

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-36

PROCEDURAL HISTORY

On May 10, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Vancouver 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 May 13, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 22, 2019, the District requested an extension of time for the submission of its response regarding SECC 19-36. OSPI requested the District submit its response no later than June 5, 2019.

On June 5, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on June 6, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 18, 2019, OSPI spoke with the Parent via telephone.

On June 19, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

ISSUE

1. Did the District follow procedures when developing/implementing the Student's individualized education program (IEP) regarding the Student's Ankle Foot Orthoses (AFO) from September 2018 through May 10, 2019.

LEGAL STANDARDS

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

Initial IEP: For an initial IEP, a school district must ensure that: a) the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and b) As soon as possible following development of the

IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR §300.323; WAC 392-172A-03105.

Parent Participation in IEP Development: The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information they provide. The district is not required, however, to adopt all recommendations proposed by a parent. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Health Plans: An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his/her participation in his/her education and to support his/her teachers. Any nursing or health services a qualified school nurse or other qualified person provide to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service. The IEP team is also not required to include information under one component of a student's IEP that is already contained under another component of the student's IEP. 34 CFR §300.320(d); WAC 392-172A-03090(2)(b).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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 §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115.

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of

educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

FINDINGS OF FACT

1. During the 2018-2019 school year, the Student was enrolled in an early childhood special education (ECSE) program in the District.
2. The District's 2018-2019 school year began on September 5, 2018.
3. On September 25, 2018, the District notified the Parent that an individualized education program (IEP) meeting had been scheduled for October 23, 2018, to review evaluation reports and discuss eligibility determination for the Student.
4. On October 23, 2018, the Student's IEP team met to review the Student's evaluation (dated October 23, 2018) and to develop the Student's initial IEP.

The Student's evaluation found the Student eligible for special education services under the category of other health impairment and determined the Student required specially designed instruction in the following areas: gross motor, fine motor, cognitive, adaptive, and communication. The evaluation included the following statement, "Student has recently begun [physical therapy] and [occupational therapy] therapies, each 1x/week, at [rehab clinic]. At her last physical therapy visit, she was fitted for bilateral orthotics¹ for her feet."

Under the "Present Levels of Educational Performance, Medical-Physical, [and] Safety" sections, the October 2018 IEP included the following statement:

While walking, Student may fall several times/day and is able to catch herself as she goes down. No need for safety helmet at this time. Braces may reduce the number of falls,

¹ Also referred to throughout the complaint as "ankle foot orthoses" (AFOs), or "orthotics."

although Student has not been tolerating brace use for more than 2 hours/day. She will arrive with braces on – remove if uncomfortable.²

Under “Present Levels of Educational Performance, Gross Motor, [and] Educational Implications Statement”, the IEP included the following statement:

[Student] demonstrates delayed gross motor skill development, and musculoskeletal differences that limit her safe and independent access and participation in a school environment. Specially designed instruction delivered by the classroom staff with related services support from physical therapy will [be] used to improve [Student’s] functional mobility and participation in her school environment.

The October 2018 IEP included three gross motor skills annual goals in the areas of steps, stairs, and walking:³

- (Steps) By 11/05/2019, when given opportunity [Student] will independently step up and down a standard sized curb or curb height platform (6-8 inches) improving functional mobility from independently stepping up and down curbs 0/5 trials to independently stepping up and down curbs without loss of balance or additional support 5/5 trials as measured by classroom and therapy data;
- (Stairs) By 11/05/2019, when given a single wall or railing for support [Student] will go up and down stairs with an upright posture and stability improving balance and functional mobility from ascending and descending stairs with single rail/wall support 0/5 trials to ascending and descending stairs with single rail/wall support 0/5 trials as measured by classroom and therapy data;
- (Walking) By 11/05/2019, when given opportunity [Student] will walk between activities in the classroom without falling improving functional classroom mobility from experiencing zero falls in a classroom environment during a single day 0/5 observations to experiencing zero falls in a classroom environment during a single day 4/5 observations as measured by classroom and therapy data.

The October 2018 IEP provided the Student with physical therapy as a related service in the following amount:

- 30 minutes, 2 times weekly, to be provided by a physical therapist (PT);
- 20 minutes, 2 times weekly, to be provided by a licensed physical therapist assistant.

The October 2018 IEP additionally provided the Student with the following specially designed instruction in gross motor skills:

² The Student has an individual health plan, which contains a similar statement: “Safety: While walking, [Student] may fall several times/day and is able to catch herself as she goes down. No need for a safety helmet at this time. Braces may reduce the number of falls, although [Student] has not been tolerating brace use for more than 2 hours/day. She will arrive with braces on – remove if uncomfortable.”

³ In his reply, the Parent noted that the gross motor IEP goals did not incorporate AFO usage. He wrote that he felt this was because the “District [physical therapist] PT refused to work with the AFOs until [Student] could tolerate them for more than 2 ½ hours.” The Parents intended on incorporating the usage of AFOs in the initial IEP goals but could not because of the District PT’s unwillingness to apply the AFOs or to train school staff on their application.”

- 20 minutes, 4 times weekly, to be provided by the Early Childhood Special Education (ECSE) teacher
5. Meeting notes from the October 2018 meeting summarized the following input from the Parent:
- [Parent] had a suggestion about braces. Maybe braces could be brought to school. PT prefers [Student] to come to school with her braces. If they are uncomfortable then they can be taken off. It is a challenge to get them on, per parent report. Parents said that when she goes to school on Friday then [parent] will put them on. They are new and made of carbon-fiber. They are more like an orthotic. They have support that goes around her ankle [. .].⁴

The meeting notes additionally indicated the Parent showed the District's PT a picture of the braces to help the PT better "understand the braces."

