

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-97

PROCEDURAL HISTORY

On August 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 Spokane 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 August 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 September 16, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on September 17, 2020.

On September 25, 2020, OSPI requested that the District provide additional information, and the District provided the requested information on September 30, 2020. OSPI forwarded the information to the Parent on October 1, 2020.

On September 30, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on October 1, 2020.

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

ISSUES

1. Did the District follow procedures to ensure Parent participation in the development of the Student's individualized education program (IEP) and IEP meetings, including providing the Parent a copy of the Student's IEP under WAC 392-172A-03100¹ and timely access to Student records under WAC 392-172A-05190?
2. Did the District develop an IEP for the Student that was appropriate in light of the Student's circumstances, individual needs, and designed to provide the Student a free appropriate public education (FAPE), including:
 - a. Developing sufficient present levels of academic achievement and functional performance;
 - b. Developing measurable annual goals; and,
 - c. Addressing the Parent's concerns regarding the Student's progress?²

¹ According to the Parent's complaint, her allegation that she was denied participation in IEP development, and that she was not provided with a copy of the Student's IEP, both relate exclusively to the development of the May 28, 2020 IEP.

² As per Issue 2, the Parent's complaint was not clear as to which of the Student's IEPs her allegations applied to. (As described below, in the statement of facts, the Student has had several IEPs within the past couple

3. Did the District provide the Parent notice consistent with WAC 392-172A-03100 for the May 28, 2020 IEP meeting?
4. Did the District follow procedures to discuss the Parent's request for extended school year services (ESY) during the 2019-2020 school year?
5. Did the District follow procedures to provide progress reporting during the 2019-2020 school year?

LEGAL STANDARDS

IEP Prepared in Draft Form Prior to Meeting: School districts must ensure that, if district personnel bring drafts of some or all of the individualized education program (IEP) content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion of the student's needs and the services to be provided to meet those needs—before the IEP is finalized. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12478-79 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32). The IDEA, however, does not require a district to provide a parent with a draft IEP prior to an IEP meeting.

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

District Must Provide Parent with Copy of IEP at No Cost to Parent: The school district must give the parent a copy of the student's IEP at no cost to the parent. WAC 392-172A-03100(8).

years, including: January 29, 2019; October 14, 2019; December 3, 2019; and May 28, 2020.) In the portion of her complaint that relates to Issue 2, the Parent wrote "IEP attached." Attached to the Parent's complaint was a copy of the Student's January 29, 2019 IEP and the Student's December 20, 2019 IEP. The Student's January 29, 2019 IEP falls outside the time period under investigation in this citizen complaint. As detailed in OSPI's opening letter, the time period under investigation begins on August 27, 2019, as OSPI may only investigate those issues occurring during a one-year period. Therefore, with Issue 2, OSPI will not be looking at the Student's January 29, 2019 IEP. However, in an email communication contemporaneous with the Parent's filing of her complaint, she stated that her allegations regarding Issue 2 also applied to the Student's May 2020 Amended IEP. Therefore, as OSPI understands it, given the Parent's complaint and her contemporaneous email to OSPI, Issue 2 related to the Student's December 2, 2019 IEP and May 28, 2020 IEP, and OSPI's investigation into Issue 2 will relate to these two IEPs, as identified by the Parent.

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 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. 34 CFR 300.503; WAC 392-172A-05010.

Least Restrictive Environment (LRE): School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994). *See also Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020) ("Services should reflect the unique needs of the student and not the schedule").

FERPA: Education Records: The term "education records" means those records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. The term "educational records" does not include records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records are in the sole possession of the maker of the records, and are not accessible or revealed to any other individual except a temporary substitute of the record maker. 20 USC § 1232g; WAC 392-172A-05180; *see also* IDEA, 64 Fed. Reg. 12,641 (March 12, 1999) ("FERPA exempts from the definition of 'education records'...those records considered to be 'sole possession records,' [such as raw data or notes]. 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").

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 free appropriate public education (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.

Present Levels: IEPs must include a statement of the student's present levels of academic achievement and functional performance, including: how the student's disability affects the student's involvement and progress in the general education curriculum; or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. 34 CFR §300.320(a)(1); WAC 392-172A-03090(1)(a).

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Specially Designed Instruction: The purpose of the IDEA is to ensure that all students eligible for special education have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 34 CFR §300.1; WAC 392-172A-01005. Special education includes specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Parent Participation – Notification of 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: Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and Scheduling the meeting at a mutually agreed on time and place. The notification must: Indicate the purpose, time, and location of the meeting and who will be in attendance; and Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA. WAC 392-172A-03100.

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal

school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

IEP Implementation: A school district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

2019-2020 School Year

1. The District's 2019-2020 school year began on August 29, 2019.
2. During the 2019-2020 school year, the Student attended a District elementary school, was in the sixth grade, and was eligible for special education services under the category other health impairment.

3. At the start of the school year, the Student's January 2019 individualized education program (IEP) was in effect. The Student's January 2019 IEP included measurable annual goals in the following areas:
 - **Reading:** ability to demonstrate reading comprehension at the 3rd grade level.
 - **Writing:** ability to "write paragraphs reflecting completeness" and "demonstrate command of the conventions of standard English capitalization, punctuation, and spelling."
 - **Math:** ability to "state a strategy when solving multiple-digit problems" and improve calculation abilities.
 - **Behavior Social 1:** ability to "complete tasks in the general education and special education setting with 2 or less teacher reminders."
 - **Behavior Social 2:** ability to "use a completion checklist" on assignments.

According to the Student's January 2019 IEP, progress on the aforementioned goals was to be reported to the Parent via an "annual IEP and trimester notices of progress...or upon meeting a goal. A work sample of assessment from which the data sample/data point was pulled will be included with the progress note."

4. According to the District's response, prior to "the start of the 2019-2020 school year, the District's elementary schools changed from a trimester grading system to a semester grading system."
5. The District's response included a copy of the goals from the Student's January 2019 IEP. This copy contains handwritten notes and post-it notes. The entry dates ranged from March 2019 through October 2019.

According to the District: "The special education teacher states she gave [these pages] to the Parent, but does not remember if she sent them home with the Student or how it was delivered and does not have documentary proof that they were delivered."

6. On October 14, 2019, the Student's IEP team, including the Parent, special education teacher, general education teacher, and principal, met to develop a new annual IEP for the Student. The Student's October 2019 IEP included the following present levels of academic achievement/functional performance (PLAAFP) and measurable annual goals (MAG):
 - **Reading:**
 - PLAAFP: Student is currently able to verbally answer comprehension questions (ex: who, what, when, where, why, how) after independently reading a 3rd grade text, 3 out of 10 correct, over 5 consecutive trials, as measured by data collection.
 - MAG: Student will increase his ability to verbally answer comprehension questions (ex: who, what, when, where, why, how) after independently reading a 3rd grade text increasing from 3 out of 10 correct to 9 out of 10 correct, over 5 consecutive trials, as measured by data collection by October 13, 2020.
 - **Written Language:**
 - PLAAFP: Student is able to independently write a complete sentence (Capitals, punctuation, grammar, spelling) that answers a comprehension question 1 out of 5 correctly, over 5 consecutive trials, as measured by data collection.
 - MAG: Student will be able to independently write a complete sentence (Capitals, punctuation, grammar, spelling) that answers a comprehension question increasing from 1

out of 5 correct to 4 out of 5 correct, over 5 consecutive trials, as measured by data collection by October 13, 2020.

- **Math:**
 - PLAAFP: Student is able to solve subtraction word problems involving renaming problems 6 out of 10 correct, over 5 consecutive trials, as measured by data collection.
 - MAG: Student will be able to solve subtraction word problems involving renaming increasing from 6 out of 10 correct to 9 out of 10 correct, over 5 consecutive trials, as measured by data collection by October 13, 2020.
- **Behavior/Social 1:**
 - PLAAFP: Student currently needs to be redirected by an adult least 4-5 times during transitions, over 5 consecutive trials, as measured by teacher observation.
 - MAG: Student will decrease his need for redirects during transitions from 4-5 adult redirects to 2 adult redirects during transitions, over 5 consecutive trials, as measured by teacher observation by October 13, 2020.
- **Behavior/Social 2:**
 - PLAAFP: Student is able to stop a preferred task when asked by an adult (for example: at transitions and/or during teacher directions) 1 out of 5 opportunities, over 5 consecutive trials, as measured by teacher observation.
 - MAG: Student will stop a preferred task when asked by an adult (for example: at transitions and/or during teacher directions) increasing from 1 out of 5 opportunities to 4 out of 5 opportunities, over 5 consecutive trials, as measured teacher observation by October 13, 2020.

