

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-011

PROCEDURAL HISTORY

On January 28, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant), alleging the Lake Washington School District (District) violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to a student (Student).

On January 29, 2021, 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 January 29, 2021, the parent (Parent) of the Student provided OSPI with a signed release, permitting OSPI to share personally identifiable information on the Student with the Complainant.

On February 11, 2021, the Parent provided additional information to OSPI concerning the allegations in the complaint.

On February 16, 2021, the District requested an extension of time to respond to the complaint. OSPI granted the extension to February 22, 2021.

On February 22, 2021, OSPI received the District's response to the complaint and forwarded it to the Complainant and the Parent on February 24, 2021. OSPI invited the Complainant to reply.

On February 25, 2021, OSPI received the Complainant's reply. OSPI forwarded that reply to the District that same day.

On March 16, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on March 18, 2021. OSPI forwarded the information to the Complainant that same day.

On March 16, 2021, OSPI received additional information from the Complainant. That additional information was forwarded to the District on March 18, 2021.

On March 19, 2021, OSPI's investigator conducted a phone interview with the District's special education director.

On March 19, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on March 22, 2021. OSPI forwarded the information to the Complainant that same day.

On March 23, 2021, OSPI's investigator conducted a phone interview with the Student's special education teacher.

On March 23, 2021, OSPI received additional information from the Parent. OSPI forwarded that information to the District on March 24, 2021.

On March 25, 2021, OSPI requested that the District provide additional information, and the District provided the requested information that same day. OSPI forwarded the information to the Complainant on March 25, 2021.

On March 25, 2021, OSPI's investigator conducted a phone interview with the Parent.

On March 25, 2021, both the Complainant and Parent provided OSPI with additional information. OSPI forwarded a copy of that additional information to the District on March 25, 2021.

OSPI considered all information provided by the Complainant, Parent, and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during interviews.

ISSUE

1. Did the District follow proper procedures in determining the Student's placement for the spring 2021 semester?

LEGAL STANDARDS

Placement: When determining the educational placement of a student eligible for special education, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

Evidentiary Weight: According to the Office of Special Education and Rehabilitative Services, "it would not be inconsistent with the IDEA...for a State to use a 'preponderance of the evidence' standard in making independent determinations as to whether a public agency violated a requirement of Part B of the IDEA." *Letter to Reilly*, 64 IDELR 219 (OSERS 2014). Merriam-Webster's Dictionary of Law defines the phrase "preponderance of the evidence" as "the standard of proof...in which [a] party [wishing to establish a factual premise] must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not." MERRIAM-WEBSTER'S DICTIONARY OF LAW 377 (1996).

IEP Team Unable to Reach Consensus: The individualized education program (IEP) team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member

has “veto power” over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district’s proposals or refusals, or both, regarding the student’s educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

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

Authority of State Education Agencies: State education agencies have “general supervisory responsibility” to ensure compliance with the IDEA. 34 CFR § 300.600; *see also Letter to Warkomski* (Mar 30, 2001); *Letter to Librera* (May 26, 2004) (“The SEA is ultimately responsible for ensuring that all Part B requirements, including eligibility, evaluation, and procedural safeguards, are met for eligible children residing within the State.”)

IEP Revision: A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). In conducting its review of a student’s IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student’s learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student’s assistive technology needs. 34 CFR §300.324; WAC 392-172A-

03110(2). Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

IEP Must State Amount of Services: An IEP must include a statement of the special education, related services, and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student to: advance appropriately toward attaining the annual IEP goals; be involved and progress in the general curriculum in accordance with present levels of educational performance and participate in extracurricular and other nonacademic activities; and, be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Basis for IEP Team Decisions: IEP team decisions must be reasonably supported by the student-specific data. OSEP Memorandum 00-20 (July 17, 2000); *see also Letter to Ash*, 23 IDELR 647 (OSEP March 31, 1994); *see generally* WAC 392-172A-03035; WAC 392-172A-03090; WAC 392-172A-03110.

FINDINGS OF FACT

2019 - 2020 School Year

1. During the 2020-2021 school year, the Student attended a District high school, was in the tenth grade, and was eligible for special education services under the category other health impairment.
2. On April 25, 2020, the Student's private psychiatrist wrote a "to whom it may concern" letter, summarizing some of the Student's needs resulting from the Student's disability. Subsequently, this letter was provided to District staff. It read, in part:

Student's psychological condition has deteriorated [since November 2018] and I write now to request urgent re-consideration of his disability-related special needs.

...

Conventional approaches to supporting a student with ADHD are likely to be inadequate in a student with Student's exceptional history...It is critical for those planning for Student's needs to understand that Student has highly impairing differences in information processing in addition to his more conventional symptoms of ADHD.

A conventional academic curriculum that requires flexible, fast-paced processing of large volumes of often-unrelated information overwhelms Student and is not tenable. Because of his impairments in attention regulation, Student is drawn to the most emotionally salient stimuli in his environment. In the appropriate environment, this could include intrinsically interesting and challenging work. In the wrong environment, the most salient stimulus is his awareness of his limitations in contrast to his abilities, which leads to intense worry about his functioning and his future...It is extremely challenging for him to flexibly and rapidly process, filter and mentally organize incoming information that is not highly related to whatever stimuli he is hyper-focused on. Finally, it requires enormous cognitive effort for Student to recognize the implicit organization and meaning in a larger quantity of information, as well as to organize an output or response, all while monitoring his task performance and completion.

His efforts to perform in a conventional public school setting have repeatedly led to high levels of anxiety, associated physical symptoms, and a marked deterioration in his sense of self and his motivation to succeed. Despite increasingly aggressive medical treatment for his psychiatric conditions, since beginning high school Student has become progressively anxious, stressed and overwhelmed. His mother reports that he actively seeks to avoid going to school. He is increasingly pessimistic about his future, and is disengaged from a curriculum that is overwhelming, under-stimulating and feels meaningless to him. When he is able to achieve reasonable grades, it is only through anxiously putting in unreasonable and unhealthy amounts of time, typically 6 hours of study every weeknight and several hours each weekend day. These efforts preclude him from engaging in other activities that are essential to his healthy development and wellbeing, and as such are destructive to his physical and psychological health. Furthermore, the sustained elevated chronic stress he experiences itself makes real learning impossible, and has long-term negative effects on development, brain and physical health. The marked, ongoing fatigue noted by his parents and teachers is just one visible sign of his chronic stress; other signs include the

extraordinary number of visits to the school health room with complaints of stress, headaches and stomachaches.

At this time, I'm deeply concerned that Student's learning environment is having a substantial and potentially irreversible negative impact on him. In my opinion, the most effective way to prevent further deterioration in mood, motivation, and academic and psychosocial outcomes is to change his school environment, specifically to effect outplacement that allows more individualized and appropriate support for his special needs.

My recommendation is that he be placed in a setting that:

- Allows him to study advanced, high-interest content appropriate to his superior cognitive abilities.
- Allows him to focus on 2-3 content areas/classes at a time to accommodate his need for self-pacing, mastery and deriving meaning.
- Provides 1:1 or very small group (no more than 4 students) instruction in building executive functioning skills, by personnel with expertise in high-intellect students with disabilities.
- Provides 1: 1 support throughout the school week that assists with clarification of instructions, recognizing implicit and intended meaning in information and communication, help with organizing, planning and monitoring work completion and turn-in, and help navigating digital tools.
- Provides instruction and support in stress management, self-advocacy and problem-solving.
- Includes support services that prepare him for the transition to post-secondary study/college, which is a time of high risk for students like Student who have exceptional strengths and vulnerabilities.

3. On May 22, 2020, the Student's individualized education program (IEP) team amended the Student's existing IEP. The May 2020 Amended IEP:

- Described the Student, in part, as follows: "an excellent student [who] is very strong in most areas"; "a highly intelligent student with a wide-range of academic skills across a variety of subject areas"; and, a student who "usually has an upbeat, positive attitude and engages in friendly and appropriate social interactions with teachers and peers."
- Described some of the Student's needs resulting from the Student's disability, in part, as follows:
 - "Student struggles to stay focused in class and to use independent worktime productively";
 - "Student's disability adversely affects his performance in the area of organization";
 - "Student still struggles with task initiation and time management";
 - "Student's anxiety and how it manifests in [the] classroom and other school settings is likely a contributing factor to specific off-task behaviors...He has reported having feelings of overwhelming anxiety and panic, particularly during assessments."
- Described some of the Parent's concerns as follows:
 - "There is a consistent discrepancy between his known abilities and his achievement in high school. [He] finds the general education content uninteresting and meaningless, and is not adequately challenged or engaged";
 - Student was "extremely stressed by [the] remote learning environment and that stress [was] causing serious mental and physical health problems";

- Student was “overwhelmed by the conventional school day with its heavy burden of cognitive shifting and multiple physical transitions”;
- Student “struggles to be on-task in class and is often unable to concentrate during instruction and while doing homework.”

The May 2020 Amended IEP provided the Student with numerous accommodations. The IEP provided the Student with the following specially designed instruction from May 25, 2020 through August 31, 2020 in a *special education setting*:

- Organization: 30 minutes 5 times a week (to be provided by a special education teacher)

The May 2020 Amended IEP provided the Student with the following specially designed instruction from September 1, 2020 through May 26, 2020 in a *special education setting*:

- Organization: 90 minutes 1 time a week (to be provided by a paraeducator)

The IEP included annual goals in organization skills (improving ability to complete work and stay on task; improving ability to complete work in a timely manner).

The May 2020 Amended IEP also stated: “Student will attend Running Start in the fall of 2020 and receive dual credit[s] in core and elective [classes]”¹; and, starting September 2020, “Student will be in full time running start with access to [District high school] special education support.”

