

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-100

PROCEDURAL HISTORY

On December 27, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Kennewick School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On December 30, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On January 17, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on January 21, 2020. OSPI invited the Parent to reply.

On February 3, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District that same day.

On February 5, 2020, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received the requested information/documentation on February 10, 2020, and forwarded it to the Parent on February 11, 2020.

On February 12, 2020, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District. OSPI received the requested information/documentation on February 13 and 18, 2020, and forwarded it to the Parent on February 19, 2020.

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

ISSUES

1. Did During the 2019-2020 school year, did the District properly implement the following portions of the Student's Individualized Education Programs (IEPs):
 - a. Minutes of specially designed instruction in executive functioning and social; and,
 - b. Accommodations?
2. Did the District properly implement the Student's IEP when it allegedly placed the Student's IEP on "hold" for two or more weeks beginning in November 2019?
3. Did the District follow proper IEP development procedures in March 2019 in developing the Student's postsecondary goals and transition services, including:
 - a. Obtaining (or seeking to obtain) the input of the Student on the same (WAC 392-172A-03095(2)(a)-(b)); and,

- b. Ensuring the IEP team's determinations were based on sufficient, relevant, and accurate data (see generally, WAC 392-172A-03020; see also WAC 392-172A-03110(1)(a)-(d), - (3); WAC 392-172A-03090(k)(i))?
4. Does the postsecondary goals and transition services section of the Student's March 2019 IEP include the components required by WAC 392-172A-03090(k)?

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 who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "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 child with a disability and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Compensatory Education: A state educational agency is authorized to order compensatory education, as appropriate, through the special education citizen complaint process. 34 CFR §300.151(b)(1); WAC 392-172A-05030. The state educational agency, pursuant to its general supervisory authority, has broad flexibility to determine appropriate remedies to address the denial of appropriate services to an individual child or group of children. *Letter to Lipsitt*, 181 LRP 17281 (2018). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018) ("The purpose of a compensatory services award is to remedy the public agency's failure to provide a child with a disability with 'appropriate services' during the time that the child is (or was) entitled to a free appropriate public education and was denied appropriate services.")

There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the

parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2); *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015; *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "within a reasonable period of time and without undue delay;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

Behavioral Intervention Plan (BIP): A BIP is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The BIP, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031.

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Student Required Member of IEP Team When Postsecondary Goals and Transition Services Discussed: The student must be invited to the IEP team meeting when the purpose of the meeting

will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP meeting, the school district must take other steps to ensure that the student's preferences and interests are considered. WAC 392-172A-03095(2)(a)-(b).

Rationale for IEP Team Determinations: An IEP team's decisions must be based on sufficient, relevant, and accurate data. *See generally* WAC 392-172A-03020; *see also* WAC 392-172A-03110(1)(a)-(d), -(3); WAC 392-172A-03090(k)(i).

Postsecondary Goals and Transition Services: Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include: (i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and (ii) The transition services including courses of study needed to assist the student in reaching those goals. WAC 392-172A-03090(k).

FINDINGS OF FACT

2018-2019 School Year

1. At the start of the 2018-2019 school year, the Student was eligible for special education under the category autism, was in the ninth grade, and attended a District high school.
2. The record contains an "Invitation to Attend a Meeting" document, dated March 4, 2019. This document was addressed to the Parent and the Student and invited them to attend a meeting scheduled for March 11, 2019. According to the document, at the March 11, 2019 IEP meeting, two topics would be discussed: 1) individualized education program (IEP) development/review/amendment; and 2) secondary transition planning.
3. According to the District, at some point prior to March 11, 2019, special education teacher 1 "interviewed Student using questions from a staff-developed questionnaire" that concerned postsecondary goals and related transition services.

Special education teacher 1 stated:

[Being] a freshman, Student did not have exact answers [to my questions], so more general information was used¹...Parent told me that she did not want me to interview the Student. She was concerned Student would say he didn't want to go to college and that [this] would impact his ability to attend. [I] reassured [Parent that Student was] capable of going [to college].

¹ In its response, the District stated, "little information was obtained during [special education teacher 1's] interview [with the Student]" concerning appropriate postsecondary goals and transition services.

