

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-47

PROCEDURAL HISTORY

On March 26, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Issaquah School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 27, 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 April 22, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent the same day.

On April 30, 2020, OSPI received the District's supplemental response to the complaint. OSPI forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On May 15, 2020, OSPI interviewed the Parent.

On May 19, 2020 OSPI determined that additional information would be helpful to the investigation and contacted the District director of special education. OSPI received the requested information from the District on May 20, 2020. OSPI forwarded that information to the Parent the same day.

On May 21, 2020, OSPI received additional information from the Parent. OSPI forwarded that information to the District on May 22, 2020.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on September 4, 2019. Any information included from events prior to September 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) for the 2019-2020 school year, including procedures for determining the Student's least restrictive environment, and for appropriately addressing the Student's post-secondary/transition goals?
2. Did the District follow procedures to respond to the Parent's proposal to reduce the Student's math services, including providing prior written notice (PWN)?

LEGAL STANDARDS

IEP Definition: A district must develop an individualized education program (IEP) for a Student eligible for special education services that contains all required elements. An IEP must contain a statement of: 1) the student's present levels of academic achievement and functional performance; 2) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; 3) how the district will measure and report the student's progress toward their annual IEP goals; 4) the special education services, related services, and supplementary aids to be provided to the student; 5) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; 6) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; 7) extended school year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); 8) behavioral intervention plan (BIP), if necessary for the student to receive FAPE; 9) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; 10) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; 11) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; 12) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and 13) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

Transfer of Rights at Age of Majority: All of the IDEA procedural safeguards, duties, and responsibilities transfer to a student at age eighteen. School districts must give any required notices to both the adult student and the parent after rights transfer to the adult student. When this transfer occurs, the district must notify the student and the parent of the transfer of rights. An adult student possesses the rights and responsibilities formerly given to the parent, unless: he or she (1) has been judged incapable of exercising these rights by a court of law pursuant to chapter 11.88 RCW; or (2) has been certified as unable to provide informed consent, or to make educational decisions, and has an educational representative appointed for them, pursuant to WAC 392-172A-05135(5). An adult student may elect to authorize another adult to make educational decisions on his or her behalf using a power of attorney consistent with chapter 11.94 RCW. 34 CFR §300.520; WAC 392-172A-05135.

Definition of Special Education: Under the IDEA, the term "special education" means specially designed instruction provided to a student who has been determined through an evaluation to be eligible for such services. Specially designed instruction must be provided at no cost to the

parents, consistent with a properly formulated IEP, and designed to meet the unique needs of the student. 34 CFR §300.39; WAC 392-172A-01175.

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. A need for special education is not limited strictly to academics; it also may include physical education and transition services. 34 CFR §300.39; WAC 392-172A-01175.

Program Modifications and Accommodations: An IEP must include a statement of the program modifications and accommodations 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(4); WAC 392-172A-03090(1)(d).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. 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.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current

classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The review of existing data does not need to be conducted through a meeting, but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b); 300.501(b); WAC 392-172A-03025(3); WAC 392-172A-05000(2). The school district must provide a copy of the evaluation report and documentation of determination of eligibility to the parent, and at no cost to the parent. 34 CFR §300.306; WAC 392-172A-03040(1)(b).

Evaluation before Change in Eligibility: Districts must evaluate a student eligible for special education before determining that the student is no longer eligible for special education services and must include the parent in making that determination. 34 CFR §§300.305(e); 300.304; WAC 392-172A-02000(2)(a); 392-172A-03030(1). Districts must follow evaluation procedures as outlined in WACs 392-172A-03020 through 392-172A-03080. 34 CFR §300.305; WAC 392-172A-03030(1).

Consideration of Less Restrictive Placement Options: Less restrictive placements always have to be considered, but they do not always have to be tried. As a rule, when there is uncertainty about the appropriate placement for a student, a district should make a diligent effort to educate him in a less restrictive environment before proposing a more restrictive one. *Seattle School District No. 1 v. B.S.*, 82 F.3d 1493, 1500 (9th Cir. 1996).

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

Transition Services: Transition services means a coordinated set of activities for a student eligible for special education that: is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational education, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation, and is based on the individual

student's needs, taking into account the student's strengths, preferences, and interests; and includes: instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation. Transition services for students eligible for special education may be special education, if provided as specially designed instruction, or a related service, if required to assist a student eligible for special education to benefit from special education. 34 CFR §300.43(a); WAC 392-172A-01190.

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals. Beginning no later than one year before the student reaches the age of majority under state law (18), the IEP must include a statement that the district has informed the student of the rights under IDEA Part B that will transfer to him or her on reaching the age of majority, unless an exception applies. 34 CFR §300.320; WAC 392-172A-03090.

Graduation and Transition Planning: Graduation with a regular high school diploma ends a student's eligibility for services under Part B of the IDEA. Once a student meets all state and local graduation requirements, a district must issue the student a diploma. RCW 28A.230.120. Transition services are not intended to extend past a student's secondary education. Rather, they are intended to end upon graduation with a regular diploma. *Letter to Moore*, 39 IDELR 189 (OSEP 2002).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has the ultimate responsibility to ensure an IEP includes the services that a student needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 48, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9); *see also Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003); *Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

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 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.

FINDINGS OF FACT

Background: 2018-2019 School Year

1. At the commencement of the 2018-2019 school year, the Student was eligible for special education services under the category "other health impairment". He was an eleventh-grade student and attended a District high school. His January 2018 individualized education program (IEP) was in effect.¹ The January 2018 IEP provided the Student with the following specially designed instruction:
 - 50 minutes of behavior weekly, to be provided by a special education teacher in the special education setting.

The IEP included post-secondary goals in education/training and employment along with transition services to help meet those goals.

2. The Student began the 2018-2019 school year enrolled in Algebra II for math.²

¹ The Student has a diagnosis of attention deficit hyperactivity disorder (ADHD). The Student initially qualified for special education services in 2007 under the category of speech and language impairment. In 2010, a reevaluation showed the Student qualified for eligibility for special education services under the category of specific learning disability in reading and math. The Student's eligibility category was changed to specific learning disability. In 2012, following a reevaluation, the Student was exited from special education and a 504 plan was put in place. In December 2017, the Student was initially evaluated for special education services in both academics (reading, writing and math) and behavior. The evaluation did not show a "significant delay" in any academic area, but it was noted that the Student was still struggling in class, particularly on longer assignments and tests, despite his 504 accommodations, access to tutoring, and one-on-one meetings with teachers. The evaluation determined that while the Student did not require specially designed instruction in academics, he did in behavior/executive functioning and qualified for special education services under the category of "other health impairment." The Student's IEP team met and developed an IEP in January 2018, based on the results of the initial evaluation. That same year, the Student completed a transition assessment, which noted the Student's interest in pursuing a four-year college degree after high school and documented the Student's interest in a career in broadcasting, athletics, or real estate. It also noted the Student's interest in participating in school athletics.

