

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-143

PROCEDURAL HISTORY

On November 30, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Kent School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On December 2, 2022, 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 December 7 and 8, 2022, OSPI received additional information from the Parent. OSPI forwarded the information to the District on December 8, 2022.

On December 8 and 9, 2022, OSPI received additional information from the Parent. OSPI forwarded the information to the District on December 13, 2022.

On December 19, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on December 20, 2022. OSPI invited the Parent to reply.

On December 19, 2022, OSPI received additional information from the Parent. OSPI forwarded the information to the District on December 21, 2022.

On December 24, 25, 27, 28, 29, and 30, 2022, January 3 and 4, 2023, OSPI received additional information from the Parent. OSPI forwarded the information to the District on January 3 and 5, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on December 1, 2021. 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. Per WAC 392-172-03100(8), did the District provide the Parent with an updated copy of the Student's individualized education program (IEP) in a timely manner after the December 1, 2021 IEP meeting?
2. Whether the District developed the IEP per the IEP team's discussion and agreements at the December 1, 2021 IEP meeting and considered the Parent's requested amendments?

3. Per WAC 392-172A-05010, did the District provide the Parent with a copy of the prior writing notice (PWN) in a timely manner after the December 1, 2021 IEP meeting?
4. Per WAC 392-172A-05215, did the District follow the proper procedures to address the Parent's May 2022 requests to amend the December 1, 2021 PWN?

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.

IEP Amendments: If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110. And, generally, the district must give the parent a copy of the student's IEP at no cost to the parent. WAC 392-172A-03100.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Amendment of Student Records: A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information. The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request. If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures. 34 CFR §300.618; WAC 392-172A-05215. The Family Policy Compliance Office (FPCO) has explained that this right

is not unlimited. A school is not required by FERPA to afford a parent the right to change substantive decisions made by school officials, such as grades or other evaluations, including decisions regarding special education. FPCO, *Letter to Parent re: Amendment of Special Education Records*, 122 LRP 29033 (August 13, 2004).

FINDINGS OF FACT

2021–2022 School Year

1. During the 2021–2022 school year, the Student attended a District elementary school as a kindergartener and was eligible for special education services under the category of developmental delay.
2. The Student’s May 5, 2021 IEP was in effect at the beginning of the 2021–2022 school year. From August 31, 2021 through May 11, 2022, the IEP provided specially designed instruction (SDI) and related services in:
 - Speech Language-articulation: 30 minutes/4 times per month (provided by a speech language pathologist (SLP), in a special education setting)
 - Speech Language-language: 30 minutes/4 times per month (provided by an SLP, in a special education setting)
 - Social/Emotional Skills: 30 minutes/4 times per week (provided by a special education teacher, in a special education setting)
 - Adaptive Skills: 30 minutes/4 times per week (provided by a special education teacher, in a special education setting)
 - Social/Emotional Skills: 45 minutes/5 times per week (provided by a paraeducator, in a general education setting)
 - Adaptive Skills: 30 minutes/4 times per week (provided by a paraeducator, in a general education setting)

The accommodations section provided, in part, as follows:

Accommodations	Frequency	Locations	Duration
Post visual or picture/schedule	Daily	Classroom	5/12/21–5/11/22

3. The Student was in the District’s “integrated program” (IP). According to the District, students primarily assigned to an IP caseload receive SDI addressing the “mild to moderate differences” in their instructional needs. Instructional content varies based on each student’s IEP. Services may be provided in any setting, based on the student’s IEP.
4. On August 31, 2021, the District held its first day of kindergarten for the 2021–2022 school year.
5. The complaint investigation timeline began December 1, 2021.
6. On December 1, 2021, the Student’s IEP team met. The District’s prior written notice (PWN), which was provided to the Parent in January 2022, documented the following, based on the IEP meeting:
 - Description of the proposed or refused action:

[Parents] proposed an IEP meeting to go over [the Student's] service minutes and daily schedule. Due to the nature of the current pandemic, this meeting was held over video conference. In attendance were: [Parent, ombudsperson, and five District employees].