4. On March 11, 2019, special education teacher 1 emailed the Parent, stating, "Is Student coming to the IEP meeting [scheduled for later today]? I wanted to ask him about his transition plans—college, trade school, on-the-job training. That kind of thing."
5. On March 11, 2019, the Student's IEP team developed a new annual IEP for the Student.² The Student's March 2019 IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - **Social Skills:** 20 minutes a week (to be provided by special education staff)
 - **Executive Functioning:** 25 minutes a week (to be provided by special education staff)

The March 2019 IEP included the following two measurable annual goals:

- **Social:** By March 5, 2020, Student will improve social skills from an average score of 2.22 to an average score of 3.22 as measured by the Social Skills Rating Scale.
- **Executive:** By March 5, 2020, Student will improve executive functioning skills from an average score of 2.25 to an average score of 3.25 as measured by the Executive Function Rating Scale.

The Secondary Transition section of the March 2019 IEP read, in part:

Age Appropriate Transition Assessments

Student states that he wants to attend college, although he isn't sure which ones or for which degree. He did state that he would probably begin at a two year college...in order to live at home and save money. He is interest[ed] in possibly attending [a] tech skill center while in high school. When asked to list three things he is good at, Student responded that he was good at being kind/friendly, video games, and helping people. When asked to list three things in which he would like to improve, Student could only think of one thing: improve test scores.

Postsecondary Education/Training Goal: Student will be able to apply at a post-secondary institution of choice.

Transition Service: Complete application forms.

Staff/Agency Responsible: Staff/Student.

Postsecondary Employment Goal: Student will be able to apply for an entry level job (in an area of interest).

Transition Service: Student will be able to complete a variety of forms.

Staff/Agency Responsible: Staff/Student.

Postsecondary Independent Living Skills Goal: Not applicable.³

Courses of Study

Student will enroll in those courses required for graduation.

6. The District's response included an undated "meeting notes" document. According to the District, this document related to the March 11, 2019 meeting. This document read, in part: "Why is Student not participating? Parent does not want Student here."

² According to the March 2019 IEP, the Student was 15 years old as of March 11, 2019.

³ The District explained, as of March 2019, the Student's IEP team determined the Student was fully capable of living independently, and so Student did not require secondary goals or services in this particular area.

7. The District acknowledged that the “specific courses Student will need to complete in high school to meet graduation requirements and achieve his postsecondary pursuits” are not listed in the secondary transition section of the March 2019 IEP. The District also acknowledged that “the IEP team’s determinations regarding postsecondary goals and transition services were not based on sufficient, relevant, and accurate data, as the information collected was minimal.”

To remedy these issues, the District proposed to undertake four actions:

- a) Complete a more comprehensive transition assessment of the Student—specifically, the Career Information System (CIS) assessment;⁴
 - b) “Have Student attend [the] IEP meeting to participate in transition planning discussions and assessment;”
 - c) Add “the specific courses Student will need to complete in high school to meet graduation requirements and achieve his postsecondary pursuits” to the Secondary Transition section of his IEP; and,
 - d) Update the Secondary Transition Section of the Student’s IEP, as needed, based on both the results of the CIS assessment, as well as the Student’s input.
8. The District’s response included an “IEP Amendment without Reconvening the IEP Team” document, dated April 23, 2019. According to this document, on April 23, 2019, the accommodations in the Student’s March 2019 IEP were updated.⁵

According to the Student’s April 2019 Amended IEP, the Student was supposed to receive the following accommodations in all subject areas:

- Prior notice of tests/quizzes (accommodation 1).
- Set of books for home (accommodation 2).
- Any [projects] over a week [are to be] considered long-term. Teacher will breakdown project into manageable segments/due dates (not scored) [and] notify [the] IEP case manager. With the intermittent checks, the assignment will be due on the date established by the teacher (accommodation 3).
- Extra time to complete tests/quizzes same day or next: Student will approach teacher to determine time/place to finish; if Student does not approach teacher, the teacher will approach Student (accommodation 4).
- Provide Student outlines/guides/graphic organizers (accommodation 5).
- Extended time on daily assignments (defined as having a due date no more than one week after assigning). If additional time is required, Student will show teacher [the] work [he has] completed [by the] original due date. Together, Student and teacher will determine an appropriate amount of extension time/[a] new due date. If Student has not started the

⁴ According to the District, the CIS assessment “will provide the team with additional information regarding Student’s interest in future careers, college information, resume building, etc. This would allow Student to continue to build his portfolio through the school year and become prepared for post-secondary pursuits.” This assessment is also referred to by the acronym: WOIS.

⁵ The minutes of specially designed instruction in executive and social skills in the Student’s March 2019 IEP were not changed by the April 2019 Amended IEP. The Student’s two measurable annual goals in his March 2019 IEP (one in social and one in executive) also did not change with the April 2019 Amended IEP.

assignment by the original due date, then he [will] receive no additional time (accommodation 6).

