

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-008

PROCEDURAL HISTORY

On January 27, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Omak 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 January 27, 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 January 28, 2021, the OSPI investigator spoke with the Parent via phone regarding her complaint allegations.

On February 15, 2021, OSPI received a release of information, signed by the Parent, giving OSPI permission to share records with an individual supporting the Parent as part of her "support team."

On February 16, 2021, OSPI received the school's¹ response to the complaint and forwarded it to the Parent on February 17, 2021. OSPI invited the Parent to reply.

On February 16, 2021, OSPI received additional information from the Parent. OSPI forwarded the additional information to the school on February 17, 2021.

On February 25, 2021, the OSPI investigator spoke with the Parent via phone regarding the concerns she raised in the complaint.

On March 10, 2021, OSPI requested that the school provide additional information, and the school provided the requested information on March 11, 2021. OSPI forwarded the information to the Parent the same day.

On March 12, 2021, OSPI interviewed one of the individuals assisting the Parent as part of her support team.

On March 12, 2021, OSPI requested that the school provide additional information, and the school provided the requested information on March 12, 2021. OSPI forwarded the information to the Parent on March 15, 2021.

¹ The Student attends an online school run through the District. In this complaint investigation, while communications always included the District per OSPI's standard complaint process, the school was the primary point of contact and provided all the information and documentation requested as part of the complaint investigation. Therefore, the school will be referenced throughout the complaint instead of the District.

On March 15, 2021, OSPI interviewed the school's special programs principal.

On March 17 and 18, 2021, OSPI received additional documentation from the Parent and her support team. OSPI forwarded the information to the school on March 18 and 23, 2021.

On March 17, 2021, OSPI requested that the school provide additional information, and the Student's speech language pathologist provided the requested information on March 20, 2021. OSPI forwarded the information to the Parent on March 23, 2021.

On March 18, 2021, the OSPI investigator interviewed the Student's occupational therapist.

On March 23, 2021, the OSPI investigator interviewed the Student's current special education teacher.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 28, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures to implement the Student's individualized education program (IEP), including specially designed instruction, related services, accommodations, and progress monitoring/reporting from January 28, 2020 through the present?
2. Did the District follow procedures to amend the Student's IEP if services were changed or reduced between January 28, 2020 and the present?
3. Did the District follow procedures to ensure Parent participation, including but not limited to, addressing language access and ensuring the Parent understood proceedings of IEP meetings per WAC 392-172A-03100 and WAC 392-172A-05001?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a district, the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Prior Written Notice: Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education (FAPE). It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. 34 CFR 300.503; WAC 392-172A-05010.

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

Parent Participation in IEP Meetings: Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting the rights of students with disabilities and

providing each student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

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. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. 34 CFR §300.322; WAC 392-172A-03100.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

FINDINGS OF FACT

Background

1. On January 27, 2021, OSPI received this complaint. The Parent alleged the District and school failed to provide the Student the special education services outlined in his individualized education program (IEP), including instruction in writing and adaptive skills, the provision of occupational and speech therapy, and the provision of accommodations and supports. Regarding occupational and speech therapy, the Parent clarified that the Student received

these services, but that they were not working on the Student's IEP goals during the sessions. Regarding writing and adaptive instruction, the Parent stated the District was providing "none of the writing or adaptive special ed services dictated in the IEP, including...progress tracking." The Parent also alleged the District reduced the amount of services the Student was to receive without involving the Parent in the decision.

The Parent emphasized that she had difficulties with email communication and that the District's continued use of email as the primary form of communication was limiting her ability to participate in the Student's education, in particular around the scheduling of IEP meetings. The Parent further stated that the District's failure to include her support team in communications limited her ability to participate in the Student's educational planning.

2019-2020 School Year

2. During the 2019-2020 school year, the Student attended an online school in the District, was in the sixth grade, and was eligible for special education services under the category specific learning disability.
3. The school the Student attended is an online school in the District. Because the Student lives in another part of Washington and his resident school district is a different district in the State, he attends the school as a "choice transfer" student.
4. The Student's April 2019 transfer IEP was in effect at the start of the 2019-2020 school year. The April 2019 IEP included annual goals in the areas of reading (decoding multisyllabic words, syllables, and fluency), written language (paragraph writing, legibility), math (multiplication, division, and fractions), social/emotional behavioral (set and achieve goals and peer interaction), and adaptive behavior (completing tasks and organizational skills), with progress reporting at the end of the grading period. The IEP included the following specially designed instruction and related services from April 3, 2019 through March 26, 2020:
 - Social/emotional behavioral: 45 minutes daily (provided by a special education teacher in the special education classroom)
 - Social/emotional behavioral: 20 minutes daily (provided by a general education teacher in the general education setting)
 - Written language: 30 minutes daily (provided by a special education teacher/provider in the special education classroom)
 - Math: 45 minutes daily (provided by a special education teacher/provider in the special education classroom)
 - Adaptive behavior: 60 minutes daily (provided by a special education teacher/provider in the special education classroom)
 - Reading: 60 minutes daily (provided by a special education teacher/provider in the special education classroom)
 - Written language (related service): 30 minutes weekly (provided by an occupational therapist (OT) in the special education setting)
 - Communication (related service): 30 minutes weekly (provided by a speech language pathologist (SLP) in a special education setting)

The IEP indicated the Student would spend 34.2% of his time in the general education classroom. The IEP also included an OT consult as needed to address the Student's sensory needs and provide support for the use of assistive technology. The IEP noted the Student needed assistive technology, including a computer, sentence writing software with word prediction, and text-to-speech. The IEP included an extensive list of accommodations and modifications in the areas of curricular adaptations, behavioral cues, instructional strategies, assignments, Student's method of response, and environment.

Complaint Investigation Timeline began January 28, 2020

5. In its response to the complaint, the school admitted that the Student's minutes of specially designed instruction were incorrectly reduced between January 28 and May 11, 2020. The school noted the Student attended class sessions and received the following minutes of instruction and related services during this period:
 - 420 minutes in social/emotional behavioral
 - 1,860 minutes in English language arts
 - 180 minutes in math
 - Speech Therapy: 450 minutes (plus 180 minutes offered and either a cancellation or "no show")
 - Occupational Therapy: 300 minutes (plus 90 minutes offered and either a cancellation or "no show")

The school stated, "because of an administrative error...a draft IEP was mistakenly marked active resulting in a reduction of certain special education services. This error was corrected in May 2020." Between January 28 and May 11, 2020, the school asserted that related services and accommodations were made available and provided in accordance with the Student's IEP.

The school stated that since May 2020, the school had provided the Student's special education instruction and related services in "full compliance with the IEP" based on a review of the school's "live session data." The school stated that accommodations have been made available to the Student as well.