² The Student completed common core geometry the previous year.

3. On October 29, 2018, the Student's IEP team met for his annual review.
4. In November 2018, the Student's IEP team initiated an assessment revision to evaluate the Student in math only. At the time, the Student was receiving a failing grade in math despite having 504 accommodations and individual support in the general education classroom and his teacher reporting that the Student was putting forth good effort. The Student's Parent also reported the Student was working with two outside tutors. The assessment revision showed the Student had significant delays in achievement in math and required specially designed instruction in a special education setting. The Student's performance on the assessment revision resulted in the IEP team qualifying the Student for special education services in math in addition to behavior, and amending the IEP to add math problem solving and math calculation goals. Following the IEP meeting, the District issued prior written notice (PWN), documenting its decision and stating its intention of updating the Student's IEP within thirty days.
5. On April 24, 2019, the Student's IEP team met to amend his IEP.³ The IEP was amended to provide the Student with the following amount of specially designed instruction, to be provided by a special education teacher in the special education setting:
 - 200 minutes weekly of math; and,
 - 50 minutes weekly of behavior.⁴

The April 2019 amended IEP stated the Student's post-secondary goals were to, upon leaving public school, "attend a four year university, community college or vocational program and then be employed in a career of his choosing." The April 2019 IEP provided him with the following transition services:

- "[Specially designed instruction] in behavior will assist [Student] in gaining admission to college and improving his ability to place in college level courses";
- "Instruction and support in completing the [high school] Culminating activities will prepare [Student] for post-secondary education by researching college choices and requirements;"
- "[Student] will use the Career Center to research admission requirements, course offerings, cost and availability of financial aid for different colleges;" and,

³ The April 2019 IEP included a statement of the impact of the Student's disability, noting his ADHD impacted his performance in math and executive functioning and that he required specially designed instruction in both areas. The IEP also documented the different placement options considered by the IEP and the IEP team's decision to place the Student in one special education class per day to receive his specially designed instruction, but that he would otherwise be in the general education setting.

⁴ On April 24, 2019, the District issued PWN following the April 4, 2019 meeting, which noted the Parent's wish for the District to refrain from using the term "behavior" to refer to the specially designed instruction the Student received in organization/executive functioning, as she believed there were racial connotations underlying the term, which negatively impacted her son. Similar concerns were expressed to the OSPI investigator during the interview with the Parent on May 15, 2020. The PWN issued by the District explained that this was the term used in their IEP online system and recognized in their documents. Accordingly, this is the term used throughout this document because it was also used in the District's documents. It is acknowledged that the Student was receiving special education services in behavior for support in an organization/study skill goal.

- ["Student] will access the office of disability services to gain assistance in developing resumes and practicing job interview skills."
6. During the summer of 2019, the District and Parent were in dispute regarding the specially designed instruction provided to the Student in math. In June 2019, a settlement agreement was reached between the District and Parents, whereby the District agreed to pay for the Student to receive private summer tutoring to repeat Algebra II and earn high school credit. The Student attended and earned passing scores on Algebra II during summer 2019, and fulfilled his high school graduation requirement in math.

2019-2020 School Year

7. On August 30, 2019, the special education teacher and case manager (case manager) emailed the Student, who had turned eighteen, and who had accordingly reached the age of majority, and notified him of an IEP meeting scheduled for September 4, 2019.
8. On September 3, 2019, the Student responded to the case manager that he was available to meet on the scheduled date for an IEP meeting. When responding to the case manager, he noted that he would like his Parent to be included in all conversations regarding his academics.
9. September 4, 2019 was the first day of the 2019-2020 school year for the District. At the commencement of the 2019-2020 school year, the Student was eligible for special education services under the category other health impairment, was in the twelfth grade, and attended a District high school. The Student's April 2019 IEP was in effect.
10. For the 2019-2020 school year, the District enrolled the Student in "math lab" as indicated on his IEP. Math lab was a special education class taught by the Student's case manager. According to the District's response, during math lab, students were presented with "activities, instruction and feedback on math concepts, including transformations, factoring, and balancing equations." During math lab, the District also collected data on the Student's progress on his IEP goals and offered the Student 1:1 support in math."⁵
11. Also, on September 4, 2019, the Student's IEP team met to discuss the Student's IEP and schedule for the upcoming school year. The Student, Parent, special education teacher, general education teacher 1, general education teacher 2, director of secondary special

⁵ The District's response noted the Student "has presented little work [during math lab] and seems unable to perform the [math] goals," on his IEP. It noted that the Student's "perspective is that he has met the high school graduation requirements and should not need math class." The District asserted their perspective is that "[Student] has a math goal, math [specially designed instruction] that need[s] to be delivered," and that "Parents refuse both options to remove math goal (either via re-evaluation or revocation)." The District's response noted that progress monitoring shows little growth in the Student's math goal during the 2019-2020 school year, and stated that the Parent has repeatedly requested to reduce the amount of specially designed instruction to 5 minutes a week with a check-in. The District stated in its response that their perspective is that this amount is "insufficient to meet the need in lack of math mastery and is not specially designed instruction in math."

education services, and assistant principal attended. During the meeting, the Student indicated he did not want to be in math lab. According to emails sent after the meeting to the Student, Parent, and other members of the IEP team documenting the events of the meeting, the Student was informed that any class changes made after September 16, 2019 would show up on his transcript as a "W" and the team accordingly was encouraged to make a decision about math lab prior to that date. The Student and Parent were provided the option of having the Student take a "revision assessment" to see if he still qualified for special education services in math.

