

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-46

PROCEDURAL HISTORY

On June 2, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Kent School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 3, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 15, 2021, the District requested an extension of time to respond to the complaint. OSPI granted the extension to July 2, 2021.

On July 2, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On July 15, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 16, 2021.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 3, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Did the District follow procedures to address the Parent's requests for individualized education program (IEP) meetings to discuss concerns regarding placement, evaluations, and progress, including:
 - a. Responding to requests to schedule meetings;
 - b. Addressing the Parent's topic of concerns;
 - c. Following IEP meeting scheduling procedures; and,
 - d. Following IEP meeting attendee requirements?

LEGAL STANDARDS

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop the individualized education program (IEP), and to revise or review it as necessary. 34 CFR

§300.324; WAC 392-172A-03110. A student's parents and school personnel will develop, review, and revise an IEP for the student. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student. 34 CFR §300.501; WAC 392-172A-050005.

The parent's role is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100(3).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100.

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs to receive FAPE. 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. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than

one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

FINDINGS OF FACT

Background

1. OSPI received the Parent's complaint in June 2021. The Parent alleged that when she asked for individualized education program (IEP) meetings, an out-of-District placement for the Student, or a meeting to review the Student's evaluation, the District failed to appropriately respond to her requests or misinterpreted her requests. The Parent stated that when she requested an out-of-District placement, the District interpreted her request as wanting in-person instruction. The Parent alleged the District failed to properly identify the topic of meetings on the IEP invitation and invited the wrong people to meetings.

According to the Parent, after she met with the District's executive director of inclusive education (executive director), they agreed that one of the District's assistant directors of inclusive education (assistant director 1) would "send agenda and meeting recap emails." The Parent stated that after this, they had two IEP meetings to discuss the Student's placement, but that only 30 minutes was scheduled for the meeting. The Parent also stated that the District "only wanted to discuss [IEP] progress" and did not want to "discuss the BIG picture by looking at his last 3 year evaluations" (2017 and 2020 evaluations). (Emphasis in original).

2. In its response to the Parent's complaint, the District stated it responded to the Parent's requests and concerns within a reasonable amount of time by generally suggesting that the IEP team meet to address the concerns, and then scheduling IEP meetings. The District stated it "consistently and promptly responded to the Parent's requests for IEP meetings to discuss her concerns regarding placement, evaluations, and progress." The District noted it understood the Parent was "dissatisfied with the IEP team's decisions at these meetings," but that the team "did in fact discuss and address her concerns."

2020–2021 School Year

3. On August 31, 2020, the Parent emailed a second assistant director of inclusive education (assistant director 2) questions regarding the Student's remote education program, including whether the District could provide a tutor or paraeducator, or consider a "charter or private school that has in person learning."
4. The District's 2020–2021 school year began on September 3, 2020, and the Student was eligible for special education services under the category autism.

5. On September 8 and 14, 2020, the Parent emailed assistant director 2 and the executive director, resending her August 31, 2020 email and stating the Student's "IEP is not being followed." Assistant director 1 responded to the Parent on September 14, 2020 and suggested the Student's IEP team meet.
6. On September 15, 2020, the Student's case manager and special education teacher (case manager) emailed the Parent and other members of the IEP team to schedule an IEP meeting.
7. On September 16, 2020, the Parent responded, noting the Student was not attending remote classes as virtual learning was not working for the Student and "he is not learning and is getting frustrated." The Parent stated she was open to meeting with the IEP team to discuss "IN PERSON learning options" for the Student, such as an "out of district placement...private school, a personal tutor, or district provided [applied behavior analysis]." (Emphasis in original.)

In response, assistant director 1 stated she would call the Parent and encouraged the case manager to proceed with scheduling an IEP meeting.

8. On September 23, 2020, the Student's IEP team—including the Parent, assistant director 1, the inclusive education program specialist (program specialist), dean of students, occupational therapist (OT), speech language therapist (SLP), general education teacher, school nurse, and the case manager—met.

The prior written notice documenting the meeting noted the team discussed "how best to support [Student] during remote learning" and "whether or not in-person learning would be safe and appropriate for [Student] when in-person learning is available." The team determined they would take data on the Student's attendance and length of attendance during online synchronous learning. The notice indicated the Student "would not qualify for in-person learning at the time due to his safety needs." The notice further recorded that "the IEP team hopes that by having [Student] login to live virtual instruction, he will learn the routine and the team will then be able to determine what [Student] can and cannot access during virtual instruction and the team will see if [Student] is learning during this type of instruction." The notice went on to document that:

[Student] struggles to come to the computer, stay and engage with live instruction. The team recommends that the parents use first/then and a penny chart (provided in materials sent home...) as a way to leverage positive incentives. [The Parent] stated that penny charts are for ABA therapists and teachers, not for her as a parent. Though the team has seen positive results using a positive incentive system with [Student] in the classroom, it will not be used at home. [Parent] did say that she would provide items if the therapists, teacher or paras would like to use the penny system.

