposed goals appeared to be aligned with first, second, and third grade math standards.

24. According to the Parent's complaint, on January 4, 2021, the Student took an "Aimsweb" assessment.
25. On January 7, 2021, the associate principal responded to the Parent's January 2, 2021 email requests related to the prior written notice. He also proposed an IEP meeting on January 13, 2021. The associate principal further explained, summarized:
- 1: He would coordinate with the registrar regarding the Student's name and pronouns;
 - 2: Explained math specially designed instruction was offered during the "LAB" class and math foundations class and noted the Parent had previously indicated that she did not want to access all of the offered specially designed instruction;
 - 3: The percentage of time the Student would be in the general education setting would be updated and reflected in the IEP;
 - 4: The goals were changed based on the team's discussion and they could discuss further concerns at the next IEP meeting. Assessment data used to determine the IEP goals would be provided before the next meeting; and,
 - 5: The District would follow up with the Parent about recovery services.

Subsequent emails between the Parent and associate principal indicated they agreed to meet on January 12, 2021.

26. In the District's response, it noted the Parent's complaint stated the District was required to revise prior written notices as requested by the Parent. The District stated special education regulations do not require a prior written notice to contain detailed explanations and supporting documentation for how services are implemented and delivered, nor does it require a detailed description of all discussions during an IEP meeting, or to revise the prior written notice based on a parent's request.

The District further noted it described the implementation and delivery of services in the Student's IEP, IEP meeting discussions, and correspondence; and it described the basis for the

³ The Parent stated in her email that the team concluded the math goal needed to be updated because it did not align to the Student's grade level and that "IEP goals **must** be aligned to grade level content in order to provide a Free and Appropriate Public Education." (Emphasis in original).

proposed math goals and reviewed support data and documentation in the IEP, IEP meeting, and correspondence as well.

27. On January 11, 2021, the associate principal emailed the Parent a Zoom link for the IEP meeting and a draft of the amended IEP.
28. On January 12, 2021, prior to the IEP meeting, the associate principal provided the Parent with math data collected by the case manager.⁴ In a separate email, the associate principal resent a Zoom link and noted the general education teacher that would be attending the meeting.
29. On January 12, 2021, the Student's IEP team met. The meeting was attended by the Parent, Student, director, associate principal, case manager, and general education teacher. The team reviewed data related to the Student's math skills and updated the IEP.

The January 2021 IEP noted the Student's challenges with remote learning and assignment completion. The present levels indicated the Student received his specially designed instruction in a math foundations and "LAB" class, although the Student was not currently attending "extensions or office hours in the afternoon." The adverse impact summary indicated the Student "has not memorized basic facts." The present levels documented that the Student scored eight points on the math probe, and that the Student used a multiplication grid. The IEP noted the Student had trouble retaining skills over breaks and further documented:

[Student] was unable to use previously taught strategies to help them solve the problems. They were unable to immediately recall doubles facts...unable to recognize doubles plus adding one...didn't recognize patterns of county by 2s and 3s. They were able to recall multiplication facts that involved multiplying by 1s, 2s, 5s, and 9s. When solving two digit by one digit problems...they used long division to solve the problem. They were also unable to accurately solve problems that were 2 digits by 2 digits.

The present levels stated the Student "did not make progress towards their current goal" and thus the "team felt it was appropriate to change it to help [Student] earn foundational math skills to help them be successful." The team agreed to discontinue the June 2020 IEP math goal and developed two new math goals, with objectives:

- By 06/03/2021, when given 10 one-step math equations involving addition, subtraction, multiplication, and division [Student] will accurately and independently solve problems improving 6th Grade Math Skills (CCSS.Math.Content.6.EE.A.1)⁵ from 0% accuracy over 5

⁴ The Parent stated in her reply that the raw data and assessments were not provided "in advance of the meeting as promised" because they were sent only three hours prior to the meeting and therefore, she did not have enough time to review the data before the meeting. Further, the Parent stated, "The two math Aimsweb assessments provided are undated, and the third is clearly labeled an assignment or lesson in multiple places...[Student] says that this is an assignment that he completed in September 2020. It is unclear when this was collected and therefore not an accurate reflection of [Student's] present levels."

⁵ This notation refers to the common core standards for sixth grade math, expressions and equations: "Apply and extend previous understandings of arithmetic to algebraic expressions. CCSS.MATH.CONTENT.6.EE.A.1 Write and evaluate numerical expression involving whole-number exponents." <http://www.corestandards.org/Math/Content/6/EE/>.

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

- By 04/30/2021, [Student] will when given 10 math problems, [Student] will correctly and independently solve on step equations involving addition and subtraction with 80% accuracy.
- By 05/31/2021, [Student] will when given 10 math problems, [Student] will correctly and independently solve one step equations involving multiplication and division with 80% accuracy.
- By 06/03/2021, when given 10 multi-digit problems involving addition, subtraction, multiplication, and division [Student] will use strategies (such as bridge to 10, Use a Double, Build Up/ Build Down) to independently and accurately complete math problems improving Computational Fluency from 0% accuracy to an average of 80% accuracy over 5 consecutive trials as measured by data collection on goal performance probed at time of progress reporting and/or previously observed performance.
 - By 03/31/2021, [Student] will when given 10 multi-digit addition and subtraction problems, [Student] will use teacher taught strategies to solve these problems with 80% accuracy.
 - By 05/31/2021, [Student] will when given 10 multi-digit multiplication and division problems, [Student] will use teacher taught strategies to solve these problems with 80% accuracy.

Progress toward the goals was to be reported at the trimester. The IEP included 96 minutes, five times weekly of specially designed instruction in math, in the special education setting. The IEP noted the Student would spend the remaining time, 72.9%, in the general education setting. The IEP also noted the Student would receive extended school year (ESY) services.

30. According to the Parent's complaint (and noted in contemporaneous emails from the Parent after the meeting), during the January 12, 2021 meeting, the director stated that "recovery services are to 'level the playing field' and NOT intended as 'regression recoupment'...but only to make up for supplemental services (PT, OT, SLP, etc.) that were not provided during the COVID closure." The Parent stated this was incorrect according to OSPI guidance that stated:

When determining the extent to which recovery services may be needed, districts should consider multiple factors, including what services were provided during the spring 2020 school facility closures, the degree to which the student was able to participate in those services, **any regression in the student's skill**, progress or lack of progress made in the general education curriculum and toward meeting the IEP goals, and parent input.

(Emphasis in original).

The Parent further stated, in her reply, that the team meeting was not collaborative, and they did not collaboratively develop the goals. The Parent stated the director insisted on the goals in the IEP "without substantial evidence to show their appropriateness," and stated the director said the team needed more data to develop appropriate goals. The Parent objected to the present levels in the IEP, characterizing them as "present levels of deficiency" instead of present levels of progress and noted they speak to what the Student "cannot do and say nothing about what he *can* do." (Emphasis in original). The Parent stated that the District seemed to "acknowledge some of the many challenges [Student] has in math" but did not

“change any strategies of delivery [specially designed instruction] to make sure my student would learn these necessary skills.”

The Parent further noted that after the January 12, 2021 IEP meeting, despite agreement that the team needed additional data to develop appropriate goals, the goals “presented during that meeting were implemented without another IEP team meeting, without further data collection, and in spite of my objections.”

31. Regarding the IEP, the Parent stated in her complaint that the District “proposed and then implemented goals that were supported by sparse data.” The Parent stated at every IEP meeting, she requested the Student’s goals align with his grade level and that between September 2020 and January 2021, the Student’s IEP only had one goal aligned with fifth grade math. The Parent noted the Student did not meet this goal during the 2019–2020 school year as a result of COVID-19, school facility closures, and subsequent remote learning model.

