

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-79

PROCEDURAL HISTORY

On October 11, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Vancouver School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 13, 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 November 1, 2021, the District requested an extension of time to submit its response regarding SECC 21-79. OSPI requested the District submit its response no later than November 8, 2021.

On November 8, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on November 10, 2021. OSPI invited the Parent to reply.

On November 12 and December 1, 2021, OSPI interviewed the Parents.

On November 16, 2021, OSPI requested additional information from the District. On November 22, 2021, the District provided the requested information and OSPI forwarded it to the Parents on November 29, 2021.

On November 22, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 1, 2021.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on October 12, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures for developing the Student's individualized education program (IEP), including (if necessary) procedures for providing evaluations, and responding to the Parent's concerns about the Student's needs for and related to use of an Augmentative and Alternative Communication (AAC) device?

2. Did the District implement the Student's IEP regarding use of her AAC device?

LEGAL STANDARDS

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Consideration of Special Factors: In developing, reviewing, and revising each student's IEP, the team must: consider the use of positive behavioral interventions and supports and other strategies to address a student's behavior; consider the language needs of the student; consider the communication needs of the student, and in the case of a student who is deaf or hard of hearing, the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs including opportunities for direct instruction in the student's mode of language and communication; and, whether the student needs assistive technology devices and services. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2).

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

Provider Responsibility for Implementation: Each school district must ensure a student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation; and each provider is informed of their specific responsibilities related to implementing the student's IEP, as well as the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. 34 CFR §300.323(d); WAC 392-172A-03105(3).

Assistive Technology: The need for assistive technology (AT) must be determined on a case-by-case basis, considering the unique needs of each student. If the IEP team determines that a student with disabilities requires AT in order to receive a free appropriate public education (FAPE), and designates such AT as either special education or a related service, the IEP must include a specific statement describing such service, including the nature and amount of such services. Any AT needs stated in an IEP must be provided at public expense, under public supervision and direction, and without charge. *Letter to Anonymous*, 29 IDELR 1089 (OSEP 1994).

If the student's IEP team determines that the student needs to take a required AT device home in order to receive an appropriate education, that device must be provided at no cost to the parents. This means that a district could not assess a charge on parents for normal use and wear and tear. State laws rather than Part B, however, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly-owned equipment used at home in accordance with a student's IEP. Therefore, districts should look to State law concerning the extent to which persons lawfully in possession of the property of another are financially responsible for its damage or loss. Such State laws, however, must be implemented consistent with Part B and the right of each disabled student to FAPE. *Letter to Culbreath*, 25 IDELR 1212 (OSEP 1997).

AT Device: The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, and/or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device. 34 CFR §300.5; WAC 392-172A-01025.

AT Service: The term "assistive technology service" means any service that directly assists a student eligible for special education in the selection, acquisition, or use of an assistive technology device. The term includes: the evaluation of the needs of a student eligible for special education, including a functional evaluation of the student in the student's customary environment; purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by students eligible for special education; selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices; coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; training or technical assistance for a student eligible for special education, or if appropriate, the student's family; and training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students eligible for special education. 34 CFR §300.6; WAC 392-172A-01030.

Assistive Technology Evaluation: A district must ensure that as part of an educational evaluation, when warranted by a child's suspected disability, it assesses, in accordance with the evaluation requirements, the student's functional capabilities and whether they may be increased, maintained, or improved through the use of AT devices or services. *Letter to Fisher*, 23 IDELR 565 (OSEP 1995). A parent has the right to an independent AT evaluation, at district expense, if the parent disagrees with the evaluation obtained by the district, and the district fails to show that its evaluations are appropriate. *Letter to Fisher*, 23 IDELR 565 (OSEP 1995).

FINDINGS OF FACT

2020–2021 School Year

1. August 31, 2020 was the first day of the 2020–2021 school year in the District.

2. At the commencement of the 2020–2021 school year, the Student was four years old and enrolled in a District inclusion preschool program. The Student was eligible for special education services under the category other health impairment.¹ The Student's June 2020 individualized education program (IEP) was in effect.²

The Student's June 2020 IEP included information about the impact of the Student's expressive and receptive³ language delays on her ability to effectively communicate with peers, family, and other adults and noted that she had been reevaluated in May 2020 using informal methods due to the COVID-19 school closures and was found to continue to require specially designed instruction in communication provided by a speech-language pathologist (SLP).

The IEP additionally included a statement about the Student's need for assistive technology (AT),⁴ noting that the Student was a "multi-modal communicator who uses a variety of unaided (e.g., sign language, gestures) and aided (low-tech systems, such as core language boards and high-tech voice output device) methods, as well as an augmentative and alternative communication (AAC) system."⁵ The IEP further clarified that the Student had "the skills to be

¹ The Student's diagnoses include two genetic disorders, including a developmental delay, that result in learning, fine and gross motor development and communication (expressive and receptive language) delays.

² The Student's June 2020 IEP provided the Student with specially designed instruction and related services in the areas of cognitive, social/emotional, communication, adaptive, fine-motor, gross-motor, occupational therapy and physical therapy. The Student was also supported by a full-time 1:1 paraeducator.

³ Per the June 2020 IEP, the Student "reportedly uses approximately 50 single words/word approximates yet only a small number of words and phrases are use[d] consistently and spontaneously throughout her school day for a limited number of communication purposes." The June 2020 IEP added the following note: "[Student] has begun to use some holistic phrases (e.g., I did it) and demonstrates the prerequisites needed for verbal imitation. She now imitates body movements in familiar songs and fingerplays, is beginning to fill in words during verbal routines...imitates some mouth postures, and is using verbal exclamations in familiar stories...When working directly on vernal imitation skills, [Student] performs best when provided with highly motivating reinforcements and lots of praise. Oftentimes the target word needs to be simplified in order for her to make an attempt at imitation (e.g., please—pease—pea='pea')."

⁴ The prior written notice (PWN) sent by the District following the June 2020 IEP meeting did not include the IEP team's decision to add AT services to the Student's IEP. However, the language of the IEP coupled with other documentation, including meeting notes, communication records between the District and family, and the District's response to the Parent's complaint confirm the IEP team's intention to add AT services, including use of an AAC device (communication device) to the Student's IEP during the June 2020 IEP meeting. While outside the timeline for this complaint, OSPI reminds the District that it should have followed procedures for providing PWN, documenting the amendments made to the Student's IEP.

⁵ The District assessed the Student's need for AT in May 2020 as part of a reevaluation. The Student's IEP documented that the Student had been using "high-tech voice output AAC Systems (Touch Chat with WordPower42)" and that she had "great success" with these systems. It added that "Before the COVID-19 shutdown, [Student] made requests in the classroom when using this system when provided with consistent

able to use a device with a dynamic display consisting of multiple pages and core/basic vocabulary. The June 2020 IEP stated the Student would begin a "trial of a "dynamic voice output device with the assistance of SLP", and that the initial trial device "be a dedicated speech generating device to assist [Student] in understanding that it is a tool to assist her in communicating." The IEP added that "The district has tablets (iPad) available as well as multiple communication applications that can be trialed." It also stated that "[t]he SLP may determine which of the applications to trial and in what order."

The June 2020 IEP also included the following update regarding the Student's use of her AAC device during the COVID-19 school closures:

[Student] was beginning to successfully trial the use of an iPad with an application TouchChat with WordPower42 Basic when schools were closed due to COVID-19. The device was sent home with her to all her (sic) to continue to explore it for communication with guidance and support from her parents. Her SLP is providing consultative services in the use of the device to the family. Please see COMMUNICATION section of the recent evaluation and IEP for additional information.