According to the prior written notice, the team reviewed the "IEP Team Flowchart," information from the Parent, information from the teacher, SLP, and OT, and safety information shared by the school nurse.

9. In her reply, the Parent stated she emailed the case manager on September 29, 2020 that "virtual learning is still not working for us and that [Student] was getting anxiety when I try to

keep him focused and in the same room as the laptop.” The Parent stated she “also brought up that he was biting and scratching as I tried to entice him with positive rewards to stay in the room.” The Parent stated the case manager “suggested a couple 30 minute 1:1 meetings virtually with her to see if that would...We did try this a few times with no luck.”

10. On October 6, 2020, the Parent emailed the Student’s case manager and assistant director 1, reiterating that online learning was not working and he was not receiving a “free APPROPRIATE public education for his needs.” (Emphasis in original). The Parent stated she wanted to discuss “either withdrawing or switching to part time learning.”

The case manager responded with suggestions for engaging the Student in learning, summarized as follows:

- A consistent login time to build routine and structure (and a consistent end time)
- Whole group, small group, and 1:1 instruction with the case manager and paraeducators
- Consistent spot or desk at home for learning
- Optional 1:1 instructional time during afternoon asynchronous learning time (Parent supported while Student worked with case manager online)
- Utilize asynchronous resources in the afternoons

The case manager stated, “[Student] is very aware of schedules and expects certain things to happen throughout the day and this is definitely something we can build on. Would you like me to create a visual schedule and send to you? I can also create first/then visuals if you think that might be something that you would use with [Student].” The case manager further stated, “I realize that you do not wish to use a positive reward system at home with him but are willing to provide [Student’s] favorite snacks or incentives if we were to work online and use a penny chart with him. Are you still willing to do this?”

The case manager asked the Parent to let her know if she wanted to convene the IEP team. The same day, assistant director 1 further responded, stating she suggested the IEP team meet again to “check in and discuss [the Parent’s] concerns.”

The Parent replied on October 8, 2020, stating, in part: “The last IEP meeting was exactly what I asked it not to be. I would hate to waste everyone’s time again. The whole meeting was about everything except in-person learning options. The team did not discuss home bound instruction or in person learning options.” The Parent also stated in her email that the prior written notice misrepresented what she said about the “penny chart” and that she did use many positive reinforcement options at home.

11. The Parent, in her reply to the District’s response, stated that she:
 - Requested a meeting to review all in person learning options since [Student] was not receiving any education in online class due to his inability to attend or focus. Strategies for me as a parent to use to help him stay focused have already been discussed multiple times and are not working. Against my specific request, [assistant director 1] scheduled a meeting and only discussed continuing virtual learning options. No in person options were discussed...[Assistant director 1] stated that absolutely NO in person options of any kind

were being offered to anyone or available and that my only option was to try to continue to help him attend virtual learning...

12. On October 13, 2020, the Parent emailed assistant director 1, stating she had read that a nonpublic agency school was "providing trained behavior technicians to come out and help with online learning." The Parent asked if they could look into that for the Student.
13. On October 16 and 20, 2020, the Parent emailed assistant director 1 and asked about the possibility of enrolling the Student at an out-of-district placement. Assistant director 1 responded and explained that a change in placement would require a reevaluation.
14. On December 1, 2020, the Student's reevaluation was completed. The evaluation report noted the Student was in a remote learning model and had opportunities to access both synchronous and asynchronous learning. The evaluation included that the Student "has not been logging on to join his class for synchronous learning during the 2020-2021 school year." The evaluation noted that materials were available in hard copy for the Student, and the Parent had picked some up. The evaluation also noted the Student received ABA therapy at home.

The prior written notice, dated December 16, 2020, documented that the following attended the evaluation meeting: Parent, Parent's advocate, case manager, SLP, OT, dean of students, assistant director 1, and school psychologist.

15. On December 10, 2020, the District sent the Parent a draft copy of the IEP.
16. On December 14 and 17, 2020, the Student's IEP team—including the Parent, assistant director 1, the dean of students, Parent's advocate, two general education teachers, the case manager, the OT, the SLP, and the program specialist—met to discuss the reevaluation and draft an updated IEP based on the reevaluation.