6. On February 9, 2020, the school emailed the Parent the Student's first semester progress report. According to the progress report, the Student made the following progress on the annual goals in his April 2019 IEP:
 - Reading: Sufficient progress – "[Student] does a good job attending required class connects and participates in class. In class, [Student] can identify common syllables, prefixes, and roots w/ 80% accuracy."
 - Reading: Sufficient progress – "[Student] does a good job attending required class connects and participates in class. [Student] can read a passage at the 5th grade level and answer comprehension questions w/ 100% accuracy. He did a 6th grade Stride reading report and scored 83% on details, 94% on character, plot, and setting. 65% on sequence and 80% of main idea! He scored 6.7 grade level in Moby max."
 - Writing: Sufficient progress – "[Student] does a good job attending required class connects and participates in class. In class when given a prompt, [Student] can write 1-2 sentences. He would rather give me the answer over the mic. He is working on [occupational therapy] writing skills w/ his OT."

- Writing: Sufficient progress – “[Student] does a good job attending required class connects and participates in class. [Student] was able to write a research paper w/ help and also with the use of speech to text. He scored an A on his research paper on domesticating horses and not zebras.”
- Math: Sufficient progress – “[Student] attends math gen ed classes only, does not need support in pull out. In class, [Student] was able to complete 10 multiplication problems from 2-10 w/ 100% accuracy. He is also able to use a [multiplication] chart on grade level assignments.”
- Math: Sufficient progress – “[Student] attends math gen ed classes only, does not need support in pull out. In class, [Student] was able to do 10 division problems from 2-10 w/ 100% accuracy. He is also able to use a [multiplication] chart on grade level assignments.”
- Social Skills: Sufficient progress – “[Student] has no overdue assignments/lessons and passed all courses at end of semester. Work on this task at home.”
- Social skills: Sufficient progress – “[Student] has no overdue assignments/lessons and passed all courses at end of semester. Work on this task at home.”

7. In additional information provided by a member of the Parent’s support team, the support person provided a document that included the school’s data collection on the Student’s goals between October 2019 and March 2020. The document included work samples and progress monitoring probes from October 2019, December 2019, and January 2020. The document also included a note regarding second semester, which stated: “[Student] does not come to support classes starting second semester. Per Mom’s request he is attending only gen ed classes. He is passing all courses and has good attendance.”

The Parent’s support person stated she believed the progress monitoring document indicates the IEP was not implemented with fidelity and shows a “lack of conformity to the goals” (for example “‘50 facts in 5 minutes’ is interpreted to mean a smaller number and ‘five minutes’ is simply crossed out.”

8. On February 13, 2020 and in March 2020, IEP meetings to review the Student’s IEP were scheduled and canceled by the Parent, according to the school’s response to this complaint.

Emails indicated an IEP meeting was scheduled for March 16, 2020, and the Parent asked on March 16, 2020 to reschedule the meeting until after April 24, 2020. The school stated they understood the need to cancel, were not “in a position to reschedule at this moment,” but would be in touch. Additionally, on or around March 26, 2020, according to contradictory documentation in the complaint, the Student’s IEP team met or a meeting was scheduled, but canceled—it is not clear which occurred.

9. On May 5, 2020, the school emailed the Parent a meeting notice for a May 11, 2020 IEP meeting. According to notes on the meeting notice, the Parent responded. An Outlook email meeting invitation was also sent to the Parent with the purpose, location, and time of the meeting.
10. On May 11, 2020, the Student’s IEP team—including the Parent and individuals supporting the Parent—met. At the meeting, the Student’s present levels were updated, along with goals and services. The team considerations section of the IEP noted the Parent’s input regarding the

Student's strengths and her concerns; this section also noted that the Student did not have assistive technology needs or behaviors that impacted his learning or the learning of others.

The May 2020 IEP included annual goals in written language (paragraph writing), reading (comprehension), math (calculation), social/emotional (work completion), adaptive skills (task completion), occupational therapy (writing legibility and typing skills), communication (event sequencing and retelling, sequence words/cohesive devices, defining words, synonym and antonyms, and prefix and suffix), with progress reporting at the semester via a "written report card." The May 2020 IEP provided the Student with the following specially designed instruction and related services from May 11, 2020 through May 10, 2021:

- Communication (related service): 30 minutes weekly (provided by an SLP in the special education setting)
- Math: 15 minutes monthly (provided by a special education provider in the general education setting)
- Reading: 15 minutes monthly (provided by a special education teacher in the general education setting)
- Written Language: 15 minutes monthly (provided by a special education teacher in the general education setting)
- Adaptive Skills: 15 minutes weekly (provided by a special education teacher in the special education setting)
- Social/Emotional: 0 minutes monthly (provided by a special education teacher in the general education setting)²

The IEP indicated the Student would also spend 98% of his time in the general education setting. The IEP also included an OT consult as a supplementary aid and service for 30 minutes a week and the following accommodations and modifications:

- Extra time for assignments
- Multiplication table
- Small group testing
- Extended test time

The prior written notice documenting the meeting indicated the May 2020 was the annual IEP and that specially designed instruction would be provided. The IEP did not list any Parent requests or proposals that were considered by the IEP team.

11. The school noted in additional information provided that the Parent requested the Student have increased access to the general education setting.
12. On June 1, 2020, the school emailed the Parent a meeting notice for a June 11, 2020 IEP meeting. According to notes on the meeting notice, the Parent responded. An Outlook email meeting invitation was also sent to the Parent with the purpose, location, and time of the meeting.

² OSPI notes that the IEP included a social/emotional behavioral goal related to work completion, but also stated, "At this time [Student] does not need to attend social skills class. He will have zero minutes for [specially designed instruction] and will be monitored monthly by the special education teacher."

13. On June 10, 2020, the school emailed the Parent the Student's second semester progress report. According to the report, the Student made the following progress on his goals:

- Written Language: Sufficient progress
- Reading: Sufficient progress
- Math: Sufficient progress
- Social/emotional behavior: Sufficient progress
- Adaptive Skills: Sufficient progress
- Occupational Therapy 1-2: Sufficient progress
- Communication 1-5: Sufficient progress

14. On June 11, 2020, the Student's IEP team—including the Parent and a member of her support team—met and reviewed the Parent's concerns. Based on the documentation, the Student's IEP services were not amended at this meeting; although information was added to the Parent concerns and input section of the IEP.

According to the Parent's support person, their understanding was that the May 2020 IEP was not finalized. The Parent's support person stated, "[Parent] was under the impression that some of the concerns raised in the IEP meeting in June 2020 would be addressed before the IEP was finalized...She was surprised to find that the IEP had been finalized without her consent."

15. There was no prior written notice related to the June 2020 IEP meeting included in the documentation provided in this complaint.

16. Based on the related services logs provided in the school's response, between May 11, 2020 and the end of school year around June 11, 2020, the Student received the following related services:

- Speech Therapy: 120 minutes (plus 60 minutes offered and either a cancellation or "no show")
- Occupational Therapy: 30 minutes (plus 75 minutes offered and either a cancellation or "no show")

17. In its response, the school stated that in addition to services outlined in the IEP, the school also provided the Student a laptop, text-to-speech, speech-to-text, and word prediction software. The school, however, noted that the subscription for the word prediction software was not renewed, as the vendor did not provide tech support to ensure students could access the program.

2020-2021 School Year

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

19. At the start of the 2020-2021 school year, the Student remained eligible for special education services and was in the seventh grade. However, the Student was not enrolled in the District at the start of the 2020-2021 school year.