Next Steps (for when Student returns to school; in-person):

- Review progress with device and app
- Determine if a different app needs to be trialed or if this app is meeting her needs
- Integrate use of trial device across all aspects of her educational environment
- Explore options of family/insurance to purchase of personally owned device
- SLP to continue to provide consultation to the family and educational staff

The Student's June 2020 IEP included two IEP goals in the areas of cognitive and communication supported by the Student's use of the AAC device for the 2020–2021 school year:

- **Cognitive (beginning reading):** "By 05/31/2021, when given a story read to her and her AAC device set to the correct page to make related responses, [the Student] will participate in the literacy activity by using her communication device to respond to what or where questions improving early literacy and communication skills from responding to 4 out of 13 (or 30%) opportunities with prompting at home, to responding to 6 out of 10 opportunities with wait time then prompting in the classroom setting, as measured by observation and teacher data."
- **Communication (Expressive Language/Functional Communication):** "By 05/31/2021 when given the presence of a preferred item and partner assisted navigation to the appropriate page on her AAC device, [the Student] will independently complete the request for the preferred item by activating the icon, improving functional communication from 25% of opportunities to 75% of opportunities as measured by SLP and teacher data and observation."

aided language simulation." The Student's June 2020 IEP also stated that "At home, [Student's] parents report that she is actively exploring the [AAC] device and is making requests which have been primarily food and drink related. Strategies for continuing to encourage use of a wide range of vocabulary on the device (e.g., emotions, prepositions, verbs) has been shared with her parents to broaden her communication. A new goal will be written to continue to facilitate and use of the AAC device across a variety of different communication partners." In their reply, the Parents added that at the time the June 2020 IEP was written, the Student had been working on using Touch Chat outside of school for over a year."

The timeline for this complaint began October 12, 2020

3. On October 20, 2020, the Student's IEP team met. According to meeting notes maintained, the Parents relayed during the IEP meeting that they had not been using the Student's AAC device with the Student during remote learning because the device and application were "difficult to set up" and "overwhelming for the family," and thus, no progress was made on the Student's AT goals. The IEP team determined the Student would return to in-person learning in a hybrid model and that the Student would work on her AAC supported AT goals during in-person learning time. The Parents and District also agreed the Student would use the Student's personal iPad as her AAC device.
4. On October 23 and 30, 2020, the SLP documented in the Student's communication log that she worked with the Student on developing her expressive language skills by using her AAC device and voice to request preferred items."⁶
5. On November 6, 2020,⁷ the SLP documented working with the Student on her AAC supported goals in the Student's communication log.
6. On November 23, 2020, the District reported the Student's progress on her IEP goals, including those that were supported by use of her AAC device.
 - Cognitive (beginning reading): "[Student] has been attending in-person preschool since 10/20/2021. She seems to enjoy listening to stories read to her at school. She has not yet demonstrated progress in answering comprehension questions."
 - Communication (Expressive Language/Functional Communication): "[Student] is using her AAC device or voice to request preferred items in 50% of opportunities when given a model. She is using her voice much more than requesting using AAC. Good job [Student]!"
7. From November 24–26, 2020, the District was on Thanksgiving break.
8. On December 16, 2020, the Parent requested the District provide an iPad for the Student to begin using as her dedicated communication device, which the District made available that day.

⁶ During interviews with the Parents, the Parents implied to the OSPI complaint investigator that they believed the SLP inappropriately relied on interventions that did not require use of the ACC device and thus did not work with the Student on making progress toward the Student's AAC goals, and that they felt this was not in accordance with her IEP.

⁷ The communication log noted: "Requesting preferred items using AAC device: (Communication Goals: Requesting using voice and AAC: Using voice and/or AAC to talk about features in pictures mainly pointing out and labeling verbs. Working towards getting her to produce /b/ and /p/ sounds. [Student] is doing a great job working her whole therapy time with me!"

9. On December 4⁸ and 11,⁹ 2020, the SLP documented working with the Student on her AAC supported goals in the Student's communication log.
10. On December 20, 2020, the District reported on the Student's progress on her IEP goals, including those that were supported by the use of her AAC device:
- Cognitive (beginning reading): No goal progress recorded with the use of the AAC device. [Student] has become easily distracted by the AAC device and is not using it to functionally communicate her needs. To scaffold this skill, staff read stories to [Student] and prompted her to answer what and where questions using picture cards. She was able to accurately respond to what and where questions with 10% opportunities.
 - Communication (Expressive Language/Functional Communication): "[Student] is using her AAC and/or a prompted model to request preferred items in 50% of opportunities."
11. From December 20–31, 2020, the District was on winter break.
12. In January 2021, the District reported on the Student's progress on her IEP goals, including those that were supported by the use of her AAC device:
- Cognitive (beginning reading): No goal progress recorded with the use of the AAC device. [Student] has become easily distracted by the AAC device and is not using it to functionally communicate her needs. To scaffold this skill, staff read stories to [Student] and prompted her to answer what and where questions using picture cards. She was able to accurately respond to what and where questions with 10% opportunities.
 - Communication (Expressive Language/Functional Communication): "[Student] is using phrases mostly intelligible 'you help me,' 'eyes,' 'help me,' 'I want xx,' 'me,' 'juice,' 'baby' to request preferred items independently in 60% of opportunities and is willing to attempt an imitation for preferred items when she does not know the word for it. She is not wanting to use AAC during out (sic) sessions lately which I have been honoring."
13. On February 5, 2021, the Parent emailed the SLP with questions regarding the Student's performance and use of her AAC device. The SLP responded as follows:
- **Parent:** Have you stopped working on her AAC communication goal to focus more on her imitation goal?
 - **SLP:** "I still have been bringing out the AAC but the last 2 times or so [Student] has really not wanted it with her. So instead of expanding her utterances with AAC, I have more been expanding her utterances with language. Ex. In the last week [Student] was gluing pieces of paper so instead of using her AAC to model language and have her request, I model language and try to have her imitate. I have also been creating some 'temptation tasks' where she has to initiate communication either by gestures, sounds, words, etc. and I help her form it into the best approximation she can do at the moment"
 - **Parent:** How is [Student] communicating with peers and adults at school?

⁸ The communication log noted: "Expressive: Requesting preferred item using AAC device, (Communication Goals: Yes/No questions, requesting with voice and AAC)."

⁹ The communication log noted: "Expressive: Requesting preferred item using AAC device, (Communication Goals: Focus was on imitating concepts identifying prepositions and little/bog. Using AAC to request books)."

- **SLP:** "From what I see she is using a lot of gestures and vocalizations – teachers in that class are very good about giving her a word or two to imitate to meet her need instead. Lots of modeling – yay! I don't see her initiating interaction with peers too often and when she does it seems mostly in structured activities where the class is working/listening together..."
- **Parent:** How does [Student] initiate and communicate her requests at school?
 - **SLP:** "When she knows the word for what she wants she will use it! When she does not have the language she will vocalize and gesture. She has been more open to imitating when this happens. She is also so much more consistent with answering yes/no in reference to her needs so I teachers asking her question to figure out her needs as well."¹⁰
- **Parent:** How is she participating in large group and small group discussions?
 - **SLP:** "[Special education teacher] might speak on this more. From what I have seen briefly in circle time she will be prompted to raise her hand if she wants to help tell the story for example. There is a lot of prompting from staff to help her effectively and appropriately involve herself. It seems to me like there is also a lot of natural turn taking built into what everyone is doing so that [Student] as well as everyone else gets a chance to participate."

14. On February 23, 2021, the District reported on the Student's progress on her IEP goals, including those that were supported by the use of her AAC device:

- Cognitive (beginning reading): No goal progress recorded with the use of the AAC device. [Student] has become easily distracted by the AAC device and is not using it to functionally communicate her needs. To scaffold this skill, staff read stories to [Student] and prompted her to answer what and where questions using picture cards. She was able to accurately respond to what and where questions with 10% opportunities.
- Communication (Expressive Language/Functional Communication): "Requesting preferred items using voice in 70% of opportunities either by saying 'I want' or the name of the item. Yay [Student]!"

