

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-44

PROCEDURAL HISTORY

On March 13, 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 Kent 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 March 18, 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 March 24, 2020, OSPI received additional information from the Parent, which resulted in OSPI amending the issues in the complaint. OSPI notified the District of the amended issues on March 26, 2020.

On April 6, 2020, the District requested an extension of time to respond to this complaint, which OSPI granted and asked the District to submit its response by April 23, 2020.

On April 23, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on April 24, 2020. OSPI invited the Parent to reply.

On May 5, 2020, the Parent requested an extension of time for the submission of her reply due to closures associated with COVID-19, which OSPI determined created an exceptional circumstance that required an extension of the sixty-day timeline for completing this complaint investigation. OSPI requested the Parent submit her reply no later than May 14, 2020. The deadline for the written decision changed as a result of the extension. OSPI notified the District and Parent it would issue a written decision by May 19, 2020.

On May 15, 2020 OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on March 14, 2019, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to March 14, 2019 is mentioned for informative, background purposes only.

ISSUES

1. Did the District provide the Student with the services stated in his individualized education program (IEP) from September 23, 2019 through October 18, 2019, including physical therapy, occupational therapy, speech, and vision and social/emotional therapies?
2. Did the District follow procedures for developing and implementing the Student's IEP, regarding his need for nursing services from September 9, 2019 through October 18, 2019?¹

LEGAL STANDARDS

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

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information she provides. The district is not required, however, to adopt all recommendations proposed by a parent. The IEP team should work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to

¹ The letter sent to all parties on March 26, 2020 stated that the timeline for issue 2 was September 9, 2019 through October 18, 2020. This was a typo, as October 18, 2020 had not yet occurred. The correct timeline was October 18, 2019.

provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Informal Meetings: Each school district must provide notice to ensure that parents of students eligible for special education have the opportunity to participate in IEP meetings. However, a meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. WAC 392-172A-05001(1)(c).

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

FINDINGS OF FACT

Background

1. The Student was first enrolled in the District during the 2017-2018 school year to receive early childhood special education preschool services. The Student was eligible for special education services under the category other health impairment.²
2. In 2017, the Student was evaluated. The evaluation report recommended the Student receive special education services in the areas of communication, social/emotional, adaptive, and vision, and supplementary aids and services and related services in physical therapy and occupational therapy. The evaluation report noted the Student had a history of seizures that

² In her reply to the District's response, the Parent noted that in the Student's IEP, the disability category was listed as "health impaired," however, health impaired is not a disability category in Washington as WAC 392-172A-01035 (Child with a disability or student eligible for special education) defines the eligibility category as "other health impairment."

were treated by an anti-seizure medication, and that the District would not be responsible for administering this medication.³

3. The Student's May 2018 individualized education program (IEP) indicated the Student had an individualized health care plan, which included a section titled "Individualized Emergency Seizure Action Plan" and described procedures District staff were to follow if the Student experienced a seizure while at school.⁴
4. According to the Parent's reply, on May 29, 2019, the District sent the Student's doctor a medical form to fill out regarding the Student's needs, including nursing support. The Student's doctor returned the form to the District on June 11, 2019.
5. On June 6, 2019, the Student's IEP team met and discussed the Student's need for nursing support.⁵

Prior to the meeting, the Parent provided information via a "Pre-IEP Parent Survey," which included the Parent's belief that the Student required support from a nurse for all activities, including transportation to and from school. The Parent also wrote, "the school's plan for seizure rescue is inadequate and there must be someone available 1:1 to be the person that would administer seizure rescue meds should it become necessary."

At the meeting, the Parent requested the IEP be amended to include a full-time nurse that would be available to administer the Student's emergency seizure medication. To support this request, the Parent provided a neurology care plan from a local children's hospital, which stated "in the school setting, [a registered nurse ("RN")] or other personnel, per school policy, may administer the Emergency Medicine. If the student is on the school bus or if an

³ The Parent's reply noted that at the time of the evaluation, the Student's "Parents had not yet 'rescued' [Student] using his prescribed rescue medication for a seizure lasting more than 4 minutes, but [Student] had always had frequent and often daily absence seizures...which needed to be controlled by using increasing medication (which [Parents have] done consistently)" and which the Parent stated she and the caregivers for the Student "need to be on the watch for 'seizures requiring rescue during periods of frequent absence seizures.'"