According to the Student's October 2019 IEP, progress on the Student's measurable annual goals was to be reported to the Parent "annually with the IEP and with report cards at the end of each term."

The Student's October 2019 IEP stated the Student did not require extended school year (ESY) services.

7. On November 18, 2019, the Parent emailed the special education teacher, stating, in part: "I didn't receive work samples with the October progress notes."³ The Parent further requested that a grade level be written into the Student's math goal. The Parent also asked, in relation to the Student's writing goal, whether the Student was required to complete one sentence or five sentences to accomplish the goal.
8. The District was on Thanksgiving break from November 28 and 29, 2019.
9. According to a prior written notice, dated December 3, 2019, the IEP team, including the Parent, special education teacher, general education teacher, and District representative, held

³ According to the District's response, it understood the Parent's email communication of November 18, 2019 as referring to the copy of the October 2019 IEP that the District had previously provided to her, which included information on the Student's present levels of performance. On this point, the District's response further stated: "The special education teacher states she did give [Parent] a copy [of the Student's October 2019 IEP] but [that] she cannot remember what the delivery method was and does not have documentary proof that she delivered the [October 2019] IEP to the Parent."

a meeting on that date to amend the Student's October 2019 IEP to "add an additional behavior goal to address Student's need for self-monitoring during transitions."

In the Student's December 2019 amended IEP, the October 2019 PLAAFP and MAG remained the same for the following goals: reading; behavior social 1; and behavior social 2—although, the target date for the Student's mastery of those goals was extended to December 2, 2020.

With the December 2019 amended IEP, the writing and math goals in the October 2019 IEP were changed slightly to add the grade level, as follows:

- **Writing:**
 - PLAAFP: Currently, while answering a written comprehension question at the 3rd grade level, Student is able to write his answer in a complete sentence 1 out of 5 sentences correctly, over 5 consecutive trials, as measured by written response.
 - MAG: While answering a written comprehension question at the 3rd grade level, Student will be able to write his answer in a complete sentence increasing from 1 out of 5 sentences correct to 4 out of 5 sentences correct, over 5 consecutive trials, as measured by written response by December 2, 2020.
- **Math:**
 - PLAAFP: Student is able to solve subtraction word problems at the 4th grade level 4 out of 10 correct, over 5 consecutive trials, as measured by data collection.
 - MAG: Student will be able to solve subtraction word problems at the 4th grade level increasing from 4 out of 10 correct to 9 out of 10 correct, over 5 consecutive trials, as measured by data collection by December 2, 2020.

The Student's December 2019 amended IEP included a new measurable annual goal:

- **Behavior Social 3:**
 - PLAAFP: Student is able to self-monitor his transitions for readiness (supplies and self-ready) for the next subject 1 out of 5 opportunities, over 5 consecutive trials, as measured by teacher observation.
 - MAG: Student will be able to self-monitor his transitions for readiness (supplies and self-ready) for the next subject increasing from 1 out of 5 opportunities to 4 out of 5 opportunities, over 5 consecutive trials, as measured by teacher observation by December 2, 2020.

According to the Student's December 2019 amended IEP, progress on the reading, written language, and math goals was to be reported to the Parent in the following manner "annually with the IEP and with report cards at the end of each term. Quarterly work samples will be provided for Parents to show growth and progress of goals."⁴ According to the Student's

⁴ During the course of this investigation, OSPI's investigator asked the District about the following: according to the Student's December 2019 amended IEP, progress on the reading, written language, and math goal was to be reported to the Parent in the following manner: "annually with the IEP and with report cards at the end of each term. **Quarterly work samples** will be provided for Parents to show growth and progress of goals" (emphasis added). But the District's 2019-2020 school calendar does not contain quarters for elementary school students. So when and how was the District to provide the Parent with quarterly work samples?" In response, the District stated: "The statement regarding providing quarterly work samples was not changed on the IEP forms after the elementary schools switched to a semester grading period. This

December 2019 amended IEP, progress on the behavior social goals was to be reported to the Parent in the following manner: "annually with the IEP and with report cards at the end of each term."

The Student's December 2019 amended IEP stated the Student did not require extended school year (ESY) services.

The Student's December 2019 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from December 3, 2019 through December 2, 2020:

- **Reading:** 60 minutes per week (to be provided by a special education teacher)
- **Writing:** 60 minutes per week (to be provided by a special education teacher)
- **Math:** 120 minutes per week (to be provided by a special education teacher)
- **Behavior:** 30 minutes per week (to be provided by a special education teacher)

The Student's December 2019 amended IEP provided the Student with the following supplementary service in *all settings* from December 3, 2019 through December 2, 2020:

- **Individual Para-Professional Support:** 1,725 minutes per week (to be provided by a paraeducator)

10. On December 16, 2019, the Parent emailed the special education teacher, stating, in part: "May I also have a copy of [Student's] work samples? I haven't seen work samples since the beginning of the school year...I like to see data to compare to after the [winter break]...I'm concerned of regression."

11. The District was on winter break from December 23, 2019 through January 3, 2020.

12. According to the District's 2019-2020 calendar, January 24, 2020 was the end of the first semester for elementary school students.

13. The District's response included a progress report, dated January 27, 2020, for those goals in the Student's December 2019 amended IEP, as follows:

- **Reading:** Not Mastered: 7.5 out of 10 correct.
- **Written Language:** Not Mastered: 1 out of 5 correct.
- **Math:** Not Mastered: 6 out of 10 correct.
- **Behavior Social 1:** Not Mastered: 3-4 redirects during transitions.
- **Behavior Social 2:** Not Mastered: 2 out of 5 opportunities.
- **Behavior Social 3:** Not Mastered: Independently: 1 out of 5 opportunities. With Support: 3 out of 5 opportunities.

14. According to the District's response, as well as additional information provided by the District: The District provided progress reports to the Parent at the end of each [semester] grading period. [The District] does not usually keep proof that [the progress reports] were placed with [a student's] report cards and sent home.

[lack of clarity] will be addressed in [the District's] progress monitoring training...submitted as a corrective action in Special Education Citizen Complaint 20-90."

...

[The January 27, 2020] progress report was sent home in the Student's folder on February 3, 2020, with a copy of the Student's report card. [The January 27, 2020 progress report] did go home in Student's folder that goes back and forth to school [on February 3, 2020].

15. According to the District's 2019-2020 calendar, February 4, 2020 was the "first grading period" for elementary school students.
16. On March 9, 2020, the Parent emailed the special education teacher, stating, in part: "I'm emailing you because I know that we're probably nearing a Move-up meeting with the [future middle school] team. I'm not sure if I will be receiving information to attend the meeting but, I would love to be there. May I please receive information of when the meeting will take place so that I can attend?" (As explained in the District's response, "every spring [the] elementary school IEP teams meet with the future middle school IEP team[s] to discuss how services will look as students move from 6th to 7th grade.")
17. On March 13, 2020, the Washington Governor issued a proclamation, announcing the closures of all public and private K-12 school facilities in the state through April 24, 2020, due to the COVID-19 pandemic and resulting public health crisis.
18. On March 14, 2020, the Parent emailed the special education teacher, asking if "the move-up meeting with the [middle school] team" was going to be postponed in light of the Governor's recent proclamation.

In a separate email, dated March 14, 2020, the Parent told the special education teacher, in part: "I do have a huge concern with regression! I don't want to see Student's educational gap increase. Consequently, I believe extended school year services (ESY) will be needed and [I] would like to talk further about enrolling."
19. According to the Parent's reply, on March 16, 2020, she again sent an email to a District staff member, inquiring as to the details of the potential move up meeting for the Student.
20. On March 16, 2020, the special education teacher emailed the Parent, stating, in part: "I sent home a packet of review work for Student to help reduce regression and retain growth. The main thing is that Student reads to you."
21. On March 23, 2020, OSPI issued guidance, instructing districts that while school facilities are closed and not providing traditional in-person instruction, education must continue. OSPI's guidance outlined the expectation that "continuous learning" would begin for all students by Monday, March 30, 2020.
22. On March 23, 2020, the Parent emailed the District's parent and school liaison, stating, in part: "Do you have any information on the move up team meeting for children entering middle school [next fall]?"

23. On March 26, 2020, the special education teacher emailed the Parent, stating, in part: "I hope you received the materials we put together for your child. The purpose of these materials is to maintain the skills we have achieved over the majority of the school year."
24. On March 29, 2020, the Parent again emailed the District's parent and school liaison, stating she had not yet heard back from the Student's special education teacher in regard to whether, and when, the Student's move up meeting would take place.

