

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-05

PROCEDURAL HISTORY

On January 24, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Lake Washington School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 27, 2020, 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 February 13, 2020, the District requested an extension of time for the submission of its response. OSPI granted the extension and requested the District submit its response by February 21, 2020.

On February 18, 2020, the District requested a second extension of time for the submission of its response. OSPI granted the extension and requested the District submit its response by February 26, 2020.

On February 26, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on February 28, 2020. OSPI invited the Parent to reply.

On March 5, 2020, OSPI requested clarifying information from the District. On March 10, 2020, OSPI received additional information from the District and forwarded that information to the Parent on March 11, 2020.

On March 10, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 11, 2020.

On March 11, 2020, OSPI requested clarifying information from the Parent and received a response the same day. On March 12, 2020, OSPI forwarded the additional information to the District.

On March 13, 2020, the Parent provide additional information, which OSPI forwarded to the District on March 16, 2020.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 25, 2019. These references are included to add context to the issues under investigation

and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2019-2020 school year?
2. Did the District follow procedures for progress monitoring and progress reporting during the 2019-2020 school year?
3. Did the District follow procedures for developing the Student's IEP, specifically with respect to addressing mastery of IEP goals?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure 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.

Progress Reporting: IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c). The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process).

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. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. 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.

Provision of Services: Special education must be provided by appropriately qualified staff. Generally, a teacher who is hired to provide special education services must hold an individual teaching certificate with a special education endorsement. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided the instruction is designed and supervised by special education certificated staff. Student progress must be monitored and evaluated by special education certificated staff. 34 CFR §300.156; WAC 392-172A-02090.

Choice of Personnel: Generally, districts have discretion in personnel decisions, such as staffing assignments or hiring. *Gellerman v. Calaveras Unified Sch. Dist.*, 37 IDELR 125 (9th Cir. 2002); see also, *In the Matter of the Clover Park School District*, OSPI Cause No. 2004-SE-0072X (WA SEA 2004).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); See also, *Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

FINDINGS OF FACT

Background

1. During the 2018-2019 school year, the Student attended a middle school in the District and was eligible for special education services under the category autism. The Student was in a sixth grade "transition program," a special education program for students with more "intensive unique needs," according to the District's response to this complaint.
2. In November 2018, the Student's annual individualized education program (IEP) was developed. The Student's IEP noted she received English language learner (ELL) services and provided the Student with goals in communication/speech language therapy, functional academics (reading, writing, and math), social/emotional, and adaptive skills (with quarterly

progress reporting). The IEP included several daily accommodations and the following specially designed instruction in the *special education setting*:

- Speech and Language Therapy: 30 minutes, twice per week (speech language pathologist (SLP))
- Adaptive Skills: 210 minutes per week (special education team¹)
- Functional Academics – Math: 215 minutes per week (special education team)
- Functional Academics – Reading: 215 minutes per week (special education team)
- Social/Emotional: 210 minutes per week (special education team)
- Functional Academics – Writing: 215 minutes per week (special education team)

The IEP also included 15 minutes a week of occupational therapy, from an occupational therapist (OT) as a related service in the special education setting. The IEP noted the Student would spend 1,140 minutes per week in the special education setting, and 33.33% of her time in the general education setting. The Student participated in a general physical education (PE) class and received special transportation.

3. On June 17, 2019, the District reported the progress the Student had made on her November 2018 IEP goals. According to the progress reporting, the Student made sufficient progress on her functional academics reading goal; mastered her functional academics writing, two social/emotional, and two adaptive skills goals; and, demonstrated progress on her two functional academics math goals and speech language goal.
4. In her reply to the District's response to this complaint, the Parent and her advocate noted the Student mastered six out of her nine IEP goals, as of June 2019. The Parent's reply stated these goals should have been updated earlier in the fall of 2019 and "the staffing challenges...may have impacted anyone being available to update [Student's] goals." The reply noted:
There was no updating of goals until the IEP annual team meeting that occurred on November 26, 2019. Though the substitute teacher...was hired in October, she did not notice that the goals that she was to be working on with [Student] had already been mastered. Not only was [Student's] education impacted by not having consistent receipt of her [specially designed instruction] by a special education teacher, she also was then subjected to a new substitute teacher who did not recommend or acknowledge [Student's] goal mastery.

2019-2020 School Year

5. During the 2019-2020 school year, the Student attended the same middle school, was in the seventh grade, and continued to be eligible for special education services under the category autism. The Student's November 2018 was in place at the start of the 2019-2020 school year.
6. The District's 2019-2020 school year began on September 3, 2019. The Student's first semester schedule was as follows:
 - Period 1: Reading
 - Period 2: Social Skills
 - Period 3: Functional English
 - Period 4: Math
 - Period 5: Cooking
 - Period 6: PE

¹ In its response, the District explained that "Special Education Team" refers to "a combination of a special education teacher and para-educators assigned to an individual student's special education program."

7. According to the District, there was an “unexpected increase in other students’ behaviors within Student’s special education program” and thus, a “separate physical space was created within [middle school] to appropriately serve all students.” The District stated, “this led to an increased logistical burden for [the Student’s case manager] and [the] other assigned special education [special education teacher 1] to have direct service minutes with Student.”

The District stated the Student’s program was supported by multiple paraeducators, and due to scheduling challenges, “prior to and during [special education teacher 2’s] addition to the program...Student’s [specially designed instruction] was delivered primarily by the program para-educators in September and October 2019.”

According to the Parent’s complaint, there were two “transition rooms at school” and the Student had class in the room upstairs. The Parent stated there was no teacher in the Student’s class from “September till the middle of October.” According to the complaint, the District failed to ensure the Student’s specially designed instruction was provided, delivered, and monitored by a certificated special education teacher.

8. In October 2019, the District hired “an additional substitute special education teacher” (special education teacher 2), who was assigned the Student as part of her case load. Special education teacher 2 began on October 2, 2019.²

According to the District’s response, the special education teacher “has a Master’s Degree in Special Education and is currently working under an emergency substitute credential, while she finishes her Washington State special education endorsement requirements.”

9. In its response to this complaint, the District stated it “had unexpected staffing challenges in the fall of 2019 that adversely impacted Student’s consistent receipt of her [specially designed instruction] from a special education teacher.” Documentation from the District indicated the staffing challenges included the need to hire another special education teacher and difficulty filling a paraeducator position. The District stated “program paraeducators continued to work directly with Student on her [specially designed instruction], as contemplated in her IEP,” but, “given the lack of consistent direct instruction from a special education teacher this fall, the District has proposed compensatory education services for Student this coming summer.”