6. On October 23, 2018, the District provided the Parent with prior written notice (PWN) after the IEP meeting of its intent to "initiate" an "educational placement and an initial IEP for [Student]." The IEP noted that the Student "qualifie[d] for specially designed instruction in the areas of adaptive, cognitive, fine motor, gross motor and communication development" The PWN additionally noted the IEP team chose the ECSE program as an appropriate placement for the Student. The PWN was silent regarding the Student's need for orthotics and the role of staff in assisting with the Student's use of her orthotics during the school day.
7. In his reply, the Parent wrote that, "It should also be noted that despite discussing the AFOs at length during the October 23, 2019 IEP meeting, the District did not include any information regarding the AFOs in the Prior Written Notice written that same day. The parents erroneously believe[d] that the District included appropriate language in the IEP to ensure that the District would support the AFOs as [Student's] medically prescribed orthopedic equipment, and believed this information based on what was presented to them both in written and verbal communication."
8. On January 23, 2019, the District sent a meeting invitation to the Parents, notifying them that a meeting had been scheduled for January 24, 2019, to review the Student's current IEP and discuss transportation and related attendance.

⁴ In the Parent's reply, the Parent clarified his suggestion with the following statement: "I suggested that [Student] bring the braces to school on Tuesdays, Wednesdays, and Thursdays because [Student] attends daycare on those mornings and the plan was for her to ride the bus from daycare to school. I was far more comfortable having school staff who are accustomed to working with children with disabilities apply the orthotics – where there is also a nurse and licensed therapists on-site – rather than placing this responsibility on the daycare provider, who has no such expertise or training. The reason I agreed to apply the AFOs before school on Fridays is because [Student] has private therapy on that day, and I drive her to school rather than having her ride the bus as she does on other school days."

9. On January 24, 2019, the IEP team convened to discuss amendments to the IEP regarding the Student's transportation. According to the District's response, none of the IEP provisions related to the Student's AFOs were discussed or changed at this meeting.
10. On January 24, 2019, the District sent the Parent PWN that it was adding special transportation to the Student's IEP.
11. On February 28, 2019, the Student's medical team increased the Student's prescribed daily wear time for her AFOs to four hours.
12. On March 1, 2019, the Parent emailed the classroom teacher to inform her that at the March 20, 2019 IEP meeting, she also wanted to discuss the Student's AFOs. She stated in her email that the "[Student's] [private] physical therapist wants [Student] to start wearing them at school, so we'd like to add this into her IEP."
13. Also on March 1, 2019, the classroom teacher responded to the Parent: "Orthotics: I double checked the 'Medical-Physical' section of her IEP, and it does state that she has bilateral orthotics. So there is no need to change that."
14. On March 4, 2019, the Parent responded to the classroom teacher, "As for the orthotics, that's great that her orthotics are already listed in her IEP. We're working with her private physical therapist to develop a plan for the Student to start wearing them at school. We figured that it would be a good time to discuss since we are already planning on meeting, rather than calling for an additional meeting in a few weeks."
15. On March 6, 2019, the Parent stated in his reply that he telephoned the case manager and requested an IEP meeting to discuss the Student's increased wear time of her AFOs.
16. On March 8, 2019, the Parent emailed the case manager and requested to schedule an IEP meeting.
17. On March 11, 2019, the Parent telephoned the director of special services and again requested an IEP meeting to discuss the Student's AFO use.
18. According to the Parent's reply, on March 11, 2019, the Parent "received communication from the school nurse stating that the updated instructions from the Student's medical team regarding the AFOs had been added into [Student's] individual health plan (IHP)." The letter was written by the Student's private physical therapist and stated the following:

[Student] has been wearing bilateral Kiddie Gait orthotics since November of 2018. [Student's] orthotics provide her with a smoother, more efficient gait pattern. They assist with a heel-toe pattern and therefore, substantially decrease her number of falls. Without these orthotics, [Student] falls much more consistently, putting her at greater risk of additional injury. Therefore, they are medically necessary for [Student] and should be worn regularly at school. The ultimate goal is for [Student] to wear orthotics for 6 hours per day (or more) for an ideal gait pattern, safety and general strengthening.

19. The Parent additionally stated that he was “finally able to secure an IEP meeting to discuss goals and implementation of AFO usage for [Student] at school.” The IEP meeting was scheduled for March 20, 2019.
20. On March 15, 2019, the District sent a meeting invitation to the Parents, notifying them that an IEP meeting had been scheduled for March 20, 2019, to review the Student’s current IEP, review instructional needs, and to discuss the Student’s needs during meal times at school.
21. On March 20, 2019, the Student’s IEP team convened. The IEP team agreed to amend the Student’s IEP to add adult assistance during feeding, based on a report from [hospital].

According to the meeting notes, during the discussion, the Parent stated the Student should wear the AFOs four (4) hours daily because they were considered a prescription/medical device. The notes indicated the IEP team agreed to the following schedule:⁵

- Tuesdays: Classroom staff will take them off before going on the bus.
- Wednesdays: [. . .] (PT) will put them on.
- Thursdays: [. . .] (PT) will put them on.
- Fridays: [. . .] Student’s father will put them on and take them off.

note If Student cries in pain and gestures to her orthotics, classroom staff is to take them off.

At the March 20, 2019 IEP meeting, the team additionally reviewed the Student’s progress on her IEP goals. Regarding her gross motor goals, one goal (walking) was removed from the IEP because the Student had met her goal. Regarding the other two gross motor goals, the Student had either made no progress (curbs) or insufficient progress (stairs).

22. On March 20, 2019, the District sent the family PWN, which stated, “At this time, the Student is wearing orthotics for four (4) hours daily. A schedule for when she wears them, and who will help put them on or take them off will be created with parent input. Parents will keep the IEP team updated on any recommended changes for orthotic use.”
23. In its response, the District noted that at the March 20, 2019 IEP meeting, no changes were made to the Student’[s] health plan, nor were AFOs added to the IEP, despite mention of them

⁵ In the Parent’s reply, the Parent stated: “This schedule was never agreed to by the parents. This was the schedule directed by [PT]. We stated multiple times, ranging from March 20, 2019 until the next IEP meeting on May 9, 2019 that we did not agree with this wear scheduled and maintained that we wanted [Student] to wear the AFOs 100% of the time she was in school. The schedule proposed as a result of the March 20, 2019 meeting fails to indicate that if [Student] attends daycare on Tuesdays – which is her general education time as stipulated by the IEP – [Student] could not possibly wear the AFOs on Tuesdays. It also does not take into consideration that if the AFOs were to be removed on Fridays, that there was no staff on-site at the school who were authorized or trained to reapply the AFOs. In the March 20, 2019 meeting, we also added an adaptive goal for [Student] to take her shoes on and off. [Student] also wears diapers, which necessitate removing the AFOs. All of this was raised by the parents in this meeting, yet [PT] told us there was nothing she could do because of licensing requirements.”

in the IEP.⁶ The revised IEP from the March 20, 2019 IEP meeting did not mention the Student's AFO wear schedule.