15. On April 1, 2021, the Parent emailed the SLP to ask what progress the Student was making on her AAC goal during her trial using the TouchChat application. The SLP responded that the Student had "been pretty resistant to using the AAC device" and added that "when we have her IEP I would like to revise this goal." The SLP also wrote that "the last several times I have brought out her device she has shaken her hands at it and said 'no.' I want to honor that she would rather use her own voice, so we have been working on requests for desired items/activities using her own voice or word approximations."¹¹ The SLP added that she was

¹⁰ The Parents expressed to the complaint investigator that they viewed these comments, and other similar comments, to suggest the SLP had admitted to not working with the Student on using her AAC device. The Parents explained that the Student's outside private SLP providers had recommended the Student become familiar with her AAC to improve the Student's ability to engage in conversation with unfamiliar adults and peers and that they believed this was the purpose of the Student's IEP goals. The Parents further explained that they felt that by not working more with the Student on using her AAC device than they believed the SLP was doing, that progress on the Student's IEP goals could not be made and this stated purpose not fulfilled.

¹¹ The Parents highlighted this language from the SLP as further support for their allegation that the SLP was not using the Student's AAC device.

“focusing a lot on vocabulary expansion and word approximations or wh words in order for [Student] to have language to request and comment.”¹²

16. On April 2, 2021, the Parent emailed the District to ask about the Student’s progress and use of her AAC device. The Parents indicated that they did not believe the Student’s IEP was being implemented.
17. On April 3, 2021, the Parent emailed the SLP and special education teacher, stating that while he understood the Student “is apprehensive to use AAC for wants and needs because she is able to use speech approximations with known adults,” that “her speech is not effective when talking to unfamiliar people or to answer questions [and that] [t]his is the reason the IEP team decided to develop [the Student’s] skills in augmentative communication [...] so she would have more tools for communication in the class.” The Parent then provided examples of ways he believed the SLP could incorporate the Student’s AAC device and goal into the topic board used by the special education teacher and activities the SLP was doing with the Student. He stated he wanted to “give [Student] the opportunity to demonstrate a higher level of cognitive skills and do more than just complete the worksheet.”

The Parent also added, “I’ve noticed that the number of options on TouchChat can sometimes be overwhelming for [Student], and if it’s too difficult for her to use, she gets silly and it’s impossible to keep her engaged...I would recommend decreasing the number of choices on her topic board; you might even want to make it errorless the first few times until she gets the hang of this new way of communicating.” The Parent also suggested some no tech options.¹³

The Parent concluded his email by saying that he “would like to see [Student’s] AAC goal implemented with fidelity before [Parents] make the decision to stop using it at school. [Student] has so much more to communicate than what she can say, and we really need to be working on her language development especially with her having more opportunities for Gen

¹² In its response, the District relayed its belief that despite the Parent’s allegation that the IEP was not being implemented, the SLP “continued to deliver the Student’s specially designed instruction in communication and worked with the Student on her then-current IEP goals until the IEP team, including the Parents, revised these goals for the May 2021 IEP.” In the Parent’s reply, the Parent expressed frustration that the SLP did not respond to their specific questions on the Student’s specific progress on use of AAC in support of IEP goals and instead only gave general “updates on the student’s total communication” progress which they explained was not equivalent to the Student progressing on her IEP goal using her AAC device as written in the IEP goal.

¹³ In its response, the District stated it recommended lower tech options and that the Parents rejected these options and insisted the District use the Student’s AAC device. The Parents told OSPI that they had previously suggested low-tech options and were primarily concerned with the District implementing a consistent communication system. The Parents further stated that they requested the IEP team implement the recommendations from the private evaluation they had obtained because they did not believe the District had an alternative consistent communication system in place (either low or high tech).

ed next year. If we are struggling to find the right fit for communication at school, could we have an AAC evaluation done like we started last year?"

18. On April 4–8, 2021, the District was on spring break.
19. On April 15, 2021, the SLP replied to the Parents that she "did not mean to imply that [she was] not working on [Student's] use of AAC" or that she wanted to "end [Student's] AAC goal." The SLP apologized for the confusion. She clarified that she was using the Student's AAC device in sessions and asking the Student to either respond with the AAC device or the Student's voice, and that if the Student chose neither, that she (SLP) would then "do a lot of AAC and voice modeling" for the Student. The SLP further stated that she spoke with the special services director (director) "to problem solve some of [Student's] barriers to effective communication," and relayed that she and the director "think it would be beneficial to have [professional group staff] come out to observe [Student] and help assess her functional communication with both AAC and ECS," adding that it was her opinion that "This would help us have some additional information going into her IEP. I agree with you [Parent] that we still need to find the exact right fit for [Student] to communicate her needs effectively – whether this is one mode or multiple modes of communication, but I am very encouraged by her expressive language development over this past year."
20. The Parents alleged in their complaint that on April 23, 2021, the SLP suggested to them that they should get an AAC evaluation because she did not feel TouchChat was meeting the Student's needs. In its response, the District denied this allegation and that there was evidence to support this, and further stated that it believed it was "actively supporting the Student's communication needs, including supporting her use of Touch Chat and using her own voice, which was her preferred method of communication at school." The District asserted in its response that the District did not recommend an additional assessment for the Student around this time and that it did not believe it was necessary or required under the IDEA.¹⁴
21. Also, on April 23, 2021, the Student's communication log began incorporating notes regarding the Student's use of and progress on communication and AAC goals as developed at the May 2021 IEP meeting. Specifically, it noted the Student was "Working with Good Night Gorilla book and answering questions verbally and with AAC."
22. On April 27 and 30, 2021, the Parent and SLP exchanged communications regarding a new template the SLP added to the Student's AAC device. The SLP explained to the Parents how she was using the new template, and what icons she was using. The Parent responded that she liked the new template and provided some suggestions, along with personalized vocabulary and TV show names that she wanted added to the device to keep consistent between home and school. The SLP added the Parent's suggestions, along with additional vocabulary to a "group" folder based on what the Student's general education class was

¹⁴ The District referenced an emailed, dated April 2, 2021, in which the SLP explained that she was "working on expanding the Student's vocabulary and that the Student was using 'her own voice' and 'word approximations' during their lessons."

working on. The Parent responded with approval and stated she was “excited to hear how [Student] does with it.” The Parents confirmed with the OSPI investigator that this occurred “on occasion,” but stated that in their opinion, adding additional vocabulary to the Student’s device “did not happen on a regular basis,” unless the Parents had first added the vocabulary themselves.

23. On May 7, 2021, the District documented the Student’s use of her AAC device and progress on communication and AAC goals in the areas of requesting preferred items using AAC device and modeling and aiding in making requests with the AAC device.
24. On May 13, 2021, the Student’s IEP team convened for the purpose of the Student’s annual IEP review meeting. At the meeting, the Parents informed the IEP team that it had obtained a private AAC evaluation completed by a private SLP that included recommendations for use of an AAC device and incorporating and integrating the AAC device at school and home.¹⁵ The Parents shared the recommendations from the private evaluation and requested the IEP team adopt them, including that the Student begin using the application of Grid 3 (Grid)¹⁶ instead of Touch Chat.

¹⁵ In its response, the District asserted that the Student did not require additional evaluation or assessment under the IDEA for her AAC needs because in addition to the Student’s initial evaluation in October 2018 and incorporation of recommendations from the Parent’s privately obtained evaluations by the IEP team in May 2021, the District also agreed to the Parent’s request for two additional, “off-cycle evaluations” in 2019 and 2020. The District stated that it believed the services provided to the Student were appropriate and implemented the Student’s AAC goals. In their reply, the Parents clarified that the first off-cycle evaluation was prompted by the Student’s teacher and case manager to assess the Student’s need for additional services in the area of social/emotional, and that the second was required in response to a recommendation for a placement change. They continued to allege that they believed the services provided by the SLP did not sufficiently implement the IEP. The Parents told the OSPI investigator that the Student’s need for additional evaluation was discussed by the Student’s IEP team at prior IEP meetings and in emails, but said that they were told by the District that the District was unable to provide an AAC evaluation. In their reply, the Parents stated that according to their notes from the May 2021 IEP meeting, the special services manager “clarified that the District misunderstood what was available through [local University],” and that they were told “[University] offers a device loner program, not AAC evaluations.” The Parents wrote that the District “agreed to follow the recommendations of the private AAC evaluation” in lieu of not having an “alternative solution” regarding how to implement the Student’s need for an AAC device in lieu of the Student’s total communication needs.

