

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-140

PROCEDURAL HISTORY

On November 28, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Peninsula 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 December 2, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On December 19, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on December 20, 2022. OSPI invited the Parent to reply.

On December 29, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 30, 2022.

On January 12 and 13, 2023, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on January 13, 2023. OSPI forwarded that information to the Parent on January 18, 2023.

On January 13, 2023, OSPI's investigator consulted with an OSPI special education program supervisor with professional experience with programs and services for individuals with auditory-visual impairments, deaf-blind interveners, and interpreting as a related service.

On January 19, 2023, the Parent provided OSPI with additional information related to her allegations. A copy of this information was provided to the District on January 20, 2023.

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

SCOPE OF INVESTIGATION

The period under investigation begins on November 29, 2021, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to November 29, 2021 is mentioned for informative, background purposes only.

ISSUES

1. Did the District follow proper prior written notice procedures in relation to the June 7, 17, and 24, 2022 prior written notices?

2. Since November 29, 2021, did the District follow proper IEP development procedures, specifically, whether an American sign language (ASL) intervener should have been added to the Student's IEP prior to June 2022?
3. Since November 29, 2021, did the District follow proper IEP implementation procedures, specifically, did the District properly implement the Student's IEP accommodations related to communication?
4. Did the District ensure proper IEP team attendance at the following meetings: May 24, 2022, May 26, 2022, and June 10, 2022¹?

LEGAL STANDARDS

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

IEP Revision: A student's individualized education program (IEP) must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Stay Put: Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise. 34 CFR §300.518; WAC 392-172A-05125. The IDEA does not define the term "current educational placement," but courts have interpreted the term to mean the type of program a student is receiving rather than a specific school or classroom. See, e.g., N.D. v. State of Hawaii, Dep't of Educ. 54 IDELR 111 (9th Cir. 2010) (holding that a change in placement occurs when a student is

¹ In relation to Issue 4, one of the dates to be investigated was originally identified as June 7, 2022. During this investigation, both the Parent and District clarified that the true date in question was June 10, 2022.

moved to a different type of program or when there is a significant alteration of the student's program even though he stays in the same setting).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 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. 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 §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

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

be in attendance at the IEP Team meeting. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question C-3).

FINDINGS OF FACT

2020–2021 School Year

1. A due process hearing request involving the Student (2020-SE-0149 decided on or about April 21, 2021) determined, in part, “Based on the record, then, it is concluded that the Parent has not met her burden and has not shown the Student’s IEPs were unreasonable or inappropriate because the Student did not receive a 1:1 intervener to assist with communication.”

2021–2022 School Year

2. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of multiple disabilities, was in the fifth grade, and attended a District elementary school. According to the District, at that time, the “Student’s October 2022 IEP remained in effect.”

The October 2020 IEP stated a new annual IEP needed to be developed for the Student no later than October 27, 2021, did not provide the Student with an ALS intervener trained in tactile signing, and did state the Student was to participate, to some extent, in the general education environment. (Emphasis added.)

3. A new annual IEP was not developed prior to October 27, 2021.
4. An October 28, 2021 prior written notice read, in part:
The evaluation team received consent on September 20, 2021 to begin a comprehensive evaluation of the Student. The team decided that continuing the current IEP while completing the evaluation was the best course of action at this time. The Parent agreed by email on October 19, 2021 to continue the current IEP [until] November 29, 2021.
5. A reevaluation of the Student was completed in early November 2021. According to the Parent, two “evaluation meetings” were held on November 3rd and 8th, 2021.

In relation to the November 2021 evaluation report, the audiology portion included detailed notes on an observation of the Student in most school environments, as well as a summary of hearing and behavioral testing done in May and June 2021, respectively, the communication portion included a review of the Student’s progress on communication goals, a summary of relevant medical information, and results from the ‘AAC Language Lab Screener Summary’ and ‘Functional Communication Profile-Revised (FCP-R)’ assessments, the vision and mobility portion included the results from the ‘Cortical Visual Impairment Overview’ assessment, and the assistive technology portion included the results from the ‘Wisconsin Assistive Technology Initiative (WATI)’ assessment.

The November 2021 evaluation report included numerous recommendations for the IEP team to consider when drafting the Student's annual IEP, including, in part, that the Student, "use...a personal DM system [which is a] system [whereby] a microphone and transmitter...are worn by the person Student it to attend to and the receivers are worn in their ears", "a clear cuing system that lets Student know who and what to attend to", "moving Student closer to the teacher", "student should continue to be encouraged to use her talker and adapted signs/gestures...and use of multi-modal communication systems should be modeled frequently by her team", "provide wait time to allow for latency in visual response, especially when presenting Student with new objects", and "enlarging print will help create more negative space, supporting visual discrimination."