The IEP noted the Student had not been attending school online, despite "school and educational opportunities" having been provided and "1:1 instructional times have been offered." The IEP noted the Student was provided with asynchronous learning materials and activities. The Parent reported that the Student "struggles to engage online," but that he "works on asynchronous work with his home ABA provider."

The IEP included goals in social emotional (greet peers, make choices), adaptive (self-care, attending to tasks), written expression (trace/copy words, trace/copy name), reading (sight words, letter sounds, match words to pictures), math (coins, number sense, addition), and speech (language, articulation), with progress reporting monthly. The IEP included several accommodations and specially designed instruction and related services in the special education setting. The IEP indicated the Student was to spend 28.7% of his time in the general education setting.

17. The prior written notice documenting the December 2020 IEP meetings included the following:
[Parent] requested that the district provide an out of district placement for [Student] at a school that is holding in person services while [District] is in a distance learning model.

[Parent] states that [Student] has not been able to access online learning or asynchronous learning during the COVID-19 remote learning platform and that he needs to learn in-person and that he has not made progress. Additionally, she states that [Student] struggles to learn online and will not sit down for more than 5 minutes. She and [Student's] home [board certified behavior analyst] BCBA also noted an uptick in behaviors...[Student] has attended class 9 times this year and does not stay for the duration of class. The IEP team agrees that [Student] needs significant support to access online learning.

The prior written notice indicated that the placement was not rejected, but that the team "is continuing to discuss how to best support [Student];" the team "also discussed other considerations for a change of placement to a more restrictive setting and program;" and the team would "continue this discussion as no decision was made at this meeting." The team also discussed conducting a functional behavioral assessment (FBA) to evaluate the function of the Student's behaviors in the distance learning model.

18. In her reply to the District's response, the Parent stated that at the IEP meetings, she continued to express concern with the reevaluation and that it "did not, in fact, evaluate [the Student] at all." For example, the Parent stated they did not know the Student's "present levels since no one has been able to see him or work with him since he has been unable to attend virtual learning." The Parent further stated that she disagreed with the evaluation and believed it was inaccurate. The Parent also stated she disagreed with the IEP itself and that the team "did not finish the discussion about placement as we were in disagreement."
19. The District was on winter break from December 21, 2020 through January 1, 2021.
20. On January 21, 2021, assistant director 1 emailed the Parent regarding providing support in the Student's home and stated:

As we discussed at [Student's] IEP meeting, we would like to propose that we reach out...to the agency that you are currently working with for support in your home. If they are open and able to add additional time to work with [Student] in their staffing schedule, we would like to propose that they work with [Student] in the morning in addition to the time they are currently working with him in the afternoon. Given they have their own goals and plan, this would be to support [Student's] access to his educational programming while not taking away from his other programming...We would ask the agency to increase their time and that we would reimburse you for this additional time.
21. On January 25, 2021, the Parent responded to assistant director 1 and declined the District's proposal to provide support in the home. The Parent stated this was because their current ABA provider did not have anyone available during school hours, it would be a "huge adjustment period and trial for a new [ABA] therapist, who is not trained in education, to work with [Student] to sit still and watch class on a screen for hours a day," and the Parent did not feel "there would be enough educational benefit." The Parent stated the Student was not progressing "with the school district in person OR virtually" and requested the Student be placed at a school outside the District.

Assistant director 1 responded that they would set up a meeting to discuss as an IEP team.

22. On February 1, 2021, an IEP meeting was scheduled for February 8, 2021, and then subsequently rescheduled for a time the school psychologist could attend (March 3, 2021).
23. The Parent disagreed with rescheduling to March 3, 2021 and requested the meeting be scheduled sooner. The Parent stated she had been requesting the IEP meeting since January 2021. In her reply to the District's response, the Parent further emphasized that assistant director 1 knew, per the Parent's January 25, 2021 email, that "I wanted to go over progress based on evaluations and failed to invite the appropriate people to the meeting to discuss." The Parent stated, "it was not really my choice at all to reschedule the meeting. I was ready to have the meeting and [assistant director 1] was not prepared."
24. Regarding scheduling the next IEP meeting, assistant director 1 emailed the Parent in mid-February 2021, stating scheduling was tricky as mid-winter break was in February, and that given the Parent's request to have the school psychologist at the meeting, March 3, 2021 was the first date everyone on the IEP team was available. Assistant director 1 clarified that "the psych wasn't invited to this meeting because your request was to discuss in person out of district options. Typically, they do not attend IEP meetings unless the evaluation is in process or if there is a request for them to attend." The assistant director stated, "I didn't realize that you had wanted her to attend until the morning of the meeting when you mentioned that you wanted to discuss progress over time...[since] the evaluation from 3 years ago. While the team was prepared to discuss [Student's] progress, I understand that you wanted to discuss more about the evaluation."

