

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-35

PROCEDURAL HISTORY

On March 3, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an advocate (advocate) for a parent (Parent) and student (Student) attending the **[REDACTED]** School District (District). The advocate alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 4, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 12 and 16, 2020, OSPI received additional information from the advocate regarding SECC 20-35. The additional information was forwarded to the District on March 19, 2020.

On March 26, 2020, OSPI received part of the District's response to the complaint and forwarded it to the advocate on March 27, 2020. OSPI invited the advocate to reply.

Also, on March 26, 2020, OSPI received a request from the District for an extension on the remainder of its response. The District requested the extension so it could compile the emails it had on file and submit in the format requested by OSPI, which were not provided with the original response. OSPI granted the request and requested the remainder of the response be provided no later than April 10, 2020.

On April 6, 2020, OSPI received the remainder of the District's supplemental response to the complaint and forwarded to the advocate the same day.

On April 9, 2020, OSPI received the advocate's reply. OSPI forwarded that reply to the District the same day.

On April 21, 2020, the OSPI investigator interviewed the District director of special education (director).

Also, on April 21, 2020, the OSPI investigator interviewed the advocate.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on March 4, 2019, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to March 4, 2019 is mentioned for informative, background purposes only.

ISSUES

1. Did the District follow procedures for developing the Student's individualized education program (IEP) during the 2019-2020 school year, including:
 - a) appropriately determining the level of services recommended; and
 - b) providing prior written notice?
2. Did the District implement the following provisions of the Student's IEP during the 2019-2020 school year:
 - a) specially designed instruction; and
 - b) accommodations (including text-to-speech)?
3. Did the District follow IEP meeting procedures during the 2019-2020 school year, including:
 - a) ensuring Parent participation in the meeting process;
 - b) providing timely notice of meetings; and
 - c) ensuring all required members of the IEP team attended or followed procedures to be excused from the IEP meeting on February 13, 2020?
4. Did the District follow procedures for monitoring progress and providing progress reporting to the Parent during the 2019-2020 school year?
5. Is the Student's special education record missing, as alleged by the Parent, and if so, is the District in compliance with WAC 392-172A-05230?

LEGAL STANDARDS

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Prior Written Notice: 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 individualized education program (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. Prior written notice is not an invitation to a meeting. 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. 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. 34 CFR 300.503; WAC 392-172A-05010.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 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. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation and that each provider is informed of their specific responsibilities related to implementing the student's IEP, as well as the specific accommodations, modifications, and supports that must be provided for the student in accordance with the 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).

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Difference between Accommodations and Modifications: Accommodations: 1) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; 2) provide equal access to learning and equal opportunity to demonstrate what is learned; and 3) grading and credit is the same as typical students. Modifications: 1) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; 2) provide a student with a meaningful and productive learning experiences based on individual needs and abilities; and 3) grading and credit are different. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

IEP Team Meetings: Time: Districts must schedule IEP meetings at a mutually agreeable time for the parent and the district. 34 CFR § 300.322(a)(2); WAC 392-172A-03100(2).

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

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

General Education Teacher Attendance at IEP Meetings: Participation by a general education teacher is an important aspect of the IEP development process because of their knowledge of how a student with a disability might benefit from being placed in a general education classroom. IDEA, 62 Fed. Reg. 55,124 (October 22, 1997) (Appendix C to 34 CFR Part 300). The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. However, the general education teacher may not, depending upon the child's needs and the purpose of the specific IEP team meeting, be required to participate in all decisions made as part of the meeting, be present throughout the entire meeting, or attend every meeting. IDEA, 64 Fed. Reg. 12,475, 12,477 (March 12, 1999) (34 CFR Part 300, Questions 24 & 26).

IEP Team Member Excusal: Parents and districts can agree in writing that a required IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP team includes "[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) . . ." Neither the IDEA nor its implementing regulations

require that an IEP team include more than one regular education teacher. Therefore, if an IEP team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP Team meeting. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question C-3).

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

Lists of Types and Locations of Records: Each school district or other public agency must provide parents and adult students, on request, a list of the types and locations of educational records collected, maintained, or used by the agency. Each district must also protect the confidentiality of personally identifiable information at the collection, storage, and destruction of records stage and follow procedures for the collection and storage of personally identifiable and confidential information contained in educational records. Each school district or other public agency must provide training or instruction regarding the procedures on protection of the confidentiality of personally identifiable information contained in state education law, the regulations implementing the Family Educational Rights and Privacy Act (34 C.F.R. Part 99). 34 CFR §300.616, WAC 392-172A-05230.

FINDINGS OF FACT

2018-2019 School Year

1. At the start of the 2018-2019 school year, the Student was eligible for special education services under the category of specific learning disability, was in the ninth grade, and attended a District high school.
2. On November 28, 2018, the Student's reevaluation was completed. The evaluation team found the Student continued to be eligible for special education using professional judgment in the areas of written language and reading comprehension. It was noted that, "While [Student] does not meet initial criteria, he continues to struggle in these areas." The evaluation further explained that the Student "struggles with reading texts and expressing himself in writing: He does well when he is able to listen to both textbooks and fiction, and is able to comprehend at a deep level when the materials are presented auditorily. He is also able to express himself verbally, but cannot write items out cogently. These problems limit his ability to make good

progress in the general education environment.” The evaluation recommended the Student receive specially designed instruction in written expression (academic) and reading (general education).

3. On December 6, 2018, an individualized education program (IEP) meeting was held to develop the Student’s IEP and discuss the Student’s accommodations. The same day, a prior written notice (PWN) was issued, which documented the team’s decision that the Student should continue to receive specialized instruction in written expression and that the Student would receive accommodations for both reading and writing. In particular, the PWN documented the team’s determination that “at [Student’s] next IEP meeting [Student] should be transitioned to the use of speech to text for writing assignments and should learn to use auditory books for high stakes reading assignments, including textbooks.”
4. The investigation time period for this complaint began on March 4, 2019.
5. On May 23, 2019, the Student’s IEP team met to develop the Student’s IEP. The May 2019 IEP indicated the Student would spend 100% of his time in the general education setting and provided the Student with the following amount of specially designed instruction, to be delivered and monitored by a special education teacher, in the general education setting:
 - Reading, 30 minutes, 2 times weekly; and,
 - Written expression, 30 minutes, 2 times weekly.

The Student’s IEP provided him with the following accommodations and modifications:

- Can listen to required reading (daily);
- Check work frequently and provide feedback to ensure understanding (during independent time);
- More time in math (assignments and tests) to process answers (as needed);
- More time to complete writing assignments (up to 5 days without penalty);
- One on One time with teacher to review writing assignments and expectations (as needed);
- Read aloud – English (as needed) (District and state assessments);
- Repeat direction as needed/check for understanding (daily);
- Scribe (district and state assessments);
- Use Cloze notes for notes and outlining (daily and as needed);
- Use speech to text for writing assignments (daily);
- Work with teacher to create a timeline for when each part of a writing assignment should be completed (when working on writing assignments);
- Testing Accommodations: alternative location (daily); and,
- Testing Accommodation: Level 2 considered as passing (state testing).