4. The District’s response to this complaint included a May 25, 2020 prior written notice that read, in part:

The school psychologist and the associate director [will] also look into opening an evaluation for Student and ask the District behavioral health specialist to review the case. The school psychologist [will] also send out Release of Information documents to all relevant parties to create a robust evaluative file in order to [gather] information that [will] support a more appropriate education for Student...The decision to reevaluate will be shared with Student’s parents from the school psychologist. One question to be continued is: what environment will support Student’s cognitive abilities and not negatively impact his emotional well-being?

5. The District’s response included a progress report, dated June 6, 2020, which related to the goals in the Student’s May 2020 Amended IEP. For both goals, the June 2020 progress report read, in part:

Due to Covid 19 and the subsequent closure of in person learning, exact data has not been collected on this goal. Parent and student have been in contact with the case manager regarding support for IEP goals throughout the closure and the comprehensive communication and work towards goals- or goals similar to those listed- are documented in the Continuous Learning Plan.

¹ According to Bellevue College’s website, the Running Start Program permits Washington State students in the eleventh and twelfth grades to earn both high school and college credits while in a college setting. <https://www.bellevuecollege.edu/runningstart/navigation/about/>.

6. According to the Parent, on June 12, 2020, she had a telephone conversation with the school psychologist, and during that conversation, the school psychologist stated, "she did not believe Student's needs could be met within the District" and that a reevaluation would "likely...provide the evidence the District needed to find a more appropriate placement for the Student."

Summer 2020

7. In August of 2020, the Student was evaluated by an outside clinical psychologist (independent evaluator) so the District and the Student's IEP team could "better understand Student's social, emotional, and behavioral functioning."²

The independent evaluator's August 2020 report read, in part:

Summary and Recommendations

He is a student with a complex clinical presentation with a history of developmental challenges and a worsening of symptoms over the past year. Currently, Student describes significant symptoms of social anxiety, including anxiety in social situations in which he may be scrutinized, fear that he will act in ways where he will be negatively evaluated, and avoidance of social situations or tolerated with fear or anxiety. Moreover, Student reported worry that not only occurs throughout the day, but also increases significantly under stress. While he worries about performing academically, Student also worries at times about his abilities and his future, and how he is perceived by others. Furthermore, Student reported that increased worry would lead him to remember a task, but he noted that he is less inclined to engage in schoolwork if he is not worried about it. He also endorsed somatic symptoms of anxiety, including feeling on edge, being easily fatigued, as well as his mind going blank, irritability, and headaches and nausea when in school. These symptoms have been longstanding and impact Student's functioning (most notably in school). Information gleaned from this evaluation support previous diagnoses of Generalized Anxiety Disorder ...and Social Anxiety Disorder...Student's social anxiety and persistent worry are further exacerbated by his perfectionistic beliefs about himself. Because of his awareness of his cognitive abilities, Student often judges himself as "lazy and unproductive" when he can't concentrate and work is not completed. Student also endorsed depressed mood during school, however reported no current symptoms of Major Depressive Disorder. It is hypothesized that without interventions that Student's depressive symptoms will return once fall semester begins.

The diagnoses of Attention-Deficit/Hyperactivity Disorder and Social (Pragmatic) Communication Disorder were not reevaluated in the context of this independent educational evaluation. There was also no evidence available to justify need for reevaluation of these diagnostic problems. Therefore, the diagnoses will remain intact for the purposes of educational planning and program placement.

Results of the evaluation also indicate strengths and challenges within the domains of social interest and skills. Student's mother noted historical and current challenges in social

² The quoted language comes from the independent evaluator's report, which, upon knowledge and belief, was completed in August of 2020 or shortly thereafter. The independent evaluator's report details interactions with the Student on August 7, 10, 17, 25, and 27, 2020.

relationships, including few quality friendships and reduced social interest. Similarly, sensory sensitivities have been noted throughout Student's life. On the ADOS, Student used well-coordinated nonverbal and verbal social communication, sustained conversation, and shared enjoyment in interaction with others. He demonstrated appropriate insight into relationships, communicated empathy for others, and made appropriate social overtures given his age. In the clinical interview, Student described frequent contact within his friend group, and strong desire to see his friends but lack of initiation in getting together. Behavioral observations, direct assessment of social and communication behaviors, and clinical interview do not support a diagnosis of Autism Spectrum Disorder. This is consistent with previous evaluation of an autism spectrum disorder by [doctor] in 2014. Although parent report of past developmental history and current functioning indicated a high likelihood of an autism spectrum disorder, it is believed that the symptoms endorsed a related to Student's anxiety symptomatology, behaviors consistent with Attention-Deficit/Hyperactivity Disorder and Social (Pragmatic) Communication Disorder.

Student exhibits a number of problematic behaviors (including thoughts and emotions) that interfere with his own learning at school and functioning at home. These include 1) difficulty asking others for help related to his perception of burdening others and expectations that he should complete tasks on his own, 2) telling himself he'll do it later when faced with tasks (procrastination), 3) perfectionistic expectations of his performance that lead to increased anxiety, stress, and avoidance, 4) poor initiation of tasks and work avoidance, 5) poor planning, task management, and organization, 6) excessive worry about his abilities across multiple domains, 6) anxiety in social situations where he may not be liked or he may be a burden to others, 7) disinterest and poor attention to academic material, and 8) judgment of himself ('lazy, unproductive') when he does not meet his goals that likely lead to sadness, hopelessness, and suicidal ideation. While some of these behaviors have been identified through executive functioning goals, it will be critical to target behaviors related to anxiety, worry, perfectionism, and self-criticism directly to increase independence and his academic success, as well as improve his confidence in his own abilities.

Detailed Recommendations Are Provided Below:

(1) Eligibility Determination. Student currently qualifies for special education services under the category of Other Health Impairment. Results of this evaluation indicate that this is an appropriate classification.

(2) Cognitive-Behavioral Therapy. Given the worsening of Student's anxiety over the past year, as well as comorbid depression, it is recommended that Student and his family engage in psychotherapy with a psychologist or other well-trained therapist who is familiar with cognitive-behavioral therapy procedures that have evidence of efficacy for these problems...

- (a) Individual therapy. Student will benefit from CBT to address anxiety and worry, perfectionistic standards, and self-conscious around others, as well as procrastination and avoidance behaviors that maintain these symptoms. Exposure will be an important part of the treatment program, and would include asking for help from adults as well as engaging with peers in multiple social contexts. Social anxiety treatment has been effectively delivered in a group format, and could be beneficial for Student (see below).
- (b) Family therapy...

- (c) Problem solving skills training. Student would benefit from instruction in solving problems he experiences in multiple settings.
 - (d) It's important to note that Student reported stress when adults became more engaged in checking on homework and helping him complete assignments, so this 'stress' will likely need to be addressed early on in treatment. The individual therapist, family and school team will have to be flexible in providing support in areas in which Student struggles and to balance it with increasing his independence through scaffolding and faded support. Continuous data monitoring and coordinated care will be important throughout this next year to address this need.
- (3) Executive functioning skills³ teaching. Student will benefit from teaching of executive functioning skills by a provider who has specific expertise in teaching skills to adolescents with ADHD. It will be important not only to provide didactic information, but also to conduct functional assessments of the barriers to skill implementation. Teaching and monitoring will need to occur with existing assignments and coursework.
- (4) Medication management...
- (5) Educational programming. Student is currently enrolled in Running Start...He will be able to access accommodations through the Disability Resource Center, and it is recommended that these include, but are not limited to:
- (a) Flexibility in due dates or published missing dates to the end of the semester
 - (b) Access to professor notes if available
 - (c) Extended time on tests up to 50%
 - (d) Alternate grading options in lieu of oral presentations in individual or group work
 - (e) Opportunity to resubmit work if instructional steps are missed for full credit
 - (f) Audio recordings allowed in class
 - (g) Alternate testing site for midterms, finals or other major exams
- (6) Specially Designed Instruction. Student will continue to benefit from provision of organizational services provided through the [District]. Ideally, the school staff member providing this service will work closely with the executive functioning skills staff (identified above) to coordinate care and monitor progress.
- (7) Opportunities for Peer Interactions. Student would benefit from opportunities to expand his connections with peers either online or in-person (when feasible). This could occur through a social anxiety therapy group or through structured settings (e.g., student clubs at...college, scheduled get together with friends).
- (8) Resources...
- (9) Reevaluation. It is recommended that Student's team review his progress and functional status, at least informally, in early 2021 to determine the efficacy of strategies and programming. A more thorough evaluation might be beneficial before the beginning of the 2021 academic year.

³ According to understood.org, "Some people describe executive function as "the management system of the brain." That's because the skills involved let us set goals, plan, and get things done...Executive function is responsible for many skills, including: Paying attention; Organizing, planning, and prioritizing; Starting tasks and staying focused on them to completion; Understanding different points of view; Regulating emotions; Self-monitoring (keeping track of what you're doing). <https://www.understood.org/en/learning-thinking-differences/child-learning-disabilities/executive-functioning-issues/what-is-executive-function#Snapshot: What Executive Function Is>

8. On August 11, 2020, the Parent emailed the independent evaluator, sharing her “thoughts on Student’s placement for the fall.” In said email, Parent stated, in part:

[Barring unforeseen data in the forthcoming reevaluation of the Student, I believe the following will be the best educational situation for the Student in the fall of 2020:] (1) Enrollment in full time Running Start...to pursue a 2-year transfer degree (he's enrolled and registered for fall classes to begin 9/21); (2) Enrollment in...Neurodiversity Navigators (NDN) program (he's been accepted and is currently taking the required 3-week orientation class); (3) Accommodations through...Disability Resource Center; and (4) One-to-one instruction/tutoring in skills and support provided via [an outside resource].⁴

...

[The Neurodiversity Navigators Program] focuses on building skills in Executive Functioning, Self-Advocacy, Self- Regulation, and Social Interaction.

...

