

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-74

PROCEDURAL HISTORY

On July 19, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the mother (Parent) of a student (Student) attending the Sedro-Woolley School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On July 20, 2018, 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 August 15, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on August 16, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On August 20, 2018, OSPI granted the Parent an extension of time until August 31, 2018, to submit her reply to this complaint.

On August 22, 2018, OSPI determined that additional information would be helpful to the investigation and contacted the District concerning the same. On August 27, 2018, OSPI received the requested information from the District. OSPI forwarded the additional information to the Parent on August 29, 2018.

On August 28, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on August 29, 2018.

On August 29, 2018, OSPI determined that additional information would be helpful to the investigation and contacted the District concerning the same. On August 31, 2018 and September 4, 2018, OSPI received the requested information from the District. OSPI forwarded the additional information to the Parent on September 5, 2018.

On August 30, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on August 31, 2018.

On September 5, 2018, OSPI determined that additional information would be helpful to the investigation and contacted the District concerning the same. On September 6, 2018, OSPI received the requested information from the District. OSPI forwarded the additional information to the Parent on September 7, 2018.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District middle school and was eligible to receive special education services. At the beginning of the school year, the Student's September 2017 individualized education program (IEP) was in place. The Student's September 2017 IEP included several modifications.¹ On November 16, 2017, the Student's IEP team created a new IEP for the Student. The Student's November 2017 IEP included the same modifications as those listed in the September 2017 IEP – though the wording of three of the modifications in the November 2017 IEP was slightly different than that found in the September 2017 IEP.

On July 19, 2018, the Parent filed this complaint with OSPI, alleging that the District did not provide the Student with the modifications listed in his IEPs during the 2017-2018 school year. Specifically, the Parent alleged that the District did not: a) provide the Student with written instructions for assignments; or b) check the Student's understanding of assignments. The District admitted that the Student was not provided the modifications listed in his November 2017 IEP in his co-taught math class during the period of May 7, 2018 through May 24, 2018, when the Student's case manager was absent from that class. The District otherwise denied this allegation.

The Parent also alleged that the November 16, 2017 IEP meeting was improperly attended. The District denied this allegation.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on July 20, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District implement the accommodations, modifications, and supplementary aides and services listed in the Student's individualized education programs (IEPs) in place during the 2017-2018 school year?
2. Did the District ensure that the November 16, 2017 IEP meeting was attended by a properly constituted IEP team?

¹ Some of the "modifications" listed in the Student's September 2017 IEP are actually "accommodations." Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students. Modifications: (a) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide a student with meaningful and productive learning experiences based on individual needs and abilities; and (c) grading and credit are different. For ease of understanding in this complaint, OSPI will use the same categorization for accommodations and modifications as that found in the Student's September 2017 and November 2017 IEPs.

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. 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. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a). "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994).

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

IEP 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); at the discretion of the parent or the school district, other 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). Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child's unique needs and ensure the provision of a free appropriate public education (FAPE) to the child, participate in the child's IEP Team meeting. The IDEA does not expressly require that related services personnel attend IEP Team meetings. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting. *Letter to Rangel-Diaz* (OSERS April 2011).

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 to the parent and other IEP team members prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

FINDINGS OF FACT

Background Information

1. The Student was initially identified as eligible for special education on November 18, 2007, under the category of "Developmentally Delayed." At that time, the Student was almost three years old. On November 18, 2010, the Student was reevaluated for special education eligibility and it was determined that he continued to qualify as "Developmentally Delayed." On December 20, 2012, the Student was reevaluated and his eligibility category was changed to "Autism." On December 2, 2015, the Student was reevaluated and it was determined that he continued to qualify under the category of "Autism."
2. The Student's December 2015 reevaluation report noted, in part:
[Student] has been diagnosed with autism at the mild end of the spectrum. He demonstrates delays in social and communication behaviors. However, these delays are pervasive and impact all aspects of [Student's] classroom performance. These delays impact [Student's] ability to interact effectively in the classroom and fully benefit from grade level curriculum.
3. On August 31, 2017, prior to the beginning of his seventh grade year, a new individualized education program (IEP) was created for the Student. This IEP was to be implemented starting on September 5, 2017 – the first day of school. The September 2017 IEP included goals in the area of social/emotional. The September 2017 IEP provided the following accommodations to the Student during any state testing that took place from September 5, 2017 to December 2, 2017:
 - Noise buffers
 - Separate Setting (alternate setting or resource room)

The September 2017 IEP also provided the following modifications, each day, from September 5, 2017 to December 2, 2017:

No.	Modification	Location
1	Other: Modified grading – Classroom Participation is weighted at zero (0). [Student] will not be graded on classroom participation. Report card will note M for modified – to see IEP Progress Report. It is expected that [Student] will participate at his ability level.	General education classroom or resource room.
2	Other: Daily Assignment List: [Student] will copy daily assignments into his agenda, and then have it checked and initialed by teachers. Homework will be noted in agenda as well.	General education classroom or resource room.
3	Presentation: Rephrase test questions and/or direction: Provide [Student] with a visual checklist to clarify directions given verbally.	General education classroom or resource room.
4	Presentation: Shortened assignments: [Student] will be given a checklist or an outline of steps required to complete larger assignments.	General education classroom or resource room.
5	Setting: Modify/repeat/model directions: [Student] will be asked to restate or rephrase direction to assure understanding.	General education classroom or resource room.
6	Setting: Preferential seating: Student will have a seat in an area that provides the least amount of distraction for [Student] and other students (front of room/teacher proximity/minimized distractions).	General education classroom or resource room.
7	Setting: Take test in separate location: [Student] will be provided an opportunity complete classroom tests in a resource room or alternate setting.	Resource room or alternate setting.
8	Setting: Provide individualized/small group instruction: Individualized or small group setting will be provided to support [Student's] IEP goals.	General education classroom or resource room.
9	Testing – Timing – IEP Specific: More than one day: For a test session or subtest: [Student] will be provided more than one day for a test session or sub-test session during Smarter Balanced (State) Testing. ²	Resource room or alternate setting.
10	Timing/Scheduling: Allow breaks (during work, between tasks, during testing, etc.): [Student] will be allowed breaks during work, between tasks, during testing, etc., as long as he is showing appropriate effort at his learning level.	General education classroom, resource room, or alternate setting.
11	Timing/Scheduling: Extra time on tests/quizzes: [Student] will be allowed additional time to complete classroom tests/quizzes as long as he is showing appropriate effort.	General education classroom, resource room, or alternate setting.
12	Timing/Scheduling: Extra time to complete assignments: [Student] will be allowed extra time (an extra day or two) to	General education classroom or resource room.

² By its nature, this modification was not required to be provided to the Student each day; this modification only needed to be provided to the Student when Smarter Balanced (State) Testing took place.

	complete homework or larger assignments, if parents request. Due to therapy outside the school day.	
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The September 2017 IEP provided the Student with the following specially designed instruction in a *general education setting* from September 5, 2017 through December 2, 2017:

- Social/emotional – 100 minutes 5 times weekly (to be provided by a special education teacher)

The September 2017 IEP also provided the following specially designed instruction in a *special education setting* from September 5, 2017 through December 2, 2017:

- Social/emotional – 50 minutes twice weekly (to be provided by the classroom teacher)

2017-2018 School Year

4. During the 2017-2018 school year, the Student attended a District middle school and his September 2017 IEP was in place. The District’s 2017-2018 school year began on September 5, 2017.
5. The Student’s class schedule for the first semester was as follows:
 - Period 1: Social studies – general education setting
 - Period 2: Art – general education setting
 - Period 3: Advisory – special education setting
 - Period 4: Wellness – general education setting
 - Period 5: Math – general education setting (co-taught with the case manager)
 - Period 6: Science – general education setting
 - Period 7: English – general education setting (co-taught with the special education teacher)

The regular and co-taught class periods averaged 52 minutes and were held each day. The advisory class period was 44 minutes and took place twice each week.³

6. On September 19, 2017, the Student’s case manager⁴ emailed the science teacher, the special education teacher, the physical education (PE) teacher, the English teacher, the art teacher, the math teacher, and the social studies teacher, stating:

I spoke with [Student’s father] yesterday evening. He was concerned about [Student’s] accommodation of “checking for understanding.”