24. In the Parent's reply, the Parent expressed concern with the PWN provided to him by the District on March 20, 2019. Specifically, the Parent wrote that the PWN "[did] not say that the District will support the orthotics," but rather he felt the language of the PWN was "based on staffing levels of licensed physical therapists [. . .]"
25. In the Parent's reply, the Parent additionally added that at the March 20, 2019 meeting, he and his wife were informed by the IEP team that the "licensing regulations from the Washington State Department of Health prevented [the PT] from delegating responsibility for the routine application of the AFOs to school staff, so they could only be applied by [PT] or her assistant." Because they were told by the Student's case manager on March 1, 2019 that the AFOs were already included in the IEP, the Parent wrote that he was not expecting to be told by the District PT that the Student could not wear the AFOs full time—something which the Parent stated in his reply that the Student was medically able to do at that time. In his reply, the Parent expressed frustration at not having been told until the March 20, 2019 meeting that the District's PT would "only be present in [Student's] classroom two days per week for 30 minutes at a time [which] meant that [Student] would not be able to have her orthotics applied on Tuesdays and that there would be nobody to reapply or adjust the AFOs on Fridays if they were to be removed during school hours [. . .]." The Parent wrote that he felt "[District PT] could have alerted [Parents] to this when [he] had inquired about the AFOs on March 1, 2019 [. . .]," and that "[t]his only caused further delays in the implementation of the prescribed wear schedule for the AFOs."
26. On March 21, 2019, the Parent emailed the case manager:

I just left you a voicemail but wanted to ensure you get this message. We sent [Student's] orthotics in her backpack today. We'd like to have [PT] put them on, but because we have a late meeting today, we would like your team to remove them before she gets on the bus so she's not wearing them too long. Please let me know that you received this and if you have questions.
27. Also on March 21, 2019, the case manager responded to the Parent, "Got it! We will take them off before putting her on the bus." Later the same day, the District's physical therapist responded by saying, "I took them off myself as I wanted to look at her feet after she had worn them for a while – everything looked fine and she tolerated them well. She was very eager to wear her braces and allowed me to put them on without any difficulty. I asked her if she liked them and she said, 'yes.'"

⁶ In the Parent's reply, the Parent wrote that he felt this statement in the District's response "[was] not entirely true, and [was] contradictory to the parent request in the same meeting that [Student] wear her AFOs 100% of the time." The Parent noted that "[t]he IHP (health plan) was modified by the school nurse on March 11, 2019 – though the IEP remained unchanged."

28. On March 25, 2019, according to the District's response, the "teacher informed the District's physical therapist of the Parent's request for an adaptive goal of taking off shoes and asked the District's physical therapist to write the goal. The teacher responded, 'Tuesdays are my days to take off her orthotics so I can track data around that.'"⁷

29. According to the District's response, on March 26, 2019, "[t]he [case manager] emailed the Parent and stated that it was her day to take off the orthotics but the Student did not come to school wearing them. On the same day, the Parent responded that it was his understanding that, '[PT] will put her in the orthotics at school. She isn't supposed to wear them for more than 4 hours at a time right now, so when she goes to daycare, that usually exceeds the 4 hours.' The Parent's email continued, 'We are working towards her being able to wear them all day, but aren't there yet. Additionally, we would like to discuss having your classroom staff trained in putting the orthotics on. While there is a risk of putting them on improperly, there is no reason your staff cannot learn how they should fit. This opinion has been confirmed by two (non-school) physical therapists. Can we please work with [PT] on this? After spring break is fine.'"

30. On March 26, 2019, the case manager responded to the Parent's email, saying that the PT is "not available on Tuesdays." The case manager included in her email the plan from the March 20, 2019 meeting notes:

- Tuesdays: Classroom staff will take them off before going on the bus.
 - Wednesdays: [. . .] (PT) will put them on.
 - Thursdays: [. . .] (PT) will put them on.
 - Fridays: [. . .] Student's father will put them on and take them off.
- *note* If Student cries in pain and gestures to her orthotics, classroom staff is to take them off.

31. Later on March 26, 2019, the Parent responded to the case manager:

I will try to put her in them on Tuesdays. On days like today when she is dropped off at 8am, she probably won't wear the orthotics because she will be in the[m] for 4 hours by noon. This is one of the reasons we need to have the classroom staff trained in putting the orthotics on. I understand that this deviates from what we discussed last week, but we looked into the issue further and it seems that your staff can put the orthotics on as long as they are properly trained [. . .]. Let me know if we need to schedule another meeting about this.

⁷ In the Parent's reply, the Parent wrote, "On March 25, 2019, the District refers to an email exchange where the teacher discusses adding an adaptive goal for taking off her orthotics... On Tuesdays [PT] was not on-site at the school and stated that nobody other than her could apply the AFOs. This means that the teacher intended to work on taking off shoes with [Student] on Tuesdays, with nobody at the school available to reapply the orthotics after working on this goal – demonstrating that [Student] was not wearing the AFOs 100% of the school day on Tuesdays. [Student] also attends daycare on Tuesdays and without school staff being able to apply the AFOs, she would be unable to wear them on Tuesdays because [she] would arrive at school past her recommended wear time on those days if they were to be applied by parents before daycare. Had relevant school staff been trained in the routine application of the AFOs, this issue would have been avoided, enabling [Student] to wear the AFOs as prescribed."