Regarding recovery services, the Parent further stated in her reply to the District’s response:

The District would have us believe that sufficient data had been collected to determine appropriately challenging IEP goals, but that there was insufficient data to determine whether the Student required recovery services. However, they have not explained how the data used to determine IEP goals was different than what was required for determining recovery services and why that data could not be compared to data collected prior to the pandemic, nor have they explained why data collected virtually is sufficient for crafting IEP goals, but data collected in person is required for recovery services.

The Parent noted she reviewed the Student’s math assessment data, and data indicates the Student regressed during the 2020–2021 school year. The Parent further explained the challenges the Student had with Zoom instruction, including difficulty connecting with teachers, internet connection, anxiety with the camera, difficulty with logins, and teachers not letting the Student into the Zoom room.

Finally, regarding progress monitoring, the Parent stated that at the January 12, 2021 IEP meeting, the director stated the “next step would be to take ‘baseline data’ and draft a new IEP amendment.” The Parent stated this was not done and the subsequent assessments she was sent were administered prior to January 12, 2021.

32. On January 20, 2021, the Parent emailed the IEP team her notes from the IEP meeting, which included the following, summarized:

- Parent received assessments prior to the meeting but was waiting on the score sheets and norms tables.
- Team discussed the proposed math goal and the standards the goals should be tied to.
- Team discussed recovery services.
- Student qualified for ESY given regression “after the spring COVID closure, summer break, Thanksgiving break, and winter break.”
- Discussion of Student attending the “LAB Extension” period for additional specially designed instruction and other discussion of when the Student could get instruction or additional support.

- Discussion of attending a hybrid in-person schedule.
- Discussion of the triennial reevaluation.

33. On January 21, 2021, the case manager emailed the Parent data collected on the Student's performance on addition, subtraction, multiplication, and division. The case manager noted they were working on solving equations that day and provided reports from the Student's previous three class-based math assessments, as well as a table of the average rate of improvement norms for fifth and sixth grade students. The case manager later (on February 4, 2021) provided the Parent with a copy of the answer keys for the three math assessments.
34. Regarding the data provided on January 21, 2021, the Parent noted these assessments were from November 2020, December 2020, and January 2021. The Parent stated she was "unclear as to why [these] assessments were not provided to me prior to the January 12, 2021, meeting."
35. On January 29, 2021, the associate principal emailed the Parent a copy of the January 12, 2021 amended IEP and prior written notice. The prior written notice stated the proposed actions—implementing the amended IEP with updated math goals—would be initiated on February 4, 2021, and the District "considered and rejected" the request for recovery services because "the data presented from the parent and IEP team were consistent with regression/recoupment so the Team added [ESY] to the IEP" based on "Parent and Staff Input, Evaluation Data, Classroom-Based Assessments."

The Parent, in her complaint, stated that January 29, 2021 was almost three weeks after the January 12 IEP meeting.

The District, in its response, noted this was 11 school days after the meeting and that there is no requirement to issue a prior written notice within a certain number of days. Instead, the District stated the only timing-related requirement is that the District issue the prior written notice within a reasonable time before the implementation of the proposal. Further, the District stated the prior written notice contained all required elements and that the District was not required to review the notice to document all Parent disagreements. The District stated, "nonetheless, the District agreed to add Parent's dissenting opinion to the District's official records;" thus, fully documenting the Parent's disagreement.

36. On February 3, 2021, the Parent emailed the IEP team regarding the amended IEP and prior written notice, stating that she wanted to "clear up some misunderstandings." The Parent stated she did not agree with the proposed math goals because she believed the team did not have sufficient data—the Parent stated the case manager was going to collect more data and "we don't yet have baseline data...and the goals were based on first, second, and third grade standards." The Parent stated the amended IEP did not mention ESY and noted she disagreed with the rejection of her request for recovery services. The Parent stated she wanted the Student in a LAB class period that did not have social emotional or adaptive work, as that "takes away from [Student's] time to work on math." The Parent also asked about the dates on the IEP and beginning the Student's reevaluation. Finally, the Parent suggested that in

future, the IEP team review the wording of each prior written notice at the meeting and that she “look[ed] forward to receiving a corrected PWN before the weekend.”

37. On February 4, 2021, the director responded to the Parent’s emailed requests, stating that “we are happy to add your dissenting opinion to our official records.” The director also provided the following responses or clarifying information, summarized:
- ESY services were documented on page 13 of the IEP and the team had agreed to meet again to develop an ESY IEP;
 - The team could reconsider recovery services again when they were planning for ESY;
 - The team could discuss the Student’s LAB class format at the next IEP meeting, noting the Student’s minutes of specially designed instruction had been updated on the services matrix;
 - The Parent would be receiving consent to begin the reevaluation process; and,
 - The IEP meeting and implementation dates were automatically calculated, and she would review to adjust the dates.

The Parent replied and continued to list things she wanted in a prior written notice:

- “The ESY box was checked on the IEP but there was no information about ESY in the [prior written notice].”
- There was no information about recovery services and the change of LAB class format agreed to at the December IEP meeting in the prior written notice.
- The prior written notice did not document the Parent’s request for the triennial reevaluation.
- The prior written notice needed to “explain the reasoning behind your decision that [Student] will not receive services if they do not attend school in-person when the hybrid schedule begins in March...I don’t understand why [Student] would not receive services because of this.”

38. The Parent noted in her complaint that her understanding was that the prior written notice is the document where disagreements among team members should be recorded.

39. On March 24, 2021, the school psychologist emailed the Parent a consent form for the reevaluation, Parent questionnaire, and options for the reevaluation. The Parent responded that she wanted a comprehensive reevaluation, “given that we do not know what [Student’s] current level of progress looks like” and that “we need more information in order to craft suitable IEP goals.”

40. On March 29, 2021, the case manager provided the Parent with the Student’s second trimester progress report. The progress reporting included the following information:
- One-Step Equations, Addition/Subtraction Objective: “On three data trials involving addition and subtraction, [Student] only completed one of the trials. On the completed trial, they scored 90% when solving addition problems. For the other two trials, they were given the same assessment. The first trial they only completed two problems and on the second trial they did not complete any problems.”
 - One-Step Equations, Multiplication/Division Objective: Not assessed during second trimester.
 - Math Computation, Addition/Subtraction Objective: “[Student] is able to use teacher taught strategies with 50% accuracy.”
 - Math, Computation Multiplication/Division Objective: No comments included.

41. On April 4, 2021, the Parent emailed the school psychologist the signed consent form for the reevaluation. The consent form indicated the reevaluation would address the following areas: general background, review of existing data, social/emotional, medical-physical, general education teacher report, behavior, academic, Student observation, other: "educational."

The consent form indicated the decision to recommend an evaluation was based on the timeline for the Student's triennial reevaluation, that no other options were considered or rejected, and that, under other relevant factors, "Your participation in this process is encouraged. Please complete the Parent Questionnaire-Re Evaluation, which will come to you via a separate email. I look forward to meeting [Student]." The Parent also wrote: "We need an accurate understanding of [Student's] present level of progress in math, and an evaluation of [Student's] executive functioning. [Student] is having a lot of difficulty complete tasks and assignments." The Parent signed and dated the consent form.