10. On October 17, 2019, the Parent emailed the District’s director of special education (director) regarding her concerns about the Student’s educational program. The Parent stated she had not seen any of the Student’s academic work nor was the Student getting any homework, unlike the previous school year. According to the Student, during her math and reading period, she “watches youtube online with class, plays...online games or reads some simple flash online book. Sometimes she is doing a very simple worksheets, definitely below her level with no

² Other documentation in the complaint (e.g., the November 19, 2019 meeting notes) indicated special education teacher 2 had been providing instruction since week six, which would have been the week of October 7, 2019. However, the District clarified that the building confirmed October 2, 2019 was the first day for special education teacher 2.

feedback from her teacher." The Parent stated she felt the Student was not making progress and was regressing in some of her academic skills and work ethic.

11. On October 21, 2019, the director responded to the Parent's October 17, 2019 email and suggested scheduling an IEP meeting to "address these concerns in more detail with your child's educational team." The director copied the District's associate director of special services (associate director) and stated he would help support that process. The same day, the associate director responded to the Parent and offered to schedule a meeting.
12. On October 24 and 25, the associate director and Parent emailed regarding scheduling a meeting with the Parent, case manager, and associate director.
13. On October 25, 2019, the case manager also emailed the Parent to schedule the Student's annual IEP meeting.
14. On November 5, 2019, the District's first quarter ended.
15. On November 19, 2019, the Parent and Student's father met with the director, associate director, program specialist, school counselor, and case manager. According to the notes from the meeting, the Parent shared information about the Student's activities and her concerns about the Student's educational program and IEP implementation. The group discussed the Student's IEP, how related services and specially designed instruction were being provided, the Student's schedule, communication, and considerations for compensatory education. The case manager agreed with the Parent that the Student had regressed. The group also discussed the upcoming annual IEP meeting. The meeting notes included actions items, including:
 - "Need to discuss Comp Ed component."
 - "Daily schedule needs to be provided to family."
 - Case manager and special education teacher 1 "need to collaborate to ensure that data is being collected on the actual IEP goals."
 - Case manager will meet with special education teacher 2 "to have read/write goals administered during her period."
 - Program specialist will "administer the Brigance on [Student] for her core academics. This will give us a good starting point for data collection."
16. On November 26, 2019, the program specialist emailed the case manager and associate director a copy of the results of the Student's "Brigance Comprehensive Inventory of Basic Skills II" for reading, written language, and math (and later emailed the "amended results"). The program specialist stated she included the information from the inventory in the Student's present levels, and later in a second email, stated the Student's "goals will need to be adjusted to reflect the present levels" based on the "amended results."
17. On November 26, 2019 the Student's IEP team—including the Parent, a District administrator, OT, program specialist, case manager, SLP, special education teacher 2, and associate

director—met to develop the Student’s annual IEP.³ The Parent agreed to excuse the general education teacher.

The IEP noted, in the team considerations section, that the Parent had “expressed concern in regards [sic] to [Student’s] teaching and learning environment and implementation of services and goals...since the start of the school year. Parents have requested that [Student] have a specified plan in place that includes a schedule, data collection, and implementation of IEP goals.” At the meeting, according to the meeting notes included in the District’s response, the team discussed her present levels of performance, progress, goals, and schedule. At the meeting, the District’s program specialist shared the Student’s results for the “Comprehensive Inventory of Basic Skills II.” The program specialist shared that the Student was reading at a second-grade level, seemed to rush during the math assessment, and that the writing portion was not necessarily representative of what the Student knows. The Parent shared that the Student is not “responsive to the testing with a new person and different presentation” and that she was concerned the Student “is not as focused on learning and see school as fun with little demands and wants her to have more direct instruction.” The meeting notes indicated the team would schedule a meeting to review data in January.

The meeting notes also recorded the Parent’s concern that the Student be “under a SPED teacher’s care” and asked if the Student could switch teachers. The associate director stated, according to the notes, that special education teacher 2 was the special education teacher: “[special education teacher 2] is our Special Education teacher. We are providing support around her. [Teacher 2] has her master’s in SPED, she does not have the WA state certificate.” The notes also indicated: “Mom would like a SPED certified teacher. Document in [prior written notice].” The notes recorded that “compensatory services will be another conversation.”

18. The November 2019 IEP included updated present levels and new annual goals in adaptive skills, social emotional, and functional academics (reading, writing, and math), and speech language therapy.⁴ The IEP required progress reporting to be provided quarterly. The IEP

³ The first page of the Student’s IEP notes that the case manager is the primary staff contact.

⁴ The November 2018 IEP included two adaptive goals (completing a 6-step task related to a time application; independently completing activities); the November 2019 IEP included one adaptive goal (completing a 5-step tasks sequence related to opening, heading, and saving documents). The 2018 IEP included two social emotional goals (non-preferred activity or frustrating situation; initiating with peers). The 2019 IEP included one social emotional goal (self-regulation; non-preferred activity/situation). The 2018 IEP included a reading goal (reading 10 sight words) and the 2019 IEP updated the reading goal (reading 31 words in different forms common in the community). The 2018 IEP included a writing goal (form and model personal information) and the 2019 IEP included two writing goals (filling in personal information; writing the words corresponding with numbers). The 2018 IEP included two math goals (matching analog clock and schedule; 4-step addition task) and the 2019 IEP included two math goals (matching analog time to digital time; completing 6-step functional math tasks). The 2018 IEP included one speech and language goal (identifying problem/conflict and generating a solution). The 2019 IEP included three speech language goals (identifying problem/conflict, cause, and solution in a passage; describing attributes of a word; and, describing a situation in which the Student has a need and development of events).

included several daily accommodations and included the following specially designed instruction, in the *special education setting*:

- Speech and Language Therapy: 30 minutes, twice per week (SLP)
- Adaptive Skills: 210 minutes per week (special education teacher)
- Functional Academics – Math: 215 minutes per week (special education teacher)
- Functional Academics – Reading: 215 minutes per week (special education teacher)
- Social/Emotional: 210 minutes per week (special education teacher)
- Functional Academics – Writing: 215 minutes per week (special education teacher)

The IEP also included 15 minutes a week of occupational therapy as a related service in the special education setting. The IEP noted the Student would spend 1,140 minutes per week in the special education setting, and 33.33% of her time in the general education setting. The Student participated in a general PE class and received special transportation.

