

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-170

PROCEDURAL HISTORY

On November 23, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On November 23, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 29, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 15, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to December 18, 2023.

On December 15 and 19, 2023, OSPI received the District's response to the complaint and forwarded it to the Parents on December 18 and 19, 2023. OSPI invited the Parents to reply.

On December 15, 2023, OSPI received additional information from the Parents regarding their allegation about prior written notice. On December 18, 2023, OSPI forwarded this information to the District and the District provided a supplemental response to this allegation on January 9, 2024. OSPI forwarded that response to the Parents on January 9, 2024.

On December 30, 2023, the Parent requested an extension of time to reply to the District's response to the complaint. OSPI granted the extension to January 5, 2024.

On January 2 and 9, 2024, OSPI requested that the District provide additional information¹, and the District provided information on January 9 and 19, 2024. OSPI forwarded the information to the Parents on January 9 and 22, 2024.

On January 8, 2024, OSPI received the documents from the Parents as part of their reply. OSPI forwarded that reply to the District on January 10, 2024.

On January 12, 2024, the Parents requested an accommodation of extended time to submit their reply. OSPI granted this request and asked the Parents to submit their reply on January 26, 2024, which created an exceptional circumstance that required an extension of the 60-day timeline for completing this complaint investigation.

On February 5, 2024, the Parents requested an accommodation of extended time to submit their reply. OSPI granted this request and asked the Parents to submit their reply on February 12, 2024,

¹ In part, OSPI noted that the Parents had identified that the District's response did not contain any internal emails. OSPI requested the District provide internal emails or communications relevant to the issues being investigated in the complaint.

which created an exceptional circumstance that required an extension of the 60-day timeline for completing this complaint investigation.

On February 12, 13, and 14, 2024, the Parents provided additional documents and their reply to the District's response. OSPI forwarded this documentation to the District on February 14, 2024.

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

SCOPE OF INVESTIGATION

OSPI notes that the Parents, in their reply, provided information and raised issues that were not included in their complaint filed in November 2023, nor identified in the issues OSPI opened to investigate. For example, the Parent raised concerns about the IEP team facilitating work with the Division of Vocational Rehabilitation (DVR), the development of communication goals, and IEP meeting excusal procedures, among other topics. OSPI notes that any references to such information are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations.

ISSUES

1. Whether, since October 2023, the District implemented the Student's individualized education program (IEP)?
2. Whether, during the 2023–24 school year, the District addressed the Parents' concerns that the IEP was insufficiently developed in the area of adaptive/life skills, specifically whether the IEP goals in that area were appropriate?
3. Whether, during the 2023–24 school year, the District provided prior written notice as required by WAC 392-172A-05010?
4. Whether, during the 2023–24 school year, the District conducted sufficient progress monitoring and provided progress reporting?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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 §300.323; WAC 392-172A-03105. "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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program

that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress", the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, " and the student should have the opportunity to meet challenging objectives. *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105.

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.

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

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis

for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

Background: 2022–23 School Year

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of multiple disabilities and attended a running start program at a community college.
2. On June 12, 2023, the Student met with the occupational therapist (OT) and identified goal areas for adaptive goals. Subsequent documentation indicated that there were continued discussions and meetings regarding adaptive with the Student, Parent, and District staff.
3. According to a June 30, 2023 prior written notice, the Student's IEP team met on June 6, 22, and 29, 2023, to develop the Student's annual IEP. The Parents and Parents' educational advocate attended the IEP meeting.

The June 2023 IEP included present levels and progress data on the adaptive/life skills, social emotional/behavioral, study/organizational, and written language goals. The IEP included an updated section related to the Student's motor skills and communication, and included a section related to age-appropriate transition assessments and secondary transition planning.

The IEP included annual goals in adaptive/life skills (using available resources), social/behavior (self-advocacy and emotional regulation skills), study/organization skills (email management, using a calendar and to-do list, time management, prioritization, and daily planning skills and

time management), and written language (pre-writing skills, application of a pre-writing tool, elaboration and commentary, and creating/choosing a graphic organizer). Progress reporting was to be provided at the trimester, via a written progress report.

The District stated in its response that the team agreed that the adaptive skills goal would help guide the Student as he learned how to utilize the available resources at the college, particularly the tutoring/writing center. The prior written notice documented that the team discussed "adding additional adaptive goals" and because of time restrictions, agreed to "revisit the adaptive goals in September."

The IEP included numerous accommodations and assistive technology (AT). The June 2023 IEP included the following specially designed instruction (SDI), related services, supplementary aids and services (SAS), and support for school personnel:

- Speech language pathology (related service): 45 minutes weekly (to be provided by a speech language pathologist (SLP) in the special education setting)
- Counseling (related service): 60 minutes weekly (to be provided by a counselor in the special education setting)
- Adaptive/life skills (SDI): 30 minutes, twice weekly (to be provided by a general education teacher in the general education setting)
- Social/behavior (SDI): 30 minutes, twice weekly (to be provided by a general education teacher in the general education setting)
- Written language (SDI): 45 minutes, twice weekly (to be provided by a special education teacher in a special education setting)
- Study/organizational skills (SDI): 15 minutes, three times weekly (to be provided by a special education teacher in a special education setting)
- SLP/Communication Consultation (SAS): 15 minutes monthly (to be provided by an SLP in the special education setting)
- Occupational therapy (support for school personnel) for trialing new supports, collaborating with team for continued implementation and family check-ins (600 minutes a year; 2 times a month direct; 1 time a month [for] team support; 1 times a month [for] parent).

4. In their reply, the Parents provided documentation, such as emails, discussing that the team ran out of time and stating their position that the development of the June 2023 IEP was incomplete. For example, adaptive goals were not fully discussed or addressed.

2023–24 School Year

5. At the start of the 2023–24 school year, the Student continued to be eligible for special education services and was in the 12th grade. The Student's June 2023 IEP was in effect and the Student was attending classes through running start at a local college.²
6. The District's 2023–24 school year began on September 6, 2023, and the running start/college fall quarter began on September 26, 2023.

² Documentation indicated the Student participated full time in running start and did not attend any classes at a District school.

7. In their complaint, the Parents alleged the District :
- Failed to implement the Student's IEP, including my providing special education services based on teacher availability.
 - Failed to develop a sufficient IEP, specifically a lack of appropriate goals, in adaptive/life skills.
 - Failed to provide prior written notice to "accurately record decisions made about [Student's] educational programing."
 - Failed to "collect valid data used for progress monitoring in accordance to progress monitoring and reporting requirements."

In their reply, the Parents stated that the lack of appropriate adaptive goals meant that the Student could not attain his postsecondary goals and that the District would not be able to implement the Student's transition plan. The Parent also stated the adaptive goals should have been completed and that the IEP team had, had adaptive goals on the agenda since April 2023 and provided information about ongoing communication around adaptive goals, transition assessments, and supports from the school counselor between April and fall 2023.

In their reply, the Parents also alleged that the Student's IEP team agreed in February 2023 that the Student required "Google Voice", which would allow staff to call the Student regarding time sensitive issues (e.g., coming to meetings and class on time). The Parent alleged and provided documentation related to this not being implemented.

8. At the start of the school year, a special education teacher served as the Student's case manager (case manager 1). The case manager, based on emails, met with the Student on September 7, 2023, so that they could discuss the Student's schedule.
9. On September 12, 2023, a general education teacher informed the Student and Parents that she would serve as the Student's high school advisor (advisor) and that she would meet with the Student in-person when running start classes began. The advisor asked if she could meet with the Student before classes began via video conference to discuss their in-person meeting schedule and goals for the year.
10. Also, on September 12 and 14, 2023, the SLP asked the Student to send his class schedule so they could schedule and continue speech services. The Student agreed to meet September 15, 2023, and then subsequently meet on Thursdays 10:45 to 11:30 am.
11. A September 19, 2023 email from the principal to case manager 1 and the Student's advisor stated:
- [Advisor] told me that you are concerned that [Student's] IEP lists 2 hours per week to be provided by the General Education teacher. This is based on our Junior year model of serving students for 2 hours per week in a group setting. Our Seniors are only receiving a 30 minute 1:1 remote meeting each week, but we have created a schedule for [Student] to receive twice this amount of time and for the meetings to be in-person. I hope that we can explain to the [family] that the model is to reduce support time to increase independence, but that we are still being responsive to his needs by providing him double what other Seniors are receiving.