42. On May 7, 2021, the school psychologist emailed the Parent a copy of the draft reevaluation report.
43. On May 13, 2021, the District completed the Student's triennial reevaluation and held a feedback meeting, which the Parent attended.⁶ The evaluation group found the Student exhibited "global delays in math" and had challenges with working memory and math fact retrieval. The reevaluation noted other concerns, such as the Student's ability to stay on task, complete work, concentrate, that a remote learning environment was challenging for the Student, and that there were concerns regarding attendance. The evaluation group found the Student continued to be eligible for special education services in the category of specific learning disability and recommended specially designed instruction in math. The evaluation group also recommended the team continue to monitor the Student's executive functioning needs following a return to in-person learning.
44. In her reply to the District's response, the Parent stated the reevaluation did not accurately document the Student's challenges with working memory and that the District did not "administer any assessments to distinguish between [Student's] previously diagnosed Specific Learning Disorder in Math...and deficits in working memory or processing speed." The Parent stated the District took information from a 2017 private evaluation out of context and that the 2017 evaluation indicated the Student "scored in the High Average range overall for working memory" and the low average range for processing speed. The Parent noted the District evaluation stated, "Results from [2017 private] evaluation showed inconsistencies in [Student's] working memory that are consistent with current observations... In this evaluation, [Student] did well when asked to repeat back numbers in the order presented, but struggled to count backwards by twos, fives, or tens."

Further, the Parent stated that the evaluation:

⁶ The District's response included emails regarding the evaluation meeting, which included the Parent on the email as well as the date, time, and location of the meeting, the attendees, and the purpose of the meeting.

Focuses heavily on [Student's] absences. However, the evaluation does not elaborate on which of the partial-day absences kept [Student] out of math periods...Furthermore, the district never suggested a meeting or a Functional Behavior Assessment to determine why [Student] was missing so many class periods, nor did they convene a meeting to discuss absences as required by [District policy] as well as RCW 28A-225-018...The only absences ever discussed during IEP meetings were afternoons (when [Student's] LAB extension period was scheduled), and only to say that they really wanted [Student] to attend extensions and office hours...

45. On May 17 and 20, 2021, the case manager emailed the Parent and subsequently followed up regarding scheduling an IEP meeting on June 1, 2021. The Parent responded she was available.
46. On May 28, 2021, the case manager emailed the Parent with a draft IEP in advance of the IEP meeting. The draft IEP included an IEP meeting document that indicated the purpose of the meeting and who would be attending by title.
47. On June 1, 2021, the Student's IEP team met and developed a new annual IEP for the Student. The IEP noted concerns regarding the Student's inconsistent attendance and assignment completion. The adverse impact summary indicated the Student "does not know their basic math facts. Although they have access to a multiplication chart, they do not always use it to help. They are unable to skip count and use teacher taught strategies to solve problems."

The IEP included updated present levels, noting global delays in math ("overall skills falling at the 6th percentile") and specific challenges with working memory and math fact retrieval. The present levels indicated the Student's previous evaluation (completed three years ago) "suggested that [Student's] math skills fell in the below average to low range" and that once the Student began receiving specially designed instruction, he made strong gains the first year. The IEP noted the Student's engagement and participation decreased during COVID-19. The present levels indicated specific areas of challenge for the Student (counting by threes or fives, counting backward, subtests related to knowledge or fluency with math facts), and noted the Student "demonstrated a basic understanding of math terminology and the processes used in math problem solving." The IEP noted the Student was currently receiving math instruction that focuses on "helping students learn and understand how numbers work. This includes understanding place value, multiplication, division, and fractions." The present levels noted it was difficult to assess the Student's progress, given inconsistent attendance and incomplete assignments. The present levels further indicated the Student "did not meet [his] IEP goal...However, when looking at the data, it shows that [he is] able to solve one step equations using addition and subtraction. [He has] not been assessed in one step equations using multiplication and division due to [his] attendance."

The IEP stated the goal would be based on common core standards ("apply and extend previous understandings of multiplication and division to divide fractions by fractions") and the "goal of solving fractions using a four operations [sic] is an entry level skill required for this common core standard." The goal included multiple objectives as follows:

- By 06/01/2022, when given a list of 10 problems with a mix of adding, subtracting, multiplying and dividing fractions with unlike denominators [Student] will accurately solve problems

improving math skills from from [sic] an average of 0% accuracy to an average of 80% accuracy over the most recent 3 data collection days as measured by data collection on goal performance at time of progress reporting and/or previously observed performance.

- By 02/28/2022, [Student] will when given a list of 10 problems adding and subtracting fractions with like and unlike denominators, [Student] will accurately solve and average of 80% over three consecutive data collection days.
- By 04/30/2022, [Student] will when given a list of 10 problems multiplying fractions with like and unlike denominators, [Student] will accurately solve and average of 80% over three consecutive data collection days.
- By 12/31/2020, [Student] will when given a list of 10 division problems up to 3 digit dividend and a 1 digit divisor, [Student] will accurately solve and average of 80% over three consecutive data collection days.

Progress was to be reported at the trimester. The IEP provided specially designed instruction in math for 96 minutes, five times per week in the special education setting. The Student also required ESY services, and the team developed an ESY IEP.

48. In her complaint, the Parent noted that the Student's IEP goal had been in place since January 18, 2021, and that the District "had five months to collect this data...[Student's] attendance should not have been a factor preventing the district from collecting this data." The Parent stated the IEP goal was now aligned with sixth grade standards, but the Student was going into seventh grade for the 2021–2022 school year. The Parent noted that "other than increasing the amount of time he spends in special education, there has not been any change in how instruction is delivered."
49. On June 2, 2021, the case manager provided the Parent with the Student's June 2021 IEP and ESY IEP, and prior written notice for both.

The prior written notice proposed to implement the Student's June 1, 2021 IEP as the Student required specially designed instruction in math to fully access the general education curriculum, based on teacher reports, parent reports, progress monitoring, and the Student's most recent reevaluation. The notice indicated the team rejected the option to keep the Student's amount of specially designed instruction at 48 minutes per day as the Student has shown limited growth in math during the 2020–2021 school year. The prior written notice indicated the team would revisit this after the first trimester of the 2021–2022 school year. Finally, the notice indicated the proposed actions would be initiated on June 3, 2021.

50. June 18, 2021 was the last day of the District's 2020–2021 school year.
51. On June 18, 2021, the case manager emailed the Parent a progress report covering the Student's IEP goal progress for the last two weeks of the third trimester and a copy of the June 2021 IEP. The case manager stated they needed to coordinate an ESY schedule.

The progress reporting included the following information:

- One-Step Equations: "6/18/21-[Student] did not meet their IEP goal this year in relation to one step equations. However, when looking at the data, it shows that they are able to solve one

step equations using addition and subtraction. They have not been assessed one one [sic] step questions using multiplication and division due to their attendance in the class.”

- Fraction Operations: “IEP recently implemented.”

52. On June 21, 2021, the Parent responded to the case manager’s emailed, stating she did not agree with the IEP.

53. On June 22, 2021, the director emailed and stated they would “schedule a time to meet in the Fall to discuss [Student’s] progress during COVID and the need for additional services.”⁷

54. In response to allegations in the complaint regarding IEP meeting notice, the District noted that IEP meetings were held at mutually agreeable dates and times as evidenced by email scheduling discussion. The District stated the Parent was aware of the purpose of each meeting, given that she requested the meetings and given the scheduling discussions, which also provided the Parent with information about who would attend. The District noted the Parent was aware each meeting would be held remotely when it provided the Parent a Zoom link. The District acknowledged there were procedural errors that occurred, such as not providing the Parent notice the math teacher would be the general education teacher attending the November 18, 2020 IEP meeting, but maintained that these errors did not impact the Student’s education program and did not amount to a substantive violation.

55. Regarding the Student’s IEP and aligning goals to grade level standards, the Student’s case manager shared that IEP teams, in general, always tried to align IEP goals with grade level standards and content. However, the case manager noted that this could be difficult if a student is not at grade level in their skills. For this Student, the case manager reiterated that it was difficult to assess the Student’s skill level as the Student’s participation was minimal.