⁴ In her reply, the Parent stated she disagreed with the health care plan and that she had requested multiple changes, which were not incorporated into the plan. The Parent provided OSPI multiple emails between her and the District discussing concerns with the health care plan and referenced these emails in her reply. However, concerns with the content of the health care plan were not raised as issues in the initial complaint and are outside the scope of this decision.

⁵ In her reply, the Parent noted that following the June 6, 2019 IEP meeting, and continuing through June and July 2019, members of the IEP team met "several times as a partial 'IEP' team—only internally with [District] employees or administrative staff—to discuss the Student's need for a nurse..." She noted that she was not included in these discussions and alleged that she accordingly was denied an opportunity to participate.

appropriate person is not available in the school, then 911 should be called and paramedic requested to give Emergency Medicine per order.”

According to the District’s response to this complaint, the IEP team discussed and was unable to agree that the Student required additional nursing services. The District’s response stated that instead, the team agreed to move forward with the Student’s existing plan and seek a clarifying recommendation from the Student’s doctor. In her reply, the Parent stated that she did not agree to move forward with the existing care plan and instead, “understood that, after leaving the meeting, and after getting the appropriate clarification from [Student’s doctor], that the [District] would then make its decision regarding the request for nursing support for the Student to begin the 2019-2020 school year.”

6. The June 6, 2019 IEP, included the following specially designed instruction and related services in a special education setting:
 - Speech Language-language, 30 minutes 6 times a month, provided by a speech language pathologist;
 - Speech Language-articulation (concurrent), 30 minutes 6 times a month, provided by a speech language pathologist;
 - Adaptative Skills, 62 minutes 4 times a week, provided by a special education teacher;
 - Social/Emotional, 61 minutes 4 times a week, provided by a special education teacher;
 - Vision Services, 20 minutes 2 times a week, provided by a vision specialist;
 - 1:1 Paraeducator Support, 960 minutes a week;
 - Occupational Therapy, 20 minutes a week, provided by an occupational therapist; and,
 - Physical Therapy, 20 minutes a week, provided by a physical therapist.
7. According to the District’s response, on June 10, 2019, the Student’s case manager and special education teacher (case manager) provided the Parent a copy of the draft IEP and prior written notice (PWN) from the June 6, 2019 IEP meeting.⁶ The PWN documented that the team had discussed the Parent’s request for full-time nursing support (both during transportation and during the school day) and had declined to provide that service in the Student’s IEP despite the Parent’s requests.⁷
8. On June 11, 2019, the District received a faxed health care order, dated June 10, 2019, from the Student’s doctor, which stated the Student needs “a full-time nurse accessible in the building and [r]equires nursing support for transportation [and] for field trips.”
9. On June 13, 2019, the Parent sent the IEP and PWN back to the case manager with edits, including clerical changes and a request that the PWN be revised to specify that the Parent requested the full time nurse because “school policy requires a nurse to administer prescription medicine (rather than the district making an exception to the policy to train his

⁶ In her reply to the District’s response, the Parent stated she received the draft IEP on June 11, 2019.

⁷ In her reply, the Parent stated she never agreed to the PWN and therefore “submits that the 2019-2020 IEP for the Student was never finalized prior to the October 2, 2019 ‘amendment meeting’ because the IEP team (which includes the Parent) did not agree on the document” (emphasis in original).

paraprofessional to administer the emergency medication)." The District noted in its response that the Parent had "previously suggested training and authorizing the Student's paraprofessional to administer the emergency medication. She was informed that this was prohibited by District [policy]..." The Parent also requested that the IEP be changed so that instead of stating, "medications will not be given at school," it would read "daily seizure maintenance medications will not be given at school."