The November 2021 evaluation report read, in part:

Interveners are professionals, typically paraeducators who work under the direction of the classroom teacher, who have received specialized training to work with people who are deafblind. An intervener provides consistent one-to-one support to help the person with deaf-blindness gain access to information, facilitate communication, and promote social and emotional development. The IEP Team Discussion Guide (see attached) can be used to help Student's team determine if an intervener would be an appropriate support for her.

6. On November 10, 2021, the psychologist emailed the Parent a "final copy" of the November 2021 evaluation report.

A November 10, 2021 prior written notice read, in part, "Parent declined to sign the evaluation report, citing she had a dissenting opinion which she would submit in writing to the team at a later time."

7. On November 24, 2021, the special education teacher emailed the Parent "a draft IEP" to be discussed at an upcoming IEP meeting scheduled for November 29, 2022, which the Parent had been invited to attend and the purpose of which was to develop a new IEP for the Student. (The draft IEP was dated November 29, 2021.)

Later, on November 24, 2021, the Parent's attorney requested an independent educational evaluation (IEE) at District expense based upon a disagreement with the November 2021 reevaluation.

8. On December 6, 2021, the District filed a due process hearing request to defend the appropriateness of the November 2021 reevaluation (due process 1).
9. On January 14, 2022, the Parent filed a due process hearing request (due process 2). In her due process request, the Parent took issue with the November 2021 evaluation report and also alleged the District had failed to provide the Student with FAPE because it had not followed proper procedures for responding to the Student's needs in the area of communication.
10. In its response to this complaint, the District stated that following the filing of the due process hearing requests, it continued to implement the Student's October 2022 IEP.

11. On April 14, 2022, both due process 1 and 2 were dismissed at the request of the respective parties. And the documentation provided to OSPI during this investigation does not indicate the District and Parent agreed—between December 6, 2021 through April 14, 2022—that the Student required an ASL intervener.

12. The District's response read, in part:

[Following a May 2022 evaluation-related request from the Parent], the District responded by filing another due process hearing request to defend [its] November 2021 Reevaluation...Parents subsequently clarified that they were not seeking an IEE at District expense and the District therefore withdrew its hearing request.

13. According to meeting notes included in the District's response, on May 24, 2022, the following individuals met to discuss, in part, whether the Student should be provided with an ASL intervener: collegiate director, Parent's special education advocate, Parent, speech language pathologist (SLP), special education teacher, teacher of the visually impaired, and principal.

In her complaint request, the Parent alleged the following individuals were also present for the May 24, 2022 meeting: the special education director and audiologist.

14. No later than May 24, 2022, the Parent requested the Student be provided with an ASL intervener who was trained in tactile signing.

15. An IEP meeting took place on May 26, 2022. According to a prior written notice², the following individuals were present at the May 26, 2022 IEP meeting: principal, director, general education teacher, special education teacher, occupational therapist (OT), physical therapist (PT), SLP, audiologist, orientation and mobility specialist, Parent, two special education advocates, and collegiate director.

Meeting notes for the May 26, 2022 gathering stated the foregoing individuals were in attendance, with the exception of the director, the SLP, and the audiologist.

At some point subsequent to the May 26, 2022 IEP meeting, the Parent provided District staff with her notes regarding the meeting, and according to these notes, the collegiate director's input regarding the Student was considered at the May 26, 2022 IEP meeting.

16. The District's response read, in part, "The IEP team finally re-convened in May of 2022 to finalize development of the November 2021 IEP...Based upon [the District's] understanding...there is no separate May 2022 IEP for Student. The November 2021 IEP was the operative IEP, but it was not finalized until May of 2022."

The draft IEP included, in part, the following accommodations: "adapted signs"; "consider using an Invisiboard to limit complexity of the sensory environment"; "consider using matte lamination on worksheets"; "repeat and clarify...picture directions"; "use a first/then board to show Student what activity is next"; and "bold color marker for writing."

² Dated June 17, 2022.

17. A June 7, 2022 prior written notice read, in part:

[On] May 24, 2022, the Parents requested an IEE at District expense in the area of communication to address the Student's main form of communication which the Parent is saying is tactile signing...The District stands by their communication evaluation and [the understanding] that Student functions best in the school setting when using a variety of communication methods to include, but not [be] limited to, her assistive augmentative and alternative communication (ACC) device, gestures, and signing. [The District has] rejected funding [the Parents'] IEE request...The District has agreed to a 1:1 intervener to support Student's education and communication supports and the District will continue to collect data around her use of the various forms of communication...The District will file a hearing request with [the office of administrative hearings] to defend the appropriateness of its current communication evaluation.