The case manager stated that the Student’s January and June 2021 IEP goals were aligned with grade level standards, and further noted that the seventh-grade curriculum is similar to sixth grade as students explore many of the same concepts, but learn about negative numbers, and work on moving from one-step to two-step questions. Seventh grade students begin the year working on a fractions unit, and the case manager noted the Student worked with her 1:1 during ESY and that they work on division and long division. The case manager noted that one of the Student’s challenges is that he does not know his math facts.

The case manager and director shared during the interview that at IEP team meetings, they showed and discussed the standards, and explained that even if goals address foundational skills that these foundational skills provide gateways or access points to the standard. They stated they felt the goals were appropriate for the Student and appropriately ambitious. They shared the Student needed to learn other skills as well, such as the previous goal he had about

⁷ The District noted in an interview that the discussion about recovery services in the District is ongoing and that teams have been directed to revisit the need for recovery services at least at each student’s annual IEP meeting. The District stated this Student’s IEP team could discuss recovery services again.

using teacher taught strategies, even though this was not directly aligned to a grade-level standard.

56. Regarding the Student's attendance during the 2020–2021 school year, the District provided additional information in interviews, including that:

- District staff, including the associate principal and case manager, communicated concerns about attendance to the Parent.
- Associate principal noted the IEP team had conversations regarding when specially designed instruction was provided (in the morning), the purpose of afternoon sessions (office hours, additional support for specially designed instruction and asynchronous learning), and that the team encouraged the Student attend in the afternoon for additional support.
- At the start of the school year, the Student attended most remote math classes in the morning for direct instruction.
- Student never attended afternoon office hours. According to the District, the Parent stated the Student was not interested in attending in the afternoon.
- The Student's case manager noted the Student, at the start of the year, did not seem to know the schedule and thus the case manager would reach out and send messages with the class schedule and encouraged the Student to attend.
- After the hybrid schedule began in March 2020, the Student remained remote and increasingly did not attend math classes.
- The case manager stated she thought some of the barriers to attendance included the Student's mental health struggles and that he was tired of remote learning. The case manager stated that during the spring 2021 reevaluation, the team discussed the Student's need for social-emotional instruction and supports, but that the Parent declined these services.

The District noted the Student is attending in-person during the current, 2021–2022 school year and that because of this, attendance and participation has been improving.

57. The Parent, in her reply to the District's response, noted that "the cumulative effect of these procedural failures resulted in the denial of [a free appropriate public education] FAPE for [Student]." The Parent stated, "the District has delivered no plan for [Student] to catch up. If the District had agreed to recovery services in a timely manner, [Student] could catch up and be working at grade level before moving on to high school in ninth grade." The Parent also stated, "the District's procrastination in the delivery of [prior written notice] caused unnecessary delays, the lack of appropriate personnel at the November 18, 2020 IEP team meeting caused delays, and there were unnecessary delays due to the amount of time the District required to provide me with collected data."

58. The Parent provided a chart in which she had consolidated the Student's assessment results from fourth through sixth grade. The assessments taken were at the fourth and fifth grade level and indicated the Student scores fluctuated between "well below average" to "average."

CONCLUSIONS

Issue 1 – Individualized Education Program (IEP) Team Membership: The Parent alleged the District failed to invite a representative of the District who is knowledgeable about the availability of District resources to the November 18, 2020 IEP meeting.

Relevant to this issue, an IEP team must include a regular education teacher and 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, among other individuals.

The November 18, 2021 IEP meeting was attended by the Parent, associate principal, case manager, counselor, and a special education teacher (the District initially identified this teacher as a general education teacher and later clarified he was a special education teacher). Specifically, the Parent alleged she requested the IEP team discuss recovery services for the Student and the associate principal stated they could not discuss recovery services because the District's director of special services (director) was not present. The documentation in the complaint indicates that the Parent and District disagree about whether recovery services were discussed at this meeting, with the Parent maintaining they were not. The District stated recovery services were discussed, the associate principal was the required District representative, and the IEP team deferred consideration of recovery services until the Student returned to in-person instruction and the team could collect additional data, "not based on [associate principal's] knowledge about the availability of District resources or authority to make decisions, nor was it because [director] was not present." The District stated, "nonetheless, [associate principal] invited [director] to attend the follow-up IEP team meeting...to further address Parent's questions related to recovery services."

Ultimately, the documentation indicates that while there may be disagreement over the extent of the discussion, a District representative (the associate principal) attended the IEP meeting, and the IEP team was properly constituted in this respect. Even if the team did not discuss recovery services at the November 18 meeting—this alone is not a violation as there is no specific timeline by which a district must consider recovery services and the team discussed recovery services at subsequent meetings (see discussion below). However, the IEP team was missing another required member—a general education teacher—and there is no evidence that excusal procedures were followed. Thus, OSPI finds a violation. However, as this appears to be a one-time occurrence and general education teachers were present at all subsequent IEP meetings, OSPI finds that the District has already corrected the violation and no further corrective actions are necessary.

Issue 2 – IEP Meeting Notices/Invitations: The Parent alleged the District failed to provide meeting notices in advance of meetings and the Parent was not notified of who would attend meetings or for how long meetings were scheduled. The Parent stated this meant she could not prepare for meetings.

A district is required to schedule IEP meetings at a mutually agreed on time and place and notify parents of meetings early enough to ensure that they will have an opportunity to attend. The notification must indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student.

Here, the documentation in the complaint indicates that formal meeting notices were generally not provided to the Parent prior to IEP meetings during the 2020–2021 school year. The exception was that prior to the June 1, 2021 IEP meeting, the Parent was sent a draft IEP, which included

documentation of the purpose of the meeting and attendees. Importantly, there is nothing in the IDEA that requires the use of a specific meeting notice document or a particular format—just that the notice include the above elements. Thus, OSPI looked at whether the scheduling communications surrounding each meeting provided the required information, and if not, whether this impacted the Parent’s ability to participate in the IEP meetings to the degree that it denied the Student a free appropriate public education (FAPE).

During the 2020–2021 school year, the following IEP and reevaluation meetings occurred: November 18 and December 9, 2020, January 12, May 13 (reevaluation), and June 1, 2021. The Parent attended all meetings and the associated email scheduling discussions provided that:

- All meetings were scheduled at a mutually agreed upon date and time.
- The purpose of the meetings was included in scheduling emails as the Parent either requested the meeting and provided agenda items, or District emails addressed meeting topics. For example, emails prior to the December 9, 2020 meeting made clear the purpose was to discuss math goals, math assessment, and recovery services.
- The Student attended school in a remote format during the 2020–2021 school year and meetings were held remotely via Zoom. The Parent was provided a Zoom link for each meeting.
- The Parent was inconsistently notified of who would be attending the IEP meetings. Some of the participants were clear based on emails. However, for some meetings, the District emailed the Parent the day of the meeting regarding the general education teacher that would attend. Additionally, there was no general education teacher present at the November 18, 2020 IEP meeting.

The one consistently missing element in the scheduling emails is information notifying the Parent of provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. It is not clear that the Parent wanted to invite other attendees to the meeting and at no point asked or suggested other attendees. Thus, while a procedural violation, it does not appear this impacted the Parent’s ability to participate in meetings or resulted in a denial of FAPE for the Student. Despite incomplete meeting notification, the Parent attended all meetings, and based on the documentation, including Parent’s meeting notes, actively participated. The Parent did not always agree with the outcome of the meeting and there were instances when follow up IEP meetings were needed as the IEP team did not resolve everything (e.g., the December 9 meeting was scheduled to continue the discussion at the November 18, 2020 IEP meeting). Yet, disagreement and the need for additional meetings does not necessarily mean the Parent was prevented from participating. OSPI also notes that while it is helpful to know how long a meeting is, there is no specific requirement that an IEP meeting be a particular length or that the length of the meeting be included in the meeting notification.

