

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-60

PROCEDURAL HISTORY

On May 20, 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 Puyallup School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 20, 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 May 28, 2020, the District requested an extension of time for the submission of its response due to circumstances created by COVID-19. On May 29, 2020, OSPI granted the District's request and requested the District submit its response no later than June 16, 2020.

On June 16, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on June 17, 2020. OSPI invited the Parent to reply.

On July 7, 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 May 21, 2019. Any information included from events prior to May 21, 2019 is mentioned for informative, background purposes only.

ISSUES

1. Did the District follow procedures regarding the development and implementation of the Student's individualized education program (IEP), including specially designed instruction (SDI) and the implementation of accommodations and modifications from the commencement of the 2019-2020 school year on September 4, 2019, through May 20, 2020?¹

¹ In the Parents' reply to the District's response, submitted on July 7, 2020, the Parents clarified that their complaint did not include the Spring trimester. The Parents wrote, "To clarify, our complaint does not include the Spring trimester, during the school closure. In fact, the instruction provided by the substitute teacher...was excellent. I was able to provide [specially designed instruction] at home, and the only services that were absent were effective social and emotional strategies during class Zoom sessions." Accordingly, this complaint covers the span of time from September 4, 2019 through March 13, 2020 (the end of the second (winter) trimester).

2. Did the District follow procedures for progress monitoring and providing the Parent with progress reporting as indicated in the Student's IEP from September 4, 2019 through May 20, 2020?²

LEGAL STANDARDS

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 individualized education program (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 they provide. 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 provide the student with a free appropriate public education (FAPE). 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).

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 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. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

² See footnote 1.

"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).

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. *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). 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).

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, the Student was eligible for special education under the category of autism, was in the fourth grade, and attended a District elementary school. The Student was in the QUEST program—a program serving highly capable students.
2. On February 26, 2019, the Student's individualized education program (IEP) team convened for his annual review. The meeting was attended by the Parents, speech language pathologist, District representative, special education teacher, and general education teacher from elementary school 1. The team identified the Student's present levels of performance and reported the Student continued to present with a communication delay, difficulties with social-emotional and social communication skills, and anxiety. The team developed an annual social-emotional goal, which focused on improving the Student's social communication skills. The Student's IEP indicated he would spend 96.2% of his time in the general education setting and provided the Student with the following specially designed instruction and related services:
 - Social-emotional, 20 minutes weekly, to be provided by the special education teacher in the general education setting;
 - Social-emotional, 30 minutes weekly, to be provided by the special education teacher in the special education setting;
 - Speech-language therapy (as a related service),³ 25 minutes, 6 times monthly, to be provided by the speech-language pathologist in the special education setting; and,

³ The Student's February 2019 IEP stated that "Speech-Language services will be designed to support [Student's] communication skills as they progress toward his social-emotional goals of improved cooperative learning and self-awareness. Our emphasis will be on learning and practicing effective communication skills such as using speech strategies to improve the clarity of his speech so others can understand him. Specific skills will include using an age appropriate habitual vocal pitch, clear articulation

- Speech-language collaboration (as a related service), 10 minutes monthly, to be provided by the speech-language pathologist in the special education setting.

The Student's IEP team provided the Student with several accommodations, including:

- Preferential seating;
- Access to alternative testing environment (during SBA testing);
- Access to teacher directed movement breaks (when off-task or appearing "bored");
- Check with student for understanding;
- Consider speech articulation errors when interpreting oral reading fluency scores;
- Extra time (1.5 times longer for timed math and writing tasks);
- Positive reinforcement system;
- Provide untimed option for math drills;
- Use of a move and sit cushion; and,
- When communication breaks down, discretely provide feedback about Student's vocal pitch, date of speech/and or speech articulation skills to assist him in clarifying his meaning.

The Student's IEP additionally included the following modifications:

- Access/use of 3-5 min warning about emergency drills (during emergency drills);
- Access/use of word processor/computer (for long writing assignments);
- Access/use of quiet space;
- Preferential seating;
- Writing assignments sent home (daily);
- Alternative options for oral presentations (as needed);
- Opportunity to do timed math tests out loud (as needed); and,
- Test setting: (Quiet area to complete work).

3. On May 7, 2019, the District sent the Parents notice that an IEP team meeting had been scheduled for May 13, 2019 for the purpose of sharing information with the Student's private applied behavior analysis (ABA)/board certified behavior analysis (BCBA) therapist, as requested by the Parents. The Parents responded the same day that they could attend.
4. On May 13, 2019, the Student's IEP team met to discuss his transition to a new elementary school (elementary school 2) for the 2019-2020 school year, as the QUEST program was changing school sites. Participants at the IEP meeting included the Parents, general education and special education teacher from elementary school 1, general education and special education teacher from elementary school 2, speech therapist, Student's private ABA therapist, and principal. According to the District's response, at the IEP meeting, the team requested information from the Student's private ABA therapist and the Parents regarding ways to support the Student's transition. The Parents requested the IEP team develop a work completion goal related to keyboarding and a goal for recognizing personal space violations. The Parents additionally requested the team revise the Student's social-emotional goal to focus on specific behaviors, including helping the Student understand when he needed to respond to an adult or peer and some appropriate things to say when he was asked a question

of speech sounds, and using a moderate rate of speech. Please refer to the Social-Emotional Present Levels of Performance section of this IEP for details regarding his skills in these areas."

or if he did not feel like responding. The IEP team agreed to amend the Student's IEP to reflect the Parents' requests.

5. On May 13, 2019, the District issued prior written notice (PWN), which stated that during the IEP meeting, an observation by the private ABA therapist was used to inform the team's decision, as well as relevant information collected by the ABA therapist, input from the classroom teacher, and information related to IEP progress. The PWN documented the Parents' requests for the IEP to be amended.
6. On May 16, 2019, the District issued a second PWN, which documented that the IEP had been amended without an additional meeting, per the discussion which began at the May 13, 2019 IEP meeting. Specifically, the Student's IEP was amended to reflect a revised social-emotional goal focusing on recognizing and respecting others' personal space⁴ and to add a social emotional goal which focused on work completion using electronic means.⁵ The IEP team agreed that goal progress reports would be provided to the Parents each trimester.

2019-2020 School Year

7. The District's first day of school for the 2019-2020 school year was September 4, 2019.⁶
8. At the commencement of the 2019-2020 school year, the Student continued to be eligible for special education under the category of autism, was in the fifth grade, and attended a District elementary school (school 2) where he continued to be enrolled in the QUEST program for highly capable students. At that time, the Student's May 2019 IEP was in effect.
9. On September 6, 2019, one of the Student's Parents emailed the special education teacher to remind her that emergency drills (particularly lock downs) caused the Student extreme anxiety. She noted that during much of 2nd grade, the Student would refuse to go into the building until the principal promised him there would be no drills that day and that it was crucial the Student only be given a five-minute notice prior to a drill.