10. According to the District's response, the case manager and principal reviewed the Parent's requests and incorporated clerical changes. They determined that "substantive changes not previously agreed to would require an IEP amendment meeting."⁸
11. On June 17, 2019, the District sent the Parent a finalized version of the IEP. The Parent emailed that she did not agree with the IEP because it did not incorporate her requested changes, including those regarding nursing services.
12. On June 18, 2019, the director of nursing emailed the assistant director of health services and program specialist to ask if they could meet prior to the next IEP meeting, and preferably within the following week, to review next steps. In response to the email, a meeting was scheduled for June 20, 2019. In her reply, the Parent expressed frustration that the director of nursing's email was sent the day after the deadline to finalize the Student's IEP following the June 6, 2019 IEP meeting.⁹
13. On June 20, 2019, the director of nursing, assistant director of health services, and program specialist met. In her reply, the Parent stated that she believed she should have been included in this meeting, along with other members of the Student's IEP team.
14. On June 21, 2019, the program specialist responded to the Parent and let her know they would need to have an IEP meeting to discuss the doctor's June 10, 2019 recommendations, and proposed meeting at the end of August.
15. On June 25, 2019, the District's assistant director of inclusive education (assistant director), replied to the Parent's June 21, 2019 email and offered to have a phone call to discuss the plan for the Student's 2019-2020 placement. According to the District's response, the Parent declined a phone call and stated she would follow up in writing. In the Parent's reply, the Parent stated she asked for a written description of the District's plan in lieu of a phone call. The Parent wrote that the "requested written description of the 'plan'" was "never provided to [her], other than a cursory statement that the Student was projected to attend [school] **with nursing support.**" (emphasis in original).

⁸ In her reply, the Parent expressed frustration that these issues were not discussed at the June 6, 2019 IEP meeting and noted that the District already had the requested information from the Student's doctor and that there continued to be delays in moving forward with deciding about nursing services.

⁹ June 17, 2019 was listed as the last day to finalize the Student's IEP.

16. On July 6, 2019, the Parent emailed the assistant director and requested a copy of the Student's current IEP, which she indicated should include all of her requested changes. The assistant director responded and provided a copy of the June 2019 IEP and informed the Parent that they would need to schedule an IEP meeting to discuss additional changes.¹⁰
17. On July 8, 2019, the Parent emailed the assistant director, program director, director of nursing, and other District staff to request the District schedule an IEP meeting when school was back in session. Specifically, the Parent requested the District "...plan for a meeting when the district staff is back in session, at the earliest possible opportunity, and with no further delay by the district."

2019-2020 School Year

18. The District's first day of school was September 9, 2019.
19. At the start of the 2019-2020 school year, the Student continued to be eligible for special education services under the category of other health impairment and attended a District preschool. At that time, the Student's June 2019 IEP was in effect.¹¹
20. On September 9, 2019, the assistant director emailed the Parent to inform her that the District was working on staffing a nurse at the Student's preschool and to assign temporarily to the Student's bus while working through the IEP process.
21. On Friday, September 20, 2019, the Parent's attorney emailed the District and stated the Parent was pulling the Student out of school until additional nursing services were provided.¹² In response, the District's attorney contacted the Parent's attorney and stated the District would be willing to provide the Student in-home instruction for 1.5 hours a day, 2-3 days per week until full-time nursing support was arranged. The District's response noted this offer did not include at-home occupational therapy, speech services, or vision services. The Parent's attorney accepted the offer on behalf of the Parent.
22. The Student stopped attending school, effective Monday, September 23, 2019.

¹⁰ In her reply to the District's response, the Parent wrote that she disagreed with the District's assertion that an IEP meeting was necessary to amend the IEP. The Parent wrote that she believed it was used to delay adding nursing services to the Student's IEP.

¹¹ The Parent stated in her reply that she did not believe the June 2019 IEP was in effect at the commencement of the 2019-2020 school year because she did not agree with the PWN following the June 6, 2019 IEP meeting.

¹² The District's response noted the Student had attended eight days of school at that point, and that the Student's regular schedule had him attending school Monday, Tuesday, Thursday, and Friday of each week.

