

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-06

PROCEDURAL HISTORY

On January 18, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parents 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 January 19, 2022, 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 January 28 and February 4, 2022, OSPI received a portion of the District's response to the complaint. These portions were forwarded to the Parents on February 2 and 7, 2022, respectively. And OSPI invited the Parents to reply.

On several instances, the Parent requested an extension of time by which she could provide OSPI with a reply. Those extension requests were granted on: February 18, February 25, and March 3, 2022.

On February 22, 2022, OSPI received additional information from the District. OSPI forwarded a copy of this information to the Parents the same day.

On February 24, 2022, OSPI received additional information from the Parent. OSPI forwarded a copy of this information to the District on February 25, 2022.

On March 3, 2022, OSPI granted the Parent's third request for an extension. OSPI granted this extension request to ensure that the Parent could fully participate in the process. In a March 3, 2022 letter to both parties, OSPI also recognized this created exceptional circumstances, and the date for OSPI to issue its decision was extended to March 25, 2022, as permitted by WAC 392-172A-05030.

On March 15, 2022, OSPI received the Parents' reply. OSPI forwarded that reply to the District the same day.

On March 16, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of that information the same day.

On March 16 and 18, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District March 18 and 22, 2022. OSPI forwarded that information to the Parents on March 22, 2022.

On March 21, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of that information the same day.

On March 22, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of that information on March 23, 2022.

On March 23, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of that information the same day.

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

ISSUES

1. Did the District follow procedures to consider new/additional information about the Student shared by the Parents in September 2021, including:
 - Amending the Student’s individualized education program (IEP) as appropriate;
 - Considering the Student’s need for a remote/virtual learning modality; and,
 - Considering whether a reevaluation was needed?
2. Did the District implement the Student’s IEP during the 2021–2022 school year?
3. Did the District follow procedures to monitor and report the Student’s progress on his IEP goals with respect to the November 2021 progress report?
4. Did the District provide a prior written notice following the October 14, 2021 IEP meeting that met the requirements of WAC 392-172A-05010?
5. Did the District provide proper meeting notice with respect to the October 14, 2021, specifically, notice of who would be attending and the purpose of the meeting as required by WAC 392-172A-03100(3)(a)?
6. Did the District follow procedures to respond to the Parents’ requests for an IEP meeting, beginning on August 13, 2021, including scheduling timely meetings, and following IEP team member excusal procedures and/or ensuring the required IEP team members attended?

LEGAL STANDARDS

IEP Development: When developing each child’s individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Basis for IEP Team Decisions: Generally speaking, an IEP team’s decisions must be based on a student’s needs resulting from that student’s disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student’s needs resulting from the student’s disability. *See, e.g.,* WAC 392-172A-03020(3)(g); *see also, generally,* WAC 392-172A-03090.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed

in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

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.

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 in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 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 Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Progress Reporting: 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).

Meeting Invitations: A school district must ensure that one or both of the parents of a student eligible for special education services are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. (3) The notification required under subsection (1) of this subsection must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance. WAC 392-172A-03100(1)-(3)(a).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010. The prior written notice should document any disagreement with the parent.

IEP Team Meeting Time: Districts must schedule IEP meetings at a mutually agreeable time for the parent and the district. 34 CFR § 300.322(a)(2); WAC 392-172A-03100(2). In general, districts often schedule meetings before or after school to ensure that all team members can be present. The US Department of Education's Office of Special Education Programs (OSEP) has stated that it is not unreasonable for a district to schedule meetings during their regular hours. However, "there may be circumstances where a parent cannot attend an IEP meeting that is scheduled during the day because their employment situation restricts their availability during school hours...in such a circumstance, [school districts] should be flexible in scheduling IEP meetings to accommodate reasonable requests from parents. Where [school districts] and parents cannot schedule meetings to accommodate their respective scheduling needs, [school districts] must take other steps to ensure parent participation...[including] conference telephone calls or videoconferencing." *Letter to Thomas*, 51 IDELR 224 (OSEP 2008); see also 34 CFR § 300.322(c); 34 CFR § 300.328.

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).

General Education Teacher Attendance at IEP Meetings: Not less than one of the student's general education teachers must participate as a member of the IEP team, if the student is, or may be, participating in the general education environment, to assist in the determination of appropriate annual educational goals, behavioral interventions, supplementary aids and services, program modifications, and/or supports for the student. 34 CFR §§300.321, 300.324; WACs 392-172A-03095(1)(b) and 392-172A-03110. Participation by a general education teacher is an important aspect of the IEP development process because of their knowledge of how a student with a disability might benefit from being placed in a general education classroom. Individuals with Disabilities Education Act (IDEA), 62 Fed. Reg. 55,124 (October 22, 1997) (Appendix C to 34 CFR Part 300). The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. However, the general education teacher may not, depending upon the child's needs and the purpose of the specific IEP team meeting, be required to participate in all decisions made as part of the meeting, be present throughout the entire meeting, or attend every meeting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,477 (March 12, 1999) (34 CFR Part 300, Questions 24 & 26).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5). As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP Team includes "[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) . . ." Neither the IDEA nor its implementing regulations require that an IEP Team include more than one regular education teacher. Therefore, if an IEP Team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP Team meeting. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question C-3).

Parent Request for IEP Meeting: The legislative history of the IDEA makes it clear that there should be as many IEP meetings a year as any one child may need and districts should grant any reasonable parent request for an 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. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12,

1999) (Appendix A to 34 CFR Part 300, Question 20). 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. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324; WAC 392-172A-03110.

Parent Participation in IEP Meetings: A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. 34 CFR §300.322; WAC 392-172A-03100. Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

Authority of State Education Agencies: State education agencies have "general supervisory responsibility" to ensure compliance with the IDEA. 34 CFR § 300.600; *see also Letter to Warkowski* (Mar 30, 2001); *Letter to Librera* (May 26, 2004) ("The SEA is ultimately responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within the State.")

Consideration of Independent Educational Evaluation (IEE) Results: If the parent obtains an independent educational evaluation at public or private expense, the results of the evaluation: must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student. WAC 392-172A-05005(5)(a).

FINDINGS OF FACT

Background Information

1. According to the Parent, the Student attended a different school district (district 1) for three years prior to attending the District for the 2021–2022 school year.

District 1 created a June 2021 amended individualized education program (IEP) for the Student. In part, the June 2021 amended IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Organizational/Study Skills:** 30 minutes a week (to be provided by special education staff)
- **Social/Emotional Behavior:** 30 minutes a week (to be provided by special education staff)
- **Written Expression:** 90 minutes a week (to be provided by special education staff)

The June 2021 amended IEP provided the Student with the following related service in a *special education setting*:

- **Counseling:** 60 minutes a week (to be provided by a counselor)

The June 2021 amended IEP stated the Student would be educated 87.83% in a *general education setting*. The June 2021 amended IEP read, in part:

Parents also report that Student receives private interventions at home to help overcome these challenges which include a private speech language pathologist and tutor working with Student on English assignments and [an] occupational therapist and board-certified behavioral analyst to work on study and organization to address executive functioning deficits.

...

Based on his most recent evaluation Student's disability adversely affects his capacity to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing. These factors prevent Student from accessing the general education curriculum. As a result, Student requires specially designed instruction for social/behavior, written language, and organizational/study skills, as he cannot successfully access the general education curriculum without changes to the delivery, content, or methodology of his instruction.

The June 2021 IEP included the following measurable annual goals, which were to be reported quarterly via production of a copy of the goal page: **Social/Emotional Behavior 1 and 2** (task initiation – “Student will identify at least 5 steps required to complete [a 5 step assignment] improving study organization” and task completion – “Student will identify the step he plans to complete in a period”); **Organizational / Study Skills** (ability to “check in with an adult to identify remaining tasks when given a 5 minute reminder”); **Written Language 1, 2, and 3** (ability to utilize “a pre-writing tool to support pre-writing strategies”; ability to “use [a] pre-writing tool to create a 5-sentence written response for Student’s general education class”; and ability to “write a response that includes elaboration and supporting evidence when given a writing prompt, a completed pre-writing graphic organizer, and a self-edit checklist”).

2. On August 13, 2021, the Parent emailed the District, stating: Parent needed to enroll the Student in an online program in the District in the event district 1 did not permit the Student to continue being enrolled; and, the Student's "three-year evaluation" would be completed toward the end of August 2021 and a reevaluation meeting would need to be held.

Subsequent emails show the following:

- District 1 provided the Student with extended school year (ESY) services during the summer of 2021. On or about August 17, 2021, the District was provided with a district 1 prior written notice that read, in part: "[District 1] is proposing recovery services as Student requires these services to successfully transition back to in-person learning in the fall."
- The Parent believed: the Student required a virtual school environment because of the Student's "asthma and clinical anxiety, among other disabilities"; the Student's IEP from district 1 included, in part, 60 minutes a week of mental health counseling, and that it was particularly important the District continue to provide this service; and, based on the recommendations of previous service providers, the Student could perhaps attend band class in-person, "especially if classes were held outdoor[s]."
- The Parent was informed the District did not have an online option and that its policy was to refer all secondary students with an IEP to an online school based in a different Washington district. The Parent then determined to enroll the Student in the District because, as of August 27, 2021, she had "not yet heard back from [online school]."
- On August 30, 2021, one of the District's directors of special education (director 1) informed the Parent, in part: "You as a family are welcome to investigate what online educational provider is most appropriate to serve Student."
- On August 31, 2021, the Parent requested that "some options for an IEP meeting" be provided to her.

2021–2022 School Year

3. The District's first day of school was September 1, 2021. According to an email, the Student "missed the first day of school" – potentially as the result of enrollment processes taking longer than expected.
4. According to the District, at the start of the 2021–2022 school year, its schools "no longer provid[ed] remote learning options through synchronous lessons." In its response, the District further stated: during the 2021–2022 school year, consideration of placement options outside of in-person, synchronous work was dependent on: "a student's individual disability or health condition[s]"; and, a student's IEP team's determination of what constituted a free appropriate public education (FAPE).

The District's response further read: "At the start of the 2021–2022 school year, for high school families wanting remote options, the District assisted families in exploring and enrolling in other virtual schools (e.g., [other virtual schools based in other Washington districts])."

5. On September 2, 2021, the Parent provided the District with a letter from a clinical psychologist, dated August 30, 2021, which read, in part:
I have just evaluated Student [and] strongly request that he continue with remote learning and synchronous instruction for the upcoming...school year. Student has autism and severe

anxiety that is mostly school-based, and he will require remote learning, as opposed to in-person school, to access instruction and maintain positive mental health. Student has asthma and as such is more anxious than most about the possibility of becoming infected with COVID.

6. No later than September 4, 2021, the Student's enrollment in the District was completed and the Student was assigned to a District high school.¹
7. On September 7, 2021, the Parent emailed several District staff members, stating, in part: "Student will remain remote this school year at [the] recommendation of a psychologist."

Director 1 responded that same day, stating, in part: "As we discussed in the meeting on August 20, 2021, there are no 6th – 12th grade virtual learning options in the District. If you would like Student to attend school remotely this year, you would need to withdraw from the District, and enroll in the virtual school."

8. According to emails dated September 8, 2021, as of that date: district 1 had not yet completed a functional behavioral assessment (FBA) of the Student, though it had completed a reevaluation in the areas of neuropsychological; occupational therapy; communication; and, assistive technology.

In the same September 8, 2021 email, the Parent again stated the Student would need remote instruction and that a "transfer IEP [meeting] will need to happen."