⁴ Social-emotional goal one (personal space/redirection) stated: "By 03/03/2020, when given verbal or non-verbal reminders about being in someone's personal space without permission [Student] will respond by correcting the behavior improving responses to redirection from correcting the behavior with adult support less than 50% of the time to correcting the behavior with adult support at least 75% of the time as measured by teacher observations and reporting."

⁵ Social-emotional goal two (work completion) stated: "By 03/03/2020, when given specific steps for completing a written task [Student] will complete all of the steps of the task using word processing or other electronic means improving in class work completion of written tasks from independently completing writing tasks in-class from less than 50% of the time to independently completing writing tasks in-class at least 70% of the time as measured by teacher observation and independently completed classroom work."

⁶ Multiple documents included with the District's response showed the Student's IEP at a glance was printed off and provided to all teachers and staff during August/September 2019.

10. Also, on September 6, 2019, the special education teacher replied to the Parent's email that teachers are aware the day of a drill that it is going to happen, but often do not know the time. The special education teacher stated she did not see why she could not tell the Student a drill was going to happen that day but said she would speak with the principal. The Parent responded that at the Student's previous school, the principal would call the teacher about five minutes before the drill. She recalled a day the previous year when the general education teacher informed the Student's class the morning of a drill and that the Student was "immediately in tears and could not calm down the entire day." The Student's other Parent also emailed and explained that if the Student was informed of the drill any more than five minutes in advance, he would perseverate on it for days.
11. On September 9, 2019, the District sent the Parents notice that an IEP meeting had been scheduled for October 23, 2019 to amend the Student's IEP goals and accommodations. The Parents responded the same day that they could attend.
12. Also, on September 9, 2019, the general education teacher and one of the Parents exchanged emails regarding the Student's performance in class that day. The general education teacher explained the Student had been off task during an assignment on the computer. The Parent said she spoke with the Student who told her he had not understood directions. The Parent reminded the general education teacher of the Student's accommodation to check for understanding. The general education teacher responded that she did not believe the Student was being defiant and was notifying the Parents only to find a "rhythm" and solicit any feedback they might have.
13. On September 11, 2019, one Parent emailed the general education teacher, alleging the District did not implement accommodations in the Student's IEP that week related to notifying him of emergency drills, which resulted in the Student being unable to attend school due to anxiety. He wrote, "Since the accommodations in [Student's] IEP concerning emergency drills were not followed this week, we have hit a road block. [Student] has had nightmares and difficulty sleeping the past two nights since you told the class about the drills. He is unable to overcome his anxiety to come to school today. We tried everything we could."
14. Also, on September 11, 2019, the special education teacher forwarded the Parent's email to the education specialist and director and stated, "I'm not sure how we didn't follow the IEP. It says in accommodations to notify him of drills 3-5 min in advance." The director wrote back that it would be discussed at the upcoming IEP meeting and asked the special education teacher to follow up with the Student's previous school to see if they did anything differently to help the Student.
15. On September 13, 2019, the general education teacher and one Parent exchanged emails regarding protocol for emergency drills. The Parent explained that at the Student's previous school, they had one drill each month. She noted that prior to September 10, 2019, the Student had never experienced two drills in the same day and that while the Student was learning to cope with an emergency drill when given a five minute warning, he had expressed he cannot handle multiple drills and more than a five minute warning.

16. On September 15, 2019, the Parents exchanged emails with the special education teacher regarding their notes on language for proposed goals in the draft IEP and accommodations. The Parents additionally provided an agenda, indicated they would require 10-20 minutes per item, and stated the Student's private ABA therapist would be attending. They requested the special education teacher provide feedback on their comments included in the email prior to the IEP meeting.
17. On September 18, 2019, the Student's IEP team met to discuss the Student's annual goals and school emergency drills, including fire drills.⁷ The meeting was attended by the Parents, speech-language pathologist, District representative, special education teacher, general education teacher, and education specialist. The team agreed to the Parents' requests to develop three new IEP goals and to report on goal progress on a monthly basis.

These goals included:

- **Social-emotional (sustain, complete):** "When given a non-preferred academic task [Student] will sustain and complete the task (using the strategies of positive reinforcement, asking for help, checklist, first/then, calming strategies) improving social-emotional/work skills from 33% sustaining task, 43% completed task with cuing to 90% sustaining task, 90% completed task with cuing as measured by data collection, observation."
- **Social-emotional (adult interaction):** "By 03/03/2020, when given a new or familiar adult [Student] will respond appropriately to an adult asking his name, what he is working on, or how are you questions. Strategies to use nonverbal (nonverbal gestures, writing), telling a familiar person and having them share etc. improving social-emotional skill from 2 out of 5 given opportunities as measured by data collection, observation;" and,
- **Social-emotional (personal space):** "When given verbal or non-verbal reminder about being in someone's personal space without permission [Student] will respond by correcting the behavior. Strategies include written response, providing wait time to think, and verbal response improving social/emotional skills from an average score of 1.5 to an average score of 3...as measured by teacher observation and/or data collection."⁸

The team additionally agreed to the Parents' request to amend the accommodations and modifications on the Student's IEP. The following accommodations and modifications were added:

- Positive reinforcement system that is individualized to Student's preferences;
- Provide clarification and additional detailed instructions (when off task or appearing 'bored');

⁷ Notes from the September 18, 2019 meeting stated the Student was told about the fire drill two days before the drill instead of 3-5 minutes, as indicated in his IEP. According to the notes, the teacher was going over the procedures because they were going to be different from the previous drill. The teacher reported the Student participated and did not shut down. The Parent reported the Student experienced great anxiety.

⁸ Per the Student's IEP, rating scale is as follows: 1 = "well below expectation; with an observation cue [Student] does not acknowledge nor attempt to repair the error;" 2 = "Skill is emerging; with an observation cue [Student] apologizes but doesn't rectify the problem or ask if the person is okay;" 3 = "Meet expectations; with an observation cue ('Oops, I see you knocked Kevin's water bottle off the table') he does a repair (e.g. 'Sorry Kevin' and picks up the water bottle);" 4 = "Exceeds expectations; without reminders he apologizes and does a repair if he gets in someone's space."

- When unable to get appropriate verbal response from Student, offer the opportunity for him to respond in writing;
- Access/use of word prediction software;
- Optional/alternative participation in presentations and performances due to anxiety (as needed); and,
- Adaptation of activities requiring fine motor skills.

The following modifications were removed:

- Writing assignments sent home (daily); and,
- Alternative options for oral presentations (as needed),

The team agreed to reconvene to finalize the Student's IEP amendment.