In relation to the June 7, 2022 prior written notice, during this investigation, the Parent alleged the following: the Parent actually made her evaluation-related request at the May 26, 2022 IEP meeting—not the May 24, 2022 IEP meeting; the Parent had not requested an IEE, but rather, that “the District open up [its] reevaluation [so as to incorporate] information we learned from the collegiate director of deafblind programs (collegiate director) after her observations, assessments, and recommendations [were completed]”; and “nothing is referenced [in the June 7, 2022 prior written notice] regarding the [fact] the District representative needed to discuss with the executive director regarding [the Parent's evaluation-related request], as the District representative was not [actually] able to make [a] decision at the IEP meeting.”

The District's response read, in part, “the June 7, 2022 prior written notice related to Parents' May 24, 2022 request for an IEE at District expense.”

18. A meeting took place June 10, 2022. The Parent alleged, “according to my notes, the only people present [at the June 10, 2022 IEP meeting] were: Parent, special education advocate, director, special education teacher, options teacher, and assistant principal.”

According to the District's response, the purpose of the June 10, 2022 meeting was “to discuss Student's transition from elementary school to middle school for the next school year.”

Emails included in the District's response show that at least one purpose of the June 10, 2022 meeting was to discuss the collegiate director's observation of the Student.

The Parent's complaint request included a “Notice of Meeting” that shows, in part, the June 10, 2022 meeting had originally been scheduled for June 7, 2022, and the following individuals were invited to attend the June 7, 2022 meeting: general education teacher, OT, Parent, PT, psychologist, special education teacher, SLP, director, three separate vision specialists, audiologist, two assistive technology specialists, and principal.

19. A June 17, 2022 prior written notice read, in part:

The IEP team...met on November 29, 2021 [and] May 26, 2022 [and] agreed to the following updates to the annual IEP: add[ition] of an [ASL] intervener to the IEP starting in the 2022-2023 school year; and, the second [service] matrix which is for the middle school setting...With only 17 school days remaining in the year, the team agreed that it did not

make sense to make a change in LRE or [a] change to Student's minutes for the remainder of 5th grade...The team did agree to breaks from the general education setting by Student's request or through the intervener's reading of her body language and communication...

The June 17, 2022 prior written notice stated the action described therein was to be implemented on June 22, 2022.

In relation to the June 17, 2022 prior written notice, the Parent's reply read, in part: [Parent made a request for an ASL intervener] at the December 10, 2021 IEP meeting...A Parent input document was provided to the District in preparation for the December 10, 2021 IEP meeting, clearly stating the communication (and other) needs of the Student that needed to be addressed...Not [providing] an intervener...until June 17, 2022 [resulted in a loss of educational opportunities].

During this investigation, the Parent also alleged:

- She received the June 17, 2022 prior written notice on June 30, 2022, which is after the date the prior written notice says it was to be initiated. And in its response, the District admitted its provision of the June 17, 2022 prior written notice to the Parent was not timely, as per the language in the actual prior written notice.
- The May 2022 IEP was developed over the course of four IEP meetings during the 2021–2022 school year, not over the course of two IEP meetings.

20. A June 24, 2022 prior written notice, detailing a June 10, 2022 meeting, read, in part: [The purpose of the meeting was] to review the observation of Student by the collegiate director...The team decided an intervener would be a good next step and that [an] intervener would be added to the...IEP for the 2022-2023 school year. The District further agreed that the intervener would [be required to] go through an intervener training...The Parent wanted it noted she [was] requesting the intervener be trained in a higher level university program [and] the District agreed to train the intervener at the level necessary to work in a public school setting...The Parent is requesting the intervener be able to sign and do tactile signing with Student. The District deferred any decision on this request at this time and will wait for the intervener to be working with Student prior to revisiting the need for signing with Student.

The Parent made four principal allegations in relation to the June 24, 2022 prior written notice: the June 24, 2022 prior written notice did not capture "all titles or names" that participated in the June 10, 2022 meeting; "the information provided from the collegiate director should also be listed" in the June 24, 2022 prior written notice; the prior written notice needed to include greater detail on her exact request, including the following, "The classroom teacher and all service providers will provide instruction material a week in advance, allowing adequate time for materials to be adapted and/or modified"; and:

[At the meeting], the IEP team agreed to tactile signing [and] there [were] no stated disagreements...The director stated she was not sure how to list [the credential requirement] properly and needed to 'work around' union bargaining. The director agreed to tactile signing and an intervener [but] she was not sure how she was going to list it on the IEP and PWN...If the District is denying the request for the higher credentialed intervener, they need to deny the request and include why they are denying [that request] Stating they will train the intervener at the level necessary to work in a public school setting

and deferring the decision until the intervener begins working with Student is not addressing Student's unique educational needs and is nonspecific.

