

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-82

PROCEDURAL HISTORY

On October 22, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of two students (Student A and Student B) attending the Nine Mile Falls School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Students' education.

On October 23, 2019, 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 November 15, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on November 18, 2019. OSPI invited the Parent to reply.

On December 5, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District that same day.

On December 6 and 9, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the Parent concerning the same. On December 10, 2019, OSPI received the requested information from the Parent. OSPI forwarded that information to the District that same day.

On December 6 and 9, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the District concerning the same. On December 10, 2019, OSPI received the requested information from the District. OSPI forwarded that information to the Parent on December 11, 2019.

On December 10 and 16, 2019, OSPI's investigator conducted a phone interview of the Parent.

On December 13 and 16, 2019, OSPI's investigator conducted a phone interview of the District's special services director.

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

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 23, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow proper procedures for ensuring the Parent's participation in any IEP meetings for Students A and B that took place during the 2019-2020 school year, including:
 - o Properly responding to the Parent's requests for the same; and,
 - o Following proper procedures concerning having "other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate" attend the meetings?¹
2. For Student A and B's respective June 2019 IEPs, did the District follow proper development procedures by:
 - o Ensuring a properly constituted IEP team was in attendance; and,
 - o Ensuring that each Student's IEP had all the components required by WAC 392-172A-03090?
3. Did the District follow procedures for responding to the Parent's request to review the Students' educational records, consistent with the requirements of WAC 392-172A-05190?

LEGAL STANDARDS

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's individualized education program IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

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

¹ The Parent's complaint includes the following allegation: "At the original IEP meeting, I was not allowed to invite outside providers that know my son." In the course of this investigation, the Parent clarified that this allegation was specific to Student A's June 2019 IEP meeting—in other words, this allegation did not relate to either the 2019-2020 school year or to Student B's IEP meetings. Therefore, this issue will actually be addressed in Issue 2(a): whether Student A's June 2019 IEP team was properly constituted.

individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Team Member Excusal: Parents and districts can agree in writing that an 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).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) 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; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) 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; (l) 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 (m) 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.

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

Education Records: Education records means the type of records covered under the definition of "education records" in the Family Educational Rights and Privacy Act (FERPA), 34 CFR Part 99. WAC 392-172A-05180. Under FERPA, "education records" means those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. 34 CFR §99.3.

"With regard to parents having access to 'raw data or notes,' FERPA exempts from the definition of education records under 34 CFR §99.3 those records considered to be 'sole possession records.' FERPA's sole possession exception is strictly construed to mean 'memory-jogger' type information. For example, a memory-jogger is information that a school official may use as a reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals." Individuals with Disabilities Act (IDEA), 64 Fed. Reg. 12,641 (March 12, 1999) (comment to 34 CFR §300.562).

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, Student A qualified for special education under the category of specific learning disability, was in the first grade, and attended a District elementary school. Student B qualified for special education under the category of developmental delay and attended a District integrated developmental preschool program.

2. Student A and B's respective individualized education program (IEP) teams created a new IEP for each Student in June 2019.
3. On June 6, 2019, the District issued the Parent an initial IEP invitation for Student A for a meeting scheduled for June 12, 2019. The initial IEP invitation said that, on June 12, 2019, an initial IEP would be developed for Student A. It also read, in part:

The parent...may invite individuals who have knowledge or special expertise regarding the student, including related services personnel, to participate...If you...are bringing other individuals to the meeting, please let us know. This will ensure that the meeting space will accommodate all team members.
4. In an interview with OSPI's investigator, the District's director of special services (director) explained the District's general approach to sending IEP meeting invitations to parents: usually, a phone call would precede the sending of the invitation. In this phone call, the District would work with the parent on finding a suitable date. Then, an IEP meeting invitation would be sent to the parent, either via regular mail or by being sent home with the student.

During the above-mentioned interview, the director also stated the District's general policy is to be very accommodating of parents who wish to bring other individuals to IEP meetings that may have special knowledge of the relevant student.

5. On June 7, 2019, Student B's IEP team met. The following individuals attended Student B's IEP meeting: Parent, school psychologist 1, special education teacher 1², and the speech language pathologist.