12. On September 6, 2019, the case manager emailed the Student's teachers from the 2018-2019 school year regarding the accommodations used by the Student and sent out assessment revision paperwork to his current teachers. To the Student's former teachers, she wrote, "I want to ensure I follow the IEP in the way those accommodations have been implemented in the past." She met with at least one of the Student's previous teachers in person to discuss accommodations. The Student's former language arts and social studies teacher responded:

For [language arts] and [social studies], [Student] did not use many of the accommodations. He did not test separately and never used extra time (his choice, not ours). His mom did ask us to meet with him the week before a test to individually review his notes and work (not in his IEP). He rarely attended our set meetings though. One accommodation was the modification of testing verbally, which we confirmed would require him to go Pass/Fail, which his mom did not want due to college applications.

The Student's former history teacher responded to the language arts and history teacher's email to indicate that she agreed with her reply.

13. Also, on September 6, 2019, the assistant principal emailed the Parent to confirm the Student had met the State requirements in math to graduate through his state testing at a level 2.
14. On September 11, 2019, the District issued PWN, stating no changes were made to the Student's IEP at the September 4, 2019 meeting, but documented that the Parent and Student wanted to exit the Student from math lab. It stated the Student and Parent were presented with the following three options in light of the Student having recently completed the math graduation requirement over the summer and in light of the data on his 2018 reassessment, which showed a disability in math and a need for specially designed instruction:
- 1) "[Student] could continue to receive math services in a math lab during the school day. It would be focused on continued progress towards new math goals, as he has mastered his already;"
 - 2) "Based on the completion of Algebra 2, and [Student's] mastery of both IEP goals, as well as moving to factoring quadratics where $1=1$ by the end of the semester last year, data supports that a revision assessment to look at the area of math would be appropriate. This would allow the team to discuss whether or not [Student] continues to qualify in the area of math. In addition, prior education evaluation (standardized assessment) showed he was in the average range. The decision to add math services was based on curriculum based measures and his previous progression of content. All of these factors would be considered if a revision assessment occurred;" and,
 - 3) "The team discussed revocation of consent to the IEP and transitioning to a 504 if the family wanted an immediate change to the schedule. The team discussed the pros and cons of this and how it is different from an IEP."

The PWN also documented the IEP team's discussion regarding the Student's transition to a college setting the upcoming year, including that services would not continue in college, and that accommodations may be different in college than what were provided in high school.

15. On September 11, 2019, the Parent emailed the case manager that the family had decided to continue with math lab first semester and the Student would "look to test out for 2nd semester." She stated the timeline for making a change was too short to act otherwise. The case manager responded the same day that she was "on board" with the plan and would watch for the Student's email notifying her of his decision.
16. On September 19, 2019, the District emailed the Parent to request her attendance at an IEP meeting regarding the Student scheduled for October 16, 2019. The same day, the Parent responded that she could attend.
17. On October 2, 2019, the case manager emailed the Parent, noting concerns she had regarding the Student's performance in math lab. She noted the Student was frequently "off-task," on his phone, having side-conversations, using the bathroom daily, and did not seem engaged. The case manager acknowledged the Student's behaviors might have been due to the Student not taking algebra 2 like the other students, but indicated she was there to reteach and preteach everyday concepts "that are all skills that [Student] may need (or benefit from having) for whatever math courses he chooses to pursue in college next year." In her email, she also explained her expectations of the Student during math lab and how he was being graded. She explained the Student's grade came from completing work during class, making a note card for each unit (which was made as a class), and taking the "test" for the unit.⁶

The same day, the Parent responded to the case manager's email and requested a meeting to discuss the Student's enrollment in math lab. In her email, she wrote the following:

[Student] and I actually have been talking about the lab and his concern about what he is getting out of it. [Student] mentioned a test that you had him take for your research and I decided to wait until this week to contact, but then Monday happened. When we decided that he would stay in the lab, we had something else in mind as far as prep for his ACT/SAT test. [Student] is taking a lot of prep and taking additional test in your class when he isn't taking a math class is going to be testing overload and if you did give him a test, it shouldn't

⁶ In her email, the case manager explained that the Student was required to take the test for each unit so she could assess the Student's progress on the skills discussed during lab. She noted that if anything was on the test that was not covered in lab, it would be crossed out. The class then went over the test as a group, and the Student was provided an opportunity to "retake" the test, the case manager wrote, "I just want to see that he has improved in something (i.e., the extra help is helping fill in areas of need)." The Student would receive an A for "simply improving from the original to the retake." The Student would complete all work during lab so he did not miss any general education or "flex" time. The Student was also permitted to use a notecard on the original and retake tests and was permitted to add cues to the notecard for the retake. During a phone call with the OSPI investigator on May 15, 2020, the Parent stated she and the Student felt the tests given to the Student by the case manager were "research," to see if the case manager's teaching methods were successful and were not indicated in the Student's IEP. Throughout emails, the Parent refers to the "tests" given to the Student as "research."

count towards his grade. As I am writing this email, a grade came through and I definitely believe now that we need to meet about what this lab will mean for him.

18. On October 3, 2019, the case manager emailed the director of secondary services for support in response to the Parent's email and stated, "I feel my expectations are reasonable, specially designed (as I have data to support he doesn't have the skills we are doing in class) and I have data about progress of instruction."

19. Also, on October 3, 2019, the case manager emailed the Parent to provide clarification on the "tests" the Student was taking:

[Student] is not taking a test in the sense that I am putting his score into my gradebook. In fact, I wrote 'practice only' on his initial test to remind him that I am looking to see what he knows and doesn't know to determine what skills I should be reteaching. He scored a 10/40 on the first assessment related to transformations of functions. For his retake, the goal was to improve to at least an 11/40 with all the corrections and reteaching we did prior to completing the 'retake.' If he had, he would have earned full credit in the gradebook. This is a way to determine student progress and mastery of skills. It is an opportunity for me, and him to see his progress and what he understands and doesn't understand.

The case manager additionally requested that the Parent and Student provide her with their expectations of math lab prior to the meeting so she could "brainstorm solutions and ideas around how [her] expectations and [theirs] align[ed]."

20. On October 8, 2019, the Parent responded to the case manager and requested she use math lab time to help the Student prepare for his upcoming ACT. The case manager responded the same day to inquire if the Student had specific materials he was working on. Later that day, the Parent responded with information regarding materials the Student was working on through an online ACT preparation course. She informed the case manager the Student could concentrate on math preparation during math lab and could ask her for help "if he gets stuck."

21. On October 10, 2019, the District emailed a meeting invitation⁷ to the Parents and Student for the IEP meeting scheduled for October 16, 2019.