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

[Student] is exhibiting behaviors at home including struggling to get ready for school, difficulty with emotion regulation, aggression with her siblings, etc. Parents believe this is because she is not receiving consistent support every day. The Integrated Program paraeducator has not been consistently in attendance at school since the beginning of the school year. Consequently, there have been a variety of education staff that have been working with [Student] since the beginning of the school year. In addition, [Student's] parents have noted her feelings of anxiety around strangers, especially new men. Even her male preschool teacher was a stressor for [the Student]. Also, fire drills, earthquake drills, etc are stressors for [the Student] when she gets home.

Description of any other options considered and rejected:

At the meeting it was discussed that the school is going to notify [the Parents] when there are fire drills, earthquake drills, etc to prepare [the Student] for changes in her day. In addition, when [the Student] is in school, she is able to use her fidgets and sensory tools when she is feeling anxious. One concern is that she is not asking for breaks. School staff are going to teach [the Student] to take breaks 3 times per day, in hopes that this will reduce her emotional breakdowns when she gets home. [The Student] will also be offered headphones (possibly noise cancelling if she likes them) to wear when students are working and it is getting busy and noisy in the classroom. [The Student's] parents were asked whether they would prefer that [the Student] gets no interventions on the days that there are different paraeducator substitutes. They are still considering this option at this time.

The Parent, in her complaint, provided her edited version of the PWN¹, as follows:

Description of the proposed or refused action:

[Parents] proposed an IEP meeting to go over [the Student's] service minutes and daily schedule. Due to the nature of the current pandemic, this meeting was held over video conference. In attendance were: [Parent, ombudsperson, and five District employees].¹⁰

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

[The Student] a is exhibiting behaviors at home including ~~struggling to get ready for school~~², difficulty with emotion regulation, ~~aggression with her siblings~~, completing mastered skill tasks etc. Parents believe this is because she is not receiving consistent support every day³ **and she has a constantly changing and unpredictable schedule**. The Integrated Program paraeducator has not been ~~consistently~~⁴ in attendance at⁴ school ~~since~~

¹ The footnotes inserted in this version represent the Parent's thoughts that appeared in her document using the "comment" function. The red text and striking out of text also appeared in the Parent's edited version. The Parent shared her edited version with the District on May 21, 2022.

² Parent comment 1: violent tantrums when arriving home from school, ...

³ Parent comment 2: AND she has a constantly changing unpredictable schedule.

⁴ Parent comment 3: but ___ days since...

but ___ number of days since the beginning of the school year. Consequently, this leaves [The Student] with no support/services. There⁵ have has been a variety of education staff that have been working with [the Student] since the beginning of the school year. In addition, [the Student's] parents have⁶ expressed their concerns with [the Student's] schedule starting before the bell at 9:05a when staff is not available and the classroom door is not open. Parents also noted her feelings of anxiety around strangers—familiar and unfamiliar people, especially new men. After 2 years with the same preschool teacher [the Student] still struggles with anxiety when seeing him outside his classroom environment. Even her male preschool teacher was a stressor for [the Student]. Also, fire drills, earthquake drills, substitute teachers etc are stressors for [the Student] when she gets home.

Description of any other options considered and rejected:

At the meeting it was discussed that the school is going to notify [the Parents] via email before 9am when there are fire drills, earthquake drills, and substitute teachers, etc to prepare [the Student] for changes in her day. In addition, teachers will notify [the Parent] if and when she has/had IP support to help [the Parent] track antecedent of her behaviors. When [the Student] is in school, she is able to use her fidgets and sensory tools when she is feeling anxious. One concern is that she is not asking for breaks. School staff are going to teach [the Student] to take breaks 3 times per day, in hopes that this will reduce her emotional breakdowns when she gets home. [The Student] will also be offered headphones (possibly noise cancelling if she likes them) to wear when students are working and it is getting busy and noisy in the classroom. [The Student's] parents were asked whether they would prefer that [the Student] gets no interventions on the days that there are different paraeducator substitutes. They^{7,8} are still considering this option at this time. [Parent's] response via email after meeting was; "Yes, [the Student] should receive services from all paraeducators familiar or not. I believe she will be successful when my requests are implemented;

1.) I would like [the Student] to have the necessary visual accommodations at her desk. This is to include all of her daily transitions.