¹⁶ Grid 3 is an application that allows for an iPad (or other tablet) to be used as a voice output device. At a basic level, “the Student operates Grid 3 by touching pictures or words loaded into the application, which the device then says out loud.” According to the District’s response, the Student’s Grid 3 profile includes three types of word sets (including pictures and words): “core vocabulary, dynamic buttons, and topic boards.” Core vocabulary are common words used for daily communication (e.g., “yes,” “no,” “I”). Dynamic buttons are activity-specific vocabulary sets (e.g., “age appropriate math vocabulary”). Topic boards are “similar to dynamic buttons but are custom vocabulary sets.” Per the District’s response, “Although topic boards can be created, the basic package is preloaded with 2,500 common words and phrases and over 70 topic grids. According to the Student’s teachers, these preloaded words allow the Student to participate

The Student's IEP team amended the Student's IEP to state that a speech evaluation was completed on 5/13/2021 by a private SLP at a nearby university and noted that the evaluation included recommendations for the Student's use of an AAC device. The Student's IEP also included language from some of the recommendations included in the private evaluation, including that the Student required "extra-large" spacing to accommodate the Student's finger movement patterns.¹⁷

At the May 2021 IEP meeting, the Student's IEP team also developed three IEP goals that incorporated the Student's use of her AAC device, including:

- **Communication (Expressive Language – AAC Communication):** "By 05/12/2022, when given a story read to her and her AAC device, [Student] will answer WH questions (who, what, when or where) improving reading comprehension skills from 6 out of 10 opportunities to 8 out of 10 opportunities as measured by curriculum based assessments and classroom observation."
- **Communication (Expressive Language – Requesting):** "By 05/12/2022, when given access to her AAC device and a communication partner, [the Student] will use her AAC device to independently comment on an activity or object improving expressive language and understanding of her AAC device from 0% of opportunities as measured by SLP therapy data."
- **Communication: (Receptive Language – Commenting):** "By 05/12/2022, when given access to her AAC device and a communication partner, [the Student] will attend to modeling and guidance of her AAC device by a trained person^[18] improving receptive language and language use from needing 10+ verbal prompts to attend in 5 minutes period to needing 5 verbal prompts to attend in a 5 minute period as measured by SLP data and observation."

25. On May 17, 2021, the SLP emailed the Parent the draft revised IEP. The Parent responded that "[t]he communication and AAC sections look great. You guys captured the [university] evaluations perfectly." The Parent requested that additional information regarding consultation and training the SLP. The District responded and included information and training support for Grid for iPad. The District sent the Parent the finalized IEP and prior written notice the next day. The PWN did not include information regarding the Student's use of AT services or an AAC device.

fully in learning and other school activities." The District and Parent continue to dispute how the topic boards should be used, including how many and what vocabulary words should be added to topic boards, as well as the frequency with which new words should be added.

¹⁷ The IEP included instructions for providers on how to complete this task and links for additional support resources for those implementing the application. Meeting notes documented the District's agreement to train staff on how to use the AAC device IEP team decision to remove "TouchChat" language from IEP and add "Grid" language. It was also noted that the District would hold off on ordering a screen guard.

¹⁸ In their reply, the Parents wrote that they did not believe the staff implementing the Student's IEP were properly trained, and thus the Student's IEP was not properly implemented. They wrote, "The District also presents evidence that they had staff trainings, including with the outside vendor who created the AAC software (Grid). This is irrelevant to the question at hand, which is whether the District implemented the Student's IEP properly. It is ultimately an admission by the District that they did not employ staff who were properly trained in the AAC software they agreed to work with for [Student's] AAC software."

26. On May 20, 2021,¹⁹ the SLP emailed the Parents an update on how the Student was doing with Grid at school. She also noted aspects that were challenging for the Student. The SLP stated that the app still needed to be installed on the Student's school iPad. The Parent offered to send the Student's home iPad in with the Student until Grid could be installed. The SLP agreed.
27. On June 3, 2021, the Student's private SLP emailed the District SLP to offer to coordinate regarding the Student's use of her AAC device and AT services. She also offered recommendations for goals and included information regarding the Student's progress on goals set during her work with the Student. Throughout the summer and into September 2021, the private SLP and District SLP continued to exchange emails regarding how to support the Student at school.
28. On June 8, 2021, the District reported that the Student was making satisfactory progress on her ACC Communication goals:²⁰
- **Communication (Receptive Language – Categories):** "When given access to her AAC device and a communication partner, [Student] will use her AAC device to independently comment on an activity or object improving expressive language and understanding of her AAC device from 0% of opportunities to 80% of opportunities independently as measured by SLP therapy data.
 - June 2021: This is an emerging skill for [Student]. She is looking at the picture and sorting them into two categories with approx. 30% accuracy. She also enjoys trying to find the picture (we have been working on animals) on her AAC when the correct page is open.
 - **Communication (Expressive Language – AAC Commenting):** "When given access to her AAC device and a communication partner, [Student] will use her AAC device to independently comment on an activity or object, improving expressive language and understanding of her AAC device from 0% of opportunities to 80% opportunities independently as measured by SLP therapy data."
 - June 2021: [Student] is not commenting independently but is working on finding the correct icons when prompted either verbally or given a model. We have been focusing on icons pertaining to her environment such as 'outside, go, want, all done, I'm ready, etc.
 - **Communication (Expressive Language – Requesting):** "When given access to her AAC and a communication partner, [Student] will attend to modeling and guidance of her device by a trained person, improving receptive language use from needing 10+ verbal prompts to attend in a 5 minute period to needing 5 verbal prompts to attend in a 5 minute period as measured by SLP data and observation.
 - June 2021: [Student] is requiring 10 or more prompts to attend to her AAC in a 5 minute period when she is working on tasks that directly require her attention to her device.

¹⁹ The District asserted in its response that during the spring 2021, the Student began using Grid 3 at school. The Parents highlighted in their reply that the District required they provide the Student's iPad with the Grid application because the Student's device at school did not have the application downloaded.

²⁰ The Parents expressed concern that although the Student was reported as having made "satisfactory" progress on all AAC related goals that the narrative comments and communication with the District did not appear to show the Student as having made progress, and that the SLP continued to not use the AAC device often with the Student due to alleged differences in opinion between the SLP and family.

29. June 16, 2021 was the last day of the 2020–2021 school year in the District.
30. On June 30, 2021, the director emailed the Parents that the District had purchased Grid and was still working on getting it installed on the Student’s school iPad. She noted that “it is a new app for our district so I am working through the approval process and will have it ready to go in August.”
31. From August 9 through 19, 2021, the Student participated in “Jump Start,” an optional two-week kindergarten readiness program. The Parent expressed concern that technological issues impacted the District’s ability to implement the Student’s AAC device during this program. In its response, the District acknowledged that technological issues did prevent the District from being able to upload the Student’s Grid 3 profile to her device during that time. However, it stated that the Student used her personal iPad at school and was able to access her specially designed instruction using her device.
32. On August 24, 2021,²¹ a transition meeting was held with the Student’s kindergarten team. The Student’s private SLP attended. According to the Parent’s reply, at this meeting, the District’s SLP expressed concerns regarding the Student’s IEP, which the Parents stated they felt indicated that she was “unwilling to implement the IEP” due to disagreements about methodology, specifically she “contended that she felt the preloaded vocabulary was sufficient for [Student’s] educational needs.” The Parents additionally wrote in their reply that their private SLP disagreed with this, and that they disagreed with the SLP having “made this assessment before ever interacting with [Student] and before ever attempting to implement the IEP as written.” The meeting notes maintained by the District included a notation that vocabulary would be added one time per week, and that there would be separate devices at home and school, but that the same login would be used.