32. On March 27, 2019, the District's PT emailed the Parents, director of special education, and the case manager and requested that the staff continue with the previously agreed upon schedule, even though the Parents had informed the District that the Student's private PT had indicated the Student may require an increase in the amount of time she was wearing her AFOs. In her email, she stated, "The orthotic schedule that we agreed upon at the Student's IEP reflects many articles from the Revised Code of Washington (RCW) regarding physical therapy practice, specifically Chapter 18.74 RCW. Since I am not available to supervise education staff o[n] Tuesdays and Student has restrictions on when she can be in her orthotics, I recommend that we continue with the orthotic schedule we established."
33. Also on March 27, 2019, the Parents reiterated to the District's PT and the director of special education (director) in an email that the Student's PT said "classroom staff need to have the ability to adjust, remove, and reapply the orthotics." The Parent additionally asked "what is the plan if [Student] needs to have a change of clothes/diaper that requires the removal of the braces? How is [case manager] working on a changing shoe goal if the orthotics cannot be reapplied after they have been removed? There are a variety of different situations that might require a change of shoes." The Parent's email continued: "Currently [Student] is only wearing the orthotics for 4 hours a day but soon she will be wearing them all day. They will be her main shoes. [PT] is only at [school] 50% of the time [Student] is in school It would be irresponsible of us to not have a plan for the rest of [Student's] time at school."
34. According to the District's response, on March 28, 2019, the District's PT communicated with the school and District staff that she wanted to get clarification and guidance from her licensing agency, the Washington State Department of Health (DOH), regarding a "physical therapist's delegation and supervision of duties." The PT's specific question was whether training the teacher to apply the orthotics would make the teacher a PT aide under her license.
35. On March 29, 2019, the District's PT sent the following email to the program manager for the Board of Physical Therapy, at the Washington State Department of Health (DOH):
- [T]hank you for your quick response and informative phone conversation yesterday. As you requested I am resending my questions in this email so you can forward it to board members for consideration. I feel I that we have adequately addressed my first question, but the second question is the one where further guidance and clarification is needed. If you or the board would respond in a writing regarding both question[s] that would greatly assist me in clarifying the situation with both district administration and the family. [. . .]
- My current situation and most pressing questions revolve around this scenario:
- I provide PT services to a student on an Individual Education Plan (IEP). This student is ambulatory and has diagnoses that impact functional mobility, including [disorder]. The student has orthotics with a restricted wear schedule of 4 hours and has not been wearing them at school. These orthotics were obtained by community providers and a community based PT is providing services to this student also. The family sees the community based PT as the 'orthotic manager.' The parents have requested that her orthotics be applied at school (when I am at that school) and the father would apply them at home on one other day. Since that time the parents and the community based PT wants the teacher and the

paraeducators to apply the orthotics to increase wear time at school and allow for the orthotics to go on and come off multiple times during the day.

- 1) If I train the educational staff to apply the orthotics, does that make the educational staff PT aides?
- 2) If the parents train the educational staff to apply the orthotics at times when I am not present and available, are the educators still considered PT aides?

I have resisted training educational staff to avoid delegation and supervision restrictions that would come into play if they are considered PT aides. Could you help provide clarification and guidance for this situation that is compliant to the state PT practice act?

36. On April 9, 2019, the District's PT received a response from the DOH, which said, "I took your questions to the PT board meeting yesterday and wanted to let you know that the board is preparing a response back to you. I will send their response to you as soon as I receive it."
37. On April 10, 2019, the Parent emailed the director and case manager, asking how the District would support the Student's use of orthotics when the District's PT was not available. The Parent asked again if another IEP meeting was needed.
38. On April 10, 2019, the director emailed the District's PT regarding the status of her inquiry with the DOH.
39. On April 10, 2019, according to the Parent's reply, the Student did not wear AFOs at school.
40. On April 11, 2019, the director emailed the District's PT and asked, "Any news from the licensure board regarding the preschool kiddo and orthotics? Or would you like to go to plan B and have them train the staff?" The same day, the PT responded to the director in an email that the question "was brought to the entire PT licensing board on Monday. They made a ruling and I will receive a written statement on their findings. I don't know what they decided."
41. On April 15, 2019, the director emailed the District's PT and inquired, "What about the idea of the PT delegating," to which the PT replied, "The answer regarding me training and delegating the application of the orthotics is solid and per RCWs. I was told that the board would also address this information in their written statement. Delegation of orthotics management has these limitations.
 - a. If I delegate and train others to apply the orthotics, I make that/those person(s) a PT Aide.
 - b. PT Aides must receive direct and immediate supervision. If I were able to provide this level of support I would be available to apply the orthotics myself.
 - c. A PT may only have three people working under their licensure. [Person 1] and [person 2] already occupy two of those positions.If I have not heard from the board today I will contact them and see if I can get a timeline for receiving their decision."

42. On April 16, 2019, the Parent emailed the director and inquired about when the District anticipated receiving a response from the DOH. The Parents proposed looking at alternative solutions, including a different District PT.⁸
43. On April 16, 2019, according to the Parent's reply, the Student did not wear AFOs at school.
44. On April 18, 2019, the director responded to the Parent's email, "I understand you wanting this to happen sooner rather than later, however, the feedback we get from the state may end up changing our PT's practice – so changing PTs may not end up being an option. [PT] has been pushing the board to get us a response ASAP – but I have no firm date at this point."
45. On April 22, 2019, the District's PT sent the Parent the following email:
I have been in contact with the WA State Licensing board since before spring break regarding issues of delegation and supervision when someone other than a PT assistant or PT applies orthotics. My questions were sent to the entire board at their monthly meeting on April 8th. The board made a determination and will issue a written response. I have since asked the board what their time-line for that response would be. I was told I would receive that response as soon as possible. In the interim, I have drafted a proposal that I believe could be implemented while we wait for the board's action. I have attached that document here. I would like to schedule a meeting with you, myself, [director of special education], and [case manager] to review this proposal. Please respond with some suggested meeting times.
46. The schedule proposed by the District's PT was modified on Tuesdays so that the PT assistant would put on the AFOs. However, the Parent reply stated that the revised schedule "still left [Student] without any trained staff to manage the AFOs on Fridays."
47. On April 26, 2019, the District's PT resent the email from April 22, 2019 to the Parent because she had not received a response regarding setting up a meeting. Later that day, the Parents responded that a meeting regarding the AFOs would be appropriate.
48. On May 2, 2019, the Parent emailed the District's PT to inquire if she had received a decision from the DOH. The Parent additionally requested a copy of the statement from the DOH so that they could review it before the IEP meeting.
49. On May 6, 2019, the District's PT responded to the Parent's email that her "last contact with the WA State PT Board was on [April 22, 2019] when they contacted [her] by email and stated that their responses to [her] questions were in final review."