On March 30, 2020, the District's parent and school liaison responded, stating, in part: "My apologies, my thinking is that people have not been scheduling the meetings quite yet as they navigate how this will all work! Let me dig in and see if I can get a hold of anyone for you."

25. On March 31, 2020, the special education teacher emailed the Parent, stating, in part:
I have received your communication about move-ups and wanted to let you know that I have been working on getting your questions answered. I have talked with the special education director to make sure that I have the current and correct information to pass along to you.

I have been informed that at this time, move-ups are on hold at this time due to the statewide shut down of schools. The plan is that we will be holding move-up meetings in May. Hopefully, in person, if not we will hold them remotely.

I will keep you informed throughout the move-up process. I will also make sure you are included in the move-up meetings.

Some things that I do know is that Student will continue having a 1:1 paraprofessional with him at [the] Middle School in the fall. And that [the] Middle School will be having professional development on inclusion as they will be a state demonstration site for Inclusionary Practices.

The Parent responded, thanking the special education teacher for the information and stating: "Yes, I found out...that move up meetings would resume when school reopened. However, what I didn't know was: [had Student's move up] meeting already occurred prior to school closing."

26. According to the Parent's complaint, she "emailed the school system about extended school year services [for the Student] in April of 2020...due to the Student's regression in reading and math [but she] never received a response [from the District]."
27. The District was on spring break from April 6 through 10, 2020.
28. On April 6, 2020, the Governor extended the March 13, 2020 school facility closure directive through the remainder of the 2019-2020 school year.
29. Also, on April 6, 2020, OSPI issued guidance on Continuous Learning 2020, which included recommended guidelines for maximum student commitment each day, as follows: Grades 6-8: 20 minutes per class (2.5 hours maximum).

30. On April 19, 2020, the Parent emailed the special education teacher, asking the special education teacher how she could determine the Student's current level of performance on his math goal. The Parent also asked for the Student's "present levels of performance [that] he was at [during] the end of March [2020]? If he met goals, [was] close to meeting goals, etc."
31. During the spring 2020 COVID disruption, the District utilized a "School Closure Tracking Form" (SCTF) to track the services provided to the Student during that time, as well as communications with the Parent. According to the SCTF, on May 1, 2020, a District staff member spoke by phone with the Parent. The May 1, 2020 SCTF communication note further read:
- Working with Student daily⁵ with multiplication and division to two digits. Unable to do 3-4 digits (e.g., 88344). With writing he will write 2-3 sentences and say he's tired. If typed he will do up to 8 sentences. Mom has Student see a picture, watch a video or read a book, and then write what he learned.
32. On May 13, 2020, the Parent emailed the special education teacher, stating, in part:
- I am agreeing to the services [referenced in the SCTF] that the District can provide during this [COVID disruption period], but with the understanding that there will be an IEP meeting when school returns to discuss if Student requires compensatory education due to educational time lost due to the closure.
33. On May 18, 2020, the special education teacher invited the Parent to a "move up meeting" scheduled for May 28, 2020, at noon, via Zoom. The May 18, 2020 invitation did not include a list of individuals that were also invited to attend the meeting.
- On May 20, 2020, the Parent responded, stating she would prefer if the general education teacher, "and [the middle school] sped teacher" and the Student were invited to attend the meeting. The Parent also asked the special education teacher about inviting the Student's 1:1 paraeducator to the meeting.
- On May 20, 2020, the principal responded, stating: the middle school special education teacher was invited; the special education teacher would be sending an invitation to the general education teacher; and the 1:1 paraeducator was not available for the meeting as she was on leave.
34. According to the SCTF, during the week of May 26, 2020, the special education teacher assigned the Student a "worksheet for IEP goal data collection [in the area of] math."
35. On May 28, 2020, the special education teacher emailed the Parent, stating, in part: "Just a reminder that we will be meeting today at 12 noon to discuss Student's move-up to middle school. Below is the zoom invite." The "topic" of the Zoom meeting invite is described as follows: "move up meeting."

⁵ According to the District's response, it was "the Parent [who] worked with the Student daily and was the [one] collecting the data [and providing it to] the teacher."

36. The District's response included an "IEP Amendment without Reconvening the IEP Team" and a prior written notice, both dated May 28, 2020, that stated the Student's IEP team was thereby amending the "frequency, location, and/or duration of special education services" listed in Student's December 2019 amended IEP so as to "accurately reflect special education service time in [Student's] middle school [next year]." The May 28, 2020 prior written notice read:

The reason we are proposing or refusing to take action is: The reason we are making the proposed change is due to Student moving to middle school.

Description of any other options considered and rejected: Options rejected were not to change the Service Matrix at this time.

The reason(s) we rejected those options was: Student's service time in special education will be differ due to the schedule change of being in middle school.

A description of each evaluation procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows (if initial evaluation or reevaluation, include the areas being assessed and the purpose): Classroom work and performance.

With the May 28, 2020 amendment of the December 2019 amended IEP, the present levels of academic and functional performance (PLAAFPs) and measurable annual goals (MAGs) remained the same as they were in the December 2019 amended IEP.

The Student's May 2020 amended IEP stated the Student did not require extended school year (ESY) services.

The Student's May 2020 amended IEP provided the Student with the following specially designed instruction in a *general education setting* from September 3, 2020 through December 1, 2020:

- **Reading:** 138 minutes per week (to be provided by a special education teacher)
- **Writing:** 137 minutes per week (to be provided by a special education teacher)
- **Math:** 275 minutes per week (to be provided by a special education teacher)

The Student's May 2020 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from September 3, 2020 through December 1, 2020:

- **Social:** 275 minutes per week (to be provided by a special education teacher)

The Student's May 2020 amended IEP provided the Student with the supplementary services in *all settings* until December 2, 2020:

- **Individual Para-Professional Support:** 1,725 minutes per week (to be provided by a paraeducator)

According to the District, the following individuals attended the May 28, 2020 meeting, which resulted in an amendment to the IEP: the 6th grade general education teacher; the future 7th grade special education teacher; elementary principal; middle school assistant principal; secondary special education coordinator; special education director; 6th grade special education teacher; and Parent.

37. On June 8, 2020, the Parent emailed the special education teacher, asking to see a copy of the May 28, 2020 "IEP addendum form [that the meeting participants] went over...during the May 28, 2020 move up meeting."

On June 10, 2020, the special education teacher responded to the Parent's email, providing her with a copy of the May 2020 amended IEP.

38. According to the District's 2019-2020 calendar, June 11, 2020 was the end of the second semester for elementary students, as well as the "second grading period" for elementary school students.

39. On June 12, 2020, the Parent responded to the special education teacher's email of June 10, 2020, stating, in part:

I finished reviewing the IEP, and upon a closer look, there are a few things that are missing, and items to be addressed.

I am hereby requesting an IEP meeting in regards to the IEP provided to me...from the 5/28/2020, IEP/move up meeting.

I do not agree with the IEP and do not approve any part of the IEP received on 5/28/2020 to be implemented.

Please advise when the team can resume and meet ASAP.

40. The District's response included a progress report, dated June 16, 2020, for those goals in the Student's December 2019 amended IEP, with entries as follows:

- **Reading** – Making Progress: Due to COVID-19 school closure, SpEd services have been provided through weekly learning plans emailed via parent and an option to join remote weekly learning support center meetings was provided. Student participated in remote group meetings. Mom sent photos of his learning tasks to the SpEd Teacher. Work Sample: Anansi's Bad Hair Day (Write In Reader) 5 out of 5 correct.
- **Written Language** – Making Progress: Due to COVID-19 school closure, SpEd services have been provided through weekly learning plans emailed via parent and an option to join remote weekly learning support center meetings was provided. Student participated in remote group meetings. He emailed his learning tasks to the SpEd teacher. Work Sample: Anansi's Bad Hair Day (Write In Reader) 4 out of 5 correct.
- **Math** – Making Progress: Due to COVID-19 school closure, SpEd services have been provided through weekly learning plans emailed via parent and an option to join remote weekly learning support center meetings was provided. Student participated in remote group meetings. Mom sent photos of his learning tasks. Work Sample: PDF subtraction word problem worksheet 5 out of 5 correct.
- **Behavior Social 1-3** – Maintaining: Due to COVID-19 school closure, SpEd services have been provided through weekly learning plans emailed via parent and an option to join remote weekly learning support center meetings was provided. Student participated in remote group meetings.