Summer 2022

21. An August 26, 2022 prior written notice read, in part, "Parent [sent an] email on August 23, 2022 indicating an intent to unilaterally place Student outside of the District for the 2022-2023 school year. The District is proposing to continue Student's current IEP."

2022–2023 School Year

22. The District's response read, in part, "At the start of the 2022–2023 school year, the Student was eligible for special education under the category of multiple disabilities, was in the 6th grade, attended a private school unilaterally selected and paid for by Parents, and Student's IEP finalized on May 25, 2022 was in effect."
23. On November 28, 2022, the Parent filed the community complaint with OSPI. It read, in part, "The District representative told me the District did not have the money to fund an intervener and the District was not in a hurry to complete the annual IEP because they had already reported it to OSPI that is had been closed (locked) and [was] compliant."

CONCLUSIONS

Issue 1: Prior Written Notice Procedures – The Parent alleged the District did not follow proper prior written notice procedures in relation to the June 7, 17, and 24, 2022 prior written notices.

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

June 7, 2022

The District stated, "the June 7, 2022 prior written notice related to Parents' May 24, 2022 request for an IEE." The June 7, 2022 prior written notice read, in part:

[On] May 24, 2022, the Parents requested an IEE at District expense in the area of communication to address the Student's main form of communication which the Parent is saying is tactile signing...The District stands by their communication evaluation and [the understanding] that Student functions best in the school setting when using a variety of communication methods to include, but not [be] limited to, her assistive augmentative and alternative communication (ACC) device, gestures, and signing. [The District has] rejected funding [the Parents'] IEE request...The District has agreed to a 1:1 intervener to support Student's education and communication supports and the District will continue to collect data around her use of the various forms of communication...The District will file a hearing request with [the office of administrative hearings] to defend the appropriateness of its current communication evaluation.

In relation to the June 7, 2022 prior written notice, the Parent alleged the following: Parent actually made her evaluation-related request at the May 26, 2022 IEP meeting, not the May 24, 2022 IEP meeting; the Parent had not requested an IEE, but rather that "the District open up [its] reevaluation [so as to incorporate] information we learned from the collegiate director of deafblind programs (collegiate director)] after her observations, assessments, and recommendations [were completed]"; and "nothing is referenced [in the June 7, 2022 prior written notice] regarding the [fact] the District representative needed to discuss with the executive director regarding [the Parent's evaluation-related request], as the District representative was not [actually] able to make [a] decision at the IEP meeting."

In its response, the District acknowledged it misunderstood the evaluation-related request the Parent made in May 2022, explaining it responded to the Parent's request by filing a due process request to defend its reevaluation and subsequently withdrew the due process after the Parents clarified they were not seeking an IEE.

For two reasons, OSPI does not find an IDEA violation in relation to the June 7, 2022 prior written notice. First, assuming the prior written notice did not accurately capture the date the Parent made her request regarding the collegiate director's observations of the Student³, this fact—in and of itself—does not mean the Student's access to FAPE was negatively impacted. Second, despite the initial misunderstanding regarding the nature of the Parent's evaluation-related request, the IEP team did subsequently consider the collegiate director's information. For example, in spring 2022, the Parent provided District staff with her notes regarding the May 26, 2022 IEP meeting, and according to these notes, the collegiate director's input regarding the Student was considered at that meeting, and a June 24, 2022 prior written notice, detailing a June 10, 2022 meeting, noted one purpose of the meeting was to review the collegiate director's observations.

In sum, for the foregoing reasons, OSPI does not find an IDEA violation in relation to the June 7, 2022 prior written notice.

³ For example, each of the following individuals participated in the May 24, 2022 IEP meeting regarding, in part, whether the Student required an ASL intervener: Parent, collegiate director, and Parent's educational advocate.

June 17, 2022

The June 17, 2022 prior written notice read, in part:

The IEP team...met on November 29, 2021 [and] May 26, 2022 [and] agreed to the following updates to the annual IEP: add[ition] of an [ASL] intervener to the IEP starting in the 2022-2023 school year; and, the second [service] matrix which is for the middle school setting...With only 17 school days remaining in the year, the team agreed that it did not make sense to make a change in LRE or [a] change to Student's minutes for the remainder of 5th grade...The team did agree to breaks from the general education setting by Student's request or through the intervener's reading of her body language and communication...The action will be initiated on June 22, 2022.