9. On September 11, 2021, the Student's case manager emailed the counselor and the assistant principal, stating in part: "If this Student is in honors academics and only needs behavioral supports for work refusal and emotional support for bullying, he may be better suited for a social-emotional learning placement, as most of the focus of [resource²] is in remedial learning"; and, the Parent wanted the Student in all general education courses but all such general education courses would have "34+" students and, given "the additional [supports] Parent wants [for Student³, it would be difficult to provide that absent] significant additional support and resources from the District."

¹ The "school assignment information" letter had an "effective date" of September 1, 2021, but the Parent stated she did not receive the letter until September 4, 2021.

² The District's website reads, in part: "Students with the Primary Service type of resource receive specially designed instruction (SDI) addressing the mild to moderate differences in their instructional needs for specific academic needs and social skills. Instructional content varies, based on each student's IEP. These students spend the majority of their instructional time in general educational settings with targeted support. Services may be provided in any setting, based on the student's IEP. This Primary Service type is available to students who qualify in any IDEA disability category."

³ A separate email from the case manager detailed that at least one of these additional supports the Parent was requesting was: "a 1:1 paraeducator...for a...Student in honors English." And a different email from the case manager stated the Parent wanted remote learning for the Student because the Student experienced bullying when previously enrolled in-person in the District. Yet another email (dated September 15, 2021)

10. On September 13, 2021, the Parent emailed the case manager date options during which she was “generally available” for IEP meetings.

Later that day, the case manager responded, stating, in part:

I do not think we will be able to meet this week for an IEP meeting, given that an evaluation is unfinished...There are probably some temporary measures that can be done in the meantime to mitigate things, but those are things that are outside of my authority and expertise and will need to be directed by administration.

11. Separately on September 13, 2021, the case manager emailed the special education supervisor (supervisor), stating, in part:

If I am still going to be case managing this Student I will need a lot of support (and the District taking things off my plate) as I am currently over my caseload limits by 5 students. My caseload will likely grow by another 5-10 students this week since another...teacher just left for 3 months [of] leave and the only substitute available is an emergency certification. Can District special education staff please take the lead on this one?

The supervisor responded, stating: “the first thing we need to do is review the IEP and have a meeting.” Later that day, the case manager responded, stating:

Unfortunately, it is more complicated than that. The current evaluation was done in 2019 and the Parents stated they are not going to send that to us because they disagree with it, and are having a private one completed. With no evaluation and no IEP, I do not know what to [do to] write a new IEP. This is why I need District support.⁴

12. On September 14, 2021, the Parent emailed the case manager, stating: “it makes sense to gather all the information we have coming about Student’s evaluation reports before the team develops a new IEP [and] I will share [them] with you as we get them”; and, “we would like to put an IEP meeting and an evaluation feedback meeting on the calendar [with] 2-3 weeks [of] lead time.”

13. According to emails dated September 14–29, 2021:

- On or about September 14, the District was able to obtain a copy of the Student’s district 1 IEP. Initially, it appeared there was some confusion as to which district 1 IEP was the correct IEP for the District to consider when processing the Student’s transfer into the District.⁵ In its response

stated the Parent wanted remote learning for the Student because “Student has high anxiety about getting infected with COVID-19.”

⁴ In a separate email dated September 13, 2021, the case manager stated a Thursday, September 16, 2021 IEP meeting would not work for the additional reason that: “per Parent request documents need to be provided one week prior to [a] meeting.”

⁵ On September 14, 2021, the case manager obtained a copy of a district 1 June 2021 amended IEP (which amended a January 2021 IEP) that the case manager believed was the Student’s most recent IEP. On October 15, 2021, the Parent provided the case manager with a copy of the Student’s district 1 October 2019 IEP, stating in part: “[The October 2019 IEP] was in place until May [2021]. The IEP from January 2021...was never in place. District 1 responded to our [independent educational evaluation] IEE request [by] filing for due

to this complaint, though, the District stated it determined the Student's June 2021 amended IEP was the correct IEP to consider in these circumstances.

- A meeting was scheduled between District staff and the Parent on September 16, 2021, "to set up Student's schedule" and now that the District had a copy of the Student's previous IEP, the District "should be able to create an in-person schedule...that meets Student's academic and IEP needs."
- The Student's school had "professional therapists/counselors in the in-building Teen Health Center, so [the IEP team] should be able to get [those particular IEP] services...lined up."
- The Parent reiterated, in part: "Student is not coming to the school building" for in-person services⁶; the Student required a mental health provider with experience in autism⁷; in May–June of 2021, pending the results of a functional behavioral assessment (FBA), the Student was "temporarily" provided with 180 minutes of 1:1 paraeducator support each week in his general education English class; the Student required "training on the...technology he is expected to use"; and, the Student experienced significant bullying when previously enrolled in the District.
- The case manager noted the Student's district 1 IEP did not include language "that mandates remote learning."
- The Student received his COVID-19 vaccine(s) at some point prior to mid–September 2021.
- On September 15, 2021, the Parent emailed the case manager links to several medical and education documents on the Student, including, in part: an August 2021 letter from a clinical psychologist; an August 2020 Children's Hospital Evaluation; a July 2021 UW Autism Report; a January 2020 written language consultation report; the Student's October 2019 IEP; a May 13, 2019 letter from a second medical provider; a November 2020 occupational therapy evaluation report; a January 2020 occupational therapy "Education Activity Analysis"; and, a January 2020 occupational therapy "Assessment of School Functioning."⁸
- The District staff members and Parent were able to create a first semester schedule for the Student on or about September 16, 2021.
- The Parent and case manager discussed the Student's experience with previous case managers and what types of communicative approaches worked best for the Student.
- The case manager arranged for the Parent to pick up a District laptop for the Student to use, but, the Parent was unable to get it to work properly until roughly September 24, 2021.
- On September 21, 2021, the case manager: informed the Parent the District had to provide services in conformity with the spring 2021 IEP documents—any additions and/or changes to what was in the spring 2021 IEP documents could only take place after the completion of the independent educational evaluation (IEE); and, at the District's school, the Student's specially designed instruction was best able to be provided during the Learning Lab course, and that it

process and...stay put [took hold] until District 1 withdrew their due process request and granted Student an IEE at public expense."

⁶ See *also* email from the Parent to case manager (September 21, 2021) ("Student is not attending school in-person this school year...No amount of emails between us will make him go").

⁷ At some point, the case manager appeared to have told the Parent: "Student's IEP does not call for his counseling minutes to be provided by someone with an autism spectrum diagnosis background."

⁸ Initially, the case manager had some difficulty opening the Parent's attachments, but was able to get access shortly after the Parent sent them.

- would not be the Student's least restrictive environment to provide the Student's specially designed instruction in a special education class.⁹
- On September 22, 2021, the Parent emailed the District's section 504 coordinator, stating the Student required, in part: remote instruction; "links to a platform to access live instruction/classes"; and, audio and video recordings of lectures." The 504 coordinator responded, stating: since the Student qualified for special education, section 504 was not relevant and that the Parent's request could, and should, be considered within the context of special education.
 - On September 23, 2021, the case manager informed the Student's teachers they "need[ed] to provide [the Student with] the same resources and supports that you would to any other absent student...such as email correspondence...and access to assignments and electronic resources."¹⁰ The band teacher, though, does appear to have made efforts to permit the Student to access the classes in real-time via Microsoft Teams.¹¹

14. In relation to the data on the Student provided by the Parent on or about September 15, 2021, OSPI notes: the July 2021 UW Autism Report entitled, "Exit Report and Transition Plan", noted: "Student present[s] [with] delays in executive functioning, independent living, and emotional regulation." It read, in part:

Treatment Approaches: [B]ehavioral principles including but not limited to prompting, reinforcement strategies, replacement behavior training, instruction in coping strategies using modeling and repeated practice...**Recommendations:**...Help support Student with tasks to promote independence at home and in the community...Continue to promote planned get-togethers where Student plans activities, coordinates travel, and schedules with friends...In-person gatherings occurred with less frequency and should be practiced.

The November 2020 occupational therapy evaluation read, in part:

Student [was enrolled in] the sixth grade...in the District during the 2017-2018 school year, but was bullied by his peers.

...

SOCIAL AND PLAY PARTICIPATION:

Parents report [Student] needs extensive time to adjust and is easily dysregulated/becomes teary-eyed. He tends to internalize/'close up' when upset. He will verbally provoke or touch his brother to annoy him. He may not notice if someone is talking and accidentally interrupt them, otherwise will not interrupt at all at the expense of not getting a turn to talk in a conversation.

⁹ The case manager also stated removing the Student from special education eligibility, and placing him in 504, was also not appropriate under the factual circumstances. (The Parent appeared to, in part, propose that a 504 categorization would permit the Student to be educated remotely during the 2021-2022 school year.)

¹⁰ In this same email, the case manager noted his understanding that in order to record the Student's in-person classes and provide those recordings to the Student, the other consent of the other students' parents would be needed.

¹¹ In a subsequent email to the Parent, the case manager stated this was permissible because "all the other students in the class ha[d] signed media waivers that allow them to be recorded."

The May 13, 2019 letter from the psychiatrist read, in part: "Because Student spends most of his time in the general education classroom and shows the greatest impairment when interacting in a group setting, Student would benefit most from social skills coaching by a professional in a classroom or group."

15. The Student's first semester schedule was as follows:

- 1: World Literature
- 2: Physics
- 3: World History
- 4: Spanish
- 5: Math
- 6: Learning Lab
- 7: Mentorship¹²
- 8: Jazz Band

16. According to emails dated October 1–14, 2021, as well as other documentation:

- In early October, the District's transfer psychologist informed two other District psychologists that "the Student's IEP [from district 1] includes counseling as a related service but I do not see counseling listed as a related service on the evaluation and I don't see narrative information about it on the IEP." Noting the foregoing discrepancy, the compliance specialist informed several District staff members: "Counseling will not be provided as a related service. The IEP team can verify this via prior written notice."¹³
- On October 6, 2021, the special education teacher emailed the Parent a link to several assessments the special education teacher's class had taken. The special education teacher also sent a link to a "movie we took notes from on how to organize homework." That same day, the Student's physics teacher emailed the Parent "resources...available to Student through our class Schoology Page and through Microsoft OneNote."
- On October 7, 2021, the Spanish teacher noted the Student had "not yet responded to...Schoology assignments, quizzes, or test[s]."
- On October 7, 2021, the Parent was emailed a Microsoft Teams meeting invitation for an October 14, 2021 IEP meeting. "Required attendees" included: the case manager; Parent; Student; the assistant principal; the director; the supervisor; the special education specialist (specialist); and, a math teacher at the Student's school. Regarding the scheduled meeting:
 - The Parent objected to the presence of the specialist ("it was under the supervisor's watch that Student was bullied" when previously enrolled in the District). The Parent also noted: "there seem...to be a lot of higher-level administrators assigned to [this] IEP meeting"; and, "we need for Student to not be one out of 10 people in his IEP meeting."
 - On October 8, 2021, the case manager stated the following individuals would be in attendance at the upcoming IEP meeting: "a building administrator (probably the

¹² According to the District: "Mentorship is a daily class – it's similar to the required "advisory" periods at other high schools/districts. It consists of the daily bulletin, registering for courses, schoolwide updates, etc. All-school assemblies generally take place during this period. At [Student's school], special education students are assigned to their case manager's Mentorship class, and it allows additional time to check in regarding instruction, IEP goals, etc."

¹³ But a November 15, 2021 email from the case manager to the Parent explained, in part: "Student's most recent evaluation makes no mention of counseling in either the section on IEP recommendations or under 'other related services.' Student's most recent IEP just stipulates 'counseling' with no additional parameters, and it determined that it should be delivered and monitored by the counselors, not the IEP team. Those standards are broad enough that any of the Teen Health Center counselors would be able to...satisfy the IEP requirements."