41. According to the SCTF, on June 16, 2020, the District "sent [a] progress report" to Parent via "email," and that progress report concerned "all goal areas."⁶

42. On June 16, 2020, the Parent's educational advocate emailed the secondary special education coordinator and the director, stating, in part:

I am requesting a Family Educational Rights and Privacy Act (FERPA) request to include, but not [be] limited to, [the following]:

2018/2019 [school year]: progress reports; data to support progress reports; IEPs; notes; meeting notes; and recordings.

2019/2020 [school year]: progress reports; data to support progress reports; IEPs; notes; meeting notes; and recordings.⁷

...

Another IEP meeting needs to be held, however, it cannot happen as quickly as you suggested to the Parent by phone. Please provide 4 separate dates and times.

On June 19, 2020, the director responded, stating, in part: "I wanted to let you know the District has received your request and will work to gather the requested documents and send them to you." The Director also stated:

Today is our last day of school and then our certificated staff are off for the summer. That being said we want to ensure a successful start to the school year for Student and will be available to meet at a time that works for the team. The District would like to propose that we either meet next week for an IEP meeting or after August 1st. If you and Parent can send me some dates that work for you, I will work on our end to find a time when we can pull the full team together on one of the proposed dates.

On June 22, 2020, the Parent's educational advocate responded, stating: "We need to receive the documents before scheduling a meeting. When can we expect the documents requested? Next week is too soon. When does school start next year? Once the above questions are answered I will get back to you on a couple dates and times."

43. June 19, 2020 was the last day of the 2019-2020 school year for the District.

44. According to the District's response, on June 27, 2020, "the District provided a copy of [the] requested educational records to [the Parent's educational advocate], including the Student's current and past IEPs."

⁶ The District's response included a June 16, 2020 email from the special education teacher to the Parent that read, in part: "I have attached your child's progress reports for you to review." The actual attachment, though, was not included. During the course of this investigation, when specifically asked by OSPI's investigator, the District stated it was the June 16, 2020 progress report that was sent via email to the Parent on June 16, 2020.

⁷ According to the District's response, on June 16, 2020, the District received a "signed...release" from the Parent concerning a request for access to certain Student records under FERPA.

The District's response included a June 27, 2020 email from the Director to the Parent that read, in part: "Attached are the following documents: consent for re-evaluation; 1/29/19 IEP; 10/14/19 IEP; 12/3/19 IEP; 5/28/20 IEP Amendment; 6/2020 progress report." From the attachments listed on this email, it appears the referenced documents were attached.

45. On June 29, 2020, the director emailed the Parent, stating, in part: "I am sorting through the materials that the school shared with me. There are many work samples. Are work samples something that you and Parent wanted as part of the request or would you like it limited to just data sheets that support the progress notes?"

Later that same day, the educational advocate responded, stating: "Yes please."

Later that day, the director, responded, stating: "Here you go! Let me know if there is anything else you need." Attached to the director's email were four files:

- 2019 IEP with Progress Notes.pdf⁸
- 2019-2020 Data.pdf⁹
- 2018-2019 Data.pdf¹⁰
- 2019 Work Samples.pdf¹¹
- 2019-2020 Work Samples.pdf¹²

46. July 31, 2020 represents forty-five (45) calendar days after June 16, 2020—the date the Parent's advocate first requested access to certain of the Student's educational records.

47. On August 26, 2020, OSPI received the Parent's complaint and opened this investigation.

According to the Parent's complaint, her allegation that she was denied participation in IEP development, and that she was not provided with a copy of the Student's IEP (Issue 1), both relate exclusively to the development of the May 28, 2020 IEP. According to the Parent's

⁸ In its response, the District stated the Student's January 2019 IEP was included as part of this file.

⁹ This file contained a weekly schedule for the Student, including, in part, activities the Student worked on, for the weeks of: December 9, 2019 through December 13, 2019.

¹⁰ This file consisted of: six pages of documents that track how many teacher prompts the Student required to complete various assignments; an "assignment checklist" that appears to have been intended to help the Student better track and complete assigned work; and, several pages tracking whether Student stayed on task, used kind words and gestures, arrive to class on time, and took care of Student's "work and tools." In accordance with the file name, it appears the entirety of this attachment related to the 2018-2019 school year.

¹¹ This file consisted of: a progress report for the Student's January 2019 IEP, with one entry dated March of 2019 for each goal in the January 2019 IEP; and math and reading assignments completed by the Student.

¹² This file contained, in part, the following: a January 27, 2020 completed math assignment; a February 20, 2020 completed reading/writing assignment; a December 16, 2019 record related to a reading assignment; a December 16, 2019 completed writing assignment; and an undated, completed writing assignment.

complaint, as well as supplemental information provided by the Parent during the course of this investigation, her allegations on this score are multi-faceted:

- i) Parent was not provided with a copy of a draft IEP, which had been created prior to the May 28, 2020 IEP meeting, before the actual meeting;
- ii) Parent was not informed prior to the actual meeting that it was going to be an IEP meeting;
- iii) Furthermore, Parent was not provided with a copy of the draft IEP during, or after, the actual meeting;
- iv) Parent's input was not considered during the development process for the May 28, 2020 IEP meeting;
- v) Parent did not agree with the contents of the May 28, 2020 IEP, but the District nonetheless chose to implement the May 28, 2020 IEP after that date; and,
- vi) Parent requested a follow-up IEP meeting after the May 28, 2020 meeting, but she was ignored.

As per the Parent's allegation the District did not properly respond to her request for Student records under FERPA, she stated that "all [requested] records were not produced."

As detailed in an above footnote, according to the Parent's complaint, Issue 2 (IEP development) relates exclusively to the Student's December 2, 2019 and May 28, 2020 IEPs.

As per Issue 2(a), "developing sufficient present levels of academic achievement and functional performance," according to the Parent's complaint, her allegation on this score is as follows: the December 2, 2019 and May 28, 2020 IEPs do "not include any information about the Student's present levels of academic performance." The Parent's complaint also read, in part: "present levels are non-existent."

As per Issue 2(b), "developing measurable annual goals," according to the Parent's complaint, her allegation on this score is multi-faceted:

- i) "The District did not document the IEP teams' rationale for continuing with the same goals and there is no documentation to show whether the goals continued to be appropriate for the Student [given the Student's lack of progress]";
- ii) "There was no baseline and without this progress cannot be measured accurately"; and,
- iii) "There is a lack of measurability of the annual goals."

As per Issue 4 (ESY), the Parent's complaint and reply stated, in part:

ESY is a team decision, and I was not included in the decision not to provide ESY. Additionally, I was not provided data or progress notes in January 2020 to show there was no regression, and that ESY was not necessary...During the IEP meeting [on] October 14, [2019], I expressed concerns of regression, and reference[d] the data I received in June 2019 that showed regression, and minimal progress.

...

[I] emailed the school system about extended school year services [for the Student] in April of 2020...due to the Student's regression in reading and math [but she] never received a response [from the District]."

As per Issue 5 (progress reporting), the Parent's reply stated, in part:

Progress notes were provided in October 2019. Progress notes were not provided again until it was requested by the Advocate in June.

Progress notes were not sent home in the Student folder in February 2020, as the District claims. I was very diligent to check my child's folder daily, and progress notes were not sent or received by the parent in February 2020.

...

On April 19, 2020, I emailed requesting information with regards to my child's present levels of performance, if he met goals or close to meeting goals. At no time was I informed that progress notes had been sent to me in February with this information. I would not have requested this information had the progress notes been sent to me in February. Further, in accordance with the IEP, quarterly work samples were to be provided to the parent to show growth, and progress of goals. This too did not happen as outlined in the IEP.

48. OSPI received the District's response to the Parent's complaint on September 16, 2020. According to the District's response, as regards any potential violation of Issue 1 (parent participation), "the District proposes as corrective action that the Student's case manager receive training on the requirements of WAC 392-172A-03100."

The District denied it failed to properly respond to the Parent's FERPA request.

As regards Issue 2 (IEP development), the District proposed that "the Student's IEP team reconvene within the first six weeks of the start of the school year to discuss any need for recovery services for the Student as a result of the school building closure last spring due to COVID-19."

As regards Issue 3 (meeting notice), the District's response stated:

The District admits that it did not provide the Parent notice consistent with WAC 392-172A-03100 for the May 28, 2020 IEP meeting. While the District provided the Parent with an invitation to this remote Zoom meeting via email, the email invitation with the Zoom link did not include all of the necessary information. It should be noted that this meeting took place during the mandatory COVID-19 school closure and the District was holding all IEP meetings remotely at that time. As a corrective action, the District proposes providing all special education case managers with a written training related to providing IEP meeting invitations consistent with WAC 392-172A-03100, including the continued use of the District's PowerSchool system for generating meeting notices and invitations during the continuing COVID-19 crisis and any school closure periods.