18. On September 24, 2019, the Parents emailed the general education teacher to request clarity regarding the Student's work and progress in the general education teacher's class. The Parents noted that they believed more emphasis needed to be given towards the Student's new IEP goal regarding initiating, sustaining, and completing non-preferred activities. The general education teacher responded to the Parent's concerns and indicated that she found the Student to be communicating effectively with her in class.
19. From September 2019 through January 10, 2020, according to a statement by the special education teacher included with the District's response, the Student received specially designed instruction two times weekly for 60 minutes for social emotional, and 60 minutes monthly for "organization (planner)." According to the special education teacher, the Student received specially designed instruction in the general education setting in a 1:1 setting to target initiating/sustaining/competing academic tasks and to assist with organization of his materials and desk. Her statement also indicated that the Student received accommodations, including "teacher proximity, reinforcement, visuals, nonverbal cues, check list of tasks, break down materials into manageable parts." She added that at the start of each lesson, there was a review of expectations and a review of tasks on the Student's task list.⁹ Regarding the methodology of the instruction provided, the special education teacher stated she would use "how to ask for help, work first/then___ statements," helped to increase stamina and duration of task by providing high reinforcement with high frequency with intentional fading, taught the Student "how to interact with peers (wave, say their name to get attention, ask them to join, active listening with on topic response, etc.)" And, at the end of the day, there was a daily check out, ensuring "planner completion," which the special education teacher assisted the Student in completing.
20. On October 1, 2019, the special education teacher exchanged emails with the general education teacher regarding collecting data on the Student's personal space goal for the upcoming IEP meeting. The special education teacher asked the general education teacher if she required more data collection sheets, to which the general education teacher responded

⁹ The District's response included copies of task lists completed by the Student with assistance from his teachers. The task list included stars next to items the Student had successfully completed.

that she had not been using them because they did not encompass the “normal day” and because there was only one instance where the Student had invaded someone’s personal space, and “Other than that [Student] has been fine.”

21. On October 8, 2019, the Parent spoke with the Student’s music teacher over the phone regarding the Student’s performance in his class. According to the Parents’ complaint, the music teacher had requested the Student try to play the ukulele and the Student had refused. The Parent informed the music teacher that fine motor tasks were difficult for the Student due to his autism and that the Student experienced significant performance anxiety. She requested an alternative way for the Student to demonstrate what he was learning other than playing the ukulele in class and performing. According to the Parent, the music teacher insisted the Student continue to try to play the ukulele. The Parent also asked if the music teacher was aware of the Student’s IEP and accommodations. According to the Parent, the music teacher stated he said he was not, to which the Parent responded that she would send the IEP to him.
22. On October 23, 2019, the Student’s IEP team met to finalize the Student’s IEP amendment. At the meeting, the team updated the Student’s present levels of educational performance and reported on his progress on his IEP goals. The team finalized three new social-emotional goals that addressed the areas of sustaining and completing academic tasks, appropriately interacting with new or familiar adults, and appropriately responding when given verbal or non-verbal reminders about being in someone’s personal space. The Parent additionally requested the team develop a rubric for monitoring the Student’s personal space goal that the Parent provided. The team also amended the Student’s accommodations and modifications in response to the Parent’s request. The Student’s IEP was further amended to provide the Student with the following amount of specially designed instruction:
 - Social-emotional, 60 minutes weekly, to be provided in the general education setting by a special education teacher;
 - Social-emotional, 60 minutes monthly, to be provided by a special education teacher in the special education setting;
 - Speech-language therapy (as a related service), 60 minutes monthly, to be provided by a speech-language pathologist in the general education setting; and,
 - Speech-language collaboration (as a related service), 10 minutes monthly in the special education setting.
23. Also, on October 23, 2019, the District issued PWN that reflected what occurred at both the September 18 and October 23, 2019 meetings. It stated that on September 18, 2019, the IEP team met to develop the Student’s IEP, and that at that meeting, the team discussed three new goals and agreed to a data collection process whereby the “case manager will report progress on goals on a monthly basis through scanning and emailing data to parents.” The PWN documented the changes and additions to accommodations and modifications agreed to by the team and noted that the private ABA therapist wanted to conduct a classroom observation, which the PWN stated the education specialist had agreed to set up. The PWN further indicated the private ABA therapist would be sending her functional behavioral analysis (FBA) to the school’s board certified behavioral analyst (BCBA) and that the team “discussed emergency drills and making [Student] aware only 3-5 minutes in advance...” The PWN noted

that no options were considered and rejected on September 18, 2019, and that the team met again on October 23, 2019 to discuss the draft IEP provided on September 18, 2019. The PWN indicated that on October 23, 2019, the IEP team rejected a proposal for 25 minutes six times monthly of speech, but noted that "speech is a related service and the IEP team determined that [Student] would benefit being in general education as much as possible...Speech [would be provided] to support presentations and collaboration with peers in the general education setting." The PWN also indicated the team considered and accepted the following: adding "strategies" to goals, agreeing that the "IEP at a glance" would be provided to specialists and the general education teacher, accepting use of a preference assessment to create a menu of reinforcement, and adding 60 minutes monthly of specially designed instruction in social/emotional.

24. On November 6, 2019, one of the Parents emailed the Student's music teacher to summarize the conversation she had with him on October 8, 2019 regarding the Student's performance in class, the Parent's request that the Student be provided an alternative format to demonstrate what he had learned in class, including "reading and researching the specific content being studied in class, and demonstrating his knowledge through written work such as a report or test," and the music teacher's insistence that the Student try to learn to play the ukulele. The email stated the Student's IEP was discussed and that the music teacher stated he was aware of the IEP but not of the details. The Parent wrote that she had attached it to the email and asked that the music teacher make sure he understood the accommodations that pertained to music class. The Parent asked the music teacher to respond to the email with what of any accommodations he was using during music class and how they were working, what issues he was having with the Student participating, and if there were any performances that month or the next (specifically during assemblies or holiday musicals).
25. On November 15, 2019, the music teacher responded to the Parent's email that the last time the Student had been in his class, the Student was doing "fairly okay," and that they were "gearing up for a winter performance." He wrote that the performance was optional, though highly encouraged and not part of grading. He also wrote that he had not had time to implement the Student's accommodations because he had not seen the Student in class since the previous Monday.
26. On November 19, 2019, the special education teacher emailed the Parents that on December 10, 2019, the students would be running through all emergency drills with parents present. She noted there would be a practice of all drills done individually prior to that day by classroom.
27. A data sheet documenting the Student's daily performance on his goals was kept for November 2019 with entries made on November 7, 12, 14, 19, 21, and 22. For the sustaining attention and completing task goal (sustaining/completing), the data sheet documented whether the Student did or did not meet his goal that day. The personal space goal was recorded as a "yes or no" goal on the goal sheet, but a rubric of 1-4 was also included and it was noted on the form that the score was to be based on a scoring system of 1-4, with 1 being "well below expectation" and 4 being "exceeds expectations." The adult interaction goal

reported on an interaction the Student had with an adult and noted whether the interaction was positive or negative. Narrative comments were provided regarding the Student's performance on all goals.