The Parent replied and stated, in part, she requested private placement on January 25, 2021, and in that email, stated that one of the reasons she was declining the District's proposal to hire an ABA therapist was that the Student was not making progress with in-person or remote learning. The Parent stated, based on this email, "I believe the school has 30 days from 1/25 to hold this IEP meeting."

25. On February 8, 2021, according to a later email from the Parent (April 14, 2021 email), assistant director 1 "set up intro with private school which was horrible fit [sic]."
26. On February 12, 2021, the case manager emailed the Parent the Student's progress report. The progress report indicated the Student was making either insufficient or emerging skill progress on his goals, primarily because he not accessing synchronous learning opportunities.
27. On March 3, 2021, the Student's IEP team met, including the Parents, Parent's advocate, the program specialist, assistant director 1, the dean of students, a general education teacher, the OT, and the SLP.

The prior written notice stated the District was "refusing to change [Student's] LRE placement to a public/private day school as requested by his mother." The notice recorded the IEP team decision that the District was "able to provide the special education services [Student] qualifies for as outlined in his evaluation and IEP" and that while the District recognized the Student required "in person services to make meaningful progress on his IEP goals, and that is not yet

available in [District], the district has provided alternatives to implement the IEP which the parent has refused." The notice indicated these alternatives were to provide paraeducator support in the Student's home to support the Student in "Accessing remote instruction as well as to engage 1-1 teaching activities," and noted this option was available "as long as instruction is being provided in a remote setting, should the family reconsider."

28. In her reply to the District's response, the Parent stated that at the March 2021 IEP meeting, despite IEP team member statements, assistant director 1 "only [wanted] to discuss IEP progress...goal progress and NOT look at his evaluations...[and continued] to say that the district can support [the Student]." The Parent stated assistant director 1 declined the out-of-District placement. The Parent disagreed with the prior written notice, stating:

The prior written notice stated that the reason out of district placement was declined is because the schools offer to hire our [ABA] provider to work morning was still on the table. This was **NEVER** a realistic option since our [ABA] team does not have this availability...The PWN...does NOT say 2017 evaluation [was reviewed], which parent specifically asked...repeatedly to look at to VERIFY that there has been no progress. As far as team input, his teachers could only read minimal progress as it was written in IEP goals. They could not give me any specific examples of progress when asked...His SLP did agree that he wasn't making much progress and may benefit from outside placement. His teacher hesitated when I asked her, admitting that he hadn't progressed much but said she 'thinks [District] can meet his needs'...

(Emphasis in original.)

29. On March 29, 2021, the Parent emailed the executive director and expressed concern that the Student was not receiving a FAPE as his "disability makes it impossible for him to login, sit still and learn online." The Parent expressed concern that the Student had not made progress compared to his previous triennial reevaluation. The Parent stated the District refused the out-of-District placement and while the District "did offer to hire aba to come in the house and sit with him during school...[assistant director 1] was unable to provide a plan in writing or show any sort of plan to provide this." The Parent stated, "based on the simple suggested offer with no plan, I declined." The Parent also expressed concern that there had been "a lot of 'misunderstanding' about why we are having meetings" and gave the example of her requesting an "outside placement" and then the request being "reword[ed] that I'm requesting in person learning. When I requested a meeting to go over outside placement based on info in [District's] evaluations, she misunderstood and did not invite the right people."
30. On April 14, 2021, the Parent emailed the executive director and shared a note from the Student's private medical provider, wherein the doctor stated that, based on the Student's disability, his "opinion [was] that [Student] would benefit from placement in a private school that specializes in autism to help him and his family with his behavior."
31. On April 19, 2021, the executive director emailed the Parent, noting follow up action items as a result of the meeting, in relevant part:
- "Review and provide a comp ed offer and discuss with family;"

- "IEP/evaluation team to review new information shared by you and any additional information you would like to share for next steps..."
- "IEP team discussion (if not occurred already) regarding appropriateness of a temporary evaluative placement;" and,
- "IEP team can also revisit placement and programming conversations in the context of an IEP team if new information warrants such."