According to the District's response and other documentation (IEP title page and IEP meeting invitation) included in the complaint:

The District made [an] error: the meeting notice [said] that the special services director would be attending, when in fact school psychologist 1 [attended as] the administrative designee and the special services director later reviewed and signed the report for that purpose.

The District [also] determined that it failed to have a fully comprised IEP team in light of the fact that Student B was transitioning from pre-school to kindergarten.³ The District acknowledges [that] it should have had a regular education kindergarten teacher and [an] elementary special education teacher present at the meeting.

Student B's June 2019 IEP included the following components: present levels of educational performance; measurable annual goals; manner and frequency with which progress on goals will be reported to the Parent; one accommodation; one modification; details on the special education that would be provided to Student B (service type, provider, frequency, location,

² Special education teacher 1 was a special education teacher in Student B's preschool program.

³ The 2019-2020 school year was going to be Student B's first year in kindergarten. Student B's kindergarten class would be located in the same elementary school that her developmental preschool class met in during the 2018-2019 school year.

date range for provision of the same); a description of the extent to which Student B would participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities; a statement that Student B does not require extended school year services or an emergency response protocol; and the following statement: "the District has a procedure for notifying Parents regarding the use of restraint or isolation. A copy of the District's procedure is attached to this IEP."⁴

Student B's June 2019 IEP had him spending most of his time in the general education setting.

6. On June 12, 2019, Student A's IEP team met. The following individuals attended Student A's IEP meeting: general education teacher, Parent, school psychologist 2, and special education teacher 2.

According to the District's response and other documentation (IEP title page and IEP meeting invitation) included in the complaint:

The Notice of IEP meeting delivered to the Parent notified the Parent that the special services director would be attending the IEP. The special services director [though], was not present [at the actual meeting]. The District acknowledges that the special services director was not excused from the meeting by the Parent and did not attend the IEP meeting. He later reviewed the IEP for general compliance purposes and signed it at that time. Although the District informed the Parent [ahead of the meeting] that school psychologist 2 would be present at the meeting, the District should have informed the Parent before the meeting that school psychologist 2 was the designated administrator authorized to bind the District for the purposes of the IEP meeting.

In an interview with OSPI's investigator, the Parent stated she would have preferred that Student A's private counselor (from Frontier Behavioral Health) attend the meeting, as well as a medical professional from Northwest Autism. (The Parent stated that, in the spring of 2019, Student A was being tested at Northwest Autism.) But the Parent stated the period of time between the meeting invitation (June 6, 2019) and the meeting itself (June 12, 2019) was so short and effectively prevented her from inviting these individuals. According to the Parent, at the June 12, 2019 IEP meeting, when she stated she would have preferred that the foregoing two people been in attendance, she was told that a new IEP meeting could be held during the 2019-2020 school year.

Student A's June 2019 IEP included the following components: present levels of educational performance; measurable annual goals for two of the three subjects that Student A would receive specially designed instruction in; manner and frequency with which progress on goals will be reported to the Parent; two accommodations; one modification; details on the special education that would be provided to Student A (service type, provider, frequency, location,

⁴ According to the District, the District's restraint and isolation reporting policy was located in the District's version of the procedural safeguards document, and the Parent was given a copy of this document on or about June 12, 2019. During the course of this investigation, the District did provide OSPI with a copy of its procedural safeguards document, which includes pages detailing how the District informs parents of incidents of restraint and isolation.

date range for provision of the same); a description of the extent to which Student A would participate with nondisabled students in the general education classroom and extracurricular and nonacademic activities; a statement that Student A does not require extended school year services or an emergency response protocol; and the following statement: "the District has a procedure for notifying Parents regarding the use of restraint or isolation. A copy of the District's procedure is attached to this IEP."⁵

According to the District:

Student A's June 2019 IEP should have included a goal in the social-behavioral area. At the [June] IEP meeting, the team, at the request of the Parent, agreed to add a goal in this area. The team developed a goal and it was put into the District's online IEP system. Unfortunately, our investigation [for this special education citizen complaint] discovered that the online IEP system compared the evaluation to the IEP and removed the goal, as it had not been recommended in the evaluation report. The team's determination that Student A needed social-behavioral services should have been reflected in the evaluation report; then the team-developed goals would have properly printed out in the system.

During an interview with OSPI's investigator, the Parent stated that, during Student A's June 2019 IEP meeting, she requested a copy of Student A's test results. Specifically, she said school psychologist 2 had been administering MAP testing⁶ to Student A every couple of weeks.