2019-2020 School Year

6. September 4, 2019 was the first day of school for the 2019-2020 school year for the District.
7. At the commencement of the 2019-2020 school year, the Student continued to be eligible for special education services under the category of specific learning disability, was in the 10th grade, and attended a District high school. The Student’s May 2019 IEP was in effect.

8. According to the District's response, during the 2019-2020 school year, the Student was served in an "inclusionary" classroom model, whereby the Student attended general education classes that were supported by paraeducators to assist with IEP implementation.
9. The District asserted that from September through December 2019, the special education teacher designed the Student's specially designed instruction and that shared paraeducators assigned to the Student's English Language Arts (ELA), integrated math, and world history class attempted to deliver the instruction and the Student's accommodations and modifications. The advocate alleged in the complaint and in the reply to the District's response that the District did not implement the Student's IEP during this time with regard to the Student's specially designed instruction, accommodations and modifications, and instead alleged the paraeducators were not in communication with the special education teacher, did not receive training or information on how to implement the Student's IEP, and that the Student did not begin receiving specially designed instruction until January 2020.¹
10. According to the District's response, on September 11, 2019, the District began implementing its 2019-2020 staffing schedule for students in secondary education who were receiving

¹ When interviewed by the OSPI complaint investigator on April 21, 2020, the director told the investigator that he had spoken to the special education teacher and paraeducator and had conducted one classroom observation regarding the delivery of specially designed instruction from September through December 2019. The director asserted during this time, the special education teacher designed instruction for all students in the inclusionary classroom, including the Student, and then provided information to the paraeducators on how to implement the instruction. The director explained that in the area of written expression, the paraprofessional would provide specially designed instruction by providing support during writing assignments in the form of "initiation support, organization/planning support, and work completion prompting." During reading, the director stated specially designed instruction was provided in the form of offering "comprehension support and checking for understanding." The director acknowledged he was not able to provide formal documentation of the specially designed instruction provided and that the District did not collect data on progress made on the Student's IEP goals during this time. He noted the District was small and its practice was to communicate verbally rather than provide documentation of services in writing.

In the complaint, and during an interview with the advocate on April 21, 2020, the advocate asserted that regardless of what was asserted verbally, the District did not provide specially designed instruction to the Student during September through December 2019, and that during this time, the paraeducators did not receive instruction from or communicate with the special education teacher regarding the Student's need for specially designed instruction and that consequently, they did not know how to implement the Student's IEP. The advocate asserted the Parent asked multiple times for documentation of the instruction being provided to the Student and for data, showing the Student's progress based on the instruction provided and was never provided it. When asked about this discrepancy, the director stated the special education teacher told him that specially designed instruction was offered to the Student in accordance with his IEP, but often not able to be implemented because the Student often refused it due to not wanting to be "singled out" or identified as a student with an IEP. The advocate agreed that the Student could at times refuse accommodations, but also noted the Student did not refuse accommodations when offered discretely, and that paraeducators had indicated to the Parent that they were not provided information on how to implement the Student's IEP appropriately in a way the Student would accept it, as had occurred in previous years, until January 2020.

specially designed instruction in the general education setting as part of the inclusionary model. According to the District's response, this staffing schedule continued to serve as the foundation of the District's high school schedule throughout the 2019-2020 school year.²

11. On October 7, 2019, the Parent emailed the director and special education teacher and requested an IEP meeting. She asked to "discuss [Student's] current classes, his accommodations and needs to be successful," adding that she was "very frustrated and disappointed that this has not been discussed with his current teachers and that he has not been checked on or had support." She requested the Student's ELA, math, science, [agriculture] mechanic, and history teachers be present at the meeting, as well as the principal and school psychologist. That same day, the special education teacher emailed the Student's teachers to notify them of the meeting and the Parent's request.
12. The District's response included a formal meeting notice issued on October 16, 2019 at 11:44 am, for a "Student, Special Education Teacher, Parent, LEA Representative, General Education Teacher, and Counselor." The notice did not include a recipient or subject matter. The complaint, however, contained an email from the Parent to the advocate, dated December 18, 2019, in which the Parent mentioned the meeting invite for the IEP meeting on October 16, 2019 was for 3:15 pm.
13. On October 16, 2019, the Student's IEP team met. According to the Parent's meeting notes, while the meeting was held at 3:15 pm, two teachers indicated they had to leave at 3:30 pm.

² In its response, the District explained that its "inclusionary model" at the District high school utilized paraeducators to deliver specially designed instruction to students with IEPs during general education classes. In the complaint, the advocate raised concerns that the District used paraeducators to deliver the Student's specially designed instruction instead of a special education teacher, as indicated on the Student's IEP. During a phone interview with the director on April 21, 2020, the director explained to the OSPI investigator that when he arrived at the District as a new employee at the commencement of the 2019-2020 school year, he discovered a "clerical error" in that all IEPs for students, regardless of needs identified in student evaluations and despite how services were actually being delivered, were written to indicate that specially designed instruction should be provided by a special education teacher. He explained that the inclusionary classroom model was intended to serve students who were appropriately served by having their specially designed instruction designed by a special education teacher and implemented by paraeducators. He stated this was known by IEP teams when they decided to place students in that program, but that IEPs were not written to reflect this. The director further explained that in November 2019, the District began offering additional opportunities for students with IEPs to receive support or specially designed instruction as a "pull-out" service during "Apollo" period, which occurred Monday, Tuesday, Thursday, and Friday from 12:00-12:35 pm. "Apollo" period was an elective period offered to all students. During this time, an offer was made by the District to make the special education teacher available to provide instruction to the Student as a "pull out" service. However, during Apollo period, the Student participated in a variety of leadership activities with his general education peers and did not want to receive specially designed instruction at that time. Further, when this option was offered to the Parent, the Parent noted that the Student's IEP indicated the Student's specially designed instruction was to be provided in the general education setting and she declined amending the IEP to have the Student's specially designed instruction provided to the Student as a pull-out service.

The Parent's notes³ documented discussion of the Student's poor performance in his general education classes, the Student's need for accommodations, including access to audio versions of textbooks, and the lack of knowledge by his general education teachers of the Student's IEP.

14. Also, on October 16, 2019, the District issued PWN that it was proposing an accommodation amendment. The PWN documented the following decisions of the IEP team: "In two weeks, the team would reconvene to review classroom based assessments and related performance data to assess the effectiveness of the proposed accommodations."

The PWN also noted other factors from the Student's evaluation related to classroom performance, which were agreed to be important to consider when evaluating the Student.