20. The school stated in its response that the Student's enrollment was delayed because the Parent failed to complete "the choice transfer request by the deadline for the start of the

school year” and that, “upon receipt of the proper transfer request and paperwork, [the Student] was promptly enrolled without any administrative delays.”

Documentation provided by the Parent and her support team indicated that there were challenges—including numerous calls with school staff and staff at the school’s national organization, miscommunications, and technology/enrollment systems barriers—that impacted the process of getting the Student enrolled.

In further information provided by the school, the special programs principal shared that enrollment is not managed at the school, but instead by the national organization for the school. The special programs principal stated enrollment communications usually begin in March for the following school year and that while enrollment communications come from the national organization, in this case, the special programs principal sent additional emails to the Parent about the enrollment beginning in April 2020.

The special programs principal also shared that despite the Student not being officially enrolled at the start of the school year, the school did begin providing speech and OT in September 2020.

21. On November 17, 2020, the Student’s IEP team met. During the meeting, the Parent shared numerous concerns. The Parent’s support person shared information about the Student, her background working with the Student, and concerns—although noted many of these concerns did not “show up” in an online school.

Based on a recording of the IEP meeting reviewed in the investigation, the Parent (and the support person) was concerned that the IEP did not meet the Student’s needs, specifically in adaptive skills, motor skills, pragmatic language, independence, organization, problem solving, and writing. The Parent did note that the Student had made great growth since the previous year in academics. The Student’s IEP team also discussed:

- The supports the Parent provides at home, such as prompts for self-care needs, prompting hand movements, prompts to sit down for class, use of a clock or timer, reminders to raise his hand, prompts for next steps, reminders to focus, and scribing.
- The SLP shared that the Student overcompensates to mask areas of weakness. She also shared the Student was working on academic goals (synonyms, antonyms) and that she wanted to shift more to social thinking communication goals, such as sequencing (target in a functional way), social stories for pragmatic language and social skills, conversation skills, and sharing personal narratives.
- The OT shared that the Student gets anxiety about writing, specifically about spelling and word choice. The OT shared that there are two components—motor and academic—and that for the motor component, they were working on the brain-hand connection and motor skills. She also shared that the Student was typing 16 words per minute. The OT also shared some of the technical difficulties they had with co-writer and the computer.
- School staff shared that they were in the process of sending hard copy materials to the Student, and one of the teachers shared that teachers were scanning and making available remotely the materials the Student currently needed.

The IEP meeting discussion also indicated the Parent and District members of the IEP team disagreed regarding finalizing the IEP versus beginning the Student's triennial evaluation. The Parent indicated she was not willing to move forward with discussing the evaluation until she was happy with the IEP. The District members of the IEP team felt it was important to begin the evaluation to get further data to inform the Student's needs.

At the meeting, a follow up IEP meeting was scheduled for November 20, 2020, although the Parent's support person had a potential conflict. The school stated they would send out a calendar invite for November 20 following the meeting. The Parent stated she was "flexible" on scheduling. According to the school's response to the complaint, the "whole team agreed they were available to attend." According to the recording, the Parent's support person agreed to let the team know as soon as possible if she was available.

22. On November 20, 2020, the Parent canceled the meeting, stating that her support people were not able to attend. In additional documentation provided by the Parent's support person, the support person indicated that they did not know this meeting had been "rescheduled" and then "found out about [it being rescheduled] too late to be able to attend."
23. In its response, the school stated it emailed the Parent with three options for meeting times following the canceled November 2020 meeting. The District stated it received no response from the Parent and a meeting was scheduled for December 3, 2020. The Parent was sent the Outlook email meeting invitation, which the District noted the Parent forwarded to two members of her support team.
24. Following the November 17, 2020 IEP meeting, one of the members of the Parent's support team sent the school a letter, dated November 19, 2020, to serve "as parent Input regarding [Student's] IEP." The letter included information about the Student's strengths; concerns about writing, sensory, motor, and social skills; a request for a functional behavioral assessment and behavior plan, a request for assistive technology services, and a request for weekly progress monitoring on writing goals.

Additionally, some point in December 2020 (or January 2021, the letter is undated), the Parent and her support team sent the school a second letter, outlining concerns similar to the concerns shared in the November 19, 2020 letter.

25. On December 1, 2020, the Parent forwarded an email to the special programs principal with a request for compensatory services to address the fact that the Student was not enrolled in the District until November 2020.

The principal responded, "Please understand that, as previously discussed, there was no error on our [part] with regards to [Student's] enrollment. We did not receive his [choice transfer request] until 9/15, a month after it was due so [Student's] start date was after the beginning of the year." The principal also stated that the Student's IEP would be written to address his needs as identified and that the IEP team was in the process of doing this. The principal also

stated she was looking "forward to working with you and the rest of the team on Thursday to complete the IEP and begin the evaluation process."

26. On December 2, 2020, the school emailed the Parent a reminder of the meeting scheduled for December 3, 2020. The email included the meeting notice, procedural safeguards, and purpose of the meeting.
27. On December 3, 2020, the Parent and the Parent's support person arrived for the meeting. The Parent stated she was unaware of the meeting and wanted to end the meeting.
28. On December 4, 2020, the Student's IEP team—including the Parent—met and reviewed the Student's IEP. Based on the documentation, the Student's IEP was not amended at this meeting. At the meeting, the team scheduled an informal meeting for January 4, 2021.
29. On December 14, 2020, the school issued a prior written notice, indicating the following:
Description of the proposed or refused action:
Continued implementation of IEP developed in May 2020 and amended in June 2020.
Refused increased service minutes. Refused compensatory services. Refused Co:Writer software.

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

IEP team met to review and revise IEP on 11/17/20 at the parent's request but meeting was finished before IEP was finalized. Another time to convene the IEP team was arranged with entire team. Team was to meet on 11/20 but was canceled by parent citing that her support team was unavailable. Another meeting was scheduled for 12/3 to continue the review of the IEP and to begin the evaluation process. Two members of the parent support team were present for meeting on 12/3 @ 2pm but parent would not attend. Another time to convene was arranged with the parent and scheduled for 2 hours. Meeting was finished before IEP was finalized.

Service minutes outlined in IEP amended June 2020 will be provided until need for increased services is determined as needed by IEP team based upon present levels including baseline performance data as determined by IEP team members.

Compensatory services are typically provided by a district when it has been determined that the district did not provide the services the district was supposed to provide to the student. Parent was informed on 6/3/20 and 6/10/20 that it was the last chance to secure a seat with [school]. [Student] was un-enrolled on 8/20/20 due to lack of approved Choice Transfer Request (CRT). That CTR was not received until 9/15/20 and [Student] was waitlisted. Therefore, the district has not erred. However, in the IEP team's review of existing data for the IEP, baseline performance will be determined and services will be designed based upon that information.

Description of any other options considered and rejected:

The intention of the meeting was to convene the evaluation team and to continue work on IEP.

The reason we rejected those options were:

Parent refused the evaluation meeting.

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

IEP developed in May 2020 and amended in June of 2020. IEP meetings on 11/17, attempted meetings on 11/20 and 12/3, and meeting on 12/14. Emails regarding CTR.

Any other factors that are relevant to the action:

[School] agreed to meet on 1/4/21 with parent and parent advocate to address additional concerns with IEP in preparation for next IEP team meeting.