Ultimately, OSPI finds the District in violation because while the scheduling emails provided the Parent with most of the information required in the special education regulations for meeting notice, it did not consistently notify the Parent of the attendees or the provisions for inviting other individuals. The District will be required to complete a file review and audit to review the District’s special education meeting invitation policies and practices, identify areas for improvement, and carry out identified steps for improvement.

Issue 3 – Prior Written Notice: The Parent alleged the District routinely delayed providing prior written notices, provided prior written notice with too little time for the Parent to exercise procedural safeguards, and failed to document Parent objections. The Parent alleged that the delays resulted in delaying the provision of suitable specially designed instruction.

Districts must provide written notice a reasonable time before the school district: Proposes or refuses to initiate or change the identification, evaluation, educational placement of the student, or provision of FAPE to the student. The notice must include elements outlined in special education regulations. Prior written notice must be provided a *reasonable time prior* to the proposed or refused action. Guidance provides factors to consider, but no firm timing requirements. OSEP has interpreted a reasonable time to be 10 calendar days in some instances, although does not address whether a shorter period would be appropriate in other instances. Washington due process decisions have found that providing prior written notice the day before the proposed changes are to be implemented were not a reasonable time before the proposed change.

September 4, 2020 Prior Written Notice: The District sent a prior written notice on September 4, 2020 (initiation date September 4, 2020) regarding a District-wide schedule change, increasing weekly instructional minutes from 1,710 to 1,725. Here, OSPI finds the District’s rational persuasive: the change in minutes—while in theory could impact FAPE for a student—in this case did not impact the Student’s identification, evaluation, or educational placement. The change equated to three minutes per day and did not impact the Student’s IEP or percentage time in a general education setting. While OSPI notes that sending this out as a prior written notice could have been confusing and this information likely could have been provided in a different format (e.g., District-wide email), OSPI finds no violation with prior written notice procedures, even though this was provided to parents the same day it was to go into effect.

November 18, 2020 IEP Meeting: The Parent alleged that no prior written notice was provided following the November 18, 2020 IEP meeting. The District stated prior written notice was not necessary because the team discussed potential changes to the Student’s IEP—but did not make any decisions at the meeting—instead agreeing to meet again. OSPI finds this is an accurate characterization of the meeting, as it does not appear the team made any decisions to either change (or refuse to change) the identification, evaluation, educational placement, or the provision of FAPE to the Student. The team scheduled a meeting on December 9, 2020 and subsequently documented both meetings in a prior written notice. OSPI finds that the District was not required to create a separate prior written notice for the November 18, 2020 meeting and finds no violation.

December 9, 2020 IEP Meeting: On December 17, 2020, the District provided the Parent with prior written notice, documenting the November 18 and December 9, 2020 IEP meetings. The actions described in the notice were to be initiated on January 8, 2021. The prior written notice included the following information, summarized:

- The IEP team proposed to amend the Student’s math goals based on team conversations that the “current math goal needed to be amended to more accurately reflect [Student’s] academic

performance.” The team rejected keeping the math goal the same based on teacher reports, progress reports, parent reviews, progress monitoring.

- IEP team proposed to increase the Student’s specially designed instruction to 96 minutes per day, five days per week, because the IEP needed to be updated to “reflect the two periods of specially designed instruction that [Student] receives.”
- Other factors: “[Student] is not currently attending extensions in the afternoons to receive the math instruction that is being offered. Parent has requested the team consider recovery services. The team will consider recovery services upon the return of in-person learning.”

The Parent objected to this prior written notice because she stated it incorrectly documented the meeting, stating she “requested changes to the [prior written notice] but none were made” and that she was told that “a separate [notice] would be issued regarding the denial of recovery services, but this was never done.” The Parent’s requested changes were outlined in a January 2, 2021 email to the IEP team and included, in part, that the District provided details on how the IEP would be implemented, update the percentage of time the Student would spend in general education, change the reason why the IEP team proposed new math goals, and provide details as to why the IEP team would not consider recovery services. The District responded in part, that some of these were changes that would need to be made in the IEP, not the prior written notice, or were not appropriate to detail in the notice, and reiterated the goals were changed based on the team’s discussion and further concerns could be discussed at the next IEP meeting. The District stated they would follow up regarding recovery services.

There is nothing in the regulations that require a certain level of detail—and certainly the prior written notice is not intended to record every word spoken at an IEP meeting—however, the notice should be sufficiently detailed so that the proposed or rejected changes can be understood. Here, OSPI notes some of the requested changes were not items that were required or necessarily appropriate to be in the prior written notice. For example, the percentage time spent in general education belongs in the IEP itself, as the prior written notice already documented the proposed change—the increase in special education minutes. Or based on the proposed and rejected actions, there was no reason for the prior written notice to detail how specially designed instruction was being provided. Further, the District noted it described the implementation and delivery of services in the Student’s IEP, IEP meeting discussions, and correspondence.

Other elements of the Parent’s request were already addressed in the prior written notice, although the Parent may disagree with the wording or outcome. For example, the Parent stated she wanted details as to why the IEP team would not consider recovery services and stated she was told that “a separate [notice] would be issued regarding the denial of recovery services.” Again, there is no requirement for how much detail goes in a prior written notice, and here the notice was clear as it stated: “Parent has requested the team consider recovery services. The team will consider recovery services upon the return of in-person learning.” There is also no reason why this information needed to be conveyed in a separate prior written notice. The Parent also stated the District needed to change the reason why the IEP team proposed new math goals (the Parent stated the reason the goals need to be updated is because they were not aligned with the Student’s grade level). However, the prior written notice already recorded the key agreement—that the IEP team agreed the goals needed to be changed.

Overall, while the IEP may not have been as detailed as the Parent would have liked, OSPI finds the notice contained all required elements and sufficiently documented the proposed and rejected changes based on the IEP meetings. OSPI finds no violation.

January 12, 2021 IEP Meeting: On January 29, 2021, the District provided the Parent prior written notice, documenting the January 12, 2021 IEP meeting. The notice stated the proposed actions—implementing the amended IEP with updated goals—would be initiated February 4, 2021 and the District “considered and rejected” the request for recovery services because “the data presented from the parent and IEP team were consistent with regression/recoupment so the Team added [ESY] to the IEP” based on “Parent and Staff Input, Evaluation Data, Classroom-Based Assessments.”

The Parent objected to the timing of this prior written notice, noting it was sent almost three weeks after the IEP meeting. The District, in its response, noted this was 11 school days after the meeting. There is no requirement to issue a prior written notice within a certain number of days after the meeting, only that it be issued a reasonable time before implementation, which in this case it was. Here, the timing was reasonable as the Parent had time to consider and respond to the proposed actions prior to the implementation date based on her February 3, 2021 email. OSPI finds no violation related to the timing of the notice but reminds the District that best practice would be to generally provide the prior written notice within a few days after a meeting—OSPI’s “Understanding Prior Written Notice” document recommends one to two days.⁸

The Parent, also on February 3, 2021, emailed the IEP team that she did not agree with the proposed IEP goals as she stated they were based on “first, second, and third grade standards” and there was insufficient data; that the IEP did not mention [extended school year] ESY; that she disagreed with the rejection of her request for recovery services; and, the Parent stated she wanted the Student in a LAB class period that did not have social emotional or adaptive work, as that “takes away from [Student’s] time to work on math.” The Parent requested a “corrected” prior written notice. The Parent noted in her complaint that her understanding was that the prior written notice is the document where disagreements among team members should be recorded.

The District responded to the Parent, stating ESY was in the IEP and that they would develop an ESY IEP later, that the team could reconsider recovery services again when planning for ESY, stated the IEP team could again discuss the Student’s class format and specially designed instruction, and noted the Parent’s “dissenting opinion [would be added] to our official records.”