³ The September 2017 IEP was created with the belief that the advisory class would be 50 minutes long, which is why the IEP provided 50 minutes twice weekly, of social/emotional instruction in the special education setting. According to the District, prior to the creation of the September 2017 IEP, the school’s bell schedule was established for the 2017-2018 school year and the advisory class was only 44 minutes long. The intent, according to the District, was to have the September 2017 IEP reflect the length of the advisory class that was permitted by the bell schedule – this is why the advisory class length was changed to 44 minutes when the November 2017 IEP was created. See below. In other words, during the first semester, the Student’s advisory class only met for 44 minutes.

⁴ The case manager also served as a special education resource room teacher.

Our discussion focused on providing multiple opportunities for [Student] to explain his understanding of a concept or direction in each class period. Some phrases that should be used include "what should you be doing first?" or "tell me your next step." Please make sure you are checking in with [Student] multiple times in a class period and probing for comprehension of content or task instructions and include printed directions with the task that [Student] can have with him/in front of him in the form of notes provided or notes taken.

The case manager also stated that, in response to the Student's father's request "to have communication on any redirections/prompting necessary during a class period," she would create an agenda using google documents that "will have a 1-5 rating for this purpose where you can circle the number of redirects or prompts."⁵

Later that same day, the case manager emailed the Student's teachers a draft of the agenda to be used at the end of each class. It looked as follows:

Assignment/Task:
Homework: Y N
Due Date:
Teacher Rating: 1 2 3 4 5
Teacher Initials:
Teacher Comment:

7. In an email conversation, dated September 19, 2017, the Student's sixth grade teacher provided the math teacher with her observations of the Student from the previous year. At one point in this conversation, the math teacher stated, in pertinent part: "I told [Student] I expected him to participate with the class to the best of his ability."
8. On September 22, 2017, the special education teacher emailed the case manager, stating, "[Student] does not have his daily calendar (google document)." In this email, the special education teacher updated the case manager on the Student's classroom activities that day, asking her to "pass [this] along to [Student's] father so he has accurate documentation of today."
9. On September 28, 2017, the special education teacher emailed the case manager, stating:
Just a heads up. I have been providing [Student] with a copy of the google calendar doc for [English language arts] and update it every day (along with giving him physical copies of daily task lists that [the English teacher] puts on the board). I have discovered that he is wadding these up and putting them at the bottom of his backpack. He may be doing this to you as well...I have copies of my documentation so I can happily provide the information again. But you may want to let his dad know...Also, can you clarify the 1-5 behavior rating scale? Is 1 low and 5 high? Or is it the other way around?

⁵ From the documentation provided in this complaint, it is not clear to what extent the Student was expected to fill out the proposed agenda.

10. On October 16, 2017, the PE teacher emailed the Parent, stating that the Student “need[s] reminders of next steps” when participating in class assignments and activities.

11. On November 16, 2017, the Student’s IEP team met and developed a new IEP. The following individuals attended the meeting: the parents, the Student, the science teacher, the math teacher, the English teacher, the special education teacher, the case manager, and the assistant principal. According to the District’s response:

- The social studies teacher and the art teacher also attended the meeting, but neither of them signed the signature page of the November 16, 2017 IEP.
- The social studies teacher arrived to the meeting approximately fifteen minutes late because of a coaching obligation.
- The meeting began at 2:20 in the afternoon. At around 3:20 in the afternoon, the following individuals left the meeting because of other obligations: the science teacher, the English teacher, the math teacher, the social studies teacher, and the art teacher.
- “By 3:20, the IEP goals, accommodations, modifications, and services had been discussed.”
- “After the general education teachers left, [the parents] continued to discuss who was required to be present at IEP meetings and planned future IEP follow up discussions.”

According to the Parent’s complaint, “[The Student’s father and I] made our wishes very clear...that we would not be ‘excusing’ any one from this meeting.”

12. The November 16, 2017 IEP was to be implemented starting on November 21, 2017. The November 2017 IEP included goals in the area of social/emotional.⁶ The November 2017 IEP included the same accommodations as those listed in the Student’s September 2017 IEP.

Nine of the modifications in the November 2017 IEP were the exact same as those in the September 2017 IEP; three modifications were phrased slightly differently in the November 2017. Those modifications are as follows (the changes have been italicized):

No.	Modification	Location
4	Presentation: <i>Chunked</i> assignments: [Student] will be given a checklist or an outline of steps required to complete larger assignments.	General education classroom or resource room.
9	Testing – Timing – IEP Specific: More than one day: For a test session or subtest: [Student] will be provided more than one day for a test session or sub-test session during <i>standardized testing</i> . ⁷	Resource room or alternate setting.
12	Timing/Scheduling: Extra time to complete assignments: [Student] will be allowed extra time (an extra day or two)	General education classroom or resource room.

⁶ The September 2017 and November 2017 IEPs both included the following measurable annual goal: “[W]hen given an opportunity to focus on teacher instruction or task initiation/completion [Student] will stay on task or focused on instruction improving attention and on task behavior from an average of 90% of the time (baseline collected from outside agency data) to an average of 100% of the time as measured by data collection.”

⁷ According to the District, the phrase “standardized testing” was intended to refer to “state-based assessments.” In other words, this modification did not change.

	to complete homework or larger assignments, <i>if parents and educators agree.</i>	
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The November 2017 IEP provided the Student the following specially designed instruction in a *general education setting* from November 21, 2017 through November 20, 2018:

- Social/emotional – 100 minutes 5 times weekly (to be provided by a special education teacher)

The November 2017 IEP also provided the following specially designed instruction in a *special education setting* from November 21, 2017 through November 20, 2018:

- Social/emotional – 44 minutes twice weekly (to be provided by the classroom teacher)

13. According to the Parent’s complaint, at the November 16, 2017 IEP meeting, the District agreed that the teachers of the classes that the Student was struggling with the most would meet with the Parent on a quarterly basis.⁸ According to the prior written notice, dated November 16, 2017, the District proposed “to proceed with the services and plans outlined in the [November 2017] IEP.” In pertinent part, it stated, “We will meet in January, March, and May.”⁹

14. The record contains an undated email from the case manager to the special education teacher, the PE teacher, the social studies teacher, the art teacher, the science teacher, the English teacher, the school principal, the assistant principal, and the school counselor. It stated:

I just wanted to send an email to remind or inform you of some accommodations and modifications [Student] will need in place promptly.

1. Modified grading – he is not graded on class participation, but is expected to participate at his ability level.

2. Daily Assignment List – [Student] will have an agenda that has to be initialed by teachers. It should have the daily assignment and any homework clearly marked.

3. Directions for any task/activity/assignment should be written and available for re-reading until completion.

4. Steps for larger tasks/projects will be provided in clear steps or checklists.

5. Ask [Student] to repeat/rephrase directions to check for understanding.

6. Preferential seating: Student will have a seat in an area that provides the least amount of distraction for [Student] and other students.

⁸ In a March 15, 2018 email to the case manager, the Parent referred to these meetings as “IEP teacher check-in[s].” In a reply email to the Parent on March 16, 2018, the case manager stated, in part, “I have no problem agreeing to have quarterly check-in meetings with you. These are not IEP meetings, but we can discuss whatever concerns you have.”

⁹ The November 16, 2017 prior written notice does not detail who will be meeting at these times or what will be discussed at these meetings.