- Color-coded folders: one [for] 'homework to be completed' and one [for] 'homework to be returned or submitted (accommodation 7).'

9. As of June 14, 2019, the Student had made the following progress on the social goal in his April 2019 Amended IEP:

Using the Social Skills Rating Scale, Student's teachers yielded an average score of '1.59 – Rarely demonstrates skill [even] if prompted/reminded.' This is lower than at the time of Student's IEP in March 2019. [The] goal [has] not [been] met.

As of June 14, 2019, the Student had made the following progress on the executive goal in his April 2019 Amended IEP:

Using the Executive Functioning Rating Scale, teachers evaluated Student, yielding an average score of '2 – Inconsistent.' This is lower than when [Student was] evaluated at the time of his [spring 2019] IEP. Goal not met; no progress [has been] made.

10. According to documents submitted by both the District and the Parent, special education teacher 1 provided the Student with his specially designed instruction during the latter part of the spring 2019 semester.

2019-2020 School Year

11. The District's first day of school for the 2019-2020 school year was September 3, 2019.

12. At the start of the 2019-2020 school year, the Student continued to be eligible for special education under the category autism, was in the tenth grade, and attended a District high school. His April 2019 Amended IEP was in effect.

13. The Student's schedule for the fall 2019 semester was as follows:

- **First Period:** American Sign Language 3 (taught by the American Sign Language (ASL) teacher)
- **Second Period:** Algebra 1 (taught by the algebra teacher)
- **Third Period:** PE Health (taught by the PE teacher)
- **Fourth Period:** US History 1 (taught by the history teacher)
- **Fifth Period:** English 3 (taught by the English teacher)
- **Sixth Period:** Biology 1 (taught by the biology teacher)

14. According to the District:

- "Due to a staffing error in which a service provider [was] not assigned" to the Student, the District did not provide the Student with the minutes of specially designed instruction in executive functioning and social skills in his April 2019 Amended IEP "for the first three weeks of September";
- "Once [the] failure [to provide services for the first three weeks of September] was determined to have happened, the District provided compensatory educational services for the minutes not provided, which the Student did, at times, refuse"; and,
- Starting September Monday, September 23, 2019 (the fourth week of school), special education teacher 2 provided the Student with the minutes of specially designed instruction in executive functioning and social skills in his April 2019 Amended IEP.

15. In terms of the how the Student was provided with the specially designed instruction in executive functioning and social skills in his April 2019 Amended IEP, the District stated:

- During the 2019-2020 school year, said instruction was provided “primarily in the resource room classroom”; and,
- “Student [was] pulled during different class periods [during the 2019-2020 school year]. He [would also occasionally] refuse to leave class...to come to the resource room.”

16. The District’s response included the following statement from special education teacher 2:

[In working with the student to provide him specially designed instruction social skills and executive functioning], I used the SMART curriculum...as well as several social skills supplemental materials targeting conversational skills and navigating nonverbal communication. Services were...provided 1:1 at the insistence of Parent. However, I attempted twice to provide services in a small group setting with like peers. It is my professional training and experience that informs my belief that social skills instruction is best provided and practiced with peers. Both times Student refused to enter the classroom...Parent was inconsistent in her request that services be provided at the same time each week –[at various times, Parent requested that Student be pulled from different classes] so that he didn’t miss the same period every week. When asked to decide which [option she would prefer], Parent refused to answer and changed the subject.

...

When services were provided, Student often refused to engage in conversation or in any written work. At times Student seemed angry or frustrated, stating that he did not have to do what I asked. When asked to elaborate, Student would state that his IEP only says he has to send a weekly email. When told that sending an email is only a small part of the instruction (executive functioning and social skills cover a wide range of skill), Student verbally disagreed, repeating that that was what his IEP [said].

...

Given the nature of executive functioning and social skills services, these skills were often provided concurrently. Many topics overlap—for example, cognitive flexibility, and therefore I cannot say that 20 minutes of social skills and 25 minutes of executive functioning were provided, but I can say that a minimum of 45 minutes were provided each week. When I realized that a gap of services existed prior to Student being assigned to my class, I attempted to recoup that loss of time, attempting to meet and offer services multiple times, while also being cognizant of the importance of Student being in class to access the general education curriculum.

Services were provided in a special education setting. However, there were occasions when Student refused to enter the classroom, standing in the hallway outside the classroom. During these times, I would close the adjacent classroom door and continue to engage Student in an effort to develop rapport [and] model and practice social skills.