12. In additional information from the District, the District stated that the principal had explained to the Parents that the,
- design of the [Student's District high school] program includes the philosophy that students should be moving towards independence. Practically this means that Juniors receive 120 minutes of small group mentorship, while Seniors receive 30 minutes of 1:1 mentorship. We had discussed this during his Junior year and said that we could provide him double the 1:1 time (60 minutes) during his senior year, but not the 120 minutes that he received as a Junior.

However, the team "ultimately offered 120 minutes per week of [specially designed instruction] delivered by the general education teacher."

13. On September 21, 2023, the occupational therapist (OT), offered the Student three options for virtual occupational therapy meetings. Later, on September 28, 2023, the Student informed the OT that Tuesdays from 11 to 11:30 am worked best.

Documentation showed that the OT initially provided direct services to the Student on Tuesdays at 11 am and then later agreed to change the meeting time to 1 to 1:30 pm on Tuesdays. Emails from the OT indicate that there were ongoing conversations about AT, that the OT did research on various AT programs and applications. For example, emails stated they could "continue to explore how to use his email, scheduling system, google keep and google voice more functionally in order to keep track of assignments and get assignments turned in on time" and explore "built in word prediction and text to speech to support his writing all within his current operating system." The OT's service log report documented consultation with the Student's teachers and sessions with the Student, including work on identifying AT that the Student would use and techniques for checking emails and prioritizing emails.

14. On September 22, 2023, the Student met with his advisor.

15. On September 26, 2023, the running start/college fall quarter began.

16. The District's response and documentation showed that the following SDI was provided:
- Advisor/general education teacher: Scheduled to deliver a portion of the Student's SDI on Mondays from 10 to 10:30 am at the college and Thursdays from 12 to 12:30 via zoom.
 - Case manager 1: Scheduled to deliver SDI on Tuesdays and Thursdays from 2 to 3 pm and Fridays from 12:10 to 12:30 pm virtually in October 2023.
 - Case manager 2: Delivered SDI on Tuesdays, Wednesdays, and Thursdays for an hour and on Friday for 30 minutes in November.

The District further clarified that the following specially designed instruction has been provided:

[General education teacher], the general education teacher, had been providing 60 minutes of [specially designed instruction] per week and [case manager 2], the special education teacher, had been providing the remaining 60 minutes of [specially designed instruction] that was listed in his IEP as being delivered by a general education teacher, but monitored by a special education teacher. As of this week [January 15, 2024], the schedule has changed, so [general education teacher] is now providing the 120 minutes of [specially

designed instruction] identified in his IEP as being delivered by the general education teacher.

[Principal] stated that [case manager 1's] schedule from the beginning of the school year until his departure in late October included two 60-minute meetings and one 20-minute meeting each week for a total of 140 minutes of [specially designed instruction].

This documentation included notes from the general education teacher, indicating they met on September 27 (the Student arrived at the end of the meeting time), October 2, 4, 11, 16, 18, 2023, November 2 (the Student arrived at the end of the meeting time), 6, 16, 20, 27, 30 (Student arrived 20 minutes late), and December 4 and 7, 2023. The Student did not show up for sessions on November 9 and December 11, 2023. The notes indicated the general education teacher sent the Student two text messages on December 11, 2023, and did not get a response. Other notes indicated: October 26, 2023, the IEP meeting was scheduled during their meeting time, emails were sent to reschedule but no response; October 30, 2023, teacher was unavailable and the session was ultimately rescheduled to November 28, 2023.

The notes indicated they generally worked on planning for classes; creating weekly to-do lists and updating weekly/calendar schedule; checking personal and college email; setting phone reminders; planning around upcoming assignments, late assignments, and submission of assignments, including prioritizing assignments and scheduling time to complete assignments (e.g., completing assignments that will lock first or late assignments); emailing teachers/professors, location and use of resources (including writing center and math/science tutoring center) and class materials; at times working on specific assignments and working to break assignments into chunks and provide feedback on assignments; and other discussions of topics, such as ultimate frisbee, issues with the coach, registration for next quarter, and future meetings.

This documentation included notes from case manager 1, indicating that generally they focused on self-advocacy, time management, and writing skills. They met on September 7, 26, 28, 29 (the Student arrived late and teacher texted the Student), October 3 and 6, 2023. The notes indicated they generally worked on applying for accommodations through the college website and through college board; discussed schedule and planning around schedule; worked on writing assignments for history, assignments for science; discussed T-Folio, transition goals, IEP goals; and discussed other issues and topics, such as transportation.

This documentation included notes from case manager 2, indicating they met on November 7, 14, 16, 17, 21, 28, and 30, and December 1, 5, 7 8, and 12, 2023. The Student did not show up for a session on November 3, 2023.

The notes indicated that case manager 2 and the Student generally worked on planning around schedule and completing assignments, checking email, creating to do list, updating his assignment sheet, time-management planning, and working on prioritizing; discussed requirements for passing classes; worked on writing (including working on writing assignments, pre-writing, graphic organizers, breaking projects into chunks); discussed and

planned areas for self-advocacy, including emailing professors and emailing regarding transportation; discussed modifications for assignments, such as only doing even questions for homework; discussed other topics, such as music, registration for future quarters and waivers for PE, meeting with the OT, ultimate frisbee; and discussed schedule challenges, such as transition from school to practice, in and out of school mode and sorting out transportation.

17. Also, on October 6, 2023, the Parents emailed the Student's team with several concerns, summarized as follows:

- The Student did not have access to his history textbook and did not know how to get the book. The Parent stated this was related to executive functioning skills, study/organization specially designed instruction, and accommodations.
- That the Student had not received the accommodation of "support in creating a checklist for multi-step tasks."
- That one of the Student's goals included "will check in with an adult to identify what task(s) remain for him to complete and independently record information on his to-do list with reminders and due-dates" and that the Student was not doing this independently.
- That the Student was not checking his email twice a day or independently, per his IEP goals.
- The Student had not followed up with the college about accommodations. The Parent stated this was related to his study/organization and self-advocacy goals.
- That the team had not addressed the Student's supported decision making yet.

Case manager 1 responded that the Student had sent him "PDF files of his history book" and the case manager resent those to the Parent. The case manager stated those were what the Student needed for his current assignments.

The Student's advisor also responded, sharing the history syllabus that the Student had shared with her and noted the history professor posts all the readings on "Canvas." The advisor further stated that during their meetings, the Student "updates his to do list, using the Canvas calendar, before working on an assignment with my support. He has been checking his [college] email and personal email during our meetings. Today, [Student] set phone alerts to check his emails on a daily basis." In separate email on October 9, 2023, the advisor reiterated this, following questions from the Parents about the checklists. The advisor stated:

[Student] is creating his own to-do list for his assignments with deadlines during our meetings. He is using the schedule spreadsheet you shared with us at the beginning of the school year. [Student] has been coming up with the plan to complete the assignments, like when and what he'll work on between classes, meetings, or after school. I've been emailing a summary of his plan. Please let me know if you have any other questions.

18. On October 13, 2023, the Parents emailed the Student's team, noting the Student needed "substantial written language support." The Parent listed concerns related to the Student begin behind on school assignments, pdfs/textbooks not being accessible to the Student, that the Student needed to be monitored related to progress on checking emails, concerns related to how the Student was updating his assignment tracker independently, transition planning, vocational/internship, etc.

In part, the OT responded to the team and reminded the team that if the Student was willing to use a different internet browser, he would have access to applications and browser extensions that would create accessible PDFs.

19. On October 17, 2023, case manager 1 emailed the Parents rubrics for measuring the Student's progress in social/emotional and self-advocacy, links to online questionnaires for both rubrics, and documents showing the Student's previous responses. Separately, the case manager emailed the rubrics to the Student to fill out.
20. On October 18, 2023, the Student's advisor emailed him a summary of their meeting that day and documented they had come up with a solution regarding the schedule change. The advisor noted they would continue to meet Mondays in person and then have their second meeting on Thursdays from 12–12:30 via Teams (instead of Wednesday). The advisor noted the new scheduled would start the following week.