15. Also, on October 16, 2019, the director emailed the Student's teachers a calendar invitation for a follow up IEP meeting on October 29, 2019. The director noted that he "expected everyone is there for the full time and this meeting should likely be 30 minutes from 3:15-3:45 since it is a follow-up." He added that if anyone could not attend the meeting, they should "inform the special education teacher immediately so they could complete a waiver and see parent guidance on moving forward."
16. On October 29, 2019, the follow up IEP meeting was canceled the day of the meeting due to the director having double booked meetings. The director sent an email, apologizing and asking to reschedule.
17. On October 30, 2019, the Parent emailed the director, special education teacher, school psychologist, and principal to follow up on the canceled IEP meeting. She expressed concerns that the Student was behind in science, that she did not want him pulled out of classes to receive his specially designed instruction, and requested an update on how the Student was doing in his other classes. The director responded that the Student was doing well in his other classes and that he would meet with the Student to go over assignments he had missed.
18. On October 31, 2019, the Parent emailed the director, and copied the special education teacher and science teacher, to ask if they could meet the following week to discuss an update on the Student's progress, highlighting the Student's present levels, and what the Student's grades told them, as well as accommodations, modifications, and communication.
19. On November 5, 2019, the Parent emailed the director that she had not received a reply to her October 31, 2019 email, requesting a meeting. She reminded him that they agreed at the last meeting to meet again in two weeks and "it has now been 3 weeks." That same day, the director responded, saying he would be targeting November 12 for a meeting date.
20. On November 12, 2019, the Parent, director, principal, English teacher, and science teacher met. At the meeting, the Parent recalled the Student having only seen the special education

³ The Parent emailed her notes from all previous IEP meetings to her advocate on December 18, 2019.

teacher “for three minutes,” during which time she indicated the Student was provided a login for “Learning Alley”⁴ but stated the Student was not taught how to use it and that a computer was not checked out for him. In the Parent’s notes for the meeting on November 12, the Parent wrote, “[Student] is working well in English, all students can use a variety of accommodations in this class. The teacher provides books on audio.” No changes were made to the IEP.

21. On November 18, 2019, the Parent and science teacher exchanged emails regarding the Parent’s concerns with the Student’s grades in that class resulting from what the Parent described as a lack of implementation of accommodations. The Parent additionally requested the Student be provided opportunities for extra credit.
22. On November 21, 2019 at 7:30 am, the director, Parent, and grandparent met. At the meeting, the Parent asserted the Student was not getting services and the Student’s accommodations were not being implemented, particularly in science, which she believed was resulting in the Student’s poor grades in the course. The Parent requested the special education teacher work with the general education teachers to learn how to implement the Student’s accommodations related to the Student’s specific learning disability in reading and writing. According to the Parent’s notes from the meeting, the director stated he would speak with the principal, who he stated was responsible for overseeing implementation of accommodations for students with IEPs in the general education setting. It was agreed at the meeting that the next meeting would be a facilitated IEP meeting⁵ and all core teachers, the principal, and the school psychologist would be present.
23. On November 21, 2019 at 10:30 am, the director, Parent, and principal met to discuss implementation of the Student’s accommodations. According to notes maintained by the Parent, it was decided at the meeting that the principal would speak with the Student’s general education science teacher regarding implementing the accommodations in the Student’s IEP. No changes were made to the Student’s IEP.
24. On Monday, December 16, 2019, the director sent an email to all District staff invited to the facilitated IEP meeting on January 6, 2020, confirming the following agenda:
 - Review meeting expectations and overall guidelines: Re-establish ground-rules/norms
 - Purpose of meeting
 - Update accommodations and modifications:
 1. What works?
 2. What needs to be refined?
 - Update on Missing Assignments/Tasks/Tests so far this semester
 1. What can be modified?
 2. What needs to be added to the “to do list”?
 - Upcoming: Down the Wire: Closing out the semester

⁴ Learning Alley is an application used to provide textbooks and other learning materials in an auditory format.

⁵ Facilitation is a voluntary process for parents and districts to meet to discuss their concerns with the help of a trained, neutral facilitator.

- 1. Tests
- 2. Projects
- 3. Assignments
- Communication
 - 1. Moving forward: Who needs to communicate, what, when, how?

25. The Student's grades for the first semester of the 2019-2020 school year (with modified grading) were as follows:

- Leadership: S
- World History: B+
- Weights: A
- English 10: B+
- Int. Math: A
- Biology: B+
- Agricultural Mechanics: A

26. On January 6, 2020, a facilitated IEP meeting was held. The following people were in attendance: Parent, director, advocate, special education teacher, English teacher, science teacher, leadership mentor, career and technical education (CTE) teacher, principal, physical education teacher, grandparent, special education teacher from 2018-2019 school year, math teacher, and IEP facilitator.

27. On January 7, 2020, the advocate emailed the District superintendent regarding her concerns following the facilitated IEP meeting. In her email, she wrote:

[T]he special education teacher has not spoken to any of the general education staff about any of the many IEP students in their classrooms. We are almost finished with the first semester of the school year!...[Parent] told one of the teachers in October that [Student] had an IEP as that teacher did not know. How is data being collected for progress monitoring??!!...Some staff have gone above and beyond in their support to [Student] through his accommodations and modifications but are not able to deliver the specially designed instruction in reading and writing for which [Student] qualifies in his IEP. Staff expressed concern regarding the complete lack of communication regarding Special Education, [special education teacher's] schedule or availability, including not being informed of previous IEP team meetings for them to attend! The staff are open to special education support to better understand how [Student's] accommodations and modifications could be better implemented for him...[Student] is not receiving several of his accommodations due to the need for planning and coordinating services like testing support, training for the new reading for text program or 1 on 1 writing support and breaking up assignments into smaller units. [Special education teacher] is the 8-12th grade special ed teacher, yet her schedule seems to include a 1 on 1 kindergartener, and 2 other 1 on 1 students...

28. The District's response included a meeting notice issued for January 8, 2020 at 8:21 am for a "Student, Special Education Teacher, Parent, LEA Representative, General Education Teacher, and Counselor." The notice was not addressed to anyone and did not include any information regarding the subject matter to be discussed at the meeting.

29. On January 8, 2020, the facilitated IEP meeting attendees all exchanged informal, yet exhaustive notes and next steps via email. The notes included questions from the Student's general education teachers and paraeducators, documenting their admissions of unfamiliarity

with the Student's specially designed instruction and accommodations (including text to speech and speech to text software) and how to implement specially designed instruction and accommodations, agreement that training was required on accommodations, and an understanding that further meetings were required to coordinate and facilitate training for general education staff and paraeducators. The notes also documented agreements made regarding communication moving forward—about services and accommodations in the Student's IEP, scheduling IEP meetings, and for contacting the Parent. The email from the director to the parties additionally stated that PWN would be provided by the following day (Thursday, January 9, 2020), and that a copy of the procedural safeguards would be included.