Parent Allegation 1: In relation to the June 17, 2022 prior written notice, the Parent's principal allegation appears to be with the timeliness of the decision made by the IEP team at the May 2022 meetings, namely to provide the Student with an ASL intervener beginning with the 2022–2023 school year. The Parent's reply read, in part:

[Parent made a request for an ASL intervener] at the December 10, 2021 IEP meeting...A Parent input document was provided to the District in preparation for the December 10, 2021 IEP meeting, clearly stating the communication (and other) needs of the Student that needed to be addressed...Not [providing] an intervener...until June 17, 2022 [resulted in a loss of educational opportunities].

Accordingly, in relation to the June 17, 2022 prior written notice, the Parent's principal allegation relates to Issue 2, whether an ASL intervener should have been added to the Student's IEP prior to June 2022. Therefore, this question will be addressed in Issue 2, below.

Parent Allegation 2: The Parent also alleged she received the June 17, 2022 prior written notice on June 30, 2022, after the date the prior written notice says it was to be initiated. Here, in its response, the District admits its provision of the June 17, 2022 prior written notice to the Parent was not timely, as per the language in the actual prior written notice.

OSPI finds that despite the fact the June 17, 2022 prior written notice stated it was to be implemented on June 22, 2022, that does not appear to have actually been the case. For example, the principal components of the May 2022 IEP—a new service matrix and the addition of an ASL intervener—were not to be implemented until the start of the 2022–2023 school year. Additionally, the documentation provided to OSPI during this investigation does not suggest the Parent was unaware, generally, of the principal decisions made as a result of the IEP development meetings. For these two reasons, OSPI does not find a violation in relation to this specific allegation.

Parent Allegation 3: The Parent alleged the May 2022 IEP was developed over the course of four IEP meetings during the 2021–2022 school year, not over the course of two IEP meetings. Even if true, without more, this does not indicate the Parent was unaware of the principal determinations made in relation to development of the May 2022 IEP, which is the core requirement for prior written notices. OSPI does not find a violation.

June 24, 2022

Parent Allegation 1: The Parent alleged the June 24, 2022 prior written notice did not capture “all titles or names” that participated in the June 10, 2022 meeting. This is not a requirement of WAC 392-172A-05010. Therefore, OSPI does not find a violation.

Parent Allegation 2: The Parent alleged, “the information provided from the collegiate director should also be listed” in the June 24, 2022 prior written notice. While it is true that a prior written notice should include “a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action,” there is no requirement that a prior written notice extensively detail most of the contents of a particular evaluation result or record. Here, the June 24, 2022 prior written notice stated the collegiate director’s information further supported providing the Student with an ASL intervener during the 2022–2023 school year, and that is sufficient. OSPI does not find a violation.

Parent Allegation 3: The June 24, 2022 prior written notice read, in part:

The District...agreed that the intervener would go through an intervener training...The Parent wanted it noted she [was] requesting the intervener be trained in a higher level university program [and] the District agreed to train the intervener at the level necessary to work in a public school setting...The Parent is requesting the intervener be able to sign and do tactile signing with Student. The District deferred any decision on this request at this time and will wait for the intervener to begin working with Student prior to revisiting the need for signing with Student.

The Parent alleged:

[At the meeting], the IEP team agreed to tactile signing [and] there [were] no stated disagreements...The director stated she was not sure how to list [the credential requirement] properly and needed to ‘work around’ union bargaining. The director agreed to tactile signing and an intervener [but] she was not sure how she was going to list it on the IEP and PWN...If the District is denying the request for the higher credentialed intervener, they need to deny the request and include why they are denying [that request] Stating they will train the intervener at the level necessary to work in a public school setting and deferring the decision until the intervener begins working with Student is not addressing Student’s unique educational needs and is nonspecific.

In terms of analysis, the documentation shows: no later than May 24, 2022, the Parent requested the Student be provided with an ASL intervener that was trained in tactile signing; during the spring 2022 meetings, whether the Student required an ASL intervener, and whether the Student required instruction and assistance in tactile form, were both discussed extensively; as a result of the spring 2022 meetings, the IEP team did determine the Student required an ASL intervener. However, emails and meeting notes are not clear as to whether the IEP team reached a decision in relation to whether the Student required an ASL intervener trained in tactile signing. In fact, in relation to this determination, the June 24, 2022 and June 7, 2022 prior written notices appear to be in conformity with one another. For example, the June 7, 2022 prior written notice read, in part, “District will continue to collect data around Student’s use of various forms of communication with the addition of the 1:1 intervener.”