OSPI finds that the January 29, 2021 prior written notice contained all the required elements. Further, the District addressed the Parent’s requests (e.g., clarifying that ESY was checked in the IEP or noting the team should discuss the Student’s LAB class before changing it). Regarding the Parent’s other requests, OSPI finds her disagreement with the recovery services decision was documented, as the notice stated: “considered and rejected” the request because “the data presented from the parent and IEP team were consistent with regression/recoupment so the Team added [ESY] to the IEP.” Given that the Parent requested recovery services, it is clear the Parent

⁸ https://www.k12.wa.us/sites/default/files/public/specialed/pubdocs/understanding_pwn.pdf

would disagree with a rejection of the request, although it would not have hurt for the District to state this explicitly. The only element missing in the notice is the Parent's disagreement with the math goals. While ideally this would be documented in the prior written notice, the District agreed to add the Parent's dissenting email to the Student's records, and thus, OSPI finds the District sufficiently documented the Parent's disagreement. The fact that this was in a separate email does not render the prior written notice invalid and OSPI finds no violation.

Spring 2021 Reevaluation: The Parent alleged the District failed to provide prior written notice to inform the Parent of the reevaluation and the areas in which the Student would be reevaluated, and thus, she was not given the information necessary to provide informed consent.

Districts must provide written notice of a proposal to initiate an evaluation, including a description of each evaluation procedure and assessment used as the basis for the proposed action. OSPI guidance further provides that if the prior written notice is being sent to inform the parent of an evaluation, a district should include the areas in which the student will be evaluated or reevaluated (e.g., cognitive, behavioral, reading, etc.).

OSPI notes that while there are required elements in a prior written notice, there is no required form or format. Here, the District did not send the Parent prior written notice but did send a consent form. Here, the consent form included:

- A description of the proposed or refused action: Consent indicated a reevaluation was proposed;
- An explanation of why: Consent form stated this was based on the timeline for the Student's triennial reevaluation;
- Data and information used: Consent indicated the following areas would be address by the reevaluation - "general background, review of existing data, social/emotional, medical-physical, general education teacher report, behavior, academic, Student observation, other: 'educational.'"
- Description of other options that the IEP team considered and the reasons rejected: No other options considered or rejected; and,
- A description of other relevant factors: "Your participation in this process is encouraged. Please complete the Parent Questionnaire-Re Evaluation, which will come to you via a separate email. I look forward to meeting [Student]."

The consent form also included a statement that procedural safeguards had been provided. The Parent signed the form, giving consent for the reevaluation. OSPI finds the consent form contained all the required elements of a prior written notice; although, OSPI notes that best practice would be to provide more specific information on the proposed evaluative tools or assessments, either in the notice or by attaching a separate document. Additionally, OSPI notes that the Parent specifically alleged she was not provided information about the areas for evaluation; however, the consent included areas for evaluation and the Parent added areas and a response, indicating she had enough information to respond. It is not clear how this information being provided in a consent form document instead of a prior written notice impacted the Parent's ability to give informed consent. OSPI finds no violation. OSPI does remind the District that best practice would be to also provide a prior written notice.

June 1, 2021 IEP Meeting: On June 2, 2021, the District provided the Parent prior written notice, documenting the June 1, 2021 IEP meeting and a copy of the IEP and ESY IEP. The actions

described were to be initiated on June 3, 2021. On June 21, 2021, the Parent emailed the District, stating she disagreed with the IEP. In her reply to the District's response, the Parent objected to the June 2021 prior written notice based on timing.

Prior written notice must be provided a reasonable time prior to the proposed or rejected action and OSPI notes that guidance from due process decisions is that providing prior written notice the day before the proposed changes are to be implemented is not a reasonable time before the proposed change because it creates a "virtual impossibility of filing a request for due process hearing in time to be legally entitled to stay-put (prior to the date of proposed implementation)." The June 2, 2021 prior written notice fits the situation described in the due process decision and was not provided a reasonable time before the proposed action. The notice was provided the day before it was to be implemented, which potentially limited the Parent's ability to access certain procedural safeguards, such as filing a due process in order to invoke "stay-put." OSPI finds a violation and the District will be required to hold an IEP meeting to address the Parent's concerns with the June 2021 IEP. The District will also be required to provide the guidance ordered in SECC 21-64 more broadly and to review prior written notice as part of the file review ordered above.

Issue 4 – Recovery Services: The Parent alleged the District "refused to address the Student's need for recovery services due to COVID 19-related closures and distance-learning." Here, there is disagreement over when recovery services were discussed, the depth of those discussions, and the ultimate decision about recovery services.

Recovery services are intended to mitigate the impact of COVID-19 school facility closures and pandemic generally and to enable the student to make progress on IEP goals. Recovery services should be provided if students have not been provided or were unable to access IEP services because of COVID-related reasons. There is no specific deadline by which districts must consider recovery services. OSPI has noted that while the need for recovery services may not be able to be fully measured until in-person school operations resume, districts are not prohibited from providing recovery services during the 2020–2021 school year and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during the pandemic on the student's overall progress and engagement, including progress toward their IEP goals.

The District stated that recovery services were addressed at the November 18 and December 9, 2020 IEP meetings and that the District conveyed the IEP team would decide whether and the extent to which recovery services were needed after the Student began attending in-person instruction. The District, during the complaint, stated that there were concerns regarding the Student's attendance and they wanted the Student to attend in-person to gather updated data to inform the decision. OSPI finds this plan reasonable.

The Parent in emails contemporaneous to meetings (e.g., November 20 and December 15, 2020 emails) noted the team was unable to or did not discuss recovery services. For example, the Parent stated the December 17, 2020 prior written notice was the "first time recovery services were mentioned by the District during the 2020-2021 school year." The District acknowledged that the Parent may have interpreted its position as declining to discuss recovery services, but maintained

that it did not refuse to address this with the Parent. It does appear the Parent understood the District saying that they would discuss recovery services when the Student was in person as a refusal to discuss recovery services.

The team did discuss recovery services at the January 2021 IEP meeting. The documentation indicates there was potentially confusion around the purpose of and criteria for recovery services. Despite confusion, the District did address the requested recovery services when it stated in the January 29, 2021 prior written notice that it “considered and rejected” the request for recovery services because “the data presented from the parent and IEP team were consistent with regression/recoupment so the Team added [ESY] to the IEP.” OSPI does note that the Parent’s contention that the District had sufficient data to develop appropriately challenging IEP goals, but that there was insufficient data to determine whether the Student required recovery services is valid. But, ultimately, the team did address the impact of COVID-19—the purpose of recovery services—just by agreeing the Student needed ESY instead of labeling it recovery services.

The Parent disagreed with the decision and provided data that indicates the Student has regressed; for example, a December 9, 2020 email noted the “[Student’s] assessment baseline has dropped from 8 points (March 2020) to 6 points.” The Parent also provided a chart in which she consolidated the Student’s assessment results from fourth through sixth grade. The assessments taken were at the fourth and fifth grade level and indicated the Student scores fluctuated between “well below average” to “average.” However, the Student’s regression was likely related to multiple and interconnected factors, COVID-19, remote learning, and lack of attendance. Overall, OSPI finds that the District did consider the Parent’s request for recovery services. Despite the Parent’s disagreement with the decision, the District followed OSPI’s guidance in that it considered the Student’s need for recovery services, the impact of COVID-19, and the progress information it had. And the IEP team considered the impact of COVID-19, determining that ESY during summer 2021 was needed. OSPI finds no violation with respect to recovery services.

The District stated in a June 22, 2021 email and during the complaint investigation that considering recovery services is ongoing and something the Student’s IEP team could revisit. OSPI recommends the Student’s IEP team include recovery services on the agenda for IEP team meetings that occur during the 2021–2022 school year to reassess the Student’s need now that they are attending school in-person and given that there may be new or additional data.