Date and time to convene evaluation team meeting will be determined at meeting on 1/4/21.

...

Co:Writer will not be provide to [Student]. [Student] has access to word prediction software contained within the operating system of the computer provided by [school].

30. The District was on break from December 21, 2020 through January 1, 2021.
31. On January 4, 2021, the middle school principal, Parent, Parent support person, and special programs principal met to discuss the Parent's concerns and her input into amending the Student's IEP. The District noted that, at the meeting, the Parent was asked if she would like an interpreter. The Parent declined and the Parent support person stated the Parent was "more proficient in English than her native language."
32. On January 11, 2021, a member of the Parent's support team wrote an email, documenting the Parent's request to include her support team on emails sent by the school and her request for compensatory education for the Student. The Parent requested a response to her concerns in writing. The email also noted a concern that the Student did not have class because the special education teacher was no longer there and that there was a "new teacher who has not connected with me. [Student] still doesn't have his class schedule."
33. On January 19, 21, and 22, 2021, the school sent the Parent meeting notices for an evaluation and IEP review meeting scheduled for January 28, 2021. The January 22, 2021 email included an Outlook email meeting invitation with the purpose, location, and time of the meeting.
34. On January 22, 2021, the school's first semester ended.
35. Regarding the provision of specially designed instruction during the first semester and 2020-2021 school year generally, the school acknowledged that there had been staffing changes, including a long-term substitute and subsequent new special education teacher. However, despite the staff changes, the special programs principal stated the Student's IEP has been consistently implemented.
36. Based on the related services logs provided in the District's response, during first semester, between September 11, 2020 and January 22, 2021, the Student received the following related services:
 - Speech Therapy: 390 minutes (plus 210 minutes offered and either a cancellation or "no show")

- Occupational Therapy: 270 minutes (plus approximately 160 minutes offered and either a cancellation, "no show," or "0 service administered")

37. On January 25, 2021, the Parent received the meeting notice and procedural safeguards the District had sent via certified mail, per the school's tracking notification for the certified mail.

38. On January 26, 2021, the Parent stated via an email sent by the support person that she would not be attending the meeting scheduled for January 28, 2021, because she did not know about the meeting. The Parent requested that she be included by including her support team on communications.

39. On January 28, 2021, the Parent's support person arrived for the meeting and stated the Parent would not be attending.

40. Also, on January 28, 2021, the Parent's support person emailed the special programs principal a message from the Parent, which stated, "We cannot have a meeting today. You did not invite me. There is not enough time to invite my people."

41. On February 3, 2021, the special services principal emailed the Parent, stating she was sorry the Parent was unable to attend the meeting on January 28, 2021. The principal stated:

The team did meet and reviewed [Student's] progress toward goals and areas the team would like additional data. The team did not make any decisions about the evaluation or the IEP without your attendance.

We do want to schedule an IEP meeting with you. Please work with your support team and provide us with three dates and times to meet...

At this meeting we would like to review the IEP...to ensure we are meeting [Student's] educational needs. We will also begin discussion of the reevaluation that is past due.

...

I have also added 3 additional hours in speech and 3 additional hours in occupational therapy to address missed services because of nonenrollment. These hours are to be used between 2/8/2021 and 4/5/2021.

The principal also asked the Parent for a release of information to communicate with and release records to the Parent's support team.

42. According to the school's response, it has declined to provide the Student with compensatory services for the first two months of school during which the Student was not enrolled. However, the District stated that "additional speech and occupational therapies have been made available to the student for use between 2/8/21 and 4/5/2021." The Student has, according to the school, been attending these additional sessions.

43. On February 6, 2021, the school emailed the Parent the Student's first semester progress report. According to the progress report, the Student made the following progress on his May 2020 IEP goals:

- Written Language: Mastered – “[Student] has met the goal but requires additional time to complete.”
- Reading: Mastered – “Demonstrates the ability to understand figurative language. Demonstrates the ability to read grade level text.”
- Math: Mastered – “[Student] does not use a calculator (parent may not allow) and exceeds the performance of most general education students. May demonstrate some difficulties with writing but not mathematics.”
- Social/emotional behavior: Sufficient progress – “On target with regards to progressing in online school. May still have some organizational issues.”
- Adaptive Skills: Sufficient progress – “Able to follow weekly schedule as evidenced by attendance and work completion. Progress regarding hygiene tasks is not known. Parent reports daily, step by step, reminders are needed.”
- Occupational Therapy 1-2: Sufficient progress – “Handwriting 84% looking solely at motor, not spelling. Using the therapist’s word prediction and voice to text – can do a paragraph within 20 minutes. Unable to do so when he tries voice to text independently.”
- Communication 1: Sufficient progress – “4/5 with moderate verbal support.”
- Communication 2: Sufficient progress – “4/5 with moderate verbal support. Sequencing very well verbally.”
- Communication 3: Sufficient progress – “70% mastery of goal.”
- Communication 4: Sufficient progress – “90% without support.”
- Communication 5: Sufficient progress – “80% mastery.”

44. On February 8, 2021, the Parent called and emailed the special programs principal, asking why one of the people on her support team was no longer being included in emails.

The principal responded to the Parent, including the support person on the email, with times that were available to have an IEP meeting. The principal also referred the Parent to a previous email, which outlined that the Parent needed to complete a release of information in order for the school to communicate with the Parent’s support team.

45. On February 15, 2021, one of the Parent’s support person emailed the special programs principal on behalf of the Parent and included a signed release of records. The support person stated the Parent and her team would coordinate with the school to schedule the next IEP meeting, stating that “until we have reached agreement on the IEP, we cannot move on to the evaluation.” The Parent asked for a copy of the draft IEP a week before the meeting.

The support person communicated that the Parent was declining an interpreter because she spoke English, “however some of the domain-specific language of the IEP process leads to misunderstandings, and she struggles to find the correct words to best express her meaning.” The support person also stated the Parent had requested “several times an explanation as to why she was excluded from the last meeting” and received no response. The support person stated the Parent wanted a prior written notice “regarding this decision.”

46. On February 25, 2021, the OSPI investigator spoke with the Parent. The Parent shared her concerns that she believed the Student was no longer in a special education class and that the school was not implementing his IEP. The Parent stated the Student works with an OT, but

that the OT does not support his writing or provide assistive technology. The Parent also shared that the Student has adaptive skills needs that are not being met.

47. On March 12, 2021, the OSPI investigator interviewed the Parent's support person. In summary, the support person shared concerns that she felt like the school was not listening to the Parent or addressing the Student specific and unique, disability related needs. Specifically, the support person stated that the Student's IEP did not address his needs and did not include goals in his real areas of need (e.g., spelling, organization, writing, pragmatic communication, problem solving and social skills). She expressed frustration that goals from the transfer IEP were set aside and that minutes of specially designed instruction were decreased from what was provided in the transfer IEP. The support person shared that she and the Parent were not clear how the school was working on the IEP goals, stating that the school only provided "tutoring" on the general lesson and not specially designed instruction on the goals. The support person also stated the school did not seem to take into consideration the effort the Parent puts in to supporting the Student in organization, staying focused, and prompting to transition or do tasks.