7. Testing: [Student] will be provided an opportunity to complete classroom tests in a resource room or alternative setting. (Offer to let him go to the office for now).

8. Extra time on tests, quizzes, and assignments.

9. Allow breaks – He will be asking “May I go get a drink of water please?”

It is critical that we provide these acc/mod as stated in the IEP. I will be providing you with his IEP at a glance, so you have it on hand.

15. On November 20, 2017, the Parent emailed the case manager and the math teacher, stating: [Student] has quite a few items in his binder from the last couple weeks – can one of you please check in with him and see if they need to be turned in, kept or tossed?...[Student’s] report card says that he is on a modified curriculum, what exactly does this mean?

The math teacher responded on November 21, 2018, stating:

We are working through a new curriculum right now, and there are a lot of “in class” activities that the kids work through, and we discuss their strategies in small group, with partners or in class whole group...The kids are completing short entry tasks at the start of class periodically, that I look at to check for understanding, and then I redesign my instruction to help adjust for misconceptions.

Modified curriculum can take a variety of forms: it may mean shortened assignments (doing 5 questions instead of 10), providing scaffolding¹⁰ on a multi-step problem to ensure all steps are covered, having the students verbally respond to a question, rather than writing it. [Student] has received very few modifications on his math assignments, but at times [the case manager] may scaffold an assignment to assist [Student]. [Student] has been accessing all the regular material in class, has been assessed the same as his peers, but some modifications have been made.

16. The District was on break November 23 and 24, 2017.

17. On November 29, 2017, the Parent asked the special education teacher if the Student could re-do some assignments in English class that he got a low score on. The special education teacher responded on November 30, 2017, stating:

He had a challenge with a Framework Paragraph quiz...He didn’t study (but he wasn’t the only one). This is what we worked on all this week (along with the biography essay) and he is taking another quiz tomorrow. This should be much improved given the work he did this week and will improve his grade. If not, I will have him re-take.

¹⁰ According to the District’s response, “Scaffolding can be breaking a task into smaller chunks or providing additional instruction/information to allow a student to ensure tasks are accessible for students. Hard Scaffolding included: reading directions to [Student], changing the wording in directions or test questions, providing additional examples, or changing an example to a more simplified version of the same concept. Soft Scaffolding included: talking to a partner about a task, asking targeted questions, activating prior knowledge, additional examples, continued prompting.”

18. On December 12, 2017, the Parent emailed the special education teacher and the case manager, stating:

When you take [Student's] agenda at the end of the week – can you make a copy first for him to bring home? We miss how he does on Fridays and use the feedback from his teachers for rewards and such. Can you send last week's home with him sometime this week?

The case manager responded on December 13, 2017, stating, "Absolutely! I will send last week's home today." The special education teacher responded to the case manager on December 13, 2017, stating, "I can photocopy on Fridays for you. Will try to remember."

19. The District was on break from December 21, 2017 through January 3, 2018.

20. The Student's class schedule for the second semester was as follows:

- Period 1: Social studies – general education setting
- Period 2: Foundations in Technology – general education setting
- Period 3: Advisory – special education setting
- Period 4: Wellness – general education setting
- Period 5: Math – general education setting (co-taught with the case manager)
- Period 6: Science – general education setting
- Period 7: English – general education setting (co-taught with the special education teacher)

The regular and co-taught class periods averaged 52 minutes and were held each day. The advisory class period was 44 minutes and took place twice each week.

21. On January 11, 2018, the Parent emailed the art teacher and the case manager, stating:

Originally I was going to send this and we were going to ask that you move [Student] away from [another student]. However, after further thought, [Student] knows better and needs to be held accountable. He knows that he should be listening to you and making his work a priority and not sitting there chatting away with [this other student]. So...if [Student] is not listening or doing his work and you are getting on to him more than once, please send him to the office or write him an infraction or whatever it is that you can do. We are holding him responsible at home and need to him to see that school has the same expectations of him.

On January 12, 2018, the art teacher responded, stating, in part:

The students that [Student] sits near try to help him and keep him on track but he does not take that advice well! Instead of thinking they are helping he thinks they are telling him what to do! He sometimes voices that frustration but I haven't seen that from him in a while and to be honest, most students have stopped trying to help him because he responded negatively to their help.

I have spent quite a lot of one on one time with him lately to get him to follow instructions and to repeat my instructions so he won't ruin his project and all his hard work but it has been frustrating when he just sits there after we chat.

22. On January 17, 2018, the math teacher emailed the Parent, explaining the process she employs in her classroom for certain activities:

Students are presented with different “chunks” of questions, to which they first answer independently and quietly, second, share out with their neighbors about their thinking, and third, we go over the main ideas and student thoughts in class...I monitor the class during their discussions and ask probing questions to get at their misconceptions (if any).

In this same email thread, the math teacher and the Parent discussed the Student’s improved score on an assignment he was allowed to re-do.

23. On January 18, 2018, the special education teacher emailed the Parent, stating, “I wanted to let you know I am unable to attend today’s meeting. Unfortunately, I have an IEP.” The special education teacher also provided the Parent with an update on the Student’s performance and progress in his English language arts class.

24. On January 18, 2018, the Parent and the District had their first “check-in” meeting. According to the Parent’s complaint, she invited the special education teacher and the English teacher, but only the case manager and the school principal attended the meeting.

25. On January 19, 2018, the math teacher emailed the case manager, the school psychologist, the school principal, and another teacher in the math department, stating:

Update on how things are going in the co-taught 7th grade class. There are many challenges here in this group, both academically, behaviorally, and with sheer numbers. Since the curriculum is new (pilot) I am providing 95% of the instruction, planning and assessing of this group. We simply cannot find the time to do it any other way. [The case manager] accommodates and modifies when she can, but other than scaffolded [*sic*] lesson instruction I provide, these kids all are completing and participating in the exact same work as their grade level peers, while [the case manager] monitors the room and small group discussions, during lessons. Her daily, timely and active presence in this class is critical for it to run smoothly. There are many times when she has to be out of the room, and I feel things fall apart for those who are left, at times.¹¹

...

[Student] – Grade B. Doing fine. Keeping up on his agenda daily without reminders. Plays with his calculator a LOT during instruction and needs daily, frequent reminders to put it away.

26. On January 23, 2018, the case manager emailed the science teacher, the special education teacher, the PE teacher, the English teacher, the math teacher, the social studies teacher, the technology teacher, the school principal, and the Parent, stating:

[Student’s] parents met with [the school principal] and I last Thursday to discuss any concerns we have as a team concerning [Student’s] IEP. [Student’s parents] are concerned that [Student] is not being held to the same academic and behavioral standards as other students. Please make sure to hold [Student] accountable for meeting high standard in

¹¹ According to the District’s response, the case manager had to “leave [the co-taught math class] to address student needs 1-2 times per week for 5 to 10 minutes.”

quality of work and classroom conduct. The two main concerns [Student's parents] expressed have to do with accommodations and modifications in [Student's] IEP.

1. Using "checks for understanding" regularly and specifically asking [Student] to repeat directions in his own words or clarify the next steps.
2. Providing direction in written form, which [Student] can either copy into a notebook or take with him. Please make sure directions are "chunked" or broken into smaller manageable steps. Then communicate with [Student] the timeframe/deadline for each of the steps. Please make sure these deadlines/due dates are on the written instructions.

I included his IEP at a glance in case you need a new one. This will give you a quick reference for Acc/Mod/goals and services.

Later that same day, the math teacher responded to the case manager, stating:

[W]as there a specific concern? I feel like we are doing this in math, but maybe not as often with the [checks for understandings] as we need??? I can accommodate in the directions what needs to be done on the parts of the assignment, and I feel like we scaffold the instructions pretty well.