In other words, as a result of the spring 2022 meetings, it appears a decision was reached that the Student required an ASL intervener, but a decision was not reached as to whether that ASL intervener needed to be trained in tactile signing, and the IEP team was going to revisit the issue of tactile signing after ASL services began during the 2022–2023 school year. Importantly, OSPI finds the June 24, 2022 prior written notice to clearly summarize the IEP team’s decision. OSPI finds no violation with respect the prior written notice. (Whether that decision was appropriate will be explored, in part, in Issue 2, below.)

Parent Allegation 4: The Parent alleged the prior written notice needed to include greater detail on her exact request, including the following, “The classroom teacher and all service providers will provide instruction material a week in advance, allowing adequate time for materials to be adapted and/or modified.”

In response to this specific allegation, OSPI notes the November 2021 evaluation report does suggest the Student would benefit, in part, from instructional visuals adapted and/or modified in response to her vision and hearing needs, and the draft IEP includes, in part, adapted instructional visuals. OSPI does not find a violation in relation to the June 24, 2022 prior written notice on this score. To the extent the Parent continues to have questions regarding the IEP team’s proposals regarding adapting and/or modifying visual materials for the Student, if the Parent were to reenroll the Student in the District in the future, OSPI recommends the IEP team further discuss this matter.

Issue 2: IEP Development – The Parent alleged the District did not follow proper IEP development procedures. Specifically, the Parent alleged an ASL intervener should have been added to the Student’s IEP prior to June 2022. More specifically, the Parent alleged the District should have created a new annual IEP for the Student in October 2021, and that this IEP should have included an American sign language intervener, because of the Student’s needs resulting from the Student’s disability.⁴ The Student’s annual IEP was due by October 27, 2021.

In terms of a timeline, OSPI notes, in part:

- A new annual IEP was not developed prior to October 27, 2021, in part, because the District’s evaluation group was completing a reevaluation of the Student. A reevaluation was completed on or about November 3, 2021. And an October 28, 2021 prior written notice read, in part, “The team decided that continuing the current IEP while completing the evaluation was the best course of action at this time. The Parent agreed by email on October 19, 2021 to continue the current IEP [until] November 29, 2021”;
- According to the Parent, two “evaluation meetings” were held in early November 2021, on November 3rd and 8th;
- On November 10, 2021, the Parent was emailed a “final copy” of the November 2021 evaluation report. And a November 10, 2021 prior written notice read, in part, “Parent declined to sign the evaluation report, citing she had a dissenting opinion which she would submit in writing to the team at a later time”;

⁴ The complaint request read, in part, “The District representative told me the District did not have the money to fund an intervener and the District was not in a hurry to complete the annual IEP because they had already reported it to OSPI that is had been closed (locked) and [was] compliant.”

- On November 24, 2021, the special education teacher emailed the Parent “a draft IEP” to be discussed at an upcoming IEP meeting scheduled for November 29, 2022, which the Parent had been invited to attend and the purpose of which was to develop a new IEP for the Student.⁵ Later on November 24, 2021, the Parents’ attorney requested an IEE based upon a disagreement with the November 2021 reevaluation;
- On December 6, 2021, the District filed a due process hearing request to defend the appropriateness of the November 2021 reevaluation (due process 1);
- On January 14, 2022, the Parent filed a due process hearing request (due process 2), disagreeing with the evaluation and alleging the District had failed to provide the Student with FAPE because it had not followed proper procedures for responding to the Student’s needs in the area of communication;
- Following the filing of the due process hearing requests, the District continued to implement the Student’s October 2022 IEP;
- On April 14, 2022, both due processes were dismissed;
- In May and June 2022, several IEP meetings were held, to develop a new annual IEP for the Student and consider the collegiate director’s observations of the Student; and,
- An August 26, 2022 prior written notice read, in part, “Parent [sent an] email on August 23, 2022 indicating an intent to unilaterally place Student outside of the District for the 2022-2023 school year. The District is proposing to continue Student’s current IEP.”

For three reasons, OSPI does not find a violation; the fact that an ASL intervener was not added to the Student’s IEP prior to June 2022 does not represent an IDEA violation.

First, the documentation provided to OSPI during this investigation show the District was diligent in working with the Parent on scheduling meetings related to reviewing the evaluation data and finalizing a new IEP for the Student, both prior to due process 1 being filed on December 6, 2021, and following due process 1 and 2 being dismissed on April 14, 2022.

Second, while a due process hearing request is pending resolution, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise. The IDEA does not define the term ‘current educational placement,’ but courts have interpreted the term to mean the type of program a student is receiving rather than a specific school or classroom. Here, then, the District was very likely obligated to continue implementation of the October 2020 IEP, the IEP that was in effect prior to due process 1 being filed. And the October 2020 IEP did not provide the Student with an ASL intervener. Additionally, the documentation does not indicate the District and Parent agreed—between December 6, 2021 through April 14, 2022—that the Student required an ASL intervener.