- assistant principal), the supervisor, the director, Parents, Student [and] your invited attendees.”
- The case manager explained: “representatives from the District [needed to be] present since the purpose of the meeting itself goes beyond a typical building-level meeting that focuses on goals and service minutes; the specialist might be in attendance— unless the Parent was able to provide greater context on the bullying accusations; and, “the meeting participants will be 4 District members (IEP teacher, building administrator, 2 District administrators) plus you and the people you have invited. Only one parent is required to attend, so should Student attend it makes him one of six people.”
 - The case manager explained the jazz band general education teacher would not be able to attend “due to the meeting taking place during the teaching day.”
 - The Parent stated the jazz band general education teacher needed to attend as “he is the only teacher who has actually worked with Student.”
 - The case manager “sent home to the Parents an excusal form for the” band teacher. The Parent refused to excuse the band teacher. In response, the case manager stated, “a general education teacher is required for the meeting, but it is not a requirement that they be a teacher that has previously worked with the Student. I will have a different general education teacher attend to fill that role.” The District found a substitute general education teacher for the IEP meeting, but the Parent objected on the basis that this individual did not work with the Student.
 - On October 12, 2021, the band teacher emailed the case manager feedback on the Student’s performance in that class, including, in part: “Student is on camera and engaged with the class...His questions have all been relevant and to the point.” In a separate email to the Parent, the case manager stated he would share this input at the meeting. Emails dated after the IEP meeting, though from both the case manager and the Parent, show the band teacher’s input was not shared at the meeting, in part, because, at the start of the meeting, the District members of the Student’s IEP team agreed FAPE could be provided to the Student in a particular remote environment (VOPP).
 - The Parent wanted the Student’s educational advocate to attend the meeting.
 - On October 12, 2021, the case manager sent the Student’s father a screenshot of the meeting invitation for the October 14, 2021 IEP meeting. The father responded with: “[P]lease send us...a list of attendees for this Thursday’s IEP meeting and include their titles and roles. We have not yet received an official invitation.” The case manager responded on October 13, 2021, stating: “The team members for the meeting are in the screenshot I sent you but here they are again: me, the supervisor, the director, the specialist (alternate), band teacher (excused), Parents, Student, people invited by you.” (The case manager attached the actual meeting invitation to this email.)
 - On October 13, 2021, the District provided the Parent with a Meeting Notice (Amendment), which listed the following attendees for the October 14, 2021 IEP meeting: the assistant principal; the director; the supervisor; general education teacher (October 14, 2021 general education teacher); Parents; Student; and, case manager.
 - According to the District’s response: “The only teacher on [Student’s] schedule that was not teaching a class during the meeting times that the family required (the family was not available for before or after school meeting times) was the Student’s Spanish teacher, but she was out sick the day of the meeting. The

- October 14, 2021 general education teacher was not a teacher of [Student's] but she still attended the meeting as a general education teacher so that it would be compliant and could take place."
- And, according to the case manager, the Student's educational advocate attended the October 14, 2021 IEP meeting.
 - On October 14, 2021, the case manager emailed the Parents a link to the Zoom meeting.
 - The Parent was instructed by the case manager to "bring documentation that shows Student was able to make academic growth in an online setting last year, as that is needed for the IEP team to make a determination on a change in placement to a virtual school. I do not have a copy of Student's goal progress from [district 1]."
 - The Parent replied, stating the most important piece of evidence "that [the] Student's IEP is not meeting his needs is that he refuses to attend the school...in-person [and I have previously shared that] Student was successful [in a remote setting] and his transcripts/grades reflect that." The Parent stated the District was "welcome to reach out to [district 1] for whatever 'evidence'...is necessary for the team to review before our meeting"; and, provided the District with a letter from a second doctor that "recommend[ed] virtual learning."
 - The case manager subsequently acknowledged, "The [second] doctor's note and attendance records of Student not showing up to any of his in-person classes [this school year does] go towards establishing that an in-person setting is not currently working."
 - In a separate email, the Parent explained the Student had previously reported to her that the relatively chaotic nature of an in-person resource room was distressing to him and that he did not "belong there." The Parent reported a remote setting permitted the Student to "turn his camera off and significantly reduce...sensory overload" and that Student "even made friends among classmates when [in] online learning."
 - The case manager asked for statement from the Student explaining why the Student believed he required remote learning. But it appeared the Student had challenges in providing such a statement (e.g., an email from the Parent to case manager, stating "Student, [due to his disability], does not do well with producing writing samples on demand and out of context").
 - The case manager also asked the Student directly for "any of the written work...you did for [classes last year that show] you are able to do well in a remote-only setting on your IEP goals."
 - The Parent preferred that the meeting take place via the Zoom platform. The District initially determined it would take place via Microsoft Teams. Ultimately, though, after significant back-and-forth, the District determined the meeting would take place via Zoom.
 - The Parent believed that more than one 45-minute IEP meeting would be necessary.
 - The Parent was also requesting occupational therapy, physical therapy, and speech language pathology services, all of which were not in the district 1 IEP.

17. The District was on break October 8, 2021.

18. The Student's IEP team met on October 14, 2021.

According to the Parent, at the October 14, 2021 IEP meeting, "the District agreed Student require[d] instruction through virtual platforms and offered for Student to attend a future pilot program [but] the District had no details about [this pilot program] to share with us."

According to emails, the director had to leave the meeting early due to a fire alarm going off.

The District's response included a "Transfer Review (Amendment)" document that read: "Continue least restrictive environment (LRE) placement in accordance with previous IEP? Yes."

The District's response included a prior written notice, dated October 14, 2021. It read, in part:

The IEP team met Thursday, October 14th to propose Virtual Option Pilot Program (VOPP) for remote learning.

...

As of the IEP meeting, no documentation or description has been provided to the IEP team regarding any specifics beyond assertions that bullying had occurred [when the Student was previously enrolled in the District]. No record of a bullying incident was documented by administrators during Student's time at [the District] middle school.

...

The District will launch a high school VOPP in the coming weeks, which the District believes will be able to meet Student's remote learning needs. While the District continues to be ready to serve Student at [his current school] and provide FAPE for in-person instruction, the District agreed that staff will follow up with the family and assist them in registering Student for the VOPP.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows: Parent, admin, teacher, and student feedback was used to reach that decision. No documents were shared by [District] or the family during the meeting, and no unshared documents were referenced by [District] during the meeting.

Any other factors relevant to the action: ...Four minutes prior to the meeting's scheduled end the family made a request that the Student's IEP team take a vote on what additional recovery services need to be provided to Student by the [district 1 School District]. Student was not a student at District last year and he instead attended [district 1] High School during the 2020-2021 school year. The vote was not held because this request was not on the agenda and no one in the meeting that is employed by District was aware of the request or what it was for prior to a vote request being made. No one at District currently has any data on what Student's present levels are, and it was unclear to District staff what a decision about [district 1] recovery services would be based upon. The District agreed to look into the request and follow up after the meeting.

19. According to emails, between October 15 and 31, 2021:

- The Parent believed the Student required more recovery services than the district 1 IEP team had previously agreed on—both to address pre-2021–2022 regression, but also the start of the 2021–2022 school year—wherein the Student did not attend instruction (other than intermittent remote access to band). The Parent requested 20 additional hours of written expression recovery services; and, the Parent noted she was not sure who (district 1 or the District) would be responsible for which portion of the recovery services.

- The Parent stated the Student had made some progress on most of his goals during the 2020–2021 school year. It appears the District was first provided with a copy of district 1’s June 2021 progress report for the Student on or about October 14–15, 2021.
- On October 19, 2021, the band teacher provided the Parent with the written statement concerning his observations of the Student, which he had earlier provided to the case manager.
- The Parent continued to reiterate that the Student required some technical assistance with various software programs utilized for classroom assignments. The case manager again offered to assist the Student outside the school building, but within WiFi range, with a mask, and with the Student in the car.
- The Parent stated the Student “has counseling on his IEP” and the family “hired a private therapy provider with an Autism background because Student cannot wait for when the District” begins providing that service.
- On October 22 and 29, 2021, the case manager emailed the Student: an offer to provide technical assistance; and, “Schoology links for [Student’s] classes.”
- On October 25 and 27, 2021, the Parent stated VOPP would not work because she had just learned it was “an asynchronous model [and] Student requires synchronous instruction,” in part because “Student needs social interaction [and] should not be isolated from his peers.”
- The Parent continued to state the Student required real-time remote access to his school’s synchronous classes, not links to assignments and materials, etc.

20. During this investigation, OSPI’s investigator emailed the District the following question:

Concerning Schoology assignments: I see, prior to October 22, 2021, Student’s teachers occasionally sent emails with Schoology links. Starting on or about October 22, 2021, the case manager did the same. For the period between start of school year through at least October 22, 2021, I am not necessarily seeing systemic/regular emails from the Student’s teachers to Parent/Student with Schoology links. Were updates/assignments posted on Schoology and it was Student’s general responsibility to access them there?

The District’s response to the foregoing question was, in part:

It is my understanding that the Student’s class assignments from all teachers were posted on Schoology regularly, and emails were also regularly sent to the Student/Parent with information about assignments. However, given the volume of emails, our email search included all emails between the parent and staff serving the Student with key words relevant to the issues of the complaint (e.g., Student’s name, IEP, FAPE, etc.). Given this, emails between general education teachers and the Parent were likely not pulled if they did not include key words related to the issue statements, or simply mentioned an assignment. Our email system also does not pull the automatic alerts from Schoology that go to families (e.g. “Mr. X posted an assignment”)...I believe the emails you have with Schoology links from general education teachers are the ones pulled because the Parent replied to the string alleging a lack of “FAPE,” or using another key term from our search (e.g., IEP, etc.).

21. On November 2, 2021, the director wrote the Parent, stating, in part:

The District is confident it can provide Student a FAPE at [the] high school; we are unaware of any health/disability considerations which would prevent him from attending in-person. If you would like Student to stay remote because of COVID concerns, the District can work with you to ensure he receives a FAPE through VOPP. But our offering for live, concurrent

instruction with peers is in-person at [the] high school...The District does not believe [a home-based program] is appropriate for Student.

...

Scheduling during the school day when staff [are] teaching is...not a reasonable solution.

...

We are able to schedule an evaluation for assistive technology when Student comes to school [in-person].

Data collection is not able to be collected at [the school] regarding Student's progress as he is currently not participating in any classes other than band.

District recovery services can be discussed at an IEP meeting.

22. According to emails between November 5 and 30, 2021:

- On November 5, 2021, the case manager emailed the Student an offer to provide technical assistance and "Schoology links for [Student's] classes."
- In relation to information on the Student's needs resulting from the Student's disability:
 - An IEE provider reached out to the District's band teacher to gather some information relevant to a functional behavioral assessment (FBA) the IEE provider was completing.
 - On November 10, 2021, the Parent provided the case manager with a link to an "assistive technology [assessment] by an speech language pathologist/assistive technology specialist [at a] children's hospital."¹⁴
 - One email suggests: as of November 11, 2021, the Parent had already provided the District with "the SLP, OT, and AT portions of the IEE," but the Parent had not yet provided the District with the psychologist's portion of the IEE. Another email from the Parent stated these were provided on October 18, 2021.
 - As of November 18, 2021, "some of the [IEE] results [had been provided to district 1 School District] but not all [of them]."
 - It appears that on November 29, 2021, the Parent provided the director with a neuropsychologist's IEE report, but that as of that date, the Parent was still "waiting for the IEE FBA and transition assessments."
 - The Parent believed that Edgenuity—the VOPP offering—would not work for the Student because it was "not live instruction [and] does not work for Student [who has] executive function deficits."
- On November 9, 2021, the case manager "mailed" the October 24, 2021 prior written notice to the Parent. The case manager also collaborated with the other members of the Student's IEP team, including the Student and the Parent, to set up a second IEP meeting.
 - On November 11, 2021, the Parent stated none of the six times offered¹⁵ would work and both the Student's father and the Parent needed to be in attendance. The Parent also stated several items should be in the prior written notice, but were not, including, in part: that the Parents still did not have detailed information on VOPP; the understanding that the Student's IEP services would not change with the placement at VOPP; there was still no plan for the Student to access his courses remotely in real-

¹⁴ In this email, the Parent asserts that a similar type of assessment—conducted by a different institution—was provided to the District on October 18, 2021.