The Parents responded, copying other members of the team, and shared concerns, including:

- The Student not having his laptop charger was a sign the Student "should have a checklist of what he needs for school".
- That the Student's games and practices were not on his schedule.
- That the Student needed more support with creating "a timeline for each step [of assignments] built in so he has a specific plan and a date when he will submit each assignment realistically".
- That the Student's "Schedule/Assignment tracking sheet" and weekly schedule did not reflect his plan to work on assignments.
- That the advisor does not arrive until 9:45, so the Student's transportation needed to be adjusted.³
- How would they ensure the Student logged in for remote sessions with the advisor on time.
- That the Student's IEP called for 120 minutes per week of specially designed instruction with a general education teacher, and he was only getting 60 minutes per week.

The advisor responded about the transportation and timing, and noted in a separate email that this was the only time the Student had not had his charger, so it was not a reoccurring issue. The advisor stated:

During our Monday and Wednesday meetings, [Student] and I have been able to work on his to do list, check emails, and sometimes start on a late assignment. When I've asked him to add things to his weekly schedule spreadsheet, he told me he prefers to add items like Ultimate games and practices to his phone reminders, which he has done in our meetings. I agree that it would be better for him to add everything to his weekly spreadsheet, and I will discuss this with him on Monday. I will also ask him to add his plan for assignment work time and deadlines to his spreadsheet.

In order to provide [specially designed instruction] for all the goals supported by the general ed teacher, I am going to prioritize different tasks and goals on Monday and different goals on Thursday. Now that I know [Student] is on campus before our meeting time, he can come to the classroom early to work on his to-do list and emails which will open time for us work on the other goals.

³ OSPI notes the Student's schedule reflected that the meeting with the advisor was scheduled at 10 am.

On Monday, [Student] and I are going to walk over to the writing center in the library, so he knows where it is. I would like to suggest that [Student]'s transportation schedule remain the same, even though we moved his Wednesday meeting with me to Thursday. When he gets to campus, he can go to the writing center, and have 1-1.5 hrs to work on history writing assignments or any other writing assignments that come up.

In a subsequent email to case manager 1, the Parent stated that the advisor was not responding to questions, such as:

...about the planning of each step of assignments. She says she works with [Student] on study/organization, including his email and his schedule/planning. Specifically, the third question should be easy for her to answer: **Is there a timeline for each step built in so he has a specific plan and a date when he will submit each assignment realistically?**...Not only that the IEP implementation issues persist, also ignoring our questions shows lack of understanding of the importance of parental participation, and overall respect to [Parents] as equal members of [Student]'s IEP team...**Why are the 120 minutes of SDI by general ed teacher on [Student]'s IEP not provided and reflected on [Student]'s schedule?**...

(Emphasis in original.)

In an undated email to the District's director of special education, the Parents reiterated the concern about the general education teacher, stating, "[Principal] is going behind [Student's] team's back, telling the general Ed teacher to only provide 60 out of the 120 [specially designed instruction] minutes a week mandated by the IEP."

21. On October 20, 2023, the Parent stated she met with the special education teacher and the special education teacher "disclosed that the school principal informed him that [Student's] current [specially designed instruction] that is to be delivered by the general education teacher would need to shift to the special education teacher once the teacher is hired." The Parent stated they also met in part to "collaborate to narrow down the adaptive goal areas."

The Parents stated, "We found out that the principal approved that [Student's] IEP required services, [specially designed instruction] by general education teacher, to be reduced by 50% because the teacher assigned to [Student's] college campus is too busy."

22. On October 25, 2023, the SLP sent the Parents a report on the Student's progress on his speech-related goals. And, on the same day, case manager 1 sent the Student's IEP team, including the Parents, a report on the Student's progress on his goals and a draft amended IEP. The SLP progress notes included the following:

Skill: Using cues to discern message

By 06/16/2023, when given a real, and/or hypothetical social scenario [Student] will use social thinking strategies...to independently assess another person's communicative message improving social/pragmatic language skills from goal just initiated to 90% of observed opportunities as measured by SLP therapy data.

Progress: [Student] has made solid progress in his ability to utilize verbal, nonverbal, situational and environmental cues to independently evaluate others' message. He has

been able, in structured activities in which pictured and/or described scenarios are presented by the clinician, to use these cues as stated above to help discern someone's message. He is presently able to do so approximately 80% of observed opportunities.

...

Skill: Using cues to discern intentions

By 06/16/2023, when given a real, and/or hypothetical social scenario...[Student] will correctly answer questions about the perspectives, intentions, thoughts, actions, and/or feelings of the people involved improving perspective taking skill from 20% of observed opportunities to 90% of observed opportunities as measured by SLP therapy data.

Progress: [Student] has made good progress in his ability to, given a real, and/or hypothetical social scenario...correctly answer questions about the perspectives, intentions, thoughts, actions, and/or feelings of the people involved. He is presently able to do this approximately 75% of observed opportunities.

...

Skill: Topic Based Conversations

By 06/16/2023, when given structured opportunities to converse with peers and/or adults [Student] will independently initiate and maintain the topic of conversation by asking and answering follow-up questions, making comments or sharing his thoughts improving social communication skills from goal just initiated to 5 exchanges per topic as measured by SLP therapy data.

Progress: [Student] has made good progress in his ability to independently initiate and maintain a topic of conversation by asking and answering follow-up questions, making comments and sharing his thoughts, in structured social conversations with the clinician. He is able to do this in conversations with the clinician with 5+ (often 8-10+) exchanges on a given topic, 90% of observed opportunities.

In response to the SLP, the Parents stated, "What we need is the ESY quantitative and qualitative data from the fall." In their reply, the Parents stated that the "SLP didn't send progress monitoring data collected during a recoupment window from a break after the summer or after winter break to see if [Student] regressed after a break and then if he was able to recoup skills after regression."

And in response to the case manager, the Parents asked why the progress reports only included information from the case manager and no other IEP team members. The case manager responded that he hoped to get input from everyone, hopefully before the meeting, but if not, other team members could share during the meeting.

The case manager responded the next day with an updated progress report with comments from the Student's advisor. The progress reports included the following progress and comments as of October 25 and 26, 2023:

- Study/Organization Skills (Email Management): Little or no progress made; Case manager 1: "[Student] uses his personal email, and this causes him to miss some important emails from school. He did not check emails over the summer and he also missed an important email from the college about accommodations in...college (he is now enrolled in both [college 1] and

- [college 2]). I have learned to use his personal email just to make sure that he gets my message. While this works for us, it's important for [Student] to be able to use email systems that might be necessary to use in the schools he attends or the jobs that he obtains"; Advisor: "[Student] checks both emails during our meetings. He has set phone reminders to check emails at other times. He mentioned that he has only worked some of the time because when the alert has gone off, he has not been home or had access to his laptop."
- Study/Organization Skills (Calendar/To-Do List): Some progress made; Case manager 1: "[Student] still uses a spreadsheet to create a very detailed calendar. The calendar contains all of the links he needs for his meetings. This works very well although there has been confusion with links because of the way Outlook creates new links for every day that's different. I have learned to go directly to [Student's] shared spreadsheet and click directly on the links from there. While this works for us, it's important for [Student] to be able to use calendars that might appear in the schools he attends or the jobs that he obtains"; Advisor: "[Student] has been managing his to-do list and weekly schedule spreadsheet. He has started adding his plan for when to do what parts of assignments to his spreadsheet."
 - Social/Behavior (Self-Advocacy); Social/Behavior (Emotional Regulation): Some progress made; Case manager: "[Student] was able to practice his self-advocacy skills last year dealing with some incompletes that he received in a course he took Fall quarter and a course he took Winter quarter. Both of those incompletes were converted to passing grades. This process required self-advocacy skills, and when [Student] filled out the questionnaire, he ranked himself with mostly 3's and 4's, averaging a 3.3. Three others rated [Student] based on their observations with lower scores: [case manager 1's] average was 2.6. [Mother's] average was 2.1, and [Father's] average was 1.9. This year, [Student] was a little slow to get back into the busy schedule, and he told me that he was 'out of practice.'"
 - Study/Organization (Time-Management): Not applicable this grading period; Case manager: "[Student] has not had any long-term projects this quarter yet"; Advisor: "I can report that [Student] uses his time well during our meetings. He has a very busy schedule though and I think this contributes to having assignments on his to-do list that are passed the deadline."
 - Study/Organization (Prioritization): Little or no progress made; Case manager: "While [Student] has a sophisticated spreadsheet to list his assignments including a prioritization score that he assigns to each project, he seems to be getting behind very quickly this quarter. There seems to be some regression on this goal because in the past, he had put in upcoming assignments, but when I worked on him this school year, he was prioritizing which assignments to get done that were already late. I reminded him to look on Canvas and add what assignments are coming up and when they are due."; Advisor: "When we discuss assignments in our meetings, he is able to tell me which assignments have a higher priority and why. For example, biology assignments often have a lock time, so he completes them first."
 - Written Language (Pre-Writing Skills): Some progress made; "[Student] says that he knows how to make lists and outlines, but he still needs some practice. The options for SDI could be 1. Instruction on how to make more complicated lists and outlines. 2. Learn a new pre-writing strategy and see if that might help him speed up the writing process. I have no evidence for either regression or improvement at this point in the quarter."
 - Written Language (Application of Prewriting Tool): Significant progress made; "[Student] said that it might be possible to remove this goal or change it to one that involves writing in a timely manner. [Student] retrieved his unofficial transcript today. The good news is that both of his incompletes were changed to a grade, so he earned all 45 credits during his first year of college. There are two grades that he is not happy with...and he mentioned to me that he is likely to file a dispute about them. The reason I add this is because this particular skill (writing a paragraph