2.) Para should not start before 9:15a to allow [the Student] time to get settled and review her new desk schedule. (Being made by Myself and [District employee 1 12/14/21])

A District employee took notes at the December 1, 2021 IEP meeting, which, in part, included the following:

[meeting participants including a Parent invitee]

...

PWN?

⁵ Parent comment 4: She is not getting the required time with her special educator or paraeducator.

⁶ Parent comment 5: stressed the need for consistency and routine for [The Student].

⁷ Parent comment 6: I submitted my response on 12/13.

⁸ Parent comment 7: You can put my response in as; *Yes, [the Student] should receive services from all paraeducators familiar or not. I believe she will be successful when my requests are implemented; 1.) I would like [the Student] to have the necessary visual accommodations at her desk. This is to include all of her daily transitions. 2.) Para should not start before 9:15a to allow [the Student] time to get settled and review her new desk schedule. (Being made by Myself and [District employee 1] 12/14/21) (italics in the original).*

Drills – [District employee] can have her walk through w/ him
...– prep Ss [students] leading up to drill
Incr[ease] ability to changes in schedule
9:05–
Focus is to get structure
Does she need more Breaks
Never asked for break – try Break tickets
Using OT tools sensory – fidgets, playdough
Mom – last month started using tools – by time she grabs toy already maxed out
Structured break 2–3 mins
2–3 breaks/day
Steps to taking break
Headphones
Anxiety – trouble w/ strangers that are men
...
Male teacher would be a stressor

7. On December 1, 2021 at 10:45 am, the Parent sent the District an email that stated:
Thank you for taking the time to meet with me today. It was very helpful to hear from everyone. Before I make my decision on moving forward with her schedule [District employee 2] I'd like to take a look at your spreadsheet. I have logged every tantrum including each one's ABS's and I want to compare service days vs. non service days to see how that impacted the type of tantrum and the level of her tantrum (i.e., was it just an attention seeking tantrum with whining and flopping on the floor vs. was it an escape from a demand tantrum and things were broken)

At 11:22 am, District employee 2 responded:
Here is the excel document I created with each day of school.

Moving forward, I am not able to continue keeping track of minutes but I can let you know each day if there was a para or not. The other issue is that sometimes I cover for the para schedule. I've been trying to do this on alternating weeks. So this week, if there is no para, then I'm covering the para's schedule. Again, if you don't want me to provide services to [the Student] on these days because of the inconsistency, please let me know.

Her schedule as of Nov. 1
9:15–10:15 A/SEL IP para
11:45–12:00 A/SEL IP para
1:10–1:30 A/SEL [District employee 2] (if there is no para, I have been keeping the students till 2:10 pm)
1:30–2:30 A/SEL IP para
I hope this is helpful.

At 10:23 pm, the Parent responded:
Thank you for this. The patterns I am trying to look for aren't working. I must have you and the Para assigned to the wrong sessions. Was there a different schedule from 8/31-10/28? The very schedule I received on 10/28 is below. Can you please send me the correct one or make changes on the one below?...

At 11:00 pm, District employee 2 responded, "There were many different schedules from 8/31-10/28. The schedule I just sent you is the one she currently has."

8. On December 2, 2021, at 8:22 am, the Parent sent the District ombudsperson an email that stated, in part:

This schedule she sent me...is horrible, how do I ask for more detailed information. So many things are wrong with it, one major concern for me is how/why does she have extra minutes on some days? 170min! when her IEP/schedule requires 135. If they are adding more on some days that means they are pulling her more or someone is in the class more and this is obviously inconsistent.

...

I am very frustrated, I have asked for this information so many times.

At 11:41 am, the Parent sent the District an email that stated, in part:

[The Student] has an accommodation for 'Visual Schedule' in her IEP and [District employee 3] has a great one in her classroom for daily activities, this gives her access to a basic schedule. She also needs support for other parts of her day. For this she needs a 'personal' daily schedule at her desk. A visual schedule that is updated each morning (prior to her seeing a para). This is what she is used to at home...