30. Also, on January 8, 2020, the District issued PWN that contained notes from the facilitated IEP meeting⁶ and stated that the District was proposing to change the Student's IEP following participation in a facilitated IEP meeting. The PWN stated:

- CHANGES IN THE IEP: NEW GOALS
 - READING: By June 2, 2020, [Student] will demonstrate ability to access Speech to Text software related to Audible Books moving from to as measured by teacher observation and assessment provided by software program.
 - WRITING: By June 2, 2020 [Student] will demonstrate ability to implement Speech to Text software completing writing assignments in General education classes moving from -to-as measured by work sample.
 - SELF ADVOCACY: A new Self-Advocacy Goal, within the context of Accommodation and Modification implementation will be added to his IEP: "By June 2, 2020, [Student] will demonstrate the ability to ask for accommodations and/or modifications within his General Education classes through direct communication with his teachers via personal contact or email."⁷

The PWN documented the following notes under "FOLLOW UP FROM MEETING: Areas Expressed as Concern:"

- a. ACCOMMODATIONS: Speech to Text and Text to Speech: Within the context of 'self advocacy' and accommodations, Speech to Text [via Google product or other speech enhancement software] and Text to Speech [via Learning Ally audible book,] [Student] will receive explicit support through Special Education Teacher during the established [specially designed instruction] session [ELA Classroom]

In doing so, the District is committed to:

- Accessing and contracting professional development support for the Special Education Teacher and all interested General Education Teachers
 1. Assuring the training is available to all staff by January 30, 2020
 2. Assuring the explicit instruction begins February 2020.

⁶ On April 21, 2020, the director reported during a phone interview with the OSPI investigator that it had been his practice to include in PWN both notes from meetings and those items which implicated a change in a free appropriate public education (FAPE).

⁷ The director noted during the phone interview on April 21, 2020 that these self-advocacy goals were later rejected by the Parent and that they were included in the PWN as "notes" and not agreed upon changes.

3. Assuring the development of speech to text and text to speech skills will be assessed via observation anecdotal records, and recorded within the Email communication process
- b. SERVICE MATRIX/Schedule: Beginning January 13, 2020, specially designed instruction will be provided by the Special Education Teacher through June 2, 2020...within the ELA Classroom, Four days a week, M-T-TH-FR for 50 minute periods...It was agreed that the specially designed instruction would be delivered through a 'co-teaching model'⁸ ...
The [specially designed instruction] format provided by the Special Education Teacher will include both inclusive co-teaching activities in the form of "pre-teaching" content and skills as well as "post-instruction" reinforcement in support of reading comprehension and written expression skill development.
Specially designed instruction will be provided through discreet instruction through a 'pullout' model in close proximity related to mastery of IEP goals. Assessment tools measuring progress will include: MAP Assessment, Classroom based assessments [formative and summative] as well as teacher observation and anecdotal records taken on a weekly basis (by Friday of each week) by the Special Education Teacher.
- c. COMMUNICATION: Beginning the week of January 13, 2020, the Special Education teacher will communicate with [Student's] General Education [teacher] on a weekly basis addressing the three topics:
 - a. Review of IEP Goals in Reading, Written Expression, and the new Goal, Self-Advocacy
 - b. Review current progress in the General Education classroom including assignments, tasks, projects, and overall grades.
 - c. Review and address accommodations and modifications currently being implemented, efficacy of each, as well as exchange observation and data related to [Student's] 'self-advocacy' related to the implementation of the accommodations and modifications.

The PWN further contained a detailed communication plan to support the changes, noted that communications would be conducted by phone or email from February 12 through June 2, 2020, and beginning as soon as possible, the community counselor would also begin working with the Student once a week in support of his social-emotional development on his self-advocacy skills.⁹ The PWN also contained a plan for the counselor would work on. The District further agreed to begin working on securing a contractor or trainer to provide training in accommodations, modifications and 'universal design.'

⁸ The co-teaching model was described in the PWN as a model "requiring the General Education Teacher and the Special Education Teacher to exchange curriculum, instruction resources, and co-develop lessons in alignment with the classroom course outline as well as the students' IEP specific goals-accommodations-modifications."

⁹ The director explained to the OSPI investigator that he had included the self-advocacy goals as suggested goals in response to concerns that were expressed about the Student's discomfort utilizing accommodations around peers. The director said his intention was to add an agenda item to future meetings to discuss ways to help improve the Student's self-confidence so that he could learn to confidently utilize his accommodations moving forward, as he believed he would need to do outside the school setting. The director acknowledged, however, that listing his thoughts in the PWN gave the impression that they had agreed to new goals at the facilitated IEP meeting, which he stated was not his intention.

31. On January 9, 2020, the advocate emailed all parties who had participated in the facilitated IEP meeting, asking why a PWN had been issued because she did not think any IEP changes had been agreed to at the facilitated IEP meeting. She asked if by "changes to the IEP," the District was referring to the decisions to improve communications between special education and staff to "benefit [Student's] education." In the advocate's reply, the advocate further asserted that the January 8, 2020 PWN included items that were not agreed to by the IEP team as fact.
32. On January 17, 2020, the Parent and special education teacher exchanged emails regarding implementation of the Student's accommodations and concerns about progress monitoring. The same day, the District issued PWN¹⁰ that the Parent had requested an IEP meeting to go over accommodations and goals.
33. On January 20, 2020, the director emailed the Parent a proposed agenda for the IEP meeting the following day. It included: 1) Review the PWN [from the January 6, 2020 meeting, dated 1/8/20]; and 2) updates on the developments from the PWN.
34. The District's response included a meeting notice issued for January 21, 2020 at 12:00 pm for a "Student, Special Education Teacher, Parent, LEA Representative, General Education Teacher, and Counselor." The notice was not addressed to anyone and did not include any information regarding the subject matter to be discussed at the meeting.
35. On January 21, 2020, the Student's IEP team met. In attendance were the Parent, advocate, special education teacher, director, school psychologist, and principal. Notes from the IEP meeting included the following agenda:
- Meeting agreements (3:15)
 - A review of the PWN dated 1/08/20 (3:20)¹¹
 - Reviewing the document together
 - Questions/concerns
 - Adjusting as needed
 - Goal development (3:35 pm)¹²
 - General process will be featured: To be rewritten
 1. Reading
 2. Written expression
 3. Social Emotional: Self Advocacy (suggested)

¹⁰ It appears the District sent PWN instead of a meeting notice or invitation.

¹¹ Notes from the meeting documented concerns that the PWN, dated 1/8/20, "stated information as though the district planned to implement new goals, counseling for [Student] and other ideas posed in the document as having been decided by the facilitated IEP team. [Director] stated it was 'suggestions' he wrote that represented the district's intent posed in a document to be further discussed. Conclusion – [director] did not intend for the PWN document to mean what PWN means in IDEA terms. It was a document to summarize proposed ideas for [Student] with start date to move forward for [Student]."

¹² Notes from the Parent taken during the meeting indicated that there were no data or plan for specially designed instruction to review. Notes also documented concerns that the Student was expressing increased anxiety at school because he felt that he was being singled out for accommodations.