17. According to special education teacher 2, on September 26, 2019, she provided the Student with a combined 30 minutes of specially designed instruction in social skills and executive functioning.

18. According to special education teacher 2, on September 27, 2019, she provided the Student with a combined 45 minutes of specially designed instruction in social skills and executive functioning.

19. According to special education teacher 2, on October 1, 2019, she: provided the Student with a combined 15 minutes of specially designed instruction in social skills and executive functioning; and intended to provide additional minutes but the "session [was] ended early due to Student refusal."
20. On October 3, 2019, the Parent emailed special education teachers 1 and 2, stating, in part:
Having Student attend a social group goes against what was discussed and communicated during team meetings. Student will not be attending a social group at any time during the school year. He has extensively communicated that he does not want to stand out and a social group of disabled students does just that.
21. According to special education teacher 2, on October 4, 2019, she: a) provided the Student with a combined 30 minutes of specially designed instruction in social skills and executive functioning; b) Student refused to engage for the last 15 minutes; and, c) she "collaborated with [Student's] general education teacher regarding Student's refusal-seeking function of behavior to inform [the provision of specially designed instruction]."

In the course of this investigation, special education teacher 2 clarified the results of her collaboration with the Student's general education teacher (or teachers):

I learned from the Student's health teacher and biology teacher that Student engages with peers in the class in an appropriate manner and that they do not have any concerns with Student's ability to engage socially or executively with classroom assignments or tests. I also learned that Student is involved with cross country. I used my information regarding cross country to build rapport, asking questions about the sport, how long he'd been running, sharing my experiences with running. He refused to engage in any dialogue, turning away from me as I spoke with him. In regard to Student being perceived by [his teachers as] being able to socially interact and demonstrate executive functioning skills, I attempted to engage Student in being able to identify 'what was different' about these classes in order to build on those strengths. He refused to engage despite several attempts to use wait time, rephrasing the question, giving examples.

22. According to special education teacher 2, on October 7, 2019, she: provided the Student with a combined 15 minutes of specially designed instruction in social skills and executive functioning; and attempted to provide the remaining 30 minutes, but Student "did not show but was present at school."
23. According to special education teacher 2, on October 8, 2019, she: provided the Student with a combined 15 minutes of specially designed instruction in social skills and executive functioning; and attempted to provide the remaining 30 minutes, but "Student refused to enter the classroom."
24. According to District meeting notes, on October 9, 2019, the Student's IEP team met. From the meeting notes, the following topics were discussed, in part: a) Student's class "scores" were slightly lower in 2019-2020 than they had been the previous year; b) Student's refusal to engage with his specially designed instruction; c) Student did not want to attend a social skills small-group; and, d) a District-Parent communication plan.

25. According to special education teacher 2, on October 10, 2019, she provided the Student with a combined 15 minutes of specially designed instruction in social skills and executive functioning.
26. According to special education teacher 2, on October 11, 2019, she provided the Student with a combined 45 minutes of specially designed instruction in social skills and executive functioning.
27. According to special education teacher 2, on October 14, 2019, she provided the Student with a combined 15 minutes of specially designed instruction in social skills and executive functioning.
28. On October 15, 2019, special education teacher 1 emailed the Parent, stating:

Because there was no resolution at our last meeting, we would like to set up a meeting to continue dialogue and discuss Student's program minutes. Our focus will be changing the location of Social Skills services for Student from a pull-out program (special education location) to a general education location (more organic in nature).
29. As of October 16, 2019, the Student had made the following progress on the social goal in his April 2019 Amended IEP:

According to the Social Skills Rating Scale completed by 4 teachers, Student has not demonstrated progress on his goal. The mean average is 2.16 (54% inconsistently) with strengths in his health class and continued skill deficits in ASL. Student has participated in about 50% of the service/instruction attempts, and several of those Student participated [in] minimally, refusing to engage in the lesson. Attempts to build rapport and engage in conversation have been met with resistance, making it difficult to serve him in the area of social skills.

As of October 16, 2019, the Student had made the following progress on the executive goal in his April 2019 Amended IEP:

According to the Executive Functioning Rating Scale completed by four teachers, Student has demonstrated some progress towards his goal. The mean average is 2.5 (62.5% inconsistently to frequently) with strengths in his health and history classes and continued skill deficits in ASL. The range of scores in percentages from high to low were 83% to 25%. Student has participated in about 50% of the service/instruction attempts, and several of those Student participated [in] minimally, refusing to engage in the lesson, stating that he is only expected to send a weekly email to his teachers. Given his IEP goal and the progress monitoring provided by his teachers, additional instruction in other executive functioning skills is needed for him to make progress.