⁸ On April 15, 2019, the director emailed the District's PT to ask why some of the PTs in the District "delegate this activity" (referring to the application and removal of orthotics) in response to the PT's statement that doing so made the delegee a PT Aide, and when a PT may only have three people working under his or her licensure. The PT responded, "I can't answer that. Each therapist is responsible for knowing and practicing according to the [sic] state practice act."

50. In his reply, the Parent wrote that on May 6, 2019, he contacted the director by phone and email regarding the Student's prescribed need to wear her AFOs 100% of the time while at school and reminded the director of special education services of the Student's need for services to be able to do so. In his reply, the Parent explained his understanding of the situation as follows:

The District had never argued that [Student] was not entitled to wear her AFOs 100% of the school day simply that they did not have adequate staffing of physical therapists on-site at [Student's] school to manage the AFOs 100% of the time she was in school. I stated that staffing issues should not impact [Student's] access to her education, and that RCW Chapter 18.74 was irrelevant to the District providing this service to [Student]. At that time, I was still under the impression that the AFOs were correctly added to the IEP in a way that required the District to follow her prescribed wear schedule, based on the previous information received from the case manager in the March 1, 2019 email exchange.

51. On May 6, 2019, the Parent sent the director the following email to express his concerns and to confirm what was discussed during their phone call:

[PT's] lack of urgency illustrates the irrelevance of the state licensing board's response to her inquiry on the [Student's] use of her medically prescribed orthotics during school. [. . .]. If her orthotics cannot be applied without [PT's] supervision, then [District] needs to ensure a licensed physical therapist is on-site at [Student's] school whenever she is present. If [PT's] understanding of the licensing board's regulations and corresponding RCW is incorrect, then the school staff (teacher, paraeducator, nurse) need to be trained in how to appropriately apply the orthotics.

[Parent] and I have offered to conduct this training and provide visual instructions for the classroom staff. Apparently this was still a liability issue to [PT] and [District] – but again, none of this should impact [Student]. Things like staffing and liability are internal problems that should not prevent children from being served.

Regardless of the direction from the state licensing board, the outcome should be the same – [Student] needs to wear her orthotics during school hours as directed by her medical team. Staffing issues or legal clarification should not impact my daughter's education or her individual medical needs. Medical impairment is [the] main reason why she qualifies for special education services. She has a physical disability. I don't particularly enjoy having to go back and forth for months to try and get the special education team to help my three year old wear an orthopedic device that ensures her safety. However, it is my responsibility as her father and custodial parent to advocate for her needs and to follow the direction of her specialized medical team. [. . .]

District was informed before the initial IEP meeting – this was in October 2018 – that [Student] wears these orthotics. During the initial IEP meeting, we were told that the school didn't want to 'deal with' the orthotics until she was able to tolerate them for the entire school day. While I did not agree with this at the time, I did not want to cause conflict as [Student] was only able to tolerate the orthotics for about two hours per day and thus, I was able to satisfactorily achieve this at home. However, we informed the IEP team that we expected her to wear them during school once she could tolerate the orthotics consistently for the entire time she is in the preschool classroom. This occurred in February, when her medical team instructed us to have her wear them whenever she wears shoes. We

immediately called for an IEP meeting, and have been given every kind of pushback imaginable.

As of today, she is wearing them 50% of the time at best. This also means that [District] has not been serving my daughter for approximately seven weeks – if you count back to the date of the previous IEP meeting where [PT] refused to follow the medical team’s instructions. If you look back to when we initially made the request for the IEP meeting, it has been nearly ten weeks. We will not accept any plan from [District] that does not include our daughter wearing her orthotics at school 100% of the time. If you intend to present us with something different, we’ll be looking at due process. Enough is enough, and [District] will not continue to violate [Student’s] rights.

Please find attached a copy of the complaint I am submitting regarding this matter to the Office of Superintendent of Public Instruction. [. . .]

52. On May 7, 2019, the Parents notified the District that the Student got larger AFOs and that the Student could now independently take them off. The Parents additionally sent the new prescription to the District and instructions for wearing the AFOs.
53. On May 7, 2019, according to the Parent’s reply, the Student did not wear AFOs at school.
54. On May 9, 2019, the representative from the DOH informed the District’s PT that the attorney for the DOH was working on a response.
55. On May 9, 2019, the IEP team convened to discuss the Student’s orthotics.⁹ The following individuals attended the meeting: Parents, director, District’s PT, and case manager. According to the District’s response and the Parent’s reply, the District’s PT asserted at the IEP meeting that she could not delegate the responsibility of putting on the AFOs to other staff—an assertion with which the Parents disagreed. The District’s PT noted in her treatment log that, pending information from the DOH physical therapist licensing board, the “Parents would train the classroom teacher in placing the AFOs on the Student.”
56. Meeting notes from the May 9, 2019 meeting¹⁰ included the following proposed schedule:
 - Tuesday – Is there staff in the building? (Put on at school ([case manager – after parents show her])
 - Wednesday – [District PT]
 - Thursday – [District PT]
 - Friday – Building PT

⁹ According to the District’s response, the District stated the Parents provided the IEP team with information from the Student’s private PT that the Student’s AFOS were “medically necessary for the Student and should be worn regularly at school. The ultimate goal is for the Student to wear orthotics for 6 hours per day (or more) for ideal gait pattern, safety and general strengthening.” In his reply, the Parent stated that the District was first made aware of the “medical necessity” of the Student’s AFOs in October 2018 during the Student’s initial evaluation, and that they first received notice that it was “medically necessary” on March 20, 2019.