28. On December 1, 2019, the principal reminded staff that "Parent Safety Drill day" (drill day) was scheduled for December 10, 2019. The general education teacher emailed the special education teacher to ask what the plan was for the Student. The special education teacher responded that the Student should practice the drills on the practice day like the rest of the class, but noted a Parent informed the school the Student would not attend the morning of drill day. The principal responded and asked the special education teacher to keep the Student with her for 10 minutes while the other students practiced safety drills later that week because he was not going to be present on drill day.
29. On December 3, 2019, the students were scheduled to practice for drill day. One of the Parents emailed the special education and general education teachers that the Student was continuing to have anxiety regarding the upcoming practice drills. He asked that they check in with the Student. The special education teacher responded that she was originally going to have the Student be in her room for the drill, but that she would go to the classroom to assist the Student instead. The general education teacher responded with, "Today is just a practice." The other Parent responded to the general education teacher that "To clarify, a ***practice*** drill is still very much a source of anxiety" (emphasis in original).
30. On December 3, 2019, the Student's teachers collected data on the Student's performance on his goals and added the data to the data collected in September to inform them how the Student was progressing on his IEP goals.
31. On December 11, 2019, the special education teacher emailed the November/December progress report and data sheets to the Parents. The Parents requested the data collection sheets for September and October, which they said were used to determine the original baseline for the goals. On the progress report provided, the Student's teachers reported that the Student was able to speak with appropriate volume and articulation in class and that all listeners could understand him. The report additionally indicated the Student had made progress on sustaining and completing academic tasks, responding appropriately to new or unfamiliar adults, and responding to verbal or non-verbal cues about being in someone's personal space without permission.

In an email response to the special education teacher the same day, one of the Parents clarified his understanding that data on progress for the goal on correcting behavior in response to a reminder about personal space should only be collected when the Student is in someone else's personal space. He wrote:

On 8 observed sessions, [Student] remained in his own personal space without adult intervention 87.5% of the opportunities. The goal requires use of the 4 level ratings of each occurrence as documented on page 4 [of Student's IEP] under present levels of

performance. So for this one instance reported where he was in someone's space, the level of his response (1-4) should be reported.¹⁰

32. On December 13, 2019, the Parents emailed the music teacher to ask for an update on the Student's performance in preparation for the next IEP meeting.
33. On December 19, 2019, the Student's IEP team met in response to the Parents' request to discuss the Student's progress and data, and to determine next steps. The Parents, general education teacher, private ABA therapist, special education teacher, education specialist, director of special education, and speech therapist attended. The team agreed to develop a positive behavior support plan for the Student and to realign data reporting forms to reflect the Student's IEP goals. The team also agreed to initiate a functional behavioral assessment (FBA); to model and coach positive behavior supports in the classroom; and to support the Student with organization and note taking strategies.
34. On December 19, 2019, the District issued PWN, documenting the team considerations and agreements.
35. On December 20, 2019, the director emailed the IEP team members a reminder of the tasks each had agreed to at the December 19, 2019 IEP meeting.
36. The District's response included meeting notes from January 9, 2020, which were kept by the director. The notes indicated the Parent was concerned the teachers "do not seem to have a clear grasp of IEP and contents, specifically initiate & sustain," and that strategies in the IEP were not being used. The notes stated the Parent was concerned the Student was not completing his work, but indicated the general education teacher had met with the special education teacher and school psychologist and had been in the resource room classroom several times that year and did not notice the Student being off-task. The notes documented that the director and Parent discussed the need for clear instructions for homework and assignments, direct instruction and detailed lesson plans, increased daily feedback and the need to immediately address behaviors, and for the feedback to be Student specific.
37. On January 6, 2020, the District's education specialist emailed the general education teacher to schedule time to meet the next day to discuss strategies for supporting the Student and improving communication with the Parents.
38. On January 7, 2020, the general education teacher met with the principal to discuss what steps needed to be implemented to "further support academic, social and behavioral growth" of the Student. The email outlined that the general education teacher would provide detailed directions for all assignments in class and at home, implement positive behavior supports,

¹⁰ In the complaint filed with OSPI, the Parents wrote that they believed the District reported the Student as having made more progress than he had on his personal space goal during September and October 2019 because they believed the District included data from when the Student was not in someone's personal space instead of recording data for how the Student responded and self-corrected when in someone else's personal space. In the District's response, the District asserted that data was collected correctly.

including addressing any inappropriate behavior demonstrated by the Student right when it occurred, providing positive feedback, and following a designated behavior plan designed by the team. The email also indicated the general education teacher would utilize a communication log daily and weekly that would outline two positive behaviors exhibited by the Student during the day and highlight one area of improvement based on the Student's behavior that day.¹¹

39. On January 9, 2020, the director emailed the special education teacher and principal an updated version of the "classroom/parent communication form," which she stated would also be used for IEP goal data collection. According to the director, the intention was to measure progress on IEP goals while also allowing for the special education teacher to see if the Student was transferring skills across all education settings. The director asked the special education teacher to review with and explain to the general education teacher the following day.
40. On January 9, 2020, the speech and language provider emailed the Parents work the Student had been completing with her on pitch and intonation.
41. On January 13, 2020, the education specialist emailed the Parent that the special education teacher would be pulling out the Student so she could work with him 1:1 to organize his one note and design a way to hold him accountable with maintaining organization. She also stated they received the preference assessment from him and created a menu for reinforcement/items and would introduce the menu and expectations with him the following day.
42. From January 13 through March 3, 2020, according to a statement by the special education teacher included with the District's response, the Student received specially designed instruction two times weekly for 60 minutes for social emotional, and 60 minutes monthly for "organization (planner)." According to the special education teacher, "[specially designed instruction] was provided in the resource classroom (small group) target of initiate, sustain, and completion of academic classwork, organization of materials in binder," and the Student received accommodations, including "teacher proximity, reinforcement, visuals, nonverbal cues, check list of tasks, break down materials into manageable parts." She added that at the start of each lesson, there was a review of expectations and a review of tasks on the list. Regarding the methodology of the instruction, she would use "how to ask for help, work first/then___, increase stamina and duration of task by providing high reinforcement with high frequency with intentional fading, organization of binder and completion of planner (AVID), teach how to interact with peers (wave, say their name to get attention, ask them to join, active listening with on topic response, etc.)" During the daily check out, the special education teacher did planner completion and binder organization tasks with the Student.