22. On October 14, 2019, the case manager emailed the Parent and Student a draft IEP.

23. On October 15, 2019, the Parent emailed the case manager and requested the meeting be rescheduled. The meeting was rescheduled for October 29, 2019.

24. On October 17, 2019, the Parent met with the principal regarding her concerns with the Student's IEP and the Student's enrollment in math lab.

25. On October 18, 2019, the Parent emailed the principal to say she had forgotten to mention a couple important items when they spoke and asked to speak again prior to the Student's IEP meeting. The principal followed up with a phone call before the meeting.

⁷ The date on the meeting invitation was October 8, 2019. Documentation showed it was emailed to the Parent on October 10, 2019.

26. On October 24, 2019, the Student emailed the case manager the following:

I am requesting a meeting with you, my Mom and [principal] to discuss Math Lab. You keep giving me grades for math sheets after telling me you wouldn't and it is dropping my grade. It still feels like test [sic]. There are also other things that have happened that I would like to talk about. This semester was not supposed to be stressful because of math. I don't have a math class. I'm done with my math requirements. I was just contacted again by [college] yesterday and I think my energy should be concentrated on my ACT/SAT Prep and other classes. The prep that I use at home is what helps me. What is being done in class burns me out. I haven't had a break. I would like to meet next week and this week use [sic] my time in class preparing my way for my ACT test Saturday.

27. Also, on October 24, 2019, the case manager emailed the assistant superintendent, the director of secondary special services, the assistant principal, and the principal to request additional support at the upcoming IEP meeting. She noted the Student was not engaged or doing work during math lab. She explained that she "continued to push [with the Student] that we can alter IEP goals to meet the skill set we need to focus on," but that she was unsure what she was expected to do with a student who was not in Algebra 2, but who she was trying "extremely hard to do math with."

28. On October 24, 2019, the case manager also responded to the Student's email:

I know on Tuesday I spoke with you about how your goals in the IEP will drive the work that you will be doing in class (as a component of improving your math). From the conversation I asked you to think about what skills you feel you would benefit the most from getting support with. I continue to be open to looking over practice tests you've taken and helping identify what those topics might be. When we write your IEP those goals will drive our instruction and it will hopefully ensure that what we are doing you find valuable. As for this week, I will let you work on materials that you bring in to help you get ready for Saturday's test and may ask to see them, so that I can understand the topics you are using to prepare with and the topics in math you are covering. Then on Tuesday we can, as a team, decide what our focus will be on with your IEP goals, so that moving forward you can view lab in a more positive, helpful way.

29. On October 29, 2019,⁸ the Student's IEP team convened for the Student's annual review. The Parent, Student, special education teacher, general education teacher, school counselor, and District representative were present. At the meeting, it was noted that the Student had met all of his behavior goals, but would still benefit from check-ins. The IEP team discussed having the Student reevaluated to determine if he continued to qualify for special education services (either in just math, or in both math and behavior). The team discussed what 504 accommodations might look like, and the possibility of doing a file review instead of a new evaluation if the evaluator had sufficient information. The family agreed to bring in outside

⁸ Meeting notes kept during the IEP meeting describe the Parent's concerns regarding the Student's GPA if he were to exit from special education, and that there would be no "pass/fail" grading. The notes indicated the Parent had not yet signed consent for the Student to be reevaluated in math or behavior but that both options were discussed. OSPI notes that because the Student was the age of majority, the Parent's consent was not required and the District would have needed to obtain the Student's consent.

information about math from the Student's summer course work. The Student and Parent stated they would like to discuss all options and follow up within thirty days.⁹

The IEP resulting from the October 29, 2019 IEP meeting indicated the Student would spend 89% of his time in the general education setting and provided him with the following specially designed instruction:

- Math, 200 minutes weekly to be provided by a special education teacher in the special education setting; and,
- Behavior, 30 minutes monthly to be provided by a special education teacher in the special education setting.

The IEP included several accommodations¹⁰. Under considerations for least restrictive environment, it was noted that the Student required a general class with pull-out special education services because the Student's "math needs require additional reteaching, task analysis of skills, and repetition of concepts to reteach concept mastery of content topics. Behaviorally, although having made tremendous gains in completing work and turning it in on time, [Student] continues to require specially designed instruction through check-ins."¹¹

Regarding the Student's present levels of performance in math, the Student's teacher documented that the Student had not yet met his goals, but that some of his low scores may also be an indicator of the Student's effort, as the Student had indicated his lack of desire to participate in math:

[Student] was working on identifying key features of functions based on a graph... identifying transformation of functions...[Student] is taught the skills during the lab time, creates a notecard, does practice problems, and then completes a check for understanding. He is then retaught content and completes a similar assessment again to determine the

⁹ Information regarding the events of the IEP meeting were documented in several emails between the case manager, school psychologist, and Parent following the IEP meeting, as well as in the prior written notice sent to the Parent on November 6, 2019.

¹⁰ Accommodations listed on the October 2019 IEP included the following: "1) Break multi-step assignments/tasks into a task list or checklist with expected due dates. Check with student for understanding of assignment expectations; 2) Use of a calculator and or multiplication table for assessments and assignments; 3) Use of a notecard with formulas or definitions for tests. The notecard must be in the student's own handwriting and be approved by the general education teacher; 4) Provide a copy of class notes. Provide written instructions and directions; 5) 50% additional time on tests with the option to test in a small group setting; 6) Preferential Seating: [Student] benefits from intentional peer pairing with on-task peers and to allow for check-in with peers to understand instructions/directions; 7) Assignments may be modified in length, but not in complexity or content expectations; 8) Allow for one retake of assessments when the score falls below 60%; 9) Allow 1 additional day to complete assignments."

¹¹ In the complaint filed by the Parent, the Parent alleged that "as long as [Student] is considered qualified for special education services in math, he had no choice but to miss out on general education for a full period every day of his final semester. The district took this position even though the math lab was unwanted and embarrassing for [Student] and not his least restrictive environment, and even though he had already finished the general education curriculum for math."

progress of content mastery. On the initial assessment [Student] scored 10/40...On the reassessment, [Student] scored 4.5/40. It should be noted that on the reassessment, [Student] made dashes through 7 problems rather than attempting them like he did on the initial assessment. Behaviorally, [Student] is on his phone often (and redirected back to task by the teacher), uses the bathroom daily, and often does not complete the example problems that are being done in the class (even during whole group instruction). This may therefore be a lower indicator of his abilities.