- in a timely manner), may have contributed to both of his lower grades. It may be wise to change this goal to allow him to practice writing quickly using various strategies (such as free-writes, fast-lists, and possibly (ironically) less critical thinking about his own writing (it doesn't have to be perfect)."
- Written Language (Elaboration/Commentary): Some progress made; "[Student] is able to elaborate especially about preferred topics. Unpreferred topics are a bit more of a challenge. A more important goal (as I discussed with [Student]) is about how long it takes him to get even small assignments done. It may be helpful to time himself on various parts of the writing process. What takes him longer, writing the sentences (which he usually never has to fix grammar issues)? Or choosing the words? Then see if he can reduce the time it takes him to do each of those processes. It also may be helpful for him to learn to determine what assignments require perfection and what assignments might be okay to be turned in even if he does not think it's good enough."
 - Written Language (Graphic Organizer): Some progress made; "It is always a good idea, in writing, to bounce ideas off other people (his peers, his professor, someone at the writing center, or his tutor). [Student's] writing quality is not the issue. The issue comes down to how much time it takes him to write. It may be that [Student] decides to take one less course per college quarter. This would give him more time on the two courses..."
 - Adaptive/Life Skills (Using Available Resources): Little or no progress made; "This goal will be emphasized during this school year because he will graduate next year and will need to access the resources that are available to him. [Advisor] told me that [Student] did not go to the writing or tutoring center on his own. She went with him this last Monday."
 - Study/Organization Skills (Daily Planning/Time Management): Little or no progress made; Case manager: "Time Management skills for [Student] have not improved, nor have they gotten significantly worse. I wonder if taking two courses instead of three would make his life more manageable, especially if he is involved in extra-curricular activities such as sports and work. Both [SLP] and I discussed his attendance and timeliness. I can report that [Student] has been much better at arriving at his appointments on time."; Advisor: "[Student] uses his time well during our meetings. He has a very busy schedule though and I think this contributes to having assignments on his to-do list that are passed the deadline."

23. According to the Parents' complaint, "the general Education teacher input of [extended school year] ESY data was sent to us 15 minutes prior to the October 26th IEP meeting" and the progress report created by case manager 1 "to record the ESY data did not include the data collected by the general education teacher or by the OT as promised, and the SLP never provided data from the fall."

24. Regarding progress reporting, the District stated the Student's June 2023 IEP included progress reporting at the trimester through a written progress report and that case manager 1 provided a written progress report on October 25 and 26, 2023. The District stated the SLP sent a progress report on SLP-related goals on October 25, 2023, and that the IEP team discussed the Student's progress on his goals during the October 26, 2023 IEP meeting and through other communications with the Parents. The District further stated:

While Parents may have wanted additional data related to Adult Student's progress on his IEP goals, the IDEA does not require a specific amount of data to be collected and provided as part of IEP goal progress reports. Overall, the District denies that it violated the IDEA and denied Adult Student a FAPE by failing to follow proper progress reporting procedures.

25. In their reply, the Parents stated that because the IEP team agreed during the October 26, 2023 IEP meeting that data was incomplete, this reflected a failure to conduct progress monitoring and reporting on the Student's IEP goals.
26. On October 26, 2023, the Student's IEP team met. The Parents, Student, and Parents' advocate participated in the meeting. The October 26, 2023 IEP noted that the Student's anticipated graduation date was June 20, 2024, and that the Student was "expected to earn an AA degree (or close to it) through Running Start."

The IEP included updated/amended present levels of performance in communication with updated information regarding progress and the IEP added annual goals in communication. The IEP included that progress would be reported at the end of each running start/college quarter, with specific dates added to the IEP (December 15, 2023, March 20, 2024, and June 14, 2024).

The IEP team added rubrics for measuring the Student's progress on his social/behavior goals, as well as scores from the self-advocacy and social/behavior skills rubrics. The scores were based on reports from the Parents, Student, case manager 1, OT, advisor/general education teacher, SLP, and an outside provider. The team amended the Student's social/behavior goals (self-advocacy and emotional regulation skills) to include percentages from the rubrics and to align progress reporting with the college's quarters. The team agreed that checklists would be used to collect data in self-advocacy. The team also amended the Student's study/organization skills goals to include updated baselines and additional information about how progress would be measured and reported. The team amended the written language goals to align progress reporting with the college's quarters.

The IEP included goals in adaptive/life skills (using available resources), speech language pathology (self-evaluation of academic communication interactions, solutions for challenging communication situations, implementing improved proactive strategies), social/behavior (self-advocacy and emotional regulation skills), study/organization skills (email management, using a calendar and to-do list, time management, prioritization, and daily planning skills and time management), and written language (pre-writing skills, application of pre-writing tool, elaboration and commentary, and creating/choosing a graphic organizer).

The October 2023 IEP included the following SDI, related services, supplementary aids and services (SAS), and support for school personnel:

- Study/organizational skills (SDI): 15 minutes, twice weekly (provided by a general education teacher, in a general education setting)
- Adaptive/life skills (SDI): 15 minutes, twice weekly (provided by a general education teacher, in a general education setting)
- Social/behavior (SDI): 30 minutes, twice weekly (provided by a general education teacher, in a general education setting)
- Written language (SDI): 45 minutes, twice weekly (provided by a special education teacher, in a special education setting)
- Study/organizational skills (SDI): 15 minutes, three times weekly (provided by a special education teacher, in a special education setting)

- Speech Language Pathology (related service): 45 minutes a week (to be provided by an SLP)
- Counseling (related service): 60 minutes weekly
- SLP/Communication Consultation (SAS): 15 minutes a month (to be provided by an SLP)
- Occupational therapy (support for school personnel) for trialing new supports, collaborating with team for continued implementation and family check-ins (600 minutes a year; 2 times a month direct; 1 time a month [for] team support; 1 times a month [for] parent)

The team agreed the Student would receive ESY and that an ESY IEP would be developed in the spring; however, the ESY box in the IEP was marked “no”. The team agreed to reconvene on November 9, 2023, to continue and complete the amendment of the IEP.

27. According to the Parents’ complaint, the IEP team came to the October 26, 2023 IEP meeting unprepared. In part, the Parents stated the “data was incomplete” and in the meeting, the “team agreed that the missing data would be sent to us for the newly scheduled IEP meeting.”

Regarding the Student’s special education services in adaptive/life skills, the Parents stated:

- The Student “qualifies for [specially designed instruction] in...Adaptive/Life skills. His Adaptive needs are not being met and he does not have appropriate goals on his IEP and therefore does not receive appropriate services that would teach him those missing skills.”
- “As of today, [Student] has just one Adaptive Goal which addresses his ability to utilize the college tutoring center. None of his other life skills are addressed.”
- “Over the course of spring and fall 2023, [Student] met with his school and private providers with parents to go over Adaptive goal areas. These pre-meetings helped [Student] determine which areas of Adaptive skills needed to be addressed by secondary transition IEP goals. The base for these goal areas were pulled out of the district’s transition assessments, IEEs, district’s evaluation, [Student’s] input and resources available from public agencies...”