32. On April 27, 2021, assistant director 1 emailed the Parent, noting that they were reviewing the Parent's additional information and putting together an offer of compensatory services. Subsequently, assistant director 1 emailed the Parent the offer "owed due to the distance learning framework and the IEP team decision for [Student] to receive in person instruction," which included 162.5 hours of 1:1 tutoring in math, written expression, adaptive, social/emotional, and reading. The director also stated they planned to add the Parent's additional information to the Student's evaluation through an "Assessment revision."

33. On May 5, 2021, the Parent emailed assistant director 1, asking how the recovery service hours were calculated, whether the District would provide compensatory education due to the Student's "failure to progress in the past 3 years, prior to Covid closure," and asked to schedule a meeting to discuss "placement or move forward with [independent educational evaluation] IEE."¹

Assistant director 1 responded to the Parent, stating she asked the IEP team to schedule a meeting "to discuss your questions" and that the school psychologist was already planning a meeting for "the evaluation amendment that includes the information you have provided."

The Parent replied, forwarding the email thread to the executive director, stating that assistant director 1 had "incorrectly re-phrased" what her emailed stated, and emphasizing that she asked for an "outside placement" and not that she had requested an evaluation amendment. The Parent stated she wanted to schedule a meeting "to move forward with outside placement with you present right away," due to the "severity of situation and summer break in a month."

Assistant director 1 responded, stating in part:

Because placement is an IEP team decision, the team needs to schedule a meeting to discuss and respond to your request. Further, a reevaluation is required before a change of placement...In my response on 5/7/21 I noted that I had asked the team to schedule a meeting to discuss your questions (I would like to schedule a meeting to discuss placement...) and recognize that I could have been more specific in that statement.

34. As of May 17, 2021, or earlier, the Student began receiving some in-person instruction at his District school.

¹ Note: The District ultimately filed a request for a due process hearing in response to the Parent's request for an IEE. As this issue is being addressed through due process, references to the IEE will be limited.

35. On May 19, 2021, the Parent met with assistant director 1 and the executive director to discuss the Parent's concerns. In an email recapping the meeting, assistant director 1 noted they discussed, in part:

- The IEP meeting the following day to discuss requested out-of-District placement, including discussing progress and new information from the Parent.
- Increasing collaboration and communication by using agendas for meetings and following up with Parent to "ensure understanding of agreements, requests, and discussions."
- The Parent would be providing further information related to her request for compensatory education.
- The District's offer of compensatory education (162.5 hours) and how it was calculated.

The assistant director also provided an agenda for the IEP meeting the following day, which included: "Discuss Out of District Placement Request; Discuss New Information Provided (Dr. Letter and Notes from [hospital])."

36. On May 20 and 24, 2021², the Student's IEP team met to discuss the Student's progress, a potential out-of-District placement, and new information provided by the Parent. The meeting attendees included the Parent, assistant director 1, executive director, program specialist, case manager, SLP, OT, Parent's advocate, and the school psychologist. A general education teacher attended the May 20, 2021 IEP meeting and was excused from the May 24 meeting.

The team discussed the Student's placement but did not make a final decision, agreeing instead to "meet again in early June to continue the discussion around outside placement."

The prior written notice and meeting notes indicated the IEP team discussed the Parent's concerns "around [Student's] progress from his 2017 evaluation to his 2020 evaluation," the Parent's request for an out-of-District placement change, and new information provided by the Parent. The notice indicated the team discussed and agreed to add additional information shared by the Parent (medical and treatment notes) to the Student's recent reevaluation.

The notice recorded that the Parent shared that the Student "is not safe at home, they do not believe he is making progress at home or at school and they believe he needs a change of placement." The team considered the request to change the Student's placement, but "after discussion around [Student's] progress the team was unable to conclude this discussion" and agreed to reconvene to continue the discussion and make a decision. The "school team shared IEP goal progress"; information about how the Student uses his communication device; and information about how the Student was doing at school, in-person; although it was noted that the "parents were most concerned about progress from evaluation to evaluation."

² The May 20, 2021 meeting notes/recap and an email from the Parent to the executive director indicated the Parent was frustrated only 30 minutes were scheduled for the IEP meeting and that the Parent requested they reconvene. In her email to the executive director, the Parent stated, "We went over the same information I have been explaining all year. All of the staff on the IEP team confirmed what I have been saying." A second meeting was scheduled for May 24, 2021 to continue the discussion.