27. On January 16, 2018, in response to an email from the Parent concerning the Student's progress on a class project, the art teacher stated:

I wouldn't say that he is really behind but he is not quite where he should be. Today we moved on to final drafts and he was to pick 1 from his 4 sketches that he actually wants to sculpt. I had to remind him a few times to only sketch his top #1 choice and for some reason he kept sketching all 4. I want him to only have his #1 main idea sketched on final draft so he doesn't get confused as to which one he is sculpting. I hope that makes sense!

28. On February 20, 2018, in response to a question from the Parent regarding a missing assignment and some low test scores, the math teacher emailed the Parent, stating, in part:

The kids are welcome to redo any quick quizzes they have done poorly with, as those are given as a check point to see what material they are mastering and what needs some work. I've been trying to check in with [Student] during the student think time, and sharing time, to check his understanding and solution paths. I give him suggestions to steer him in the right direction, but he is reluctant at times to take the feedback.

He has a couple options for redoing any of the quick quizzes, but both need to be completed outside of class, as I don't want to take time away from learning new material (unless of course, we have a break in class where it is appropriate to catch up):

1. He can redo the one(s) that were passed back by putting his new response on the back. I would like for the kids to explain the error they made in their own words, and put a correct solution on that same paper. This should be turned into the "late/absent" work by my desk.
2. He can see me before or after class to get a new copy and complete it without having to explain his error, while he works here in the classroom.
3. Other options as agreed upon...I'm happy to entertain appropriate accommodations here, just let me know.

29. On February 22, 2018, the special education teacher and the Parent exchanged emails in which they discussed allowing the Student to re-do two assignments he had already submitted because he had likely "rushed [though them]" and he needed to "spend more quality time" on completing them.
30. On February 27, 2018, in response to an email from the Parent asking why the Student appeared "frazzled" when he came home from school, the special education teacher stated:
[Student] was given instruction on how to do a pre-writing outline. Following the instruction, students were asked to complete it and I sat at his table (along with a few peers) to help support them. He clearly stated he was not going to be a part of the group and ignored the outline that I modeled to the students. As a result, he completely got the assignment wrong. Therefore, when he thought he had finished, he grabbed a computer to play an online game. I asked to review his assignment first and when it was noted it was wrong, we put the computer away and we did it again together.
31. On March 8, 2018, the Parent emailed the case manager, the math teacher, and the school principal, asking why a certain test was "marked as missing." Later that same day, the case manager responded, stating:
[Student] did not do well on the test. I held on to it, let him look at it again with some additional clarification, and offered him the opportunity to come in before school, after school, or during lunch to make adjustments. He did not take advantage of any of those opportunities.¹²
32. On March 14, 2018, the Parent emailed the special education teacher, asking why the Student "got talked to" during class earlier that day. Later that same day, the special education teacher responded, noting that the Student had been "very goofy" during his English language arts class and that he had difficulty completing an assignment. The special education teacher concluded by noting: "[Student] was definitely harder to re-direct...Overall, [Student] did do his work but required more supervision than usual."
33. On March 20, 2018, the technology teacher emailed the Parent and the Student's father about the Student's progress in technology class, stating:
[W]e're about to be wrapping up our graphic design unit...and on any given day or minute he LOOKS like he's working on it and making progress, so I tend to sign his agenda thinking he's looking okay, then when I go to really check something off as completed, he hasn't actually saved any of his work, so he might have some missing assignments coming up soon.
34. On March 26, 2018, in response to an email from the Parent concerning grading, the math teacher stated, in pertinent part, "[The case manager] is careful with all the students to ensure they are checking their work and being accurate with their calculations and steps before they submit their test to the turn in box." In a subsequent email that same day, the math teacher added:

¹² The test was "recorded" later that same day.

[The case manager] spent significant time with [Student] today encouraging him to look over his work more than once before turning it in. [The case manager] walked through many of the questions prompting/reminding him, "What do you need to do first? "How do you need to show your thinking?" "Does this answer make sense?" [sic] All of these before turning in his assessment.

35. On March 27, 2018 and March 28, 2018, the Parent and the math teacher exchanged emails, wherein they discussed their decision to allow the Student to re-do a couple classroom assignments.

36. The District was on break April 2-6, 2018.

37. On April 10, 2018, the Parent and the District had their second "check-in" meeting.¹³ According to the Parent's complaint, the following individuals attended this meeting, in addition to herself: the case manager, the school principal, the math teacher, and the technology teacher.

38. On April 11, 2018, the case manager emailed the technology teacher, the science teacher, the special education teacher, the PE teacher, the English teacher, the math teacher, the social studies teacher, the school principal, and the Parent, stating:

[The school principal], a couple teachers, and I met with [Parent] yesterday to check in about [Student]. I included [Parent] and [the school principal] in this email, so please correct me if I miss anything. Here are a few concerns we discussed:

1. Checking for understanding and providing written directions: Please make sure you are using language like "[Student], let me check your understanding on..." [Student] does not feel that teachers are checking in with him so try to make your language clear to him. As well, make sure that he has written directions available to reference throughout the completion of the task. I know this happens, but please ask [Student] to copy it down or provide him an individual set of instructions that he can keep.

2. [Student's] agenda – He should be completing the top portion and possibly the homework part. Teachers should be completing the bottom section on [Student's] request. The teacher rating is 1 multiple reminders (please add information in comments section) and 5 is no reminders (great behavior).

3. If you are noticing a behavior happening repeatedly, 2 or more time within a few periods, please let me know. I will communicate this with [Student's parents].

39. On April 17, 2018, the school principal responded to the case manager's April 11 email, stating, "I met with [Student's father] this morning about another concern, and he asked that I remind all to be checking in daily with [Student] using the wording around "checking in/with." I'm sure you are doing this, but I said I'd send another reminder." The math teacher responded

¹³ According to the District's response to this complaint, the following topics were discussed at the two check-in meetings: checking for understanding and grades.

to the school principal, including the case manager on her response. She stated, "I KNOW this is happening in math, I'm watching [the case manager] do it daily."

40. On April 18, 2018, the Parent emailed the case manager, stating:

Just a quick question on [Student's] test from yesterday – his agenda says that he didn't finish—do I need to make arrangements for him to do that after school or will he have the opportunity sometime this week during school hours? Also – the agenda that he is using this week doesn't have a rating spot for the teacher.

Later that same day, the case manager responded, stating, "It looked like he is close to finishing and I will have him wrap it up tomorrow. I will also make sure I get him a new agenda with the teacher rating on it for next week."

41. On April 25, 2018, the case manager emailed the Parent, stating, "[W]hen asked, [Student] did not present his agenda for teacher signature [in PE class today]."

42. On April 26, 2018, the Parent emailed the math teacher, stating, in part, "I received your email about the inequalities test retake, but [Student] doesn't have the 'checklist' – is this something that he can do with [the case manager] or at home this weekend?" The next day, the math teacher responded, stating, "This was due today, but we can make an extension if warranted. I'll touch base with [the case manager]."

43. On May 7, 2018, the Student took a test in English class in a "separate setting."¹⁴

44. On May 7, 2018, the Parent emailed the social studies teacher, asking her if the Student could "repair" the poor grade he received on a recent vocabulary test. On May, 8, 2018, the social studies teacher responded, stating, "I had [Student] pick 14 vocabulary words that he would like to be retested on. After he studies these words at home and is ready for the test I will test him orally at school. He just needs to let me know when he's ready."

45. Beginning on or about May 7, 2018, the case manager was administering the Washington State Smarter Balanced Assessments (SBA) to the students on her caseload, ensuring that they received appropriate accommodations. During this time, no special education teacher was present in the Student's general education math classroom.

46. On May 9, 2018, the Parent and the math teacher exchanged emails, wherein they discussed the decision to allow the Student to re-do two classroom assignments.