19. On November 26, 2019, at the IEP meeting, the District stated it provided the Parent with progress reporting on the Student's November 2018 IEP goals. The progress reporting noted the following:

- **Functional Academics – Reading:** Mastered – Student "read sight word improving functional reading skills with 90% accuracy for three days as measured by teacher collected data."
- **Functional Academics – Writing:** Progress Demonstrated – Student "cannot fill out the form with accuracy but she can fill it out when given the information as measured by teacher collection data." October 2019 OT Update: Student "is a very sweet student that is often eager to work and goes above and beyond to try and help her peers when she can. [Student] has difficulty with providing personal information from memory with a provided form to outline where to provide her name, address, grade, and phone number. When given personal information to copy, she is able to do so with minimal assistance to correct errors with letter formation and spelling when there is a visual model to refer to."
- **Functional Academics – Math:** Sufficient Progress – "Student can tell analog time by the hour and half-hour. She has regressed since the June [sic] and requires reteaching of quarter hours and five minute increments."
- **Functional Academics – Math:** Insufficient Progress – Student "can complete a 4-step addition task to add prices for 0/4 steps with independence for 3 days. [Student] has regressed since June and requires reteaching of values of dollars and coins and their corresponding values, in addition to using a calculator to add values."
- **Social/Emotional:** Insufficient Progress – Student "can use a strategy (for example: ask for a break, ask for help, calming routine) to meet her needs in 30% of opportunities. [Student] has regressed since the June [sic] and requires reteaching of emotional regulation skills."
- **Social/Emotional:** Insufficient Progress – Student "can ask to play, for a hug, to hold hands improving social/emotional skills from asking to play, for a hug, to holding hands in 10% of opportunities. [Student] has regressed since the June [sic] and requires reteaching of social skills, specifically in understanding personal space, relating to peers, and using respectful language."
- **Adaptive Skills:** Insufficient Progress – Student "can complete a 6-step task for managing accessibility for 1/6 steps independently for 1 day. [Student] has regressed since the June [sic] and requires reteaching of the skill."
- **Adaptive Skills:** Insufficient Progress – Student "independently complete an activity for 1/10 attempted trials. [Student] has regressed since the June [sic] and is continuously disrupting others and the class. She requires reteaching and a stable and predictable environment."

- **Speech and Language Therapy:** Progress Demonstrated – Student “is very close to meeting this goal of targeting her ability to use expressive reasoning while listening to brief passages. She was able to identify the problem and state at least one solution in 3/4 trials and 3/3 trials during the two most recent sessions this was targeted. When a choice of 3 possible answers is provided [Student] is consistently able to select the correct choice with greater than 80% accuracy, but not yet demonstrating this accuracy when independently generating solutions across scenarios. This goal will continue to be targeted during the next [IEP] period until the mastery criteria is met. [Student’s] receptive language continues to improve significantly. A future [IEP] goal continuing to target expressive language will be developed during the quarter [IEP] period (answering ‘why’ questions, or generating a retell/procedures).”

20. In additional information provided by the Parent and the Parent’s advocate, the Parent stated she did not receive the progress report at the IEP meeting in November.

In the Parent’s reply, the Parent and her advocate argued that “the data clearly shows that there is no data or progress monitoring until January. There is no data from September-December. There IS data from the SLP, but nothing from the [specially designed instruction] in all other areas.” The Parent’s advocate stated, in additional information, that to date (March 13, 2020), they had not received “Progress Report from November that only reflects the November 2018 annual IEP with the 4th (November 2019) progress report” and stated she “believe[d] [the District] did not do the November 2019 Progress Report.”

21. On November 27, 2019, the Parent emailed the director and associate director and asked for documentation related to the Student’s special education teacher, including: “...Proof of the Master Degree diploma of a special education teacher of a long term substitute teacher in [Student’s] classroom as well as her special endorsement and all her active teaching certificates.”

22. On December 1, 2019, the Parent emailed the case manager and asked for a copy of the Student’s updated IEP. The case manager responded, stating she was “still working on this” and that she needed “more time with [special education teacher 2] to inform her of the programming and do some modeling.”

23. On December 3, 2019, the case manager emailed the associate director and asked for coverage to work with special education teacher 2 as teacher 2 wanted the case manager to “go over the programming and model it for a couple half days or so.” The case manager asked if the program specialist could assist as well. The program specialist responded she was available to assist with training. A few days later, on December 9, 2019, the case manager emailed again, asking if they could get the training schedule because she had “yet to see anything being implemented and mom is concerned...”

24. On December 4, 2019, the associate director emailed the Parent to discuss scheduling another meeting to “continue the discussion on the IEP.”

25. On December 19, 2019, the Parent resubmitted her request for information about the special education teacher job posting and credentials as a public record request. The District

responded with a letter on December 20, 2019, stating it received the public record request on December 20, 2019, and anticipated it would be able to produce the requested documents by January 30, 2020.

26. The District was on winter break from December 23, 2019 through January 3, 2020.
27. During the week of January 13, 2020, the Student underwent testing, including "Brigance Comprehensive Inventory of Basic Skills II," in order to retest and assess her progress.
28. On January 13, 2020, the advocate emailed the associate director with additional questions, including how many minutes of the Student's specially designed instruction was provided by or monitored by the case manager. The advocate also requested additional documentation.
29. On January 14, 2020, the District updated the Student's progress reporting on two of the Student's November 2018 IEP goals. The progress reporting noted the following:
 - **Functional Academics – Reading:** Mastered – Student "read sight word list improving functional reading skills with 92% accuracy for three days as measured by teacher collected data."
 - **Functional Academics – Writing:** Progress Demonstrated – Student "cannot fill out the form with accuracy from memory. She can copy it or write it when reminded about the information by her teacher."
30. In a later email from the case manager to the associate director regarding the progress reporting, the case manager explained:

[Special education teacher 1] updated the goal from the prior IEP because the present IEP was unlocked and IEPOnline defaults to the locked IEP for progress prints. Also, [special education teacher 1] based her knowledge on general site words. [Teacher 1] also didn't need to report on the progress toward the goal altogether because she was not accountable for implementing the IEP goal, rather she was instructing a replacement English class as is the current set up. [Teacher 1] also reported the progress on an off-cycle update because she works in both [another middle school] and [Student's middle school]. [Middle school] reports progress just after quarterly report cards; therefore [sic] the first reporting cycle for the IEP goals is just now.
31. On January 16, 2020, the Parent's advocate filed a records request with the District, which the District responded to the same day. The associate director emailed the advocate records, including: The Student's reevaluations (2016, 2017, other), IEPs (2016-2019), and progress reports (September 2017, December 2017, November 2018, January 14, 2020).
32. On January 17, 2020, the advocate emailed the associate director and asked whether the January 2020 progress report was based on the November 2018 IEP, as it appeared "the data collection was on past goal that she had previously met on the 11/30/2018 IEP life cycle?" In another email, on January 17, 2020, the advocate asked the associate director to take "a look at this progress Report document" and stated she was "very concerned about it. The lack of compliance is an issue that we need to address. Concerns range from incompleteness, mastery in June and not creating new goals, etc."

33. On January 20, 2020, the associate director emailed the advocate, stating that “with regards to your last several emails, much of this information will be reviewed when we meet as an IEP team.”

34. Also, on January 20, 2020, the Parent emailed the associate director, in response to his email on December 4, 2019, about setting up a meeting to continue discussing the Student’s IEP. The Parent stated:

This meeting does not connect to IEP directly. This one was set up at our first meeting on 19th November 2019 regarding our issues about [Student’s] special needs program at [school]. We planed [sic] to discuss and evaluate:

- The changes that have been implemented in [Student’s] program and their impact for [Student’s] social/emotional and academic education.
- Daily routine reports of [Student’s] educational program that had to be implemented according to our IEP meeting discussion – daily schedule, parent communication, data checklist monitoring.⁵
- To discuss [Student’s] academic progress that had to be shown by comparing her testing results in November and January.

35. On January 24, 2020, OSPI received the Parent’s request for a special education citizen complaint investigation and opened this investigation.

36. On January 28, 2020, the District’s second quarter/first semester ended.

37. On January 29, 2020, the associate director emailed the Parent regarding scheduling the follow-up meeting. The associate director stated he knew the additional assessments had been completed, although they had been delayed because of the snow days.

The Parent responded regarding scheduling and asked if the program specialist could send her the results of the assessments.

38. Also, on January 29, 2020, the advocate emailed the associate director and asked for the progress reporting on the goals from the Student’s November 2019 IEP prior to the meeting.

39. Also, on January 29, 2020, the program specialist emailed the associate director the most recent results of the Student’s assessment using the skills inventory.

40. On January 30, 2020, the associate director emailed the advocate, responding to her questions. The associate director provided the following information, summarized in relevant part:

The following [school] staff are responsible for the delivery of [Student’s specially designed instruction] and Related Services...

- [Special education teacher 1]
- [Special education teacher 2]
- [SLP]

⁵ The District, in response to a question from the OSPI investigator, stated the daily routine reports “were a courtesy that the teacher did the previous year, but it was not continued this school year as it was not part of the IEP and staff were focused on program implementation.”

- [OT]

[Case manager] collaborates and works with [special education teacher 2] in monitoring the IEP and delivery of Specially Designed Instruction, along with participating in the IEP meetings for [Student].

[Special education teacher 2's job duties]...includes the coordination with general education staff in the implementation of [Student's] IEP. [Special education teacher 2] also develops and implements the specially designed instruction for the classes she teaches [Student].

[Special education teacher 1] collaborates with [special education teacher 2] and [case manager] in the design and implementation of her instruction with [Student] in the class she teacher [sic] her. The first semester schedule: *(See attached Schedule Template)*

- [Special education teacher 1] is providing the 215 minute/week in the area of Functional Academic (FA) in Writing
- [Special education teacher 2] is providing the following services
 - 215 minutes/week in the area of FA ~ Math
 - 215 minutes/week in the area of FA ~ Reading...
 - 210 minutes/week Social Emotional
 - 210 minutes/week Adaptive *(this class is co-taught by [teacher 2] and [case manager])*
- [SLP]
 - 30 minutes 2 times a week Speech and Language
- [OT]
 - 15 minutes 1 time a week Occupational Therapy

Paraeducators

- There are at least one to two paraeducators in each of [Student's] classes that are there to support the teacher in the delivery of specially designed instruction of all the students in each class.
- Paraeducators support the teacher and deliver [specially designed instruction] as needed by the teacher. It is determined each class period depending if there is whole group instruction and/or individualized.

[Special education teacher 2] is currently working under a substitute teaching certificate and has a master's degree in special education.

...

[Student] is enrolled in a Social Skills class each day that addresses the varying needs of students in the class. Her [specially designed instruction] is implemented during those lessons and is also reinforced during the second part of the class of her class [sic]. [Student] also participates in general education classes to work on her social skills and learn classroom norms.

41. On January 31, 2020, the program specialist emailed the associate director a compilation of the results from the two skills inventory assessments the Student took in November 2019 and January 2020.