As per Issue 4 (ESY), the District's response stated:

During the October and December IEP meetings held during the 2019-2020 school year, the team addressed ESY services for the Student, as reflected on the Consideration of Special Factors page on the IEP documents. The Parent attended these IEP meetings and participated in these discussions. On March 14, 2020, the parent sent an email to the case manager asking for a conversation about ESY...The District admits that it did not follow procedures to discuss the Parent's request for ESY services during the 2019-2020 school year. However, the Student did not show regression upon returning from winter break in January 2020 and would not have qualified for ESY Services that year. The IEP team determined that there was no demonstrated need for ESY services.

49. During the course of this investigation, OSPI's investigator asked the District the following:

What was the District's understanding of the Parent's request for an IEP meeting of June 16, 2020?...Parent disagreed with the present levels and goals in the May 2020 amended IEP, but was this also to review the Parent's evaluation request?

Also, concerning the Parent's evaluation request: was this a request for an [independent educational evaluation] IEE? Has that been completed as of today? If so, when?

In response, the District stated:

The district was not sure of the reason other than to review the IEP as the Parent stated she disagreed with the goals. The evaluation request was for the District to conduct a full-reevaluation of the student. We have begun the evaluation, however it is not completed as our school psychologist started the process when we returned from summer break.

The District anticipates completing the Student's reevaluation by November 5, 2020.

CONCLUSIONS

Issue One – A: Parent Participation – The Parent alleged she was denied participation in the May 28, 2020 individualized education program (IEP) meeting. Specifically, Parent stated she was prevented from participating in the following ways:

- **Allegation 1:** Parent was not provided with a copy of a draft IEP, which had been created prior to the May 28, 2020 IEP meeting, before the meeting took place;
- **Allegation 2:** Furthermore, Parent was not provided with a copy of the draft IEP during, or after, the actual meeting;
- **Allegation 3:** Parent was not informed prior to the actual meeting that it was going to be an IEP meeting;
- **Allegation 4:** Parent's input was not considered during the development process for the May 28, 2020 IEP meeting;
- **Allegation 5:** Parent did not agree with the contents of the May 28, 2020 IEP, but the District nonetheless chose to implement the May 28, 2020 IEP after that date; and,
- **Allegation 6:** Parent requested a follow-up IEP meeting after the May 28, 2020 meeting, but she was ignored.

The parents of a child with a disability are expected to be equal participants, along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and, (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

Allegation 1

The Parent alleged the IDEA was violated because she was not provided with a copy of a draft IEP before the May 28, 2020 meeting, which had been created prior to the meeting.

School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion of the student's needs and the services to be provided to meet those needs—before the IEP is finalized. The IDEA, however, does not require a school district to provide a parent with a draft IEP prior to an IEP meeting.

Here, the District's response did include a copy of the Student's May 2020 amended IEP that was labeled, 'draft.' On June 8, 2020, the Parent emailed the special education teacher, asking to see a copy of the May 28, 2020 "IEP addendum form [that the meeting participants] went over...during the May 28, 2020 move up meeting." In light of the foregoing facts, it does appear a draft version of the May 2020 amended IEP existed prior to the meeting. However, the IDEA does not require a school district to provide a parent with a draft IEP prior to an IEP meeting, so long as there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. Therefore, there was no violation of the IDEA on the mere fact the Parent alleged she was not provided with a copy of the draft May 2020 amended IEP before the meeting. OSPI does recommend that when drafts are created in advance of meetings, that they are shared with parents; however, there is no requirement to do so.

Allegation 2

The Parent alleged she was not provided with a copy of the draft IEP during, or after, the meeting. The school district must give the parent a copy of the student's IEP at no cost to the parent.

Here, the record supports the following two findings. First, the Parent was provided with, at least, access to the draft May 2020 amended IEP during the May 28, 2020 IEP meeting. For example, on June 8, 2020, the Parent emailed the special education teacher, asking to see a copy of the May 28, 2020 "IEP addendum form [that the meeting participants] went over...during the May 28, 2020 move up meeting." Second, soon after the May 28, 2020 IEP meeting, the District provided the Parent with a copy of the Student's May 2020 amended IEP. For example, on June 10, 2020, the special education teacher responded to the Parent's email of June 8, 2020, providing the Parent with a copy of the May 2020 amended IEP.

Therefore, OSPI finds the Parent was provided a copy of the IEP and there has been no violation of the IDEA.

Allegation 3

The Parent alleged she was not informed, prior to the actual May 28, 2020 meeting, that it was going to be an IEP meeting—in other words, that the Student's needs resulting from the Student's disability was going to be a topic for discussion. When scheduling IEP meetings, districts must inform parents of the purpose of IEP meetings.

Here, the District did not explicitly tell the Parent that the May 28, 2020 meeting was going to be an IEP meeting. For example, in several communications in March and May 2020, the Parent and various District staff discussed the need for a “move up” meeting, to discuss the Student’s transition to middle school; these same communications do not explicitly refer to the meeting as an IEP meeting.

However, the District did provide the Parent with notice that at least some of the Student’s needs resulting from the Student’s disability would be discussed at the May 28, 2020 meeting. For example, on March 31, 2020, the special education teacher informed the Parent that, whenever the move up meeting took place, the following topics would be discussed: 1) the fact that the Student would continue to have a 1:1 paraprofessional with him in the middle school setting in the 2020-2021 school year; and, 2) the fact that the Student’s future middle school would “be having professional development on inclusion [of students with special needs] as [the middle school] will be a state demonstration site for Inclusionary Practices.”

Furthermore, after the District invited the Parent to the move up meeting on May 18, 2020, the Parent and the principal worked together to determine who to invite to the meeting. On May 20, 2020, the principal told the Parent the middle school special education teacher had been invited to attend the May 28, 2020 meeting. For the foregoing reasons, the Parent did have notice that at least part of the May 28, 2020 meeting would be devoted to discussing the Student’s needs resulting from the Student’s disability, and there has been no violation of the IDEA.

Regardless, OSPI reminds the District of the following: When scheduling meetings wherein students’ IEP services will be discussed, school districts must inform parents: 1) that said meetings are IEP meetings; and, 2) if there is a more specific purpose—say, for example, to discuss a specific portion of a student’s IEP, or a new need resulting from the student’s disability, that the more specific purpose must also be communicated to the parent.

Allegations 4 & 5

The Parent alleged her input was not considered during the May 28, 2020 IEP meeting. The Parent also stated she did not agree with the contents of the May 28, 2020 IEP, but the District nonetheless chose to implement the May 28, 2020 IEP.

Here, from the Parent’s complaint and reply, it is clear the Parent has concerns with the following portions of the Student’s May 28, 2020 IEP: present levels of functional and academic performance and measurable annual goals. From the Parent’s complaint and reply, it is also clear the Parent believes the May 28, 2020 IEP did not adequately respond to any lack of progress the Student was making on the Student’s goals. These three issues will be addressed below, in Issue 2.

From the contemporaneous record—the emails and IEP documents from May and June 2020, though, the following is not clear: what the Parent’s input was at the May 28, 2020 IEP meeting; which portions of the May 28, 2020 IEP the Parent disagreed with during the actual May 28, 2020 IEP meeting, and why; and what the District staff members thought of the Parent’s input and concerns. Therefore, to the extent the Parent did offer input and disagreement with certain aspects

of the Student's May 2020 amended IEP at the May 28, 2020 IEP meeting, the District is reminded of the following: One purpose of prior written notice is to document that full consideration has been given to parental input regarding the student's educational needs, and to clarify 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.

OSPI's investigation into Allegations 4 & 5, though, did uncover the following problematic occurrence:

Students' IEP teams must determine a student's least restrictive environment. Districts shall ensure that the provision of services to each student eligible for special education shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and, 2) Special classes, separate schooling, or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

In determining a student's least restrictive environment, the IEP team must consider the following factors: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. Furthermore, services included in a student's IEP should reflect the unique needs of the student and not the school's schedule.

Here, the following two changes were made to the December 2019 amended IEP by the May 2020 IEP amendment: 1) the total amount of specially designed instruction in reading, writing, math, and social/behavior the Student was to receive increased—fairly substantially; and, 2) the *educational setting* for the provision of the Student's specially designed instruction in reading, writing, and math was changed from a *special education setting* to a *general education setting*.