I have attached a photo of the classroom schedule, her home morning schedule, and a rough example of what she needs. It would work best to use the same photos that are on [District employee 3's] schedule. In addition to those [the Student] would need a photo to represent the following [five suggestions were provided]...I think there was an agreement in yesterday's meeting that [District employee 2] will notify [District employee 3] at or prior to 9am of the para status for the day. If not, can that be done?

[District employee 3]-[the Student] enjoys helping me change the schedules at home, you can give her the task of updating her schedule daily if you want. Provide her with the pecs for the day...just the changeable pieces and she'll put it together.

Please let me know your thoughts on this proposal.⁹

At 1:07 pm, District employee 2 responded, in part, "And no, I did not agree to let [District employee 3] know before 9am whether there is an ip para or not. She has access to the same information I have. [The Student] already has a visual schedule so nothing has been missing from her visuals."

At 3:36 pm, the Parent emailed the District, in part, as follows:

I apologize [District employee 2]. Last night I was thinking, I should ask [District employee 3] to see [the Student's] schedule. I wanted to take maybe the first three parts and add them to our home schedule. The last photo on ours you can see is a pic of the school. I didn't realize that I am leaving her at a dead end everyday. I should know she needs to see further. When we got to school this morning I asked [District employee 3] if I could take a picture of [the Student's] schedule so I knew what to add. She told me [the Student] references the one on the board but does not have one at her desk. Got home started my project with what I had, adding her IP

⁹ Photos of three schedules were attached to the email.

schedule to her class schedule so I could have a master of a full day's schedule. This will help me for situations like conference week when an afternoon transition is now at 10a or her favorite PE time is moving to another day. I hit a bump in the road when 'Para' fell into her first three transitions. And I realized I didn't have pecs for IP transitions. So I assumed neither did [the Student] since I was told this classroom schedule is the only one she is referencing in class. Ah Ha! moment thinking, this could be the missing part of her day! This could solve everything! Excitedly without double checking for pecs from anyone else I made my rough draft and sent it out for everyone's thoughts. I jumped the gun and I apologize. Before we go forward with changing anything [District employee 2] can you share the visual schedule you are referring to? If it has all transitions for [the Student] then we definitely don't need to change anything and I can add those to my home/school schedule.

9. On December 6, 2021, at 3:01 pm, the Parent sent the District the following email, "I have waited two business days and received no response. How are we moving forward?"

At 3:06 pm, the Parent sent this email to the District ombudsperson, "I have no response or resolution to this email, getting [the Student] a visual schedule at her desk."

At 4:13 pm, District employee 2 emailed the Parent as follows:

What are the 2 business days for? Sorry, I'm not sure I heard anything about 2 business days. I worked on the Prior written notice over the weekend. I am mostly ready to go, just checking on some last details. I wanted to let you know that [the Student] and I created a take a break sign last week. I laminated it and I went through the steps with [the Student] this morning. I wrote down the times for breaks on the sign. Her break times will be every day at 9:50am, 11:50am and 1:30pm. I let [the Student] know that she can always take more than these 3 breaks in a day if she starts to feel nervous or worried or not in the green zone. Today she got the 9:50 and 1:30 breaks but I think the para told me [the Student] was busy at 11:50. I let the para know (she'll be back Friday) that [the Student] gets a break no matter what she is doing, if she is in the classroom. The point now is for her to learn the routine and for you to see how things are going at home. We'll see how it goes tomorrow with all 3 breaks. I'm hoping things will improve at home with these breaks.

At 10:59 pm, the Parent sent the following email to the District:

My question from 12/2 that has not been answered is regarding [the Student's] Visual Schedule Accommodations. Copied from my email below: 'Before we go forward with changing anything [District employee 2] can you share the visual schedule you are referring to? If it has all transitions for [the Student] then we definitely don't need to change anything and I can add those to my home/school schedule.'

(Emphasis in original.)

At 11:12 pm, District employee 2 responded:

I was referring to the visual schedule that [District employee 3] has up on her whiteboard. It's the last picture you sent. I was saying in my email that we still need to work on a visual schedule that [the Student] can put on her desk with her transitions on it, but she has had a visual schedule since she started school.