2021–2022 School Year

33. August 31, 2021 was the first day of the 2021–2022 school year. The Student continued to be eligible for special education services under the category of other health impairment. The Student’s May 2021 IEP remained in effect.
34. From August 31 through September 10, 2021, the Student used her personal iPad because the District was unable to successfully install Grid software onto a separate iPad for the Student.

²¹ In their reply, the Parents wrote that their meetings notes stated “[Student] is able to use total communication for a lot of functional communication and most core words. Grid is being used to support (the student’s) access to participate in activities and should be used at school for the academic vocabulary and concepts that (the student’s) peers are being expected to learn.” Meeting notes maintained by the District noted that they agreed to update vocabulary one time per week, and that insurance would pay for device if broken.

In its response, the District acknowledged this occurred and stated it experienced technical difficulties with the Student's device.²²

35. The week of September 3, 2021, the District documented that it began working with the Student to attend to her AAC device and independently comment on an activity. It also documented working on a sorting activity using the device.
36. On September 10, 2021, the Parents requested the Student's teachers and/or 1:1 support add a "what I did at school today" topic board and vocabulary regarding what the Student did at school that day so the Student could participate in family discussions at dinner regarding her day. The team added a school page with six buttons.

The Parents noted in their reply that at this time, the Student was successfully using grid sets at home with up to 48 buttons and the school topic board did not include any core vocabulary. The Parents also asserted in their reply that the school team did not add any "school specific" vocabulary words until September 24, 2021, and that at the time the complaint was filed, the school had added "20 school-specific vocabulary words" to the Student's device. The Parents further stated that the words added did not contain the "WH" words necessary for the Student to work on her IEP goal in AT targeting responding to "WH" questions. The Parents accordingly stated they believed the Student's "iPad settings had not been set to the recommendations that were in the Assistive technology section of the current IEP."

37. Also, on September 10, 2021, the SLP documented in the Student's communication log that the Student was making progress on her communication goal using her AAC device. The SLP wrote: "I have seen [Student] every day this week and she is doing better with following a model when given a visual. She worked on attending to the device and categories related to the topic at the moment (numbers, letters, animals, core)." The SLP also noted that more technology training would be helpful to fully support the Student's communication device.
38. On September 12–13, 2021, the Parent and SLP emailed regarding the Student's use of her AAC device, including her use of prompts and possible need for a key guard. The Parents also sent a video of the Student using the device at home.
39. On September 14, 2021, the District contacted the Parents and notified them that Grid had been installed on the school iPad, that they are able to use the Student's Grid set on the iPad, and that the Parents can stop sending the Student's personal iPad to school with the Student.
40. On September 16, 2021, seven staff members who support the Student received training at the school regarding the Student's use of her AAC device. According to the District, at the training, the Grid consultant, "recommended that the Student's profile not be overloaded with new vocabulary and topic boards as [Student] was learning to use the technology."

²² For example, on September 1, 2021, District staff was unable to log into the Student's Grid 3 profile. These problems continued, as the Districts experienced problems with user restrictions and the District's firewall.

41. Also, on September 16, 2021, the Parent and SLP exchanged additional emails regarding the Student's use of her AAC device and about how the Student was communicating during class. The Parent reminded the SLP that AT section of the Student's IEP required the spacing to be extra-large.
42. On September 17, 2021, the District documented in the Student's communication log that the Student was working on receptive language skills using Grid and independently commenting on an activity or object. Regarding the Student's progress on this goal (independently commenting), the SLP wrote, "Not quite independent – she is learning the core vocabulary; requires a direct model." The communication log also noted the Student was attending to modeling and guidance of her AAC and "less [hand over hand] is needed," however, it was noted the Student "still requires a partial prompt to access her device."
43. On September 21, 2021, the Parents emailed the SLP and inquired if the school was receiving the edits on the AAC device that were being made by the Parents at home, and if the home and school devices were synching properly. The SLP responded that the AT specialist was coming to school the next day to address the issues and that they could set up a time to videoconference.
44. On September 22, 2021, the District informed the Parents that they are unable to synch the Student's Grid set on her school iPad. The Parents emailed the District with concerns the Student's IEP was not being implemented.
45. On September 22, 2021, the principal responded to an email from the special services manager regarding allegations from the Parent that the Student's IEP was not being implemented. She wrote that "We had the Grid trainer out last week...Even the trainer wasn't recommending as many topic boards for [Student] to IOL...however her old IEP that is in her file does not reference a topic board in her communication goals. Do you know what part dad is talking about when he says that is not being met?"
46. On September 23, 2021, the District's AT specialist came to the Student's school to work with the Student and support the creation of additional templates and topic boards.
47. On September 24, 2021, the SLP emailed the Parent that they were continuing to have technological difficulties with the Student's iPad and the Grid software. In particular, the SLP wrote that the District was unable to synch the Student's iPad and informed the Parents that they would need to add vocabulary to the Student's device every Friday or send the Student in with her personal device. The District also noted that the laptops they required to load information on the Student's device was continuing to crash on them, and that they were actively working with the manufacturer to resolve the issue.²³

²³ In their reply, the Parent expressed frustration that the District "uses technology issues as an excuse as to why the district is unable to implement [private SLP's] recommendations."

48. Also, on September 24, 2021, the District documented in the Student's communication log that regarding the Student's AAC goal to "attend to modeling and guidance of her AAC device," the Student "did 20% better when given the direct model and visual to touch the targeted picture."²⁴ The Student's communication log additionally noted that staff were "collecting school specific vocabulary and routine activities to add to device profile," and "Working with Smartbox and [District] IT to resolve software and compatibility issues."
49. Also, on September 24, 2021, the Parents requested the school iPad be sent home with the Student so they could set up the school iPad with her specific Grid set.
50. On October 1, 2021, the District documented in the Student's communication log that the Student was continuing to work on her AAC goals. The communication log documented that later that week, "the para and [SLP] consulted on appropriate vocabulary lists and best options for ease of access." The SLP noted that "Although topic based and daily routine activity vocabulary are readily available, we continue to work on personalizing further based on need. Worked with AT specialist this week on remote editing access and programming." In their reply, the Parents wrote that during October 2020, the Student's mother added an "Apple" grid set to the Student's AAC device, as that was the topic of the month for September in the Student's general education class.
51. On October 5, 2021, the SLP emailed the Parents and suggested they create the school specific Grid sets using the weekly classroom newsletter as a guide to what the class is learning. The SLP reiterated that she believed the topics that came with the Grid were otherwise sufficient for the Student's needs. The Parents relayed to the OSPI investigator that they continue to disagree with this assertion and that they believe the standard core vocabulary that comes with the Grid device is not sufficient for the Student to be able to participate in general education classes.
52. On October 7, 2021, the SLP emailed the Parents stating, "We made some edits today on [Student's] school device to further support her communication efforts at school." The email then provided directions to the Parents on how to navigate to the "school" topics board to locate update folders for the Student's current schedule and a topics board about "pumpkins," which was added for that month's kindergarten topic. The Parent responded that the library had a "pumpkin carving" grid, which she added because the family was going to the farm the next weekend.
53. On October 10, 2021, the SLP also communicated with the Parent regarding vocabulary and edits made by the Parent to the "school" topics board. The SLP added that they would be adding buttons that week, and that she would be checking the weekly kindergarten bulletin

²⁴ The Parents expressed to the OSPI complaint investigator that they had concerns with comments of this nature because they felt the District was collecting data on her total communication skills and letting the Student select which method of communication to use instead of measuring the Student's progress on her AT goal and working with the Student on using her AT device.