¹⁰ The meeting notes from the May 9, 2019 meeting are incorrectly dated May 8, 2019.

The meeting notes additionally included the following notations regarding adjustments to the Student's orthotics and notes regarding training to staff:

- "If [Student's] orthotics require adjusting (after [case manager] and at least one para is trained) – first step, call PT extension to check for reapplying; second step Teacher will reapply according to parent instruction;"
- "Wednesday May 15, [2019], parents coming in to train [case manager] and para(s) how to apply [Student's] orthotics;"
- "[Student] will always wear the orthotics during the time she is in school, as she is now up to 6 hours of wear time (from 4 hours previously)";
- "After training staff can work with [Student] on the shoe removal goal more often (take off and put on orthotics for her IEP goal."

57. On May 9, 2019, following the IEP meeting, the Parent emailed the director and the District's PT:

I wanted to follow-up quickly to confirm the details of the plan we discussed at the IEP meeting this morning.

- There is an additional physical therapist who is present at [school] on Fridays, She will supervise the orthotics on Fridays. Tuesdays are [to be determined].
- Parents to conduct training of school staff on Wednesday, [May 15, 2019] at 11:45 AM
- [Student] will wear the orthotics 100% of the time she is in school unless she experiences any kind of problem with the orthotics (discomfort, blisters, etc.)

Additionally, I have been in contact with [program manager of the Washington State Board of Physical Therapy]. She stated that normally, they would have had [PT] bring an issue like this to her own attorney (questions about licensing regulations), but because of [PT's] persistence in questioning this regulation/need for clarification, the board has completed a response but it is pending their legal team's review. She did not understand that this was impacting a student who is in school and her safety that was the reason for the lack of urgency here. Knowing that information, she is reaching out to her legal team to try to expedite a response for us. She is going to contact me with more info, and I will be following up with her again on [May 15, 2019] if we do not receive a response by then.

58. On May 10, 2019, the District's PT and PT assistant began keeping a tracking sheet for the application of the Student's AFOs at school.

59. On May 13, 2019, the District received a written response from the DOH in response to the District's PT's question, which clarified that the "routine application of the student's orthotics" could be delegated. The DOH further clarified that the Parents could train the educational staff on the routine application of the Student's orthotics.

60. On May 15, 2019, the Parent trained school staff on the application of the AFOs for the Student. The training was attended by the teacher and classroom paraeducators.¹¹

¹¹ On May 14, 2019, the District's PT emailed the director and expressed her preference to have the Parent train school staff on the application of AFOs because of her interpretation of the guidance received from the physical therapy licensing board. In his reply, the Parent wrote that it was his understanding that the PT

61. On May 16, 2019, the Parents requested a copy of the guidance that was received from the DOH. The same date, the District's PT shared the DOH's findings with the Parents. The Parents then requested the Student be assigned a different PT by the District.¹²
62. On June 5, 2019, the District submitted its response to OSPI. In its response, the District conceded that the District "did not perfectly develop or implement the application of the AFOs." The District's response included the following additional conclusions:
- "School staff implemented the AFO schedule based on their understanding of the IEP, which was inconsistent with the Parents' intended outcomes;"
 - On March 20, 2019, an IEP meeting was held, during which the school team did not incorporate language into the IEP regarding the application of the AFOs. The AFOs were "mentioned in the IEP, but the AFOs were not documented as an 'other relevant factor' requiring assistance of school staff." The District acknowledged that the "prior written notice summarized the IEP team's intent," but then found that the "actual AFO schedule was not incorporated into the Student's IEP or health care plan."
 - The "lack of IEP documentation created confusion and waiting for the [Department of Health (DOH)] response caused a delay in the team agreeing on an implementation schedule for the AFOs."¹³
 - The "lack of specificity, even while waiting for the DOH response led to miscommunication and different expectations for the Parents and school staff. The different expectations led to the

was on site the day he trained staff and felt that "as a licensed physical therapy professional, [the District PT] is clearly better suited to conduct a training of school staff." Currently, the Parent has completed all training of school staff.

¹² In the Parent's reply, the Parent stated that in "the initial evaluation that was conducted by the District in October 2018 indicated that [Student] was falling 30 or more times per day due to her physical disability, yet [PT] refused to even try the orthopedic device that [Student's] medical team provided documented evidence indicated that it reduced the number of falls for [Student]. This callous disregard caused non-quantifiable impact to [Student], as she was hospitalized three times between November 2019-May 2019 due to physical injuries related to falling. Though these injuries did not occur during the school day, she was not wearing her AFOs as prescribed due to [PT's] unwillingness to support her AFO usage at school delayed [Student's] ability to wear the AFOs as prescribed." The Parent requested OPSI investigate possible professional misconduct and negligence by the PT, and that OPSI require the District to assign a different PT to the Student. On June 18, 2019, after receiving the Parent's reply and request, the OSPI investigator reached out to the Parent by phone to ensure the Parent understood the Special Education Citizen Complaint process. The Parent was informed that the additional requests were outside the scope of what OSPI could investigate.

¹³ As part of its investigation, the District found that there was a delay in implementing the Parent's expressed wishes of having the Student wear her AFOs 100% of the school day. In the complaint, the Parents expressed concerns that delay on the part of the PT was intentional and based on possible differences in professional practice beliefs regarding the use of orthotics on young children. In its response, the District denied "any intentional misrepresentation of information," or "effort to delay or avoid use of the Student's AFOs," and maintained that the District's PT's inquiry to the (DOH) was "based on [the District PT's] desire to comply with her professional licensing requirements" to "ensure she did not compromise her professional licensure."

school staff believing they were complying with the Parents' request and caused the Parents to believe the delay was an intentional effort to avoid applying the AFOs."

- "A clearly written statement in the IEP about the AFOs as an 'other relevant factor' would have helped both parties come to the same understanding."

63. The District exercised its right under WAC 392-172A-05030 to propose a resolution to the complaint filed on May 10, 2019. The District proposed the following corrective actions.