- Specific Goal Development will take place during Special Ed Teacher "Release Time"
 1. Scheduled Thursday
- Other Items (3:45pm)
- Closing (3:55pm)
 - Review of next steps

36. On January 22, 2020, the director gave a presentation to school board members where he noted budgetary concerns and recommended "re-calibrating" IEP minutes in IEP documents to align with the District's practice of using paraeducators and certified staff to deliver specially designed instruction within the general education classroom.

37. On January 23, 2020, the District provided a progress report on the Student's goals:

- **GOAL ONE: Written Expression:** By 6/02/20 When given a narrative paper to write [Student] will use words and phrases, telling details and sensory language, improving his ability to convey a vivid picture of the experiences, events, setting, and/or characters from using the same words (really, wish, happy, enjoy) repeatedly in a 5 paragraph essay to to [sic] using words (like-actually, request, content, appreciate) at least 4 of these per 5 paragraph essay, over 3 data days as measured by teacher collected data.
 - Progress (Date of Review: 1/28/2020) – Sufficient Progress
 - Comments: [Student] did really well with his essay in November. I [sic] was not a narrative essay but he did use a lot of descriptions to support his points. When there is a narrative essay he should show how much he has improved over the last few months.
- **GOAL TWO: Reading:** By 06/02/2020 When given a graded (fiction/nonfiction) passage [Student] will read the passage improving reading comprehension from answering 80% questions correctly at 4.7 grade level to answering 80% questions correctly at 5.0. 5.8. 6.5 over 3 data days as measured by teacher collected data (informal assessment data, MAPS scores, classroom data)
 - Progress (Date of Review: 1/28/2020) Sufficient Progress
 - Comments: None
- **GOAL THREE: Written Expression:** By 6/2/2020 When given a writing prompt [Student] will write an organized, on topic 5 complete sentence paragraph improving organization and complete sentences from writing one unorganized, on topic paragraph including at least 5 complete sentences, over 3 data days as measured by teacher collected data.
 - Progress (Date of review: 1/28/2020) – Sufficient Progress
 - Comments: None

38. On January 24, 2020, the director set a letter to all parents of students supported by an IEP, including the Parent, with the subject, "Changes in the IEP Documents: Clerical Amendment." The letter stated: "I am writing you to collaborate on a proposed update or amendment to your child's IEP (individual education program document). This will be handled by the case-manager assigned...In most cases, this will be addressed through a phone call and a copy of the amended IEP will be sent to you directly." The letter went on to explain that the amendment was necessary to correct an error in the IEPs so that the IEPs would reflect the District's current service model in which "services are most often supported directly by Para Educators and supervised/monitored by the Special Education Teacher. So the IEP does not reflect what has been established as our service model. So it's time to update this error." The

letter notified parents that it was not necessary to conduct a meeting to amend the IEP, and that instead, "IEP case managers would be scheduling a phone call to answer any questions, [and] an edited IEP would be sent to the parents." The letter informed parents that an IEP meeting could be scheduled if requested.

39. There was no documentation that the Parent objected to or requested an IEP meeting in response to the January 24, 2020 letter.¹³
40. On January 27, 2020, the advocate emailed the director regarding concerns that the science teacher was being asked to "drop" every third science grade the Student had received due to concerns with his grade in the class and a need to maintain athletic eligibility.
41. On January 29, 2020, the advocate emailed the director to request a date for the IEP meeting the Parent requested, and proposed the following agenda: 1) specific plans outlining implementation of the IEP as written; 2) an explanation of the specially designed instruction for Student's goals; and, 3) information related to progress monitoring as listed in the goals.
42. On January 31, 2020, the special education teacher emailed the Parent and copied the director regarding the Student's performance that week. She wrote:
 - Happy Friday. It is early in the semester, so not a lot to report.
 - History they are working on mid-evil [sic] history study notes
 - Language Arts they worked on their organizer for their research project...he was able to turn in today on time. I check in with him and the other students leaving [English teacher] able [sic] to sit with him and help as needed.
 - Science I [sic] was able to help with the lab (they put yeast, water and smooshed fruit into a beaker with a balloon on top) and help with their cactus project [sic]. (that was one of my sub days to work with teachers)

Let me know if you would like more or different information.
43. On February 6, 2020, the Parent received a letter from the director in response to her request for the Student's special education records. The letter stated that when completing the records request, it was discovered the Student's special education file was "not within the Special Education cabinet," and that "this was the only file missing." It was noted that the director,

¹³ During an interview with the director on April 21, 2020, the director noted the Student qualified for services by professional judgment and required minimal specially designed instruction but with several accommodations. He also noted the inclusionary model for services had been in existence in the District for the last four years and that during that time, paraeducators had delivered the specially designed instruction under the supervision of a special education teacher. The director stated the Student's IEP team would have known this when it recommended the Student for the program, as it did for the other students who were appropriately served by that program, but that the IEP was not written to correctly identify the Student's needs. The director further noted that the Parent had declined additional pull-out services. Thus, the director maintained that the amendment to the Student's IEP was clerical in nature only and reflected the needs as identified on the Student's IEP. The Director further explained that the inclusionary model was only one of four models available to students and confirmed that the District continued to offer a continuum of placement options to students.

special education teacher, and school psychologist searched their offices extensively, and informed the District superintendent, but were unable to locate the missing file.

44. On February 7, 2020, the special education teacher emailed the Parent and copied the director regarding the Student's performance that week. She wrote:

- Good afternoon,
 - In language arts we have moved on to writing our essays. He is on track, but still needs a few more sentences to finish his conclusion. [English teacher] said that they can finish up on Monday if they need to.
 - History had a test today it was multiple choice but I had [paraeducator] offer to read the test to the students if they wanted.
 - He will have a test in science Monday [Paraeducator] said they were given a study guide or pre test to study so you might want to look for that.

45. On February 13, 2020, the Student's IEP team met. The following members were in attendance: The Parent, advocate, director, special education teacher, math teacher, science teacher, and school psychologist. The science teacher had to leave the meeting early and accordingly, was asked by the director to provide his updates early in the meeting.¹⁴ Notes taken by the Parent during the meeting documented the team's discussion of her concerns regarding implementation of the Student's accommodations, including that she should be notified if the Student refused accommodations and that teachers should try to offer accommodations without identifying the accommodation as an "accommodation" in front of other students. In her notes, the Parent wrote that she asked the director when specially designed instruction was implemented for the Student, and that the director and special education teacher responded it was the second week of January, because prior to that, the paraeducator was not working with students with IEPs.

46. On February 21, 2020, the director emailed the advocate with notes from the February 13, 2020 IEP meeting and reminded the advocate that the case manager would be sending out the PWN¹⁵ shortly. In his notes, the director documented that the science teacher indicated during the meeting that he had to leave early due to prior commitments, and that a second advocate brought by the Parent raised concerns regarding the teacher's early departure and requested the meeting be rescheduled. The director's email documented that he had interpreted the laws and regulations to permit the meeting to continue because another general education teacher was present at the meeting, which he felt met the general education teacher requirements for IEP meetings. The director's notes additionally documented that communication would continue between the special education teacher and the Parent, that it

¹⁴ There was disagreement during the meeting regarding the early departure of the science teacher without a pre-approved waiver. It was agreed that the meeting would continue and the group would seek guidance regarding the appropriateness of the early departure after the meeting.