Issue 5 – Progress Monitoring: The Parent’s allegations with respect to progress monitoring relate to her belief that progress data was insufficient, was not sent in a timely manner, and that the District improperly stated progress data could not be gathered due to the Student’s lack of attendance. Progress monitoring and reporting must occur in the method and at the frequency identified in the IEP. The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Progress Reports: The Student’s IEPs required progress reporting at the trimester and the District provided the Parent with progress reports each trimester on December 4, 2020, March 29, 2021,

and June 18, 2021. The December 2020 progress report noted the Student made insufficient progress: "11/25/2020-when given 8 minutes, a paper and pencil math concepts and applications probe at the 5th grade level, [Student] scored an average of 6 points over three consecutive trials." The March 2021 progress report provided progress information on some, but not all goal objectives:

- One-Step Equations, Addition/Subtraction Objective: "On three data trials involving addition and subtraction, [Student] only completed one of the trials. On the completed trial, they scored 90% when solving addition problems. For the other two trials, they were given the same assessment. The first trial they only completed two problems and on the second trial they did not complete any problems."
- Math Computation, Addition/Subtraction Objective: "[Student] is able to use teacher taught strategies with 50% accuracy."

OSPI notes the requirement is to provide progress reporting on the goal, but there is no requirement that progress on all objectives be reported on every progress report; for example, some objectives may be sequential and as of the date of the progress report have not been worked on yet. Finally, the June 2021 progress report noted the Student did not meet the one-step equations goal and "when looking at the data, it shows that they are able to solve one step equations using addition and subtraction. They have not been assessed one...step questions using multiplication and division due to their attendance in the class." The report noted the IEP had recently be implemented and thus, there was no data related to the fraction operations goal.

OSPI finds that progress reports were provided in the manner outlined in the IEP, and that while the Student made insufficient progress, progress was documented, and the reports provided progress data. OSPI finds no violation. Although, OSPI recommends the District review OSPI's progress reporting guidance and as a best practice, include suggestions for how a lack of progress will be addressed in the report.

Other Requests for Progress Information: Between progress reports the Parent requested, and the District provided, additional raw data. For example, on August 29, 2020, the Parent requested "raw data supporting the 2019/2020 progress reports." On October 7, 2020, the District provided the Parent with access to assessments taking by the Student and additional information about the level of the assessment and interpretation of scores. On January 12 and 21, and February 4, 2021, the District provided math data, norms tables, and answer keys for math assessments (e.g., on January 21, the case manager emailed the Parent with data collected on the Student's performance on addition, subtraction, multiplication, and division, and noted they were working on solving equations that day). The Parent, in some instances, objected to the content or timing of the data. For example, regarding the January 12 data, the Parent stated this was provided only three hours prior to the IEP meeting and that "the two math Aimsweb assessments provided are undated, and the third is clearly labeled an assignment or lesson in multiple places...[Student] says that this is an assignment that he completed in September 2020. It is unclear when this was collected and therefore not an accurate reflection of [Student's] present levels." Regarding the data provided on January 21, the Parent noted these assessments were from November 2020, December 2020, and January 2021, and the Parent stated she was "unclear as to why [these] assessments were not provided to me prior to the January 12, 2021, meeting." With respect to

concerns about how this data informed present levels and IEP development, this will be address below in issue 6, including addressing lack of attendance.

Additionally, the Parent stated regarding progress monitoring, that at the January 12, 2021 IEP meeting, the director stated the "next step would be to take 'baseline data' and draft a new IEP amendment." The Parent alleged this did not occur. However, the Student underwent his triennial reevaluation subsequent to this, which had the effect of providing updated information to inform the Student's IEP.

While OSPI notes that the District likely could have done a better job providing the Parent certain assessments at more relevant times (e.g., providing the November 2020–January 2021 assessments prior to the IEP meeting), the District generally was responsive to the Parent's requests for raw data. OSPI finds no violation.

Issue 6 – IEP Development: The Parent alleged the Student's IEP did not meet "his disability needs to enable him to be involved in and make progress in the general education curriculum and to advance appropriately toward attaining the annual IEP goals," including that the goals were "written without accurate present levels of progress and without collection data as required." The Parent's reply to the District's response clarified that her main objection to the IEP was that the goals were not aligned with the Student's grade level.

Here the Student was eligible for special education under the eligibility category specific learning disability and received specially designed instruction in math. During the 2020–2021 school year, the Student was in sixth grade and his IEP at the start of the year included a math goal at the fifth-grade level. At IEP meetings on November 18, 2020, December 9, 2020, and January 21, 2021, the Student's IEP team discussed revising the Student's math goal to align with sixth grade content standards. The documentation indicates it took multiple meetings to develop and agree on new goals, as there was disagreement among the team (e.g., the Parent stated proposed goals were aligned with first through third grade standards and were not sufficient to allow the Student to make progress). The Parent also felt there was not data supporting the goals.

Present Levels: An IEP must include present levels of academic achievement and functional performance, including how the student's disability affects the student's involvement and progress in the general education curriculum.

Here, the present levels in the January 12, 2021 IEP included information about the Student's challenges with remote learning, assignment completion, lack of knowledge of basic math facts, difficulty retaining skills, and information about specific math skills. The present levels stated the Student "did not make progress towards their current goal" and thus the "team felt it was appropriate to change it to help [Student] earn foundational math skills to help them be successful." The June 2021 IEP noted the Student "does not know their basic math facts...They are unable to skip count and use teacher taught strategies to solve problems." The IEP included updated present levels, continuing to note global delays in math and specific challenges, including math fact retrieval. The IEP included information about relative strengths (e.g., Student "demonstrated a basic understanding of math terminology and the processes used in math

problem solving”), as well as information about the Student’s areas of challenge, including updated information from the Student’s recent triennial reevaluation.⁹ The present levels noted it was difficult to assess the Student’s progress given inconsistent attendance and incomplete assignments. The present levels further indicated the Student “did not meet [his] IEP goal... However, when looking at the data, it shows that [he is] able to solve one step equations using additional and subtraction. [He has] not been assessed in one step equations using multiplication and division due to [his] attendance.”

With respect to the January 2021 IEP, the Parent stated in her reply to the District’s response that there was not “substantial evidence to show [the goals] appropriateness,” that the team acknowledged more data was needed, and that the present levels were “present levels of deficiency” instead of present levels of progress and noted they speak to what the Student “cannot do and say nothing about what he *can* do.” (Emphasis in original). And, with respect to the June 2021 IEP, the Parent noted that the Student’s IEP goal had been in place since January 18, 2021, and that the District “had five months to collect this data...[Student’s] attendance should not have been a factor preventing the district from collecting this data.”

The special education regulations do not require present levels to be written in a specific format; therefore, if present levels are framed in terms of a student’s deficiencies and areas of challenge, this is not alone a violation. Other areas of the Student’s IEP discuss strengths, and in fact, the June 2021 IEP present levels do discuss relative strengths. While the present levels in both IEPs may be brief, they include data about the Student’s performance, including for the June 2021 IEP updated present levels based on the spring 2021 reevaluation. While attendance issues should be addressed by districts, and thus a lack of attendance does not relieve a district of its obligations under the IDEA, lack of attendance and access to instruction in reality limits the data available. Here, based on the documentation, the present levels provided a picture—albeit a potentially limited picture—of the Student’s present levels. OSPI finds the present levels meet the requirements set out in special education regulations and finds no violation.