[The outside resource will help Student, in part, with the following:]

- Executive function strategies taught and applied directly to existing assignments. This includes using apps or texts or other methods to help him remember and practice managing his time and completing to-dos.
 - Modelling of how to break down tasks in a syllabus and monitoring to ensure he stays on track to avoid late submissions, or to help him request additional time in advance when needed.
 - Instruction and support with self-advocacy issues such as practicing when/how to reach out to a professor, or crafting an email together for the student to send.
 - Assistance with technology issues related to online courses, such as uploading a paper or responding to online discussions.
- ...
- When in-person instruction resumes, [outside resource] staff can meet him at...to help Student become oriented to the campus and to develop strategies for other essential components of the placement that often trigger high anxiety. This includes items such as where to park, how to get lunch, where to go on site if feeling overwhelmed, etc.

2020 – 2021 School Year

9. The District’s 2020-2021 school year began on September 1, 2020.
10. At the start of the 2020-2021 school year, the Student: attended a District high school; was in the eleventh grade; continued to be eligible for special education services under the category other health impairment; and participated full-time in running start.

At the start of the 2020-2021 school year, District students enrolled in running start participated remotely. The District’s school year began remotely, and specially designed

⁴ The outside resource’s website describes its program as: “[We] make education meaningful to students by enabling them to explore their passion or discover career interests before graduating from high school. By partnering with local colleges, [our] students are able to access college courses and career training as a part of their high school studies, gaining valuable insights into life after graduation. [Our] staff are there every step of the way to advise, encourage, and celebrate as students achieve their goals.”

instruction was provided to the Student remotely per his May 2020 Amended IEP, which remained in effect.⁵

11. According to the District's response, the Student's evaluation group completed a reevaluation of the Student on September 28, 2020. The summary portion of the Student's September 2020 reevaluation report read, in part:

According to [the independent evaluator], Student carries previous diagnoses of Attention-Deficit/Hyperactivity Disorder, Social Anxiety Disorder, Generalized Anxiety Disorder, Social Communication Disorder, and Major Depressive Disorder. [The independent evaluator] reported that these diagnoses and accompanying symptoms have been longstanding and impacted Student's functioning in school. Currently, [the independent evaluator] reported that information gleaned from Student's Independent Educational Evaluation support previous diagnoses of Generalized Anxiety Disorder and Social Anxiety Disorder.

Based on Student's current evaluation results, primarily completed by [an] Independent Evaluator, Student continues to demonstrate a limited alertness with respect to his educational environment that is due to a chronic health problem, which adversely affects his educational performance.

[The independent evaluator] reported that Student currently qualifies for special education services under the category of Health Impaired and results of Student's Independent Educational Evaluation indicate that this is an appropriate classification given his diagnoses.

The social /emotional portion of the reevaluation report read, in part:

According to [the independent evaluator], Student reported significant concerns with anxiety and his responses exceeded the cut-off scores for Generalized Anxiety Disorder, Social Anxiety Disorder, and Significant School Avoidance. [The independent evaluator] reported that his score indicated a high likelihood that Student has a specific anxiety disorder.

According to [the independent evaluator], Student described during the assessment that he has significant symptoms of social anxiety, anxiety, including situations where he perceives he will be scrutinized or judged, fear that he will act in ways where he is negatively evaluated, and avoidance of social situations or tolerated with fear or anxiety. [The independent evaluator] reported that Student reported worry throughout the day and increases significantly under stress. It was also reported by [the independent evaluator] that Student experiences somatic symptoms of anxiety, including the feeling of being on edge, being easily fatigued, mind going blank, irritability, and headaches or nausea when at school. [The independent evaluator] stated that these symptoms have had a longstanding impact on Student's functioning, and information gleaned from [the independent evaluator]'s report, confirms the diagnoses of Generalized Anxiety Disorder and Social Anxiety Disorder.

[The independent evaluator] indicated that Student exhibits a number of problematic behaviors, thoughts, and emotions, which interfere with his learning and functioning at home. [The independent evaluator] stated that these include:

⁵ Organization: 90 minutes 1 time a week (to be provided by a paraeducator).

1. Difficulty asking others for help related to his perception of burdening others and expectations that he should complete tasks on his own;
2. Telling himself that he will do it later when faced with tasks (procrastination);
3. Perfectionistic expectations of his performance that lead to increased anxiety, stress, and avoidance;
4. Poor initiation of tasks and work avoidance;
5. Poor planning, task management, and organization;
6. Excessive worry about his abilities across multiple domains;
7. Anxiety in social situations where he may not be liked or he may be a burden to others;
8. Disinterest and poor attention to academic material; and,
9. Judgement of himself when he does not meet his goals that likely lead to sadness, hopelessness, and suicidal ideation.

[The independent evaluator] reported that some of the aforementioned behaviors have been identified and targeted through executive functioning goals, it is critical to target behaviors related to Student's anxiety, worry, perfectionism, and self-criticism directly to increase independent and his academic success, as well as improve his confidence in his own abilities.

The Student's September 2020 reevaluation report recommended the Student's IEP team consider providing the Student with specially designed instruction in organization and social/emotional.

12. The District's response included a prior written notice, dated September 28, 2020. It read, in part:

Description of the proposed or refused action:

Student continues to qualify for special education services under the category of Health Impaired.

The reason we are proposing or refusing to take action is:

Student continues to present with symptoms related to diagnosed health impairments, which have an adverse impact on his ability to access his educational programming and make progress at a rate typical to same-aged peers.

13. The District's response included notes from a September 28, 2020 IEP meeting. According to the District, these notes were created by a school psychology intern and they read, in part:

Discussion around the [college] Navigator program

No decision – Team needs more time to review report, review recommendations from the evaluations, and to review information...about the Navigator program.

Educational Advocate suggested the district looks at the Navigator program and consider providing it under the umbrella of Transition plan/services.

Team needs more time to determine what [specially designed instruction] services and Transition services he will receive.

14. According to the Parent's reply:

The Student had difficulties in attending the 1:1 special education sessions remotely. The team has repeatedly been made aware of the Student's challenges in using digital tools such as email, a digital calendar, and teleconferencing software. It has been documented multiple times that his disability interferes with his ability to keep and maintain a schedule and manage his time. In October and November of 2020, the Student was often unable to log in to the district laptop, and unable to navigate to the correct site. The Microsoft Teams app crashed on him many times. In addition, the special education teacher sent meeting invites and cancellation notices that were ambiguous and which did not appear on his digital calendar. The Student and Parent notified the special education teacher of this several times.

The Student also sought help multiple times from the high school technology department, which offered some unsuccessful strategies and eventually told him there was nothing further they could do.

He was not able to routinely access the meetings until he borrowed a different kind of laptop from [college] in October or November 2020.

15. On October 12, 2020, the Complainant emailed the District's director of special education (director) and the special education teacher, stating, in part:

Parent and I have had many conversations about the recommendations presented by clinical experts and continue to advocate for exactly what both providers, the Student's private psychiatrist and the independent evaluator, have notated within their evaluations.

...

[Parent and I] both lack confidence in the suggestion that a school based 'advisory' service will serve Student's needs based upon our experiences due to the following reasons: 1) Lack of time and focus; Student's time and scheduling will be a secondary issue on the teacher's overall schedule; 2) Limited experience with the Running Start program; the 'advisory' support system works within the context of [the] high [school]; 3) Limited experience with ADHD and Twice Exceptional students with profiles similar to Student's needs; 4) Lack of expertise with Executive Functioning skills...; and, 5) Too many moving parts if the social emotional goals are served by another provider...Initially, the request for placement within specialized instructional models was founded upon the following findings:

The Student's psychiatrist who he has been working with since 2014, wrote and submitted a letter to the IEP Team on 4/25/2020. The private psychiatrist reported that Student has a diagnosis of ADHD, but does not fully convey the complexity of his neurodevelopmental profile. The private psychiatrist reported that a conventional academic curriculum that requires flexible, fast-paced processing of large volumes of often unrelated information, overwhelms Student and is untenable. The private psychiatrist stated that in the aforementioned environment, Student experiences demand-related fatigue, [which] causes him to frequently zone out, dissociate, and become easily distracted by irrelevant stimuli. The private psychiatrist stated that it is very challenging for Student to recognize the implicit organization and meaning in a larger quantity of information, as well as to organize an output or response, all while monitoring his task performance and completion. In his letter, the private psychiatrist highlighted that he is deeply concerned Student's learning environment is having a substantial and potentially irreversible negative impact on him. In his opinion, he stated that the most effective way to prevent further deterioration in mood,

motivation, academic, and psychosocial outcomes, is for Student to change his school environment; the private psychiatrist specifically highlights that Student requires 'outplacement', to allow for more individualized support for his special needs.

...

[Secondly, an independent evaluator conducted a reevaluation of the Student over the summer of 2020...[and] noted, in part:] it is critical to target behaviors related to Student's anxiety, worry, perfectionism, and self-criticism...Simply put, the findings of the independent evaluator coincide with the private psychiatrist's findings.

In addition, the independent evaluator highlights the understanding that the executive function goals are aligned and work in conjunction with the social emotional goals associated with anxiety, worry, perfectionism, and self-criticism. And recommends a specialist with Executive Functioning expertise in addition to the school staff member responsible for organizational support. Clearly, there are two parts of the service model presented by the independent evaluator: (1) Expert Executive Function support in skill development; (2) School Staff follow-up with organizational support.

16. According to the District's response, the Student's IEP team met on October 14, 2020 to discuss, in part, the recently completed reevaluation. According to the District's response:

As a result of [the October 14, 2020] meeting, the Student's IEP team decided to offer Student two scheduled 30 minute 1:1 sessions [twice a week] with a certificated teacher or an Academic Support Class, which would have provided support with qualified District special education staff.⁶

Parent and [Non-Parent Complainant] rejected these offers and instead requested a 'coach' through an outside [resource]....⁷

This new request was not agreed to by the team at that time. The director stated she would review the new request for [support from the outside resource] and discuss it with the District's Behavioral Health Specialist and report back to the team with findings, understandings, and possible other support solutions for Student.