47. On May 10, 2018, the Parent emailed the technology teacher about the due date for a class project. On May 11, 2018, the technology teacher responded, stating, "It was due a couple of weeks ago, but I'll take it any time in May."

48. On May 17, 2018, the Parent emailed the school principal, stating:

¹⁴ According to the District, some of the more common "separate settings" for the Student to take tests in were as follows: office, library, conference room.

My frustration is going through the roof. Getting any kind of information from the staff is like pulling teeth. I'll be contacting [the school psychologist] to ask for [Student] to be academically tested again as it seems that staff have no interest in following his Social [sic] modifications that heavily impact his academics and no interest in communicating with me.

49. On May 21, 2018, the school principal emailed the technology teacher, the science teacher, the special education teacher, the PE teacher, the case manager, the English teacher, the math teacher, and the social studies teacher, stating, "Please communicate with [Student's] parents if he can re-do an assignment that he gets below a C on as well as when he is missing an assignment." Later that same day, the math teacher responded to this email, stating, in pertinent part:

As far as re-doing, my policy in class is that all students can redo an assignment that was completed and they found they had errors they wanted to fix. Please let me know if there is something specific to my course I should be doing, as I believe he already has these accommodations/modifications in place.

50. On May 22, 2018, the math teacher emailed the Parent about a class assignment, stating, in part:

Today [Student] turned in his assignment from yesterday and he missed 5 out of 6 of the questions that he did independently. I had him come talk to me about his score and the policy on redos. Redos can be completed on any daily assignment, but it is up to the student to decide if they would like to redo. Since [Student] has done poorly on this task, I asked him if he might want to redo this for a better score, and that it was totally up to him. He decided to redo this one, so please watch for it at home...We did questions 1-6 in class, so that every student had an opportunity to check for understanding, since [the case manager] was out of the room for testing, I could not get around to everyone and teach at the same time.

51. On or about May 24, 2018, the case manager finished administering the SBA to the students on her caseload.¹⁵

52. On May 30, 2018, the Parent emailed the case manager, stating that she was frustrated that the technology teacher, the social studies teacher, and the math teacher had not communicated to her that the Student received poor marks on several recent assignments in their respective classrooms.

53. On June 6, 2018, the Parent emailed the technology teacher, stating, "Did [Student] ask you for help with the Toy Design at all today? If you see him working on his career research – make him work on something else as that is the easiest one for him to do at home." Later that same day, the technology teacher responded, stating, "He worked on the career research stuff today...I didn't re-direct him because he seemed more productive/engaged than when he tries to work on Sketchup in class but always seems to get distracted...but I can try and get him back on the toy project tomorrow."

¹⁵ According to the Student's attendance record, between May 7, 2018 and May 24, 2018, the Student missed four days of class so that he could take the SBA.

54. On July 19, 2018, the Parent filed this special education citizen complaint with OSPI.
55. The documentation in this complaint contains several months of partially completed or totally completed agendas for the Student.¹⁶
56. In response to this complaint, the District submitted nine examples of "daily task lists used in [the special education teacher] and [the English teacher's] co-taught [English language arts class]." Five of these examples are from September 2017, three are from October 2017, and two are not dated. Several such examples follow:

Your tasks:

1. Complete Literary Elements Test – turn in to bin.
2. Complete "About Me" slideshow. DUE TODAY.
3. Complete "S.E. Hinton" biography and paragraphs.
4. Being "Outsiders Pre-Read-1960's Scavenger Hunt."
5. Read silently.

Your tasks:

1. Read Chapter 5 silently and independently.
2. When finished with Chapter 5:
 - ✓ Finish values continuum paragraphs
 - ✓ Venn Diagram (turn in)
 - ✓ Slang Sheet (turn in)
 - ✓ Read a book of our choice/library trips
 - ✓ TIC TAC TOE

Your tasks:

Google Classroom – "All Summer in a Day"

- ✓ Read the story
- ✓ Complete simile, metaphor, personification section
- ✓ Write framework paragraph about theme
- ✓ Watch movie and compare to written text using venn diagram

57. The District also submitted two examples of "assignment steps used in [the special education teacher] and [the English teacher's] class." One of these examples is from September 2017, and the other example is not dated. One such example reads, in part:

To begin your assignment:

1. Open a new browser tab.
2. Go to drive.google.com (google drive)
3. Click "new" in upper left hand corner.
4. Click on the type of file you want to start ("slides").
5. Title your document "About Me."

Create slides to answer the following questions about yourself. Slides must include your answer to the question, an explanation for your answer, and a picture***You may use

¹⁶ These agendas came from both the District and the Parent.

google images to copy and paste, but DO NOT login to social media accounts to access photos.***

1. If you were an animal, what would you be? Why?
2. If you could hang out with any 3 people in the world, living or dead, who would they be and why?
3. What are 3 things you like to do outside of school? Why do you like these activities?

58. In preparing to respond to this complaint, the District asked "the teachers that worked with [Student during the 2017-2018 school year] to address each...modification in the IEP regarding if and how [they were each] implemented." In regards to Modification 1, the District received the following responses:

- The science teacher: Always in science. I did not grade on participation.
- The English teacher: Always in English.
- The special education teacher: Always in [English language arts].
- The technology teacher: Always in tech. No one is graded on participation.
- The PE teacher: Always followed in health. [Student] was allowed to complete his group health project alone. He wrote a poem. In PE there were times when I'd allow him to walk laps instead of engaging in game play and other times that I made him practice the skills we were working on. You must participate in PE activities to get better.
- The math teacher: Always-Participation is not a graded category in math class. Students are assessed on completion of daily work and proficiency toward the Common Core State Standards on assessments. Daily work comprises 30 percent of the grade and assessments are 70%.
- The art teacher: I modified [Student's] grade to show the completion of the work instead of participation. His level of participation was noted on his agenda sheet which I filled out most days when he had it and that went home. His grade was based mostly on his technical use of the materials, presentation, creativity/effort for what he turned in, as well as the elements and principles of design we were working on/developing for each project (all based on his skill level).

In regards to Modification 2, the District received the following responses:

- The science teacher: Every time [Student] completed his agenda in science and brought it to me to be signed I added/modified/corrected as needed and signed the form.
- The English teacher: Always in English, [Student] filled out his agenda and had it checked.
- The special education teacher: [Student] completed his daily assignment sheet and teacher signed while adding in modifications, notes, and corrections required. [Student] would complete top part of his agenda and then get it checked off by staff for behavioral check-in and notes home.
- The technology teacher: Always in tech. Initialed by teacher, with homework. There was a week or two where [Student] failed to show his agenda, or erased/changed my entries when I couldn't find a pen and used pencil.
- The PE teacher: In health he always wrote on his assignment sheet. Never in PE. In health [Student] always wrote what we did in his daily log. He would often circle a high score for himself and I would correct it. I reported it to [the case manager].
- The math teacher: Always-assignments were posted on the board and [Student] had either myself or [the case manager] initial his assignment sheet on a daily basis. Since this is a co-

- teaching class, one [of] us would do this each day (referring to [the case manager], co-teach/special education).
- The art teacher: I completed the agenda sheet each day he presented it to me. I had to ask a few times for it and some days he did not have one. He wrote brief statements, sometimes even one word responses for the day's task. I elaborated and gave him points for successful work he completed.

In regards to Modification 3, the District received the following responses:

- The science teacher: Always in science. Directions including outlines and checklists are written on the board, on handouts, and/or google documents.
- The English teacher: Always in English. Directions including outlines and checklists are written on the board, on handouts, and/or google documents.
- The special education teacher: In [English language arts], in addition to directions, outlines, and checklists posted on the board, [Student] also received his own printed copy. Furthermore, [Student] was seated at the front for full access to visual cues and both his teachers.
- The technology teacher: Always done in tech, rephrased many times in person, and 100% of directions are written on digital documents, so no verbal directions to get confused on.
- The PE teacher: Always in health. Directions are written on the board. Sometimes in PE, depending upon where we were.
- The math teacher: Never – since this was a co-teaching class, [Student] would take his tests in an alternate environment and this accommodation would be provided by [the case manager], but I did not provide this accommodation in my room, simply because he did not test with me.
- The art teacher: We do not have tests but for each project, [Student] was given a checklist of what was needed to be completed as well as a checklist of the parts he needed to submit for grading in his portfolio.