23. Between September 25 and October 18, 2019, the District's home school tutor provided 810 minutes of home instruction.¹³ The District stated the tutor was also "made available for an additional 90 minute scheduled session that did not occur because the Student was unable to attend."
24. On October 2, 2019, the Student's IEP team met.¹⁴ At the meeting, the team reviewed the doctor's June 2019 guidance and the team agreed that, "for the purpose of administering emergency medications, the District would provide a nurse to accompany the Student on the bus to and from school and to be present in the school building at all times while the Student was in attendance."

The October 2019 IEP included the following specially designed instruction and related services in the special education setting:

- Speech Language-language, 30 minutes 6 times a month, provided by a speech language pathologist;
- Speech Language-articulation (concurrent), 30 minutes 6 times a month, provided by a speech language pathologist;
- Adaptative Skills, 62 minutes 4 times a week, provided by a special education teacher;
- Social/Emotional, 61 minutes 4 times a week, provided by a special education teacher;
- Vision Services, 20 minutes 2 times a week, provided by a vision specialist;
- 1:1 Paraeducator Support (related service), 960 minutes a week;
- Nurse Support, 800 minutes a week;
- Occupational Therapy, 20 minutes a week, provided by an occupational therapist; and,
- Physical Therapy, 20 minutes a week, provided by a physical therapist.

25. On October 7, 2019, the District provided the Parent a finalized copy of the amended IEP and the PWN.
26. On October 10, 2019, the District offered a nurse the position to support the Student in accordance with the agreement made at the October 2, 2019 IEP meeting.
27. On October 21, 2019, the nurse began working in the District, which according to the District was the earliest she could begin working due to her schedule.
28. Also, on October 21, 2019, the Student resumed attending school in the District.¹⁵

¹³ In response to the District's statement that "[b]etween September 25 an October 18, 2019, [District] provided 810 minutes of home instruction," the Parent stated that "due to the 'shenanigans' of [tutor], the Student not only missed out on the opportunity to attend school with his peers, but [tutor's] odd behavior during the time she was involved with the Student and 'homeschooling' him, only added to the injustice of the whole situation."

¹⁴ According to the District's response, the home school tutor and vision specialist were excused from this meeting via oral agreement at the start of the meeting and the Parent later signed an excusal form.

¹⁵ In her reply, the Parent noted the Student began receiving nursing services on October 23, 2019, and that this was four months and twelve days after she had notified the District of the Student's need for nursing

29. On October 22, 2019, the Parent's attorney emailed the District attorney to request compensatory education services for the "services [Student] missed during the first few weeks of school."
30. On December 6, 2019, the District's attorney emailed the Parent's attorney an initial offer of compensatory services—1,050 minutes of compensatory services. The Parent declined.
31. In February 2020, the Parent raised the issue of compensatory services again and a meeting was scheduled for March 24, 2020 to discuss the District's new offer of "1,220 minutes of instruction, which represented the total minutes of services missed by the Student during the time he was absent from school."
32. In its response to this complaint, the District reiterated its offer of compensatory services to make up for the services the Student was not provided while out of school. The District offered the following minutes, "equal to the minutes the Student would have received had the Student attended school from September 23 to October 18, 2019, minus the instructional minutes the District provided via at-home tutoring."
 - 420 minutes of adaptive instruction;
 - 420 minutes of social emotional instruction;
 - 120 minutes of SLP;
 - 80 minutes of OT (as a related service);
 - 60 minutes of physical therapy (as a related services); and,
 - 120 minutes of vision services.
33. The District offered to hold the March 24, 2020 meeting via videoconference because an in-person meeting could not be held due to school facility closures caused by coronavirus-related school facility closures. The Parent declined a videoconference and requested the meeting be postponed until a meeting could occur in person.
34. On May 15, 2020, the Parent submitted her reply to the District's response. In her reply, she expressed concerns that the compensatory education offered by the District thus far had only been offered in the form of "extended day programming," which the Parent indicated was not appropriate due to the nature of the Student's disabilities.¹⁶ The Parent instead requested the District provide the Student with "extended year learning services through the summer months."¹⁷

services on June 11, 2020—which was when the District received the clarifying information from the Student's doctor.