The IEP included the following goals:

- **Math Goal #1:** "When given a set of quadratic functions where $a > 1$, [Student] will correctly factor the quadratic." (Baseline, 0% accuracy from 10/25/2019, to 80% accuracy, completed by: 10/15/2020)
- **Math Goal #2:** "When given a graph, [Student] will identify the intervals of increasing, decreasing, and positive and negative." (Baseline, 0% accuracy from 10/25/2019 to 75% accuracy on 10/15/2020)
- **Behavior Goal #1:** "When given assignment, [Student] will complete the assignment and turn it in on time to the teacher using the system's work completion routine." (Baseline: From 4 current missing assignments on 10/25/2019 to no more than 2 missing assignments across all courses by 10/15/2020).

The October 2019 IEP included an individualized transition plan for the Student. It noted the Student planned to attend a four-year college after high school and was interested in a career in sports broadcasting, athletics, sports management, or real estate. It noted the Student was working on completing the necessary requirements for a high school diploma, as well as the coursework necessary to be eligible to compete through the National College Athletic Association (NCAA). The following courses of study were listed as contributing toward his measurable post-secondary goals: criminal justice, monsters in literature, introduction to fitness/weight training/conditioning, chemistry, math lab, and IB visual arts SL.

30. Also, on October 29, 2019, following the IEP meeting, the case manager emailed the school psychologist and copied the Student and the Parent to notify the school psychologist what occurred during the IEP meeting. The case manager additionally emailed the director of secondary special services a summary of the meeting where she stated there was a discussion of the Student possibly transferring to a 504 plan, and that the Parent and Student were informed of three different ways that could occur. Emails were also exchanged on October 29, 2019 between the school psychologist and the Parent and Student, in which the Parent stated she would like the Student to be evaluated in math only, and the school psychologist accordingly emailed the Parent and Student a consent for reevaluation form.
31. On October 30, 2019, the Parent met with the school counselor to review the logistics regarding the change in the Student's schedule. The Parents additionally expressed concerns regarding how withdrawing from the math lab class would affect the Student's GPA. The Parent shared that the reason she initially sought out math services for the Student was for geometry, which the Student took and completed during the summer 2019, and therefore, she did not believe the Student had a continued need for math. The Student was not present at these meetings.

32. On October 31, 2019, the Parent emailed the school psychologist and case manager that she and the Student were requesting a follow up meeting to discuss items the Student was “not comfortable” discussing in the IEP setting regarding how best to make changes to the IEP that would have the “least negative impact.” The case manager responded the same day that she was unable to meet on that date and that the Student would need to be present at the meeting to discuss IEP matters because he was eighteen. She suggested the Parent submit questions by email and indicated she would try to answer them in writing.
33. On November 5, 2019, the Parent emailed the case manager that the Student had authorized her to be power of attorney. She stated that she had called and spoke with some of the colleges the Student was applying to and had determined the best plan was for the Student to “keep the IEP but not keep the math lab.” In her email she explained her reasoning:
The goal is for him to only have to check...What is needed to avoid the negative impact from the W that he will receive, is that he is provided a [quarter] grade for Math lab. As of now his grade is a B-, it should be an A. [Student] requested a meeting regarding the grading and I have tried to address this as well [sic]...I see that the test and quizzes have been adjusted, but there was a review in particular that we also thought was not to be graded going in and I would like to personally have a conversation regarding it. It was never clear how his time in the lab was being used between what we expressed and communicated for SAT/ACT prep until [sic]. It was always clear that we didn’t want him in the lab and that we didn’t feel like we had the best choices for him in front of us based on time.
34. On November 6, 2019, the Parent exchanged several emails with both the case manager and the school psychologist.
- The case manager responded to the Parent’s email, reminding her the three ways the Student could possibly be exited from math lab (re-evaluation in math only, re-evaluation in math and behavior, or revocation of special education services). The case manager also requested the Parent provide a copy of the power of attorney form.¹²
 - The Parent emailed the school psychologist that the Student would like to proceed with a reevaluation only in math. She asked what records and information the school psychologist would need from the math class the Student took over the summer with the tutoring agency and inquired about how a reevaluation would be conducted. The school psychologist responded with information regarding the records the Parent should request from the tutoring agency and explained the process she intended to use: “...I would then include any information [tutoring agency] provides along with information from his math lab course here. Then together as a team we will review all the data and make a decision. This will occur if you would love to re-evaluate [sic].” The Parent responded that she was concerned about protecting the Student’s accommodations in other classes.

¹² The District requested the Parent provide them with a signed power of attorney form multiple times. There was no documentation in the Student’s file that the Parent provided the District with a signed power of attorney form. The OSPI investigator followed up with the District to see if staff received the form and it confirmed a signed power of attorney form was not received.

35. Also, on November 6, 2019, the District issued prior written notice¹³ to document for the October 29, 2019 IEP meeting and subsequent conversations. The PWN documented the Parent and Student's concerns over the Student's continued enrollment in math lab. The PWN stated: "[Parent and Student] believe [Student] has met all requirements (passed Algebra 2, is not taking a math course, and Smarter Balanced Assessment) and should not be required to take this course as there is no need according to them." The PWN again detailed documented the following three options considered by the IEP team:

- "The team could complete a reevaluation in the area of math only, so that the team could look at all of the data to determine if he continues to qualify in the area of math. The family requested that no additional testing should be completed and stated that they would contact [tutoring agency] to provide additional information about [Student's] math skills for the IEP team to review in making an eligibility determination. The team discussed that it could look at all the information provided and that the school psychologist would be the one to provide specifics about what would be needed after seeing the information from [tutoring agency]."
- "The IEP team [could] complete a reevaluation of all areas (math and behavior) to determine if the student continues to qualify for IEP services in either eligibility area. The team discussed that if this was completed and he no longer qualified that he could be moved to a 504 plan. As the team went through [Student's] current accommodations later in the meeting, the school counselor shared specifics about which could and could not be made part of a 504 plan. In this way, the team wanted to provide transparency about the differences to ensure the family could make an informed decision."
- "If the family did not want to go through these channels to look at the removal of math lab from his schedule, then the family could opt to revoke consent for special education services and have a 504 plan put in place. The team discussed accommodations as noted above to ensure clarity of this. The family expressed that under no circumstance would they revoke consent to an IEP."