¹⁵ November 29 at 3:50 pm; November 30 at either 8 am or 3:50 pm; December 2 at either 8 am or 3:50 pm; and, December 3 at 8 am.

time; and, the IEP team still needed to make a determination in relation to recovery services.

- The case manager informed the Parent the District “will not be able to offer late meeting times that start after the contract day...and during-school meetings are also not possible due to hardships.” It appears the times that met the foregoing criteria were: 8 am 3:50 pm. The Parent stated these times would not work because: “before school...we have a younger child who requires a significant amount of assistance...and my husband’s work schedule only allows him to meet midday [or] after 4:30 pm.”
- On or about November 17, 2021, the case manager sent the Student’s IEP team a Zoom meeting invitation for November 23, 2021 at 1:15 pm, noting the District was closed for conferences that day, which “free[d] up enough substitute teachers to allow a meeting [at a time] that otherwise would not have been possible.” It was subsequently canceled, though, when the family’s educational advocate “indicated via email that the meeting would not work for the family” (quote from a District staff person) because, in part, “the family...need[s] at least a two week window notice for scheduling [and a copy of] any documents being discussed or reviewed...at least a week prior to the meeting.”
- On November 9, 2021, the case manager wrote the Parent: “I am still willing to meet Student outside and socially distanced most school days, at multiple times, and in a variety of settings that are within District WiFi range in order to provide him real-time synchronous 1:1 instruction in an area you notified me he has a need in.” The case manager also asked if the Parent wanted the case manager to “schedule an appointment for Student with one of [the] counselors at the District’s Teen Health Center,” which the case manager stated were “able to meet Student’s counseling needs.”
 - The Parent stated all mental health services needed to be provided remotely and by a mental health professional “with expertise in...neurodiversity [and] attention deficit hyperactivity disorder.” In later emails, though, the Parent appeared to express an openness to any counseling services the District would provide the Student to be provided via the District’s Teen Health Center.
- On November 10, 2021, the case manager provided the Student with links to Schoology work.
- On November 22, 2021, the case manager emailed the Student’s educational advocate, asking for details on how and when the case manager could provide the Student with technical assistance in accessing and navigating various software programs.
- On November 24, 2021, the educational advocate proposed 10 different meeting times that would work for the Parents. Of note: none of the proposed times began at either 8 am or 3:50 pm.
- On November 29, 2021, the director emailed the case manager, stating, in part: “I would like to extend an offer of support...and provide coverage for a school day meeting. We have availability to support during the following times: Monday, December 13, 2021 [at] anytime.”
- It appears that on or about November 30, 2021, the District reassigned the individual serving as the Student’s case manager, and a new individual was appointed to that role.

23. According to the District, on November 8, 2021, the District expanded its Virtual Option Pilot Program (VOPP) to high school students.¹⁶ According to the District:

VOPP includes special education instruction and is available to students receiving special education services who can make progress through remote instruction. In short, if a student needs a remote learning option due to health concerns or disability (for e.g., anxiety due

¹⁶ <https://www.seattleschools.org/news/virtual-learning-option/>

to COVID-19), the District provides services through VOPP, not through the student's assigned school.

24. The District's response included a progress report for the Student, dated November 10, 2021. It read, in part:

Study/Organizational Skills (task completion): Little or No Progress Made:

Student has only participated in one class at [high school] this academic year, his Jazz Band class (he attends via MS Teams). In Jazz Band class Student met with the teacher at the end of class multiple times, and in those meetings he was an active participant in both generating and answering questions pertaining to him performing musical selections. Student has not attended any of his other classes (which are in-person) this academic year and as such there has not been an observable data to assess Student's performance on this goal with regards to any class that requires written work.

Written Language 1 (ability to use a pre-writing tool to support pre-writing strategies): Little or no progress made.

...

Written Language 3 ([ability to produce a writing sample that] includes elaboration and supporting evidence): Little or No Progress Made:...Student has not produced any writing samples so far this school year, and as such there isn't any evidence with which to measure his progress.

Social/Behavior Emotional 2 (task completion): Some progress made:

Student has attempted to complete only one assignment this academic year that required 5 or more steps to complete successfully. That assignment was for his Jazz Band class, which was to record and submit a sample of him playing music. On that assignment Student was able to identify all the required steps necessary to complete the assigned task, which he then successfully completed. Student has not attended any of his other classes at [Student's school] (which are in-person) this academic year, and he has not made any attempt to complete any 5-step assignments beyond the one that was assigned in Jazz Band class. As such there has not been an observable datum to assess Student's performance on this goal with regards to any class that requires written work.

25. The District was on break November 11 and November 25–26, 2021.

26. According to emails dated December 2021:

- On December 2, 2021, the Parent emailed several District staff members a link entitled, "2021 IEE reports and IEE evaluator-reviewed documents."¹⁷ In an email later that day, the special education supervisor (supervisor) stated: "We just received the IEE reports."
 - The District had some initial difficulty in accessing the IEE reports, but was eventually able to access the same.
- On December 2, 2021, the supervisor emailed the case manager: "We...have to have our psychologist consider the outside evaluations. We cannot predetermine that until it is taken in[to] consideration."

¹⁷ In the December 2, 2021 email, the Parent stated these materials had been provided earlier on November 29, 2021.

- A District administrator explained, to the extent the case manager removed the education advocate from any email threads, it was “not [the District’s] intent for the educational advocate to be excluded. The case manager has been working to make sure that he is not sharing personal student information with people he shouldn’t and I will make sure the whole school team understands that communications [should include] the educational advocate.”
- In terms of scheduling an IEP meeting to discuss the Student’s needs after review of the IEE reports:
 - On December 8, 2021, the band teacher emailed several District staff, trying to find a general education teacher substitute for a meeting scheduled for an upcoming “Tuesday, from 11:20 am – 12:20 pm.”
- The Parent made at least two requests for a revised prior written notice.
- No later than December 2, 2022, the Parent had received a hard copy of the Student’s November 2021 progress report in the mail. And the case manager appears to have provided the Parent with an electronic copy of the progress report on December 2, 2022.

27. The District was on break December 20–31, 2021.

28. According to emails dated January 2022:

- On January 5, 2022, the case manager asked the Parent if either of the following would work for the IEP meeting: January 20, 11:20 am–12:20 pm; or, January 21, 11:20 am–12:20 pm.
- On January 5, 2022, the case manager emailed the Student, asking the Student to fill out a transition-related survey, in preparation for the upcoming IEP meeting.
 - On January 18, 2022, the Student’s father responded, stating: the Student “was unwilling to respond” to the transition-related survey and that rather than the draft IEP “listing outdated information from two years ago in the transition page [perhaps] instead [the District needed to] conduct...a [transition-related] evaluation.”
- As of January 6, 2022, the District had received numerous IEE-related documents, with the exception of “the transition portion.” The District noted: “there are 10 different documents attached that have been shared with the team [and] some...records are from as far back as 2020.”
- On January 7, 2022, the case manager informed the educational advocate, in part: “It is my understanding that in order to get Student the VOPP now, the family will need to electively apply to get in (enrollment is open currently); the District had previously informed the family “it can provide FAPE that includes live instruction and interaction with peers as in-person instruction at [school].” The case manager also asked if a January 20, 2022 or January 21, 2022 meeting time would work best—both to take place at 11:20 am.
 - The Parent stated “all [IEE] evaluators are expecting to be part of [the upcoming IEP] meeting to follow their code of ethics...We are waiting to hear back from the evaluators if they are available on the two offered dates/times before we confirm attendance.”
 - The Parent subsequently responded she was not available on January 21, 2022, and, one of the IEE evaluators was available for a limited period of time on January 20, 2022.
- On January 10, 2022, the case manager emailed the Parent: “The meeting for 1/20/22 will be for an annual IEP meeting; we will not be covering any IEE materials and as stated those will be addressed later in a different meeting.”
- On January 11, 2022, a Zoom meeting invitation was sent out to several District staff members and the Parent regarding an upcoming IEP meeting for the Student scheduled for January 20, 2022. Said email also contained: a chart detailing numerous changes that were being proposed

between the January 2021 IEP and the January 2022 IEP that was to be created¹⁸; an IEP online meeting invitation; and, a draft January 2022 IEP.

- On January 11, 2022, the case manager emailed the supervisor, stating: “Here is a draft copy of the IEP (mostly copy/pasted from the current one, as there isn’t anything new to add).”
- On or about January 12, 2022, in an email to the District superintendent, OSPI’s assistant superintendent of special education, and several members of the state legislature, the Parent wrote, in part: “Now we also ask for a psychologist who understands how important transition planning is for a twice exceptional student.”
- On January 13, 2022, the case manager provided the Parents, the Student, and several District staff members a draft IEP for the Student, and an electronic Zoom meeting invitation. The following staff received this email: supervisor; assistant principal; jazz band teacher; Parent’s educational advocate; director; world literature teacher; physical teacher; one of the Student’s co-teachers for the history class; Spanish teacher; math teacher; special education teacher; and executive director.
- On January 18, 2022, the case manager emailed the Parent and several District staff members, stating, in part: “The point of the January 20, 2022 IEP meeting is to complete Student’s annual IEP, including continuing discussions around remote options (VOPP), but it is not an evaluation feedback meeting. Of course the team can consider [the psychologist’s letter we received on or about September 2, 2022], but [in] terms of incorporating the results into a new District reevaluation, that is a separate process.”
- On January 18, 2022, the case manager again emailed the Parents, Student, and several District staff members a link for the upcoming Zoom meeting, as well as a draft IEP for the Student.
- On January 16–27: the District proposed conducting its own evaluation of the Student, in part, in the following areas: social-behavior; study/organization skills; written language; cognitive; occupational therapy; communication; transition; ‘review of records and existing data’; and, observation. And the District provided blank consent forms to the Parents for these areas.
 - In further discussion, though, the District proposed: conducting “a transition interview for the Student and having him complete a career quiz [and] hav[ing] his band teacher complete a BRIEF-2 [and having the District] occupational therapist and speech language pathologist observe Student”; but, “rather than do an IEE feedback [meeting] and then a [separate, second IEP meeting for the District’s re-evaluation], utilize the IEE reports and their testing for our reevaluation, since Student’s reevaluation is due in April [2022, as] moving up the reevaluation saves us some time.”
 - According to the District’s response, though, it: “is waiting for consent to move forward with the early reevaluation” and “actively working with the Parent to schedule an IEP meeting to review the IEE reports.” (On this point, the District

¹⁸ Changes included, in part: “counseling” frequency changed from “a weekly amount” to “34 1-hour sessions per IEP year”—a change made because of difficulty tracking counseling sessions and the Health Insurance Portability and Accountability Act (HIPPA); removal of “audio books” as an accommodation because “Student does not qualify of reading in the current evaluation [as] Student tested proficient or superior on English language arts state tests”; removal of the language around a couple accommodations because, in the new IEP, those supports would be captured with the language of “frequent check-ins to ensure understanding”; removed accommodation of “second trumpet for use at school” because “Student does not qualify for physical therapy and has no documented disability that renders him incapable of carrying a trumpet”; removal of accommodation “teacher provides option to scribe” because “Student does not qualify for occupational therapy or physical therapy services”; and, the language around several other accommodations was modified but those accommodations remained substantively similar.

referenced a January 26, 2022 email from the educational advocate that read, in part: "It seems backward to conduct new evaluations [by the District] before meeting as a team with the [IEE] evaluators...The team needs to know where Student is currently based on the most recent evaluations which are the IEEs...[We] are [therefore] requesting that the team meet for the IEE feedback meeting and as part of [that] meeting we can include [District-based] evaluation planning."