30. According to special education teacher 2, on October 17, 2019, she provided the Student with a combined 55 minutes of specially designed instruction in social skills and executive functioning.
31. On October 18, 2019, special education teacher 2 emailed the Parent, stating: "Today, Student refused to participate or engage in learning. I would appreciate any help you can provide in encouraging him to participate towards making progress towards his goal."

32. According to special education teacher 2, on October 21, 22, and 23, 2019, she attempted to provide the Student with specially designed instruction in social skills and executive functioning, but "Student [was] absent from class."

The District's attendance records, though, show that, on October 21, 2019, the Student was absent from his first four classes; on that day, Student attended his other classes. The District's attendance records do not include documentation that the Student was absent, either for part of the day or the whole day, on October 22 and 23, 2019.

33. According to special education teacher 2, on October 29, 2019, she attempted to provide the Student with specially designed instruction in social skills and executive functioning, but "Student did not respond to call slip."^{6 7}

34. According to special education teacher 2, on October 30 and November 4, 2019, she attempted to provide the Student with specially designed instruction in social skills and executive functioning, but "Student refused to enter the classroom."

35. According to the District, certain District staff members met with the Parent on November 4, 2019 to further discuss the Student's "program minutes"—in particular, what the appropriate educational setting was to provide these minutes. According to the District, at the conclusion of the meeting, the educational setting was not changed—the meeting participants determined it made most sense to continue to provide the Student with his specially designed instruction in a pull-out, special education setting.

36. According to the District:

[We] did not provide services from November 5th to November 15th. This suspension from services was based on recommendations from the IEP team, including the private counselor that met [on] the afternoon of November 4, 2019. The IEP team agreed to not pull Student from general education as the Parent and the Student's private therapist expressed [that] he could no longer work with [special education teacher 2].⁸ The team proposed other potential special education teachers as providers at the meeting. The Parent and the Student's private counselor expressed that Student should have input as to who [the new provider] should be. The team agreed that Student would meet with two different providers

⁶ The District's response included an October 29, 2019 email from special education teacher 2 to the Student's father. It read, in part: "I attempted to provide instruction this morning but Student did not show up for service." The Student's father responded, stating: "I will talk to Student this evening."

⁷ According to the District, 'call slips' "are used...to call a student out of class. In the case of the Student, the case manager uses [the] call slip to call Student to her room as a reminder to receive his specially designed instruction."

⁸ A November 4, 2019 prior written notice, which was addressed to the Parent, read, in part: "Parent and Student's private therapist reported that his mental health has started to decline and it would be in his best interest to switch the provider who is giving specially designed instruction in social skills and executive functioning."

and then consult with his private therapist prior to [a change in service providers actually] being made.⁹

According to the Parent, the two alternative providers proposed by the District were: special education teacher 3 and special education teacher 4.

The District's response included a November 5, 2019 email from the assistant principal to the Parent. In relevant part, it read:

I made a mistake and special education teacher 4 is not one of the teachers assigned to provide instruction outside the classroom. Special education teacher 3, special education teacher 6, and the special education director (director) are the only ones. We know mom would prefer it not be special education teacher 5 or the director, so special education teacher 3 is the only other available person. With that said, we need to change our focus to the best way to help Student adjust to special education teacher 3.

...

I would suggest continuing on the route we examined last night...having special education teacher 3 work with him a couple of times to establish rapport, and then begin services again in their entirety after the 2 weeks is over.¹⁰

37. On November 5, 2019, the assistant director emailed the Parent, stating, in part: "This email is to inform you that you are...in agreement to suspend Student's services with special education teacher 2 for two weeks, effective today."

38. On November 5, 2019, the District sent the Parent a prior written notice that read, in part: Parent indicated that Student is hesitant to use his Hall Pass from classes when he feels anxious. It was suggested that Student need not use the allotted Hall Passes when feeling the need to leave the room when anxious...The IEP team agreed that this was a reasonable accommodation for Student (accommodation 8).

39. According to special education teacher 3, on November 15, 2019: "I met with Student and Parent to introduce myself and learn a bit about Student. We established Tuesdays, 4th period for pullout services."

⁹ The following portions of the District's response support the District's statement as to the discussion at the November 4, 2019 meeting, as well as the decisions made at that meeting concerning changing the Student's service provider: the November 4, 2019 prior written notice; meeting notes created by a District staff member during the actual November 4, 2019 meeting; and, District-conducted staff interviews of the following individuals: assistant director, psychologist, assistant principal, and principal.