- "The District agrees with the Parent's proposed resolution that school staff will be trained in proper application of the AFOs. Currently school staff is trained and they apply and remove the Student's AFOs;"
- "The District's proposed corrective action includes amending the Student's IEP to include a specific statement in 'other relevant factors' that the student will wear the AFOs one hundred percent (100%) of the Student's two and a half (2 ½) hour school day. The school nurse should also be involved and modify the Student's Individualized Health Care Plan, as needed. If the health plan contains information on the AFOs, the health plan should be referenced in the Student's IEP. The meeting to draft the amendment related to the AFOs will occur within thirty (30) days of the beginning of the 2019-2020 school year;"
- "Additionally the District will review its IEP development and implementation procedures with school staff to insure its internal practices for development and implementation of IEPs, including 'other relevant factors' are accurately captured and implemented. This school staff review will occur during the staff special education training scheduled for August 2019."

64. On June 17, 2019, the OSPI investigator spoke with the Parent, who confirmed that since filing the complaint, he had trained District staff on how to apply and remove the Student's AFOs and the Student was wearing her AFOs at school 100% of the time, as prescribed – the corrective action initially proposed by the Parent in the complaint filed with OSPI.¹⁴ The Parent informed the OSPI investigator that he had filed a reply with additional information and an additional proposed corrective action of training for the District. The Parent expressed ongoing concerns to the investigator regarding the IEP development and implementation process, specifically that IEP meetings were not held when requested, or when he felt they should have been, and that decisions made regarding the Student's wear time of her AFOs were driven by the availability of staff, staff opinion, or by delays caused by a desire to receive legal advice prior to serving the Student rather than by the Student's demonstrated medical and educational needs.

65. On June 19, 2019, OSPI received the Parent's reply. In his reply, the Parent proposed the following additional corrective action: "[District] will provide district-wide training to therapists on regulations regarding delegation of responsibility to school staff in order to support the proper use of prescribed medical and orthopedic equipment."

¹⁴ The Parent's original proposed corrective action stated, "[District] needs to allow [Student] to wear her Ankle Foot Orthoses (AFOs) as instructed by her medical team, which is currently 100% of the school day. Proposed solutions include either having a licensed PT on-site at [Student's] school whenever [Student] is in attendance or allowing the school staff to be trained in proper application of the AFOs (teacher, paraeducators, nurse)." In his reply, the Parent included two additional proposed corrective actions, which were beyond the scope of OSPI's authority. When the OSPI investigator spoke with the Parent on June 17, 2019, the Parent was informed of this and provided technical support.

CONCLUSIONS

IEP Development and Implementation: The issue is whether the District followed procedures when developing and implementing the Student's individualized education program (IEP) regarding the Student's use of her Ankle Foot Orthoses (AFOs).

IEP Development

When developing a student's initial IEP, the district must hold a meeting to develop the student's IEP within thirty days of determining a student is eligible for special education. The IEP must be developed in compliance with the procedural requirements of the IDEA and state regulations. The IEP team must consider the results of the initial evaluation, as well as any other developmental and functional needs of the student. The parents of a child with a disability, along with school personnel, are equal participants in the process of developing and revising the initial IEP. The parent plays a critical role in helping to enhance the IEP team's understanding of the student's needs, and in ensuring that the IEP that is developed is "reasonably calculated to enable the child to receive educational benefit." See *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). While an IEP team is not required to adopt all recommendations proposed by a parent, it must consider them. If the IEP team adopts a decision with which the parent is not in agreement, the district should note the IEP team's proposed action and the parent's disagreement in the prior written notice.

Here, the IEP eligibility team found the Student eligible for special education services on October 25, 2018 and developed an IEP for the Student the same day. The initial evaluation upon which the IEP was based considered the Student's developmental needs, including the Student's risk of falls and need for physical therapy as a related service to support progress in gross motor goals to enable greater independent access to the classroom. The IEP mentioned the Student wore AFOs—although briefly—demonstrating the IEP team considered information by the Parent regarding the Student's use of the AFOs. At the time of the development of the initial IEP, the Student had not been tolerating her orthotics for more than two hours a day and accordingly, did not require daily assistance with the application and removal of her AFOs at school. Development of the initial IEP occurred within the thirty-day timeline and provided the Student with specially designed instruction and related services according to the Student's needs as indicated in the initial evaluation, and in accordance with additional information provided by the Parent. The District accordingly followed procedures in developing the initial IEP.

Even though OSPI finds no violation regarding the development of the initial IEP, the District conceded that its development of the initial IEP was "imperfect." In particular, the District noted the IEP could have been clearer regarding the Student's use of AFOs. OSPI agrees with the District's conclusion. More specifically, at the time of development of the initial IEP, the District had knowledge that the Student's AFOs were medically necessary and that the amount of wear time was likely to change over the course of the year, which was going to require a change in the level of support required by staff to support the Student's use of AFOs during the school day. As noted by the District in its response, the Student had an individualized health care plan (IHP) which more clearly explained the Student's use of her AFOs. However, the IHP was not attached to the

IEP, nor did the IEP reflect what was written in the IHP. In its response, the District proposed having an IEP meeting around the beginning of the 2019-2020 school year to amend the Student's IEP to reference the Student's IHP. When students have IHPs documenting medical needs affecting the student during the school day or services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP. OSPI accepts the District's proposed corrective action and will be including it as part of the corrective action ordered for violations relating to IEP implementation (see below).

IEP Implementation & Amendment

An initial IEP must be implemented as soon as possible after it is developed and made accessible to all teachers and service providers responsible for its implementation. The amount of services to be provided must be clearly stated in the IEP, so that the level of a district's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each service must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. When a parent expresses that the IEP may no longer be appropriate, the IEP team must meet to determine whether additional data and a reevaluation are needed or agree to change the IEP by amendment.