42. On February 3, 2020, the associate director emailed the Parent the combined results of the Student's November 2019 and January 2020 skills inventory assessment.
43. On February 11, 2020, the associate director emailed the Parent and the Parent's advocate a copy of the skills inventory assessments and a copy of the November 2019 and January 31, 2020 progress reporting. The January 2020 progress reporting indicated the Student made the following progress on her November 2019 IEP goals:
- **Functional Academics – Reading (Community Access):** Sufficient Progress – "1/31/2020 [case manager/special education teacher 2]: When given 31 words in (all caps/lowercase and combination) common in the community [Student] has shown a progress of 83% when reading words aloud."
 - **Functional Academics – Writing (Personal Information):** Emerging Skill – "1/31/2020 [case manager/special education teacher 2]: [Student] can type her name, address, phone number with 90% accuracy for 3 days using a model. She capitalizes all the letters in her last name despite what is in the model and with prompting. To achieve mastery, [Student] will need to familiarize herself with varying types of forms (i.e., employee information forms, time off request forms, postal forms) in varying environments (i.e., the workplace, postal center, etc.)."
 - **Functional Academics – Writing (Words for Numbers):** Emerging Skill – "1/31/2020 [case manager/special education teacher 2]: [Student] can write words for numbers one through ten from memory but she was not able to spell eight correctly as she spelled it as eght. To continue toward mastery, [Student] will self-initiate skip counting by 10 to 100 upon request and without prompting. She will also focus on accurately spelling each value aside from ten. For example, she spells twenty as twoteen."
 - **Functional Academics – Math (Time Telling - Matching Analog):** Progress Demonstrated – "1/31/2020 [case manager/special education teacher 2]: [Student] has made substantial progress toward mastery for this goal. [Student] can illustrate digital time in analog form for five minutes accuracy with 80% accuracy with prompting support. [Student] has been given 1:1 attention when trying to answer these types of questions. [Student] can independently match time values time matching with 100% accuracy for 3 days. To achieve mastery, [Student] will focus on understanding the concept and design of time, apply the concept to understand quarter and five minutes increments."
 - **Functional Academics – Math (Calculator):** Emerging Skill – "1/31/2020 [case manager/special education teacher 2]: [Student] requires reteaching in order to work toward mastery of this goal and understands money at the basic level where she can identify bills and coins and understands their corresponding values. [Student] can use skip counting of pennies, nickels, dollars, fives, tens, and fifty to 100. She is currently working on skip counting by twenty for bills and twenty-five for quarters. [Student] can add values as requested by the teacher in varying dollar amounts, but cannot apply the same method to counting coins. For example, [Student] if she were adding \$3.00 + \$6.00 she would be able to get \$9.00 but if you were to ask what \$3.30 + \$6.00 she would not say the answer was \$9.30 she would say the answer would be \$336.00. To work toward mastery, [Student] will continue to practice skip counting and apply it to money, count coins up to one dollar and learn that their value can be less than one dollar, and write the value using the dollar symbol, decimal, and values in the ones, tenths and hundredths place."
 - **Social/Emotional (Self-Regulation):** Emerging Skill – "[Student] begins to escalate, she can respond to teacher prompting to identify her zone of dis-regulation. If she is in the yellow zone with prompting, she is able to identify reason she feels dis-regulated and understand the steps required to get back into the green zone. However, when a teacher does not notice that she is

in the yellow zone and prompt her to exhibit behaviors to return to the green zone, she quickly escalates to the red zone and begins to exhibit disruptive (loud noises), rude (remarks toward the teacher), and often immature behaviors (disobedient) to get the attention that she is seeking. [Student] is difficult to talk to and/or prompt in the red zone because she often removes herself from the class and walks away from the teacher. After time, [Student] will de-escalate herself back to the yellow zone, and at that point she is able to self reflect and understand how she felt and what she needs to do the next time to move back into the yellow zone. In sum, when escalating, [Student] can respond to teacher prompting, identifying her behavior in the yellow zone, and reviewing ensuing consequences for 40% of opportunities. This is a new skill, and while [Student] is aware that she is escalating, she struggles to revert her behavior as it accomplishes what response that she wanted."

- **Adaptive Skills (Operates Word Processor):** Sufficient Progress – "1/31/2020 [case manager/special education teacher 2]:...[Student] has shown that she is able to open up word processor, open up a new documents, save document and close the document. [Student] has difficulty remembering to put her full name, teacher name, class and date at the top of the paper. When given the chance to correct [Student] will correct the document and send it to the teacher. [Student] will only correct the document if she was told that it needed to be fixed she will not independently fix it herself."
- **Speech and Language Therapy (Expressive Reasoning):** Progress Demonstrated – "Feb 2020 – [Student] continues to work on this goal while listening to short passages with hypothetical problem solving. She is close to mastering this goal but will need to demonstrate some increased consistency with identifying the cause of the problem, often restating the problem in a new way. For example, in one passage the character forgets to zip up their backpack, runs outside and her papers fly everywhere. [Student] correctly identifies the problem and solution by stating 'she lost her paper and notebooks everywhere,' but identified the cause as 'she made a mess' instead of the correct answer 'She forgot to zip up her backpack.' During the last three speech sessions this goal was targeted she was able to identify the problem and state the solution in 3/3 trials, 3/4 trials, 4/4 trials. She was able to identify the cause of problems in 2/3 trials, 3/4 trials, and 2/4 trials. We will continue to practice this during our speech sessions until we meet the mastery criteria of 80% over two sessions."
- **Speech and Language Therapy (Describe via attributes):** Sufficient progress – "Feb 2020 – [Student] continues to demonstrate her emerging vocabulary skills during these activities. We have been selecting vocabulary terms from stories before we read them, as well as some themes for the session...[Student] is close to meeting the goal was written, labeling at least 3 attributes in 6/7 trials and 7/8 trials during two recent sessions. Additionally, she continues to require some verbal prompting around the organizations/syntax when sharing her ideas verbally so that they are in sentence form (e.g., basketball is orange, you bounce it, shoot hoops). Therefore, this activity will continue to be worked on while also continuing to support her expressive language/syntax."
- **Speech and Language Therapy (Describing Past Event):** Progress Demonstrated – "Feb 2020 – This goal has been targeted initially using 3-4 picture scenes, where [Student] is asked to describe the picture scenes using at least 4 complete sentences using temporal terms (first, next, then). The picture/visual is faded out and she is asked to attempt to retell the picture scene. During a recent session where this was proposed she was able to retell and express the sequence in complete sentences in 1/3 stories attempted. Her errors appear to be due to lack to [sic] confidence, as a lot of her attempts are 'I don't know' and wanting to revert back to the picture scene. We will continue to practice this goal during the spring semester."

44. On February 18, 2020, the Parent met with the District, including the associate director. During the meeting, the associate director proposed compensatory education for the Student. The associate director recalled that they agreed the Student's IEP team would meet again to amend the Student's goals and update the present levels; agreed that there would be weekly communication with "zones" data information and a weekly phone conversation to review communication; and agreed that quarterly progress reports would be mailed home. Also, at the meeting, the group agreed to pursue mediation to resolve this dispute. The District and Parent are scheduled to engage in mediation on March 20, 2020.

45. In her reply, the Parent and her advocate stated the meeting on February 18, 2020 was productive. However, they reported they still had concerns with special education teacher 2 serving as the Student's teacher. The reply noted:

[For] school work, communication and IEP goal monitoring, that [case manager provides] continues to be [Student's] main source of support. We do not discredit [special education teacher 2's] hard work, but the issues in regard to the quality of support that [Student] is receiving is not comparable to what [Student] receives under the monitoring by [case manager]. Daily journal, connections with parents, filing in schedule/calendar and weekly check-ins about [Student's] progress are all provided by [case manager].