¹⁶ In her reply to the District's response, the Parent wrote that she requested any compensatory services be provided during the summer months, "as that is what would work best for the Student to tolerate and be successful in his learning and growth and progress towards goals."

¹⁷ It was unclear from the Parent's reply if she was requesting extended school year (ESY) services. OSPI notes that compensatory services are different from ESY services. While both may be provided during summer months, ESY services are offered for recoupment of skills for students whose IEP teams determine

CONCLUSIONS

Issue 1: Implementation of Services – The Parent alleged the District failed to provide the Student with the services provided in his individualized education program (IEP) from September 23, 2019 through October 18, 2019, including physical therapy, speech, vision, and social/emotional therapies.

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. 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.

On September 23, 2019, the Parent removed the Student from school because the District was unable to provide nursing services in accordance with a letter dated June 10, 2019 from the Student's doctor, indicating the Student required nursing during transportation and when on school grounds in order to attend school. In its response, the District acknowledged that from September 23-October 18, 2019, while it provided the Student with instruction, it did not provide the Student with the supplementary aids and related services in his IEP, including physical therapy, speech, vision, adaptive behavior, and social/emotional therapy. In October 2019, the Parent's attorney first requested compensatory services for the services not provided during the first week of school. In December 2019, the District made an initial offering for compensatory services, which the Parent declined. In February 2020, the Parent again raised the issue of compensatory services. In response, in March 2020, the District made a second offer for compensatory services at a rate of 1,220 minutes, which was equal to the number of minutes of services the Student did not receive in the fall. The District offered to hold an IEP meeting by March 24, 2020, to discuss the compensatory services. Due to the current coronavirus outbreak, the District offered to hold the IEP meeting by phone. The Parent requested to wait until the IEP meeting could be held in person and then filed a state complaint with OSPI. In her reply, the Parent noted that one of the reasons she has been declining compensatory services is because they have only been offered to the Student in the form of an extended day, which she believes is inappropriate for the Student due to the nature of his multiple disabilities and specific needs.

OSPI finds the District to be in violation for not implementing the Student's IEP from September 23-October 18, 2019 and accepts the District's offer to provide compensatory services at the rate offered in March 2020. OSPI requires the schedule for the compensatory services to take in consideration the Student's unique needs so that the Student is able to receive the intended benefit of the compensatory services.

require it to prevent regression; whereas compensatory services are provided to students who have been denied a free appropriate public education (FAPE).

Issue 2: Nursing Services – The Parent alleged the District did not follow procedures for developing and implementing the Student’s IEP regarding his need for nursing services from September 9, 2019 through October 18, 2019.

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. 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 IEP must contain a statement of the related services to be provided to the student. If the student requires a health plan to receive a free appropriate public education (FAPE), the health plan should be included in the IEP.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. Parents must be provided sufficient notice to be afforded an opportunity to participate in IEP meetings. However, an IEP meeting does not include informal conversations involving district personnel that may include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting, or a meeting to regarding the coordination of service provision. The IEP team should work toward consensus; however, the district has the ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district’s refusal and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing or seeking other administrative remedies. Thus, an IEP may still be appropriately developed even if the parents disagree with it.

The initial IEP must be implemented as soon as possible after it is developed. Changes to an IEP after the annual IEP meeting must be done at an IEP team meeting, unless the district and parent agree to amend the IEP without a meeting. Districts must ensure that each staff member working with the student is informed of their specific responsibilities related to implementing the IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

On June 6, 2019, the Student’s IEP team, including the Parent, convened to review the Student’s IEP. At the meeting, the IEP team considered the information provided by the Parent on a pre-IEP survey she filled out, and information provided in a letter from the Student’s doctor, which stated school staff “may” administer emergency seizure medication to the Student and provided staff with a protocol for contacting emergency medical services if a school nurse was not present to administer the medication. At the meeting, the IEP team developed the Student’s IEP and did not include nursing services. Following the IEP meeting, the Parent was provided with PWN and a copy of the IEP. There is documentation that District staff also met informally after the June 6,

2019 meeting and may have discussed the Student and other issues, but they were not IEP meetings and there were no changes made to any of the Student's documents as a result of these meetings, and accordingly, there was no requirement that the Parent be invited to these meetings.