Impact of Attendance: The District stated it was hampered by the Student’s lack of attendance and engagement during the 2020–2021 school year. These concerns were communicated to the Parent, discuss in IEP meetings, and the District made efforts to encourage the Student to attend (including the case manager reaching out to the Student). Despite some efforts, it does not appear

⁹ The Student underwent a reevaluation in May 2021, which found the Student continued to be eligible for special education and required specially designed instruction in math. The reevaluation found the Student exhibited global delays in math and had challenges with working memory and math fact retrieval. The Parent objected to the evaluation in her reply to the District’s response, stating it did not accurately document the Student’s challenges with working memory, took a private evaluation from 2017 out of context, and relied too heavily on the Student’s absences. OSPI notes the Parent did not allege in her original complaint that the evaluation was insufficient or that procedures were not followed. OSPI, thus, did not specifically investigate the sufficiency of the evaluation. However, as the evaluation was used to inform the development of the Student’s annual IEP in June 2021, the District followed procedures and the evaluation provided important information about the Student’s present levels, because despite the reevaluation report noting the Student’s attendance concerns, the report also included current assessment data from the “Feifer Assessment of Mathematics” and a review of progress between fourth and sixth grades.

the District was very successful in encouraging the Student to engage with school, as his attendance progressively worsened as the year went on. It is likely there were multiple reasons for this, including the Student's challenges with remote learning, potential mental health concerns, and general fatigue with the remote format.

Importantly though, during the spring 2021 reevaluation, the IEP team discussed the Student's need for social-emotional instruction and supports, and the District stated the Parent was not interested in services in this area. However, the Student's June 2021 IEP noted the Student made strong gains in his first year of receiving specially designed instruction, but struggled with engagement and participation during COVID-19. This indicates that the Student's IEP team does need to discuss whether social-emotional and/or study-organizational skill instruction is needed in addition to math. At the same time, the Student's IEP team did increase the minutes of specially designed instruction and provided the Student with ESY services to address the lack of progress.

While OSPI believes the IEP team likely could have explored more options to address attendance concerns, the District made efforts to address attendance and made changes to the IEP to attempt to address the lack of progress. Thus, OSPI finds no violation. Although, OSPI encourages the Student's IEP team to meet again if the Parent continues to have concerns or wants to discuss amendments and OSPI hopes that now that the Student is attending in person, there will be additional data to inform the discussion. The IEP team may need to consider whether additional assessments are needed to assess the Student's updated present levels.

Grade Level Alignment: An IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet a student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum. It is not an automatic violation if a goal is not aligned with grade level standards, as ultimately goals should be based on a student's present levels and be aligned with the student's individualized need. Case law emphasizes that an IEP should be "reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances" and that students should have educational programs that are "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom." This point is further emphasized in federal guidance, which while it states that the IEP "for an eligible child with a disability under [IDEA] must be aligned with the State's academic content standards for the grade in which the child is enrolled," given that it is important of having high expectations for students with disabilities.¹⁰ At the same time, this guidance also acknowledges that not all students are at grade level and given that IEPs require an individualized decision-making process, in cases where the student is below grade level, the IEP team should estimate growth toward academic content standards and provide goals that are ambitious, achievable, and help close the gap for the student. In other words, the goal could focus

¹⁰ <https://sites.ed.gov/idea/files/idea/policy/speced/guid/idea/memosdcltrs/guidance-on-fape-11-17-2015.pdf>

on skills a student needs to build to work toward grade level standards, which OSPI notes would still be aligned with the grade level standards.¹¹

At the January 21, 2021 IEP meeting, the team drafted new IEP goals, including a goal that was tied to sixth grade math content standards—"given 10 one-step math equations involving addition, subtraction, multiplication, and division [Student] will accurately and independently solve problems improving 6th Grade Math Skills (CCSS.Math.Content.6.EE.A.1)"—and a goal related to using math strategies to complete math problems to improve computational fluency. Each goal had two objectives. Here, the team created an IEP goal aligned with sixth grade standards. The IEP also included a goal about math strategies, which the District noted the Parent disagreed with, but the District maintained that it was a skill, based on his individualized needs, that the Student needed to learn.

The June 2021 IEP stated the goal would be based on common core standards ("apply and extend previous understandings of multiplication and division to divide fractions by fractions") and the "goal of solving fractions using...four operations is an entry level skill required for this common core standard." The goal read:

By 06/01/2022, when given a list of 10 problems with a mix of adding, subtracting, multiplying and dividing fractions with unlike denominators [Student] will accurately solve problems improving math skills from...an average of 0% accuracy to an average of 80% accuracy over the most recent 3 data collection days as measured by data collection on goal performance at time of progress reporting and/or previously observed performance.

The goal included multiple objectives that broke the goal down to focus first on adding and subtracting fractions, then multiplying fractions, and then division.

The Parent objected to the goal because it was aligned with sixth grade standards and the Student was going to be in seventh grade for the majority of the IEP's implementation period. However, the District noted that the seventh-grade math curriculum is similar to the sixth-grade curriculum as students explore many of the same concepts, but learn about negative numbers, and work on moving from one-step to two-step questions, and seventh grade students begin the year working on a fractions unit. The District stated the Student's IEP goals were individualized and appropriately ambitious, especially given the Student's challenges (math fact retrieval) and his need to continue developing foundational math skills as access points to the grade level standards. OSPI agrees and given the information about the Student's current level and need for foundational math skill development, finds the goal appropriate, even though it was not updated to align with a seventh-grade standard more specifically. OSPI finds no violation.

¹¹ OSPI notes that common definitions of alignment include "the state of being arranged in a line or in proper position." <https://www.merriam-webster.com/dictionary/alignment>. Thus, OSPI does not believe the federal guidance is stating IEP goals must be copied from grade level standards, which would run the risk of not being individualized, but instead must be in line with the standard, meaning a goal could address the exact skill referenced in a standard or address foundational skills needed to work toward a grade level standard—and both would be in alignment with the standard.

CORRECTIVE ACTIONS

By or before **November 19, 2021, November 30, 2021, December 31, 2021,** and **January 31, 2022,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **November 12, 2021,** the Student's IEP team will meet to discuss the Parent's concerns with the June 2021 IEP.

Given that the Student is attending in-person, the IEP team should review current progress data and determine if, given updated data, the Student's IEP should be amended. OSPI also recommends the District revisit the question of recovery services based on current data.

By **November 19, 2021,** the District will provide OSPI with documentation from the IEP meeting, including: 1) IEP meeting agenda or notes (if used/taken); 2) a copy of amended IEP if applicable; 3) prior written notice; and, 4) any other relevant documentation.

DISTRICT SPECIFIC:

Meeting Invitation: File Review & Audit

The District will perform monthly random file reviews of approximately 5% of special education student files in the District with specific respect to practices around meeting invitations/notices and prior written notice (specifically timely provision of notices and provision within a *reasonable time prior* to the proposed action). On **November 30, 2021, December 31, 2021,** and **January 31, 2022,** the District will provide OSPI with documentation of each month's file review:

- A list of the student files reviewed;
- Any opportunities for improvement identified; and,
- Steps taken or planned steps to improve procedures and practices (e.g., general or targeted staff training, written guidance, or other actions).

OSPI will review the results of the file reviews and will determine at that point if further monitoring deadlines are necessary.

Written Guidance

The District was required to develop written guidance pursuant to SECC 21-64 (which was to be provided to the IEP team of the student in that complaint).

By **November 19, 2021,** the District will provide OSPI documentation that this guidance has also been provided more broadly: to all special education certificated staff, principals, and associate principal at the Student's school.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

RECOMMENDATIONS

Based on the investigation, OSPI has several recommendations:

- The District should review IEP meeting excusal procedures with relevant staff.
- OSPI recommends the Student's IEP team include recovery services on the agenda for IEP team meetings that occur during the 2021–2022 school year to reassess the Student's need now that he is attending school in-person, and given that there may be new or additional data.
- OSPI recommends the District review OSPI's progress reporting guidance and as a best practice, include suggestions for how a lack of progress will be addressed in the report.

Dated this ____ day of October, 2021

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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