The PWN noted that as the school was moving to a 7-period day, that math would remain at 200 minutes per week, and behavior was reduced from 50 to 30 per month. The team believed the Student's need for specially designed instruction in behavior could be met during the math lab period. The family requested the Student not be included in the whole group instruction.

The PWN also documented the team agreed to add retaking tests when the score falls below 60% as an accommodation.

The PWN additionally stated that at the time the PWN was issued, no decision had been made regarding removing the Student from math lab or exiting the Student from special education. It noted that the goals on the IEP would remain the same until "the team can meet to create

¹³ In the complaint, the Parent stated the District told her "the only way out of daily math lab was to withdraw [Student] from special education altogether or get a reevaluation to erase his disability in math." The Parent wrote that she felt this was "discriminatory." The Parent added that the Student had 30 minutes per month of special education for organizational skills, which she felt was "mislabelled as 'behavior'". The Parent wrote: "I believe [Student] benefits from having an IEP goal to turn in assignments on time. I also think 30 minutes a month is an appropriate amount of time to work on that goal, whereas the 800 minutes a month for math is excessive at this final stage of his secondary education. I told the district we did not agree with giving up all special education as the price to pay for avoiding daily math lab" (emphasis in original).

new IEP goals when the family provides the written data they would like considered in the development of the goals. This information has been requested in two separate emails, in person with the student, and in the IEP meeting.”

The meeting summary and signature page documented that the Student had been informed that rights had transferred to him; however, no release of information was included with the prior written notice or with the other documents provided by the District.

36. On November 7, 2019, the Parent emailed the school psychologist and assistant principal and requested a phone call regarding the Student’s grade in math lab.
37. On November 13, 2019, the Parent spoke with the principal, assistant principal, and case manager to discuss the Student’s grades. Following the phone call, the assistant principal emailed the Parent to summarize her understanding of their conversation. In her email, the assistant principal reiterated that for the Student to exit math lab, either a reevaluation or a revocation of services would need to occur. The Parent was provided information on how to pursue both options.
38. Also, on November 13, 2019, following the meeting, the case manager and school counselor exchanged emails regarding the Student’s schedule. The counselor noted that she was starting to send records for college application reports and that the reports required her to submit a senior schedule. The case manager responded that she had not received paperwork, including a signed consent form, necessary to move forward a reevaluation, and therefore, the Student remained enrolled in math lab.¹⁴
39. On November 20, 2019, the school psychologist engaged in multiple emails regarding the consent to reevaluate form:
 - The school psychologist initially sent the consent form to the Parent and Student.
 - The Parent responded that she believed the Student would always qualify for special education services in math “due to his memory recall and processing,” and said she wanted the Student released from math lab because he completed all of the requirements for graduation and was not currently taking a math class. She stated she would consent to the Student moving to a 504 plan only if the Student “was not subject to further testing” and if he could continue to receive “more impactful” accommodations, including quiz and test retakes. She indicated she had sent the consent form to her “special education specialist” to be reviewed.
 - The school psychologist responded and clarified that the reevaluation would be a file review and would not require new testing. She further explained that in order for the Student to qualify for math, he needed to have a math goal and receive specially designed instruction.
40. On November 25, 2019, the Parent emailed the case manager and assistant principal to request an IEP meeting to discuss reducing the number of minutes of specially designed instruction in math the Student received and to change his goals. She stated she believed the Student should be permitted to keep his IEP and remain qualified for special education

¹⁴ OSPI reminds the District that consent is not required for a file review.

services in math, but that he did not require 200 minutes per week and should be focusing on his transition planning for college.

41. On November 26, 2019, the school psychologist responded that she had contacted the District administration and would follow up after their response.
42. On December 16, 2019, the assistant principal emailed a letter to Parent, outlining the services currently in place for the Student and restated steps the Student could take if he would like to exit math lab. The letter also contained information regarding how the Student's grades were to be determined.
43. On January 10, 2020, the Parent emailed the District's special education director (director) and superintendent to request an IEP meeting. She wrote, "I am concerned that the semester is ending soon and I still haven't had the IEP team meeting or agreement on the amendment I proposed last month." She added that she believed the amendment was consistent with the proposal she and the Student wanted—"to reduce [Student's] special education in math from 200 minutes per week to 30 minutes a month." She stated that she believed was consistent with the Student's transition plan. The Parent also wrote that she felt it was consistent with their desire to remove the Student from math lab during spring semester so the Student could have room to take a creative writing class. The Parent added: "Assistant Principal [assistant principal] saying [sic] the only way out of math lab is to revoke consent for special education or do a reevaluation disqualifying [Student] from special education in math. That makes no sense and violates our rights..."¹⁵
44. On January 21, 2020, the assistant director emailed the Parent that the school was arranging a meeting with all necessary people and that she would attend if possible.
45. On January 22, 2020, the assistant director emailed the Parent, Student, and other IEP team members to propose an IEP meeting on January 30, 2020, to discuss revoking special education services and developing a 504 plan. The assistant director sent a follow up email to the Parent the same day, reiterating that the Student would need to have minutes with a goal and a special education teacher if he were to continue to be eligible for special education services. She confirmed that he had met his organizational ("behavior") goal, and therefore, only had remaining math goals.
46. On January 23, 2020, the Parent's attorney emailed the District's attorney, requesting the District either transition the Student to a 504 plan that contain all of the same accommodations as the Student's existing IEP, or amend the Student's IEP to reduce his minutes of specially designed instruction in math from 200 a week to 30 a month, and leave his minutes of specially designed instruction in behavior unchanged at 30 a month.
47. January 28, 2020 was the first day of school for the spring semester in the District.

¹⁵ This email, rewritten into the complaint, was not included with the District's response. The District's response also did not include an email from the Student, requesting an IEP meeting.

48. Also, on January 28, 2020, the Parent emailed the director and the IEP team to request the Student be enrolled in creative writing and be released of math lab.

The same day, the assistant principal responded to the Parent's email:

We share your desire for [Student] to have a strong start and to be successful. Because we need to maintain the minutes as noted in his IEP (IE: Math Lab), we need to keep [Student's] course schedule the same. If team determines that another course or program is appropriate, following our meeting on Thursday [January 30, 2010], we will expedite any shifts to his schedule to ensure a quick transition.