29. According to the District, beginning with the emergence of the Omicron variant of COVID-19 and increase in COVID-19 case numbers in January and February of 2022, "the District [would] temporarily transition...individual classrooms and/or schools to remote learning if absentee rates and community spread require[d] closure."

30. The District was on break January 17, 2022.

31. On January 18, 2022, OSPI received the Parent's complaint request. In relation to the issues investigated in this decision, the complaint request noted, in part:

- **Issue 1:**

- The complaint request also read, in part: "We believe the District violated Part B of the IDEA by not following re-evaluation procedures after being presented with new information about our son beginning in September 2021 that outlines additional disability-related needs that are not being addressed in his then current individualized education program (IEP)."

- **Issue 2:**

- Principal allegation: accommodations weren't provided: audio books; frequent check-ins; probes to ensure understanding; reminders to use audiobooks and speech-to-text; scaffolding for projects; support in creating a checklist for multistep tasks; "option to scribe"; use of graphic organizers. Additionally, general allegations that "remaining teachers have not provided any instruction or access to their classes."

- **Issue 3:**

- The November 2021 progress report is "missing two goals from the Student's...IEP and two other goals are duplicated."

- **Issue 4:**

- The November 20, 2021 prior written notice—which followed the October 14, 2021 IEP meeting—was: too late; "did not include accurate components"; and, did not "document all necessary information including [private providers'] recommendation for access to virtual instruction, specifically, [private provider], who most recently conducted independent educational evaluation of Student's educational needs, explained that Student requires synchronous (real-time) instruction."

- **Issue 5:**

- According to the Parent: the October 13, 2021 meeting invitation stated the purpose of the meeting would be to discuss an IEP transfer for the Student; but she was "led to believe that...the IEP team [would] be making a placement decision for the Student"; and, at the October 14, 2021 meeting, there was neither a discussion around placement nor around reviewing and/or transferring Student's out-of-District IEP.

- **Issue 6:**

- Allegation 1: An IEP meeting should have taken place prior to October 14, 2021, the Parent made requests for 'evaluation feedback meeting"/IEP meeting on both August 13 and September 21, 2021.
- Allegation 2: On October 7th, 2021, the case manager confirmed the October 14th IEP meeting time Invitees on this email included the Student's jazz band teacher as the required general education teacher on October 12, 2021, three school days after confirmation of the meeting date and time, the case manager sent a request to excuse the jazz band teacher from attending the October 14, 2021 IEP meeting; on October 14, 2021, the Parent declined the case manager's request; and, ultimately, "a general education teacher who was not [Student's] assigned teacher and had no knowledge about Student" actually attended the October 14, 2021 IEP meeting.

32. On January 20, 2022, the Student's IEP team held a meeting and revised and amended the Student's IEP. In part, the January 2022 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- **Organizational/Study Skills:** 40 minutes a week (to be provided by special education staff)
- **Social/Emotional Behavior:** 40 minutes a week (to be provided by special education staff)
- **Written Expression:** 50 minutes a week (to be provided by special education staff)

The January 2022 IEP provided the Student with the following related service in a *special education setting*:

- **Counseling:** 60 minutes a week (to be provided by a counselor)

The prior written notice related to the January 2022 IEP read, in part:

Description of any other options considered and rejected: the family requested that assistive technology (AT), physical therapy (PT), occupational therapy (OT), and speech language pathology (SLP) services be added to the IEP.

The reasons we rejected those options were: That option was rejected at this time because the current Evaluation does not include AT, PT, OT, and SLP as service areas. New IEE data was received by the district in December and will be considered at Student's next evaluation meeting (to be held no later than 3 months after this IEP meeting).

...

Any other factors that are relevant to the action:...A proposed change to counseling services (from 1 hr a week to 34 1-hour sessions a year) was declined by the family as they felt the current 1 hr/week more closely matched OSPI guidance.

33. In relation to those documents the District identified as "IEE Evaluation Reports" in its response, OSPI notes: the assistive technology report included, in part: the Student "reported he is worried about attending in-person school to fit his needs, both academically and socially...Student also reported some anxiety about attending in-person school due to COVID and his asthma."

The clinical psychologist's summer 2021 neuropsychological and educational evaluation noted, in part:

Student also struggles with severe anxiety which is greatly exacerbated in the school setting and impacts his day-to-day functioning, sleep, ability to focus and self-advocate, etc.

Recent research based on self-report by children with autism has shown that teachers are not aware when a child with autism is feeling anxiety as much as 40% of the time.

...

Emotional and Behavioral Functioning

Student's mother and father each completed the Child Behavior Checklist (CBCL), which screens for a full range of internalizing and externalizing disorders in children and adolescents. Based on mother's report...Student is demonstrating clinically significant symptoms on the School scale, Anxious/Depressed, and Attention Problems syndrome scales, and borderline clinical symptoms on the Withdrawn/Depressed, Social Problems, and Thought Problems syndrome scales. On the DSM-oriented (i.e., diagnostic) scales, Student's scores on the Anxiety Problems and Sluggish Cognitive Tempo scales were in the clinically significant range and his score on the Attention Deficit/Hyperactivity Problems scale was in the borderline clinical range.

Father's report indicated clinically significant symptoms on the Anxious/Depressed and Attention Problems scales, and borderline clinical symptoms on the Affective Problems and Withdrawn/Depressed scales. On the DSM-oriented (i.e., diagnostic) scales, Student's scores on the Anxiety Problems and Sluggish Cognitive Tempo scales were in the clinically significant range per father's report.

Student's teacher...completed the Teacher's Report Form (TRF), a companion form to the CBCL measuring the same symptoms and behaviors, but as observed in the school setting. Based on teacher report...Student's score on the Social Problems syndrome scale was in the borderline clinical range. On the DSM-oriented (i.e., diagnostic) scales, Student's scores on the Anxiety Problems and Obsessive-Compulsive Problems scales were in the borderline clinically significant range. His teacher wrote in that she was also concerned about Student's "mental health and family stress at home." [Parents reported no stressors at home and did not understand what the teacher was referring to here.]

...

Student completed two self-report questionnaires: the Multidimensional Anxiety Scale for Children, 2nd Edition (MASC-2) and the Children's Depression Inventory, 2nd Edition (CDI-2). Based on his own report, Student is not experiencing any clinically significant symptoms of anxiety in any area, including generalized anxiety, panic, tense/restless, separation anxiety, social anxiety, and physical symptoms. On the CDI-2, which measures various aspects of low mood, all of Student's scores were in the normative range for his age and gender, including physical symptoms/negative mood, negative self-esteem, functional problems, ineffectiveness, and interpersonal problems. [Parents reported that Student had just finished a year of virtual synchronous learning at his high school, during which he felt successful, made friends, and grew personally. Parents observed that Student matured during the pandemic while staying home from school and his functioning was positively affected by being in a safe environment without the stressors of in-person school.]

...

Finally, Student's significant anxiety interferes with his ability to self-advocate; at times he does not speak up and ask for help, at other times he does not understand instructions, but he thinks he is understanding correctly and so does not know to ask for help.

...

[The District] must include continued mental health counseling for his significant anxiety and continued synchronous virtual instruction which has clearly allowed him to access the curriculum in a way that has not at the same time degraded his mental health and focus.

The June 2021 occupational therapy report noted, in part:

Parents wish to see Student increase his independence...in the context of his home, community, and school environment...In 2016 [Student] experienced anxiety and depression due to academic and social struggles in the District.

...

Student notes that he has some difficulty in planning and managing transitions and feels flustered/ anxious when having to perform tasks quickly he reports he does not feel like he has sufficient time when having to change classrooms and feels this affects his ability to think.

Student identifies anxiety with timed testing and becomes hyper-focused on how much time is left. He feels multiple choice and short answers are easier than long responses and essays as he notes it is difficult to know how to approach the task and he gets stuck with planning.

Student is fearful of not being able to adequately present his knowledge when the test is timed.

Student notes that time management is stressful for him although he is able to identify several strategies that have been supported and implemented with OT and ABA including using a digital planner and color coding the schedule.

...

Student is easily overwhelmed with sensory information/ stimuli and when required to process multiple inputs as well as filter out extraneous information, Student experiences difficulty being able to perform complex tasks that require executive functioning including initiation, time management and problem solving.

...

[Recommendations:] Social Emotional: Provide and structure use of strategies to manage frustration and self-advocate for support...Increase emotional awareness with structured adult support - Student is able to identify being overwhelmed but he is unable to identify the cause and engage in active management of it.

34. The District was on break February 21–25, 2022.
35. According to the District: after the mid-winter break, the Student started “in-person at [a different high school] for all classes except band, which he will still access...remotely [at his previous District high school]”; and, as of February 18, 2022, a school “psychologist has sought consent to conduct an early reevaluation based on the IEE reports and/or requested to meet with the Parent to review the IEEs with the providers, to date, the Parent has not provided consent or responded to recent scheduling proposals.”
36. An additional IEP meeting took place on March 23, 2022. It appears a principal purpose of the March 23, 2022 IEP meeting was to discuss what, if any, additional assessments the District needed to conduct. It does not appear the IEE reports were considered in any substantive fashion at the March 23, 2022 IEP meeting. For example, the March 23, 2022 prior written notice read, in part: “There are Independent Educational Evaluations (IEEs) from the Mercer Island School District to be reviewed and carefully considered.”

37. There is an IEP meeting scheduled to take place on April 20, 2022. As OSPI understands it, the purpose of the April 20, 2022 IEP meeting is to review all evaluation-related data available to the IEP team as of that date¹⁹, including the IEE reports, and revise the Student's IEP, as appropriate.

CONCLUSIONS

Issue 1: IEP Development (September 2021) – In August and September of 2021, the Parent informed the District that the Student's needs resulting from the Student's disability meant the Student needed to be provided with access to real-time, synchronous remote learning and provided the District with information/documentation that she believed supported her understanding. In late August and early September 2021, the District informed the Parent it did not have a real-time, synchronous remote option available for all students for the 2021–2022 school year. The District stated that to the extent such an option was provided to any student eligible for special education services, that was a placement determination that would need to be made by a student's IEP team, when considering that student's needs resulting from the student's disability. Ultimately, as reflected in the October 14, 2021 prior written notice, the Student's IEP team appeared to state that a FAPE could be provided to the Student in either of two settings: VOPP²⁰ or "in-person instruction." (The prior written notice read, in part: "While the District continues to be ready to serve Student [at his current school] and provide FAPE for in-person instruction, the District agreed that staff will follow-up with the family to assist them in registering the Student for the VOPP.")

The question then, for Issue 1, is whether the information on the Student's needs resulting from the Student's disability that the Parent provided in August and September 2021 dictated a different result—in other words—that this information should have compelled the Student's IEP team to determine the Student did require synchronous remote learning.