37. On May 24, 2021, prior to the second IEP meeting, assistant director 1 emailed a summary of the discussion from the previous meeting and agenda. The Parent emailed with additions to the summary. Much of the information was the same as the prior written notice, but added additional details (Parent comments in parentheses):

- Parent shared that she wanted an out-of-District placement because she felt the Student was not progressing at home, that the Student had not made progress between his last triennial evaluation and current reevaluation, and his behavior was regressing (Student is not progressing at school or making meaningful progress)
- School team presented data on the Student's progress, Student's use of his communication device, reviewed each goal (Parent expressed concern that IEP goals were based on an evaluation with no progress from 2017, Student was at the same level he was at in preschool)
- Parent expressed the importance of the Student's use of the ACC to support communication skills
- School team shared how the Student is doing at school, including sitting at his desk, completing tasks/activities, that the Student works best with direct instruction, that the Student "has dumped over things in class" when he has full adult attention, the Student cleans up with a prompt, last year Student motivated by food as a reward and this year is motivated by high fives and verbal praise, enjoys 1:1 attention (Parent stated no specifics or examples were provided and that some of the Student's behaviors are new behaviors or regression)

The email also included the agenda for the next meeting (with Parent additions in parentheses):

- Continue discussion of progress (discuss "meaningful progress not the minimus [sic] and not the same info we continue to discuss at every meeting which we have all agreed is not progress)
- Discuss and decide Parent request for change of placement to out-of-District school
- Discuss and decide how to incorporate information provided by Parent from doctor

38. In her reply to the District's response, the Parent stated that during the May 2021 IEP meetings, assistant director 1 continued to insist that the District could serve the Student. The Parent also objected to several things in the prior written notice from the May 2021 IEP meetings:

- "It states that the 2017 evaluation was discussed in making that decision and that is not true."
- "[It] also states that [Student's behaviors have been unsafe at home and in the community but does not mention his behaviors since returning to in person learning."
- The Student's disability related issues "are all issues that [District] feels they can handle AND still progress on his goals. I don't see progression."
- "I see that [Student] is not progressing because [District] does not have enough well trained paras to support and have him learn and progress at the same time."

CONCLUSIONS

Issue: IEP Meeting Procedures & Addressing Parent Requests – The Parent alleged in her complaint that the District failed to properly address her concerns and requests for individualized education program (IEP) meetings related to the Student's placement, evaluations, and progress.

In general, IEP meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review as necessary. When a parent or district believes that a required component of a student's IEP should change and requests an IEP meeting, the district must conduct an IEP

meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). The parent role is an active role in which parents: provide critical information regarding the strengths of their child and express their concerns for enhancing their child's educational program; and, among other things, participate in discussions about their child's need for special education, related services, and supplementary aids and services.

IEP Meeting Scheduling: Based on the Parent's complaint and documentation, her primary concern related to an IEP meeting originally scheduled for February 8 and rescheduled to March 3, 2021. A second concern related to an IEP meeting in May 2021, which was scheduled for 30 minutes. A district must ensure that parents are given an opportunity to attend and participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place.

In general, the documentation and District response support that IEP meetings were suggested and scheduled within a reasonable amount of time, following the Parent's request for a meeting or the Parent's voicing of a concern. The Parent attended and participated in all IEP meetings held during the 2020–2021 school year (September 23, 2020, December 14 and 17, 2020, March 3, 2021, and May 20 and 24 2021).

On January 25, 2021, the Parent requested the Student be placed at a school outside the District and the District scheduled an IEP meeting for February 8, 2021. The meeting was rescheduled for March 3, 2021—a time the school psychologist could attend. The Parent wanted to meet earlier and stated she requested an IEP meeting on January 25, 2021, that she believed the District has "30 days from 1/25 to hold this IEP meeting." The District stated scheduling was delayed by mid-winter break and the Parent's request to have the school psychologist attend, and that March 3 was the first date that worked for the entire team. There is no requirement in special education regulation that a meeting must be held within 30 days of a parent's request (in contrast, there are specific timelines associated with development of a student's initial IEP and annual IEP timelines). In this case, the Student's IEP had been developed in December 2020, during two IEP meetings. Thus, while ideally the IEP team could have met sooner, it is not unreasonable—especially given the need to schedule around a District break and multiple team member schedules—that the meeting was held a little over a month after the Parent's request.

Further, regarding the fact that the May 20, 2021 IEP meeting was only scheduled for 30 minutes, there is no specific required length of time for an IEP meeting. While 30 minutes may seem short, when the Parent expressed concern, a subsequent IEP was promptly scheduled and held on May 24, 2021 to continue the discussion.

Overall, OSPI finds no violations of the IDEA or state special education regulations with respect to the scheduling of IEP meetings.