In regard to the determination of Student A's eligibility category on June 12, 2019, the District stated:

Student A qualified as a student with a specific learning disability on June 12, 2019. At that time, there was also a substantiated medical diagnosis of attention deficit hyperactivity disorder so the team considered the health impairment eligibility category, but the final eligibility decision was that specific learning disability was the most appropriate category. The health impairment category, though, was incorrectly listed on Student A's June 12, 2019 IEP.

Student A's June 2019 IEP team determined Student A needed to be in general education classrooms for approximately 40 to 79 percent of the school week.

7. According to its response to this complaint, to remedy any failures that OSPI may find with the District's handling of Student A and B's respective June 2019 IEPs, the District proposed its staff be provided training in the following areas:

⁵ According to the District, the District's restraint and isolation reporting policy was located in the District's version of the procedural safeguards document, and the Parent was given a copy of this document on or about June 12, 2019.

⁶ "MAP is a computer adaptive test, which means every student gets a unique set of test questions based on responses to previous questions. As the student answers correctly, questions get harder. If the student answers incorrectly, the questions get easier...MAP covers reading, language usage, and math. Some schools also use the MAP Science test to measure student achievement and growth in science." <https://www.nwea.org/blog/2016/answers-to-the-top-6-questions-parents-ask-about-the-map-test/>.

- Appropriate IEP team members, especially when the student is transitioning between services, buildings and programs;
- Appropriate notice provisions for IEP meetings, to include only those individuals planning to attend;
- Appropriate IEP components, such as procedures to ensure consistency for the student based on evaluation results;
- IEP online procedures; and,
- Documenting parent meetings/conversations and prior written notices.

8. The District's 2018-2019 school year ended on June 14, 2019.

2019-2020 School Year

9. The District's 2019-2020 school year began on September 3, 2019.

10. In an interview with OSPI's investigator, the Parent stated: on September 9, 2019, she and the Student's father met with school psychologist 1. During that meeting, the Parent requested an IEP meeting for both Students to discuss updating their respective accommodations. The Parent stated she does not recall making a request for records during her September 9, 2019 meeting with school psychologist 1. At some point after the start of the meeting, the Parent got upset and left the room. She then spoke with either the principal or the assistant principal in a separate room. The Student's father continued to speak with school psychologist 1. According to the Parent, the Student's father subsequently informed her that he too made a request for an IEP meeting for both Students to school psychologist 1 after the Parent left the room.

The principal's notes from the September 9, 2019 meeting reference several concerns the Parent had, including:

- Student A should "on the special education bus."
- "Boys on the general education bus were [bullying] Student A."
- Student A's IEP "has [the] wrong test scores."
- An unclear reference to Student B's "social group class" and a "meeting with [a] counselor."

11. The Parent's complaint, and the District's response, included a September 2019 calendar for Student A. According to both parties, this was a calendar for the Student's general education class and it usually went back-and-forth between the school and the Student's home each day. This calendar has certain handwritten notes on it. For September 9, 2019, the following note appear: "Denied me again for IEP meeting."⁷

⁷ The language quoted above actually appears in the box for Sunday, September 15, 2019, but the text is circled and an arrow points to September 9, 2019. According to the Parent, this text originally appeared in the September 9, 2019 box, but she later received a copy of the calendar where it was not present in the September 9, 2019 box and so she "re-added" it. According to the District, prior to the filing of this citizen complaint, its staff had never seen a copy of the September 2019 calendar with the words "denied me again for IEP meeting" written anywhere on it.

12. According to the school counselor's notes, at some point in mid-September, the Parent met with the counselor and the school principal. In that meeting, the Parent articulated her concerns that Student A needed to be on the special education bus and that Student A demonstrated self-injurious behavior.
13. The District's response included notes from school psychologist 2, dated September 18, 2019. According to those notes, school psychologist 2 investigated the Parent's concern that Student A was being bullied on the bus and Student A reported to school psychologist 2 that "he like[d] the bus. On a scale of 1 – 10 (sad to happy), Student A drew several Os behind the 10—that's how much he likes the bus."
14. During an interview with OSPI's investigator, the Parent stated she did not receive a copy of Student A's spring 2019 MAP testing, which she originally requested during Student A's June 2019 IEP meeting, until she threatened to file a special education citizen complaint sometime in September or October 2019.
15. According to the Parent's reply to the District's response to this complaint, as of October 16, 2019, she had made three verbal requests for IEP meetings for the two Students.
16. According to the District:

Despite the parent's assertion that she made 'repeated' requests for a new IEP meeting, District staff do not recall any requests for a new IEP prior to October 16, 2019. At that time, the principal's notes⁸ reflect that the parent asked for a new IEP meeting and stated something about not having just one per year.