The support person also expressed concern that she had not been included on email communications or included to help facilitate scheduling meetings despite the Parent's request. She further stated that the school would only schedule meetings via email and that they had shared with the school that the Parent prefers a phone call or text messages due to challenges with technology. The support person did state that since providing the school with a release of information signed by the Parent recently, the communication has improved and the support person was involved in scheduling the March 12, 2021 evaluation meeting and was provided data prior to the meeting by email.

48. Also, on March 12, 2021, the Student's IEP team met to review existing data and discuss the process of reevaluating the Student. The team has an additional meeting scheduled for March 26, 2021, to continue reviewing existing data.
49. In further information provided by the school, the special programs principal explained how specially designed instruction was provided to the Student. The District stated that the Student received most of his instruction through a team teaching or push-in model. Specifically, each of the Student's general education classes were either co-taught by a general education and special education teacher, or a special education teacher "pushed-in" to the class to provide specially designed instruction.

The only area the Student received "pull-out" instruction was in adaptive skills, wherein the Student had a weekly meeting with the special education teacher. In an interview with the Student's special education teacher, she stated she began working at the school at the end of January 2021, and therefore, had only met with the Student for adaptive skills instruction a couple times. The teacher noted she created a checklist to target the Student's adaptive skills goals and planned to work with the Student on daily living skills and assignment/homework management and completion. However, the teacher stated that she had a few calls with the Parent and the Parent was adamant that she work on phonics with the Student instead of

adaptive skills (and the Parent stated that the Student would work on a task completion checklist with the SLP instead). The special education teacher stated, so far, she has had a session to just get to know the Student and has done a phonics assessment with the Student.

The special programs principal stated that the Student attends "live" or synchronous English and social studies classes Monday through Friday, in addition to other classes, and that the Student is at or above grade level in reading and math. The Student's specially designed instruction in each class focuses on the grade level general education curriculum that is being taught and generally includes additional instruction after the main lesson, focusing on task analysis, setting objectives, breaking down the lesson, and then walking the instruction back to the Student's skill level.

The special education teacher stated that she attends the Student's math and English class, that the general education teacher primarily provides (and has been providing) instruction, and that the special education teacher helps differentiate instruction for the Student and support him when needed. The special education teacher stated she meets with the general education teacher regularly and discusses the Student's needs and his goals. For example, the special education teacher stated that the general education teacher has been working on the Student's paragraph writing goal with the Student, and then the general education and special education teacher discuss the Student's progress on that goal. The special education teacher did note that the Student is very smart and does not seem to struggle or need much support in the online environment in math or English class.

50. In an interview with the Student's OT, the OT shared that she has been seeing the Student roughly weekly since January or February 2020, including over the summer and at the start of the 2020-2021 school year, despite an enrollment issue. The OT stated they work on the Student's IEP goals (handwriting legibility and typing using writing technology, such as speech to text and word prediction) and foundational motor skills (physical or visual motor tasks, left/right body integration, ocular motor exercises). Regarding her instruction, the OT noted:

- They have had issues with technology that impact the second goal despite the school and OT's company providing extensive tech support.
- The Parent calls the OT frequently and leaves voicemails, stating she does not want the Student to work on writing or typing, but instead wants to work on other foundational skills or exercises. The OT respects the Parent's requests because these are appropriate areas for the Student to work on, he needs to work on foundational motor skills, and these are areas that ultimately support writing skills.
- For writing, the OT will have the Student write a story or work on word production using an exercise like "mad libs." The OT stated the Student has anxiety and gets stuck trying to come up with the perfect word to write, so they practice just coming up with one word at a time and then writing or typing the word.

The OT stated she monitors the Student's progress and that he is making progress. Currently, she stated that using features like speech-to-text, the Student can write a 5-sentence paragraph in 15 minutes (when having done a prewrite or brain map exercise the previous session), which is up from a baseline of 30 minutes. Regarding the Student's writing legibility, the OT stated he looks at letter formation, size, and spacing and that the Student has moved

from a baseline of 75% to 83%, and that the Student's handwriting is readable by an unfamiliar person. The OT stated the Student is typing at 16 words a minute.

The OT also stated that she believes the Student's goals need to be updated and that he needs to be reevaluated to define current needs.

51. In a statement from the Student's SLP, the SLP stated she had been seeing the Student for 30 minutes per week since September 2020 in a one-on-one teletherapy model (although recently the Student also completed three additional hours of speech). Regarding how the instruction is specially designed, the SLP stated:

In the area of content, we have narrowed down specific skills in which he exhibits need and formulated goals based on previous evaluations and ongoing performance data. In the area of methodology, his services entail highly individualized instruction that is scaffolded to provide adequate support. I also provide modeling and visual supports as needed. We have used elements of the Michelle Garcia Winner Social Thinking program and all treatment plans are informed by evidence-based practice.

The SLP stated the Student has met many of his current IEP goals and therefore she "jointly devised more appropriate goals with his mother and have been targeting them as well." The SLP noted these new goals and how they work on them include the following:

- "When given the opportunity to tell a short story about an illustrated social scene [Student] will include the problem; the character's reaction or response to the problem and a possible solution to the problem improving pragmatic language and social skills from includes a statement about problem, response and solution in 2/3 opportunities to 3/3 opportunities as measured by SLP data over three consecutive sessions."
 - "We have watched short video clips of various relevant social scenarios. [Student] has been tasked with identifying the emotions/nonverbal language of characters and with identifying a solution. We have role-played some of these scenarios to provide meaningful practice."
- "When given opportunities to engage in a conversation regarding a non-preferred topic, [Student] will initiate and maintain the conversation by asking questions and making comments improving his conversation skills from 3 conversational turns to at least 5 conversational turns."
 - "We have created a list of less-preferred topics. [Student] is given a visual support of Wh- questions to support generation of 'social wonder' questions to his communication partner (usually this SLP). He is also asked to self-reflect following conversation practice."
- "Given a personal narrative prompt about a memorable experience, [Student] will recount his experience in sufficient detail to ensure listener understanding of the 'who, what, where, when, why' of the story from relating details regarding 3/5 Wh- questions to relating details regarding 5/5 Wh- questions...."
 - "[Student] is given a visual support if needed and provided with a narrative prompt. One example is a 'Who knows what?' visual to support perspective taking."

52. Regarding IEP meetings, the school stated the Parent has canceled several scheduled IEP meetings and refused an evaluation of the Student. During the 2020-2021 school year specifically, the school stated it "scheduled no less than 4 IEP meetings...and an informal

meeting to discuss parent concerns” and that “Mediation and facilitated IEP meetings have been offered and declined.”

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged the school failed to provide the Student with the special education services in his individualized education program (IEP), including instruction in writing and adaptive skills, occupational and speech therapy, and accommodations. The Parent also alleged she was not provided information about the Student’s progress on goals.

A district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

January 28 – May 11, 2020: The school admitted that the Student’s IEP was not implemented as written between January 28 and May 11, 2020—a period of approximately 13 weeks (excluding spring break)—due to an administrative error and that the Student was not provided some of his specially designed instruction during this period.