¹¹ It is noted that there seemed to be confusion regarding whether the Student was supposed to fill this out, whether the special education teacher was supposed to complete this with the Student, or if the special education or general education teacher was to complete these questions. There is no documentation in the IEP regarding how these questions on the data sheets were to be answered.

43. On January 20, 2020, the Parents emailed the music teacher, noting they never heard a response from him the previous month and would like a response with feedback on the use of IEP accommodations in music class.
44. On January 21, 2020, the music teacher emailed the Parents that the Student had been participating in music class and following classroom expectations. He indicated that no accommodations had been necessary.
45. Also, on January 21, 2020, the education specialist emailed the special education teacher and general education teacher a positive response plan template. The same day, the director emailed the special education teacher and general education teacher and asked that they meet with the education specialist to develop a positive behavior support plan (PBSP) "using strategies outlined in [Student's] IEP, strategies that are utilized in the classroom and through the use of motivators identified in the survey..."
46. On January 21, 2020, one of the Parents emailed the general education teacher and director with concerns regarding how the general education teacher was gathering data. One of the Parents stated he believed the general education teacher was creating a "tally" of problems without describing what interventions she was using, and was not checking in with the Student at the end of the day to have him respond to the two positive things he did and one thing he could improve upon, but instead was filling out the answers herself. The Parent also expressed concerns that data was being collected incorrectly, specifically opining the data for the sustaining and completing academic tasks was incorrectly being collected during preferred activities, that information regarding personal space issues were being collected when there had not been an issue, and that there had not been data collected on the Student's response to unfamiliar adults. The Parent provided a revised data checklist, which he suggested the District use instead.
47. On January 22, 2020, the director responded to the Parent's emails and noted there were aspects of the Parent's proposed forms she liked but that she would also like to discuss when particular interventions should be used. She informed the Parents the general education and special education teachers would be meeting to delve deeper into the data tracking and expectations and that they could discuss further at the upcoming IEP meeting the following week.
48. Also, on January 22, 2020, the Parent responded and requested the District take immediate action to implement the new forms he provided.
49. Later, on January 22, 2020, the special education teacher, general education teacher, and educational specialist developed a positive behavior support plan and agreed to consider the data tracking forms provided by the Parent.
50. On January 23, 2020, the District issued notice to the Parents that it was proposing to complete a reevaluation of the Student.

51. On January 27, 2020, the Student's IEP team met again. The IEP team agreed to use new data reporting forms, to continue supporting the Student's organization of classroom materials, and to use a daily task list of activities for the Student to complete in the general education classroom. The team additionally discussed and clarified the Student's IEP goals. The team reviewed the Student's positive behavior support plan and added the use of a visual component to the 'off task' behavior response protocol. The Parents initially requested one-on-one support for the Student, but withdrew their request during the meeting.
52. On January 27, 2020, the District issued PWN, stating the Parents initially requested a one-on-one, but rejected the consideration due to progress in the academic setting.
53. On January 31, 2020, the District completed¹² a progress report for the Student. According to the progress report, the Student was making sufficient progress on all goals, (sustaining the task 79% and competing the task 68% of the observed occasions; responding appropriately with familiar and unfamiliar adults using either verbal or non-verbal communication 71% of the time, 5 out of 7 opportunities); and was in someone's personal space on five occasions, and corrected himself on average with a score of 2.4).
54. During January 2020, the Student's teachers collected performance data on his IEP goals on the following dates: January 10, 13, 14, 15, 16, 17, 21, 22, 23, 24 27, and 28, 2020. Data on goals was collected similarly to how it had been, except the data sheet was changed to reflect the period in which the data was being collected and included information regarding what the Student did well and what he was working on improving that day.
55. On February 18, 2020, the District sent the Parent notice that a meeting had been scheduled for February 19, 2020 to review evaluation reports and discuss the results of the FBA. The Parent was contacted by phone the same day and confirmed she could attend.
56. Also, on February 18, 2020, the Parent emailed the special education teacher regarding his concerns about progress reporting. He explained that the Parents had not received a copy of the progress reports every month, as agreed to at previous IEP meetings, and that they had only received one progress report that year, dated 12/10/2019. He added that report data on the adult interaction goal had not been sent home for over two months. Regarding the personal space goal and sustain/complete goal, the Parent wrote that he did not believe data on these goals were being collected properly. Regarding the sustain/complete goals, he noted that the IEP team agreed that math and writing were non-preferred tasks, not reading. Regarding the personal space goal, he wrote:

Please remember that the point of this goal is to help [Student] learn to, with only a simple cue or reminder, to apologize and rectify with the offended party when he has personal space issues. The reported values all appear to be higher than should be based on rating definitions, giving an inflated perspective on actual progress. Of the 6 measurements with the latest reporting sheet, 2 were reported as 4 (exceeds expectations) although several

¹² Although the District's response included a progress report from January 2020, documentation showed it was not provided to the Parents until March 2020.

interventions were noted. A rating of 4, by definition, is without reminders. The other 4 of 6 each seem to be rated too highly based on the information provided and feedback from [Student].

57. On February 19, 2020, the District completed a reevaluation of the Student and held a reevaluation meeting. The Parents, school psychologist, special education teacher, education specialist, director of special education, general education (QUEST) teacher, and speech language pathologist attended the meeting. The reevaluation included a review of existing data, general education teacher report,¹³ Student observation, and assessments in the areas of academics, communication, social-emotional, and adaptive behavior. The reevaluation additionally included information obtained from the Parent, who reported concerns with the Student's written expression and social functioning. The evaluation further stated the Student had previously been attending ABA therapy for seven hours a week and was currently receiving it for one hour a week. It also noted the Parent reported the Student was no longer receiving outside occupational therapy or speech, and that the Parents found the Student to be showing improvement in articulation, self-advocacy, and self-care. The evaluation team concluded the Student exhibited deficits in his social-emotional abilities, study skills, and written expression. The team additionally noted the Student's expressive and receptive skills were in the average range, but his articulation skills were below average. The evaluation team accordingly determined the Student met the eligibility criteria for special education services under the disability category of autism and recommended he receive specially designed instruction in social-emotional, study-skills, and written expression, along with speech-language services to address deficits in articulation and self-monitoring of speech and intelligibility.
58. Also, on February 19, 2020, the District completed an FBA for the Student. The FBA identified the Student's "target behavior" as distracting behaviors, such as talking to peers/blurting out, poking/bumping/kicking peers, grabbing peers' clothes/backpacks, waving items in faces/gesturing, wandering, loud refusals, and whining. The FBA included a summary of data collected, previously implemented interventions, a description of the setting in which the behaviors occurred (during academic demands, when the teacher is talking, during transitions, and during activities that involve less adult or peer attention), a hypothesis about why they occurred ("[Student] has a diagnosis of Autism which may effect [sic] his self-regulation, self-management, attention and organizational skills. Transitions from home to school can also contribute"), and recommendations for the IEP team.
59. On February 19, 2020, the District issued PWN, stating the District was proposing to continue to qualify the Student for special education services as a student who meets criteria under the eligibility category of autism and that the Student would receive services in social-emotional learning, study skills, written expression, and communication as a related-service.