...

The Parent's complaint seems to assert that she made these requests [for IEP meetings for both Students] verbally...To the extent that the parent claims she made numerous verbal requests for new IEP meetings, we unfortunately have to point out that she is often very hostile toward staff, yelling, using profanity and calling staff profane names. If during one of those upset events, she believes that she requested an IEP meeting, the District asserts it received no such requests.
17. According to the District:

The earliest we can find any request for records from the Parent is October 17, 2019...the Parent's email to the school principal on October 18, 2019 confirms that she attempted to get records on October 17, 2019⁹ [but] the Parent seems to believe that she had demanded records earlier via a note in a log or a calendar.

⁸ The principal's meeting notes from October 16, 2019 do not explicitly detail that the Parent requested an IEP meeting for either Student. But the notes do reflect that the Parent had certain concerns about the education of both Students. For example, it read, in part: "accommodations page on both kids." Under Student A, it read, in part: "IEP meeting once a year."

⁹ The Parent's October 18, 2019 email to the principal read, in part: "I tried to get IEP copies to be able to serve you the [special education citizen] complaint yesterday but the office said I'm to deal with you or the special education teacher about it."

18. The Parent's complaint included two letters, one for each Student, and both dated October 18, 2019. These letters were written by the Parent and addressed to the District. Each of these letters read, in part: "I am requesting an IEP meeting regarding the program for my Student."

19. The Parent's complaint included an October 18, 2019 handwritten note, titled 'Letter of Concerns of School Neglect and Failure to Comply.' It read, in part:

I tried to talk to the school psychologist September 4, 6, and 9 about [bullying being experienced by Student A] and IEP meeting only to be denied then and starting in October I made a few more complaints and requests to the school counselor and the principal. Most recent attempts October 15, 16, and 17.

The October 18, 2019 'Letter of Concerns' letter also mentioned the Parent's concerns that Student A's recent medication changes were causing some challenges and that Student A was demonstrating self-injurious behavior.

20. The Parent's complaint included handwritten notes, dated October 18, 2019, that read, in part: "Every trimester is when I've asked for IEP." These notes mention several concerns that the Parent had:

- Student A's medication being administered in a correct manner.
- Student A demonstrating self-injurious behaviors.
- Student B needing either a lunch aid or a 'lunch log' to be completed each day.
- Student B coming home with bruises.

21. On October 18, 2019, the Parent met with the assistant superintendent, the assistant principal, and the special education teacher. The assistant superintendent's notes from that meeting read, in part:

Parent [is] upset about her two children who...attend [the District]...Parent is filing a citizen's complaint with OSPI regarding what she has stated is a failure to amend the IEP and refusal to have an IEP meeting. PAVE has not been to the table...I attempted to ask Parent to hold off on the complaint and allow us to hold an IEP meeting soon. She said she would not get any...sleep this week if she did not take care of this now. [I] tried to contact PAVE but was unsuccessful.

The assistant principal's notes from that meeting state the Parent had, among others, the following concerns:

- Student A suffering "academic decline triggered by transitions."
- The need for Student A to receive MAP testing "every three months."
- Student A demonstrating self-injurious behaviors.
- Student B coming home with injuries from recess.
- Student B's food/stem log needed to be amended.
- Both Student's IEPs being incomplete and "missing accommodations and test scores."

22. Also, on October 18, 2019, the Parent emailed the principal, stating, in part: "I will serve the special education citizens complaint on the District today [along] with the legal request for [an] IEP meeting."