10. On December 8, 2021, at 10:49 am, the Parent responded in part:

[District employee 2], Thank you for clarifying. Moving forward together, can someone send me the images from the board and images/photos to represent:...

[District employee 3], Did you purchase or make your class schedule? Realized I've been asking you for images but I don't know if you even have them...sorry. If you don't have them I am happy to try and make some to match that we can both use at home and on her desk. Can we start with collecting all images today? Happy to help, just let me know.

11. On December 13, 2021, at 9:20 am, the Parent emailed the District as follows, "Good morning, I am following up on the PWN and confirmation of the picture for break. Can you get back to me today?"

At 9:43 am, District employee 2 responded:

I think I answered your question below about the visual schedule? It was the one [District employee 3] uses on her whiteboard. Last week we were working on pictures for the visual schedule she was going to use as far as who her teachers will be for the day, for transitions.

You sent me one on Friday that I don't think I've had a chance to print yet. The one where some of the picture was cropped, I think you re-sent that one.

I will check on the PWN today but I know one thing we were waiting for was to find out what you decided about whether [the Student] would get services if there was a strange male substitute.

Have you had a chance to think about that? Just let me know what you are thinking.

At 11:12 am, the Parent replied:

Sorry, my question this morning went into the email string regarding [the Student] desk schedule instead of this one regarding her break sign and PWN.

[District Employee 3] I am following up on this question from the 12/6 email about the Break Sign you and [the Student] made. I want to be sure things are consistent for her and understand the function of this sign.

Does her sign have this "Take a quiet break" image [District employee 4] gave us all for her Calm Down Choice board?

...I apologize I didn't understand that my response was needed for the PWN to be complete.

You can put my response in as; Yes, [the Student] should receive services from all paraeducators familiar or not. I believe she will be successful when my requests are implemented;

1.) I would like [the Student] to have the necessary visual accommodations at her desk. This is to include all of her daily transitions.

2.) Para should not start before 9:15a to allow [the Student] time to get settled and review her new desk schedule.(Being made by Myself and [District employee 1] 12/14/21)

Hope I have cleared this up and we'll be able to archive this email string for Break Sign and PWN soon.

(Emphasis in original.)

12. On December 14, 2021, the Parent emailed, in part, the District as follows, "I am still waiting on a PWN from [District employee 2] from the meeting. I asked for it again yesterday."
13. On December 16, 2021 at 9:41 am, the Parent emailed, in part, the District as follows, "Therefore I do not want to make any changes besides implementing her much needed visual schedule to show her transitions. I strongly believe this will help reduce her new negative behaviors we are seeing at home."

At 9:46 am, the Parent emailed District employee 4 as follows:

I am still waiting on notes/PWN from our 12/1/21 meeting. I would appreciate having this before break. I want to confirm that a Para will stop greeting [the Student] at 9:05 and [District employee 3] will be her first person of contact at school. I also want to know where those minutes are being moved to. None of this has been communicated since the meeting and I would prefer to review the notes before asking too many questions.

14. December 17, 2021 was the last day of school before the holiday break. The Parent emailed the District, in part, as follows, "I do still have questions as always. Some I thought would be answered in the PWN but I haven't received one, I've waited two and a half weeks, and now we are headed into break ..."

15. On December 23, 2021, the Parent sent the District the following email:

I sent an email to [District employee 4] on 12/16 like you said, to ask for PWN. I got no response by the afternoon of 12/17 so I sent this to the team. Still no response...I want [the Student] to be able to start back at school next month with a clear expectation of her day and all of us on the same page.

I know no one is going to respond now that we're all on break but what do you suggest I do once school starts back up?

Enjoy your holiday, talk to you next year!

16. January 3, 2022 was the first day of instruction after the holiday break. District employee 2 sent the Parent the following email that stated in part:

Here is the Prior Written Notice that I wrote in early December. I'm sorry it took me so long to get it out to you.

...

I am also sending you the procedural safeguards which you would follow if you disagree with the services we are providing for [the Student] or have any concerns about the IEP.

17. On January 10, 2022, the Parent emailed, in part, the ombudsperson as follows, "I've attached the PWN I received from our 12/1 meeting. There is so much missing and some inaccurate statements. Do I even try and get this corrected?"