to make sure the Parent was aware of topics and could add additional vocabulary to the "school" topics board.²⁵

54. The Parent filed a community complaint with OSPI on October 12, 2021.
55. On October 20, 2021, all technological issues²⁶ were resolved, and the Student was able to use her school provided iPad with Grid software installed.
56. On October 22, 2021, the District documented in the Student's communication log that the Student was working on using "game based interactive cards" that focus on conceptual vocabulary and also was "continually working on categories with grid as she is guided through the page sets with direct modeling and verbalizing." The communication log also noted that the Student "continues to use her AAC device to comment on an activity or project, when given a direct model, at the single word level, during routine activities. We introduced 2-word phrases during a routine activity and added the motor movement to touch 'speak.' This requires a direct model with one word at a time, but she did follow the routine 2-3 button hit several times during activity." The communication log additionally documented the Student's need for structure and improved performance during highly structured activities and noted that the Student continued to require visual markers. It was also noted that the Student experienced some distractions that week.
57. On October 29, 2021, the District documented the Student's progress on her communication and AAC goals, adding that "the topic based grid pages have been added with the addition of vocabulary related to her schedule, daily activities, theme of the month, etc."
58. In its response to the Parent's complaint, the District stated that despite technological difficulties, it continued to provide weekly, written updates regarding the Student's use of Grid,

²⁵ For example, on September 10, 2021, the SLP wrote, "I look at the editing that you [Parent] did and let the para know that you added some vocabulary for the week. The 'today at school' should already be set up so that [Student] can use a starter sentence and fill in with topics that were addressed, as she has access to all of the vocabulary needed with the dynamic buttons. They are set up to be topic specific, similar to a topic board, so she does have access to many of the targeted vocabulary words that are being addressed within the context of the theme of the month or what she did at school. We are also adding some buttons this week to streamline that process. I will check on the monthly bulletin that kindergarten typically sends out to be sure that you are getting the topics of the week/month along with all of the other students...That may also help guide an evening discussion at home...I have reviewed, with the teacher, the basic concepts being targeted this week and these are all accessible through her topic boards on her current profile. I am also working with the team on supplemental activities to support the concepts not only on her AAC device, but with some fun, interactive games..."

²⁶ From September 10 through October 20, 2021, the Student had access to her school iPad with the software downloaded, but the District continued to experience problems being able to edit and synch the Student's Grid 3 profile on the Student's home and school devices. This meant that if the Parents wanted vocabulary that the District added to the Student's school iPad to also be available on the Student's home iPad, they had to replicate the District's efforts and add the vocabulary by hand, and vice versa if they wanted the vocabulary they had added to her home profile to be available on her school iPad.

and has continued to meet with the Parents on a monthly basis, as well as remain in regular email communication about the Student's daily activities and progress, including about her use of her AAC device at school. The District also wrote that the Student is still "at the very beginning of learning to use Grid 3 in a school setting," and that from its perspective its use has been challenging for three reasons.

- First, the District stated it believed the physical movements required to operate Grid were challenging for the Student.²⁷
- Second, it relayed that the application Grid was challenging for the Student to navigate independently.²⁸
- Third, it asserted that "overloading the Student with new vocabulary and topic boards does not effectively support the Student's language development or participation in school activities."²⁹

The District also stated in its response that it previously suggested that instead of using a "high-tech" communication system, such as Grid 3, the District had suggested the Student could benefit from a 'lower-tech' communication system. Specifically, the District suggested the use of pivotal response treatment,^[30] which is a developmentally appropriate research-

²⁷ The District wrote that specifically, "it is difficult for the Student to isolate her finger and press on the intended button," noting that "the Student typically rubs her hand across the iPad screen...If presented with multiple pictures or vocabulary words to choose from, the Student is very inaccurate in selecting the intended picture or word." The District added that for this reason, it is currently implementing an "errorless trial" instructional method. The Parents reported that they had previously requested it implement errorless trial, and that regardless of the difficulties with implementing the Student's AAC device, they believed the District was still required to do so per the language of the Student's IEP.

²⁸ The District wrote that the Student is "not yet able, independently, to navigate between the core vocabulary buttons, dynamic buttons, and topic boards...[T]he more topic boards and vocabulary boards that are added to the Student's Grid 3 profile, the more complicated it becomes to navigate the application." It added that "One of the Parents' principal concerns is that the District is not adding new vocabulary on a daily basis or creating topic boards for each lesson the kindergarten teacher delivers to the class. In addition to technical issues with editing the Student's Grid 3 profile...there are educational reasons to not overload the Student with additional vocabulary and topic boards as she is still learning the basics of using her AAC device...the Student's Grid 3 profile already includes the vocabulary necessary for her to participate fully in her classroom and receive her specially designed instruction." The District stated it believed its approach was consistent with the recommendations of the private SLP included in the Student's IEP. The District also indicated the Student had difficulties utilizing the device without a key guard. The Parents alleged that this was not recommended by the Student's private SLP and that they disagreed with this recommendation.

²⁹ The District referenced the Student's June 2020 evaluation, which found that the Student "was working on pre-academic concepts and readiness skills in the area of communication and was at a similar level with academic skills. As a practical example, most recently this year, the Student has been working on identifying and using the words, 'in,' 'out' and 'on' with the assistance of her AAC device." The Parents relayed to OSPI that these words were not the "WH" words specified on the Student's IEP as a goal and stated that these had not been added to the Student's device.

³⁰ In their reply, the Parents noted that they did not believe this method had been recommended to them before, and that it is their understanding that it was designed for students with autism, a diagnosis the Student does not have.

based communication system that supports language development.” In their reply, the Parents wrote that:

The District also raises questions as to whether usage of an AAC device is the most appropriate method of communication for [Student] while at school. However, the District failed to develop an appropriate communication system for [Student] over the course of more than three full school years. The District had ample opportunity to determine what they felt was the most appropriate method for [Student] to communicate at school, yet failed to do so. The District agreed to accept the recommendations from private communication evaluations and add them to the IEP, but then failed to implement those recommendations. Had the District wanted to revise the IEP, they could have called a meeting with the IEP team to discuss the methodology and process what they felt was most appropriate.³¹

59. In their reply, the Parents expressed that they did not believe communication and technological difficulties excused the District from its obligation to implement the Student’s IEP—which they believe the District did not do. In their reply, the Parents also stated that the District’s assertion that the technology barriers faced by the District in configuring the Student’s AAC device did not impact delivery of the Student’s special education services is “false.”

The Parents relayed in their reply to the District’s response that they believe that “The District could not have possibly worked on the AAC-related goal areas in [Student’s] IEP when it could not add vocabulary to [Student’s] Grid profile. [Student] could not respond to academic questions (Wh-questions) using the pre-loaded vocabulary in Grid 3. Customization was required, and the District could not make any customizations until October 20, 2021.” The Parents further alleged that the District continues not to add vocabulary regularly, and that at the date the Parents filed their reply, the District “has added approximately six vocabulary words to [Student’s] grid set during the 2021-2022 school year.” The Parents stated that they believed this “is a very small proportion of the vocabulary words [Student’s] kindergarten class is targeting for learning.” The Parents additionally disagree with the District’s statement that the issue was with the District’s device being unable to synch with their home device, and instead contended that “the issue was...that parents were regularly adding vocabulary and topic Grid sets to the Student’s Grid profile, and the District was not adding any at all.”

CONCLUSIONS

Issue One: IEP Development – The Parent alleged the District did not follow procedures for developing the Student’s individualized education program (IEP), including procedures for

³¹ During an interview with the Parent, the Parent told OSPI that they (Parents) did not initially request a particular low or high tech communication method for use with the Student at school, but rather wanted whatever method used to be consistent between home and school. The Parent stated that they suggested low tech options as well, but were concerned that there was not a consistent method used. The Parent relayed to the OSPI investigator that discussed their concerns with the District, “but were told by the District that there is not a formal evaluation process in place for AAC.” The Parents explained that this is what prompted them to obtain a private evaluation.

providing evaluations and responding to their concerns relating to the Student's need for an Augmentative and Alternative Communication (AAC) device.