IEP Meeting Attendees: The Parent's primary concern related to the IEP meeting that occurred in March 2021. The Parent alleged the District originally identified the wrong people to attend the meeting because the school psychologist was not included and should have been given the Parent's request to discuss the Student's 2017 and 2020 reevaluations. In relevant part, an IEP

team must include an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative).

In general, all IEP meetings were attended by the required IEP team participants. Regarding the participation of the school psychologist, it is first important to note that the Student’s evaluation group met in early December 2020—including the Parent and school psychologist—to review the Student’s 2020 reevaluation. Then, regarding the IEP meeting, the Parent requested on January 25, 2021, the Parent stated that, per her email, the District knew “I wanted to go over progress based on evaluations and failed to invite the appropriate people to the meeting to discuss”—namely the school psychologist. However, the school psychologist is not a specific required member of the IEP team. The IEP instead must include “an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative).” The assistant director of special education, clarified in an email to the Parent, that “the psych wasn’t invited to this meeting because your request was to discuss in person out of district options. Typically, they do not attend IEP meetings unless the evaluation is in process or if there is a request for them to attend.” The assistant director stated, “I didn’t realize that you had wanted her to attend until the morning of the meeting [originally scheduled for February 8, 2021] when you mentioned that you wanted to discuss progress over time...[since] the evaluation from 3 years ago. While the team was prepared to discuss [Student’s] progress, I understand that you wanted to discuss more about the evaluation.” Ultimately, the meeting was rescheduled, and the school psychologist attended. OSPI finds no violation with respect to IEP team membership.

Responding to Requests for Meetings & Addressing Topics of Concern: The Parent alleged that when she asked for IEP meetings, an out-of-District placement, or a meeting to review the Student’s evaluation, the District failed to appropriately respond to or misinterpreted her requests. The Parent stated there were “a lot of ‘misunderstanding’ about why we are having meetings,” such as interpreting her request for an out-of-District placement as a request for in-person instruction.

The documentation in this complaint indicates the following for each IEP meeting that was held during the 2020–2021 school year³, summarized:

Meetings	Parent’s Concerns Prior to Meeting	Topics Discussed at Meeting
Sept. 23, 2020	<ul style="list-style-type: none"> • District providing a tutor, paraeducator, or a “charter or private school that has in person learning.” • Discussing “IN PERSON learning options”, such as an “out of district placement...private school, a personal tutor, or district provided [applied behavior analysis].” 	<ul style="list-style-type: none"> • How to support Student during remote learning (consistent instruction time, incentives, first/then). • Student struggles with remote instruction. • “Whether or not in-person learning would be safe and appropriate for [Student] when in-person learning is available.” • Take data on the Student’s attendance during online synchronous learning.

³ In between IEP meetings, the District also attempted to address the Parent’s concerns with multiple meetings with the District’s executive director of special education to discuss concerns, or other follow up, such as calls with one of the assistant directors of special education.

		<ul style="list-style-type: none"> • Student “would not qualify for in-person learning at the time due to his safety needs.”
Dec. 14 & 17, 2020	<ul style="list-style-type: none"> • “Virtual learning is still not working...[Student]...getting anxiety when I try to keep him focused...” • Discuss “either withdrawing or switching to part time learning.” • Out-of-District placement requested. • “The last IEP meeting was exactly what I asked it not to be...The whole meeting was about everything except in-person learning options.” • Look into nonpublic agency “providing trained behavior technicians to come out and help with online learning.” 	<ul style="list-style-type: none"> • Student not attending school online. Uptick in behaviors and lack of progress. • Student “struggles to engage online,” but “works on asynchronous work with his home ABA provider.” • Student needs significant support to access online learning. • “Considerations for a change of placement to a more restrictive setting and program.” Not rejected, but team “is continuing to discuss how to best support [Student].” Placement discussion to be continued. • Conducting a functional behavioral assessment (FBA) to evaluate the function of the Student’s behaviors.
Mar. 3, 2021	<ul style="list-style-type: none"> • Student not progressing in person or virtually. • Student was not making progress between when the 2017 and 2020 reevaluations were compared. • Out-of-District placement requested. 	<ul style="list-style-type: none"> • Student required “in person services to make meaningful progress on his IEP goals, and that is not yet available.” • “District has provided alternatives to implement the IEP which the parent has refused.” • District rejected request to change placement.
May 20 & 24 2021	<ul style="list-style-type: none"> • Student not receiving FAPE, not making progress (e.g., lack of). • Student’s behavior is regressing. • Additional information from Student’s medical providers. • Out-of-District placement requested. 	<ul style="list-style-type: none"> • Additional information provided by Parent (added to reevaluation) and potential out-of-District placement. • Parent’s concerns “around [Student’s] progress from his 2017 evaluation to his 2020 evaluation,” behavior, and lack of progress. • Student’s progress, use of communication device, goals, how the Student is doing in-person, behavior, and motivations. • Agreed to “meet again in early June to continue the discussion around outside placement.”