The team then reviewed [college's] [Neurodiversity] Navigators Program⁸ and rejected it for Student as a fee-based college support program, rather than as necessary deliverer of

⁶ During the course of this investigation, the District clarified that these sessions ultimately ended up being offered in a remote format via consultation with a special education teacher.

⁷ According to the District's response, it understood the Parent's request on this score as follows: that the District should "contract with an educational coach through [an outside resource]...to go to [college] to follow Student around to classes, and be available in the moment if the Student needed reminders on how to upload assignments or organize his assignments." According to the Parent, though, the request was not for a "coach" through [an outside resource], but "for 1:1 executive functioning skills classes."

⁸ College's website describes its Neurodiversity Navigators program as follows: "Our mission is to provide educational opportunities to increase self-knowledge that lead to successful academic outcomes in the areas of executive functioning, self-regulation, social interaction, self-advocacy, and career preparation, along with advocacy and access services for neurodivergent students; and to actively promote a campus

appropriate [specially designed instruction]. It was also noted in the [prior written notice] PWN for that meeting that Student, Parent, and [Non-Parent Complainant] did not believe...the District had the resources to support the Student.

17. The District's response included a prior written notice, dated October 13, 2020. The prior written notice included those contents summarized in the District's response. In relevant part, it also stated:

In an email right after the meeting the [non-parent Complainant] stated, '[Parent and I] both lack confidence in the suggestion that a school based 'advisory' service will serve Student's needs based upon our experiences due to the following reasons: 1) Lack of time and focus - Student's time and scheduling will be a secondary issue on the teacher's overall schedule; 2) Limited experience with the Running Start program; the 'advisory' support system works within the context of [the District high school]; 3) Limited experience with ADHD and Twice Exceptional students with profiles similar to Student's needs; 4) Lack of expertise with Executive Functioning skills as defined by [the independent evaluator]; 5) Too many moving parts if the social emotional goals are served by another provider - like the evaluation stated, Executive Functioning and Social Emotional needs go hand in hand.'

At this time the IEP will be authorized by the district and rejected by the family.

At this time, Student's case manager will offer 30 minutes 1:1 twice a week in compliance with this current IEP.

It should also be noted that Student has a peer mentor each week with the...College's Neurodiversity Navigators Program.⁹ With this support and the disabilities support, Student feels that things are going well and there were no indications of adverse emotions due to workload. In the past the [District high school's] 7 period day workload caused severe anxiety and the team proposed that he take 2 classes at [college] to alleviate any stress. Student has signed up for 4.

18. On October 14, 2020, the Student's IEP team developed a new IEP for the Student. The Student's October 2020 IEP read, in part:

Social/Emotional

Based on Student's current reevaluation, Student demonstrate social/emotional skill deficits, which are having an adverse impact on his ability to access his educational programming. It is recommended that Student receive specially designed instruction in the area of social/emotional.

Specially designed instruction is recommended in the area of social to improve skills which support positive inter and/or intra personal relationships, with a focus on: coping strategies, emotional regulation, perspective taking, impulse inhibition, improved transitions, etc.

and community environment of inclusion and understanding of students, faculty and staff with neurological differences." <https://www.bellevuecollege.edu/autismspectrumnavigators/about/program/>.

⁹ According to the District: "the Parent paid the fee for the Navigator Program, which in turn provided the peer mentor. The District rejected the request for District to pay the fee, as we cover tuition and not books, supplies, or fees."

Based on the findings of the evaluation report, it is recommended that a goal to teach strategies to support emotional regulation be added to the IEP.

...

Organization

Based on the evaluation findings and progress on previous goals, it is recommended that Student have a new organization goal that focuses on completing the steps of an assignment completion routine...Another goal for Student to work on is communication that is required for not only professional needs, but academic ones as well. Student struggles with follow through on emails with all pertinent and relevant information. Over a two week period Student was asked to complete a Release of Information Consent form and was given very scripted instructions for doing so. Student struggled with replying to all relevant members and lacked the pertinent information that was critical for the IEP process. Based on previous records and Student's demonstration of missing important information or parts of a task in order for it to be complete a goal focused on email communication will be added to his IEP. Currently Student is returning email with all necessary requested information in approximately 2 weeks with multiple reminders from parent, case manager or others. The Goal would be that Student return correspondences independently within 48 hours with all necessary and requested information.

The October 2020 IEP included the following measurable annual goals:

- **Organization 1** – Improving ability to complete an assignment completion routine.
- **Organization 2** – Improving ability to independently communicate necessary information within 48 hours.
- **Social/Emotional** – Improving social skills by utilizing “strategies for dealing with anxiety, worry, perfectionism, and self-criticism.”

The October 2020 IEP provided the Student with numerous accommodations. It provided the Student with the following, non-concurrent, specially designed instruction from October 15, 2020 through October 11, 2021 in a *special education setting*:

- Organization: 30 minutes 2 times a week (to be provided by a special education teacher)
- Social/Emotional: 30 minutes 1 time a month (to be provided by a special education teacher)

19. According to the District's response:

- Following the creation of the October 2020 IEP, the specially designed instruction included therein continued to be provided to the Student remotely; and,
- “Staff report[ed] Student did not...participate [fully] in the remote specially designed instruction sessions scheduled [after] the October [14. 2020 IEP meeting].”

20. The District's response included a progress report, dated November 6, 2020, which related to the goals in the Student's October 2020 IEP. It read, in part:

Organization 1: Not Introduced Yet

This goal is new. No Data has been collected due to attendance of 1:1 sessions. Student has attended 0/7 sessions.

Sessions have been rescheduled to fit Student's schedule per an email from his mother. Due to TEAMs repeating meetings – Tuesdays were canceled and reinstated at a different time with a different invitation.

Student contacted case manager on 11/12/2020 after the next slotted change that met his original schedule and he canceled because he is now volunteering during that time.

Organization 2: *Insufficient Progress*

Student has intermittent demonstration with this goal. The case manager has made multiple attempts to work with Student's Running Start program and with setting up appointments for Student in order to meet.

Social/Emotional: *Not Introduced Yet*

This goal is new and has not been introduced yet.

21. According to the District's response, from November 17, 2020 through February 22, 2021, the Student participated in 15 of the 18 remote specially designed instruction] sessions.
22. On December 4, 2020, the Complainant sent the director an email, in preparation for an upcoming IEP meeting on December 15, 2020. The Complainant's December 4, 2020 email stated: (1) Student's social emotional services needed to be provided by someone with "expertise with Executive Functioning, adolescence, and the complexities of Student's co-morbidities"; (2) that Complainant and Parent were thereby requesting placement at a nonpublic agency "in alignment with the recommendations from the outside evaluation"; and, (3) that the District pay for the fees associated with Student's participation in the Navigator Program.

The Complainant's December 4, 2020 email also included some notes. Those notes read, in part:

Agenda [item]: discuss placement. Is there a different, non-district setting that can meet all of these needs in one place, with expertise with the combination of gifted and disabled?

Current NPAs that are potentially good fits: [NPAs 1-5]¹⁰.

23. On December 8, 2020, the director emailed the Complainant, stating, in part:
We are happy to discuss the social/emotional and executive functioning supports and services that we feel the provider the district has identified can address. The behavioral health specialist will be sending out more information regarding the provider to Parent, Student and yourself in the next day or two as a means of introduction and to provide time for Parent and Student to review and process prior to the meeting on December 15, 2020.
...
The District declined to pay the fee for the Navigators program...and that position has not changed. Per the District website and the [high school] course catalog, the District covers the cost of tuition for eligible 11th and 12th graders that elect to enroll in Running Start, but fees, books and supplies are the responsibility of the student and family.

Later that day, the Parent responded, stating, in part:

¹⁰ According to the District, NPA 5 is an "approved NPA that provides academics, and can provide academic specially designed instruction and some limited social, skill-focused specially designed instruction." According to its website, NPA 5 is a "one-on-one and small group school designed [to treat students] as learner[s] and...individual[s]." <https://www.YellowWoodacademy.org/>

If the Navigator Program won't be considered (which may be moot since Student probably needs placement elsewhere, other than Running Start or [college]/District High School), we need to address transition services in another way....Student is rapidly becoming an at-risk student unlikely to remain in school. We've had hours of parent-child conversations about what can motivate him to stay in school and they all end with his saying that school is simply too frustrating and stressful. The lack of appropriate, effective support is the main problem. These same issues caused his emotional crisis last year and we're headed there again, this time with his considering dropping out as the best solution. These concerns were urgently and comprehensively addressed in the letter from his psychiatrist last spring.

24. On December 15, 2020, according to the District's response:

[The] Student's IEP team reconvened...to discuss transition services, review the current IEP, and Student's instructional needs. During the meeting, Parent and the [Non-Parent Complainant] requested Student's placement at a non-public agency. The team did not agree with this request. The District representative offered, however, to explore in-person support options and confirm those options with Student and Parent on December 18, 2020.

...

At the December 15th meeting, the IEP team discussed adding counselling, also requested by Student, Parent, and [Non-Parent Complainant], as a supplementary aid and service.¹¹

...

Any change in [the] Student's placement must be made by the IEP team, and the evidence shows that no such change was agreed to by [the] Student's IEP team on December 15, 2020.

According to the signature page of the December 2020 Amended IEP, see below, the special education director was listed as the District "administrator/designee" for the IEP meeting.

25. The District's response included notes from a behavioral health services clinical specialist that relate, in part, to the December 15, 2020 IEP meeting. Those notes read, in part:

Parent and [Complainant] raised the concern about Student failing all of his Running Start classes.¹² Student shared that the online environment causes him very high anxiety and presents additional executive functioning challenges that he is unable to overcome. Student endorsed feelings of embarrassment about this.

Team discussed the possibility of 1:1 instruction in person via [a nonpublic agency] placement until schools and campuses [are] able to re-open from pandemic closure.