¹⁰ According to the District, prior to the Parent being informed that the new provider would have to be special education teacher 3, neither the Parent nor the Student "ever articulated a preference for either special education teacher 3 or special education teacher 4...Parent asked the therapist if the therapist had an opinion on male (special education teacher 4) or female (special education teacher 3), [and] therapist responded [that] she didn't think it mattered."

40. According to the District, beginning Monday, November 18, 2019, special education teacher 3 began providing the Student with the minutes of specially designed instruction in executive functioning and social skills in his April 2019 Amended IEP.¹¹
41. According to special education teacher 3, on November 19, 2019, she provided the Student with a combined 50 minutes of specially designed instruction in social skills and executive functioning.
42. According to special education teacher 3, on November 26, 2019, she attempted to provide the Student with specially designed instruction in social skills and executive functioning, but: “[a] call slip [was] sent; [Student was a] no show to [the] appointment; [Student was] not absent; [special education teacher 3 did not receive an] email [from Student]; and [she was] unable to serve minutes.”
43. The District was on break from November 28–29, 2019.
44. According to special education teacher 3, on December 3, 2019, she provided the Student with 20 minutes of specially designed instruction in social skills and 15 minutes of specially designed instruction in executive functioning, but “time was cut short due to Student wanting to get back to class in order [to] not miss instructions for an assignment.”
45. According to special education teacher 3, on December 6 and 10, 2019, she attempted to provide the Student with specially designed instruction in social skills and executive functioning, but: “[a] call slip [was] sent; [Student was a] no show to [the] appointment; [Student was] not absent; [special education teacher 3 did not receive an] email [from Student]; and [she was] unable to serve minutes.”
46. According to special education teacher 3, on December 17, 2019, she provided the Student with 15 minutes of specially designed instruction in social skills and 5 minutes of specially designed instruction in executive functioning, but “time was cut short due to Student refusing to participate in the given work.”
47. The District was on break from December 23, 2019 through January 3, 2020.
48. The Student’s schedule for the spring 2020 semester was as follows:
- **First Period:** American Sign Language 3 (taught by the American Sign Language (ASL) teacher)
 - **Second Period:** Algebra 1 (taught by the algebra teacher)
 - **Third Period:** Food and Fitness (taught by the fitness teacher)
 - **Fourth Period:** US History 1 (taught by the history teacher)
 - **Fifth Period:** English 3 (taught by the English teacher)
 - **Sixth Period:** Biology 1 (taught by the biology teacher)

¹¹ According to the District, the Parent, Student, and special education teacher 3 all met for the first time on Friday, November 15, 2019.

49. According to special education teacher 3, on January 7, 2020, she attempted to provide the Student with specially designed instruction in social skills and executive functioning, but: “[a] call slip [was] sent; [Student was a] no show to [the] appointment; [Student was] not absent; [special education teacher 3 did not receive an] email [from Student]; and [she was] unable to serve minutes.”
50. According to special education teacher 3, on January 14, 2020, she provided the Student with 20 minutes of specially designed instruction in social skills and 5 minutes of specially designed instruction in executive functioning, but “there was a now day so our time was [cut] short.”
51. The Parent’s reply included a statement that special education teacher 3 was absent from January 23, 2020 through February 4, 2020. The Parent’s reply included several emails, showing that special education teacher 3 was absent from January 28, 2020 through January 31, 2020, but that a substitute was provided on these days.

In the course of this investigation, the District clarified that special education teacher 3 did not work with the Student on any day from January 23, 2020 through February 4, 2020.

52. As of January 24, 2020, the Student had made the following progress on the executive goal in his April 2019 Amended IEP: “Student’s current Executive Function Skills are at a 1.97 according to his current teachers. This is a decrease, particularly in the areas of problem solving and long-term project.”
53. According to special education teacher 3, on February 7, 2020, she intended to provide the Student with specially designed instruction in social skills and executive functioning, but “Student was absent.” The District clarified that, on February 7, 2020, the Student was absent for the entire school day.
54. As of February 17, 2020, the Student had made the following progress on the social skills goal in his April 2019 Amended IEP: “Student’s current Social Skills score is at a 2.05, which is a decrease from his previous present level, with asking for help being the lowest score.”
55. In response to the Parent filing the instant special education citizen complaint, the District undertook an investigation into whether the proper accommodations were being provided to the Student.

First, the director interviewed several individuals, including the following: assistant director; special education teachers 1-3; school psychologist; principal; algebra teacher; and, ASL teacher. The foregoing individuals each stated they provided the Student with the accommodations in his April 2019 Amended IEP.