The IEP in place at the time, the Student’s April 2019 IEP that he transferred into the District with, called for the Student to receive the following special education services:

- Social/emotional behavioral: 65 minutes daily
- Written language: 30 minutes daily
- Math: 45 minutes daily
- Adaptive behavior: 60 minutes daily
- Reading: 60 minutes daily
- Written language (related service): 30 minutes weekly (provided by an occupational therapist (OT))
- Communication (related service): 30 minutes weekly (provided by a speech language pathologist (SLP))

Between January 28 and May 11, 2020, the school stated the Student received the following instruction:

- 420 minutes in social/emotional behavioral
- 1,860 minutes in English language arts
- 180 minutes in math
- Speech Therapy: 450 minutes (plus 180 minutes offered and either a cancellation or “no show”)
- Occupational Therapy: 300 minutes (plus 90 minutes offered and either a cancellation or “no show”)

Thus, the Student should have received and was not provided the following instruction:

- Social/emotional behavioral: 4,225 minutes in 13 weeks; missed 3,805 minutes (63 hours)
- Written language and reading: 5,850 minutes in 13 weeks; missed 3,990 minutes (66.5 hours)
- Math: 2,925 minutes in 13 weeks; missed 2,745 minutes (45.75 hours)
- Adaptive behavior: 3,900 minutes in 13 weeks; missed 3,900 minutes (65 hours)

Additionally, the Student should have received 390 minutes of occupational therapy in the 13 weeks and the documentation indicated he was provided more than the requisite amount. In speech, the Student should have received 390 minutes of speech and was offered 390 minutes (although he only attended 300 minutes).

So, while the Student's related services were provided as outlined in the IEP, the Student was provided significantly fewer minutes in other areas than required by the IEP. The school acknowledged this error and OSPI finds the District and school in violation for failing to implement the Student's IEP. The Student is entitled to compensatory educational services to remedy this violation. As compensatory education is an equitable remedy that seeks to put a student in the position they would have been but for the violation, it is also necessary to consider any information about a student's progress in order to determine an equitable award.

A February 9, 2020 progress report indicated the Student made sufficient progress on all goals, passed all classes, and had no late assignments. The school noted the Parent had requested the Student attend more general education classes, which may in part explain what led to the Student receiving fewer minutes of specially designed instruction. Further, a new IEP was developed for the Student in May 2020, which included updated goals, present levels, and a reduced amount of specially designed instruction. While there is some question about the development of this IEP, discussed in issue two below, it is notable in that the school members of the Student's IEP team believed the Student needed less special education support in his current school and program than he previously needed. Thus, given that the Student made sufficient progress despite his IEP not being implemented, the school will be required to provide compensatory services in the amount of approximately 1/5 of the missed time, as follows:

- Social/emotional behavioral: 12 hours
- Written language and reading: 14 hours
- Math: 9 hours
- Adaptive behavior: 13 hours

May 2020 IEP: Once a new IEP was developed for the Student on May 11, 2020, the school stated that the Student's special education instruction, related services, and accommodations have been provided in "full compliance with the IEP." The Student's May 2020 IEP included the following services:

- Communication (related service): 30 minutes weekly
- Math: 15 minutes monthly
- Reading: 15 minutes monthly
- Written Language: 15 minutes monthly
- Adaptive Skills: 15 minutes weekly
- Social/Emotional: 0 minutes monthly
- Occupational therapy: 30 minutes weekly

Related Services: Occupational Therapy and Speech

In May and June 2020 (approximately 4.5 weeks of school), the Student was offered 180 minutes of speech therapy (more than the required 135 minutes) and 105 minutes of occupational therapy (20 minutes short of the required 135 minutes). However, as discussed above, the Student was

provided with opportunities to attend more than the required amount of occupational therapy in the previous time period; thus, on balance, the Student's IEP was implemented as written with respect to occupational and speech therapy.

November 2020, when the Student was enrolled and began attending, until the complaint was filed and opened on January 27, 2021, represents a period of approximately 11 weeks (not including winter break). For speech and occupational therapy, again, the Student has been provided with more than the minutes required in his IEP, given that the school provided the Student with services during the period he was not enrolled in the school and the school offered and provided additional speech and occupational therapy sessions, which the Student attended beginning February 8, 2021.

In additional information provided by the Parent and her support team, the Parent alleged the IEP was not implemented with respect to occupational therapy because the OT was not working with the Student on his goals. However, in an interview with the OT, the OT clearly articulated how she worked with the Student on his goals (handwriting legibility and typing using writing technology, such as speech to text and word prediction) *and* on foundational skills (e.g., physical or visual motor tasks, left/right body integration, ocular motor exercises). The OT noted that frequently, the Parent called and left voicemails, requesting that the Student work on other exercises instead of writing or typing, and that because the requests were appropriate and the Student needed to work on foundational motor skills, the OT respected these requests. The OT shared, and progress documentation supports, that the Student was making progress on his IEP goals. Finally, there is no requirement that every minute of instruction be solely focused on the IEP goals. OSPI finds it is reasonable and appropriate that the OT would also provide instruction on other foundational skills that support the Student's writing and typing goals. Similarly, the SLP described how she provides instruction to the Student and that he had made so much progress that he had met many of his current IEP goals. The SLP noted that she has developed new goals with the Parent and has also provided instruction in those areas.

Overall, OSPI finds the Student's IEP was implemented as written with respect to occupational and speech therapy.

2020-2021 School Year: Enrollment

Due to a variety of factors, including the Parent not submitting the choice transfer request by the required deadline, the Student being placed on a waitlist, and various technical difficulties and communication barriers, the Student was not enrolled in the school at the start of the 2020-2021 school year. While OSPI recognizes how frustrating this was for the Parent and the potential disruption to the Student's education, enrollment in the school is a general process and there is no indication that any special education processes or regulations were violated here. Further, the school recognized there were errors that needed to be resolved in the enrollment process and recognized the Student's need for services, and thus provided him with speech and occupational therapy beginning in September 2020, despite the Student not being enrolled. OSPI finds no violation for failing to implement the Student's IEP while he was not enrolled.

Other Specially Designed Instruction

The Parent and her support team stated they were not clear how the Student worked on his IEP goals, stating the school only provided "tutoring" on the general lesson and not specially designed instruction on the goals. The Parent also stated the Student was no longer in a special education class, that the Student was not supported in his writing or provided assistive technology, and that the Student's adaptive needs were not being met.

Regarding the instruction in math, reading, writing, and adaptive, the school stated the Student was provided specially designed instruction largely in his general education classes via a co-teaching or push-in instruction model. The only area the Student received instruction in a special education setting was in adaptive, which he received during a weekly meeting with his special education teacher. The Student's new special education teacher stated she had prepared a checklist to target the Student's adaptive skills goals (school and personal daily task completion) and planned to work with the Student on daily living skills and assignment/homework management and completion. However, the teacher stated that she had a few calls with the Parent and the Parent was adamant that she work on phonics with the Student instead of adaptive skills (and the Parent stated that the Student would work on a task completion checklist with the SLP instead). To that end, the special education teacher stated she had met with the Student to get to know him and had completed a phonics assessment.