¹³ As part of the general education report, the general education teacher reported providing the following accommodations in the classroom: "modify daily assignments, extra time for tests, special seating arrangements, reviews individually with teacher."

60. During the month of February 2020, the Student's teachers collected data on the Student's sustaining and competing tasks and personal space goals. Data was collected on February 3, 4, 5, 6, 7, 10, 18, 21, 24, 25, 26, and 27, 2020. The February data collection sheets provided space to document the Student's performance at 30-minute intervals and included a placeholder to provide a narrative statement regarding the specific expectations of the Student during that 30-minute interval.
61. The District provided documentation of task lists completed by the Student and teacher during February 2020 as part of the Student's specially designed instruction in study skills. Task lists were completed by the teachers on February 3, 5, 6, 7, 10, 18, 20, 21, 24, 25, 26, and 27, 2020.
62. On March 2, 2020, the District sent the Parent notice that an IEP meeting had been scheduled for March 11, 2020 to review the Student's current IEP and make a team decision regarding whether the Student required a behavioral intervention plan (BIP). The Parent responded that she would be able to attend.
63. On March 2-3, 2020, the District collected data on the Student's IEP goals per the same daily goal reporting sheet used in February 2020.
64. On March 9, 2020, the special education teacher emailed the progress reports with data from January and February 2020 to the Parent. She wrote that "This is the data on the last IEP, not the drafted one, as a meeting has not been held to reflect any new goals or data."
65. Also, on March 9, 2020, one of the Parents emailed the special education teacher and stated the District continued to be out of compliance with the Student's IEP requirements because it was not providing monthly data on the Student's goals. He wrote that the Parents had not received any progress reports since December 2019, and requested the backlogged reports immediately.
66. On March 11, 2020, the Student's IEP team met to develop a new IEP for the Student. The Parents, speech-language pathologist, District representative, special education teacher, general education teacher, Student's private BCBA, and District's behavior analyst attended the meeting. The team identified the Student's present levels of educational performance and areas of need, as indicated in the Student's reevaluation. The team then developed new goals, including new goals in written expression, which it determined would be reported monthly, with the exception of study skill goals, which were to be reported by the 10th of each month.

The March 2020 IEP indicated the Student would spend 79.8% of his time in the general education setting and provided the Student with the following specially designed instruction and related services:

- Written expression, 30 minutes, 5 times weekly, to be provided by a special education teacher in the special education setting;
- Study skills, 30 minutes 5 times weekly, to be provided by a special education teacher in the special education setting;
- Social-emotional, 35 minutes, 5 times weekly, to be provided by a special education teacher in the special education setting;

- Speech-language therapy, 60 minutes monthly, to be provided by a speech-language pathologist in the general education setting; and,
- Speech-language collaboration, to be provided by a speech-language pathologist in the general education setting.

The March 2020 IEP added the following accommodations:¹⁴

- Break work into manageable parts
- Check for understanding by asking open ended questions
- Explicit instruction on what Student needs to finish within a designated time (task list)
- Student directed movement breaks
- Use of organizational tools (graphic organizer and note template)

The March 2020 IEP removed all modifications, except the following:

- Access/use of 3-5 minute warning about emergency drills (no sooner or later) with ability to participate in a preferred task following the drill (during emergency drill); and,
- Preferential seating (ask Student to read a word on the board)

The Student's IEP team additionally reviewed the results of the Student's FBA. Based on the results of the FBA, the IEP team agreed to develop a behavioral intervention plan (BIP) for the Student.

67. On or around March 2, 2020, the general education teacher resigned. A substitute teacher began providing instruction (general education teacher 2).
68. On March 12, 2020, the Washington State Governor issued a proclamation, requiring mandatory closure of all school facilities in Washington State. The Governor subsequently extended the mandatory closures through the end of the 2019-2020 school year. During the school closures, special education teacher 2 became the main classroom teacher for the Student.
69. On March 13, 2020, the District issued PWN that the Student was evaluated and found eligible for specially designed instruction in written expression. The PWN additionally stated the team accepted a goal on writing sentences, adjusted the organizational goal, accepted SLP to support the social emotional goal on pro social comments, and accepted a daily recording sheet/checklist for math and writing assignments, accepted collecting data on "inappropriate touching inside the instructional settings (classrooms)." The PWN added that specially designed instruction will "continue on the goal, behavioral analyst will collect data on this for

¹⁴ According to notes from the March 11, 2020 IEP meeting, the education specialist reported the Student was making a lot of errors and reporting frustrations with the dictation software. The SLP suggested taking an audio recording of thoughts for writing for the Student to go back and listen to. Keyboarding without tears was suggested by the BCBA. The notes stated the District had other programs available. It was also noted that the Parents expressed concern that the accommodations were not being used in the classroom and that the Student had not met any of his IEP goals. The IEP team agreed to modify the Student's goals per the Parents' request. The notes further stated the Parents had reported concerns that the District was not implementing the IEP and that the Parents were exploring private school options for the student. The administrator explained that specially designed instruction would still be offered.

BIP..." The PWN also documented the agreement that a BIP would be developed and that data would be collected once a month for 30 minutes of "percent of opportunities in general education. More frequently data will be collected in resource." The PWN also noted that it was agreed that progress report would be provided by the 10th of the month.

70. On March 13, 2020, the second trimester for the District ended.

71. On March 16-18, 2020, the District was closed due to COVID-19.

72. On May 20, 2020, the Parent filed this complaint.

73. On July 7, 2020, the Parents filed a reply to the District's response to their complaint. In their reply, the Parents clarified that they did not have any concerns after the end of the second trimester on March 13, 2020, and that they found distance learning provided during the school closure by the substitute teacher to go well for the Student. However, due to concerns experienced by the Parents prior to the school closure, the Parents wrote that they would be withdrawing the Student from the District for the 2020-2021 school year.