18. On January 14, 2022, the Parent sent the District in part:

I also noticed my para decision wasn't in the PWN so I've copied it here:

You can put my response in as;

Yes, [the Student] should receive services from all paraeducators familiar or not. I believe she will be successful when my requests are implemented;

1.) I would like [the Student] to have the necessary visual accommodations at her desk. This is to include all of her daily transitions.

2.) Para should not start before 9:15a to allow [the Student] time to get settled and review her new desk schedule. (Being made by Myself and [District employee 1] 12/14/21)

19. On May 18, 2022, the IEP team met to develop the Student's new IEP in alignment with her April 2022 reevaluation.

20. On May 19, 2022, the Parent sent the District an email that stated, in part, the tasks District employees needed to do according to the Parent.

- For the Parent, it stated in part, "Send corrections to PWN dated 12/1/2021 to District employees 5 and 6."
- For District employee 5, it stated in part, "Work with District employee 6 to make corrections to 12/1/21 PWN".
- For District employee 6, it stated in part, "Work with District employee 5 to make corrections to 12/1/21 PWN".

21. On May 20, 2022, the Parent filed special education community complaint (SECC) 22-63. The issues in this complaint were:

- Did the District follow procedures to monitor and report the Student's individualized education program (IEP) progress during the 2021–2022 school year?
- Did the District properly amend the Student's IEP in February 2022 to removing adaptive and social emotional services, including whether this decision was made based on sufficient, Student-specific data?

22. On May 21, 2022, the Parent emailed District employees 5 and 6 her edited version of the December 1, 2021 PWN.

23. On May 26, 2022, the Parent sent OSPI the following email regarding SECC 22-63:

I would like to add more documentation to what has already been sent. There is a PWN for an IEP meeting held on 12/1/21 written by [District employee 2]. This document has false and missing information. I will attach for you the original PWN sent by [District employee 2] on 1/3/22, my corrections, emails from myself asking for it to be corrected, Conference notes 02/7/22 that make reference to the PWN, lastly emails regarding 9:05a start. Please let me know if anything else is needed.

24. On June 7, 2022, the Parent emailed District employees 1, 5, and 6 requesting, in part, the December 1, 2021 PWN.

25. On June 17, 2022, the District held its last day of instruction.

26. On July 26, 2022, OSPI issued a decision and found no violations in SECC 22-63.

27. On November 30, 2022, OSPI received the present complaint from the Parent. The Parent's allegations were, in part:

1. The District did not provide a PWN in a reasonable amount of time after the December 1, 2021 IEP meeting.

2. The PWN for December 1, 2021 was eventually received by Parent on January 3, 2022, but the document did not have accurate or complete documentation of the December 1, 2021 IEP meeting. Therefore, it did not ensure that the Parent was aware of the decisions made at the IEP meeting.
3. Accommodations, goals, and other areas of the IEP were not updated after December 1, 2021 to allow all District staff to implement the Student's special education services appropriately, thus denying the Student a free appropriate public education (FAPE).
4. The District failed to ensure the Parent understood the proceedings of the December 1, 2021 by not fully documenting the meeting, answering Parent questions after the meeting, or providing the PWN before the initiate date.
5. The District failed to document the newly implemented daily behavior report card, break schedule at the December 1, 2021 IEP meeting.

28. On December 8, 2022, the Parent sent OSPI an email that stated, in part, "I was not provided an updated copy of the Student's IEP after the 12/1/21 meeting or after the 1/3/22 delivery of the PWN for the 12/1/21 meeting."

29. On December 19, 2022, the District submitted its response. The District's position on the first two issues was:

Parent did not request amendment to Student's services, goals or accommodations, nor did the team propose or agree to any changes in the December 1, 2021 meeting. As such, the IEP was not amended and there was no updated or amended IEP to provide to Parent. Instead, Student's May 2021 IEP remained in place, a copy of which Parent received at the time it was developed. Because Student's IEP was not amended and Student continued to receive the same services, the District did not provide Parent an updated IEP after the December 1, 2021 meeting. Accordingly, the District did not violate the IDEA's procedures with respect to either of these identified issues.