The school stated the Student attended "live" (synchronous) English and social studies classes Monday through Friday, in addition to his other classes, and that the Student is at or above grade level in reading and math. The Student's specially designed instruction in each class focused on the grade level general education curriculum that was being taught and generally included additional instruction after the main lesson, focusing on task analysis, setting objectives, breaking down the lesson, and then walking the instruction back to the Student's skill level. The special education teacher stated the general education teachers primarily provide the Student's instruction in math, reading, and writing, and she attends the Student's math and English class to provide differentiated instruction and support. The special education teacher stated she meets with the general education teacher regularly and discusses the Student's needs and his goals, but that the Student does not seem to struggle or need much support in the online environment in math or English class is very smart.

The school did note that there have been staffing changes, including the special education teacher serving the Student (a special education teacher left, the Student had a long-term substitute, a recently new special education teacher began). While staff changes can impact a student's access to instruction, the school stated the Student's IEP has been consistently implemented despite staff changes.

Initially, the school's explanation of services was more general, and it appears that at times, the specially designed instruction is focused on differentiating the general education lesson rather than necessarily targeting the specific goals. However, there is no requirement that specially designed instruction only focus on the goals and nothing else. There is also information from the Student's current special education teacher that the general education teacher provides

instruction on the goals and that the special and general education teachers work together to meet the Student's needs, discuss supports, and review progress. Overall, any deviations from the IEP appear minor and relate to changes in teaching staff and explicit requests from the Parent to work on other areas (e.g., requests to work on phonics instead of adaptive skills). Further, the most recent progress reporting from February 2021 indicates the Student has mastered or made sufficient progress on all goals. All the individuals interviewed in this complaint echoed the progress report, stating that the Student was very smart and that his IEP needed to be updated.

Thus, OSPI finds that the larger issue here is that the Student's current IEP needs to be updated to better meet his needs and to address the fact that the Parent is routinely requesting staff provide instruction in new or different areas, versus the current IEP goals. This issue will be discussed further below with respect to the IEP amendment and development. But, regarding IEP implementation, OSPI finds the school implemented the IEP, that any deviations were minor or at Parent request, and finds no violation.

Accommodations and Assistive Technology

Regarding assistive technology, the documentation indicates the Student was inconsistently provided assistive technology, largely due to technical difficulties. There is documentation that shows the Student had access to and used speech-to-text. However, there were challenges with providing the Student word prediction software due to a lack of technology support from the vendor and issues with the Student's computer. However, the information provided in the complaint indicates the school and the OT's company provided tech support to the Student, including offering to provide him a new laptop. Further, the school addressed the issues with the word prediction software by utilizing the word prediction software already contained on the computer. Overall, while there were challenges, the documentation does not indicate a material failure to provide assistive technology. Thus, OSPI finds no violation.

Progress Monitoring & Reporting

The Parent alleged that she had not receive information about the Student's progress on his goals. A district must provide progress reporting at the frequency stated in the IEP. The purpose of progress reporting is to ensure that the reporting provides sufficient information to enable parents to be informed of their student's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the student to achieve those goals. The documentation in the complaint indicates that the Parent was provided IEP goal progress reporting on February 9, 2020 (April 2019 IEP goals), June 10, 2020 (May 2020 IEP goals), and February 2021 (May 2020 IEP goals). While the June 2020 progress reporting was light on details; overall, the documentation shows that the school met its obligation to provide progress reporting and OSPI finds no violation.

OSPI notes that the Parent throughout has communicated that email is challenging for her; thus, OSPI recommends the school confirm during the next IEP meeting the best and preferred method for sending progress reporting (e.g., emailed or mailed).

Issue Two: IEP Amendment – The Parent alleged the school reduced the amount of services the Student was to receive without involving her in the decision.

A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed.

May 2020 IEP

On May 11, 2020, the Student's IEP team—including the Parent—met and developed a new IEP for the Student. This IEP represented a significant change from the Student's previous IEP. While the April 2019 IEP included daily minutes of specially designed instruction in social/emotional behavioral, written language, math, adaptive behavior, the May 2020 IEP included 15 minutes monthly in math, reading and written language, 15 minutes weekly of adaptive behavior, and zero minutes of social/emotional. The April 2019 IEP contained an extensive list of accommodations and modifications and indicated the Student would spend 34.2% of his time in the general education setting, whereas the May 2020 IEP included four accommodations and indicated the Student would spend 98% of his time in the general education setting.

The documentation in the complaint indicated the Parent participated in the IEP meeting and in the development of this IEP, which included information provided by the Parent about the Student's strengths and the Parent's concerns. Prior written notice from the meeting did not list any Parent requests or proposals that were considered and rejected by the IEP team, or any Parent disagreements with the IEP. However, a subsequent IEP meeting was scheduled in June 2020 to discuss the Parent's concerns and input, which the Parent and a member of her support team attended. It does not appear the IEP was substantively amended at this meeting; however, it is difficult to tell as there is no prior written notice. Further, according to the Parent's support person, their understanding was that the IEP had not yet been finalized and that "[Parent] was under the impression that some of the concerns raised in the IEP meeting in June 2020 would be addressed before the IEP was finalized...She was surprised to find that the IEP had been finalized without her consent." Subsequent meetings and communications in the 2020-2021 school year clearly indicate the Parent disagreed with the May 2020 IEP and felt it did not meet the Student's needs in several areas.

Prior Written Notice

Given that the meeting in June 2020 was to discuss the Parent's concerns, it is likely that there was some disagreement that should have been recorded in a prior written notice, even if the IEP was not amended. Yet, without prior written notice, there is no record of what these concerns were and the record is not entirely clear on when the Parent expressed disagreement with this IEP—at the June 2020 meeting or only later in the 2020-2021 school year.

Prior written notice must be given to a parent within a reasonable time before a district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE). Prior written notice ensures the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate.

Given the later disagreement, it is surprising that the May 2020 prior written notice does not include any requests made by the Parent or Parent disagreement. And, OSPI notes that likely, there should have been a prior written notice following the June 2020 meeting. Thus, OSPI finds the District failed to provide sufficient prior written notice and finds a violation.

Potential Need for Reevaluation

The May 2020 IEP likely represents a significant change in placement, with no documentation that procedures were followed to discuss a change of placement or need for reevaluation. The May 2020 IEP contains a reduction in the minutes of specially designed instruction and a significant change in the amount of time the Student would spend in the general education setting. At minimum, the Student's IEP team should have discussed whether a reevaluation was necessary before developing this IEP, as one of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. And, when a student's service providers or parents believe that the IEP is no longer appropriate—which is the case here—the team must meet to determine whether additional data and a reevaluation are needed.

While it is possible that the school and IEP team had enough existing information to support the change in services—the progress reporting documentation from February 2020 indicated the Student was making sufficient progress in all his goal areas and overall, the information reviewed in the investigation indicated the Student's needs did present differently in the online school environment than his previous school or at home—the documentation in the complaint does not indicate the team discussed in May 2020 whether this was a significant change in placement, whether a reevaluation was necessary, or adequately record that existing data was enough and a reevaluation was not warranted.