In regards to Modification 4, the District received the following responses:

- The science teacher: Always in science. Students were provided with checklists and outlines for assignments in online formats and/or physical handouts. [Student] was provided an electronic version of the instructions for assignment completion that included either a checklist or an outline of steps needed for completion. Whenever the steps were unclear in the instructions additional explanation and outlines were provided.
- The English teacher: Always in English, clear lists posted and provided for assignments, additional checklists and outlines provided.
- The special education teacher: [Student] was always provided checklists, outlines, graphic organizers, and materials with highlighted information for easier access to pertinent materials for assignments.
- The technology teacher: Always in tech. Discussed lists with [Student] during class, after class, and in emails w/ mom about order-of-operations for completing required work. All students were given large assignments in chunks, with step-by-step directions, all written down so they could follow. [Student] would get additional check-ins, additional baby-step-by-baby-step chunking, and in emails with mom.
- The PE teacher: Our assignments in health were never long. All could be completed in class. I provided a rubric for larger assignments in health.

- The math teacher: Sometimes¹⁷ – depending on the length of the daily math assignment, if [Student] were able to demonstrate understanding of the concept doing fewer questions, I would draw a line on the paper and write modified. Sometimes I would email home letting parents know of a modification. Instructions on standard algorithms were provided using examples and step by step instructions copied by [Student] in his notebook.
- The art teacher: [Student] completed as much as he could and was graded only on what he submitted. There were days he did no work and was graded as such.

In regards to Modification 5, the District received the following responses:

- The science teacher: Always in science. During student work time instructor and classroom aid would rove and include a check in to assure understanding of task. Anytime [Student] seemed to be struggling and/or not completing the assigned task correctly he was asked to restate the directions.
- The English teacher: Always in English, 2 teachers checking in often to ensure [Student] had an understanding of the assignments and concepts.
- The special education teacher: Always in English, 2 teachers checking in often to ensure [Student] had an understanding of the assignments and concepts.
- The technology teacher: Always in tech, teacher would repeat directions, rephrase, and ask student to rephrase directions, and describe his work, to assure understanding.
- The PE teacher: In health I would ask [Student] if he knew what he was expected to do and he always said yes. In PE I would observe his actions and correct as needed. (yes, inconsistently).
- The math teacher: Sometimes-this accommodation was provided primarily by [the case manager] during independent seatwork time. When working with [Student] in class we would state, "[Student], I need to check your understanding on this {question/concept}, could you explain to me how you...."
- The art teacher: The directions were on the board each day as well as verbal directions were given multiple times at the beginning of the period to the class. [Student] also had his daily project checklist to refer to if needed while I helped other students until I could get to him to clarify. I also give students the opportunity to ask questions or clarify instructions throughout the period. I also check in with each student frequently throughout the period. He was fortunately in one of my smaller classes which allowed me more time to check in with [Student] than other periods.

In regards to Modification 6, the District received the following responses:

- The science teacher: Always in science. [Student] was assigned a seat that was either close to teacher proximity and/or next to students that helped him be successful.
- The English teacher: Always in English, front of room.
- The special education teacher: Always in English, front of room.
- The technology teacher: Always in tech. As discussed with [Student] and mom, it was usually in the "back" of the room, but in that case it's where the teacher is, a few feet away, w/ the least distractions, next to students that would create a good environment.
- The PE teacher: He was always seated at the front of the room.

¹⁷ According to the District, if the math teacher answered "sometimes" on whether a particular modification was provided, it was because the case manager actually provided that modification. As the math teacher explained in the District's response, "Since we are both in the classroom at the same time, many of the IEP [modifications] were made by her but 'sometimes' I would be able to make them as well."

- The math teacher: Always-[the case manager] and I strategically created our seating charts together to place [Student] at the front of the room and in the least distracting group possible.
- The art teacher: [Student] chose his seat; he sat at the front table in my room closest to the board each day.

In regards to Modification 7, the District received the following responses:

- The science teacher: Always in science. [Student] was provided the option to complete tests in an alternate setting with the classroom aid.
- The English teacher: Always in English.
- The special education teacher: In [English language arts], testing was provided in a separate special education setting with a special educator. He was also pulled for larger assignments, group assignments, and small group instruction.
- The technology teacher: Project-based class, no tests. There were some short assignments that kind of "looked" like quizzes, but those could be done at home or in class.
- The PE teacher: My students are all allowed to take tests in a separate room. [Student] never requested to do so. The life skills students always left the room. Another student was allowed to take her test home.
- The math teacher: Always-all assessments were taken under the supervision of [the case manager] in her classroom next door.
- The art teacher: No test took place.

In regards to Modification 8, the District received the following responses:

- The science teacher: Always in science. The instructor and classroom aid provided individual and small group instruction during class time while [Student] completed his work.
- The English teacher: Always in English.
- The special education teacher: [Student] had two [English language arts] teachers; each of whom checked in with him multiple times a class period. [Student] got one-on-one help from teacher many times per class period.
- The technology teacher: [Student] got one-on-one help from teacher many times per class period.
- The PE teacher: I am an up and moving about the room type of teacher. [Student] got more daily one on one attention than any other student because if I didn't he would not do his work. PE classes are structured to optimize skill development by planning for small group participation. I taught them movement cues, which they in turn used to teach each other. In health students were allowed to select their own groups for our cost of addiction project. Their groups chose how they were going to answer this question. [Student] worked alone on part of the assignment.
- The math teacher: Always – daily monitoring and instruction were provided in small groups for [Student] to reinforce/reteach the whole group lesson.
- The art teacher: [Student] was given multiple opportunities to ask for help and he did when he was ready. He also began feeling comfortable enough to ask a trusted peer for instructions as well if I could not get to him right away.

In regards to Modification 9, the District received the following responses:

- The English teacher: Always in English.
- The technology teacher: I do not administer this test.
- The math teacher: Always-[the case manager] monitored and provided this accommodation during [the Smarter Balanced Assessment Consortium testing].

- The art teacher: No tests took place.

In regards to Modification 10, the District received the following responses:

- The science teacher: Always in science. [Student] was able to take breaks during the class period at his request.
- The English teacher: Always in English.
- The special education teacher: Always in [English language arts].
- The technology teacher: [Student] was allowed to take restroom breaks, a pause from work, or a walk. He would request, and be denied, breaks that were just playing video games.
- The PE teacher: [Student] would frequently ask to use the restroom when PE activities were physically challenging. I always let him go.
- The math teacher: Always-[Student] was always provided the opportunity for a break during work time if he requested one.
- The art teacher: [Student] was able to get up to grab materials or his work when needed, to get a drink, or use the restroom. He chatted with other students and me when he needed a break and understood when he was to go back to work.

In regards to Modification 11, the District received the following responses:

- The science teacher: Always in science. [Student] was afforded additional time for tests and quizzes if he requested or was not able to complete the task.
- The English teacher: Always in English.
- The special education teacher: [Student] was provided a separate location and time for all tests.
- The technology teacher: Always in tech, as much time at home as he wants for quiz-like assignments.
- The PE teacher: He never needed additional time. My tests in health were always under 25 questions.
- The math teacher: Always-All tests and quizzes were granted additional time when [Student] was not finished in the same time as his grade level peers, although this was infrequent.
- The art teacher: No tests took place.