Complainant stated that he and the family strongly feel that Running Start is the best educational fit for Student when conducted in person.

¹¹ According to the District's response, at the December 15, 2020 IEP meeting, the team also "discussed reconvening again on January 7, 2021 with a facilitator from the Sound Options Group to continue their discussions about options for Student's in-person support [but] this proposed IEP team meeting did not ultimately happen because Parent withdrew the request for the facilitated IEP meeting."

¹² According to the District, it "does not receive any direct documentation from [college] on student performance in classes (except a final grade report for transcript purposes after course completion). The report of failing [college] classes came from the Student."

This writer clarified that supplemental counseling will only be provided through telehealth as that is the only medium through which [the] therapist is currently operating practice.

Parent, Student, and [Complainant] stated that they feel that two 30 minute telehealth sessions per week would be the most helpful service delivery. Student stated that he feels he needs to do his telehealth sessions while at his in person school location in order to have access to someone to help him keep track of his time and to log into meetings. Student also asked if he would be able to text or call [the contractual therapist] between meetings for in the moment support.

This writer agreed to reach out to [the contractual therapist] to ask about availability for 2x 30 min weekly sessions and Coaching.

26. During the course of this investigation, the Complainant provided OSPI with additional information. That additional information read, in part:

An IEP Meeting was conducted [on December 15, 2020]. At that time, it was agreed upon by the team, as shared in an email from myself to the director as follows: 'The IEP Team supports the development of an NPA academic model [specific to the COVID Schedule] with additional supplemental services through [a counselor] to include [executive functioning] and Social Emotional skill development. This will be further explored by FRIDAY and presented by the director after she runs it by her team members at district.'

27. On December 18, 2020, the director emailed the Parent stating, in part:

After speaking to my executive director and in consideration of the governor's announcement yesterday which is likely to impact services in the second half of this year, I have attached some options for you to review. Of course these would need to be discussed and worked out at the next IEP meeting.

The director's December 18, 2020 email included an attachment that outlined the three options referenced in the body of her email:

Option 1

Remain in Running Start; however, come in person to high school with support of a 1:1 aide to assist in attending to class, organizing and completing assignments.

Specific organizational, executive function strategies would be taught (as overseen by special education teacher).

2 30-minute tele-therapy sessions with the therapist to address social/emotional and anxiety related to executive functioning challenges (sessions could be built into the school day while in person at high school).

Option 2A (January)

Withdraw from Running Start.

Work In person at [high school] with 1:1 aide and access online credit recovery course (to make up failed fall quarter classes). Online course could be [a university] course.¹³

Specific organizational, executive function strategies would be taught (as overseen by Special Education teacher).

2 30-minute tele-therapy sessions with the therapist to address social/emotional and anxiety related to executive functioning challenges (sessions could be built into the school day while in person at high school).

Option 2B (2nd Semester)

When 2nd semester begins at the end of January Student would remain in person at high school with 1:1 aide and would take courses at high school (offered remotely) could be a combination of high school courses and [a university] online course.

Specific organizational, executive function strategies would be taught (as overseen by Special Education teacher).

2 30-minute tele-therapy sessions with the therapist to address social/emotional and anxiety related to executive functioning challenges (sessions could be built into the school day while in person at high school).

Later, on December 18, 2020, the Parent forwarded this email to the Complainant, stating, in part: "This is [paperwork] the director sent [me] just now. I'm incredulous. The NPA option has completely disappeared. These are options we've already told her haven't work[ed] or won't work."

28. In a separate email on December 18, 2020, the Student emailed the director, stating, in part: My mom just showed me these options, and I'm really disappointed...It was incredibly jarring to hear you propose [NPA 6]¹⁴ at the recent [IEP] meeting, which I looked into and thought would be a great option for me, and [for the District to] now retract that offer. It's obvious that you don't understand how difficult this is for me and don't want to help. You're just asking me to do the same unhelpful things I've tried in the past. One of the main reasons I'm considering dropping out of school is because of this process. It's really hard for me to come to meeting after meeting and see no change in the support I'm getting. It's incredibly stressful. I feel like a failure at school...I'm gonna talk with my mom about my next steps, but I don't see any of the options you sent being helpful to me.

Later that same day, the director responded, stating, in part:

¹³ According to the District's response, "District high school students can enroll in a [university] online class, [which] are offered in a variety of contents, [and those courses] can count as credit towards high school graduation."

¹⁴ According to the District, NPA 6 is an "approved NPA that provides academics, and can provide academic specially designed instruction and some limited social, skill-focused specially designed instruction." According to its website, NPA 6 serves "students with a one-to-one instructional approach...to help...students...reach their full academic potential and prepare for college and [a] career." <https://www.brightmontacademy.com/about-us>.

As I shared at the meeting it was an option that I agreed to explore, but I am not the final or sole decision maker. I understand you may feel disappointed, however you are definitely not a failure.

There are some good options to explore and it looks like there may be more in person options in the future as restrictions begin to change in our state. I understand you would like to think about next steps, but I hope we can find an option that will work.

29. The District was on break from December 21, 2020 through January 1, 2021.

30. On December 29, 2020, the director emailed Sound Options, stating, in part:

We did hold an IEP on Dec 15th and offered Student 60 minutes a week of Counseling as a Supplementary Aid and Service by a therapist who specializes in ASD, ADHD, Anxiety and twice exceptional students.

We discussed the possibility of classes at an NPA, but I could not get approval for that. We did offer to bring Student back in-person with the support of an aide who could provide support and assistance while Student accessed either his Running Start classes or a class schedule at his high school. The response from the Student/family was not positive to the offer of in-person. We still have a hold for [a facilitated] IEP [meeting with Sound Options and the Student and Parent] on January 7, 2021, but I don't know if the family is still interested. If they are then our team will participate, however it would only be to discuss the options we are able to offer as described above.

31. In an email thread dated January 4, 2021, the Student, director, and special education teacher worked together to create a schedule for the Student that would permit the Student to attend the "one-on-one sessions with the therapist."¹⁵

32. According to emails dated January 7 and 8, 2021, on those dates, the Complainant, the director, the special education teacher, the Student, and the Parent discussed the following:

- The fact that the Student's October 2020 IEP would be amended "to add...counseling with the therapist."
- The fact that a follow-up IEP meeting was needed to discuss Student's needs resulting from the Student's disability in the area of transition services.
- The fact that Student continued to have concerns about: life after high school; having less friends than desired; his ability to make connections with others; and, his ability to live independently.

One of the foregoing emails was written by the Parent and read, in part:

Historically, Student's had difficulty recognizing and accepting his limitations and tries to minimize or hide them. As a result, his self-reports to evaluators and counselors about his functioning, relationships etc. are overly positive and unrealistic. Also, because of his anxiety, impulsivity and communication struggles, when asked about interests and goals, he usually just says whatever pops into his head, or whatever he thinks the interviewer

¹⁵ In this email thread, the Student reiterated that, though he was willing "to try the option where [he] stay in Running Start and come into the high school for one-on-one support...from the therapist" he still had "a lot of concerns that [those] supports [were not] going to be enough to help [him] learn."

wants to hear. Through his work in the neurodiversity support program...Student is gradually becoming more accepting of and candid about his limitations. He is beginning to perceive the vast divide between where he is and what is required to succeed at college, succeed in the workplace, and to live independently.

Attached to the January 7 and 8, 2021 chain of emails was a copy of an IEP for the Student, dated December 15, 2020 (December 2020 Amended IEP). The December 2020 Amended IEP included the same specially designed instruction as that found in the Student's October 2020 IEP. However, the December 2020 Amended IEP also provided the Student with the following supplementary aid and service to be provided in a special education setting from January 10, 2021 through October 11, 2021:

- Counseling: 60 minutes 1 time a week (to be provided by a counselor)

33. The District's response included a prior written notice, proposing to change the Student's IEP, dated January 7, 2021. The January 7, 2021 prior written notice read, in part:

Description of the proposed or refused action:

The team will review the Parent request for an NPA (Non Public Agency) placement for Student.

The district is adding the Counseling as a Supplementary Aide and Services, provided by the therapist and in-person support in the [afternoon] session at [the high school], to Student in accessing his Running Start classes.

The reason we are proposing or refusing to take action is:

We are proposing this review and plan on having further discussions by Friday, [December] 18, 2020, and then reconvene for an IEP meeting on January 7, 2021, because Student has not had success in Running Start or [in] accessing his Specially Designed Instruction in the virtual setting.

The team considered [NPA 6] in-person with virtual counseling until in-person Running Start could reconvene. On December 18, 2020, the District discussed offering in-person services to Student, by having him access his remote classes (either Running Start or classes at [high school]) at [high school] with the support of an aide.

Description of any other options considered and rejected:

We rejected approving the request of [NPA 6] or [NPA 5].

The reasons we rejected those options were:

The District indicated they would explore options and confirm those options with Student and Parent on December 18, 2020.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Parent, Complainant, and Student requested an alternative educational setting and counseling.

Student has been able to meet with his IEP Case Manager 4 [out of] 16 times due to his anxiety about phone and online meetings.

Any other factors that are relevant to the action:

Student struggles with online learning and cannot access instruction in organization and social/emotional in the online setting, per Student.

Transportation will be provided to and from [high school] and in-person support will begin on January 11, 2021.

Student and Parent have opted to continue Running Start courses instead of resuming High School course enrollment. Student will need to bring his [high school] issued laptop, as well as his Running Start issued Laptop, for his in person support services at [high school].

Parent has written email regarding this [IEP] amendment and does not agree on the goals, transition supports, or service delivery at this time.

The team will reconvene to discuss transition services at a later date.

34. On January 10, 2021, the Parent emailed the special education teacher and the director, stating, in part:

We have serious concerns about the content in the [IEP] amendment and in the Prior Written Notice. We feel that vital information is missing, and other information is inaccurate, outdated and discrepant from our perceptions and from notes of the meetings. Because the amendment and [prior written notice] as it stands is, in our view, incompatible with the development of an educationally appropriate IEP for Student, we plan to pursue the next steps as allowed by the procedural safeguards.