Crucially, these changes do not appear to have been made because of the Student's needs resulting from the Student's disability, but rather because of the schedule at the Student's middle school. For example, the May 28, 2020 "IEP Amendment without Reconvening the IEP Team" and prior written notice stated the Student's IEP team amended the "frequency, location, and/or duration of special education services" listed in the Student's December 2019 amended IEP so as to "accurately reflect special education service time in [Student's] middle school [next year]." The May 28, 2020 prior written notice further noted the reason for the change was "due to Student moving to middle school", that not changing the service matrix was rejected, and that the "Student's service time in special education will be different due to the schedule change of being in middle school."

In sum, the Student's IEP team did not follow proper procedures for determining the Student's least restrictive environment, as the reason for the change to services appears to be solely based on the middle school schedule without consideration of the Student's specific, disability-related needs. Therefore, the Student's IEP team will be required to meet. At this meeting, the Student's

IEP team will consider the following factors, and as needed, revise the Student's May 2020 Amended IEP:

1. The educational benefits to the Student of a placement in a general education classroom;
2. The nonacademic benefits of interaction with students who are not disabled;
3. The effect of the Student's presence on the teacher and other students in the classroom;
4. The cost of mainstreaming the Student in a general education classroom; and,
5. The Student's needs resulting from the Student's disability.

According to the District, it is currently in the process of completing a reevaluation of the Student, as requested by the Parent. The District anticipates completing the Student's reevaluation by November 5, 2020. Therefore, OSPI will require that this IEP meeting take place by November 13, 2020.

Allegation 6

The Parent alleged she was denied participation in the Student's IEP in that: she requested an additional IEP meeting after the May 28, 2020 meeting, but the District ignored her request.

Here, the record shows the following: On June 12, 2020, the Parent requested that an additional IEP meeting take place. In her June 12, 2020 request, the Parent stated that "there [were] a few things missing and [other] items [that need] to be addressed...I do not agree with the IEP." On June 16, 2020, the Parent's education advocate requested certain Student records from the District, and again requested that another IEP meeting be held.

On June 19, 2020, the director responded, proposing that the IEP team meet the next week or after August 1 because, "Today is our last day of school and then our certificated staff are off for the summer. That being said we want to ensure a successful start to the school year for Student and will be available to meet at a time that works for the team."

On June 22, 2020, the Parent's educational advocate responded, stating the following week was too soon and that they wanted to review the requested educational records prior to meeting. The advocate stated she would propose dates once they received the documents. The District completed its response to the Parent's June 16, 2020 request for the Student's educational records on June 29, 2020. From the record, it does not appear the Parent or the District further discussed setting up another IEP meeting prior to the Parent filing her complaint with OSPI on August 29, 2020.

On the foregoing, OSPI does not find the Parent's participation was limited by another IEP meeting not taking place prior to her filing her complaint on August 29, 2020. Within five business days of the Parent's initial request, the District proposed dates for an additional IEP meeting—either the week of June 22, 2020 or "after August 1." The Parent, through her advocate, responded to the District's proposal by requesting that an additional IEP meeting be delayed until the District completed the Parent's request for Student records. In her response, the educational advocate also stated: "[Then] I will get back to you [with] a couple dates and times." On June 29, 2020, the District completed its response to the Parent's request for Student records. From the record provided to OSPI, it does not appear the Parent or the Parent's advocate subsequently provided

the District with “a couple dates and times” for an additional IEP meeting prior to the Parent filing her complaint with OSPI on August 29, 2020. Accordingly, the Parent’s participation was not limited on this score, and there has been no violation of the IDEA.

Issue One – B: Access to Student’s Educational Records – The Parent alleged the District did not properly respond to her request to access the Student’s records under the Federal Educational Rights and Privacy Act (FERPA). Under FERPA, 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 meeting relating to the educational placement of the student or provision of a free appropriate public education (FAPE) to the student. The district must respond in no more than 45 calendar days after the request has been made.

Here, on June 16, 2020, the Parent requested the following documents—for both the 2018-2019 and 2019-2020 school years: progress reports; data to support progress reports; IEPs; notes; meeting notes; and recordings.¹³ July 31, 2020 was 45 calendar days after the date of the Parent’s FERPA request. The District provided the Parent with the following records prior to that date:

Date Provided to Parent	Document(s) Provided to Parent
June 16, 2020	<ul style="list-style-type: none"> • Progress report concerning “all goal areas” in Student’s December 2019 Amended IEP.
June 27, 2020	<ul style="list-style-type: none"> • A consent for re-evaluation (date unknown); • January 29, 2019 IEP; • October 14, 2019 IEP; • December 3, 2019 IEP; • May 28, 2020 IEP amendment; and, • June 2020 progress report.

¹³ As a preliminary matter, OSPI notes the following: it is not clear, in this case, the District was obligated to provide the Parent with “meeting notes.” For example, the term ‘education records’ means those records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. The term ‘educational records’ does not include records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records are in the sole possession of the maker of the records, and are not accessible or revealed to any other individual except a temporary substitute of the record maker. FERPA exempts from the definition of ‘education records’ those records considered to be ‘sole possession records,’ such as raw data or notes. 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. If, however, a student’s IEP team took ‘official’ meeting notes that were to be stored with other information and documents on the student, those meeting notes likely would constitute education records under FERPA.

June 29, 2020	<ul style="list-style-type: none"> • Progress notes related to the Student’s January 2019 IEP; • Two weekly activity schedules for the Student for the 2018-2019 school year; • 6 pages of documents that track how many teacher prompts the Student required to complete various assignments (2018-2019 school year); • An “assignment checklist” that appears to have been intended to help the Student better track, and complete, assigned work (2018-2019 school year); • Several pages tracking whether Student stayed on task, used kind words and gestures, arrived to class on time, and took care of Student’s “work and tools” (2018-2019 school year); • A January 27, 2020 completed math assignment; • A February 20, 2020 completed reading/writing assignment; • A December 16, 2020 record related to a reading assignment; • A December 16, 2019 completed writing assignment; and, • A completed writing assignment (undated).
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Upon review, it appears the District timely fulfilled the Parent’s FERPA request in relation to the following: 1) the Student’s IEPs for both school years; 2) progress reports for the latter half of the 2018-2019 school year and the 2019-2020 school year; and, 3) work samples that would have, at least in part, represented ‘data to support progress notes’ for both school years.

Upon review, OSPI found that the Parent was, perhaps, not provided progress reporting relating to the fall semester of the 2018-2019 school year. For example, the District provided the Parent with a copy of the Student’s January 2019 IEP, which may have contained present levels information that was relevant to how much progress the Student made during the fall semester of the 2018-2019 school year—but, from the record, this is not clear. Additionally, it does not appear if meeting notes were provided to the Parent or whether these notes even exist as part of the Student’s educational record.

Furthermore, in her complaint, the Parent stated that “all [the FERPA] records [she requested] were not produced.” However, the emails provided to OSPI during the course of this investigation, as well as the Parent’s complaint and her reply to the District’s response, do not clarify what FERPA records she believes the District failed to provide to her.

In light of the foregoing:

By November 4, 2020, the District will clarify with the Parent what additional educational records the Parent believes she requested on June 16, 2020 and which the District possesses but has not provided to her. To the extent the requested records do constitute educational records under FERPA, and do appear to fall within the parameters of her June 16, 2020 request, the District will provide the Parent with a copy of these records by November 13, 2020.

To the extent the Parent’s clarification relates to records that were not requested in her June 16, 2020 request, as per FERPA, the District will have 45 calendar days to respond to this additional FERPA request.

Issue Two: IEP Development – The Parent alleged the District did not follow proper IEP development procedures when developing the Student’s December 2019 amended IEP and May 2020 amended IEP.

Present Levels and Measurable Goals

On this score, the Parent stated the above two IEPs did “not include any information about the Student’s present levels of academic performance.” She also stated the measurable annual goals in these IEPs had “no baseline and [Student’s progress on them] cannot be measured accurately.”

IEPs must include a statement of the student’s present levels of academic achievement and functional performance, including: how the student’s disability affects the student’s involvement and progress in the general education curriculum. IEPs must include a statement of the student’s measurable annual goals, including academic and functional goals designed to: meet the student’s needs that result from the student’s disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student’s other educational needs that result from the student’s disability.