In regards to Modification 12, the District received the following responses:

- The science teacher: Always in science. [Student] was not penalized for late submission of work
- The English teacher: Always in English.
- The special education teacher: Always in English.
- The technology teacher: Always in tech, he got extensions on any assignment necessary.
- The PE teacher: There was never a parent request for extra time. (yes, inconsistently).
- The math teacher: Always-[Student] was given the opportunity to have additional time after a parent question or email about an assignment or the opportunity to redo an assignment at a parent request.
- The art teacher: [Student] was allowed to turn in work at any time. I accepted any work from him up to the close of each quarter when grades were due.

59. The District's response to this complaint included the following narrative from the case manager:

Throughout the school year – Student was provided with additional time for assignments and quizzes. He took all Math and [English language arts] tests in a separate setting as these classes were co-taught with a special education teacher and general education teacher in both. [Student] was reminded regularly that all test and quizzes could be taken

in a separate setting at his request. He requested this twice for his Science class. He was able to redo assignments until the end of the grading period and stayed after school on multiple occasions to work with me on redoing assignments. Because [Student] was provided SDI¹⁸ and accommodation/modification in both of his co-taught classes by the special education teacher, he received regular 1:1 or small group instruction, regular checks for understanding, and repeated/modified directions. These were required most days. The two co-taught classes averaged 54 minutes daily, outside of alternative schedules, including half-days, scheduled assemblies, testing schedules, and school related activities. During the SBAC¹⁹ scheduled testing window, [Student] was pulled for testing to provide accommodations and modification listed in his IEP. This lasted about 4 weeks. Teachers provided preferential seating, positioning [Student] up front and away from distractions. These seating arrangements were all designed by the classroom teacher and used daily. [Student] was not graded on participation but participated regularly in meaningful ways. When directions were given orally, [Student] was prompted to write them down as a visual cue. As well, [Student's] understanding of the directions was checked verbally.

60. According to the District's response, the District proposed "tutoring services one hour per day, for 20 days after school, to rectify any possible impact [the case manager's absence from the co-taught classroom from May 7, 2018 through May 24, 2018] may have had on the ability of [Student] to access instruction and be prepared for his 8th grade classes, specifically regarding math."

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the District did not implement the modifications listed in the Student's IEPs for the 2017-2018 school year. Specifically, the Parent alleged that the District did not provide the Student with written instructions (Modification 4) or check the Student's understanding of assignments (Modification 5). The documentation also reveals implementation issues surrounding the Student's daily agenda (Modification 2) and the provision of specially designed instruction in the general education setting. The documentation shows that the other components of the IEPs were properly implemented.

A school 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.

Providing the Student with Written Instructions – The documentation shows that the District properly implemented this modification. For example, on September 28, 2017, the special education teacher emailed the case manager, stating that she provides the Student with "physical copies of daily tasks lists that [the English teacher] puts on the board." The documentation

¹⁸ Specially designed instruction.

¹⁹ Smarter Balanced Assessment Consortium.

submitted with this complaint contains nine examples of written instructions that were provided to the Student during his English class between September and October 2017. On January 23, 2018, the case manager emailed the Student's teachers, reminding them to "provid[e] direction in written form, which [Student] can either copy into a notebook or take with him." On February 27, 2018, the special education teacher "modeled" a "pre-writing outline" for the Student. On April 11, 2018, the case manager emailed the Student's teachers, stating, "[M]ake sure that [Student] has written directions available to reference throughout the completion of the task. I know this happens, but please ask [Student] to copy it down or provide him an individual set of instructions that he can keep." In the District's response, the Student's teachers each stated that they provided the Student with checklists, outlines, and lists throughout the school year.²⁰ Therefore, the District properly implemented Modification 4.

Checking the Student's Understanding – The documentation shows that the District properly implemented this modification. For example, on September 19, 2017, the case manager emailed the Student's teachers, reminding them to "check...in with [Student] multiple times in a class period and probe...for comprehension of content or task instructions." On November 21, 2017, the math teacher emailed the Parent, stating, "The kids are completing short entry tasks at the start of class periodically, that I look at to check for understanding, and then I redesign my instruction to help adjust for misconceptions." On January 17, 2018, the math teacher again emailed the Parent, stating, "I monitor the class during their [small group] discussions and ask probing questions to get at their misconceptions (if any)." On January 23, 2018, the case manager emailed the Student's teachers, reminding them to "use...'checks for understanding' regularly and specifically ask...[Student] to repeat directions in his own words or clarify the next steps." On March 26, 2018, the case manager "walked through many of the questions [on an assignment the Student was completing], prompting/reminding him, 'What do you need to do first? ' How do you need to show your thinking?' 'Does this answer make sense?'" On April 11 and 17, 2018, the Student's teachers were reminded to regularly check the Student's understanding of assignments. In the District's response, the case manager stated that the Student received "regular checks for understanding" in the two co-taught classes and the Student's teachers each stated that they regularly checked for the Student's understanding throughout the school year. Therefore, the District properly implemented Modification 5.

Agenda – The documentation shows that there were several issues with the implementation of Modification 2. First, the agenda was not always completed – though the documentation does

²⁰ The art teacher's response to the question of whether she provided Modification 4 was largely non-responsive. For example, she stated, "[Student] completed as much as he could and was graded only on what he submitted. There were days he did not work and was graded as such." However, in response to whether she provided Modification 3 ("Rephrase test questions and/or directions: Provide [Student] with a visual checklist to clarify written direction given verbally"), the art teacher stated, "We do not have tests but for each project, [Student] was given a checklist of what was needed to be completed as well as a checklist of the parts he needed to submit for grading in his portfolio." In response to whether she provided Modification 5 (checking for understanding), the art teacher stated, "The directions were on the board each day...[Student] also had his daily project checklist to refer to if needed while I helped other students until I could get to him to clarify."

show that the agenda was completed more often than it was not completed. Second, there were occasions when the completed agenda was not utilized by the Student. For example, on September 28, 2017, the special education teacher informed the case manager that the Student was “wadding [his completed agendas] up and putting them at the bottom of his backpack.” Third, the modification called for the Student to “copy daily assignments into his agenda, and then have it checked and initialed by teachers.” In practice, however, the Student’s teachers often filled out the substantive portion of the agenda. Fourth, in its response, the District notes that Modification 2 “may not be necessary for all classes as [Student] is independently completing his agenda and achieving A grades in multiple classes.” The District will hold an IEP team meeting to discuss what type of agenda the Student needs to advance towards his measurable annual goals. At this meeting, the parties will also discuss if the Student needs an agenda for all of his classes. The parties’ respective responsibilities for completing the agenda will also be clearly established at this meeting.

Specially Designed Instruction – The September 2017 IEP and the November 2017 IEP both required that the Student receive one-hundred minutes 5 times weekly of specially designed instruction in social/emotional in a *general education setting*. The Student received part of this specially designed instruction in his general education math class, which met five days a week for roughly fifty-two minutes each day and which was co-taught by his case manager. In two instances, the District failed to provide the Student with this portion of the specially designed instruction required by his IEPs.

First, from May 7, 2018 to May 24, 2018, the case manager was not present in the Student’s co-taught math class – the case manager was administering state assessments to other students. According to the District’s calendar, the period between May 7, 2018 and May 24, 2018 included fourteen school days. During this same time, though, the Student was absent from his co-taught math class for four days while he took state assessments. Therefore, the Student missed ten days (or approximately ten hours) of specially designed instruction during this period. The District has offered “tutoring services” for one hour per day, for twenty days after school, “to rectify any possible impact [the case manager’s absence] may have had on [Student].”