[But] Student will be at school on Monday to begin the proposed services.

35. According to the District:

Starting January 11, 2021, the Student was physically in person at [the District high school] with the support of a paraprofessional who provided organization support.

The certificated special education teacher was still providing remote specially designed instruction in Organization (30 minutes 2x per week) [and] the Student accessed counseling as a related service with the therapist via Tele-therapy on Wednesday, which was a fully remote day.

Both specially designed instruction from the certificated special education teacher and counseling from the therapist were provided remotely, but the support from the paraprofessional to access remote learning was provided in person.

Running Start, to the District's knowledge, remained fully remote. (However, the District is not privy to what [college] chose to allow in the way of in person learning).

36. During the course of this investigation, the District provided OSPI with a progress report, dated January 28, 2021, that related to the goals in Student's December 2020 Amended IEP. It read, in part:

- **Organization1:** Progress demonstrated but [goal] not mastered.
 - Student has been working in the building with a 1:1 para and has just started using his planner. He fills it in 4/5 days and sets timer on his phone to review at a later time. He is currently on track with all assignments turned in and passing all classes with the visual demonstration of his Canvas page to his 1:1 [paraeducator].

- **Organization 2:** Insufficient Progress demonstrated to meet this annual goal and may not achieve annual goal within duration of IEP.
 - Student has been making gains on this and has since attending in person responded to all correspondences within that time frame.
- **Social/Emotional:** Not introduced yet.
 - Student has been working with a para 1:1 these past few weeks and utilized deep breathing during the one incident at school that caused him stress (log in not working on secure test). He is able to articulate his frustration with his lack of skills 2/2 per week. Discussion of improving his social skills is continuing and he is scoring what is considered fixed mindset in Practice and Applying Skills and Taking on Challenges. He is growing in Learning from Mistakes, Accepting Feedback and Criticism, Perseverance, and Asking Questions.

37. On January 28, 2021, OSPI received the Complainant's complaint. In part, it read:
 [This complaint concerns] disregarding the IEP Team decision and related nonpublic agency placement made by the IEP [team] on December 15, 2020. The IEP team, Parent, and Student engaged in a conversation about NPA Placement. Specifically, placement at [NPA 6]. [This was] proposed by the Director of Secondary Special Education, highlighted the team's discussion including understanding and agreement that this placement [sic], specifically during the COVID pandemic, would be the least restrictive and most appropriate placement at this time.

However, the Prior Written Notice, dated January 7, 2021, highlighted a decision which was not made by the IEP Team. District Level Administration made the decision outside of the IEP Team meeting stating "We reject approving the request of [NPA 6] or [NPA 5]".

38. According to both the District and the Parent, sometime between February 18 and March 22, 2021, the Student's in-person, 1:1 paraeducator was replaced with the following service: in-person classroom support in the following setting: two paraeducators and five to six students.

39. On February 25, 2021, OSPI received the Complainant's reply to the District's response. It read, in part:

[T]he notion [that] a non-public agency placement was requested by the Parent and Non-Parent Advocate alone [is] not the case. Specifically, the director initiated within our conversation placement at [NPA 6] and emphatically highlighted reasons why [NPA 6] would be a more appropriate placement compared to other non-public agency schools such as [NPA 5 and 7].

Furthermore, [it is] not the case [that] the 'team did not agree with this request'...other members of the team affirmed this as an appropriate placement during the COVID schedule due to Student's lack of engagement through Remote Learning. We left the meeting with the understanding that the [NPA 6] placement was a viable option for placement.

We did state that in-person learning would likely be the most appropriate placement for Student but this was not available at that time [through the District high school] and continues to be unavailable throughout the 2020-2021 school year. At the time [of the December 15, 2020 IEP meeting], [NPA 6] was implementing in-person 1:1 services.

40. On March 16, 2021, OSPI received additional information from the Complainant. That additional information read, in part:

This situation is less complex than it appeared from the District's response.

Both Parent and Student clearly understood (as well as myself) that the district representative proposed an NPA placement in December due to Student's performance within the Remote Learning format. The IEP Team agreed this was appropriate.

The District dropped the proposal outside the IEP Meeting setting and highlighted post-remote learning proposals which were in the works. And the District continued on a remote learning basis through March and [college], the Running Start Program, will not be serving students via face-to-face learning this year.

41. According to the District, as of March 18, 2021:

[The Student had] not attended the last 7 [specially designed instruction] sessions and has provided various reasons for the lack of participation, such as saying he needs to eat or that the meeting invitation is not on his calendar at home, despite a new meeting invite [being] sent each week.

42. On March 19, 2021, OSPI's investigator conducted a phone interview with the special education director. OSPI's investigator's notes read as follows:

December 15, 2020 IEP Meeting

Purpose of the meeting from the District's perspective was to offer counseling to the Student. The District had made some progress in securing a contract with a counselor that could provide services to the Student.

Other issues came up during the meeting and it was determined a second meeting, in early January 2021 would be needed.

During the IEP meeting, the Student said remote learning was challenging for him. Student expressed an interest in [NPA 6 or 5]. When asked why Student preferred those options, Student stated: 'couldn't do remote' (paraphrased).

What the District could not say at the December 15, 2020 IEP meeting was that the District was in the process of finalizing at least a partial return to in-person services; the District-wide plan for the return to in-person services was not yet finalized as of the December 15, 2020 IEP meeting.

Director stated that, during meeting, she stated: 'I need to see what in-person options will be possible' (paraphrased). Director stated she did not state that [NPA 6 or 5] was the appropriate placement and would be where the Student was placed for the spring 2021 semester.

Director stated: as of December 15, 2020, the hope was that, to the extent the Student required in-person services, the District would be able to offer those services.

Subsequent Conversation with Executive Director

Director stated: the content of this conversation was less around 'can we do this NPA for this Student' (paraphrased) and more around 'well, here's the in-person services the District will now be able to offer Student.' In other words, director stated, 'I got approval that District could offer more in-person services to the Student.'

43. On March 23, 2021, OSPI's investigator conducted a phone interview with the Student's special education teacher. OSPI's investigators notes read as follows:

December 15, 2020 IEP Meeting

Special education teacher reports the meeting was more of an 'open-ended' discussion around NPAs—rather than a definitive decision being reached.

Based on the special education teacher's recollection, the Parent and Student's desire for an NPA placement was brought to the IEP team's attention 'at that moment' and the IEP team 'discussed what Student's needs were.' Special education teacher's recollection is that the IEP team believed they'd likely need to meet again on this issue.

Special education teacher recalls that Parent and Student requested the NPA because, though Student was physically able to demonstrate computer login ability and related skills, Student's anxiety and other needs interfered with Student's ability to perform said skills.

Attendance of Remote, Specially Designed Instruction Sessions Prior to November 17, 2020

According to the special education teacher, prior to November 17, 2020, the District and/or special education teacher made remote, specially designed instruction sessions available to the Student, but the Student did not attend these sessions on a regular basis.

Concerning Provision of 1:1 Paraeducator Post-January 11, 2021

Since January 11, 2021, the Student's specially designed instruction in social/emotional has also been provided remotely, but with the assistance of the in-person 11:1 paraeducator.

Since January 11, 2021, the Student's 1:1 paraeducator was not present with the Student when the Student accessed the counseling services in the Student's IEP because the Parent and/or Student did not want the paraeducator present – for the Student's privacy and to facilitate full and productive counseling sessions.

Since January 11, 2021, the Student has not received any general education services in-person at the District high school.

The Student's December 2020 IEP was not amended on or about January 11, 2021, despite the fact that an in-person paraeducator was provided to the Student to help Student access his remotely-provided IEP services, because 'it wasn't a 1:1 paraeducator that supported Student's academic needs – the 1:1 paraeducator that was provided helped Student with structure, supervision' etc. (paraphrased).

Initially, when the Student was provided with a 1:1 paraeducator beginning on or about January 11, 2021, the Student started performing better in Student's Running Start classes.

Attendance and Performance – November 17, 2020 through February 18, 2021

From November 17, 2020 through February 18, 2021, Student attended 15 of the 18 offered, remote specially designed instruction sessions. And, according to the special education teacher, Student was meeting IEP goals during this time.

February 18, 2021 through Present

Student got sick with COVID around February 18, 2021. COVID protocols were followed and the Student was unable to work in-person with the paraeducator for a couple weeks.

After the quarantine weeks were over, Student came back to one in-person paraeducator session but expressed frustration with the service (in-person, paraeducator assistance).

Since February 18, 2021, the Student has attended 1 of 9 of the offered, remote specially designed instruction sessions.

Student was present for the remote specially designed instruction session on March 22, 2021.

Other

According to the special education teacher: in the past, Student has expressed a desire to obtain an associate degree prior to graduation from the District, but Student would not have been able to achieve this goal through placement at [NPA 6].

As per the Governor's recent order, beginning April 19, 2021, the District should be able to provide the Student with some form of in-person services – beyond the current arrangement of an in-person 1:1 paraeducator to assist the Student with accessing remote specially designed instruction.

44. On March 25, 2021, OSPI's investigator conducted a phone interview with the Parent. OSPI's investigator's notes from that interview are as follows:

Student had been offered a remote, 1:1 paraeducator in spring 2020. Parent stated: this service did not help Student because it was more along the lines of 'prodding' and 'checking' to make sure work was completed; it was not a service wherein Student was actively taught skills to manage assignments on his own. Additionally, Student had difficulty engaging with the 1:1 paraeducator because of the Student's needs resulting from attention deficit hyperactivity disorder (ADHD).

Post-January 2021: on at least one occasion, Student asked his in-person, 1:1 paraeducator for direct assistance on an assignment and the paraeducator was not of much assistance. Parent characterizes the in-person, 1:1 paraeducator as fulfilling more of a 'baby-sitting' role – in other words, not teaching executive functioning skills.