The Parent and advocate noted that "[Student's] IEP states that primary contact person is [case manager] and Special Education Teacher is [case manager]. We ask that [Student's] IEP is followed by replacing the substitute teacher as [Student's] primary special education provider with [case manager]." The reply added that changing the special education teacher "per her IEP" was "not a team decision."

46. The Parent, in her reply, also included several pages from a communication journal the team began utilizing after the February 18, 2020 meeting. The notes include information about the Student's day, behaviors and expectations, assignments, her schedule, supports, social emotional instruction with special education teacher 2, speech services with the SLP, and math and adaptive instruction with the case manager. The daily journal notes were signed by various staff, including a substitute paraeducator, a paraeducator, and the case manager. The notes in the communication journal indicated the case manager and Parent had a "weekly phone meeting" set up.

In additional information from the Parent and her advocate, they stated the previous year, the case manager had communicated with the Parent. However, this year after "the school removed [case manager] as being [Student's] teacher...there was no communication" and after meeting recently the IEP team "discussed moving forward communication due to the regression, lack of communication..." The Parent stated that after the February 18, 2020 meeting, the case manager "is now...monitoring/setting [sic] up/leading daily routine/keeping connections with parents..."

47. The District, as part of its response to this complaint, provided a list of assessments and curricula used in the Student's class, examples of her daily schedule checklist (indicating which IEP goals and other classwork she worked on), daily teaching data and program checklists

(providing data on specific IEP goals), notes from speech therapy sessions, notes from occupational therapy sessions, and work samples (including works samples related to the Student's IEP goals).

CONCLUSIONS

Issue One: IEP Implementation – The Parent and Parent's advocate alleged the Student's specially designed instruction was not provided by a special education teacher. At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

September 3-October 2, 2019⁶

Here, the Student's November 2018 IEP (in place at the start of the 2019-2020 school year) required that her specially designed instruction in adaptive, functional academics (math, reading, writing), and social emotional be provided by the "special education team." The Parent, in her complaint, stated there was no teacher in the Student's class from "September till the middle of October." In its response, the District noted the "special education team" referred to a "combination of a special education teacher and para-educators assigned to an individual student's special education program." The District acknowledged that due to unexpected events and staffing challenges, there were logistical hurdles at the start of the school year that prevented the Student's case manager and the other special education teacher from having "direct service minutes with Student" to implement the November 2018 IEP. The District did state the Student's program was supported by multiple paraeducators and that in September and October 2019, the Student's specially designed instruction was delivered primarily by the program paraeducators.

Based on the Student's IEP, the Student's specially designed instruction could have been delivered by a combination of a special education teacher and paraeducators. Here, during the first five weeks of school, services were only provided by paraeducators, meaning the District failed to implement the Student's IEP as written, given that the District stated the special education team was a combination of the special education teacher and paraeducators.

Further, the Parent stated, and the District acknowledged, that the quality of the Student's services was impacted. The Parent's October 17, 2019 email to the District's director of special education (director) indicated the Student reported that during her math and reading period, she "watches youtube online with class, plays...online games or reads some simple flash online book..." The documentation provided by the District indicated the Student did still receive some amount of specially designed instruction during this period. The District admitted that the "unexpected staffing challenges in the fall of 2019...adversely impacted Student's consistent receipt of her

⁶ The Parent's complaint stated the substitute special education teacher did not start until the middle of October. However, the District provided documentation that the substitute special education teacher started on October 2, 2019.

[specially designed instruction] from a special education teacher” and offered compensatory education. The adverse impact can be seen in some of the Student’s areas of instruction based on the November 2019 progress reporting on her November 2018 IEP goals: the Student made insufficient progress on one of her math goals, her social/emotional goals, and her adaptive skills goal (the Student demonstrated progress or made sufficient progress on her other math goal, her writing goal, and her speech language therapy goals; and, the Student mastered her reading goal). Thus, OSPI finds the failure to implement the Student’s IEP as written impacted the Student’s progress and accepts the District’s proposed corrective actions: compensatory education and training on IEP implementation.

Compensatory education is an equitable remedy seeks to place the student in the same position she would have been, but for the district’s violations of the IDEA. Given this, and the fact that the Student did receive instruction, OSPI will require the District focus the compensatory education on the areas the Student failed to make progress, namely: math, social emotional, and adaptive. Between September 3 and October 2, 2019—approximately five weeks—the Student should have received the following minutes of specially designed instruction:

- Math: 1,075 minutes or 18 hours (IEP provided 215 minutes per week);
- Social Emotional: 1,050 minutes or 17.5 hours (IEP provided 210 minutes per week); and,
- Adaptive: 1,050 minutes or 17.5 hours (IEP provided 210 minutes per week).

As compensatory services provided in a 1:1 setting are generally more effective than a classroom setting and given the Student did still receive services during this time period, the District will be required to provide 1/3 the amount of time above: 6 hours each in math, social emotional, and adaptive.

After October 2, 2019

Special education must be provided by appropriately qualified staff. Specially designed instruction must be provided by and student progress must be monitored and evaluated by special education certificated staff. Other staff, including general education teachers and paraeducators, may assist in the provision of special education, provided the instruction is designed and supervised by special education certificated staff. Generally, a teacher who is hired to provide special education services must hold an individual teaching certificate with a special education endorsement. A district has discretion in personnel decisions, such as staffing assignments or hiring.

On October 2, 2019, the District hired a substitute special education teacher, who was assigned the Student as part of her case load. The substitute special education teacher has a master’s degree in special education and is working under an emergency substitute credential, while finishing her Washington state special education endorsement requirements.

The Parent continued to express concern that the Student’s specially designed instruction was not being provided, delivered, and monitored by a certificated special education teacher. The Parent made clear she wanted the Student’s instruction to be provided by the case manager (who had been the Student’s special education teacher the previous year). The Parent noted the “quality of support” the Student received from the substitute teacher was not comparable to the support

received from the case manager and gave the examples of: daily journals, connections with the Parent, filling out a schedule/calendar, and checking on progress.⁷

The Parent and her advocate argued the IEP stated the primary contact person was the case manager and that the special education teacher was listed as the case manager; and therefore, that the IEP was not being implemented. However, while the IEP does list the case manager as the "primary staff contact," the service matrix stated specially designed instruction would be provided by a speech language pathologist or a "special education teacher." The IEP does not name the special education teacher or specify that specially designed instruction would be provided only by the case manager. Thus, the fact that instruction was not provided specifically by the case manager is not a violation.