When developing a student's IEP, the student's need for assistive technology (AT) services must be determined by the student's IEP team on a case-by-case basis, considering the unique needs of the student. A district must ensure that as part of an educational evaluation, when warranted by a student's suspected disability, it assesses, in accordance with the evaluation requirements, the student's functional capabilities and whether they may be increased, maintained, or improved through the use of assistive technology services. If the IEP team determines that a student with disabilities requires AT services in order to receive a free appropriate public education (FAPE), and designates such AT services as either special education and/or a related service, the IEP must include a specific statement describing the services, including the nature and amount of such services.

At the commencement of the timeline for this complaint (October 12, 2020), the Student's June 2020 IEP was in effect. The June 2020 IEP was informed by an AT assessment completed by the District as part of the Student's June 2020 reevaluation and included the following statement describing the Student's AT needs:

...[Student] would benefit from Assistive Technology to support her communication. A trial of a voice output device will be initiated. [Student] has the skills to be able to use a device with a dynamic display consisting of multiple pages and core/basic vocabulary.

RECOMMENDATIONS: Initiate the trial of dynamic display voice output device with the assistance of the SLP. Initial trial device should be a dedicated speech generating device to assist [Student] in understanding that it is a tool to assist her in communicating. The district has tablets (iPad) available as well as, multiple communication applications that can be trialed. The SLP may determine which of the applications to trial and in what order...

The June 2020 IEP incorporated the Student's AAC device into two new IEP goals in the areas of cognitive and communication and noted that the application TouchChat was currently being trialed. The IEP provided next steps for when the Student returned to school, including reviewing the Student's progress using the application and determining whether the application should be continued or another application should be trialed. The IEP explained that the Student was a "multi-modal communicator" who used a variety of unaided-signs, gestures, low-tech, and high-tech (including AAC) to communicate, which was supported by the accommodations provided for in the IEP. The June 2020 IEP sufficiently described the nature and amount of AT services the Student needed.³²

From October 12, 2020 until the beginning of April 2021, the Parents did not raise concerns with the District that would have necessitated the IEP team to reconvene to review the IEP or to consider whether the Student required a reevaluation. During this time period, the District and Parent were in regular communication regarding the Student's use of her AAC device at school.

³² While outside the timeline for this complaint, OSPI notes that the District did not include the IEP team's decision to add AT to the Student's IEP in the prior written notice (PWN) provided to the Parent following the June 2020 IEP meeting.

However, at the beginning of April 2021, the Parents informed the District by email that they did not believe the Student's IEP was being implemented regarding the Student's AT goals pertaining to her use of her AAC device. One of the Parents emailed the District on April 3, 2021 and asked if they could *"have another AAC evaluation"* (emphasis added) like they had previously had. The District responded with, *"This [AAC evaluation] would help us have some additional information going into her IEP. I agree with you [Parent] that we still need to find the exact right fit for [Student] to communicate her needs effectively."* (emphasis added). The Parents alleged in their complaint that they requested an AAC evaluation around this time and that they obtained a private evaluation because they felt the District did not timely respond to their request. The District denies that this communication or others with the Parent in early to mid-2021 should be considered a request for an evaluation, and further denies that the IEP team ever concluded that the Student required an additional AAC assessment.

Regardless of whether the District believed the Parent was formally requesting an AAC evaluation or not in her April 3, 2021 email, it was clear from communications between the Parent and District that by April 2021, the Parent had raised concerns that the Student's IEP was not being implemented. These communications were sufficient to prompt the District to convene an IEP meeting to discuss the Parent's concerns, including whether further assessment or evaluation was necessary. The District appropriately convened an IEP meeting in May 2021. The documentation shows that at this time, the Parent presented a private SLP evaluation, addressing the Student's AAC needs, including making recommendations for what application was most appropriate and how to integrate it across settings, and that the IEP team considered the recommendations made and incorporated them into the IEP. The IEP team also agreed on three IEP goals focusing on the Student's use of her AAC device. These goals were written as separate and specific AT goals on the May 2021 IEP, which was in contrast to only incorporating the AAC device into other IEP goal areas in the previous IEP. Documentation also showed the IEP team discussed the Student having a separate device for school and home that the District would provide.

Although the District amended the Student's IEP document regarding AT services, the PWN provided by the District following the May 2021 IEP meeting did not mention AT services. The District stated in its response to the complaint that this was because the IEP team did not believe the Student required an additional AT evaluation and incorporated the recommendations from the private evaluation into the IEP only because the Parents requested it do so. However, if the IEP team did not believe the Student required any changes to her IEP, it should have documented this in the PWN following the May 2021 IEP meeting along, with the requests made by the Parents and the reason the IEP team felt the proposed changes were not needed.

Thus, while the District appropriately responded to the Parent's concerns and requests around AT and the AAC device, OSPI finds the District to be in violation for not following procedures for providing the Parent with PWN following the May 2021 IEP meeting. Due to the amount of time that has passed since the May 2021 meeting and the disagreement between the Parents and District regarding the meaning of the language in the IEP, coupled with the lack of PWN, OSPI in lieu of ordering the District to produce a PWN from the May 2021 meeting, OSPI is ordering the Student's IEP team to meet to discuss the Student's IEP needs and to provide the Parents with a

proper PWN following the meeting, which OSPI will review for compliance. The PWN should document the IEP team's decision regarding the Student's need for AT services, including any AT device the IEP team believes the Student requires, noting the nature and amount of AT services. The District will also be required to provide a training on PWN to impacted staff.

Issue Two: IEP Implementation – The Parents alleged the District did not implement the Student's IEP regarding her AAC device from October 13, 2020 through the filing of this complaint on October 12, 2021.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

At the commencement of this complaint, the Student's June 2020 IEP was in effect. The June 2020 IEP indicated the Student required assistive technology (AT) services and provided the Student with a specific AT device (an AAC device) to support her communication and cognitive IEP goals, as well as access and participation in general education. The Student's June 2020 IEP was amended in May 2021 to incorporate recommendations of a private SLP evaluation obtained by the Parents, including the recommendation that the Student trial Grid 3, a specific application used by the Student on the AAC device. The Parents' main concerns appear to be that the District did not implement the Student's IEP during the 2020–2021 school year due to a significant delay in providing the Student with her own AAC device (specifically that the Student was required to use her own personal/home device for almost a year after the IEP team determined the Student required an AAC device), and that the SLP did not use the Student's AAC device with the Student in alignment with the requirements of the IEP.

Delay of implementation during the 2020–2021 school year

Regarding the delays in providing the Student with an AAC device, OSPI finds the District to be in violation. While OSPI acknowledges the realities of technological difficulties faced by the District, the IDEA requires students whose IEP teams have determined they require AT services or AT device to be provided these services at no cost, as the IDEA provides a *free* appropriate public education (FAPE) (emphasis added)—which the District acknowledged here it did not do. It took the District almost one year to obtain a device for the Student that complied with the specifications of the Student's IEP, including the necessary software/applications and ability to synch the application on the device with the Student's home device so it could be used for its intended purpose. Although the Parent made the Student's personal device available so that the Student could work towards making progress on IEP goals supported by the AAC device and access general education,

the District cannot require a student to use their own personal device. Because the Parent was able to support the Student by providing her with her own device while the District worked to obtain a device with the proper software for the Student, it does not appear the violation had a material impact on the Student's ability to receive FAPE and no Student-specific corrective action is ordered. However, the District will be required to provide written guidance regarding its requirement to provide students in the District who require AT services, including any AT device, to families at no cost.