Regarding the fourth issue, the District's response stated, in part:

Here, Parent sent an email to the District on May 21, 2022, stating her disagreement with the December 9, 2021 (sic) PWN. The District received this email at the same time it was attempting to schedule a meeting with Parent to address her general questions and concerns regarding Student's program. The District acknowledges that it did not formally communicate with Parent in writing regarding her requested amendments to the December 1, 2021 PWN. As demonstrated by Parent's Complaint, this issue appears to be unresolved. As such, the District will formally consider Parent's requested amendments to the December 1, 2021 PWN and advise Parent in writing whether her changes will be adopted no later than January 13, 2023. The District proposes this date in light of the intervening holiday break, during which staff will not be working. The District further will advise Parent of her right to a hearing to address her concerns should they not be resolved following the District's formal response to her request.

CONCLUSIONS

Issues One and Two: IEP Copy and Amendment – The Parent's main allegations regarding the first two issues can be summarized as: After the December 1, 2021 IEP meeting, the District did not provide the Parent a copy of the IEP and the District did not update the accommodations, goals, present levels, and Student progress in the IEP.

These allegations are related because sending a copy of the IEP is predicated on amending the IEP. First, did the IEP team amend the Student's IEP so that the District would have been required to provide the Parent an updated IEP? Second, if the IEP was amended, did the District provide the Parent an updated IEP in a timely fashion? If the first issue is not answered in the affirmative, the second issue becomes moot.

When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the child. If changes are made to the student's IEP, the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.

In the present matter, according to the meeting's PWN, the Student's IEP team met on December 1, 2021, primarily because the Parent wanted "to go over [the Student's] service minutes and daily schedule." The Parent's edited PWN, submitted with the complaint, contains lengthy comments on how the original PWN should be changed, but it makes no comment regarding the statement in the previous sentence, so it can be assumed that the previous sentence's statement is in fact why the IEP team met. During this meeting, the Student's May 5, 2021 IEP was in effect.

The District's position on the first two issues taken from the District's response is that the Parent did not request an amendment to the Student's services, goals, or accommodations and that the team did not propose any changes. Thus, the District stated:

As such, the IEP was not amended and there was no updated or amended IEP to provide to Parent. Instead, Student's May 2021 IEP remained in place, a copy of which Parent received at the time it was developed. Because Student's IEP was not amended and Student continued to receive the same services, the District did not provide Parent an updated IEP after the December 1, 2021 meeting.

A review of the Parent's edited PWN shows that the District's assessment of this issue is correct. The Parent's edited PWN's main point concerned the Student's "constantly changing and unpredictable schedule." At the end of the edited PWN, the Parent provided the following statement:

I believe she will be successful when my requests are implemented;

- 1.) I would like [the Student] to have the necessary visual accommodations at her desk. This is to include all of her daily transitions.
- 2.) Para should not start before 9:15a to all [the Student] time to get settled and review her new desk schedule.

The edited PWN's purpose is to express that the Parent wanted the visual schedule accommodation—an accommodation already in the Student's May 2021 IEP—to be implemented in a very specific way. This position is supported by the Parent's emails after the IEP meeting regarding the Student's visual schedule. Those emails include, but are not limited to, the Parent's

December 2, 2021 email to the Ombudsperson, and several similar emails to the District between December 6 and 16, 2021.

A visual schedule accommodation was already a part of the May 5, 2021 IEP, and the Parent's edited PWN does not show that the Parent wanted a change to the Student's IEP goals or accommodations; instead, she wanted the visual schedule created and implemented in a specific way. There is no language in the original PWN or the Parent's edited PWN that establishes that the IEP team agreed to this change; nor do the applicable special education regulations provide a requirement to include how elements of an IEP will be implemented in the IEP; rather that is a matter of a teacher or service provider's use of instructional methodologies or strategies. Further, the District's documentation supported that the Student already had a visual schedule in class, although staff were working to create a desktop copy of the visual schedule to supplement the schedule on the board in class.

Thus, the District was not required to update the Student's IEP after the December 1, 2021 meeting, nor provide the Parent a copy of the Student's IEP after the December 1, 2021 meeting; the Parent already had a copy of the May 5, 2021 IEP, the IEP that was in effect. For these reasons, no violation exists as to the first or second issue in the present matter.