23. In a separate email on October 18, 2019, the Parent emailed the principal and the special education teacher. In that email, she articulated her concern that the qualifying disability on Student B's IEP was not accurate.
24. According to the District, on October 18, 2019, it "provided all requested records to the Parent." The documentation submitted to OSPI as part of this complaint included the following:
- An 'Authorization for Exchange of Confidential Information' for Student A and B, both of which are signed by the Parent and dated October 18, 2019¹⁰; and,
 - A 'Record of Access to Student Records' for Student B.
 - This 'Record of Access' document stated that, on October 18, 2019, the District provided the Parent with a copy of following records: Student B's injury record; Student B's medication log; and "copy of IEP."

According to the District, "there is no 'Record of Access' for Student A. There is no other documentation confirming Parent was provided copies of Student A's IEP [but] all requested documents were provided to Parent."

25. The District's response contains a transcription of a meeting that occurred on October 21, 2019. In attendance at the October 21, 2019 meeting were: the principal, the Parent, the director of student services, and the special education teacher. In addition to the other concerns already mentioned in this decision, the 'meeting transcription' detailed that the Parent also had the following concern: Student A's qualifying disability not being accurate.
26. The Parent filed the request for the instant special education citizen complaint investigation on October 22, 2019.
27. The Parent's complaint included an undated, handwritten note from the Parent that read, in part: "Student A should have a letter for main care provider and therapist in support of IEP meeting...List of new amendments for accommodations: bus change and temp; tic/stim log; therapy meeting weekly; aid of picture day; IEP meetings every map test; test scores added to IEP."
28. The District's response included an undated, handwritten note from the Parent that read, in part: "IEP is incorrect as [the District] has already been notified verbally. I've tried to make several recommendations with the school therapist, the principal, and the special education teacher. Update IEP! Have IEP meeting!...Student B needs a paraeducator."
29. On November 12, 2019, the Parent emailed the principal and the director of student services, stating, in part: "There is no rush to have the [IEP] meeting now (even though it should have

¹⁰ According to the District: "These are documents we typically use when exchanging information with organizations and individuals. The Parent was demanding records immediately that day at the school. Copies were made for the Parent and it was requested that she sign that form as a method of documenting the request. Apparently, there was some confusion and this form was completed instead of noting it in our record of access form."

happened already) but you do owe me a date for the IEP meeting now, not weeks or months from now.”

30. On November 13, 2019, the District emailed the Parent a prior written notice and a review IEP invitation.

The prior written notice was dated November 13, 2019, and stated: a) a meeting was scheduled for November 26, 2019 to review Student A’s current IEP; and, b) a meeting was scheduled for December 3, 2019 to review Student B’s IEP, and, while the Parent wanted Student B’s IEP meeting to not be facilitated through Sound Options, the District thought a facilitated IEP meeting would be best.

The review IEP invitation was dated November 13, 2019. It stated that an IEP meeting was scheduled for December 3, 2019 to discuss Student B’s IEP. It also stated that the following people were invited to attend that meeting: director, general education teacher, NW Autism representative, Parent, PAVE representative, principal, psychologist, special education teacher, speech language pathologist, and Student B.

31. The District’s response included a review IEP invitation, dated November 14, 2019, concerning an IEP meeting for Student A scheduled for November 26, 2019. It stated that the following individuals were invited to attend the meeting: private counselor, director, general education teacher, Parent, PAVE representative, principal, school counselor, two school psychologists, and a special education teacher.

32. The District’s response also included a prior written notice, dated November 14, 2019, concerning an IEP meeting for Student B scheduled for December 3, 2019. It read, in part:
The District proposes a re-evaluation review and consideration of modifications to Student B’s IEP. [We are taking this action] because you provided us with a letter from [a private medical provider] suggesting some modifications for Student B’s evaluation and IEP.

33. On November 18, 2019, the District emailed the Parent a prior written notice and a review IEP invitation, which collectively detailed that an IEP meeting had been scheduled for Student B for December 3, 2019 and that it would be a regular IEP meeting—in other words, it would not be facilitated through Sound Options.

34. The Parent’s reply to the District’s response to this complaint read, in part: “On November 26, 2019, we had a mediation/facilitated IEP meeting [concerning Student A] in which the Parents felt [that] all mistakes and/or violations were corrected on both Parents’ and District’s side.”

According to the District, as a result of the November 26, 2019 facilitated IEP meeting, Student A’s eligibility category was changed from specific learning disability to multiple disabilities.