After Student returned following his illness, Student participated in one of the in-person classroom support sessions (2 paraeducators and 5 to 6 students present), but the Student did not find it helpful and opted not to continue using this service.

Parent does not agree with the latest-in-time progress report; Parent believes it is 'lop-sided' and not representative of where the Student actually is performance-wise on his IEP goals.

Parent stated: the specially designed instruction in organization does not cover all of the Student's needs in the area of executive functioning.

From roughly December 2020 through February 2021, Parent stated: Student did show improved performance in his Running Start courses, but Parent stated: this was not because of the in-person 1:1 paraeducator, but because the Parent had taken time off work and was working with the Student intensively at home.

Parent stated: from December 2020 through February 2021, the Student did not show increased performance the goals in his IEP.

CONCLUSIONS

Issue One: Placement – The Complainant alleged the District did not follow proper procedures in determining the Student’s placement for the spring 2021 semester.

Nature of the December 15, 2020 IEP Meeting

As a preliminary matter, the Complainant alleged that, at the December 15, 2020 individualized education program (IEP) meeting:

[The IEP team reached] understanding and agreement that...placement [at NPA 6] would be the least restrictive and most appropriate placement [for Student] at [that] time. However, [the IEP team’s decision was countermanded by a] District level administration [decision] made...outside of the [December 15, 2020] IEP meeting.

The District, however, stated the IEP team discussed potential NPA placements during the December 15, 2020 IEP meeting, but no definitive decision was reached.

According to Washington’s special education regulations, placement decisions are to be determined by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options.

To the extent, then, that the Complainant is alleging: (a) the December 15, 2020 IEP team represented a group of persons knowledgeable about the Student, the evaluation data, and the placement options; (b) the IEP team made a definitive placement decision on December 15, 2020 – specifically, that the Student be placed at NPA 6 for the spring of 2021¹⁶; and, (c) that this decision was then countermanded by a District-level administrator who did not have knowledge of the Student, the evaluation data, and the placement options, then the nature of the December 15, 2020 IEP meeting is an appropriate inquiry for this decision. Whether appropriate procedures were followed in reaching the actual placement decision that was ultimately made is analyzed below.

OSPI utilizes a ‘preponderance of the evidence’ standard in making independent determinations as to whether a public agency violated a requirement of the IDEA. Merriam-Webster’s Dictionary of Law defines the phrase ‘preponderance of the evidence’ as “the standard of proof...in which [a] party [wishing to establish a factual premise] must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not.”

¹⁶ It should be noted that there is language in the Complainant’s February 25, 2021 reply that contradicts the Complainant’s position that a definitive decision was reached at the December 15, 2020 IEP meeting. For example, the Complainant’s reply read, in part: “[Parent and I] left the meeting with the understanding that [NPA 6] was a viable option for placement.” The foregoing language—that the NPA was an *option*—strongly suggests a definitive decision in regard to NPA placement was not made at the December 15, 2020 IEP meeting.

Here, the evidence in relation to whether a definitive decision was made at the December 15, 2020 IEP meeting is as follows: there is limited evidence to suggest a definitive decision was made at the December 15, 2020 IEP meeting concerning placement at an NPA.

There is some evidence that is ambiguous in terms of whether a definitive decision was made at the December 15, 2020 IEP meeting concerning placement at an NPA. For example: on December 19, 2020, the director emailed Sound Options, stating, in part: "We discussed the possibility of classes at an NPA, but I could not get approval for that." In the email, the language "we discussed the possibility" suggests an open-ended discussion took place; and that no definitive decision concerning placement was made. But the language "I could not get approval" might suggest a definitive decision concerning placement was made at the December 15, 2020 IEP meeting – but that decision was subsequently countermanded by a different individual.

Notably, though, there is significant evidence suggesting a definitive decision concerning placement was *not* made at the December 15, 2020 IEP meeting; and that the discussion on a potential NPA placement that took place on December 15, 2020 was open-ended, inconclusive, and ongoing. The following represents such evidence:

- The Complainant stated that, on or about December 15, 2020, he emailed the director the following message: "The IEP Team supports the development of an NPA academic model [specific to the COVID Schedule] with additional supplemental services through [a counselor] to include [executive functioning] and Social Emotional skill development. This will be further explored by FRIDAY and presented by the director after she runs it by her team members at district."
- On December 18, 2020, the Student emailed the director, stating, in part: "It was incredibly jarring to hear you propose NPA 6 at the recent [IEP] meeting, which I looked into and thought would be a great **option** for me" (emphasis added).
- Later, on December 18, 2020, the director responded to the Student's email, stating, in part: "As I shared at the meeting, NPA 6 was an option that I agreed to explore."
- The Complainant's reply read, in part: "[Parent and I] left the meeting with the understanding that [NPA placement] was a viable option for placement."
- During the course of this investigation, OSPI's investigator separately interviewed both the director and the special education teacher. In those interviews, both the director and the special education teacher both stated the December 15, 2020 discussion concerning potential NPA placement was open-ended, and that a definitive decision in regard to NPA placement was not reached.¹⁷

Based on the foregoing information, OSPI determines the evidence most credibly supports a finding that a definitive decision regarding potential NPA placement was not made at the December 15, 2020 IEP meeting. This, however, does not end the inquiry.

¹⁷ There is also a January 7, 2021 prior written notice that read, in part: "[At the end of the December 15, 2020 IEP meeting], the District indicated they would explore options [for NPA placement and/or in-person services] and confirm those options with Student and Parent on December 18, 2020." But in this specific instance, for this specific issue, OSPI does not give the foregoing, quoted language much evidentiary weight, as the January 7, 2021 prior written notice was: (a) created several weeks after the meeting in question – when it was clear there was already a dispute concerning whether a definitive decision had been reached at the December 15, 2020 IEP meeting concerning potential NPA placement; and, (b) it was a document created by the District.

Post-December 15, 2020

As concerns placement discussions and determinations that took place after the December 15, 2020 IEP meeting, the information provided to OSPI during the course of this investigation shows:

Soon after the meeting, the director spoke with the executive director. According to the director, this conversation principally concerned the Student's needs and the in-person services the District could offer the Student. Then, on December 18, 2020, the director emailed the Parent several "options." Each of the options provided to the Parent included in-person support for the Student at the District's high school via a 1:1 paraeducator. None of the options provided to the Parent included placement at either of the NPAs desired by the Parent and Student.

On or about January 7, 2021, the Student's IEP team determined that two changes would be made to the services provided to the Student: (1) 60 minutes a week of counseling would be added to the Student's IEP as a supplementary aid and service; and, (2) a 1:1, in-person paraeducator would be provided to the Student at the District high school, with said paraeducator helping the Student access his remote sessions of specially designed instruction. It is important to note, though, that the Student's December 2020 Amended IEP did not reflect the addition of the in-person 1:1 paraeducator support – the December 2020 Amended IEP only reflected the addition of the 60 minutes a week of counseling.¹⁸

The Parent and Student clearly disagreed with the decision to not place the Student at either NPAs 5 or 6 – or any other NPA, for the spring 2021 semester. The fact that the Parent and Student disagreed with the decision to not place the Student at either NPA 5 or 6 does not necessarily mean a violation of the IDEA occurred. An IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority vote and no one team member has veto power over individual IEP provisions or the right to dictate a particular educational program.

If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program. And a prior written notice must include, in part: (a) a description of the action proposed or refused by the agency; and, (b) an explanation of why the agency proposes or refuses to take the action.

Here, the January 7, 2021 prior written notice does explain why the Student's IEP team was going to provide the Student with in-person, 1:1 paraeducator support. For example, the January 7, 2021 prior written notice read, in part: "Student struggles with online learning and cannot access instruction in organization and social/emotional in the online setting."

¹⁸ During her interview with OSPI's investigator, the special education teacher explained the Student's December 2020 Amended IEP did not include the provision of 1:1 in-person paraeducator support because (paraphrased) "it was not a 1:1 paraeducator that supported the Student's academic needs – the 1:1 paraeducator that was provided helped Student with structure and supervision."

The January 7, 2021 prior written notice, though, does not include a clear explanation of why the Student's IEP team was rejecting placement at either NPA 5 or 6. Stated differently, the January 7, 2021 prior written notice does not explain why the Student's IEP team believed the provision of an in-person, 1:1 paraeducator was *sufficient* to address the Student's needs resulting from the Student's disability – and why NPA 5 or 6 was *more* than what was required to address the Student's needs resulting from the Student's disability; and therefore, why the Parent's request for the NPA was rejected. This represents a violation of the IDEA with respect to prior written notice procedures and the District will be required to disseminate written guidance to certain staff.¹⁹

Beginning January 11, 2020, the Student was provided with an in-person, 1:1 paraeducator who assisted the Student in accessing his specially designed instruction in organization and social/emotional, which was provided remotely. Sometime between February 18 and March 22, 2021, the Student's in-person, 1:1 paraeducator was replaced with in-person support in a classroom comprised of two paraeducators and five to six students.

The foregoing facts present an additional legal issue: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. And an IEP must include, in part: a statement of the special education, related services, and supplementary aids and services to be provided to the student; and, a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining the annual IEP goals; be involved and progress in the general curriculum in accordance with present levels of educational performance. This is, in part, because each teacher must be informed of, in part: the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

Here, the Student's IEP was not amended on or about January 7, 2021 to reflect the addition of the in-person, 1:1 paraeducator. Nor was the Student's IEP amended on or about February 18, 2021, when the Student's in-person support was slightly changed – to a classroom setting with two paraeducators and five to six other students present. This is a violation of the IDEA. The Student's IEP team will be required to amend the Student's December 2020 Amended IEP to reflect the specific type of in-person paraeducator support the Student's IEP team believes the Student requires to enable the Student to: advance appropriately toward attaining the annual IEP goals; be involved and progress in the general curriculum in accordance with present levels of educational performance.