Third, assuming a court would find the addition of an ASL intervener between December 6, 2021 and April 14, 2022 to not have constituted a change to the Student’s ‘current educational placement,’ OSPI makes the following observations regarding the November 2021 evaluation:

- In relation to audiology, communication, vision and mobility, and assistive technology, the November 2021 evaluation appears to have been comprehensive. For example, in part: the audiology portion included detailed notes on an observation of the Student in most school

⁵ The draft IEP was dated November 29, 2021.

environments, as well as a summary of hearing and behavioral testing done in May and June 2021, respectively; the communication portion included a review of the Student's progress on communication goals, a summary of relevant medical information, and results from the 'AAC Language Lab Screener Summary' and 'Functional Communication Profile-Revised (FCP-R)' assessments; the vision and mobility portion included the results from the 'Cortical Visual Impairment Overview' assessment; and the assistive technology portion included the results from the 'Wisconsin Assistive Technology Initiative (WATI)' assessment.

- The November 2021 evaluation report included numerous recommendations for the IEP team to consider when drafting the Student's annual IEP, including, in part, that the Student: "use...a personal DM system [which is a] system [whereby] a microphone and transmitter...are worn by the person Student it to attend to and the receivers are worn in their ears"; "a clear cuing system that let's Student know who and what to attend to"; "moving Student closer to the teacher"; "student should continue to be encouraged to use her talker and adapted signs/gestures...and use of multi-modal communication systems should be modeled frequently by her team"; "provide wait time to allow for latency in visual response, especially when presenting Student with new objects"; and "enlarging print will help create more negative space, supporting visual discrimination."
- But the November 2021 evaluation report did not find the data available on the Student's needs resulting from the Student's disability clearly showed the Student needed an ASL intervener training in tactile signing. In fact, the November 2021 reevaluation report actually stated it was not clear the Student even needed an ASL intervener. For example, it read, in part, "Interveners are professionals, typically paraeducators who work under the direction of the classroom teacher, who have received specialized training to work with people who are deafblind. An intervener provides consistent one-to-one support to help the person with deaf-blindness gain access to information, facilitate communication, and promote social and emotional development. The IEP Team Discussion Guide (see attached) can be used to help Student's team determine if an intervener would be an appropriate support for her."

In sum, the available data on the Student's needs resulting from the Student's disability did not show the Student needed to be provided with an ASL intervener prior to the IEP team's decision to add this support to the IEP.⁶ For this additional reason, OSPI does not find an IDEA violation in relation to Issue 2.

Issue 3: IEP Implementation – The Parent alleged the District did not follow proper IEP implementation procedures related to the Student's IEP communication-related accommodations. Specifically, the Parent alleged, "Student is a deafblind individual who requires her mode of communication which is tactile signing by [a] higher [sic] credentialed intervener...Any time [without such a service results in Student] not...access[ing] FAPE."

A district must ensure it provides 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

⁶ While not dispositive of the issue in the instant complaint decision, OSPI does note a prior due process hearing request involving the Student (2020-SE-0149 decided on or about April 21, 2021) determined, in part, "Based on the record, then, it is concluded that the Parent has not met her burden and has not shown the Student's IEPs were unreasonable or inappropriate because the Student did not receive a 1:1 intervener to assist with communication."

child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Here, the October 2020 IEP did not provide the Student with an ALS intervener that was to utilize tactile signing. Consequently, it was not a violation of the IDEA for the District to not provide this service to the Student beginning November 2021.

Issue 4: IEP Meeting Attendance – The Parent alleged the District did not ensure proper IEP team attendance at the following meetings: May 24, May 26, and June 10, 2022.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child.

May 24, 2022

According to meeting notes included in the District's response, on May 24, 2022, the following individuals met to discuss, in part, whether the Student should be provided with an ASL intervener: collegiate director, Parent's special education advocate, Parent, SLP, special education teacher, teacher of the visually impaired, and principal. In her complaint request, the Parent alleged the following individuals were also present for the May 24, 2022 meeting: special education director and audiologist.

In determining whether the required team members were present at the May 24, 2022 meeting, OSPI notes as of May 24, 2022, the Student's October 2020 IEP was in effect, and the October 2020 IEP stated the Student did participate, to some extent, in the general education environment.