28. By October 26, 2023, according to the Parents’ complaint, the Student had eight missing assignments from three classes and that he continues to stay about seven–eight assignments behind.

29. The prior written notice, documenting the October 26, 2023 IEP meeting and sent to the Parents on October 30, 2023, included in part:

...This meeting is to amend the IEP

1. Amend the social/behavior and emotional/self-advocacy goals to include quantifiable data from the rubrics (see PLOPs for rubrics and data).
2. Change progress reporting frequency dates to align with the college quarters (include specific dates).
3. Discuss whether ESY services are or are not necessary.
4. Discuss adaptive goals.

A second meeting was planned for November 9, 2023 to complete the IEP amendment. At the start of the meeting...Advocate for the family told us that the family would not meet today and would be asking for a facilitated meeting to be scheduled. As of 11/21/23 the district has not received communication on a facilitated meeting.^[4]

⁴ OSPI notes it has been included on communications that indicate discussions occurred around scheduling a facilitated IEP meeting in January 2024.

The IEP has been amended to include dates for progress reporting that align with Running Start, baselines for the social/behavior and emotional/self-advocacy goals have been added.

The team agreed to ESY at the 10/26/23 meeting. An ESY IEP will be developed in the spring.

...

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows: Progress report data, input from Gen Ed teacher, Sped Teacher, SLP, OT, psychologist, parent advocate, data from social/behavior and self-advocacy rubrics.

Any other factors that are relevant to the action:

The team decided to make changes to the rubric and/or goals so that the rubric more closely matches the goal. The dates for the progress report will be changed to no later than 5 school days after the end of each college quarter. The social/behavior goals will be adjusted to fit with a revised rubric that targets specific skills. New benchmarks will be gathered, and there will be a higher percentage that [Student] will be striving for (95% for both goals). It was also decided that a checklist would be part of the data for self-advocacy (Contact teacher, yes/no, email, call, make appointment w/ Access Center, requesting accommodations each quarter, etc.).

ESY was discussed, and it was agreed that [Student] can qualify for ESY, the specifics are to be determined later.

Documentation indicated this prior written notice was sent to the Parents on October 30, 2023. Based on the notice itself, it was updated following the scheduled but not held November 9, 2023 IEP meeting.

30. On October 27, 2023, in an email, the principal informed the Parents that a special education teacher had been hired and that the Student would meet the teacher the week of October 30, 2023.

31. An October 27, 2023 email⁵ from case manager 1 to District staff discussed the Student's minutes of services, as follows:

This thread from September explains the Gen Ed minutes situation. **Basically, seniors get less time with [advisor] than juniors, and so there is this discrepancy now on his IEP.**

I suggested that the new IEP Case Manager, who will be full-time might be able to absorb this. Or that the minutes be reduced on his IEP. I'm not sure what else we could do. What do you think? When I was discussing this with [Parent], I was hoping to reduce the minutes, but she didn't want to do that. On the current IEP draft, we did not change the total minutes, just areas would be served by each staff member.

(Emphasis in original.)

⁵ OSPI notes that this email and several other emails between District staff were not provided in the District's response to this complaint; rather they were provided by the Parents as additional information. OSPI reminds the District that OSPI requests the District provide all relevant communications, which includes internal District emails. In this investigation, internal discussions of the program structure at the Student's school and how this related to the implementation of his IEP were relevant to the issues being investigated.

Further emails between District staff indicated there was concern that the Student's "schedule was changed and it doesn't match his service matrix." An email from the principal stated:

My understanding from speaking with [case manager 1]...was that the two options presented were to simply reduce the number of Gen Ed Teacher minutes...or to trade the reduced Gen Ed Teacher minutes with additional Spec Ed Teacher minutes. I thought that [case manager 1] was going to address it again at the meeting yesterday...but he did not bring it up. [Student] is already getting twice the amount of time that any other Senior in our program gets with their Mentorship teacher and he is the only one that is receiving any of those services in person (this was also very important to [Parent]).

32. On October 30, 2023, the Parent emailed the District, asking if they could get a prior written notice regarding the agreements made at the October 26, 2023 IEP meeting. The Parent stated she thought the District would be sending rubrics to the Student's providers to fill out, that proposed changes to goals would be shared, and that the following needed to be recorded in the prior written notice:

- The specifics about adding progress reporting dates into the IEP;
- That rubrics used to collect data need to be adjusted to match the goals;
- Adaptive goals need to be discussed in the next meeting; and,
- That compensatory services were owed for the missed services by the general education teacher.

The District responded, attaching the draft IEP, and stated that the prior written notice would be completed after the next meeting.

33. Further, regarding the October 26, 2023 IEP meeting prior written notice, the Parents, in their complaint, noted the following issues with the prior written notice:

- "We asked for clarification on next steps for the planned amendments of the goals and rubrics to make sure they align."
- "The date listed in the PWN sent to us on 10/30/2023 has 10/26/2023 date. This PWN states that [Student] qualifies for ESY services and that the specifics are to be determined later. This is not specific information that would provide clarity of the decisions and agreements made."
- "The prior written notice failed to record that the areas [Student] requires ESY for are: Written Language; Study Organization; Social emotional/behavioral - for mental health counseling and SLP for social communication."

In their reply, the Parents stated the prior written notice failed to accurately reflect decisions made. Specifically, the Parent stated the prior written notice did not document changes in services minutes.

34. In the District's response, the District reiterated that the team discussed ESY services at the October 26, 2023 IEP meeting and agreed that the Student would be offered ESY services during summer 2024. The District stated, "The team agreed to reconvene in the spring to determine the areas and supports needed, and to develop an ESY IEP." The District further stated:

Parents allege that the prior written notice violated WAC 392-172A-05010(2) because it did not specify the areas in which [Student] would receive ESY services during the 2024 summer or provide specifics regarding the services. However, the IDEA does not require IEP teams

to determine ESY services by a certain date. And, courts have rejected allegations that districts violated the IDEA by waiting until the spring to determine the specific ESY services.⁶...The District, therefore, continues to deny Parents' allegation that the prior written notice violated WAC 392-172A-05010 because it did not identify the areas and specifics of the ESY services for the 2024 summer.

35. The District stated that at the end of October 2023, a different special education teacher became the Student's case manager (case manager 2).

36. On October 31, 2023, the principal emailed the Parents regarding the issue of the Student's general education minutes, stating:

Your question about the minutes that we are serving [Student's] SDI got forwarded to me and it is one that I have been concerned about all year. As you know, our model intentionally reduces the amount of minutes that our students spend with their Mentorship teacher between their Junior and Senior years (from two meetings per week to one). The support also switches from in-person support to remote support.

We heard your concerns that this change would not fully support [Student's] needs, so I worked out a plan to preserve two meetings per week and to have a meeting in-person to give him additional supports. These accommodations were not part of our general education staffing model, so it means that [advisor] is doing these meetings on top of her full-time schedule and we have no way to double these services from one hour to two hours per week.

Instead, I am thrilled that our new Special Education Teacher started this week (I am introducing him to [Student] in just a few minutes) and since this position was increased to full-time, he will be able to add this hour each week onto the services that he is providing to [Student]. Our new teacher's name is [case manager 2's name] and he is partnering with [case manager 1] this week to learn about all of the students on his caseload. We got really fortunate to find such a talented and qualified replacement for [case manager 1]. I am excited for [Student] to start working with him today. I hope this helps clarify this solution to move an hour from Gen Ed to Spec Ed and I look forward to including this in our new IEP meeting to formalize this plan.

37. On November 7, 2023, the Parents sent the OT, the SLP, and case manager 2 a list of nine proposed adaptive goal areas related to personal care, work skills/job applications, punctuality, independent transportation, independent living, independent scheduling of meetings, and participation in community activities/hobbies.