49. On January 30, 2020, the Student, Parent, director, assistant principal, principal, school psychologist, case manager, director of secondary special services, Parent's attorney, and attorney for the District were present at a meeting¹⁶. According to the District, this meeting was not an IEP meeting. The Parent, however, asserted to OSPI during a phone interview that she believed it was an IEP meeting and accordingly should have received PWN.

50. On January 30, 2020, following the meeting, the assistant principal emailed the Parent and Student that she regretted they were unable to reach resolution at the meeting and that the director would be following up with the Parent's request for the District's attorney to follow up with her attorney.

51. Following the meeting on January 30, 2020, the District issued PWN that the Student's special education services would be terminated upon the Student's graduation, which was planned for June 2020.¹⁷ The PWN did not mention the meeting on January 30, 2020, or address the Parent's request to reduce the Student's minutes in math to 30 minutes a month.

52. On February 10, 2020, the District's attorney emailed the Parent's attorney:

Per my call last week, upon receipt of Parent's revocation of consent to the special education services (attached), the District is proposing to implement the attached list of accommodations for Student through a 504 Plan completed without a team meeting.

If Parent is in agreement, please send me the signed consent form and the District will circulate the necessary 504 documents. If Parent has any questions with this proposal, please let me know."

¹⁶ In the complaint, the Parent reported that the IEP team "did not discuss [the Parents'] proposal to reduce [Student's] special education minutes in math from 200 minutes a week to 30 a month..." She also stated they were not presented with a draft 504 plan. It is noted that the process for developing a 504 plan is separate from the process of developing an IEP.

¹⁷ In her complaint, and during a phone call with the OSPI investigator on May 15, 2020, the Parent stated she believed the PWN sent on January 30, 2020 should have included information from the meeting with IEP members to document the family's request that minutes be reduced and the District's refusal to change minutes. She wrote in her complaint, "to date, we have never received a prior written notice that grants or denies our proposal to limit math instruction to 30 minutes a month, so that [Student] could take an additional general education class in his final semester of high school. We were denied an opportunity for meaningful participation in that decision. We should have had, at the least, an explanation."

53. On February 12, 2020, the Parent's attorney responded on behalf of the Parents that the Parents did not agree with revoking consent to special education services because not all accommodations included in the then current IEP were included on the proposed 504 Plan. She also wrote:

The Parents were not part of the review you describe and, until Monday, had been led to believe that all accommodations would continue. The district had ample opportunity to discuss accommodation changes during the numerous meetings with the mother (including 2 IEP meetings) regarding the unnecessary daily math lab but did not do so. To rewrite and remove accommodations at this late date, as a condition of getting rid of services that the student doesn't want or need, is procedurally problematic as well as harmful. It is essentially a threat- if the parents exercise their right to revoke consent for special education, the district will take away the student's disability accommodations so that his last semester will be harder. There has been no reevaluation or independent evaluation that would justify abandoning the previously adopted accommodations.

54. On March 2, 2020, the District's attorney replied to the Parent's attorney:

The [school] team continues to believe that [Student] is appropriately served through his IEP, and the district does not agree that a 5 minute a day check-in is an appropriate response to his identified need for specially designed instruction in math. In continued efforts to support your family about possible alternative ways of meeting [Student's] educational needs, the district offered its draft proposal to transfer his IEP accommodations to a 504 plan. Only those IEP accommodations that the district saw as necessary and appropriate were placed into the proposed 504 plan.

At this point, the same options [that] were present[ed] in his fall IEP meeting remain possible: 1) revocation of [Student's] IEP services and addressing his necessary accommodations through the proposed 504 plan or; 2) re-evaluation to ascertain if [Student] still qualifies in math [specially designed instruction].¹⁸

55. In her complaint, the Parents wrote: "In sum, the District failed to provide us with an opportunity to discuss our own IEP proposal (reducing math minutes) and the district's proposal (reducing accommodations) as members of the IEP team. The district failed to explain its apparent denial of our proposal in a prior written notice. The district threatened to take away newly approved accommodations as punishment for exercising our revocation rights..."

CONCLUSIONS

Issue 1: IEP Development – The Parent alleged the District failed to follow procedures to develop the Student's individualized education program (IEP) for the 2019-2020 school year, including determining the Student's least restrictive environment, and for appropriately addressing the Student's post-secondary/transition goals.

Under the IDEA, the term "special education" means specially designed instruction provided to a student who has been determined through an evaluation to be eligible for such services. A district must develop an IEP for a student eligible to receive special education services that contains all

¹⁸ In her complaint, the Parent expressed that she felt the District had "in effect, threatened to take away [Student's] disability accommodations across all classes if we revoked consent for the unwanted math lab."

required elements, including, among other things, a statement of the specially designed instruction, accommodations, and modifications the student requires to receive a free appropriate public education, as well as a statement regarding the extent to which the student will participate with students without disabilities, a statement of appropriate, measurable postsecondary goals¹⁹ related to training, education, employment, and independent living skills; and transition services, including courses of study, needed to assist the student in reaching those goals, and for students who have reached the age of majority, a statement that the student has been informed of the rights which transfer to him. The content of the IEP, including the specially designed instruction, accommodations, least restrictive environment, and transition services should be based on data and information contained in the Student's evaluation.

A school district must also ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational needs warrant a reevaluation, or if the adult student or teacher requests a reevaluation. This may occur if the adult student or teacher believes a student no longer requires the amount of services currently indicated in a student's evaluation. When a district determines that a student should be reevaluated, it must follow all required procedures, including providing prior written notice, informing the adult student of the contents of the reevaluation, and following required timelines. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. In lieu of a new assessment, a district may decide to do a file review where a qualified professional reviews existing data on the student, which may include previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and other relevant data. No consent is required for a file review. An adult student may decide to revoke his right to special education services. However, if an adult student does not revoke his right to special education services, districts must evaluate a student eligible for special education before determining that the student is no longer eligible for special education services and must include the adult student in making that determination.

At the commencement of the 2019-2020 school year, the Student's April 2019 IEP was in effect. The IEP team met again on October 29, 2019, to further develop the Student's IEP. Both IEPs were developed with input from the Student and Parent and contained all required elements of an IEP, including a statement of the specially designed instruction, accommodations, and modifications required by the Student to receive a free appropriate public education (FAPE), as determined by the Student's current evaluation, which included teacher reports, Student's performance and progress data, and input from the Parent and Student. Both IEPs also included statements, showing how the IEP team determined the Student's least restrictive environment (both IEPs indicated the District considered less restrictive alternatives, including 100% general education settings, but determined the Student required a pull out special education setting one period per day in order to achieve the math goals on his IEP. It was noted on the IEPs that one period a day in math lab served this purpose). The Student's IEP additionally included post-secondary goals

¹⁹ For students sixteen and older.

developed in response to the Student's input on transition assessments and included transition services, which the Student was accessing.