CONCLUSIONS

Issue 1: IEP Development and Implementation – The Parents alleged the District failed to follow procedures regarding the development and implementation of the Student's individualized education program (IEP), including specially designed instruction, and the implementation of accommodations and modifications from the commencement of the 2019-2020 school year on September 4, 2019 through March 13, 2020. Specifically, in their complaint, the Parents alleged the District did not follow procedures for considering their input when developing the IEP, did not implement the specially designed instruction, and did not implement accommodations and modifications (including a positive reinforcement system, checklists/detailed instructions, a 3-5 minute warning prior to emergency drills, alternative testing environment during STAR testing, and accommodations and modifications during music class).

IEP Development

A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. Among other things, the IEP team must consider the concerns of the parents when developing 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. 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. 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 provide the student with a free appropriate public education (FAPE). 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.

Documentation provided by the District and Parents showed that while the Parents did not always agree with the contents of the IEP, they were active participants in its development and many of their requests were incorporated into the IEP. The District ensured the Parents were able to attend and participate in all IEP meetings. It provided the Parents with timely notice of all meetings and scheduled the meetings at mutually agreeable times and places. It also accommodated the schedule of the Student's private BCBA therapist, who attended and participated in most of the IEP meetings. The Parents were provided draft IEPs prior to IEP meetings, which they reviewed and offered feedback on. Their feedback was used to develop agendas for IEP meetings, informed the development of IEP goals, and on more than on occasion, resulted in new accommodations or modifications being added to the Student's IEP. The Parents additionally participated in determining the data collection method upon which goal progress would be measured and gave input on or designed the instrument used by teachers to collect data to measure progress on IEP goals. While the Parents expressed concern that the District improperly or inefficiently implemented their recommendations, the District followed procedures for developing the IEP, including considering the Parent's input. OSPI finds no violation.

IEP Implementation

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A district must ensure it provides all services in a student's IEP and implements all accommodations and modifications, consistent with the student's needs as described in that IEP. 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. 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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP.

A) Specially Designed Instruction:

The Parent alleged the District did not implement the Student's specially designed instruction. The Student's February 2019 IEP (amended May 2019) provided the Student with 20 minutes weekly of specially designed instruction in social-emotional to be provided by a special education teacher in the general education setting and 30 minutes monthly to be provided by a special education teacher in a special education setting. According to the May 2019 IEP amendment, the specially designed instruction was intended assist the Student in meeting his IEP goals related to personal space and work completion. In September 2019, the amount of specially designed instruction provided to the Student remained the same, but the Student's IEP goals were amended

to clarify that specially designed instruction was to assist the Student with his goals in sustaining and completing non-preferred academic tasks, responding appropriately to adult interactions, and to responding appropriately to peers when given “verbal or non-verbal reminders about being in someone’s personal space without permission.” In October 2019, the Student’s IEP was amended to increase the specially designed instruction in social-emotional to 60 minutes per week, to be provided by a special education teacher in the general education setting and 60 minutes per month, to be provided by a special education teacher in the special education setting.

From September 2019 through January 2020, the special education teacher recalled providing the Student specially designed instruction 120 minutes weekly (60 minutes twice weekly) for social-emotional and 60 minutes monthly for organization. This was more specially designed instruction than provided in the Student’s IEP. However, because it appears the additional specially designed instruction was being provided to the Student in the general education setting (and not as pull out), the inconsistencies with the Student’s IEP does not appear to have been material. Documentation—including a statement by special education teacher and work samples included with the District’s response—showed that while in the general education classroom, the Student received individualized 1:1 instruction in social-emotional in the areas of “target initiating/sustaining/completing academic tasks” and in organization (for example, instruction in how to organize items on his desk). When describing the methodology used, the Special education teacher indicated she addressed the Student’s need for clear communication/directions, verbal cues and redirection as noted in his IEP, and targeted the Student’s IEP goals of sustaining and completing non-preferred academic tasks. For example, the special education teacher stated she would use “how to ask for help,” and “work first/then” statements and “helped to increase [Student’s] stamina and duration of task by providing high reinforcement with high frequency with intentional fading.” The special education teacher additionally described providing specially designed instruction to the Student regarding how to interact appropriately with peers (“wave, say their name to get attention, ask to join, active listening with on topic response, etc.”), which targeted the Student’s communication and social needs as documented in the Student’s IEP as being necessary for implementation of IEP goals involving appropriate peer interaction. At the end of each day, the Student reviewed a check list of his activities with the teacher to ensure planner completion to improve organization planning needs.

From January through March 2020, the methodology and content of the specially designed instruction received by the Student was similar, with the exception that instead of being provided instruction individually by a special education teacher in the general education setting for 60 minutes twice weekly, the Student was pulled out by the education specialist to receive his specially designed instruction in social-behavior in the area of organization in the resource room (special education setting) twice weekly for 60 minutes. The documentation showed the Student also received 60 minutes of specially designed instruction monthly in social-emotional in the special education setting. The Student’s IEP indicated the Student was to receive specially designed instruction for 60 minutes weekly in the general education setting and 60 minutes monthly in the special education setting. Although the Parents were notified of this change by email and did not express disagreement, OSPI notes that the change increased the amount of

time the Student was receiving specially designed instruction in the special education from 60 minutes monthly to 120 minutes weekly, which resulted in a decrease in the amount of time the Student was spending in the general education setting. Furthermore, according to the special education teacher's statement, the time the Student spent receiving specially designed instruction in the resource room focused on providing instruction in the area of organization. While the Student's evaluation and IEP noted his need for specially designed instruction in the area of social-emotional to assist with organization, it also indicated the Student required specially designed instruction in the general education setting to assist with initiating/sustaining non-preferred academic tasks and with appropriately navigating peer and adult interactions, which were likely to occur in the general education setting. The District did not follow procedures to amend the Student's IEP to document the change in setting and OSPI finds this to be in violation. Further, due to the Student's specific needs and reason for receiving specially designed instruction, the failure to implement the IEP as written from January through March 2020 was more likely to be material than the increased number of minutes of specially designed instruction provided to the Student in the general education setting from September 2019 through January 2020. Thus, the District will be required to complete training on procedures for amending the IEP. However, because the documentation indicated the Student received specially designed instruction, despite being provided in the incorrect setting, and because the Student continued to make progress on his social-emotional goals, there is no need for student specific corrective actions.

B) Accommodations and modifications:

In the complaint, the Parents alleged that in September 2019, the District failed to implement the Student's accommodation of providing the Student only a 3-5 minute warning prior to emergency drills. During September 2019, the Student's school participated in a practice emergency drill, for which the Student's teacher notified the Student in advance of the 3-5 minute warning window specified in his IEP. The District asserted in its response that the Student's accommodation did not apply to "practice" emergency drills. OSPI disagrees and finds the District to be in violation, as the Student's IEP and the input from the Parents prior to the practice drill clearly indicated the intent of the accommodation was to prevent the Student from experiencing anxiety from being notified of emergency drills too far in advance. If the Student continues to attend school in the District, the Student's IEP team will be required to meet prior to or at the commencement of the 2020-2021 school year to review the Student's accommodations, including those related to emergency drills. The school principal shall attend the meeting.