Here, the substitute special education teacher was completing her Washington state special education endorsement requirements. This means, for purposes of this analysis, the substitute teacher is similar to a general education teacher in that she can deliver specially designed instruction under the supervision of a certificated special education teacher. In this case, documentation provided by the District indicated the substitute special education teacher was being supported and supervised by the case manager (a certificated special education teacher), special education teacher 1, and the District program specialist. For example, the case manager asked the District's associate director of special education (associate director) for coverage to spend "more time" with the special education teacher to "inform her of the programming and do some modeling." A District program specialist was also available to assist with the training; although, emails indicate this took some coordinating (e.g., December 9, 2019 email from the case manager, asking about training schedule because she had "yet to see anything being implemented...") The January 2020 progress reporting indicated progress monitoring as being conducted by the substitute teacher and case manager. The District's documentation indicated the Student's specially designed instruction and services were being provided by special education teachers 1 and 2 (substitute), along with the SLP and OT, and that the case manager worked collaboratively with the substitute special education teacher to deliver specially designed instruction and participate in IEP meetings.

Overall, OSPI finds after October 2, 2019, the Student's IEP was implemented and specially designed instruction provided by a combination of special education staff, including the substitute special education teacher (supervised and supported by certificated special education staff). The Parent may prefer a different teacher; however, the District has discretion in staffing decisions. Thus, OSPI finds no violation with regarding to the staff implementing the Student's IEP.

Other IEP Implementation Concerns

The Parent also raised concerns in her complaint that the District failed to complete the Student's daily schedule and "data program checklist", per the Student's IEP. A district must ensure it

⁷ Interestingly, the examples given by the Parent are not examples of specially designed instruction, instruction related to a specific IEP goal, or accommodations listed in the Student's IEP. Instead, this documentation supports the Parent's preference for one teacher over another.

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.

Both the Student's November 2018 and November 2019 IEPs included several daily accommodations; however, a daily schedule and program checklist were not accommodations listed in the Student's IEP. The Parent's January 20, 2020 email to the associate director stated one of her concerns was that "daily routine reports" of the Student's educational program had yet to be "implemented according to our IEP meeting discussion." The District clarified to OSPI that daily routine reports were something the special education teacher provided as a courtesy the previous year, but were not a part of the IEP and were not continued during the 2019-2020 school year because staff were "focused on program implementation." Thus, it appears this is not an IEP implementation issue, as there was no provision in the IEP requiring the District to provide daily communications.

Regardless, the Parent did raise communication as a concern in meetings with the District and the District appears to be responding to the concern. Documentation provided in this investigation indicated that following a February 18, 2020 meeting, the Student's team began using a daily communication journal and is holding a weekly phone check-in meeting. Overall, OSPI finds no violation of the IDEA regarding providing daily updates. OSPI does support open communication between districts and parents, and encourages the Parent and District to continue problem solving together regarding these concerns.

Issue Two: Progress Reporting – The Parent and Parent's advocate alleged the Student's progress reporting was missing or lacking in documentation. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to parents on the student's progress toward meeting those annual goals.

Provision of Progress Reporting

Here, the Student's IEPs (November 2018 and November 2019) required the District to provide the Parent with progress reporting quarterly. The District's first quarter of the 2019-2020 school year ended on November 5, 2019. Between November 1 and 13, 2019, the District completed progress monitoring and the District stated it provided the November progress reporting to the Parent at the November 26, 2019 annual IEP meeting. The Parent stated she did not receive a copy of the progress report at the IEP meeting in November. The Parent's advocate pointed out that the only version of the progress reporting on the November IEP 2018 goals they received included progress notes from January 14, 2020, meaning they could not have received it in November 2019.⁸ Because there is no documentation that confirms the Parent received the progress report

⁸ The Parent's advocate also argued that because there is not a progress report that *only* shows the November 2019 progress reporting (i.e., a progress report without the January 14, 2020 update), this means the District did not "do the November 2019 Progress Report." This is not supported by the documentation. While the Parent may not have received the progress report document at the November 2019 IEP meeting, the documentation clearly indicates progress monitoring was conducted and progress recorded in the

in November 2019, this is a procedural violation of the IDEA. However, the November 2019 IEP and notes from the meeting indicated the team discussed the Student's present levels of performance, progress, and goals. And, the IEP included updated present levels, including updated information from the "Brigance Comprehensive Inventory of Basic Skills II" for reading, written language, and math conducted in November 2019. The IEP and meeting notes also indicated the Parent shared her concerns regarding the Student's progress.

Thus, even if the Parent did not receive the progress reporting in November 2019, she received information about progress and had the opportunity to discuss progress with the IEP team. This, combined with the fact that the Parent did later receive a copy of the November 2019 progress reporting, means no further corrective actions are required. OSPI does recommend the District review its process for ensuring that parents receive a copy of progress reporting, and recommends the District consider a log to record when and how progress reporting is provided to parents or date stamping progress reporting when mailed, emailed, provided, etc.

The District's second quarter ended on January 28, 2020, meaning the Student's second quarter progress reporting was not yet due when this complaint was filed on January 24, 2020. The District did update the progress on two of the Student's goals on January 14, 2020, although this appears to have been a mistake and likely caused some confusion.⁹ After the second quarter was over, the District emailed the Parent progress reporting on the Student's new November 2019 IEP goals. Thus, as the progress reporting was not yet due, OSPI finds the January 14, 2020 update—while confusing—was not a violation of the IDEA or State special education regulations.

Sufficiency of Progress Reporting

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals.

Here, the progress reporting provided by the District was sufficiently detailed to enable the Parent to be informed of the Student's progress. Both the November 2019 and January 2020 progress reporting include information about the status of the Student's progress (mastered, sufficient progress, insufficient progress). The progress reporting also contained additional data or narrative notes for each goal, providing information about the Student's progress or regression. The progress reporting provided information about areas in which the Student needed reteaching

progress report in November 2019. The fact that the document has information from January 2020, does not invalidate the November 2019 progress reporting.