At the commencement of the 2019-2020 school year, the Student was eighteen and had accordingly reached the age of majority. The Student indicated he did not want to continue taking math lab. This view was shared by the Student's Parent. The Student was enrolled in math lab in order to receive his specially designed instruction in math as indicated on his IEP. At the time, the Student had also met his goal in behavior, but the IEP team and the Student's Parent believed the Student may still benefit from some additional support in organization, due to difficulties in executive functioning related to his diagnosis of ADHD. The IEP team proposed three options to the Student: a reevaluation in math only, a reevaluation in math and behavior, or revocation of all special education services and transition to a 504 plan. To date, the Student did not sign a consent for reevaluation form, indicate that he would like a file review, or state that he revoked services. The District accordingly has continued to implement the Student's IEP.

The Parent requested through her attorney that the District either ensure the Student will have all the same accommodations and modifications on the current IEP if he transfers to a 504 plan or that the District approve her request to keep the IEP and reduce the Student's minutes of specially designed instruction to 30 minutes per month without a reevaluation. The standard for accommodations and modifications under Section 504 of the Rehabilitation Act of 1973 are not the same as accommodations and modifications under the IDEA and accordingly, the District is not required to promise the Student the same accommodations and modifications should he either be determined no longer eligible for special education services or if the Student elects to transfer to a 504 plan. Further, OSPI does not have authority to investigate the development of 504 plans through the special education citizen complaint process, and thus makes no comment on the sufficiency of the District's proposed 504 plan.

It would also be contrary to special education procedures for an IEP team to change the Student's minutes of specially designed instruction absent a current evaluation or data showing that doing so would meet the Student's current needs, especially when the Student's most recent evaluation and assessment show the Student requires significant special education services in math. As stated above, the content in the IEP, including minutes of specially designed instruction, are determined by the Student's IEP team based on evaluation and progress data. The Student's current evaluation and progress data in math continue to show the Student requires specially designed instruction in math. The Student's IEPs show the IEP team considered less restrictive alternatives but rejected them in favor of the Student's current placement because it was what they believed the Student required to meet his current math goals. The District has acknowledged the Student's current evaluation, upon which the Student's IEP was developed, may not reflect the Student's current functional needs in light of his passing the graduation requirement in math and accordingly, have recommended a reevaluation in the form of a file review. While the District could perform a file review without Student consent, the Student has not indicated he would like a review and the IEP team is not obligated to perform one. The District has also offered the Student the option of revoking consent for special education services so he may transfer to a 504 plan. The Student continues to have these options.

Overall, OSPI finds no violation regarding the development of the Student's IEP.

It is noted, however, that the OSPI complaint investigator confirmed with the District that the Parent never provided the District with documentation that the Student authorized her to serve as power of attorney.²⁰ The documents did not include evidence that the Student had signed a release of information to have the District speak with the Parent without him. While the Student indicated that he would like his Parent to be present during conversations and at meetings, the District should have been communicating directly with the Student to inform him of his options and empowering him to make decisions. There were a significant number of communications between the District and the Parent, but it was unclear what the Student wanted. The documentation showed the Student grew increasingly disengaged as the year progressed. It is recommended that moving forward, the District assess its efforts to communicate directly with and empower students who have reached the age of majority to make decisions regarding their education.

Issue 2: Prior Written Notice – The Parent alleged the District failed to follow procedures to respond to her request to reduce the Student's math services, including providing prior written notice.

Prior written notice must be given to the parent or adult student 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.

The Student reached the age of majority prior to the commencement of the school year and accordingly, the District was not obligated to respond to the Parent's requests. The District was, however, obligated to respond to the Student's requests and to provide the Student with prior written notice when appropriate.

The District provided the Student with prior written notice on September 11 and November 6, 2019, which explained the steps the Student could take if he wanted to reduce the number of minutes or remove specially designed instruction in math. His case manager also sent multiple emails at the commencement of the school year, explaining that if he wanted to change courses without having a "withdrawn" on his IEP, a reevaluation would need to occur before the add/drop period. The Student was notified that the reevaluation would include a file review and would not involve additional testing. The Student was also provided the option of revoking from special education services and transitioning to a 504 plan. These same options were continuously provided to the Student throughout the school year.

²⁰ The Parent maintains that she has power of attorney. However, documentation of this in the school records was not provided or produced within the investigation time period.

In her complaint and during her phone interview with the OSPI investigator, the Parent alleged the District was obligated to provide PWN, responding to her specific request to reduce minutes of specially designed instruction in math on the Student's IEP to 30 minutes monthly. When speaking with the OSPI investigator, the Parent also referred to a meeting held on January 30, 2020. According to the Parent's response, the Parent emailed the District on January 10, 2020 requesting an IEP meeting. It is noted that this request was not made by the Student. As previously stated, there is no documentation that the Parent was given power of attorney. The first formal request for a reduction in minutes on behalf of the Student was made on January 23, 2020, by the attorney representing the Parent and Student. The attorney requested the IEP be amended and did not mention an IEP meeting. The emails exchanged between the District and the Parent on which the Student was copied following the demand letter sent by the Student's attorney also did not mention an IEP meeting and no notice of an IEP meeting was sent. The January 30, 2020 meeting, which was attended by the Student and both the attorney for the District and for the Parent/Student, did not include all members of the IEP team (no general education teacher was present). The District asserted that no PWN was sent because there was no IEP meeting. The meeting held does not appear to have been an IEP meeting.

Further, while the Parent and Student's attorney had noted the Parent's request for an amendment in her January 23, 2020 letter, the District had already fully responded to the Parent and Student's concerns about math lab and their desire to reduce or remove specially designed instruction in math in two prior written notices, the December 16, 2019 letter, and in multiple communications, in which the District reiterated the IEP team's belief that the Student's IEP was appropriately developed based on the Student's current evaluation and performance data, and offered the Student options should the Student believe his needs had changed and the IEP was no longer appropriate. Thus, the District was under no legal obligation to send a separate PWN following the January 30, 2020 meeting. OSPI finds no violation.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of May, 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.)