The assistant principal, though, who was also interviewed, stated: "No, the accommodation about providing graphic organizers and/or outlines (accommodation 5) has not been provided in every class for every assignment."¹²

In response, the director emailed several staff members the following question: "Please let me know if you are providing outlines/guides/graphic organizers in class?" The following individuals responded, stating that they were, in fact, providing the Student with this accommodation: history teacher, algebra teacher¹³, PE teacher, biology teacher, and English teacher. The American Sign Language (ASL) teacher, though, stated:

No but [this is] because our class is based on topics brought up in class. There aren't any outlines and I take the lead from [the] students about what to discuss. We learn the signs related to these topics. I do have videos up on the class...website on 'Power School.' The students will be making lists of words/signs that we have learned.

56. During the course of this investigation, OSPI's investigator asked that each of the Student's teachers provide a written statement concerning whether they implemented accommodations 1 through 4 and accommodations 6 through 8. OSPI received the following responses:

Accommodation 1

- **ASL Teacher:** "All quizzes and test dates have been shared prior."
- **Algebra Teacher:** "Notice is given at least a week in advance. This is done verbally, via email and via display on the schedule for the week which is posted on the board a week at a time."
- **PE Teacher:** "[I provide] at least a week of prior notice [for] tests."
- **History Teacher:** "Every week I have a week long calendar on the calendar on the white board. Every week, I also respond to Student's emails asking what is due that week."
- **English Teacher:** "I rarely use test or quizzes, but they are all planned ahead of time and all students are given prior notice."
- **Biology Teacher:** "I have given prior notice of tests and quizzes for the entire year."

Accommodation 2

- **ASL Teacher:** "No books are used in ASL this year."
- **Algebra Teacher:** "Student currently has a textbook at home or in his Parent's classroom.¹⁴ I verified today with Parent that she has access to a textbook."
- **PE Teacher:** "No books for home; all work is classwork."
- **History Teacher:** "Student has access to online textbook at home. He also has the ability to ask and check out a hard copy of a book if needed."
- **English Teacher:** "All students are given their own copy of the texts we read."
- **Biology Teacher:** "We have an online book for the class anytime he needs, it can be accessed from home. He did not request to have a science book at home, but if he did we would accommodate that."

¹² The assistant principal also stated: "Student often refuses accommodations."

¹³ More specifically, the algebra teacher stated: "Yes. Not every day but for every chapter."

¹⁴ The Parent was a teacher at the Student's school.

Accommodation 3

- **ASL Teacher:** “[I] have only assigned one project and it was broken down in sections in class.”
- **Algebra Teacher:** “Not applicable.”
- **PE Teacher:** “[Not applicable]—[the] longest project was [a] 3 day food log.”
- **History Teacher:** “I don’t have any projects that take longer than a week to complete. All projects in my class are done with partners as well. This helps break up the work load.”
- **English Teacher:** “We do not do ‘projects.’ The essays we do, if you consider those similar to projects, are all broken down into the different steps of the writing process, each with their own due date.”
- **Biology Teacher:** “The ‘celebration’ mini-golf course project was the only long term science project and we had several broken down segments to it.”

Accommodation 4

- **ASL Teacher:** “Extra time has been allowed and available.”
- **Algebra Teacher:** “Student turns his tests in during the class period. I ask if he would like more time but he answers no.”
- **PE Teacher:** “Student took every test in class like everyone else and was fine.”
- **History Teacher:** “Student has never needed more time on tests to finish.”
- **English Teacher:** “The few times I do give a quiz, students are allowed to have extra time and retake the quiz if necessary.”
- **Biology Teacher:** “All year I have provided as much time as he needs to finish tests.”

Accommodation 6

- **ASL Teacher:** “Not applicable.”
- **Algebra Teacher:** “Student is permitted to turn work in for full credit anytime during the semester. We try to work together to get it done within a week of the deadline so that the material is relevant to his current in-class work.”
- **PE Teacher:** “Student did not need any extra time, [he] finished everything in class.”
- **History Teacher:** “I have given as much time as he needs to complete all assignments.”
- **English Teacher:** No answer provided to OSPI.
- **Biology Teacher:** “All year I have provided extended time for assignments.”