Thus, OSPI finds the District and school in violation with respect to the development of the May 2020 IEP for two reasons. First, given that the Parent has expressed during the investigation that she disagreed with the IEP and change in services (both in quantity and content), the school did not follow procedures to sufficiently document decisions, refusals, and Parent disagreement in prior written notices. Second, the IEP team should have discussed at the May and June 2020 meetings whether the IEP represented a significant change in placement and whether a reevaluation was necessary.

Based on the documentation, the Student's IEP team has been working on developing a new IEP for the Student since November 2020. The documentation indicates the school has been attempting to begin the Student's triennial reevaluation, but that the Parent has not been willing to move forward with discussing the evaluation. The school members of the IEP team indicated it is important to get further evaluative data to inform the Student's current needs. Recently, on March 12, 2021, the IEP team met to review existing data and discuss the reevaluation, and another meeting is scheduled for March 26, 2021.

Thus, as corrective action for the identified violations, the school will be required to conduct the Student's triennial reevaluation, develop the Student's new/annual IEP based on that reevaluation, and provide the Parent with sufficiently detailed prior written notice following any meeting where decisions are made to initiate or refuse a change impacting the Student's FAPE.

Issue Three: Parent Participation – The Parent alleged the school limited her participation by holding IEP meetings without her, not working with her support team, and not taking into account her difficulties with technology to schedule meetings. A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place.

The documentation in this complaint indicates that, in general, meetings have been challenging to schedule. There were examples where it appeared a meeting date was agreed upon, and then the Parent or her support team stated they were unavailable. For example, based on the meeting recording, the IEP team agreed at the November 17, 2020 IEP meeting to meet again on November 20, 2020 (although the support person did indicate a potential conflict). However, on November 20—the day of the meeting—the Parent canceled the meeting and the support person indicated they did not know the meeting had been “rescheduled.”

The Parent's support person noted that the school did not communicate with the Parent about potential times and dates in advance of setting a meeting in order to work together to schedule meetings, but instead schedules meetings and then tells the Parent when the meeting is (or fails to tell the Parent). However, the documentation indicates the school has attempted to work with the Parent to schedule meetings, either at the previous meeting or via email (e.g., the District asked the Parent for options for meeting times following the canceled November 20 meeting and the Parent did not respond). Overall, it appears the school attempted to work with the Parent, that this is often ineffective due to the reliance on email for communication and the Parent's noted challenges with email. Given the ongoing challenges, it is unclear why the school has not attempted to utilize other methods of communication, such as phone calls to schedule meetings, to ensure parent participation.

There are several instances when the Parent stated she was unaware that a meeting was scheduled, only found out at the last minute, and therefore was not available or her support team was not available. Again, this appears to primarily be due to meeting scheduling communications occurring via email. For example, on December 2, 2020, the school emailed the Parent a reminder

for a meeting schedule for December 3, 2020—that was canceled by the Parent and rescheduled for December 4, 2020—which the Parent attended. Or, the January 28, 2021 IEP meeting, which the Parent stated she was unaware of several days prior to the meeting, despite meeting notices and reminders being sent via email and certified mail on January 19, 21, and 22, 2020 (the certified mail was documented as received by the Parent on January 25, 2021, per the tracking notification).

The school stated it has offered an interpreter to ensure the Parent's participation; however, the investigation indicates that the main issue is around email communication, which the provision of an interpreter would not necessarily solve. The Parent and her support team expressed frustration that the school would not include members of the support team on emails, which they noted would help address many of the meeting scheduling challenges noted above. In February 2021, the school notified the Parent that it needed a release of information to communicate with and release records to the support team. On February 15, 2021, the Parent provided the school with a signed release of information to include the support team on emails. According to a member of the Parent's support team, since signing the release, communication has improved, and the support person was involved in scheduling the March 12, 2021 meeting. OSPI notes the school was not wrong in requiring a release of information, as sharing information without the Parent's permission is a violation of the Family Educational Rights and Privacy Act (FERPA); however, now that the school has a release, OSPI hopes the school will regularly include the Parent's support team, as this will hopefully address the above challenges and make scheduling meetings easier.

There is one instance where the team met without the Parent. The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a FAPE to the student. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. At the January 28, 2021 meeting, the Parent's support person arrived for the meeting and stated the Parent would not be attending. Based on a later email from the school, the team did meet and reviewed the Student's progress without the Parent; however, the school did not make any decisions about or amendments to the IEP or evaluation without the Parent. In this instance, the school made several attempts to notify the Parent of the meeting date, including via certified mail. However, it is also clear that the Parent communicated she could not attend and that she wanted the IEP team to reschedule the meeting. Thus, the team should not have met without the Parent and should have rescheduled the meeting.

Overall, OSPI finds that the school attempted to follow procedures to ensure the Parent's participation in meetings, such as trying to work with the Parent to identify mutually agreeable times to meet and sending meeting notices in advance of the meeting. These efforts were often ineffective due to challenges with email or the lack of inclusion of the Parent's support team, despite the Parent's requests to include them. The school also rescheduled several meetings in an attempt to ensure the Parent and her support team could attend. Ultimately, the Parent attended and participated in all IEP meetings, except the January 28, 2021 meeting. While OSPI understand the communication challenges related to meeting scheduling were frustrating, they do not rise to level of a violation of the IDEA or state special education regulations. OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **April 23, 2021, June 30, 2021, September 30, 2021, and February 4, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Services

By or before **April 16, 2021**, the District will coordinate with the Parent (and her support team) to develop a schedule for a total of 48 hours of compensatory services (12 hours in social/emotional behavioral, 14 hours in written language and reading, 9 hours in math, and 13 hours in adaptive).

Services will occur outside of the District's school day and may be accessed over District breaks. Services will be provided by a certified special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **April 23, 2021**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **January 31, 2022**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **June 30, 2021** and **September 30, 2021** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **February 4, 2022**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

Evaluation and Annual IEP

The District will conduct the Student's triennial reevaluation, develop the Student's new/annual IEP based on that reevaluation, and provide the Parent with sufficiently detailed prior written notice following any meeting where decisions are made to initiate or refuse a change impacting the Student's FAPE.

By or before **April 16, 2021**, the Student's IEP team will meet and determine whether it will conduct the Student's triennial reevaluation based solely on existing data or if new assessments are needed. If new assessments are needed, the school will promptly obtain consent from the Parent.

By **April 23, 2021**, the District will provide OSPI with documentation of the IEP team's decision regarding the evaluation, including: 1) IEP meeting agenda or notes; 2) Signed Parent consent, if new assessments will be conducted; 3) prior written notice documenting the decision; and, 4) any other relevant documentation.

By April 30, 2021, OSPI will review the information provided regarding the evaluation next steps and then determine additional deadlines for review. This will include deadlines to complete the evaluation and update the Student's IEP and associated documentation for review, including the evaluation report, new IEP, and related prior written notices.

DISTRICT SPECIFIC:

None.

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

OSPI recommends the school develop a communication plan for use with the Parent, including the agreed upon preferred form of communication (e.g., phone call, text message, email, mail), parameters for including the Parent's support team in communications, and guidelines to help ensure meetings are scheduled in a timely manner and at a mutually agreeable time.

Similarly, OSPI recommends the school confirm during the next IEP meeting the best and preferred method for sending progress reporting (e.g., emailed or mailed).

Dated this ____ day of March, 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.)