The following individuals signed the title page of Student A’s November 26, 2019 IEP: a school counselor, a counselor from Frontier Behavioral Health, director, general education teacher,

Parent, Student's father, parent resource coordinator¹¹, principal, school psychologist 1, school psychologist 2, and the special education teacher.

35. On December 3, 2019, a regular IEP meeting—in other words, a non-facilitated IEP meeting, was held concerning Student B. The following individuals attended this meeting: Parent, Student's father, director, general education teacher, special education teacher, speech language pathologist, assistant principal, and school psychologist 2.
36. On December 5, 2019, OSPI's investigator spoke with the Student's father on the phone. In that phone call, Student's father stated that, earlier that week (the week beginning Monday, December 2, 2019), a regular IEP meeting was held in regard to Student B and all issues were resolved.

Later on December 5, 2019, OSPI's investigator spoke with the Parent. The Parent stated that, while all issues had been resolved for both Students A and B as a result of the recent meetings, because of strained trust with the District, the Parent preferred that OSPI continue with its investigation and that it issue a decision within the required timeline.

CONCLUSIONS

Issue 1(a): IEP Meeting Requests – The Parent alleged that the District did not properly respond to her request for individualized education program (IEP) meetings for Students A and B during the 2019-2020 school year. When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). If the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

Here, the record is not exactly clear on when the Parent first made an explicit request for an IEP meeting for both Students A and B. The Parent stated she first made this request on September 9, 2019, in a meeting with school psychologist 1—the Parent alleged that, on this date, she requested an IEP meeting for both Students so that their respective accommodations could be updated. The District stated the Parent first made a request for an IEP meeting for both Students sometime in mid-October 2019.

For Student A, what is clear is this: on several occasions prior to mid-October 2019, the Parent articulated concerns about Student A's needs and special education services. For example, in a meeting with the principal on September 9, 2019, the Parent articulated the concerns regarding Student A relating to specialized transportation, bullying, and the test scores in the IEP. At some point in mid-September 2019, the Parent told the counselor and the principal that Student A required specialized transportation and that he was demonstrating self-injurious behavior. On or

¹¹ This individual works for PAVE.

about September 18, 2019, school psychologist 2 investigated the Parent's concern that Student A was being harassed on the general education bus. On the basis of these facts, at some point in late September 2019—or early October 2019 at the latest, the District should have either: a) held an IEP meeting for Student A to discuss the Parent's concerns; or b) issued the Parent a prior written notice detailing why these concerns did not necessitate either convening an IEP meeting and/or amending Student A's IEP. The fact that neither of these events occurred represents a violation of the IDEA. As a result, certain District staff members will be required to receive training on properly responding to a parent's concerns about a student's needs and/or IEP services, including how to respond to a parent when that parent articulates concerns about a student's needs and/or IEP services but does not explicitly request an IEP meeting.

According to the documentary evidence submitted to OSPI as part of this complaint, though, for Student B, it was not until October 18, 2019 that the Parent articulated concrete concerns about Student B's IEP to District staff. This same day, October 18, 2019, the Parent submitted a signed request for an IEP meeting for Student B. For example, the assistant principal's notes from a meeting with the Parent on October 18, 2019 detail that the Parent was concerned about Student B coming home with injuries, amending the food log, and missing accommodations and test scores. In an email dated October 18, 2019, the Parent informed the principal and the special education teacher that Student B's qualifying disability, as listed on his IEP, was inaccurate. Therefore, at some point in late October 2019—or early November 2019 at the latest, the District should have either: a) held an IEP meeting for Student B to discuss the Parent's concerns; or b) issued the Parent a prior written notice detailing why these concerns did not necessitate either convening an IEP meeting and/or amending Student B's IEP. An IEP meeting for Student B, though, did not occur until December 3, 2019.

Here, the Parent filed the instant citizen complaint with OSPI on October 22, 2019. Following this, there was then significant back-and-forth between the Parent and the District as the parties attempted to schedule a mediation. Eventually, it was determined that instead of a mediation, a facilitated IEP meeting for Student A would be held in late November 2019. And then a regular IEP meeting would be held for Student B soon thereafter. On this unique set of facts, it was not a violation of the IDEA for the District to not hold an IEP meeting, or issue the Parent a prior written notice, stating why an IEP meeting was unnecessary, for Student B in late October 2019—or early November 2019 at the latest.