Relevant legal principles include the following: an IEP team's decisions must be based on a student's needs resulting from that student's disability. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. When developing each student's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

¹⁹ Based on the March 23, 2022 prior written notice, it appears the April 20, 2022 date was selected, in part, so the District had time to complete some of its own assessments. For example, the March 23, 2022 prior written notice read, in part: "The team was in agreement more time was needed for the speech language pathologist to gather teacher input for the Pragmatics Profile, as well as better understand Student's social communication needs to inform recommendations"; and, "The latest occupational therapy evaluation report has since been shared for consideration and the occupational therapist will follow up with parents via email with their assessment plan."

²⁰ VOPP was the District's remote instruction option, but it did not offer synchronous learning with peers.

Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

Here, some of the information that was shared in August through early October 2021 suggests the Student might have benefited from some form of remote learning:

- On or about August 17, 2021, the Parent informed the District the Student required a remote learning option because of "asthma and clinical anxiety."
- The clinical psychologist's August 30, 2021 letter stated the Student's autism and anxiety about contracting COVID meant the Student required "remote learning and synchronous instruction."
- In early October 2021, the case manager emailed the Parent, stating, in part: "attendance records of Student not showing up to any of his in-person classes [this school year does] go towards establishing that an in-person setting is not currently working."²¹
- In early October 2021, the Parent reported a remote setting permitted the Student to "turn his camera off and significantly reduce...sensory overload" and that Student "even made friends among classmates when [in] online learning."

Other information shared in August and September 2021, though, suggests the Student did not require some form of remote learning, and that the Student actually required in-person instruction:

- The May 13, 2019 letter from the psychiatrist read, in part: "Because Student spends most of his time in the general education classroom and shows the greatest impairment when interacting in a group setting, Student would benefit most from social skills coaching by a professional in a classroom or group."
- On or about August 17, 2021, the Parent informed the District, based on the recommendations of previous service providers, the Student could perhaps attend band class in-person, "especially if classes were held outdoor[s]."
- According to emails, the Student received his COVID-19 vaccine(s) at some point prior to mid-September 2021.
- The case manager noted the Student's June 2021 amended IEP did not include language "that mandates remote learning."
- The July 2021 University of Washington Autism Report entitled, "Exit Report and Transition Plan", read, in part: "Recommendations:...Help support Student with tasks to promote independence at home and in the community...**Continue to promote planned get-togethers** where Student plans activities, coordinates travel, and schedules with friends...**In-person gatherings occurred with less frequency and should be practiced.**"

(Emphasis added.)

²¹ Though, it should be noted, in this same email, the case manager noted there needs to be more evidence on this issue, and that the attendance evidence is not necessarily determinative.

Still, other information shared in September 2021 could be cited to support either position—that the Student required in-person synchronous learning or that the Student required some form of remote learning:

- The June 2021 amended IEP read, in part: “Based on his most recent evaluation Student’s disability adversely affects his capacity to interpret nonverbal cues from his environment and others around him [and] interact socially with peers.”²²
- In mid–September 2021, the Parent shared with the District that the Student experienced significant bullying when previously enrolled in the District.²³
- The November 2020 occupational therapy evaluation read, in part: “**SOCIAL AND PLAY PARTICIPATION:** Parents report [Student] needs extensive time to adjust and is easily dysregulated/becomes teary-eyed. He tends to internalize/‘close up’ when upset. He will verbally provoke or touch his brother to annoy him. He may not notice if someone is talking and accidentally interrupt them, otherwise will not interrupt at all at the expense of not getting a turn to talk in a conversation.”

Given the fact that the evidence on whether the Student required some form of remote learning was varied, it is particularly important to note that correct IEP development procedures were followed by the District. For example: between the start of the school year and the October 14, 2021 IEP meeting, the District gathered existing data on the topic; the Student’s IEP team considered this data; the Parent’s input was gathered and considered during this process; the Parents and the educational advocate participated in the October 14, 2021 IEP meeting; and, following the meeting, the District issued a prior written notice, documenting the IEP team’s decision—that FAPE could be provided to the Student in either of two settings: VOPP or “in-person instruction.” Thus, given that the documentation does not conclusively support a different decision than the one the IEP team made and proper IEP development procedures were followed, no IDEA violation is found.²⁴

²² During this investigation, OSPI’s investigator consulted with an OSPI special education staff person with educational and professional experience, in part, in teaching special education and reviewing district policies and procedures for IDEA compliance. This staff person said this statement in the June 2021 amended IEP could reasonably support either a finding that the Student did require remote learning or a finding that the Student required in-person learning—and that other information would be relevant in making that determination.

²³ The exact circumstances of the prior bullying were not conclusively detailed in the documentation. Presumably, though, those exact circumstances would not necessarily have been repeated with the Student’s return to the District for the 2021–2022 school year. Additionally, the District could establish procedures to minimize and/or eliminate the impact of any potential bullying on the Student’s ability to access FAPE—as is the District’s legal obligation under the IDEA.

²⁴ In reaching this conclusion, OSPI notes: 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 in order to receive FAPE. No one team member has 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.

OSPI notes, though: this issue can be revisited, as needed, on the basis of the district 1 independent educational evaluation (IEE) documents and the results of any additional assessments that are conducted by the District in the future, see below.

Issue 2: IEP Implementation (2021–2022 School Year) – The Parent alleged the District did not properly implement the Student’s June 2021 amended IEP during the 2021–2022 school year.

A district must provide all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 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 student with a disability and those required by the IEP.

Here, the District did not implement the Student’s June 2021 amended IEP during the 2021–2022 school year. Rather: the Student was provided with asynchronous work assignments on a periodic basis for most of his classes; the Student accessed band class in a remote, synchronous fashion; and, at some point after mid–winter break, the Student returned to in-person instruction at a different District school.²⁵

The fact that the June 2021 amended IEP was not implemented, though, is not the fault of the District: prior to October 14, 2021, the Parent did not make the Student available for in-person instruction, believing that the Student needed synchronous online instruction. The District treated the Student as a student who was absent and provided assignments consistent with that, as it stated it did for other absent students. And, for a significant period of time after October 14, 2021, as the Parent disagreed with the IEP team’s determination as of that date that FAPE could be provided either via in-person instruction or VOPP, the Parent continued to not make the Student available for in-person instruction. During the relevant time period, the documentation shows the District was prepared and ready to implement the Student’s IEP services in-person, if the Parent had produced the Student for the same. Therefore, OSPI finds no IDEA violation.

Issue 3: November 2021 Progress Report – The Parent alleged the District did not follow proper procedures for reporting the Student’s progress in November 2021. Specifically, the Parent stated the November 2021 progress report: is “missing two goals from the Student’s [June 2021 amended IEP]”; and, “two...goals [in the November 2021 progress report] are duplicated.”

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.

Here, the Parent is correct on both accounts: there are no entries in the November 2021 progress report for **social/behavior emotional 1** and **written language 2**, and said goals are found in the

²⁵ On this point, OSPI also notes: the case manager offered multiple times to meet with the Student in COVID-safe environments to provide the Student with technical assistance in accessing classroom assignments posted online. It does not appear this offer was ever taken up by the Student.

June 2021 amended IEP; and, in the November 2021 progress report, the entries for the following two goals are repeated—meaning—there are two identical entries for each goal: **written language 3**; and, **social/behavior emotional 2**.

The repeated entries for **written language 3** and **social/behavior emotional 2** in the November 2021 progress report does not represent a violation of the IDEA—as the Parent was provided with some information on the Student’s progress on these goals. However, the lack of entries for **social/behavior emotional 1** and **written language 2** in the November 2021 progress report does represent a violation of the IDEA—as the Parent was not provided with information on the Student’s progress on these goals.

OSPI notes, though, that this violation did not necessarily deprive the Parent of much information on the Student’s progress. For example, the entries for each of the goals present in the November 2021 progress report were substantively similar: generally, the entries noted the Student had not attended his in-person classes from the start of the school year through November 10, 2021, so data was limited. Additionally, **social/behavior emotional 1** was similar to **social/behavior emotional 2**, and, therefore, the information on the Student’s progress on **social/behavior emotional 2** included in the November 2021 IEP did provide the Parent with some information as to the Student’s progress on **social/behavior emotional 1**.²⁶ (A similar analysis applies to the written language entries in the November 2021 progress report.)

Therefore, an appropriate remedy for this violation of the IDEA is as follows: the District will be required to email the Student’s IEP team a reminder that progress reports must include information on each of the goals in a student’s IEP and verify that the Parent is provided with an updated and complete progress report by April 8, 2022.

Issue 4: Prior Written Notice – October 14, 2021 IEP Meeting – The Parent alleged the District did not follow proper prior written notice procedures in relation to the October 14, 2021 IEP meeting. The documentation provided to OSPI (in part, the Parent’s complaint, the emails, and the Parent’s reply) shows the Parent believed the prior written notice had numerous deficiencies. Each of those alleged deficiencies will be analyzed in turn, below.

Written notice must be provided to the parents of a student eligible for special education services, or referred for special education services a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of

²⁶ The November 2021 progress report’s entry for **social/behavior emotional 2** read, in part: “Student has attempted to complete only one assignment this academic year that required 5 or more steps to complete successfully. That assignment was for his Jazz Band class, which was to record and submit a sample of him playing music. On that assignment Student was able to identify all the required steps and the period of time in which he will complete them. Student was able to successfully complete all the required steps by the assignment’s due date.”

why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and, (g) a description of other factors that are relevant to the agency's proposal or refusal.

Allegation 1: The Parent alleged the District issued the prior written notice related to the October 14, 2021 too late. Written notice must be provided a reasonable time before the school district proposes to initiate an action. Here, it appears the District first provided the Parent with the prior written notice on November 9, 2021. Importantly, the determination made at the October 14, 2021 IEP meeting was that the Student needed to be educated at VOPP or could be educated in-person at his school, and, as of November 9, 2021, the Student had not yet begun attending VOPP or in-person. (In fact, prior to November 9, 2021, it appears that the Parent rejected VOPP as a suitable option for the Student, as it did not offer live, synchronous remote instruction.) As the action had not yet been initiated, OSPI finds no violation of the IDEA.

Allegation 2: The Parent stated the prior written notice should acknowledge that, as of October 14, 2021, the Parent was not provided detailed information on the logistics of the Student's participation in VOPP. Importantly, the prior written notice appears to acknowledge this fact—it read, in part: "The District will launch a high school VOPP in the coming weeks [and] the District agreed that staff will follow up with the family and assist them in registering." Additionally, a prior written notice must contain the decisions made by the IEP team—either to initiate a change or deny a change; however, there is no requirement to provide all details of a particular educational arrangement in a prior written notice. Here, the prior written notice documented the decision and there was no need to include all details of the VOPP program in the notice. Therefore, OSPI finds no violation of the IDEA.

Allegation 3: The Parent stated the prior written notice did not include a plan for the Student to access his courses remotely in real-time. Importantly, though, the prior written notice appears to state the IEP team believed FAPE for the Student could be provided in either of two settings: VOPP or "in-person instruction." The prior written notice read, in part: "While the District continues to be ready to serve Student [at his current school] and provide FAPE for in-person instruction, the District agreed that staff will follow-up with the family to assist them in registering the Student for the VOPP." Based on the prior written notice (and the other documentation provided to OSPI), it appears the IEP team rejected—at the very least—as of the end of the October 14, 2021 IEP meeting, real-time remote access to synchronous instruction as FAPE for the Student. Accordingly, the prior written notice did not need to include instructions for an instructional method that had been rejected by the IEP team. OSPI finds no violation.