¹⁹ While the sufficiency of the January 7, 2021 prior written notice was not an issue this investigation was explicitly opened on, it was clearly relevant to an investigation of the placement issue that this investigation was opened on. And state education agencies have general supervisory responsibility to ensure compliance with all IDEA Part B requirements.

Substantive Placement Decision

The selection of the appropriate placement for each student shall be based upon four factors: (1) the student's IEP; (2) the placement option that provides a reasonably high probability of assisting the student to attain his or her annual goals; (3) a consideration of any potential harmful effect on the student or on the quality of services which he or she needs; and, (4) the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070.²⁰ Similarly, an IEP team's decisions must be reasonably supported by the student-specific data.

Here, from the spring of 2020 through December 2020, several potential NPA placement options were mentioned in emails and IEP-related documents. It appears, though, that the IEP team gave the most serious consideration to the following two NPA placement options: NPA 5 and NPA 6.

According to the District, NPA 5 is an "approved NPA that provides academics, and can provide academic specially designed instruction and some limited social, skill-focused specially designed instruction." According to its website, NPA 5 is a "one-on-one and small group school designed [to treat students] as learner[s] and...individual[s]." NPA 6 is an "approved NPA that provides academics, and can provide academic specially designed instruction and some limited social, skill-focused specially designed instruction." According to its website, NPA 6 serves "students with a one-to-one instructional approach...to help...students...reach their full academic potential and prepare for college and [a] career."

Here, the following arguments were made to support potential placement at either NPA 5 or 6 – or a similar nonpublic institution:

- The Complainant's reply read, in part:
 - "We did state that in-person learning would likely be the most appropriate placement for Student but this was not available at that time [through the District high school] and continues to be unavailable throughout the 2020-2021 school year. At the time [of the December 15, 2020 IEP meeting], [NPA 6] was implementing in-person 1:1 services."
- In an email to the director on December 4, 2020, the Complainant stated the Student needed to be placed at an NPA because he needed staff that had "expertise with the combination of gifted and disabled."
- During her interview with OSPI's investigator, the special education director stated: during the December 15, 2020 IEP meeting, the Student said he was interested in being placed at either NPA 5 or 6 because he "couldn't do remote [learning]" (paraphrased).²¹

²⁰ In regards to a student's least restrictive environment, school districts must ensure that the provision of services to each student eligible for special education is: 1) to the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily.

²¹ The January 7, 2021 prior written notice also states the Student made a similar statement during the December 15, 2020 IEP meeting.

- Both the Parent and the Complainant stated the private psychiatrist’s April 2020 letter and the independent evaluator’s August 2020 report supported such a placement.^{22 23}

Ultimately, the Student’s IEP team rejected the proposal to place the Student at either NPA 5 or 6. Rather, the Student’s IEP team opted for the District to provide the Student with two new services: 60 minutes of counseling once a week; and, in-person support from a 1:1 paraeducator in the afternoon at the District high school – the purpose of the latter service being to assist the Student in accessing his remote specially designed instruction in organization and social emotional, which was carried over from the October 2020 IEP and included in the December 2020 Amended IEP.

The question, then, is: was the foregoing placement determination one that was reasonably supported by Student-specific data? And, here, a fair reading of the record clearly shows the answer to that question is: yes – the placement determination represented by the December 2020 Amended IEP was reasonably supported by Student-specific data. For example:

Student-Specific Data on Student’s Needs Resulting from Student’s Disability	How Placement Determination represented by December 2020 Amended IEP Addressed Known Needs
<p>Data existed showing Student required some form of in-person support to assist Student with executive functioning skills, including, in part: organizing, planning, and monitoring work completion and turn-in.</p> <p>See private psychiatrist’s April 25, 2020 letter; see also May 2020 Amended IEP; independent evaluator’s August 2020 report; Parent’s August 11, 2020 email to the independent evaluator; October 2020 IEP; January 7, 2021 prior written notice; OSPI investigator’s notes from conversations with both director and special education teacher.²⁴</p>	<p>Beginning January 11, 2021, the Student’s IEP team in-person support from a 1:1 paraeducator in the afternoon at the District high school. This in-person 1:1 paraeducator “assisted [the Student] in attending...class, organizing, and completing assignments.” Email from director to Parent (December 18, 2020).</p> <p>Additionally, Student continued to receive specially designed instruction in organization, with said goals focusing on Student’s ability to complete</p>

²² See Complainant’s October 12, 2020 email to the director; see also Complainant’s December 4, 2020 email to the director; Parent’s December 8, 2020 email to the director.

²³ Interestingly, only the private psychiatrist’s letter appears to explicitly endorse an “outplacement” option as the best potential placement for the Student. But even then, a fair reading of the private psychiatrist’s letter shows that the more important determinant of proper placement for the Student, according to the private psychiatrist, was not whether the Student was actually placed at an NPA, but whether the Student’s education program contained the recommendations included at the end of the letter. As per the independent evaluator’s August 2020, it does recommend the Student be given “opportunities to expand his connections with peers either online or in-person (when feasible)”, but it does not appear to state the Student must be placed at an NPA.

²⁴ Also relevant on this score is the following: (1) during the course of this investigation, the Parent reported the Student had shown difficulty attending the 1:1 remote paraeducator sessions that were provided to the Student in the spring of 2020 and that the Student continued, throughout the fall of 2020, to show

	assignments and communicate necessary information regarding task completion. ^{25 26}
The Student had challenges with anxiety, self-worth, and chronic stress. See private psychiatrist's April 25, 2020 letter; see also September 2020 reevaluation report. To address these issues, specially designed instruction in social emotional was added to the Student's IEP in October 2020. See October 2020 IEP. However, from mid-October 2020 through December 2020, Student continued to demonstrate challenges with anxiety, self-worth, and chronic stress, thus necessitating a more intensive intervention in this area. See Parent's December 8, 2020 email to director; see also behavioral health services clinical specialist's December 15, 2020 meeting notes.	With the December 2020 Amended IEP, the following was included for the first time: 60 minutes of counseling once a week (as a supplementary aid and service).

“challenges in using digital tools such as email, a digital calendar, and teleconferencing software”; and, (2) from the start of the 2020-2021 school year, the Student had limited and/or irregular attendance at his remote specially designed instruction sessions.

²⁵ Though not directly relevant to the issue of whether the placement decision represented by the December 2020 Amended IEP was a substantively permissive determination **as of** early January 2021, OSPI does note the following: (1) from January 11 (when the Student was first provided with an in-person paraeducator) through February 18, 2021 (when the Student got sick), the Student showed improved attendance for his remote specially designed instruction sessions; (2) according to both the Parent and the special education teacher, from January 11 through February 18, 2021, the Student did show improved performance in his Running Start courses; and, (3) there is some indication Student made progress, even if limited, on his organizational goals from January 11 through January 28, 2021 – see January 28, 2021 progress report.

²⁶ Here, OSPI notes: there are a couple points in the record wherein the Parent appears to argue that the specially designed instruction in organization included in the Student's various 2020-2021 IEPs does not sufficiently address the Student's executive functioning needs. See OSPI investigator's notes from interview with Parent. The argument appears to be one of the following: the organization goals in the Student's IEP, which relate to completing assignment routines and communicating necessary task-related information, are not sufficient – and the Student requires additional organization goals; the Student requires more minutes of specially designed instruction in organization than is currently provided to the Student under the IEP; and/or the Student requires separate specially designed instruction in executive functioning. (Though, as OSPI understands it, there is a degree of overlap in the common understanding of executive functioning and organization, as those terms were used by the parties during the time period relevant to this investigation.) See Parent's August 11, 2020 email to the independent evaluator (executive functioning strategies need to be “taught” to the Student); see also Complainant's August 12, 2020 email to the director (the District needs to provide the Student with “skill development” in the area of executive functioning); OSPI investigator's notes from interview with Parent (Parent describes the in-person 1-to-1 paraeducator as fulfilling a “baby-sitter” type function). From the information provided to OSPI during the course of this investigation, the exact nature of the dispute on this issue is unknown, but the Student's IEP team is free to discuss it as needed.

As shown above, the placement determination represented by the December 2020 Amended IEP was reasonably supported by Student-specific data. Furthermore, while the Parent and Student may disagree with the final IEP team decision, the Parent and Student's input was clearly considered during the process of determining placement. And the placement determination was made by a group of persons knowledgeable about the Student, the evaluation data, and the placement options available. Therefore, no violation of the IDEA has occurred; the District followed proper placement procedures in determining the Student's placement for the spring 2021 semester.²⁷

CORRECTIVE ACTIONS

By or before **April 12, 2021** and **April 16, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Amendment

By **April 14, 2021**, the Student's IEP team will amend the Student's December 2020 Amended IEP to reflect the specific type of in-person paraeducator support the Student's IEP team believes the Student requires to enable the Student to, in part: advance appropriately toward attaining the annual IEP goals; and, be involved and progress in the general curriculum in accordance with present levels of educational performance.

By **April 16, 2021**, the District will provide OSPI with a copy of the amended IEP, the relevant prior written notice, and any other documentation relevant to showing proper completion of this particular corrective action.

DISTRICT SPECIFIC:

Dissemination of Written Guidance

By **April 9, 2021**, the District will provide the District-members of the Student's IEP team with the following written guidance:

If an IEP team cannot reach consensus on a particular proposal or refusal, the District must provide the parents with prior written notice of the District's proposals or refusals, **or both**, regarding the student's educational program. And a prior written notice must include, in part: (a) a description of the action proposed **or refused** by the agency; and, (b) an explanation of why the agency proposes **or refuses** to take the action (emphasis added).

²⁷ Though, OSPI notes: a new IEP meeting may be warranted on or about April 19, 2021, as the District indicated during the course of this investigation that they may be able to offer the Student some in-person specially designed instruction on or around that date.

By **April 12, 2021**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

Dated this ____ day of March, 2021

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.)