⁹ Only the reading and writing goals were updated; however, the *November 2018 IEP* goals were updated on January 14, 2020, instead of the November 2019 IEP goals. The Student's case manager explained one of the special education teachers updated these goals despite not needing to or being the teacher responsible for progress monitoring and reporting, and despite the quarterly progress reporting not being due yet.

and, notably, the January 2020 progress reporting included helpful information about what specific areas the Student would need to work on to achieve mastery.

OSPI finds that the District provided the Parent with progress reporting as outlined in the IEP (quarterly) and that contained detailed information about the Student's progress. OSPI finds no violation.

Issue Three: IEP Development – The Parent and Parent's advocate alleged the District failed to amend the Student's IEP to update her goals when she exhibited mastery prior to the annual IEP date. 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.

June 2019

The Student's June 2019 progress reporting indicated the Student mastered her functional academics writing, two social/emotional, and two adaptive skills goals (she also made sufficient progress on her reading goal and demonstrated progress on her math and speech language goal.

Here, while the Student's IEP team could have met in June 2019 to review her IEP and address mastery of goals, there is no *requirement* in the IDEA or State special education regulations that an IEP team meet immediately to update mastered goals. Conversely, the special education regulations do specifically ask IEP teams to meet to address "any *lack* of expected progress." There is no documentation that the Parent requested an IEP meeting in June 2019. Further, there are several reasons why an IEP team may not want to immediately update mastered goals. For example, here, it was nearing the end of the school year, students can exhibit learning loss over the summer, and an IEP team reasonably may want to assess progress again when a student returns in the fall before updating goals. Or, instructional staff may want to see that a student can demonstrate consistent mastery over a period of time.

Thus, OSPI finds that it is not a violation of the IDEA that the Student's IEP team did not meet in June 2019 to address mastered goals. However, the question remains whether the District should have addressed these goals in the fall of 2019 prior to the Student's annual IEP meeting.

Fall 2019

The Parent's advocate argued that the staff challenges in the fall of 2019 "may have impacted anyone being available to updated [Student's] goals" and noted the goals were not updated until the annual IEP meeting on November 26, 2019. However, as the data shows, the Student actually showed regression in the fall of 2019 and thus, no longer showed the same mastery of goals as indicated in the June 2019 progress reporting. So, the fact that the Student continued to receive instruction and work on these goals was not problematic, given that she was no longer showing

mastery. For example, the November 2019 progress reporting indicated the following for the goals that were previously mastered:

- Functional academics writing – progress demonstrated
- Social/emotional – insufficient progress
- Adaptive skills goals – insufficient progress

By November, the Student had mastered her reading goal; continued to demonstrate progress on one of her math goals and insufficient progress on the other; and, continued to demonstrate progress on her speech language goal.

As discussed above, some of this regression was likely due to the staffing challenges and fluctuations in who was providing the Student specially designed instruction. Some regression may also be due to typical learning loss over the summer. Regardless, during the fall of 2019, the Student was exhibiting regression in some areas and progress in others, and the Parent raised concerns regarding the Student's educational program and progress.

Following an email from the Parent on October 17, 2019 regarding her concerns, the District's director of special education suggested scheduling an IEP meeting to address the concerns. After some back and forth regarding scheduling, the Parent met with school and District staff on November 19, 2019 to discuss concerns. The District agreed to conduct several assessments to assess progress in core academic areas, which the District administered in November 2019 and January 2020 (Brigance skill inventory). The Student's IEP team also met on November 26, 2019 to develop the Student's annual IEP, during which the IEP team updated the Student's goals and added additional goals in several areas, considering the Student's progress and the results of the skills inventory. Following the November 26, 2019 IEP meeting, the District continued to monitor the Student's progress (e.g., January 2020 skills inventory assessment and January 2020 progress reporting) and continued to discuss with the Parent her concerns, including meeting in February 2020. The February 18, 2020 meeting included a discussion of potentially holding another IEP meeting to amend the Student's goals and updated the present levels.

Ultimately, OSPI notes the District could potentially have met earlier in the fall to discuss the Student's progress. However, once the Parent began raising concerns, the District worked with the Parent to schedule a meeting, met and developed the Student's IEP, and continued to attempt to address the Parent's concerns. OSPI finds no violation regarding the development of the Student's IEP, including consideration of goal mastery or regression. OSPI does encourage the District to continue to be responsive to the Parent's concerns and encourages the Parent to continue addressing her concerns through the Student's IEP team, which—including the Parent—is best positioned to address concerns related to the Student's educational program.

CORRECTIVE ACTIONS

By or before **June 19, 2020, July 31, 2020, August 31, 2020, September 25, 2020, and October 9, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By **June 15, 2020**, the District will coordinate with the Parent and Student to develop a schedule for a total of 18 hours of compensatory services (6 hours each in math, social emotional, and adaptive). Services will occur in a one-on-one setting and instruction will occur outside of the District's school day and may be accessed over District breaks. Services will be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **June 19, 2020**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. Regardless of any rescheduling, the services must be completed no later than **September 30, 2020**.

The District must provide OSPI with updates on the amount of compensatory services provided to the Student by providing documentation on **July 31, 2020** and **August 31, 2020** of the compensatory services provided to the Student at those points. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **October 9, 2020**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **October 9, 2020**.

DISTRICT SPECIFIC:

By **September 18, 2020**¹⁰, the District will ensure all special education staff at the middle school receive training regarding IEP implementation, including requirements to implement IEPs as written immediately at the start of the school year. The trainer may be an employee of the District and OSPI encourages the District to work with its Educational Service District (ESD) to develop the training. The training will include examples.

By **June 19, 2020**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing training materials. By **July 31, 2020**, the District will submit a draft of the trainer's

¹⁰ In the District's response to this complaint, the District proposed conducting this training during the spring of 2020. Given the school closures, OSPI is extending the deadline to complete the training until the fall. However, if the District can and wishes to conduct the training early, it is encouraged to do so and may use remote technology to hold the training with staff.

training materials to OSPI for review. OSPI will approve the materials or provide comments by August 14, 2020 and additional dates for review, if needed.

By **September 25, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session within the required timeframe.

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

RECOMMENDATION

Given the disagreement over whether the Parent received a copy of the progress reporting in November 2019, OSPI recommends the District review its process for ensuring that parents receive progress reporting. OSPI recommends the District consider a log to record when and how progress reporting is provided to parents or date stamping progress reporting when mailed, emailed, provided, etc.

Dated this ____ day of March, 2020

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.)