38. Also, on November 7, 2023, case manager 1 emailed the Parents and their advocate social/behavior goals with updated baseline numbers based on additional completed rubrics

⁶ The District response cited several cases, "See *Pachl ex rel. Pachl v. Sch. Bd. of Indep. Sch. Dist. No. 11*, 2005 WL 428587, at *8 (D. Minn. Feb. 23, 2005) (finding district did not violate the IDEA when the IEP team agreed at a November meeting that the student required ESY services, but decided to wait until the spring to define the specific services); *Reinholdson ex rel. Simons v. Sch. Bd. of Indep. Sch. Dist. No. 11*, 187 F. App'x 672, 673 (8th Cir. 2006) (upholding that district's decision to wait until May to determine the student's ESY services and skills that would be addressed)."

for social/behavior and self-advocacy. The case manager copied case manager 2 and further stated that they may need to reword the goals themselves.

39. On November 9, 2023, an IEP meeting was scheduled. The District stated that the District members of the IEP team met and at the start of the meeting, the Parents' advocate informed the team that the Parents and Student would not be joining the meeting and instead would be requesting a facilitated IEP meeting.
40. In their reply, the Parents stated that they believed the District was not prepared for the meeting, in part because updated progress reports had not been provided. For example, the Parent stated the team was not prepared to discuss adaptive goals because "we did not receive the complete records and progress monitoring data needed to make ESY decisions" and that data was shared on November 8, 2023, and other updates to the IEP were not yet made.
41. In response to the complaint, the District stated that the IEP team did not complete its discussion of IEP goals, including adaptive goals, at the October 2023 meeting, thus the agreement to reconvene on November 9, 2023. The District stated:

The District team members were prepared to discuss Adult Student's adaptive goals and Parents' concerns during the IEP team meeting scheduled for November 9, 2023. However, Parents chose not to attend the meeting. The District team members are prepared to have that discussion during the facilitated IEP team meeting, once one is scheduled. The District denies that it violated the IDEA and denied Adult Student a FAPE during the 2023-2024 school year by failing to address Parents' concerns that the IEP goals in the area of adaptive/life skills were not sufficient or appropriate.
42. According to the Parents' complaint, at the November 9, 2023 meeting, "the same situation repeated - The data provided was incomplete, did not include quantitative data points listed in each of the goals and records with data that were provided were not provided with accommodations, a week ahead of meetings."
43. On November 14, 2023, the Parents requested that case manager 1 send "the rubric used for [Student's] 4 writing related goals." Case manager 1 responded and provided the "pre-writing rubric" and case manager 2 responded he would be implementing that rubric.
44. On November 15, 2023, the Parents stated they "received the writing rubric intended to measure [Student's] baseline and progress has not been used. This rubric was not used to collect [Student's] ESY data."
45. On November 23, 2023, OSPI received and opened this complaint investigation.
46. On December 11, 2023, the Parents requested the Student receive ESY services during winter break (December 2023).
47. On December 12, 2023, the Parents met with case manager 2 to check in and they discussed the Student's need for "Adaptive skill building" and "possible new Adaptive goals."

48. On December 15, 2023, OSPI received additional information from the Parents regarding their allegation about prior written notice, specifically with respect to decisions around ESY services and prior written notice. The Parents stated the District “violated Part B of the IDEA by failing to provide prior written notice (PWN) to accurately record decisions made about [Student]’s educational programming. In this case to issue a PWN that would record their December 13, 2023, denial of ESY service for Winter break.” The Parents further stated that, “The issue with the district’s confusion regarding ESY may be that the team’s decision has not been recorded in a PWN, and lack of understanding that based on the team’s decision of whether [Student] qualifies for ESY and in what areas.”
49. On December 18, 2023, the District emailed the Parents a prior written notice regarding the request for ESY over winter break. The prior written notice stated, in part:
- On December 11, 2023, [Student’s] mother requested ESY services to be delivered during winter break of 2023. The District is refusing to provide services to [Student] over winter break.
- ...
- On October 26, 2023, [Student’s] EP team met. At that meeting Parents and [Student] asked for ESY services to be added to his IEP. The team agreed to provide ESY services to [Student] during the summer of 2024; however, the team also agreed to meet in the spring of 2024 to determine the areas of need and the supports needed. The team did not offer nor agree to provide winter break ESY services. Further, at this time, there is no evidence that [Student] needs services over the 2-week winter break in order to benefit from his special education program or that he would regress and not be able to recoup skills following a short break from school.
- ...
- A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows: IEP team discussion, parent emails, PWN from October 26, 2023 IEP meeting.
- Any other factors that are relevant to the action: The team has yet to determine the services needed for ESY. That determination will be made in an IEP meeting, looking at [Student]’s data of regression and recoupment on his IEP goals following winter and spring breaks. The IEP team will reconvene in the spring to determine ESY services for the 23-24 school year.
50. Regarding the December 18, 2023 prior written notice, the Parents stated in their reply that they disagreed with the notice because they felt the Student needed ESY over winter break, in part, because the Student has a “high number of missing assignments.” The Parents also stated they have not received complete “ESY data.”
51. According to the District and other communications that OSPI was copied on, a facilitated IEP meeting for the Student was scheduled for January 23, 2024, but was not held then and discussions regarding scheduling an IEP meeting are ongoing.
52. Regarding ongoing discussions around scheduling an IEP meeting, emails indicated that adaptive goals continued to be discussed via email and that there is disagreement between

the Parent and some District staff about the need for additional adaptive goals, and whether draft adaptive goals needed to be shared prior to a meeting or developed at IEP meetings.

53. In additional information, the Parent provided that as of February 2024, the Student was falling behind in community college/running start classes, had missing assignments, and had spent a lot of his time working on college applications. In a February 12, 2024 email to the District, the Parent stated, "We would like to request that [District] pays for [Student's] tutor to support him to be able to catch up and not get overly stressed." The Parent also provided in her reply that the Student continues to be late to appointments and meetings, "between 3-4 times a week, sometimes it is a few minutes and sometimes he misses meetings completely."

CONCLUSIONS

Issue One: IEP Implementation – The Parents alleged the District failed to implement the Student's IEP since October 2023.

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 and must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

Primarily at issue was the specially designed instruction provided by the general education teacher. The IEP in place as of October 2023 required the following services be provided by the general education teacher⁷:

- Adaptive/life skills (SDI): 30 minutes, twice weekly (to be provided by a general education teacher)
- Social/behavior (SDI): 60 minutes weekly (to be provided by a general education teacher)

Regarding these services, the investigation showed that from September 26, 2023—the start of the running start⁸/college quarter—through when the Student's schedule changed in mid-January 2024, the general education teacher was responsible for providing 120 minutes of specially designed instruction a week, but only provided 60 minutes weekly. Thus, the Student was short 60 minutes a week, for approximately 14 weeks, a total of 840 minutes.

⁷ There were additional services in the IEP, such as counseling, occupational therapy, and services from an SLP that upon investigation were not of concern. The Parents' allegations in their complaint were primarily with respect to the services provided by the general education teacher; although, the District provided documentation supporting the implementation of other services areas. OSPI notes that in their reply to the District's response, the Parent raised concerns over implementation of "Google Voice" and their desire that staff call the Student if he is late to meetings and classes. OSPI notes that there is clearly disagreement between the Parent and District about whether the IEP team agreed to such an accommodation; however, this was not on the June 2023, nor importantly, does it appear on the draft October 2023 IEP. As such, OSPI does not make a finding with respect to the implementation of this potential accommodation and recommends that if there is consensus, this be added to the IEP or otherwise further discussed by the IEP team.

⁸ The Student participated full time in running start and did not attend any classes at a District school.

Emails and the District provided this explanation, based on the District's school/program and staffing model, as follows:

[The] design of the [Student's District high school] program includes the philosophy that students should be moving towards independence. Practically this means that Juniors receive 120 minutes of small group mentorship, while Seniors receive 30 minutes of 1:1 mentorship. We had discussed this during his Junior year and said that we could provide him double the 1:1 time (60 minutes) during his senior year, but not the 120 minutes that he received as a Junior.