¹⁵ In the advocate's reply, the advocate asserted the Parent never received PWN following the February 13, 2020 IEP meeting.

would document accommodations and modifications provided in the classroom, Student's progress, and IEP goals to be addressed, and that the next meeting would be in April.

47. On February 21, 2020, the special education teacher emailed the Parent regarding the Student's performance that week. She wrote:

- Happy Friday, [Parent], I hope [Student] is feeling better soon...
 - He missed a test in history about the dark ages, so if you want him to review the information over the weekend that might be good. It was open book and if he wanted to take it in my room I can go over the essay part with him.
 - This week we did comprehension questions on The Necklace I checked on him and we talked about some of the questions and responses. Today as a class we read the first act and some of the second act of 'The Tempest' in his perspectives book, and talked about it as a class. I am sure we will be reviewing it on Monday but if you want to look over it with him this weekend that could be helpful.
 - I got information on the [test]. They are allowed to have accommodations on the test and we can set that up...
 - Just a reminder that the informational meeting for [tech school] will be Monday during [class] and then sign up after that.

48. On March 3, 2020, the advocate emailed the special education teacher regarding concerns that she had learned an athletic coach had requested the Student be permitted to drop a history grade to remain eligible for athletics. In her email, she wrote:

[Parent] and I talked this morning about concerns which I want to bring to your attention and ask about the plan you have to address them...1. [Student's] dropping History grade. The class format is lecture and testing. At our last two meetings (January and February) you stated you would be looking into the support [Student] needed for [Student] to be successful in that class. It is also mentioned as a concern needing monitoring in the IEP written last June. His testing continues to be seem to be an issue [sic]. As the online grade document seems to indicate. When you talk to [history teacher] would you ask what he believes is impacting his grade?

49. In the advocate's reply, the advocate asserted that as of March 2020, the Student still did not have access text-to-speech or speech-to-text technology. Regarding text-to-speech, in a follow up email to the interview with OSPI on April 21, 2020, the director wrote that the Student had access to Learning Alley [for audio books], and that regarding speech-to-text, the Student had been using Google Docs for ELA. The director stated the District was in the process of providing training on this technology and other similar technologies. During an interview with the advocate on April 21, 2020, the advocate asserted that while the Student had been given a password to access Learning Alley, the Student reported still not knowing how to use Learning Alley and that the special education teacher has not shown him how to access and navigate the technology. The Student reported having access to and using Google Docs in ELA, but has not used it in other classes.

50. In the District's response, the District acknowledged it had not been monitoring the Student's progress or providing progress reporting to the Parent during the 2019-2020 school year. However, the District asserted that it was using the recent school closures at the end of the

2019-2020 school year to “re-calibrate” how it documents the provision of specially designed instruction and related documentation in progress reports and how it collects data regarding student progress. During an interview with the advocate on April 21, 2020, the advocate indicated the Parent had not yet received any data regarding the Student’s progress.

51. The director indicated during the interview on April 21, 2020 that in January 2020, the special education teacher’s schedule was shifted to make her available to the Student during science so that she could co-teach with the paraeducator. The advocate reported the Student began reporting that he started to receive some support after this shift occurred.

CONCLUSIONS

Issue 1: IEP Development – The advocate alleged the District did not follow procedures for developing the Student’s individualized education program (IEP), including determining the level of services in the Student’s IEP for the 2019-2020 school year and providing prior written notice. A school district must develop a student’s IEP in compliance with the procedural requirements of the IDEA and state regulations. This includes making sure the IEP is designed to meet all of the student’s needs resulting from the student’s disability and that it includes all required components. A district must also provide prior written notice (PWN) to ensure that a parent is aware of the decisions made on matters affecting placement and implementation of the IEP.

After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP, the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

Determining Services

The advocate did not dispute the amount or type of specially designed instruction provided in the Student’s IEP or the appropriateness of accommodations and modifications. Rather, the advocate disputed the District’s amendment of the delivery method on the Student’s IEP in February 2020 from a special education teacher to a paraeducator and alleged that the change was inappropriately based on the District’s staffing model and budgetary concerns instead of the Student’s needs.

On January 22, 2020, the director gave a presentation to the school board, noting his finding that all of the secondary student IEPs in the District, including all of the IEPs for students receiving instruction in the inclusionary classroom model, had IEPs indicating their specially designed instruction was to be designed and delivered by a special education teacher. As part of his presentation, the director noted that the District currently did not have enough special education

teachers to deliver the number of minutes of specially designed instruction currently indicated in IEPs, nor had it been the practice of special education teachers to deliver all specially designed instruction to all students with IEPs. As part of his presentation, the director highlighted the inclusionary classroom model, which utilized paraeducators to deliver specially designed instruction to students that had been designed by special education teachers, and recommended the District amend the IEPs of students who were receiving instruction in the inclusionary classroom model to reflect that they were receiving their specially designed instruction by paraeducators. The presentation stated that if the IEPs of students were amended to reflect this change in delivery method, the District would be appropriately staffed to implement the IEPs. In February 2020, letters proposing amendments went out to all students with IEPs in the inclusionary classroom who were receiving specially designed instruction to indicate the delivery method of specially designed instruction would be changed to a paraeducator. When the OSPI investigator spoke with the director on April 21, 2020 regarding his January 2020 board presentation, the director clarified that the intention of the presentation was not to change the delivery method for any students who had a demonstrated need for specially designed instruction to be delivered by a special education teacher due to budgetary constraints, but rather explained that the District had budgeted for staff to fit an inclusionary program model that was based on the needs it had already identified for students, which included use of paraeducators to deliver specially designed instruction to students with IEPs in the general education classroom, but noted the IEPs did not reflect this because none of the IEPs in the District that had been developed during the previous 2018-2019 school year considered the use of paraeducators. The director further noted that when he spoke to special education staff regarding IEPs developed during the previous year, he was told that staff were not aware they could write IEPs to indicate specially designed instruction was to be designed by a special education teacher and implemented by a paraeducator or certified staff. The director explained that the District continued to offer a continuum of placement options for students and that the amendment was only intended to be a clerical amendment that did not impact the delivery of services or provision of FAPE.

While it is noted that the development of a student's IEP and delivery of services are based on a student's individual needs and not a particular staffing model, schedule or budgetary concerns, there is no indication the amendment in this complaint was based solely on those reasons or was otherwise counter to this Student's needs. When proposing the amendment, the District provided the Parent with notice in the form of a letter, the case manager reached out to the Parent via phone, and the District offered the Parent an opportunity to request an IEP meeting should she disagree with the proposed amendment. There was no indication the Parent responded to the offer to schedule an IEP meeting to discuss the amendment. OSPI finds no violation.