The following are the present levels and measurable goals from the Student’s December 2019 amended IEP and the May 2020 amended IEP in relevant part (the present levels and measurable goals included in the December 2019 amended IEP did not change with the May 2020 IEP amendment):

- **Reading:**
 - PLAAFP: Student is currently able to verbally answer comprehension questions (ex: who, what, when, where, why, how) after independently reading a 3rd grade text, 3 out of 10 correct, over 5 consecutive trials, as measured by data collection.
 - MAG: Student will increase his ability to verbally answer comprehension questions (ex:...) after independently reading a 3rd grade text increasing from 3 out of 10 correct to 9 out of 10 correct, over 5 consecutive trials, as measured by data collection...
- **Writing:**
 - PLAAFP: Currently, while answering a written comprehension question at the 3rd grade level, Student is able to write his answer in a complete sentence 1 out of 5 sentences correctly, over 5 consecutive trials, as measured by written response.
 - MAG: While answering a written comprehension question at the 3rd grade level, Student will be able to write his answer in a complete sentence increasing from 1 out of 5 sentences correct to 4 out of 5 sentences correct, over 5 consecutive trials, as measured by written response....
- **Math:**
 - PLAAFP: Student is able to solve subtraction word problems at the 4th grade level 4 out of 10 correct, over 5 consecutive trials, as measured by data collection.
 - MAG: Student will be able to solve subtraction word problems at the 4th grade level increasing from 4 out of 10 correct to 9 out of 10 correct, over 5 consecutive trials, as measured by data collection...
- **Behavior/Social 1:**
 - PLAAFP: Student currently needs to be redirected by an adult least 4-5 times during transitions, over 5 consecutive trials, as measured by teacher observation.

- MAG: Student will decrease his need for redirects during transitions from 4-5 adult redirects to 2 adult redirects during transitions, over 5 consecutive trials, as measured by teacher observation...
- **Behavior/Social 2:**
 - PLAAFP: Student is able to stop a preferred task when asked by an adult (for example: at transitions and/or during teacher directions) 1 out of 5 opportunities, over 5 consecutive trials, as measured by teacher observation.
 - MAG: Student will stop a preferred task when asked by an adult (for example:...) increasing from 1 out of 5 opportunities to 4 out of 5 opportunities, over 5 consecutive trials, as measured teacher observation...
- **Behavior Social 3:**
 - PLAAFP: Student is able to self-monitor his transitions for readiness (supplies and self-ready) for the next subject 1 out of 5 opportunities, over 5 consecutive trials, as measured by teacher observation.
 - MAG: Student will be able to self-monitor his transitions for readiness (supplies and self-ready) for the next subject increasing from 1 out of 5 opportunities to 4 out of 5 opportunities, over 5 consecutive trials, as measured by teacher observation...

As is evident from the above language, these two IEPs did, in fact, include information about the Student's present levels of academic performance.

Furthermore, the goals in both IEPs are measurable. This is because they consist of three elements: a baseline (the Student's starting point of performative ability); an objective (the goal for where the Student's performance is ended to go); and both the baseline and the objective are in the same unit of measurement. Take, for example, the Student's reading goal:

- **Baseline:** After independently reading a 3rd grade text, Student can answer 3 out of 10 reading comprehension questions correctly.
- **Objective:** After independently reading a 3rd grade text, Student will be able to answer 9 out of 10 reading comprehension questions correctly.
- **Same Unit of Measurement:** The number of reading questions Student can answer correctly after independently reading a 3rd grade text.

In sum, the present levels and measurable goals in the Student's December 2019 amended IEP and May 2020 amended IEP are sufficient under the IDEA; there has been no violation.

Parent's Concerns About Student's Progress

The Parent alleged the District did not follow proper procedures for responding to her concerns about the Student's lack of progress. More specifically, the Parent alleged it was an error for the Student's May 2020 amended IEP to include the same goals as the Student's December 2019 amended IEP.

Here, on at least three occasions, the Parent did inform the District she was concerned the Student was not making sufficient progress on his IEP goals: November 18, 2019; December 16, 2019; and March 14, 2020. From the documentation provided to OSPI during the course of this investigation, though, it is not clear to what extent the Parent communicated the more specific allegation, which

was included in her complaint and reply: that it was an error for the Student's May 2020 amended IEP to include the same goals as the Student's December 2019 amended IEP.

On the basis of the documentation provided to OSPI during this investigation, OSPI concludes as follows:

As discussed below (Issue 5), the Parent's frustration with progress reporting during the spring of 2020 was legitimate. For example, the progress reporting provided to her on June 16, 2020 did not provide her with any information of the Student's progress on his behavior – social goals, and only some limited information on the Student's reading, written language, and math goals.

Ultimately, though, for the following reasons, OSPI finds the District followed proper procedures for responding to the Parent's concerns about progress. First, the Parent participated in both the December 2019 amended IEP and May 2020 amended IEP meetings, and from the documentation provided to OSPI during the course of this investigation, there is nothing to suggest the Parent's participation and input during these meetings was improperly abridged.¹⁴

Second, the December 2019 amended IEP did add a new measurable annual goal—behavior social 3, showing that the Student's IEP team was, to some extent, responsive to a change in the Student's needs resulting from the Student's disability.

Third, the May 2020 amended IEP increased—fairly significantly, the weekly minutes of specially designed instruction in reading, writing, and math that the Student received. As discussed above, the evidence suggests this change occurred primarily as a result of what the Student's middle school schedule would be during the forthcoming 2020-2021 school year. But it is also possible the Student's IEP team determined an increase in minutes of specially designed instruction was needed to address any change in the Student's needs resulting from the Student's disability.

Thus, while OSPI finds no violation, because OSPI is already requiring an IEP meeting to occur as a result of corrective actions for this complaint, at that meeting, the IEP team will also be required to discuss: what are appropriate measurable goals for the Student?

Issue Three: Notice of May 28, 2020 IEP Meeting – The Parent alleged the District did not provide her with proper notice of the Student's May 28, 2020 IEP meeting, in accordance with WAC 392-172A-03100.

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,

¹⁴ 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.

including notifying parents of the meeting early enough to ensure that they will have an opportunity to attend. The notification must: indicate the purpose, time, and location of the meeting and who will be in attendance; and inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student.

Here, on May 18, 2020, the special education teacher invited the Parent to a “move up meeting” scheduled for May 28, 2020 at noon, via Zoom. The May 18, 2020 did not include a list of individuals that were also invited to attend the meeting.

On May 20, 2020, the Parent responded, stating she would prefer if the general education teacher, “and [the middle school] sped teacher” and the Student were invited to attend the meeting. The Parent also asked what the special education teacher thought about inviting the Student’s 1:1 paraeducator to the meeting as well. The principal responded, stating: the middle school special education teacher was invited; the special education teacher would be sending an invitation to the general education teacher; and the 1:1 paraeducator was not available for the meeting as she was on leave.

While there was not a single notification sent to the Parent, it is clear that from the two emails she was sent—one on May 18 and one on May 20, 2020, that the Parent was provided with sufficient notice under WAC 392-172A-03100. For example, from the first email, Parent was made aware of the location and timing of the meeting: a Zoom meeting at noon on May 28, 2020. From the second email, the Parent was made aware of at least some of the individuals who would likely be attending the May 28, 2020 IEP meeting: the general education teacher; the middle school special education teacher; the principal; and the special education teacher.

In actuality, in addition to the above-listed people, the middle school assistant principal, the secondary special education coordinator, and the special education director also ended up attending the May 28, 2020 IEP meeting. OSPI reminds the District that if they knew these three individuals were to attend the meeting prior to its occurrence, the Parent should have been informed of the same.

Regardless, with the May 18 and 20, 2020 emails, the Parent was provided with sufficient notice with WAC 392-172A-03100 and no corrective actions are warranted.¹⁵

¹⁵ WAC 392-172A-03100 also requires that parents be informed of the purpose of IEP meetings. As the Parent alleged she was denied proper participation in the May 28, 2020 IEP meeting, in part, because she was not informed of the purpose of the meeting, this allegation was discussed above, in Issue 1. As noted in that section, while the District could have done a better job informing the Parent that the Student’s IEP services were to be discussed at the May 28, 2020 IEP meeting, the Parent’s numerous communications with the special education teacher prior to the meeting, as well as her discussion via email concerning the Student’s paraeducator services and inclusion supports for middle school staff members, should have effectively put the Parent on notice that the Student’s special education services were to be discussed at the meeting.

Issue Four: Extended School Year Services – The Parent alleged the District did not follow proper procedures for responding to the Parent’s request for extended school year (ESY) services.

Here, the facts show the following: all three of the Student’s 2019-2020 IEPs (October 2019, December 2019, and May 2020) state the Student did not require ESY services; and, on March 14, 2020, the Parent emailed the special education teacher, requesting, in part, that the Student be provided with ESY due to a perceived regression in the Student’s performance.