Issue 1(b): Attendance of Individuals with Special Expertise at IEP Meetings – The Parent's complaint included the following allegation: "At the original IEP meeting, I was not allowed to invite outside providers that know my son." In the course of this investigation, the Parent clarified that this allegation was specific to Student A's June 2019 IEP meeting—in other words, this allegation did not relate to either the 2019-2020 school year or to any of Student B's IEP meetings. Therefore, OSPI will address this allegation in Issue 2(a), below: whether Student A's June 2019 IEP team was properly constituted.¹²

¹² OSPI notes, though, that for Student A's November 26, 2019 IEP meeting, at least one individual with special expertise on Student A was in attendance: Student A's private counselor from Frontier Behavioral

Issue 2(a): Proper IEP Team for Students' June 2019 IEP Meetings – The Parent alleged that the Students' June 2019 IEP teams were not properly constituted. 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.

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

Student A

Here, the following individuals attended Student A's June 2019 IEP meeting: general education teacher, Parent, school psychologist 2, and special education teacher 2. This represents a properly constituted IEP team under WAC 392-172A-03095.

However, a school district must also notify the parents of students with disabilities of who will be in attendance at IEP meetings. Here, the District notified the Parent that the director of student services would attend the meeting, but this individual did not actually attend. Furthermore, the Parent did not provide written permission for the director's excusal from the meeting. This was a violation of the IDEA and the District will be required to conduct training.

While the regulations did not explicitly require that the District inform the Parent that school psychologist 2 would serve as the District's representative¹³, given the fact that the director of student services was not going to actually attend the meeting (despite being listed on the invite),

Health. A PAVE representative also attended Student A's November 2019 IEP meeting on behalf of the Parent and Student A. And there is no indication in the record that other individuals who had special expertise on Student A were prevented from attending Student A's November 2019 IEP meeting.

¹³ A district representative must be qualified to provide or supervise the provision of specially designed instruction, be knowledgeable about the general education curriculum, and be knowledgeable about the availability of district resources.

OSPI agrees with the District that, in this instance, it should have “informed the Parent before the meeting that school psychologist 2 was [going to be] the designated administrator authorized to bind the District for the purposes of...IEP [team decisions].”

Finally, the Parent stated she would have preferred that Student’s A’s private counselor (from Frontier Behavioral Health) attend the meeting, as well as a medical professional from Northwest Autism. But, the Parent stated, the short period of time between the meeting invitation (June 6, 2019) and the meeting itself (June 12, 2019) effectively prevented her from inviting these individuals. OSPI does recognize that six days between a meeting invitation and the actual meeting might make it difficult to ensure a third party’s participation in that meeting. However, in this instance, there is nothing in the record—in particular, nothing from before June 12, 2019 (the date of the meeting itself), that indicates June 12, 2019 was not a mutually agreeable date. Therefore, OSPI does not find a violation of this issue. Nonetheless, OSPI reminds the District of the importance of: a) informing parents that they can invite individuals with special expertise on students to IEP meetings; and b) checking with a parent to ensure that, if the parent would like to do this, that the IEP meeting is scheduled in a manner that makes the attendance of third parties feasible.

Student B

Here, the following individuals attended Student B’s June 2019 IEP meeting: Parent, school psychologist 1, preschool special education teacher, and the speech language pathologist. Under WAC 392-172A-03095, a general education teacher must be on an IEP team if that student will participate in the general education classroom. Here, Student B’s June 2018 and June 2019 IEPs had him spending most of his time in a general education setting (the Student attended an integrated developmental preschool). Therefore, a general education teacher should have been on Student B’s June 2019 IEP meeting.

Furthermore, as Student B was advancing into kindergarten for the 2019-2020 school year, and because as of June 7, 2019, the 2018-2019 school year was almost concluded, OSPI agrees with the District that it would have made the most sense to have a general education teacher and special education teacher that were familiar with the District’s kindergarten curriculum on the IEP team.

Finally, as with Student A, with Student B’s June 2019 meeting, the District informed the Parent that the director of student services would attend the meeting, but this individual did not actually attend. Furthermore, the Parent did not provide written permission for the director’s excusal from the meeting.