It is noted, however, that while the District asserted the amendment was only clerical in nature, OSPI does not recommend assuming consent from the absence of a response. Moving forward, OSPI recommends that prior to amending a student's IEP, the District take additional steps to document affirmative consent, even for amendments that may be clerical in nature.

Should the Parent have additional concerns or feel the Student has specific needs that require the Student's services be delivered by a special education teacher, she may request an IEP meeting to discuss these concerns.

Prior Written Notice (PWN)

The advocate alleged the District did not follow procedures for PWN. PWN ensures that the parent is aware of the decisions a district has made regarding matters affecting placement or implementation of the IEP. It 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 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. It should also document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. PWN is not an invitation to a meeting and is not required when there are no changes made to the IEP.

The District provided PWN after every IEP meeting where there was a proposed change to the IEP. On at least one occasion, however, the District used the PWN when the District had not proposed a change, but instead used it to document notes of what occurred during a meeting or the District's suggestions for next steps, which were outside the scope of what was discussed at the IEP meeting. On January 6, 2020, for example, the District used PWN to document its understanding of what occurred during the facilitated IEP meeting and to suggest additional next steps for a future meeting, including proposed new goals to discuss. This caused confusion because new proposed goals were included on the PWN that were not agreed to or fully discussed at the facilitated IEP meeting. The District cleared up the misunderstanding with the Parent at future IEP meetings and did not act on the PWN; thus, no violation is found. However, it is recommended the District consider the scope of its PWN and limit its use for situations where it is formally initiating or refusing to initiate a proposed change or an action implicating the provision of a FAPE for the Student, and that it utilize a different mode of communication for notes. OSPI finds no violation.

Issue 2: IEP Implementation – The advocate alleged the District did not follow procedures for implementing the specially designed instruction and accommodations, including text-to-speech and speech-to-text, in the Student's IEP during the 2019-2020 school year.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. Each school district must ensure a student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and each provider is informed of their specific responsibilities related to implementing the student's IEP, as well as the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

Specially Designed Instruction

The advocate alleged the District failed to implement the Student's IEP regarding his specially designed instruction. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique

needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

The Student's IEP provided the Student with specially designed instruction in reading and written expression for 30 minutes twice a week. Although the Student was served in an inclusive program model and received support from a paraeducator during English language arts (ELA), history, and math, the District was unable to offer any documentation to show that from September through December 2019, staff adapted content, methodology, or delivery of instruction as necessary to implement the specially designed instruction in the Student's IEP. OSPI acknowledges the District was able to explain how specially designed instruction would have been provided to the Student during this time and that the District asserted it was offered and the Student refused instruction. OSPI also acknowledges that both parties recognized the Student's tendency to refuse specially designed instruction if offered in a manner that drew attention from peers. However, during a phone interview with the District on April 21, 2020, the District also acknowledged that it did not maintain data or documentation of its implementation of specially designed instruction or any progress data for the Student.

In addition, notes maintained by multiple parties from the facilitated IEP meeting in January 2020 documented confusion regarding implementation of the Student's specially designed instruction and accommodations, and requests from paraeducators for training on how to implement the Student's specially designed instruction and accommodations. Thus, although the Student's inclusive program was designed to implement specially designed instruction for all students with IEPs in the general education setting, similar to the Student in this complaint, the District did not provide documentation to show it implemented specially designed instruction for this particular Student between September and December 2019. OSPI finds the District to be in violation. The District will be required to provide the Student with 3.5 hours of compensatory education in reading and 3.5 written expression (7 total hours). The instruction should be provided individually by a special education teacher and may be provided online due to the current novel coronavirus situation.¹⁶

Following the January 6, 2020 facilitated IEP meeting, documentation showed increased communication between the special education teacher and paraeducator in the Student's general education classrooms regarding the Student's specially designed instruction. The District further noted the special education teacher began co-teaching in at least one of the Student's general education classrooms in January 2020, and there was some indication this was helpful to the

¹⁶ The first day of school for the District for the 2019-2020 school year was September 4, 2019. The Last day of the semester was December 23, 2019. There was no school on November 11, 2019 for Veteran's Day, and the District was on break for Thanksgiving November 28-29, 2019. Accordingly, there were about 15 weeks of school from September-December 2019. The Student's IEP provided him with 1 hour each per week of reading and written expression a week. Because OSPI provides compensatory instruction 1:1 and because the Student likely received some instruction, the Student will be provided compensatory instruction at the rate of 1/4 the number of hours he was denied, or 3.75 (rounded to 3.5) hours each in reading and written expression.

Student in his science class. Although the novel coronavirus has resulted in the closure of school facilities for the remainder of the 2019-2020 school year, it appears the District began providing specially designed instruction in January 2020. OSPI finds no violation after January 2020.

Accommodations and Modifications

The advocate additionally alleged the District failed to implement the Student's accommodations and modifications, including text-to-speech and speech-to-text technology. The Student's IEP required the Student be provided multiple accommodations in all settings due to a specific learning disability, which impacted his ability to read and write at grade level and resulted in a delayed processing speed. The documentation showed the Student's accommodations were inconsistently applied and that the Student's general education teachers were often either unaware of the Student's accommodations or unsure how to implement them in the general education setting. While paraeducators and teachers who had worked with the Student in years prior (e.g., the Student's math teacher) were able to implement the Student's accommodations in some situations, paraeducators were not available throughout the school day in all classes, and at the January 2020 facilitated IEP meeting, general education teachers expressed being unfamiliar with how to implement the Student's accommodations, including text-to-speech/speech-to-text. Specifically, regarding text-to-speech technology, as of November 2019, the District has provided the Student with a password to an account to where he can access audiobooks and textbooks in an audible format. However, the Student reported that he was not provided instructions on how to utilize the account or navigate the site and has not used it outside of class. The Parent reported requesting that the special education teacher show the Student how to use the resource, but as of April 2020, reported the Student has not received instruction on how to use the technology. Regarding speech-to-text technology, the Student has been provided access to Google docs and the District reported it is also exploring other alternative technologies and currently providing training to staff. Overall, the District inconsistently implemented the Student's accommodations and OSPI finds the District to be in violation.

The District will be required to hold an IEP meeting to discuss implementation of the Student's accommodations for the remainder of the 2019-2020 school year. At the commencement of the 2020-2021 school year, the District will be required to hold a second IEP meeting with the special education teacher, director, principal, paraeducator, and all of the Student's general education teachers to review how to implement accommodations and modifications on the Student's IEP, including text-to-speech/speech-to-text.

Issue 3: IEP Meeting Procedures – The advocate alleged the District did not follow IEP meeting procedures during the 2019-2020 school year, including ensuring Parent participation in the meeting process, providing timely notice of meetings, and ensuring all required members of the IEP team attended or followed excusal procedures during the February 13, 2020 IEP meeting.