Allegation 4: The Parent stated the prior written notice should have detailed the understanding that the Student's IEP services would not change as a result of the decisions made at the October

14, 2021 IEP meeting. Here, OSPI does agree the prior written notice could have been clearer on this point. For example, the prior written notice suggests the June 2021 amended IEP will be implemented as it currently existed when the Student begins VOPP—"The District believes VOPP will be able to meet the Student's remote learning needs"—but this fact is not explicit. For the following reason, though, OSPI does not find a violation of the IDEA: the District's response includes a Transfer Review (Amendment) document that read, in part: "Continue least restrictive environment (LRE) placement in accordance with previous IEP? Yes." And the documentation suggests this Transfer Review (Amendment) was provided to the Parent at or about the same time as the prior written notice, on or about November 9, 2021. Again, no violation is found on this specific allegation.

Allegation 5: The Parent stated the prior written notice did not detail that a determination still needed to be made in relation to recovery services. Here, the prior written notice explicitly details that: the Parent made a request that recovery services be discussed shortly before the IEP meeting; the IEP team did not get a chance to discuss this topic during the October 14, 2021 IEP meeting; and, this topic would be addressed in future discussions with the Parent. OSPI finds no violation of the IDEA.

Allegation 6: The Parent stated the prior written notice did not mention the existence and/or contents of a 2018 harassment, intimidation, and bullying (HIB) complaint she had filed with the District. Nor did the prior written notice, the Parent alleged, sufficiently detail the contents of two letters from doctors she had provided prior to the October 14, 2021 IEP meeting.

A prior written notice should include a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action.

In relation to the bullying issue: importantly, while the prior written notice does not mention, or summarize the contents of a 2018 HIB complaint, the document does acknowledge that the Parent shared with the IEP team "that bullying had occurred [when the Student was previously enrolled in the District]." Therefore, there is no violation of the IDEA on this sub-issue.

In relation to the two doctors' letters, OSPI notes: the prior written notice does mention "a note from a medical professional [shared] prior to the meeting." And the section of the prior written notice that detailed "each procedure, test, record, or report...used...as the basis for [this] action" does reference previously shared documents: for example, that section read, in part:

Parent, admin, teacher, and student feedback was used to reach that decision. No documents were shared by District or the family during the meeting, **and no unshared documents were referenced by District during the meeting.**

(emphasis added).

Emails show the District received both doctors' letters prior to the October 14, 2021 IEP meeting. And shortly before the October 14, 2021 IEP meeting, the case manager emailed the Parent, stating, in part: ""The [second] doctor's note [does] go towards establishing that an in-person setting is not currently working." Based on the totality of the documentation, it is clear that the

IEP team was aware of and considered the letters. There is no requirement that the detailed contents of each evaluation procedure, assessment, record, or report used by an IEP team be exhaustively summarized in the prior written notice. Therefore, under these specific circumstances, OSPI does not find a violation of the IDEA.

Allegation 7: The Parent wanted the following language in the prior written notice removed and/or amended: "Parent wants Student to attend school 100% remotely." The Parent stated the foregoing language was inaccurate because it was "not a parental wish" but a placement necessary because of the Student's needs resulting from the Student's disability. But the prior written notice itself acknowledges the Parent's request for synchronous remote learning was not made solely because of her personal preference, but rather because she believed the Student had "anxiety over COVID (documented in a note from a medical professional prior to the meeting)" and continuing anxiety about bullying the Student experienced when previously enrolled in the District. While the Parent may disagree with the wording, OSPI finds that the prior written notice does not inaccurately document the considerations of the IEP team members on this point. OSPI does not find a violation of the IDEA.

Allegation 8: The Parent argued the prior written notice should include a statement that "VOPP was the District's unilateral decision without parental input." A prior written notice should document any disagreement with the parent. Here, OSPI notes the following:

- The documentation provided to OSPI shows the Parent participated in the October 14, 2021 IEP meeting, and her input was considered. Disagreement with a decision the IEP team made is different from a parent's input not being considered at all.
- The prior written notice did document at least one disagreement between the District and the Parent: the District staff members believed, at least in the interim, in-person instruction at the Student's school could provide the Student with FAPE, but the Parent disagreed with this.
- Based on the documentation provided to OSPI, it appears it was not until *after* the October 14, 2021 IEP meeting that the Parent conclusively determined she did not believe VOPP would work for the Student: on October 25 and 27, 2021, the Parent stated VOPP would not work because she had just learned it was "an asynchronous model [and] Student requires synchronous instruction," in part, because "Student needs social interaction [and] should not be isolated from his peers."

For the foregoing reasons, OSPI does not find a violation of the IDEA in relation to the Parent's prior written notice allegations.

In reviewing the documentation provided to OSPI during this investigation, though, OSPI did want to address a separate prior written notice matter.²⁷

Here, following the Student's transfer into the District (which was completed on or about September 4, 2021), there was some initial uncertainty as to which district 1 IEP was the relevant IEP for the District to consider for purposes of WAC 392-172A-03105(4):

²⁷ OSPI has general supervisory responsibility to ensure compliance with the IDEA, and OSPI is ultimately responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within Washington state.

If a student eligible for special education services transfers from one school district to another school district within Washington state and had an IEP that was ***in effect*** in the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either: (a) Adopts the student's IEP from the previous school district; or (b) Develops and implements a new IEP that meets the applicable requirements.

(emphasis added).

For example: on September 14, 2021, the case manager obtained a copy of a district 1 June 2021 amended IEP (which amended a January 2021 IEP) and the case manager believed was the Student's most recent IEP. But, after September 14, 2021, the Parent provided the case manager with a copy of the Student's district 1 October 2019 IEP, stating in part:

[The October 2019 IEP] was in place until May [2021]. The IEP from January 2021...was never in place. District 1 responded to our [independent educational evaluation] IEE request [by] filing for due process and...stay put [took hold] until District 1 withdrew their due process request and granted Student an IEE at public expense.

Between September 16 and 21, though, the District determined the Student's June 2021 amended IEP was the relevant district 1 IEP for the District to consider for purposes of WAC 392-172A-03105(4). For example: a meeting was scheduled between District staff and the Parent on September 16, 2021, "to set up Student's schedule," and now that the District had a copy of the Student's previous IEP, the District "should be able to create an in-person schedule...that meets Student's academic and IEP needs"; and, on September 21, 2021, the case manager informed the Parent the District had to provide services in conformity with the June 2021 amended IEP—and any additions and/or changes to the June 2021 amended IEP could only take place after there was a demonstrated change in need in the Student's disability.

OSPI notes: the District's determination that the June 2021 amended IEP was the correct district 1 IEP for it to consider for purposes of WAC 392-172A-03105(4) appears accurate. For example, the due process decision referenced by the Parent (2020-SE-0028) was entered on November 13, 2020. So, stay put protections would not have come into play after that date, and, in part, this is likely why district 1 developed a January 2021 and June 2021 amended IEP. Furthermore, the June 2021 amended IEP had an effective date range for services of June 21, 2021 through January 28, 2022. In other words, had the Student remained in district 1 for the 2021–2022 school year, district 1 would have been implementing the June 2021 amended IEP. This was the IEP then, that was "in effect" under WAC 392-172A-03105(4), when the Student transferred into the District at the beginning of the 2021–2022 school year.

Still, OSPI reminds the District: when it proposes to provide services comparable to those in an IEP that was "in effect" in a previous Washington state school district under WAC 392-172A-03105(4), it is best practice that this determination be formally noted in prior written notice, to be provided to the parent.

Here, the case manager's September 21, 2021 email to the Parent included many, **but not all**, of the prior written notice elements required under WAC 392-172A-05010. For example, it did not include: (i) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and, (ii) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice. Therefore, there was a violation, and the foregoing reminder, is an appropriate remedy.

Issue 5: Meeting Notice Procedures – October 14, 2021 IEP Meeting – The Parent alleged the District did not follow proper procedures for providing the Parent with a meeting notice in advance of the October 14, 2021 IEP meeting. Specifically, the Parent stated she was not informed of who would be attending and the purpose of the meeting.²⁸

An IEP meeting notification must, in part: indicate who will attend a scheduled meeting; and, the purpose of the meeting. Importantly, the regulations do not require a specific form be used for a meeting notification, but rather the information that must be conveyed. Here, in relation to whether the Parent was informed of who would be attending the October 14, 2021 IEP meeting, it appears the Parent was provided this information on no less than five occasions: on October 7, 8, 12, and 13²⁹, 2021. Therefore, OSPI finds no violation.

In relation to whether the Parent was informed of the purpose of the October 14, 2021 IEP meeting, OSPI notes: the principal purpose of the IEP meeting was to discuss whether the Student's needs resulting from the Student's disability meant the Student required a virtual learning environment.³⁰ And the Parent was informed that this was the purpose of the meeting on several occasions prior to October 14, 2021. For example: the October 7, 2021 meeting invitation read, in part:

This will be an IEP amendment meeting to discuss the education needs of Student. The first item on the agenda will be to discuss remote learning options. If there are other items to cover, please email them to me and I will add them in.³¹

²⁸ In relation to the purpose of the meeting, the Parent related: the October 13, 2021 meeting invitation stated the purpose of the meeting would be to discuss an IEP transfer for the Student; but she was "led to believe that...the IEP team [would] be making a placement decision for the Student"; and, at the October 14, 2021 meeting, there was neither a discussion around placement nor around reviewing and/or transferring the Student's out-of-District IEP.

²⁹ On October 13, 2021, the case manager emailed the Student's father a list of invited attendees for the October 14, 2021 IEP meeting, and the District provided the Parent with a Meeting Notice (Amendment), which listed attendees.

³⁰ For example: The District's response included a prior written notice dated October 14, 2021. It read, in part: "The IEP team met Thursday, October 14th to propose Virtual Option Pilot Program (VOPP)."

³¹ This language also appeared in the October 12 and 13, 2021 Microsoft Teams meeting invitations—both of which were emailed to the Parent.

On October 8, 2021, the case manager emailed the Parent and several District staff, stating, in part: "The main item on the agenda is a review to see if switching to a remote (online) setting is an appropriate change of placement for Student." On October 12, 2021, the case manager emailed the Student's father about the upcoming IEP meeting, noting, in part: "One thing that will help a lot towards getting the District to agree to a remote learning program for Student is if Student can demonstrate that he is able to make progress on his IEP goal areas while working remotely." And, in the weeks preceding the meeting, the case manager and the Parent exchanged several emails concerning what data existed that would most support a determination by the IEP team that the Student required an online learning environment. In light of the foregoing facts, OSPI determines the Parent was informed of the purpose of the October 14, 2021 IEP meeting, and there has been no violation of the IDEA.

Issue 6: IEP Meetings: Properly Constituted IEP Team; Excusal Procedures; and, Timeliness

– The Parent's allegation on this issue included two parts: whether the proper general education teacher attended the October 14, 2021 IEP meeting; and, whether the IEP meetings after August 13, 2021 were held in a timely manner.

As per the first allegation, the Parent alleged the District did not follow proper IEP attendance procedures for the October 14, 2021 IEP meeting. Specifically, the Parent stated: on October 7, 2021, the case manager confirmed the October 14 IEP meeting invitees to include the Student's jazz band teacher as the required general education teacher³²; on October 12, 2021, three school days after confirmation of the meeting date and time, the case manager sent a request to excuse the jazz band teacher from attending the October 14, 2021 IEP meeting; on October 14, 2021, the Parent declined the case manager's request; and, a general education teacher who was not one of the Student's general education teacher's ended up attending the October 14, 2021 IEP meeting.

An IEP team must include not less than one regular education teacher of the student—if the student is, or may be—participating in the regular education environment. The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP.