OSPI notes that the reasoning the District provided regarding the shortfall of minutes does not align with the IDEA. A district cannot decide to not implement an IEP as written due solely to a program or staffing model. An IEP team develops an IEP and determines the amount of specially designed instruction a student requires, based on their unique disability-related needs and then the district is responsible for implementing the IEP. If a student is in a program where the structure of the program does not align with their IEP, the program and district staff will need to determine how to implement the IEP or whether it would be appropriate, based on the Student's needs, to amend the IEP. For example, here, the emails from the principal indicated the IEP team could discuss changing the number of minutes or amend the IEP to have the special education teacher provide some of the minutes currently written as being provided by the general education teacher. The IEP team would need to make these decisions, considering the Student's needs.

Importantly, the District has corrected the scheduling issue and as of the week of January 15, 2024, the Student's schedule has changed so that the general education teacher is providing 120 minutes of specially designed instruction.

Also relevant to the analysis of implementation, the IEP in place as of October 2023 required the following services be provided by the special education teacher:

- Written language (SDI): 90 minutes weekly (to be provided by a special education teacher)
- Study/organizational skills (SDI): 45 minutes weekly (to be provided by a special education teacher)

The special education teachers (case manager 1 and 2) initially delivered 140 minutes a week of instruction in October 2023 and 210 minutes per week starting in November 2023. The District stated that case manager 2 has been providing additional specially designed instruction to make up for the shortfall of minutes from the general education teacher.⁹ With the additional minutes provided by the special education teacher¹⁰, the shortfall has been reduced to 280 minutes.

Thus, while there was a failure to implement the IEP as written, OSPI must consider whether this was a material failure and whether the failure amount to a denial of FAPE. When a school district

⁹ The District noted that while the IEP indicated these minutes as being delivered by a general education teacher, the specially designed instruction was always to be monitored by a special education teacher.

¹⁰ Case manager 2 was providing approximately 210 minutes of instruction weekly, 75 minutes more than was on the Student's IEP as being provided by the special education teacher. Thus, in the approximately 7.5 weeks case manager 2 worked with the Student before the January 2024 schedule change, the case manager provided around 560 additional minutes of instruction.

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 student with a disability and those required by the IEP. Further, procedural violations of the IDEA amount to a denial of FAPE if, in relevant part, they impeded the student's right to a FAPE and caused a deprivation of educational benefits.

The investigation shows that when the general education and special education teachers worked with the Student, they were providing specially designed instruction and instruction related to the Student's IEP goals. While the Parent raised concerns throughout the fall regarding instruction (e.g., the Student not having access or knowing how to get a text book, the Student not receiving accommodations such as "support in creating a checklist for multi-step tasks"; the Student needing "substantial written language support", etc.), the Student's teachers and related services providers were responsive and provided updates on how they were providing instruction in those areas, addressing accommodations, and addressing the Student's needs.

Further, the Student's progress reporting from end of October 2023 indicated the Student made progress, although uneven, on many of his goals. The SLP reported the Student made progress on speech related goals. The Student made little to some progress on study/organizational skills, some progress on social/behavioral goals, made some to significant progress on written language goals, and little progress on his adaptive goal. However, this first progress report was issued after only a month of instruction during the 2023–24 school year and thus uneven progress is not surprising. The Parent provided information that the Student has many missing assignments; however, missing assignments alone do not necessarily show the IEP was not materially implemented. Overall, OSPI does not find that this shows the Student was not receiving educational benefit from his instruction, and notably, given that many of the goals related to organization and time and schedule management, the Student had a busy schedule between running start classes, specially designed instruction, extracurricular activities, and additional private tutoring and therapies outside the school day.

OSPI finds that the IEP was not implemented as written; however, the District has subsequently corrected the issue regarding the schedule and mitigated the lost minutes by providing additional specially designed instruction from case manager 2. OSPI does not find that a deviation of approximately 280 minutes represents a material failure, nor does the investigation show there was a deprivation of education benefit to this Student as a result. Thus, OSPI finds that an appropriate corrective action will be for the Student's IEP team to meet to finalize his IEP and for the District to review the program at the Student's school to ensure the program structure is not limiting IEP services generally.

Issue Two: IEP Development – The Parents alleged the District failed to address the Parents' concerns that the IEP was insufficiently developed in adaptive/life skills.

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 student. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child.

Here, the Student's IEP in place at the start of the 2023–24 school year contained an adaptive/life skills goal related to using available resources and the District, in its response, stated that the team agreed that the adaptive skills goal would help guide the Student as he learned how to utilize the available resources at the college, particularly the tutoring/writing center. The prior written notice documented that the team discussed "adding additional adaptive goals" and because of time restrictions, agreed to revisit the adaptive goals in the fall. On October 26, 2023, the Student's IEP team met to redevelop the Student's IEP; however, the IEP team did not finish the discussion and planned to schedule another IEP meeting in November 2023. Numerous communications and documents provided by the Parents indicated that the adaptive services and goals had been an ongoing discussion since spring 2023. The draft October 2023 IEP included an adaptive/life skills goal related to using available resources, although based on documentation while other goals were discussed and amended at the IEP meeting, the team ran out of time to specifically discuss the adaptive goals given other agenda items.

According to the Parents' complaint, the single adaptive/life skills goal was insufficient to address the Student's other life skills needs, and thus those needs are not being met. After the October 2023 meeting, the Parents emailed other members of the IEP team a list of nine proposed adaptive goal areas related to personal care, work skills/job applications, punctuality, independent transportation, independent living, independent scheduling of meetings, and participation in community activities/hobbies.

The second IEP meeting, scheduled for November 9, 2023, was ultimately not held as the Parents declined to attend, as they felt the District was not prepared. The Parents requested a facilitated IEP meeting. As of February 2024, the Parents and District were still attempting to schedule a facilitated IEP meeting. In the District's response, it acknowledged that the IEP team did not complete its discussion of IEP goals, including adaptive goals at the October 2023 meeting, but stated that the District members of the IEP team were prepared to discuss adaptive goals at the November 9, 2023 meeting and continued to be prepared to have this discussion. And while there may be disagreement over the level of preparation, ultimately the discussion of goals needs to start with the IEP team at a team meeting.

OSPI finds that while the Parents may not have felt the District was prepared to discuss certain topics at the November 9, 2023 meeting, the District was prepared to discuss adaptive goals; however, the Parents chose not to attend that meeting. The Parent provided, for example, that the team was not prepared on November 9, 2023, because they had not received records and progress monitoring data needed to make ESY decisions; however, OSPI cannot see how a lack of data on ESY would limit the team from discussing adaptive goals. At minimum, the team could have moved the forward on November 9, 2023, even if they did not complete the discussion. Overall, OSPI finds no violation with respect to the adaptive goal discussion being ongoing. IEP development is never a one-and-done process, IEPs are developed annually and can be updated more than annual to address changing needs of a student, thus the fact that a discussion about a

goal area is ongoing does not necessarily mean a violation has occurred. Here, the IEP team is still in the process of discussing whether different or additional adaptive/life skills goals are need and so OSPI finds no violation. OSPI recommends the District prioritize discussing adaptive/life skills goals at the next IEP meeting.

Issue Three: Prior Written Notice – The Parents alleged that they did not get a prior written notice of the decisions made at the October 26, 2023 IEP meeting, primarily around decisions related to ESY.

Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

October 26, 2023 Prior Written Notice: Initially, following the IEP meeting, the District responded that the prior written notice would be completed after a scheduled follow up IEP meeting as the team did not finish developing the Student’s IEP at the October 26, 2023 meeting and did not propose implementing the draft October 2023 IEP until the team could meet again. Therefore, it was acceptable for the District to state that the prior written notice would be completed after the next meeting.

Regardless, the District did send the Parents a prior written notice, documenting the October 26, 2023 meeting. The prior written notice included that team discussed, in part:

- ...1. Amend the social/behavior and emotional/self-advocacy goals to include quantifiable data from the rubrics...
2. Change progress reporting frequency dates to align with the college quarters (include specific dates).
3. Discuss whether ESY services are or are not necessary.
4. Discuss adaptive goals.

...
The IEP has been amended to include dates for progress reporting that align with Running Start, baselines for the social/behavior and emotional/self-advocacy goals have been added.

The team agreed to ESY at the 10/26/23 meeting. An ESY IEP will be developed in the spring.