Districts must schedule IEP meetings at a mutually agreeable time for the parent and the district as necessary to ensure parent participation. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. An IEP team is composed of: the parent(s) of the student; not less than one

regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the student. Parents and districts can agree in writing that a required IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. Neither the IDEA nor its implementing regulations require that an IEP team include more than one regular education teacher. Therefore, if an IEP team includes more than one regular education teacher of the child, excusal provisions do not apply.

While the District did not always send out formal written notices, documentation showed the District communicated with the Parent in some method (usually email) regarding the scheduling of all meetings, such that the Parent was timely notified of meetings and able to attend. The Parent was provided multiple opportunities to participate and her input was fully considered throughout the entire IEP process. On one occasion, an IEP meeting was canceled by the director the day of the meeting due to the director "double booking" his schedule. While this is unfortunate and created an inconvenience, it is not a violation and the District worked with all parties to reschedule. The director also encouraged the team to continue discussing the Student's accommodations in the meantime. All required members of the IEP team were also present for all IEP team meetings. On occasion, the Parent met with individual members of the IEP team, including the Student's teachers, to discuss aspects of the Student's education, which is permissible. There is no requirement that the full IEP team be present for all meetings related to a student if those meetings are not IEP meetings. However, when the Parent requested a full IEP team meeting, all required IEP team members were present.

The advocate additionally alleged IEP meeting procedures were not followed on February 13, 2020, because the Student's general education science teacher expressed at the beginning of the meeting that he would be leaving early and consent from the Parent was not obtained prior to the meeting. Another general education teacher was present for the duration of the meeting and the science teacher was able to report on the Student's progress prior to his early departure. The IDEA only requires excusal procedures to be followed for general education teachers if there will be "not less than one..." at a meeting. OSPI finds no violation.

Issue 4: Progress Monitoring – The advocate alleged the District did not follow procedures for progress monitoring and progress reporting during the 2019-2020 school year. The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child

to achieve those goals. IEPs must include a statement, indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. The District acknowledged it did not collect data on the Student's progress and that it did not provide periodic progress reporting, as evidenced by the lack of progress reporting in the Student's IEP and absence of narrative information or data in the January 2020 progress report. OSPI finds the District to be in violation.

The District will be required to provide OSPI with copies of the Student's next two quarterly progress reports and the data it used to develop the progress reports. The District will also be required to complete training on progress monitoring using OSPI's guidance.

Issue 5: Records – The advocate alleged the District failed to maintain the Student's educational records as required by WAC 392-172A-05230. Each school district or other public agency must be able to provide parents on request a list of the types and locations of educational records collected, maintained or used by the agency. Further, each school district must also protect the confidentiality of personally identifiable information at the collection and storage stages of records and follow procedures regarding the collection and storage of records containing personally identifiable information. This includes providing training or instruction regarding the procedures on protection of the confidentiality of personally identifiable information contained in state education law, the regulations implementing the Family Educational Rights and Privacy Act (34 C.F.R. Part 99), and the school district's procedures, and maintaining, for public inspection, a current listing of names and positions of those employees within the agency who may have access to personally identifiable information.

Here, the District acknowledged that it has misplaced the Student's special education record and is unable to locate it after an exhaustive search. OSPI finds the District to be in violation. The District will be required to meet with the Parent for the purpose of recreating the necessary elements of the file from documents provided by both the District and the Parent. The District will be required to send a list to the Parent and necessary staff members of documents which should be in the file, as well as to teachers and staff who have worked with the Student in the past 4 years, to see if they have copies or have any documents to add.

CORRECTIVE ACTIONS

By or before **May 22, 2020, June 5, 2020, September 11, 2020, September 25, 2020, October 16, 2020, November 6, 2020** and **January 28, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **June 5, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 7 hours of specially designed instruction in

reading and written expression. By **June 5, 2020**, the District will provide OSPI with a copy of the schedule.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **August 28, 2020**, including those needing to be rescheduled.*

No later than **September 11, 2020**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 11, 2020**. Due to the current situation with the novel coronavirus (COVID-19), the services may be provided in an online format.

IEP Meeting

By or before **May 15, 2020**, the Student's IEP team will meet to discuss implementation of the Student's accommodations and modifications for the remainder of the 2019-2020 school year, including speech-to-text/text-to-speech. The meeting should occur virtually or by phone.

By or before **May 22, 2020**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's amended IEP (if applicable); iii) any relevant meeting invitations and prior written notices; iv) a list of people, including their roles, who attended the meeting; and, v) any other relevant documentation.

By or before **September 4, 2020** (or the commencement of the first day of the 2020-2021 school year for the District), the Student's IEP team, including each of the Student's general education teachers for the 2020-2021 school year, the special education teacher, paraeducators, principal, school psychologist, special education director, and Student should he wish to attend, will meet to discuss implementation of the Student's IEP, including the Student's accommodations and modifications. At the meeting, the IEP team should include a discussion of how the Student utilizes his speech-to-text/text-to-speech technologies.

By **September 11, 2020**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's

amended IEP (if applicable); iii) any relevant meeting invitations and prior written notices; iv) a list of people, including their roles, who attended the meeting; and, v) any other relevant documentation.

Records Development

By **October 2, 2020**, the District will provide the Parent with a list of documents it believes should be in the Student's file and note which documents it has copies of. The District should also reach out to District staff who have worked with the Student over the last four years to determine if any of those staff members have copies of any of the Student's records to add to the Student's updated file. By **October 16, 2020**, the District will provide a copy of this list of documents to OSPI.

By **October 30, 2020**, the District will meet with the Parent to review what documents it has copied to the Student's special education file and to review and/or copy any additional documents the Parent makes available to the District, which she believes should be copied to the Student's file. At this meeting, the Parent and District will also collaborate to identify any remaining documents not included in the file and, if appropriate, develop a plan to obtain the documents. By **November 6, 2020**, the District will submit a list to OSPI of all the documents contained in the Student's updated special education file, along with the location of the file and a list of individuals who have access to the file.

Progress Monitoring

The District will provide OSPI with a copy of the next two copies of the Student's progress reports (around **September 25, 2020** and **January 28, 2021**), along with the data it collected to determine the Student's progress. The progress reports should include narrative comments regarding the Student's progress on the Student's IEP goals. The documentation provided to OSPI should also include confirmation that the progress reports were provided to the Parent.

DISTRICT SPECIFIC:

Training

By or before **September 11, 2020**, District special education administrative staff and special education staff will complete a mini training module on progress monitoring. The free training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the mini training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>. By or before **September 25, 2020**, the District will submit documentation that required staff have completed the training module.

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

It is recommended that prior to the commencement of the 2020-2021 school year, the special education teacher meet with the paraeducator who will be implementing the Student's specially designed instruction in the general education classroom to discuss how the specially designed instruction will be implemented, documented, and how progress data will be collected and progress monitored. It is further recommended that the special education teacher and paraeducators responsible for implementing the Student's specially designed instruction discuss with the Student his need for specially designed instruction and how they can work together to meet his needs and help him be successful.

Dated this ____ day of April, 2020

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.)