And, while the regulations did not explicitly require that the District inform the Parent that school psychologist 2 would serve as the District’s representative for Student B’s IEP team, given the fact that the director of student services was not going to actually attend the meeting (despite being listed on the invite), OSPI agrees with the District that, in this instance, it should have informed the Parent of this fact before the meeting.

OSPI finds that the Student's IEP team was not properly constituted and the District is in violation of the IDEA. The District will be required to conduct training.

Issue 2(b): Required IEP Components (Students' June 2019 IEPs) – Here, the Parent alleged that the Students' June 2019 IEPs did not contain the proper components. Among other elements, an IEP must contain a statement of: the student's present levels of academic achievement and functional performance; measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; how the district will measure and report the student's progress toward their annual IEP goals; the special education services, related services, and supplementary aids to be provided to the student; the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments, 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; behavioral intervention plan, if necessary for the student to receive FAPE; the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; and 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.

Student A

With one exception, Student A's June 2019 IEP contains all required components under WAC 392-172A-03090. As the District acknowledged, Student A's June 2019 IEP did not include a goal for social emotional, despite the fact that the June 2019 IEP provided the Student with specially designed instruction in this area. This is a violation of the IDEA.

On a related note, the record contains a couple of unclear references to Student A's MAP testing results and/or testing information included in Student A's June 2019 IEP. For example, the Parent recalled that she asked for a copy of Student A's MAP testing scores during his June 2019 IEP meeting. And the principal's notes from September 9, 2019 state the Parent believed Student A's June 2019 IEP had the "wrong test scores." Therefore, OSPI encourages the District and the Parent to make sure this particular issue is resolved, if it has not already been resolved.

Student B

Based on the documentation provided in this complaint, Student B's June 2019 IEP contains all required components under WAC 392-172A-03090.

Issue 3: Educational Records – The Parent alleged the District did not follow proper procedures for responding to her request for the Students' educational records. Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by

the district. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student. The district must respond in no more than 45 calendar days after the request has been made.

Here, it is not clear when the Parent first requested copies of the Students' educational records. On December 10, 2019, the Parent recalled that, during Student A's June 12, 2019 IEP meeting, she requested copies of the results of MAP testing that had recently been administered to Student A.¹⁴ The earliest date that the documentary record shows a request for records was made, though, is October 17, 2019. On October 18, 2019, the Parent email the principal, stating, in part: "'I tried to get IEP copies to be able to serve you the [special education citizen] complaint yesterday but the office said I'm to deal with you or the special education teacher about it.'" Therefore, the District was required to provide the Parent with "IEP copies" for Students A and B both within 45 calendar days of October 17, 2019, and before any IEP meetings took place after that date.

Here, on October 18, 2019, the District provided the Parent with: a) "copies of Student A's IEP;" and b) Student B's injury record, medication log, and IEP. This was both less than 45 days after October 17, 2019 and before the Student's respective IEP meetings—Student A's IEP meeting was held on November 26, 2019 and Student B's IEP meeting was held on December 3, 2019. Therefore, this does not represent a violation of the IDEA.

CORRECTIVE ACTIONS

By or before **January 10, 2020, January 17, 2020, and February 5, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **January 31, 2019**, the District will provide training to all special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the ILC classroom was located at during the 2018-2019 school year. The training will cover the following topics:

- Properly responding to a parent's concerns about a student's needs and/or IEP services, including how to respond to a parent when that parent articulates concerns about a student's needs and/or IEP services but does not explicitly request an IEP meeting;
- Appropriate IEP team members, especially when the student is transitioning between services, buildings, and programs;

¹⁴ During the same interview with OSPI's investigator on December 10, 2019, the Parent recalled that she was first provided with a copy of Student A's MAP testing results when she threatened to file a citizen complaint against the District in the fall of 2019.

- Appropriate notice provisions for IEP meetings, to include only those individuals planning to attend;
- Appropriate IEP components, such as procedures to ensure consistency for the student based on evaluation results;
- IEP online procedures; and,
- Documenting parent meetings/conversations and prior written notices.

The training will include examples. The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 101 staff in the creation of the training materials. The District will provide the trainer with a copy of this decision, SECC 19-82.

By or before **January 10, 2020**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **January 17, 2020**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by January 22, 2020.

By **January 31, 2020**, the District will conduct the training regarding the topics raised in this complaint decision.

By **February 5, 2020**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ____ day of December, 2019.

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.)