Issue Three: Timely PWN – The Parent alleged the PWN from the December 1, 2021 IEP meeting was not provided to the Parent in a timely manner.

Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education.

In the present matter, on December 1, 2021, the Student's IEP team met to go over the Student's service minutes and daily schedule. After the meeting, the Parent sent emails to the District that made comments, requests, or asked questions regarding the purpose of the meeting on the following days: December 1 (two emails), December 2 (two emails), December 6, December 8, and December 13, 2021(two emails).

The District responded to those emails on December 1 (two emails), December 2, December 6 (two emails), and December 13, 2021, addressing the Parent's questions and comments. Emails indicated that the District was waiting on information from the Parent as well, following the IEP meeting. For example, on December 13, 2021, District employee 2 emailed the Parent in part, as follows:

I will check on the PWN today but I know one thing we were waiting for was to find out what you decided about whether [the Student] would get services if there was a strange male substitute.

Have you had a chance to think about that? Just let me know what you are thinking.

District employee 2's question just above demonstrates two things. First, the use of the word "we" shows that several District employees needed to contribute to the PWN. This would have slowed

down the drafting process. Second, and more importantly, the District was waiting for input from the Parent to add to the PWN, and that input came later that day.

Four days later, December 17, 2021, was the last day of instruction for the District before the Christmas/New Year break. During this break, schools would have been closed and much of the District's staff, including its teachers and service providers, would not have been officially working—although they may have been doing District related work, such as editing a PWN on their own time. January 3, 2022 was the first day of instruction after the holiday break, and on that day, District employee 2 sent the Parent the PWN from the December 1, 2021 meeting.

District employee 2's question in the December 13 email shows that District employee 2 was legitimately waiting for information from the Parent to complete the PWN. Additionally, the emails between the Parent and District indicated the District was trying to prioritize the Parent's participation in the IEP process and address her questions and concerns. While OSPI understands the Parent's frustration with the amount of time between the IEP meeting and PWN, OSPI finds that given the ongoing communication about the meeting and PWN, and factoring in winter break, there was a reasonable explanation for the PWN timeline here. Thus, there is no violation regarding the third issue.

Issue Four: Request to Amend the December 1, 2021 PWN – The Parent alleged that the December 1, 2021 PWN did not accurately reflect what the IEP team agreed to at the meeting and did not address the Parent's concerns about the PWN after the meeting.

A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information. The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request. If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures.

The District's response stated, in part:

Here, Parent sent an email to the District on May 21, 2022, stating her disagreement with the December 9, 2021 (sic) PWN. The District received this email at the same time it was attempting to schedule a meeting with Parent to address her general questions and concerns regarding Student's program. The District acknowledges that it did not formally communicate with Parent in writing regarding her requested amendments to the December 1, 2021 PWN. As demonstrated by Parent's Complaint, this issue appears to be unresolved. As such, the District will formally consider Parent's requested amendments to the December 1, 2021 PWN and advise Parent in writing whether her changes will be adopted no later than January 13, 2023. The District proposes this date in light of the intervening holiday break, during which staff will not be working. The District further will advise Parent of her right to a hearing to address her concerns should they not be resolved following the District's formal response to her request.

OSPI agrees that the Parent's requested amendments to the PWN constitute a request to amend the Student's record based on the Parent's position that the information was inaccurate. The District did not follow the procedure outlined in state special education regulations to respond to the Parent's request. Based on the District's admission, a violation is found regarding the fourth issue, and thus, the District will need to advise the Parent in writing whether her changes to the December 1, 2021 PWN will be adopted or otherwise provide next steps.

CORRECTIVE ACTION

By or before **February 15, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

Records Amendment Process

Regarding the December 1, 2021 PWN, the District will advise the Parent in writing whether her changes will be adopted, or otherwise provide the Parent next steps, no later than **February 15, 2023**. The District will copy OSPI on the communication.

DISTRICT SPECIFIC:

None.

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

Dated this 19th day of January, 2023

Dr. Tania May
Assistant Superintendent of 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.)