...
The team decided to make changes to the rubric and/or goals so that the rubric more closely matches the goal. The dates for the progress report will be changed to no later than 5 school days after the end of each college quarter. The social/behavior goals will be adjusted to fit with a revised rubric that targets specific skills. New benchmarks will be gathered, and there will be a higher percentage that [Student] will be striving for (95% for both goals). It was also decided that a checklist would be part of the data for self-advocacy...ESY was discussed, and it was agreed that [Student] can qualify for ESY, the specifics are to be determined later.

Documentation indicated this prior written notice was sent to the Parents on October 30, 2023. Based on the notice, it was updated following the scheduled, but not held, November 9, 2023 IEP meeting. The prior written notice included specific information requested by the Parent on October 30, 2023, including information about adding progress reporting dates and about the rubrics. OSPI finds the prior written notice sufficiently documented the October 26, 2023 IEP meeting and decisions made, especially given that the IEP team planned to meet again to complete discussions and the development of the IEP.

Following this, the Parents disagreed with the prior written notice on the basis that it was not specific enough about ESY services. The Parents stated:

This [notice] states that [Student] qualifies for ESY services and that the specifics are to be determined later. This is not specific information that would provide clarity of the decisions and agreements made...The prior written notice failed to record that the areas [Student] requires ESY for are: Written Language; Study Organization; Social emotional/behavioral - for mental health counseling and SLP for social communication.

The District responded that while it agreed that the Student would be offered ESY services during summer 2024, the team agreed "to reconvene in the spring to determine the areas and supports needed, and to develop an ESY IEP" and maintained the prior written notice sufficiently documented that decision. The Parents also raised a concern that the notice did not document changes in the service minutes in the October 2023 IEP; however, given that the IEP was a draft and not finalized at the October 2023 meeting, OSPI does not find that the lack of this in the prior written notice rendered it insufficient as the District was not yet proposing to implement that IEP. Once the IEP is finalized and implementation proposed, OSPI would expect all decisions surrounding the IEP to be documented.

OSPI finds that the prior written notice sufficiently documented that the Student would receive ESY, and other decisions made at the meeting. As the team had not yet determined the specifics of ESY, there was no need for the prior written notice to contain more detail on the services or services areas. OSPI finds no violation.

December 2023 Prior Written Notice: On December 11, 2023, the Parents requested the Student receive ESY services during winter break (December 2023) and subsequently alleged to OSPI that the District "violated Part B of the IDEA by failing to...issue a PWN that would record their December 13, 2023, denial of ESY service for Winter break." The Parents further stated that, "The issue with the district's confusion regarding ESY may be that the team's decision has not been recorded in a PWN, and lack of understanding that based on the team's decision of whether [Student] qualifies for ESY and in what areas."

On December 18, 2023, the District emailed the Parents a prior written notice regarding the request for ESY over winter break. The prior written notice stated, in part, that the Parents requested and the District was refusing to provide services over winter break. The notice referenced the October 2023 IEP meeting and next steps:

At [the October IEP] meeting Parents and [Student] asked for ESY services to be added to his IEP. The team agreed to provide ESY services to [Student] during the summer of 2024;

however, the team also agreed to meet in the spring of 2024 to determine the areas of need and the supports needed. The team did not offer nor agree to provide winter break ESY services. Further, at this time, there is no evidence that [Student] needs services over the 2-week winter break in order to benefit from his special education program or that he would regress and not be able to recoup skills following a short break from school.

...

...The team has yet to determine the services needed for ESY. That determination will be made in an IEP meeting, looking at [Student]'s data of regression and recoupment on his IEP goals following winter and spring breaks. The IEP team will reconvene in the spring to determine ESY services for the 23-24 school year.

Thus, OSPI finds that the District provided the Parents prior written notice of the decision, and even though this prior written notice was provided after the Parents' request, it sufficiently documented the request, the District's refusal to provide ESY over winter break, and that the IEP team would reconvene in spring 2024 to determine ESY for the 2023–24 school year. Thus, OSPI finds no violation with respect to the prior written notices.

Issue Four: Progress Reporting – The Parents alleged the District failed to “collect valid data used for progress monitoring in accordance to progress monitoring and reporting requirements.”

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals.

Here, the IEP in place at the start of the school year required progress reporting at the trimester, via a written progress report. The District provided progress reporting early, although in conjunction with an IEP meeting. On October 25 and 26, 2023, the SLP and case manager sent the Parents a report on the Student's progress in advance of the IEP meeting held on October 26, 2023. The progress notes related to speech included a description of the Student's progress, including narrative examples and a quantitative measure, e.g., the Student was able to do the action or skill related to the goal in 80% or 75% of observed opportunities. Regarding the Student's other goals, the progress report indicated the Student's amount of progress and primarily contained narrative descriptions on the Student's progress (qualitative data), although goals like the self-advocacy goal reference the Student, Parents', and case managers ratings of the student's skills on a questionnaire.

In part, the Parent's complaint seems to be that the progress reporting was sent to them only shortly prior to the IEP meeting on October 26, 2023, and that the data is “incomplete” or “missing.” While the progress reporting was sent immediately prior to the meeting, and thus perhaps limited the discussions related to ESY¹¹, the draft IEP included updated present levels of

¹¹ For example, the Parent responded to the SLP that they needed “ESY quantitative and qualitative data from the fall.” In addition, the Parents', in contemporaneous communications, indicated that they did not

performance and goals with information from the social/behavioral and self-advocacy rubrics. The scores were based on reports from the Parents, Student, case manager 1, OT, advisor/general education teacher, SLP, and an outside provider. The team amended the Student's social/behavior goals (self-advocacy and emotional regulation skills) to include percentages from the rubrics and to align progress reporting with the college's quarters. The team agreed that checklists would be used to collect data in self-advocacy. The team also amended the Student's study/organization skills goals to include updated baselines and additional information about how progress would be measured and reported. The team amended the written language goals to align progress reporting with the college's quarters. All of this illustrates that despite sending the progress information shortly before the meeting, the IEP team was able to discuss the Student's progress and use it to update present levels and goals.

Special education regulations require that IEPs indicate how a student's progress will be measured and reported, and then that a district report on progress. The regulations do not include detail of what a progress report must look like, how much detail is required, or whether quantitative or qualitative data is required. Rather, in analyzing the sufficiency of progress reporting, OSPI looks to the purpose of progress reporting, which is to provide parents sufficient information for them to be informed of a student's progress. Here, it is hard to see how the progress reports failed to do that. While the progress reports from October 2023 may not have contained the level of quantitative data the Parent desired, the reports provided sufficient information about the Student's progress and allowed the IEP team to both discuss and update the IEP based on that progress. OSPI notes the October 2023 IEP required progress reporting at the end of each running start quarter and goals contained updated information about how data would be collected, although this IEP has not yet been finalized or implemented. Instead, so far progress reporting was provided in line with, although prior to the end of the trimester, the June 2023 IEP. Thus, OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **April 5, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **March 29, 2024**, the Student's IEP team, including the Parent and Student, will meet. At the meeting, the IEP team must address the following topics:

1. Whether the Student's IEP needs to be amended to ensure it accurately documents the amount of specially designed instruction being provided and the provider.
2. The investigation revealed that the Parents have ongoing concerns about the progress reporting data and frequency at which progress information is provided. OSPI strongly

receive the progress reporting with enough time to be prepared to discuss the Student's need for ESY at the IEP meeting.

recommends the IEP team meet to review, discuss, and document progress report expectations in the IEP to ensure clarity and the understanding of all parties.

By or before **April 5, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

DISTRICT SPECIFIC:

Program Review

By or before **April 5, 2024**, District special education leadership will conduct a formal review of the program at the District's high school identified in this complaint. To support an analysis of the extent to which the program model and services, including the number of hours of counselor/advisor time per grade, (1) is individualized to meet the needs of each individual student with an IEP, and (2) impacts the development or implementation of IEPs for students eligible for special education. The District will provide OSPI with a spreadsheet reflecting its review.

The spreadsheet should include all students eligible for special education in the high school/program, outlining the areas of special education services, minutes per week in each area, and the staff responsible for delivering services (e.g., special education teacher, general education teacher, advisor/counselor). The District will identify if any concerns arise during the review and any proposed next steps.

OSPI will review and contact the District to schedule a conversation around next steps if concerns are identified.

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 20th day of February, 2024

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.)