Second, the case manager had to “leave [the co-taught math class] to address student needs 1-2 times per week for 5 to 10 minutes.” For any particular week, the case manager’s momentary absence from the math class would not constitute a material failure to implement the Student’s IEPs. Cumulatively, however, this does represent a material failure to implement the Student’s IEPs. Excluding the period from May 7, 2018 to May 24, 2018, there were approximately thirty-one weeks of school during the 2017-2018 school year. If it is assumed that the case manager was absent from the co-taught math class for ten minutes once each week, this would mean that the Student missed approximately 5 hours of this specially designed instruction.²¹

The Student’s September 2017 IEP required that the Student receive fifty minutes 2 times weekly of specially designed instruction in social/emotional in a *special education setting*. The Student

²¹ 31 weeks multiplied by 10 minutes each week equals 310 minutes. 310 minutes divided by 60 minutes (1 hour) equals 5.1666 hours.

received this specially designed instruction in his advisory class, which met twice a week for only forty-four minutes. Therefore, the Student missed twelve minutes of this specially designed instruction each week. From September 5, 2017 (the start date of the September 2017 IEP) to November 21, 2017 (the start date of the November 2017 IEP), there were approximately 11 weeks of school. Therefore, the Student missed approximately 2 hours of this specially designed instruction.²²

Therefore, in total, the Student missed approximately 17 hours of specially designed instruction in social/emotional.

A state educational agency is authorized to order compensatory education through the special education citizen complaint process. Compensatory education is an equitable²³ remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. There is no requirement to provide day-for-day compensation for time missed.

Here, the District's offer to provide the Student with twenty hours of "tutoring services" properly accounts for the missed seventeen hours of specially designed instruction. In part, this is because one-to-one instruction is an effective strategy for remedial teaching.²⁴ Therefore, OSPI accepts the District's proposed corrective action and the District will work with the Parent to develop a schedule to provide the Student with a total of twenty hours of one-to-one compensatory services in the area of social/emotional. The District and the Parent will determine the academic context in which the Student will be provided specially designed instruction in social/emotional.

Extra Modifications – The District may have provided the Student with two modifications not listed in his IEPs. First, in at least three classes (English, math, and social studies), the Student was allowed to re-do previously-submitted classroom assignments.²⁵ Second, the District attempted to provide progress reporting beyond that which was required by the Student's IEPs. For example, in September 2017, the District added a "1-5 rating [scale]" to the Student's agenda to measure how many times he needed to be redirected during each class. Presumably, the rating scale was

²² 11 weeks multiplied by 12 minutes each week equals 132 minutes. 132 minutes divided by 60 minutes (1 hour) equals 2.2 hours.

²³ According to Merriam-Webster's online dictionary, "equitable" means "dealing fairly and equally with all concerned." <https://www.merriam-webster.com/dictionary/equitable>.

²⁴ See Jeremy Baker, Margaret Young, & Meredith Martin, The Effectiveness of Small-Group versus One-to-One Remedial Instruction for Six Students with Learning Disabilities, 91 *The Elementary School Journal* 1 (1990).

²⁵ It is possible that the Student was permitted to re-do previously-submitted classroom assignments in other classes as well. For example, the technology teacher, the science teacher, and the PE teacher all received the school principal's May 21 directive to "communicate with [Student's] parents if he can re-do an assignment that he gets below a C on."

used to measure the Student's progress towards the following goal, which is present in both of the Student's IEPs:

[W]hen given an opportunity to focus on teacher instruction or task initiation/completion [Student] will stay on task or focused on instruction improving attention and on task behavior from an average of 90% of the time (baseline collected from outside agency data) to an average of 100% of the time as measured by data collection.

In the Student's IEPs, progress towards this goal is supposed to be reported once each semester – by providing the Parent with a copy of the goal page. The Student's agenda, though, was supposed to be brought home to the Parent at the end of each school day.²⁶

Therefore, OSPI strongly recommends that the District and the Parent hold an IEP meeting to discuss: (1) whether the Student needs a modification allowing him to re-do previously-submitted assignments; and (2) how to best report the Student's progress towards achieving the measurable annual goals listed in his November 2017 IEP. If these topics are discussed at an IEP meeting, the District should issue a prior written notice, explaining any changes that are made to the November 2017 IEP as a result.

Issue 2: IEP Meeting Attendance – For two reasons, the Parent alleged that the November 16, 2017 IEP meeting was improperly attended: (1) not all of the Student's general education teachers were present; and (2) some of the meeting attendees either arrived late or left early.

An IEP team must include not less than one general education teacher of the student (if the student is, or may be, participating in the regular education environment). Here, the following general education teachers signed the attendance record for the November 16 IEP meeting: the science teacher, the math teacher, and the English teacher. According to the District, the social studies teacher and the art teacher also attended the meeting, but neither of them signed the attendance sheet. The PE teacher did not attend the meeting. On these facts, it is clear that at least one general education teacher of the Student attended the meeting. Therefore, this is not a violation of the IDEA.

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. Here, all of the general education teachers that attended the meeting left the meeting after an hour. The meeting, however, continued past this point. The documentation does not contain a writing (or writings), permitting the general education teachers to leave early. Therefore, this is a violation of the IDEA and the District will be required to develop written guidance regarding IEP team membership requirements.

²⁶ There was an additional issue with the rating scale: the case manager issued conflicting instructions on how to use it. On September 19, 2017, the case manager explained to the Student's teachers that the agenda would "have a 1-5 rating...where you can circle the number of redirects or prompts." On April 11, 2018, however, the case manager explained to the Student's teachers that "the teacher rating is 1 multiple reminders (please add information in comments section) and 5 is not reminders (great behavior)."

CORRECTIVE ACTIONS

By or before **September 26, 2018, October 5, 2018, October 12, 2018,** and **December 21, 2018,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **October 5, 2018,** the District and the Parent will hold an IEP team meeting. At this meeting, the following issues will be discussed:
 - a) What type of agenda the Student needs to advance towards the measurable annual goals listed in his November 2017 IEP. The District and the Parent will also discuss if the Student needs an agenda for all of his classes. The parties' respective responsibilities for completing the agenda will also be clearly established at this meeting.

At this IEP team meeting, OSPI strongly recommends that the District and the Parent also discuss: (1) whether the Student needs a modification allowing him to re-do previously submitted assignments; and (2) how to best report the Student's progress towards achieving the measurable annual goals listed in his November 2017 IEP.

By **October 10, 2018,** the District will: 1) amend the Student's November 2017 IEP to reflect any changes resulting from this meeting; 2) provide the Parent with a copy of the Student's amended IEP; and, 3) provide the Parent with a prior written notice that explains the changes that were made to the Student's November 2017 IEP.

By **October 12, 2018,** the District will provide OSPI with 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the amended or new IEP; 4) a copy of any related prior written notices; 4) a copy of any correspondence with the Parent regarding the IEP meeting and the decisions made at that meeting; and, 5) a copy of any other relevant documentation.

2. By **October 5, 2018,** the District will work with the Parent to develop a schedule to provide the Student with a total of 20 hours of one-to-one compensatory services in the area of social/emotional. The District and the Parent will determine the academic context in which the Student will be provided specially designed instruction in social/emotional. The services will be provided outside of the District's regular school day. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **December 14, 2018.** The District will provide OSPI with documentation of the schedule by **October 5, 2018.**

No later than **December 21, 2018,** the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the

dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with the documentation pertinent to this corrective action by **December 21, 2018**.

DISTRICT SPECIFIC:

By **October 5, 2018**, the District will ensure that special education administrators, the principal, the assistant principal, and certified staff, including educational staff associates (ESAs), at the Student's school receive written guidance regarding the requirements of WAC 392-172A-03095 (IEP team membership). ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The guidance will include examples.

By **September 26, 2018**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 28, 2018.

By **October 12, 2018**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's school: special education administrators, the principal, the assistant principal, and certified staff, including educational staff associates (ESAs). This roster will allow OSPI to verify that all required staff members received the guidance.

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

Dated this ____ day of September, 2018

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.)