On June 10, 2019, the Parent received updated guidance from the Student's doctor, which clarified that the Student required a nurse to be present on school grounds and during transportation to be able to dispense the Student's medication. The Parent provided the letter to the District the following day. The District stated it required an IEP meeting to amend the IEP, and to review and discuss the updated recommendations, asserting that the full IEP team had to meet to make substantive changes to the IEP. In her reply, the Parent stated she disagreed with the District's statement that an IEP team meeting was required to amend the IEP. While the IEP team could have amended the IEP without a meeting had both the Parent and District agreed to the amendment, the District is not required to amend the IEP without a meeting if it is not also in agreement. In response to the District's request that an IEP meeting be held to review the updated information, the Parent agreed to meet after the summer break.

School for the District began on September 9, 2019. The Parent removed the Student on September 20, 2019. The Student's IEP team met on October 1, 2019, to review the documents and agreed to amend the Student's IEP to add nursing services as originally requested by the Parent on June 6, 2019. The District began trying to fill the position immediately, but was unable to staff a full-time nurse until October 21, 2019, at which point the Student returned to school.

At the commencement of the 2019-2020 school year, the Student's June 2019 IEP—which did not include nursing services—was in effect and was being implemented. In her response, the Parent asserted the June 2019 IEP was not in effect because she did not agree to it. However, there is no requirement that a parent agree with an IEP in order for it to be in effect. Once the District met on October 1, 2019 and amended the Student's IEP to include nursing services, the District immediately began working to obtain nursing services necessary for the Student to attend school. By October 23, 2019, the District was implementing the Student's amended IEP. While the District was unable to implement the October 2019 IEP exactly as written for 18 days, the District provided home instruction to the Student for the time the Student was unable to attend school, and has offered 1,220 minutes of compensatory services for the services it was unable to provide the Student in the home. Thus, the initial discrepancy between the services provided to the Student during the first few weeks of school as the District obtained a nurse for the Student and what was indicated on the Student's IEP appears to have been rectified by the District's provision of home instruction and subsequent offering of compensatory services. No further corrective actions are ordered other than the compensatory instruction already ordered.

OSPI recommends, however, that in the future, if the District learns at the end of the school year of the possible need for skilled nursing services for the following school year, that it communicate with the Parent during the summer months to clarify any needs that may require amendment to the Student's IEP and additional staffing for the following school year. This may help to prevent gaps in services, like those which occurred here.

CORRECTIVE ACTIONS

By or before **June 12, 2020** and **October 2, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **June 5, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 7 hours of specially designed instruction in social/emotional instruction; 7 hours of instruction in adaptive instruction; 2 hours of speech language pathology; 1.5 hours in occupational therapy; 1 hour of physical therapy; and 2 hours of vision services.

The compensatory services will occur in a one-on-one setting and be provided by a certified special education teacher, physical therapist, occupational therapist, or speech language pathologist. The District is required to work with the Parent to develop a schedule for providing the services. The schedule must take into consideration the Student's unique needs and the District must offer services at times that will enable the Student to obtain the intended benefit of the services. The provision of services will occur outside of the District's school day and may be provided on breaks, during weekends, and over the summer in order to accommodate the Student's needs. Services may be provided online, if both the Parent and District believe it is appropriate.

By or before **June 12, 2020**, the District will provide OSPI with documentation of the schedule for services.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 25, 2020**, including those needing to be rescheduled.*

No later than **October 2, 2020**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District 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 provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **October 2, 2020**.

DISTRICT SPECIFIC:

None.

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

Dated this ____ day of May, 2020

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-720

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.)