Implementation of AT services during the 2020–2021 school year

Regarding implementation of AT services early during the 2020–2021 school year while the Student was still remote due to COVID-19, the District acknowledged the Student was unable to use her AAC device or its applications. However, the Parents expressed to the District at the beginning of October 2020 that implementation of the device was overwhelming and complicated while the Student was remote the previous year, and the IEP team, after finding the Student had not made any progress on her IEP goals supported by AAC, recommended the Student begin attending school in-person on a hybrid schedule. The Student began working on her AAC supported goals during in-person time during the fall of 2020. The Student's IEP team additionally discussed the Student's need for recovery services. While OSPI agrees the Student's IEP team determination that the Student's AAC supported IEP goals were not implemented during the early 2020–2021 school year, it also finds that the District took the appropriate steps to remedy this issue by having the Student attend school in-person and by discussing the Student's need for recovery services.

The more significant question therefore appears to be over whether the SLP's decision to permit the Student to choose when to use her AAC device or an alternative communication method (including imitation or natural voice), and to then record goal progress on ACC device supported IEP goals using either the Student's "chosen" communication method or the AAC device, and not distinguishing between which method used, was one of methodology—and thus permitted by the IEP, or a violation of implementation of the IEP—meaning that the AAC supported goals required the SLP to use the AAC device with the Student and to only record progress data on AAC supported goals when the Student was using the AAC device.

The Student's two AAC supported IEP goals written into the Student's IEP in June 2020 were as follows:

- **Cognitive (beginning reading):** "By 05/31/2021, when given a story read to her and her AAC device set to the correct page to make related responses, [the Student] will participate in the literacy activity *by using her communication device to respond to what or where questions* improving early literacy and communication skills from responding to 4 out of 13 (or 30%) opportunities with prompting at home, to responding to 6 out of 10 opportunities with wait time then prompting in the classroom setting, as measured by observation and teacher data."
- **Communication (Expressive Language/Functional Communication):** "By 05/31/2021 when given the presence of a preferred item and partner assisted navigation to the appropriate page on her AAC device, [the Student] will independently complete the request for the preferred item by activating the icon, improving functional communication from 25% of opportunities to 75% of opportunities as measured by SLP and teacher data and observation." (emphasis added)

By determining the Student required AT services in June 2020 and amending the Student's IEP to incorporate AT into two of the Student's IEP goals, including use of a particular AT device, OSPI finds that the IEP team determined progress by the Student on her AAC supported goals required the use of the AAC device and that progress on these goals was to be measured when the Student was using her device. The Student had other communication and cognitive goals in her IEP that did not incorporate use of the Student's AAC device and thus the inclusion of the AAC device into the AAC supported goals appeared to be intentional. Further, when the Student's IEP team met in May 2021 and revised the Student's IEP to more clearly develop specific goals related to the Student's ability to use her AAC device, the data collected during the first progress reporting period showed the Student's skills using the device to be minimal. The Parents suggested this data showed the District had not been working with the Student on using her AAC device during the 2020–2021 school year, and that any failure to implement the Student's AAC supported IEP goals in accordance with the June 2020 IEP was material. OSPI agrees, and accordingly finds the District to be in violation for the time period of October 20, 2021 through May 31, 2021.

However, in June 2021, the District reported on the Student's amended AAC supported IEP goals. All progress reports, while showing the Student was struggling to use her AAC device, focused on the Student's ability to use her device to support the targeted goal areas, and thus showed the District had remedied the previous violations in its progress reporting. This was the most recent progress reporting provided for the reporting period reviewed in this complaint. The District should continue collecting and reporting on the Student's progress for any IEP goal specifically requiring AAC support in this manner moving forward.

Implementation during the 2021–2022 school year

The Parents alleged that the SLP continued to permit the Student to choose when to use her AAC device in violation of the Student's IEP from the commencement of the 2021–2022 school year to the filing of this complaint on October 12, 2021. The Parents further alleged that the District did not implement the Student's IEP during this time because the SLP did not appropriately use the Grid3 application on the Student's device.

The May 2021 IEP in effect at the commencement of the 2021–2022 school year stated that the IEP team determined the Student would discontinue trialing the application TouchChat on her AAC device and begin trialing Grid 3. It further stated that the Student used a "variety of unaided (e.g., sign language, gestures) and aided (low-tech systems, such as core language boards and high-tech voice output devices), as well as an [AAC] system."

Regarding the Parent's first allegation, the documentation showed that during the 2021 summer, the District SLP and the Student's private SLP began communicating regarding how to improve implementation of the Student's AT services at school and how to better coordinate between home and school regarding use of the Student's AAC device. In September 2021, the District additionally provided training to staff working with the Student on using Grid 3. Unlike the 2020–2021 school year, during the 2021–2022 school year, when working with the Student on her AAC supported goals, documentation showed the SLP maintained progress notes showing the Student's performance on AAC supported goals when using her AT device. Although the

documentation showed the SLP may use the AAC device with the Student and work with the Student on her AAC supported goals less than other communication goals or other communication methods, the Student's IEP does not require the SLP to dedicate a specific percentage of time to working with the Student on her AAC supported goals. The Student's IEP also does not require that the Student's teachers use the AAC device with the Student instead of other communication methods, but rather indicates that the AAC device is one available mode of communication that must be available to the Student. Thus, how often the SLP works with the Student on her AAC supported goals relative to other goals, and whether the SLP or the Student's teachers permit the Student to choose what communication method to use when not working on specific AAC goals, is at the discretion of the SLP and the Student's teachers—so long as the Student has her AAC device available as an accommodation—and so long as the SLP is working with the Student on making progress on her AAC supported IEP goals using the device and documenting the Student's progress accordingly. There is not sufficient evidence to show the District is not complying with these requirements for the current school year. OSPI finds no violation regarding this first allegation.

Regarding the Parent's second allegation, although the Parents disagree with the SLP and some of the school team regarding the amount of topic boards to include on the Student's device, the frequency with which new vocabulary words are added to the device, or which vocabulary words to add—are at the discretion of the provider (including the SLP)—unless otherwise stated in the Student's IEP. The Student's IEP does not indicate a particular methodology must be used by the providers when implementing the Student's AAC device, as long as the SLP is working with the Student on making progress on IEP goals. If the Parents believe the Student requires a particular methodology to be used by the application being trials on the Student's AAC device, which is what they appear to be suggesting, they should request an IEP meeting to discuss these concerns with the Student's IEP team. Accordingly, OSPI also finds no violation regarding this second allegation.

CORRECTIVE ACTIONS

By or before **January 7, 2022, January 14, 2022, January 28, 2022,** and **February 4, 2022,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **January 7, 2022,** the Student's IEP team will meet to discuss the Student's assistive technology (AT) needs, including use of an augmentative assistive communication (AAC) device. The team will discuss the nature and amount of AT services required by the Student and who will be supervising implementation of AT services.

By **January 14, 2022,** the District will provide OSPI with: a) a prior written notice, summarizing the IEP team's discussion and decisions concerning the above matters; b) a copy of the Student's IEP (if amended); c) any relevant meeting invitations; d) a list of people, including their roles, who attended the meeting; and, e) any other relevant documentation.

DISTRICT SPECIFIC:

Training

By or before **January 28, 2022**, the impacted special education staff will complete a training module on prior written notices. The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>.

By or before **February 4, 2022**, the District will submit documentation that required staff have completed the training module.

Written Guidance

The District will develop written guidance to be provided to all District certificated special education staff at the impacted school, including principals and District special education administration staff, which will address the requirement to provide assistive technology services, including assistive technology devices, at no cost to families, as part of the District's requirement to provide a free appropriate public education (FAPE). The guidance will include examples. By **January 7, 2022**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by January 14, 2022, and provide additional dates for review, if needed.

By **January 28, 2022**, the District will provide OSPI with documentation showing that it provided all District certificated special education staff, including ESAs, principals, and District special education administration staff with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

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 December, 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.)