Here, the case manager stated: the only general education teacher on the Student's schedule that was able to attend the October 14, 2021 IEP meeting was the Student's Spanish teacher, but that the Spanish teacher was out sick that day. Ultimately, the District found a different general education teacher to attend the October 14, 2021 IEP meeting. Notably, though, the October 14, 2021 general education teacher was not one of the Student's general education teachers. This represents a violation of the IDEA.

However, the documentation shows any potential negative impact on the proceedings of the October 14, 2021 IEP meeting, as a result of this violation, was likely minimal. For example, prior to that date, the Student was provided with real-time, remote access to only one of his classes:

³² According to the Parent, the jazz band teacher "is the only general education teacher currently assigned to Student who has been providing instruction to him."

band class. In other words, prior to October 14, 2021, the Student had no experience with his other general education teachers. And, importantly, prior to the IEP meeting, the general education band teacher provided feedback on the Student's needs resulting from the Student's disability to the Student's case manager. It does not appear the band teacher's feedback particularly influenced the outcome of the October 14, 2021 IEP meeting as emails dated after October 14, 2021 show: the band teacher's input was not shared at the October 14, 2021 IEP meeting, because at the start of the meeting, "the District representative...decided to grant the family's request [for remote learning]." (The band teacher's feedback was shared with the Parent on October 19, 2021.)

Given the foregoing facts, the following is an appropriate remedy for this violation: the District will email the Student's IEP team the following reminder:

An IEP team must include not less than one regular education teacher of the student – if the student is, or may be, participating in the regular education environment. The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP.

If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both **consent in writing** to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting.

(emphasis added).

Several legal standards are relevant to the issue of whether the post-August 13, 2021 IEP meetings were held in a timely manner.

The legislative history of the IDEA makes it clear that there should be as many IEP meetings a year as any one child may need and districts should grant any reasonable parent request for an 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. The district must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

If a student eligible for special education services transfers from one Washington state school district to another Washington state school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets applicable requirements. Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services.

October 14, 2021 IEP Meeting

Here, the documentation shows, in part:

- Between August 27 and September 4, 2021, the Parent completed the Student's enrollment in the District.
- In late August and early September 2021, the District informed the Parent it did not have a synchronous remote option available for all students for the 2021–2022 school year, and that, to the extent such an option was provided to any student eligible for special education services, that was a placement determination that would need to be made a student's IEP team, when considering that student's needs resulting from the student's disability.
- On two occasions—one in late August 2021 and one in early September 2021—the Parent requested an IEP meeting.
- Based on emails, the District first received the Student's district 1 June 2021 amended IEP on or about September 14, 2021.
- Based on emails between September 16 and 21, 2021, the District determined it would provide services comparable to those outlined in the district 1 June 2021 amended IEP, pending future meetings by its own IEP team.^{33 34}
- The District held the IEP meeting to discuss the Parent's request that the Student be provided with real-time, remote access to synchronous instruction on October 14, 2021.

For the following reasons, holding the IEP meeting to discuss the Parent's request on October 14, 2021 was timely:

First, the total amount of time between completion of enrollment (on or about September 4, 2021) and the IEP meeting (October 14, 2021) was relatively small—approximately six weeks of school. And during that period, the documentation indicates the District was ready and able to provide comparable services.

Second, the District does not appear to have even received the June 2021 amended IEP until roughly September 14, 2021—approximately a week and a half after enrollment was completed.

Third, during those six weeks of school, District personnel—in particular, the case manager—continually communicated with the Parent in an effort to procure relevant data on the Student's needs resulting from the Student's disability, to inform the proceedings of the October 14, 2021 IEP meeting. For example, in part: on August 17, 2021, the Parent informed the District the Student

³³ Again, OSPI notes: the District should have provided the Parent with a prior written notice on or about mid-September 2021, stating it would provide services comparable to those outlined in the district 1 June 2021 amended IEP, pending future determinations by its own IEP team.

³⁴ There was some initial confusion concerning what comparable counseling services the District could offer: the June 2021 amended IEP included counseling as a related service; the District's transfer specialist, though, noted, "I do not see counseling listed as a related service on the evaluation and I don't see narrative information about it on the IEP"; the Parent informed the District that counseling was an important service, and that it needed to continue to be provided to the Student; and, the District determined it could provide comparable counseling services (especially given the relative lack of detail in the IEP and evaluation documents it had received as of that date) through the counselors in its Teen Health Center.

had “asthma [and] clinical anxiety”; on September 2, 2021, the Parent provided the District with a letter from a clinical psychologist, stating the Student “require[d] remote learning...as [he] has asthma and as such is more anxious than most about the possibility of becoming infected with COVID”; on September 15, 2021, the Parent provided the District with numerous health and evaluation-related documents on the Student; and, on October 12, 2021, the case manager collected input from the Student’s band teacher.

Fourth, the Parent communicated to the District that she needed several accommodations. For example, on September 14, 2021, she noted: “We would like to put an IEP meeting and an evaluation feedback meeting on the calendar [with] 2-3 weeks [of] lead time.” And, here, the Parent was first invited to the October 14, 2021 IEP meeting on October 7, 2021—approximately two weeks prior to the meeting.

Fifth, between completion of enrollment (on or about September 4, 2021) and the IEP meeting (October 14, 2021), the District had significant dialogue with the Parent in terms of scheduling the meeting at a mutually agreeable time and place, and ensuring that necessary invitees (including the Parent’s invitees) could attend. For example, email communications with the Parent regarding when and how to hold the IEP meeting took place, in part, on the following dates: September 13, October 7–8, and 12–13, 2021.

For the foregoing five reasons, the October 14, 2021 IEP meeting was held in a timely manner and there was no violation of the IDEA.

January 20, 2022 IEP Meeting

For many of the same reasons OSPI determined the October 14, 2021 IEP meeting was held in a timely fashion, OSPI also finds the January 20, 2022 IEP meeting to have been held in a timely fashion.

For example: in late October 2021, the Parent informed the District that VOPP would not work (this having been the determination of the IEP team at the October 14, 2021 IEP meeting), as VOPP did not offer synchronous instruction. Between late October 2021 and January 20, 2022, the documentation provided to OSPI during this investigation clearly shows: the District gathered substantial information on the Student’s needs resulting from the Student’s disability, including numerous independent educational evaluation (IEE)-related documents; and, the District made repeated efforts to collaborate with the Parent on identifying a mutually agreeable date and time and ensuring the participation of all necessary and desired invitees. The January 20, 2022 IEP meeting was also timely because the June 2021 amended IEP was going to expire on January 22, 2022. No IDEA violation, in relation to timeliness, is found.

However, in reviewing the documentation related to the January 20, 2022 IEP meeting, OSPI did find one violation in relation to IEP development.³⁵

³⁵ While this issue does not fall within the strict confines of the issues opened as part of this investigation, OSPI has general supervisory responsibility to ensure compliance with the IDEA, and OSPI is ultimately

Here, on or about December 2, 2021, the Parent provided the District with several IEE evaluation reports. The decision was made, though, that the IEE evaluation reports would not be considered as part of the January 20, 2022 IEP meeting—or to the extent they were considered—said consideration was minimal. For example: on January 10, 2022, the case manager emailed the Parent: “The meeting for January 20, 2022 will be for an annual IEP meeting; we will not be covering any IEE materials and as stated those will be addressed later in a different meeting”; on January 11, 2022, the case manager emailed the supervisor, stating: “Here is a draft copy of the IEP (mostly copy/pasted from the current one, as there isn’t anything new to add)”; and, on January 18, 2022, the case manager emailed the Parent and several District staff members, stating, in part: “The point of the January 20, 2022 IEP meeting is to complete Student’s annual IEP, including continuing discussions around remote options (VOPP), but it is not an evaluation feedback meeting. Of course the team can consider [the psychologist’s letter we received on or about September 2, 2022], but [in] terms of incorporating the results into a new District reevaluation, that is a separate process.”

The decision to not discuss the IEE reports at the January 20, 2022 IEP meeting represents a violation of the IDEA. If the parent obtains an IEE at public or private expense, the results of the evaluation: must be considered by the school district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and, a student’s IEP must be revised periodically, as needed based on any change in need resulting from the student’s disability. Here, the Student’s IEP team was in possession of relevant, recent data on the Student’s needs resulting from the Student’s disability (the various IEE reports) at the time of the annual IEP review meeting. It should have considered this information in developing the Student’s IEP on January 20, 2022.

Subsequent to the January 20, 2022 IEP meeting, there was an additional IEP meeting on March 23, 2022. It appears a principal purpose of the March 23, 2022 IEP meeting was to discuss what, if any, additional assessments the District needed to conduct. It does not appear the IEE reports were considered in any substantive fashion at the March 23, 2022 IEP meeting. For example, the March 23, 2022 prior written notice read, in part: “There are Independent Educational Evaluations (IEEs) from [district 1 that need] to be reviewed and carefully considered.”

There is an IEP meeting scheduled to take place on April 20, 2022. As OSPI understands it, the purpose of the April 20, 2022 IEP meeting is to review all evaluation-related data available to the IEP team as of that date³⁶, including the IEE reports, and revise the Student’s IEP, as appropriate.

responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within Washington state.

³⁶ Based on the March 23, 2022 prior written notice, it appears the April 20, 2022 date was selected, in part, so the District had time to complete some of its own assessments. For example, the March 23, 2022 prior written notice read, in part: “The team was in agreement more time was needed for the speech language pathologist to gather teacher input for the Pragmatics Profile, as well as better understand Student’s social communication needs to inform recommendations”; and, “The latest occupational therapy evaluation report has since been shared for consideration and the occupational therapist will follow up with parents via email with their assessment plan.”

OSPI is appreciative of the parties' efforts in working together to schedule the April 20, 2022 IEP meeting. To remedy the failure to consider the IEE reports at the January 20, 2022 IEP meeting, though, the following corrective action will be required: prior to the April 20, 2022 IEP meeting, the District members of the Student's IEP team must review the IEE reports and be prepared to discuss the same at the April 20, 2022 IEP meeting.³⁷

CORRECTIVE ACTIONS

By or before **April 8, 2022** and **April 15, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Email to the Student's IEP Team

By or before **April 8, 2022**, the District will email the members of the Student's IEP team the following reminders:

- **Reminder 1:** Progress reports must include information on each of the goals in a student's IEP.
- **Reminder 2:** An IEP team must include not less than one regular education teacher of the student, if the student is, or may be, participating in the regular education environment. The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP.

If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both **consent in writing** to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting.

(emphasis added).

- **Reminder 3:** When a district proposes to provide services comparable to those in an IEP that was "in effect" in a previous Washington state school district under WAC 392-172A-03105(4), it is best practice that this determination be formally noted in prior written notice, to be provided to the parent.

By or before **April 8, 2022**, the District will provide OSPI with a copy of the same email.

Provision of Completed Progress Report

By or before **April 8, 2022**, the District will provide the Parent with an updated and complete copy of the Student's progress report. Said report will include entries for each of the Student's IEP goals.

By or before **April 8, 2022**, the District will provide OSPI with documentation showing completion of the same.

³⁷ Parental consent is not necessary for District staff members to conduct a review of existing data.

Pre-April 20, 2022 IEP Meeting Review of IEE Reports

Prior to the April 20, 2022 IEP meeting, the District members of the Student’s IEP team must review the IEE reports and be prepared to discuss the same at the April 20, 2022 IEP meeting.

By or before **April 15, 2022**, the District will certify to OSPI that the District members of the IEP team have completed this requirement.

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.

RECOMMENDATION

OSPI wants to encourage both parties to continue to work together towards a consensus on the Student’s needs resulting from the Student’s disability, so that the Student can access the specially designed instruction and related services the Student’s IEP team determines the Student requires under the IDEA.

Dated this ____ day of March, 2022

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.)