Accordingly, one of the following three situations should have taken place:

- (1) A general education teacher should have attended the May 24, 2022 IEP meeting;
- (2) If the meeting involved a modification to or discussion of a general education teacher's area of the curriculum or related services and the parties both consented in writing to the excusal of a general education teacher, then the general education teacher should have submitted written input into the development of the IEP prior to the meeting; or,
- (3) If the general education teacher's area of curriculum or related services was not going to be modified or discussed during the meeting, the Parent and District should have agreed in writing that a general education teacher's participation was not necessary and that general education team member was excused from attending the IEP meeting.

The fact that none of the foregoing, three situations took place represents a violation of the IDEA, the District failed to follow proper IEP meeting attendance procedures for the May 24, 2022 IEP meeting.

In determining an appropriate remedy, though, OSPI notes it does not appear the Student's access to FAPE was impacted by the fact a general education teacher did not attend the May 24, 2022 IEP meeting. For example, the purpose of the meeting was to determine whether an ASL "intervener" needed to be provided to the Student, shortly after the May 24, 2022 IEP meeting—on May 26, 2022—the IEP team agreed to provide the Student with an ASL intervener, but the ASL intervener was not to be provided until the start of the 2022–2023 school year. Therefore, the District will be required to provide certain staff with written guidance regarding proper IEP meeting attendance and excusal procedures.

May 26, 2022

According to a prior written notice⁷, the following individuals were present at the May 26, 2022 IEP meeting: principal, director, general education teacher, special education teacher, OT, PT, SLP, audiologist, orientation and mobility specialist, Parent, two special education advocates, and collegiate director. Meeting notes for the May 26, 2022 gathering stated the foregoing individuals were in attendance, with the exception of the director, the SLP, and the audiologist.

For the following reasons, OSPI does not find a violation in relation to attendance at the May 26, 2022 IEP meeting: it appears all of the required individuals were in attendance; to the extent the director and/or SLP was not present at the meeting but their respective involvement with the curriculum or related services was going to be discussed, both of these individuals appear to have attended the May 24, 2022 IEP meeting; during the relevant time period, District staff appear to have discussed whether the Student required an ASL intervener on no less than three occasions, including, at least in part, on May 24, May 26, and June 10, 2022. In sum, OSPI does not find an IEP team composition violation in relation to the May 26, 2022 meeting.

June 10, 2022

The Parent alleged, "according to my notes, the only people present [at the June 10, 2022 IEP meeting] were: Parent, special education advocate, director, special education teacher, options teacher, and assistant principal."

In relation to what the documentation details regarding this meeting:

- According to the District's response, the purpose of the June 10, 2022 meeting was "to discuss Student's transition from elementary school to middle school for the next school year";
- A June 24, 2022 prior written notice, detailing the June 10, 2022 meeting, read, in part, "[The purpose of the meeting was] to review the observation of Student by the collegiate director...The team decided an intervener would be a good next step and that [an] intervener would be added to the...IEP for the 2022-2023 school year";

⁷ Dated June 17, 2022.

- The emails included in the District’s response showed at least one purpose of the June 10, 2022 meeting was to discuss the collegiate director’s observation of the Student; and,
- The Parent’s complaint request included a “Notice of Meeting” that shows, in part, the June 10, 2022 meeting had originally been scheduled for June 7, 2022, and the following individuals were invited to attend the June 7, 2022 meeting: general education teacher; OT; Parent, PT; psychologist; special education teacher; SLP; director; three vision specialists; audiologist; two assistive technology specialists; and principal.

In determining whether the required team members were present at the June 10, 2022 meeting, the documentation is not clear on who attended the June 10, 2022 meeting. Still, for the following reason, OSPI does not find an IDEA violation: it appears the collegiate director’s observation of the Student reinforced the decision that had already been made at the May 24 and 26, 2022 IEP meetings, namely that the Student was to be provided an ASL intervener beginning with the 2022–2023 school year. Thus, there were no amendments to the IEP discussed or made at this meeting. In sum, OSPI does not find an IDEA violation in relation to IEP team member composition at the June 10, 2022 meeting.

Still, to the extent the Parent continues to have concerns regarding the import of the collegiate director’s observations of the Student, if the Parent reenrolls the Student in the District in the future, OSPI encourages the Student’s IEP team to address the same.

CORRECTIVE ACTIONS

By or before **February 1, 2023** and **February 8, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Dissemination of Written Guidance

By **February 8, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs)⁸, at the school that the Student was enrolled in during the 2021–2022 school year. The guidance will include examples.

Topic: IEP meeting attendance and excusal procedures (WAC 392-172A-03095).

By **February 1, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by February 3, 2023.

⁸ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

By **February 8, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. 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 26th day of January, 2023

Dr. Tania May
Assistant Superintendent of 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.)