The Parents also alleged the District did not implement a positive reinforcement system prior to January 2020, which was included in the Student's IEP as an accommodation. The Parent's conceded that a positive reinforcement system was implemented in January 2020, but indicated they found the accommodation to be ineffective. From September 2019 through January 2020, the Student's teachers used a daily reward system with the Student, sent home a daily communication/goal tracking log, which included a "check-in" between the Student and teacher about what the Student thought he did well, and redirected the Student using verbal and non-verbal communication. The District's response also included multiple references to the Student's love of "red pandas," which were often incorporated into his routines as motivators and rewards.

Thus, the documentation showed that from September 2019 through January 2020, the District implemented a positive reinforcement system as required in the Student's IEP and OSPI finds no violation.

In January 2020, the District continued to collaborate with the Parent regarding their requests for additional behavior supports, including developing a positive behavior support plan (PBSP) based on the results of a functional behavioral assessment (FBA) completed in December 2019. The IEP team further recommended the team discuss whether the Student required a behavioral Intervention plan (BIP) when school reopens. OSPI notes that while the positive reinforcement system provided as an IEP accommodation or the PBSP may have been different from the system utilized in the Student's home or the system developed for the Student by the Student's private BCBA, and while the Parent may find it be less effective than the systems they are able to personally implement at home, it does not mean the accommodation on the IEP was not being implemented. OSPI accordingly finds the District continued to implement the Student's accommodation of a positive reinforcement system from January through March 2020 and finds no violation.

The Parents additionally alleged the District did not provide "[d]etailed written instructions or checklists" to the Student and indicated this was in violation of the Student's IEP. As pointed out by the District in its response, the Student's IEPs did not include written instructions or checklists as an accommodation, modification, or support. The Parents may have been referring to the Student's accommodations of "checks for understanding," which the documentation showed were provided. The special education teacher reported checking in with the Student before assignments to make sure he understood assignments and checked in with the Student at the end of the day. Thus, OSPI finds no violation.

The Parents further alleged the District did not provide the Student with testing accommodations for the fall STAR testing. None of the Student's IEPs indicated he required accommodations on STAR testing and accordingly OSPI finds no violation. It is noted, however that in the District's response, the District acknowledges that the May 2019 IEP amendment provided for an alternate testing location for the Student during the Smarter Balance Assessment ("SBA" testing). However, the District's response also documented that the Student was offered an alternate testing location for this test and that the Student declined the accommodation.

Finally, the Parents alleged the music teacher failed to make himself aware of the accommodations and modifications in the Student's IEP and failed to implement them as required—specifically those providing for "optional/alternative participation in presentations and performances due to anxiety," and "adaptation of activities requiring fine motor skills." Here, while the District provided documentation that the IEP was provided to all general education teachers, including the music teacher, the music teacher admitted he was not aware of the Student's accommodations, and that he did not feel there were any that were applicable in music class. While the music teacher did not require students to perform in the final concert, the Student's fine motor deficits relating to his autism made playing the ukulele in front of other students challenging and caused the Student anxiety. The Student's IEP required the music teacher to provide an alternative participation option and/or to adapt the activity to one that did not require the use of fine motor skills. By insisting

the Student continue to play an instrument in class, the music teacher did not implement the accommodations and modifications on the Student's IEP. OSPI finds the District to be in violation. If the Student continues to attend school in the District, the Student's IEP team will be required to meet at the commencement of the 2020-2021 school year to discuss the Student's accommodations. The District should accommodate the schedules of any non-required members of the team, including all teachers and providers who the Parents would like to attend.

Issue 2: Progress Reporting – The Parent alleged the District failed to follow procedures for progress reporting as indicated in the Student's IEP from September 4, 2019 through March 13, 2020. Specifically, the Parents alleged the District failed to provide them with monthly progress reporting as indicated in the Student's IEP, as well as the data which was used to develop the progress reports, and that the methods used to collect the data were not aligned with the goals in the IEP.

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. 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.

The Student's October 2019 IEP, which went into effect on October 28, 2019, provided the Parents should receive monthly progress reports. The Parents received the Student's first progress report for the 2019-2020 school year on December 11, 2019. The Parents additionally requested the data upon which the progress reports were based, which was subsequently provided to the Parent. Although the District was delayed in providing the progress report from November 2019, the delay was reasonable given the Thanksgiving holiday and the data was provided to the Parents upon request.

In its response, the District acknowledged that it did not provide the Parents with the next progress report until March 9, 2020, in contrast to what was required by the Student's IEP. While the District was in violation for not implementing the IEP as written, the District provided documentation to show that during January and February 2020, the Parents were being provided daily reports with data on the Student's progress towards IEP goals and that the Student's IEP team, including the Parents, met on January 27, 2020 to discuss the Student's progress. During this time, the Parents participated in developing new sheets for collecting data on the Student's goal progress and were in regular communication with the District regarding the Student's progress. Thus, while the District did not implement the Student's IEP as written regarding progress reporting, the failure to implement did not have a substantive impact on the Parents' ability to be informed of the Student's progress as necessary to participate in the development, monitoring, and reporting of the Student's IEP goals during the time period under review. The District further provided the Parents with the requested progress reports and data upon being notified of its error in March 2020. No further corrective actions are ordered.

CORRECTIVE ACTIONS

By or before **September 11, 2020, September 18, 2020,** and **October 9, 2020,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **September 11, 2020,** if the Student is still a Student in the District, the Student's IEP team will meet. The school principal will attend the meeting.

At the meeting, the IEP team must address: Accommodations and modifications as listed on his IEP, including those to be implemented during emergency drills, and how they will be implemented during the 2020-2021 school year.

By **September 18, 2020,** the District will provide OSPI with: i) a prior written notice, summarizing the IEP team's discussion and decisions concerning the above matters; ii) a copy of the Student's IEP; iii) any relevant meeting invitations; iv) a list of people, including their roles, who attended the meeting; and, v) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2019-2020 school year. The training will cover: IEP amendments, including when an IEP amendment is required due to changing the setting in which a student is receiving his specially designed instruction. The training will include examples.

The individual who conducts the training may be someone from inside or outside the District; however, it is recommended that the individual who presents the training consult with Educational Service District (ESD) in the creation of training materials. Due to COVID-19, the training may occur virtually.

By or before **September 11, 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 the training materials.

By or before **September 18, 2020,** the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 25, 2020.

By **October 2, 2020** the District will conduct the training regarding the topics raised in this complaint decision.

By **October 9, 2020**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training (or emails from attendees certifying that they attended), and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ____ day of July, 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.)