After the development of the initial IEP, documentation showed that the Student's needs regarding the use of her AFOs and need for services to support her use of AFOs changed during the 2018-2019 school year as the Student began to better tolerate her AFOs and wear them more often during the school day. When the Parents felt the Student's needs changed regarding her AFOs, they requested an IEP team meeting. However, when the Parents first requested an IEP meeting to discuss the AFOs on March 1, 2019, the Parents were misinformed that an IEP meeting was not necessary because the IEP mentioned the AFOs. In its response, regarding the March 1, 2019 email exchange, the District stated that the *"school staff implemented the AFO schedule based on their understanding, but staff understanding was inconsistent with the parents' intended outcomes. For example, the March 1, 2019 email from the parents show their clear intent of including the AFOs in the IEP. The [case manager's] response was correct that the AFOs were mentioned in the IEP, but the AFOs were not documented as an 'other relevant factor' requiring assistance of the school staff."* When the Parents emailed the District on March 1, 2019, the Parents made clear that they wanted the Student to receive the necessary support to be able to wear her AFOs as prescribed during the school day—which included a goal of 100% of the school day. Supporting this outcome required more than a mention of the AFOs in the IEP. Rather, for the Student to wear her AFOs 100% of the school day, the Student required additional support from the physical therapist (PT) to help apply and/or remove her AFOs, or that the District's PT or the Parent be permitted to train school staff to apply and remove the Student's AFOs. Neither of these options were supported by the language in the initial IEP, including the level of related services in her initial IEP, which meant an IEP meeting and potential IEP amendment was necessary.

When presented with this new information, the IEP team should have first met to discuss the Student's needs in light of this information to determine if the Student's IEP—which as of March

1, 2019, did not mention daily access to a PT, PT aide, or any other support service that could assist with the application or removal of AFOs—was still appropriate.

While an IEP meeting was held on March 20, 2019, the documentation showed that a discussion of the Student's needs in light of the new information presented to the IEP team, including the appropriateness of the current IEP, and whether an amendment was necessary, did not occur at this meeting. Instead, the documentation, including the PWN issued by the District following the March 20, 2019 meeting, showed the IEP team decided to wait on formally assessing and documenting all of the concerns raised by the Parent, including developing a schedule that would address the Student's wearing of her AFOs 100% of the time, until it had received a decision from the Washington State Department of Health (DOH) in response to the District PT's question about the delegation of physical therapy duties. In its response, the District confirmed that following the March 20, 2019 IEP meeting, no changes were made to the Student's IHP or IEP, even though the Parent presented the IEP team with a letter from the Student's medical provider explaining that the Student's need to transition to wearing her AFOs 100% of the time was medically necessary and important to her safety. OSPI recognizes the District's desire to seek out advice to potentially shield staff from future liability, but this does not relieve the District of its obligation to assess the Student's changing needs as they arise, and to revise the IEP as necessary for the Student to receive a free appropriate public education (FAPE). The District violated procedures by delaying appropriately responding to the Student's changing needs while it was waiting for a response from the DOH.

An IEP meeting was subsequently held on May 9, 2019, where it appears the Student's needs may have been more thoroughly discussed based on meeting notes; however, prior written notice from the meeting was not provided nor was the IEP appropriately updated to reflect what was agreed to at the meeting. It is accordingly not clear what was agreed to at the May 9, 2019 meeting.

In its response, the District confirmed that since the Parent filed the complaint, the Parent has trained staff on the proper application and removal of the Student's AFOs and the Student wore her AFOs 100% of the time for the remainder of the 2018-2019 school year. OSPI spoke with the Parent, who confirmed this. In the District's response, the District suggested having an IEP meeting around the beginning of the 2019-2020 school year as a proposed corrective action. OSPI agrees with the District's proposed corrective action, with the below added deadlines, based on the identified violations, including its failure to meet and amend the IEP when necessary. At that IEP meeting, the District will be required to discuss the Student's current needs regarding her AFOs, including what support is required so that the Student can wear her AFOs as prescribed. The IEP team will decide whether that support requires any training of staff during the 2019-2020 school year.

In the District's response, the District recommended as a proposed corrective action that it review its IEP development and implementation procedures with school staff to ensure its "internal practices for development and implementation of IEPs, including 'other relevant factors' are accurately captured and implemented." OSPI agrees and accepts this proposed corrective action with the addition that the training address when it is appropriate to IEP amendments and

Washington State Department of Health guidance on delegation regarding the application and supervision of use of orthotics.

CORRECTIVE ACTIONS

By or before **July 19, 2019** and **September 6, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **August 30, 2019**, the District will hold an IEP meeting, which the school nurse will attend in addition to the other members of the Student's IEP team. The team will discuss the following issues, at minimum:

- Student's needs relating to her use of AFOs during the school day, including current wear schedule and how changes in wear schedule will be communicated to the District;
- Plan to address training needs necessary for application of the Student's AFOs while at school, including (a) who is authorized to provide training, (b) who will conduct the training, (c) dates training will occur, and, (d) who will receive the training;
- Amendment of the IEP to mention and/or attach the Student's Individualized Health Care Plan (IHP); and,
- Any other issues the Parent, school nurse, or any other IEP member would like to discuss regarding the Student's use of the AFO's.

By **September 6, 2019**, the District will submit: 1) a copy of the meeting invitation (note: meeting invitation will show that the school nurse was invited); 2) a copy of the amended IEP; 3) a copy of any related prior written notices; 4) a copy of the agenda; and, 5) meeting notes on the topics discussed at the meeting.

DISTRICT SPECIFIC:

District special education staff will review procedures on IEP development and implementation at its already scheduled staff special education training in August 2019. The training will highlight internal practices for development and implementation of IEPs, including ensuring "other relevant factors" are accurately captured and implemented. As part of its training on IEP development and implementation, the District will additionally discuss the following issues: (a) importance of convening an IEP meeting when a parent raises concerns that a student's needs have changed or that an IEP may no longer be appropriate; and, (b) review of guidance received from the Washington State Department of Health on the delegation of training on the application of orthotics to ensure that practice being followed by District PTs is consistent. The training will include examples.

By **July 19, 2019**, the District will submit a draft of the relevant training materials for OSPI to review. OSPI will approve the materials or provide comments by July 26, 2019 for review, if needed.

By **August 30, 2019**, the District will complete its training as part of its special education staff training.

By **September 6, 2019**, the District will submit a sign-in sheet to OSPI of those who attended the training, along with an official roster from Human Resources to verify that special education staff were in attendance.

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 July, 2019

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)