While the Parent alleged that she requested a meeting on one topic and the actual meeting addressed something else, this is not reflected in the documentation. For example, the Parent said she requested a meeting to discuss in-person options and that this was not discussed; however, at the September 2020 IEP meeting, the team discussed both whether the Student would be eligible for in-person instruction as there were safety concerns *and* strategies for making remote instruction more effective. Or the Parent stated the IEP team did not specifically discussed the lack

of progress between the 2017 and 2020 reevaluations; however, documentation from multiple meetings indicate the team discussed the Student's progress using a variety of sources (progress reporting, IEP goals, evaluations, etc.)

It is clear the Parent disagreed with the outcomes of the IEP meetings and decisions made by the IEP team. The Parent stated she disagreed with both the December 2020 reevaluation and IEP. The Parent also disagreed with the decision regarding placing the Student at an out-of-District placement and disagreed that the District could serve the Student.

In its response to the Parent's complaint, the District stated it "consistently and promptly responded to the Parent's requests for IEP meetings to discuss her concerns regarding placement, evaluations, and progress." The District noted it understood the Parent was "dissatisfied with the IEP team's decisions at these meetings," but that the team "did in fact discuss and address her concerns." The documentation supports this and indicates the District proposed solutions, which the Parent declined or does not appear to have accessed, including the following summarized:

- The case manager engaged with the Parent to discuss and propose strategies to increase access to online learning and provided materials for use at home.
- The District proposed providing an ABA therapist (or as labeled in the prior written notice a paraeducator), in-home to support Student's access to instruction.
- The District set up meeting with a private school (Parent felt it was not a good fit).
- District offered of compensatory services (162.5 hours of 1:1 tutoring in math, written expression, adaptive, social/emotional, and reading).

Notably, some options proposed by the District were similar to things proposed by the Parent. For example, the Parent requested the District look into a school that was providing behavior technicians to support online learning, but then rejected the District's proposal to fund an ABA therapist in the home. And while OSPI understands the Parent in part rejected this option because their ABA provider did not have availability during school hours, if the Parent had been open to this option, the IEP team could have explored other providers.

OSPI notes the IEP team should work toward consensus, but a district has ultimate responsibility to ensure the IEP includes the services that the student needs to receive FAPE. 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. Thus, an instance where a parent disagrees with the outcome of a meeting does not necessarily mean there is a violation of the IDEA.

Here, the District held meetings to address the Parent's concerns and discussed the appropriate topics at the meetings with respect to the Parent's concerns. Further, while the Parent disagreed with the outcome of meetings, the Parent attended and participated in all meetings. In retrospect, it appears it took time for the IEP team to recognize that remote instruction did not work for the Student and to propose solutions (such as in-home support). Yet, whether there was a violation must be decided based upon what the IEP team knew at the time events occurred, without the benefit of hindsight. Thus, the team's decision in September 2020 to collect data and attempt to increase the Student's access to remote learning was reasonable at that time. Then, with the

Parent's renewed request for a change of placement/out-of-District placement, it was reasonable for the team to conduct a reevaluation (additionally necessary as the Student's triennial reevaluation was due). Once this was completed, the IEP team continued to discuss the Student's progress and the Parent's request for an out-of-District placement. Ultimately, the IEP team—as of the filing of the complaint—rejected the requested change of placement. And, absent any violations regarding the IEP meetings, OSPI will not overrule the IEP team's decision making.⁴

Overall, OSPI finds that while at times communication between the District and Parent was imperfect, there is no violation with respect to the District's responses to the Parent's concerns.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI does recommend that the District continue working with the Parent to address future concerns and encourages the Parent to access and the District to honor the offer of compensatory services already made, especially as the documentation does indicate the Student has made little progress over the last year and faced significant challenges accessing remote instruction.

Dated this ____ day of July, 2021

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

⁴ OSPI further notes the Parent did not file a complaint that the District failed to follow placement procedures or that the IEP team's decision itself denied the Student a FAPE. Instead, the complaint was framed around the scheduling, attendees, topics of IEP meetings, and District responsiveness to the Parent's concerns.

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.)