On this issue, the parties allege the following:

- The Parent stated she was not adequately included in a discussion about ESY during the October 2019 IEP meeting.
- The District stated the Student’s IEP team specifically addressed the potential need for ESY services during the October 2019 and December 2019 IEP meetings, and that the Parent actively participated in these conversations.
- The Parent alleged she renewed her request for consideration of ESY in an email in April 2020, due to her perception that the Student was, or would, regress in reading and math.
- The District acknowledged that it did not properly respond to the Parent’s request for ESY services during the 2019-2020 school year, but, because the Student “did not show regression upon returning from winter break in January 2020, [Student] would not have qualified for ESY services.”

As detailed above, there are relatively few facts that can be established around the IEP team’s consideration of ESY for the Student during the 2019-2020 school year. It is therefore difficult for OSPI to make determinations on this score.¹⁶

However, for the following three reasons, the Student’s IEP team will be required to meet to discuss, in part, whether the Student requires ESY services: 1) in its response, the District acknowledges it did not properly respond to the Parent’s request for ESY services during the 2019-2020 school year—which is a violation as the District is required to respond to parent requests that may impact FAPE for a student; 2) OSPI is already requiring the Student’s IEP team to meet; and, 3) due to the spring 2020 COVID disruption, the Student’s needs resulting from the Student’s disability may have changed during or since the second semester of the 2019-2020 school year, and the Student may now require ESY services.

Issue Five: Progress Reporting – The Parent alleged the District did not follow proper procedures for reporting the Student’s progress on his IEP goals during the 2019-2020 school year.

IEPs must include a statement, indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

¹⁶ To the extent it is warranted, the District is again reminded: a prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate, and why.

January 2019 IEP

According to the Student's January 2019 IEP, the Student's progress on the goals in the January 2019 IEP was to be reported to the Parent via an "annual IEP and trimester notices of progress...or upon meeting a goal. A work sample of assessment from which the data sample/data point was pulled will be included with the progress note."

On the basis of the evidence provided to OSPI during the course of this investigation, OSPI makes the following conclusions in regard to whether the District properly reported progress on the Student's January 2019 IEP goals.

First, prior to the start of the 2019-2020 school year, the District's elementary schools changed from a trimester grading system to a semester grading system. However, the Student's January 2019 IEP was not amended—it continued to state progress would be reported on a trimester basis. So, it is possible different District staff had competing understandings of when progress was to be reported to the Parent under the January 2019 IEP.

Second, to the extent the January 2019 IEP required the District to provide the Parent with a progress report several months into the 2019-2020 school year: the documentation did not include such a document. But the Parent does acknowledge being provided with some progress data in October 2019. It is possible the Parent remembered reviewing the present levels of academic and functional performance that were included in the Student's October 2019 amended IEP. For example, the Student's reading, writing, and behavior social 1 goals in the October 2019 amended IEP were roughly similar to goals found in the January 2019 IEP. Therefore, for these goals, the present levels in the October 2019 amended IEP functioned as a progress report for the Parent. But the Student's October 2019 amended IEP did not include goals that were equivalent to the following goals in the January 2019 IEP: math and behavior social 2. Therefore, from the documentation provided to OSPI, the Parent was not provided with a progress update on these two goals in the January 2019 IEP when she was provided with a copy of the Student's October 2019 amended IEP.

Third, to the extent the January 2019 IEP required the District to provide the Parent with work samples related to the Student's performance on his January 2019 IEP goals in or around October 2019, the documentation provided to OSPI during the course of this investigation does not show that such samples were provided to the Parent around this time.

December 2019 Amended IEP

According to the Student's December 2019 amended IEP, progress on the goals of reading, written language, and math was to be reported to the Parent in the following manner: "annually with the IEP and with report cards at the end of each term. Quarterly work samples will be provided for Parents to show growth and progress of goals." According to the Student's December 2019 amended IEP, progress on the goals of behavior social 1-3 was to be reported to the Parent in the following manner: "annually with the IEP and with report cards at the end of each term."

On the basis of the evidence provided to OSPI during the course of this investigation, OSPI makes the following conclusions in. First, the December 2019 amended IEP could have more clearly stated when the District needed to provide the Parent with work samples for the Student's December 2019 reading, written language, and math goals. For example, the December 2019 IEP stated these were to be provided to the Parent on a quarterly basis. But, according to both the District's response and the District's 2019-2020 calendar, there were no quarters for elementary school students, so it is not clear when these work samples were to be provided to the Parent.

Second, the December 2019 amended IEP could have also more clearly stated when the District needed to provide the Parent with a progress report on all the goals in the December 2019 amended IEP. For example, the December 2019 amended IEP stated progress on all goals was to be reported "with report cards at the end of each term." But the date for the end of the first semester, January 24, 2020, was different than the date for the end of the "first grading period," February 4, 2020.

Third, from the documentation provided to OSPI during the course of this investigation, it appears more likely than not that the Parent was provided with a progress report on the Student's December 2019 amended IEP goals in early February 2020. But the same documentation does not show the Parent was provided with work samples related to the Student's progress on his December 2019 amended IEP goals of reading, written language, and math.

May 2020 Amended IEP

The May 2020 amended IEP did not alter the goals in the Student's December 2019 amended IEP, nor the manner in which progress was to be reported to the Parent.

On the basis of the evidence provided to OSPI during the course of this investigation, OSPI makes the following conclusions. First, on June 29, 2020, relatively soon after the conclusion of the second semester and grading period for elementary students (June 11, 2020), the Parent was provided with work samples that related, in part, to the Student's progress on the goals in his December 2019 amended IEP.

Second, the June 16, 2020 progress report that was provided to the Parent did include some information on the Student's general present levels of academic and functional performance in the areas of reading, written language, and math, but it is not clear how clearly this information related to the specific reading, written language, and math goals in the Student's May 2020 amended IEP.

Third, the June 16, 2020 progress report did not include detailed or individualized information on the Student's progress on the three behavior – social goals included in the Student's May 2020 amended IEP. The June 16, 2020 progress report explained that this was due to the disruption in services the District was able to provide to the Student during the spring 2020 COVID disruption.

In conclusion, on the above facts, OSPI finds the District did not materially implement the progress reporting component of the Student's 2019-2020 IEPs. In terms of remedial action, OSPI notes the

following: the District is currently in the process, as the result of a different special education citizen complaint, of creating, and providing to District staff, a training on proper progress reporting procedures. Therefore, while there has been a violation of the IDEA on this matter, no further corrective action is warranted at this time as the previously ordered training will address the violation identified here.

CORRECTIVE ACTIONS

By or before **November 16, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

FERPA Clarification and/or Production

By **November 4, 2020**, the District will clarify with the Parent what additional educational records the Parent believes she requested on June 16, 2020 and which the District possesses but has not provided to her. To the extent the requested records do constitute educational records under FERPA, and do appear to fall within the parameters of her June 16, 2020 request, the District will provide the Parent with a copy of these records by **November 13, 2020**.

To the extent the Parent's clarification relates to records that were not requested in her June 16, 2020 request, as per FERPA, the District will have 45 additional calendar days to respond to this second FERPA request.

By **November 16, 2020**, the District will provide OSPI with an update on the FERPA portion of these corrective actions, with OSPI to require additional confirmation of FERPA compliance, as needed.

IEP Meeting

By or before **November 13, 2020**, the Student's IEP team will meet. At this meeting, the Student's IEP team will consider the following factors, and, as needed, revise the Student's May 2020 Amended IEP:

1. The educational benefits to the Student of a placement in a general education classroom;
2. The nonacademic benefits of interaction with students who are not disabled;
3. The effect of the Student's presence on the teacher and other students in the classroom;
4. The cost of mainstreaming the Student in a general education classroom;
5. What are appropriate measurable annual goals for the Student;
6. Does the Student require extended school year services; and,
7. The Student's needs resulting from the Student's disability.

By **November 16, 2020**, the District will provide OSPI with the following documentation from the IEP meeting: 1) Invitation or scheduling documentation; 2) Agenda or meeting notes; 3) Information used to determine the Student's progress on IEP goals during school facility closures;

4) Updated progress report; 5) IEP or amended IEP, if applicable; 6) Plan for additional special education services, if applicable; 7) prior written notice; and, 8) any other relevant documentation.

DISTRICT SPECIFIC:

None.

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

REMINDERS

When scheduling meetings wherein students' IEP services will be discussed, school districts must inform parents: 1) that said meetings are IEP meetings; and, 2) if there is a more specific purpose—say, for example, to discuss a specific portion of a student's IEP, or a new need resulting from the student's disability, that the more specific purpose must also be communicated to the parent.

One purpose of prior written notice is to document that full consideration has been given to parental input regarding the student's educational needs, and to clarify 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.

Dated this ____ day of October, 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.)