Accommodation 7

- **ASL Teacher:** “No homework has been assigned.”
- **Algebra Teacher:** “I have not seen this [accommodation].”
- **PE Teacher:** “Did not use color-coded note books to my knowledge.”
- **History Teacher:** “I have not done this with folders. Students have all ‘due’ work in red on the whiteboard in class. All those assignments have also been emailed to Student. Students do have a return file that I hold their work and return completed work. Students also have a Google Classroom that reminds them of due dates on any outline work as well.”
- **English Teacher:** “Folders are available if he requests them. [The] majority of the work [done] in my class, however, is turned in online.”
- **Biology Teacher:** “I do not have a color-coded folder for science, as we have one notebook that is maintained and checked for all homework being completed.”

Accommodation 8

- **ASL Teacher:** “Student has not ever indicated that he needed to step out of the classroom due to feelings of anxiety. This has been available for the Student—however, he has not accessed it.”

- **Algebra Teacher:** "Student has not utilized this option."
- **PE Teacher:** "Student never once asked to leave the classroom other than to go to the bathroom."
- **History Teacher:** "Any time Student wants to leave, he has the ability to do so."
- **English Teacher:** "The Student is allowed to leave as necessary."
- **Biology Teacher:** "Student has been informed from the beginning of the year that he may leave anytime he needs to with or without the pass. Other than the occasional request to use the bathroom like other students I have not noticed Student using this for being anxious."

57. In its response, the District proposed to undertake two actions to remedy any failure on its part to provide the Student with the accommodations in his April 2019 Amended IEP:

- "Convene a meeting of the IEP team to review current accommodations. The team will determine the accommodations needed and the settings in which they need to be provided;" and,
- "Verify, upon completion of the IEP meeting that all accommodations have been communicated and are being provided to the Student."

CONCLUSIONS

Issue 1: IEP Implementation – Minutes and Accommodations – The Parent alleged the District did not implement the following portions of the Student’s April 2019 Amended individualized education program (IEP) during the 2019-2020 school year: minutes of specially designed instruction in executive functioning and social skills; and accommodations.

A school district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the student’s IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Minutes of Specially Designed Instruction in Executive Functioning and Social – Here, the Student’s April 2019 Amended IEP provided him with 20 minutes a week of specially designed instruction in social skills, and 25 minutes a week of specially designed instruction in executive functioning, both in a special education setting. From the start of the school year (September 3, 2019) through February 7, 2020, there were approximately 20 weeks of school.

This means, during this time, the Student should have received roughly 400 minutes of specially designed instruction in social skills and 500 minutes of specially designed instruction in executive functioning.

Based on documentation provided during the course of this investigation, though, it appears that during this time period, the Student actually received 220 minutes of specially designed instruction in social skills and 190 minutes of specially designed instruction in executive

functioning.¹⁵ This represents a deficit of 180 minutes in social skills and 310 minutes in executive functioning.

As compensatory education is an equitable remedy, whether it is warranted in this instance is dependent on a couple of factors.

First, why does the deficit exist? A review of the record shows it exists for two principal reasons: i) on a small number of occasions, the Student was absent from school; and ii) on numerous occasions, the Student either refused to leave the general education classroom to receive his specially designed instruction, or, once he was with the service provider, the Student refused to engage with the specially designed instruction.

As per the latter reason (the Student's refusal to attend his specially designed instruction), it is important to note the following requirement: a student's IEP must be reviewed and revised periodically, but not less than annually, to address, in part, any changes in need resulting from a student's disability. Thus, it is pertinent to ask: what was the District's response to the Student's refusal to attend his specially designed instruction? A review of the record shows District staff took the following actions:

- Special education teacher 2 reminded the Student that his IEP required that he receive minutes of specially designed instruction in social skills and executive functioning each week—not just that Student “send a weekly email;”
- Special education teacher 2 attempted to make the learning environment more conducive to the Student's participation—for example, special education teacher 2 would “close the adjacent classroom door;”
- In early-to-mid October 2019, as well as on November 4, 2019, the Student's IEP team discussed whether the Student would benefit from participation in a social skills small group—as opposed to receiving his specially designed instruction in a 1:1 setting. The IEP team, though, ultimately determined that this was not an appropriate setting to provide the Student with his specially designed instruction in social skills;
- Special education teacher 2 “collaborated” with some of the Student's other teachers on ways to best engage the Student;
- Special education teacher 2, on at least one occasion, emailed the Parent, requesting that the Parent encourage the Student to engage with his specially designed instruction; and,
- Beginning November 19, 2019, special education teacher 3 replaced special education teacher 2 as the Student's provider of specially designed instruction.¹⁶

At no time, though, based on the record provided to OSPI, did the Student's IEP team consider conducting a functional behavioral assessment (FBA) and potentially creating a behavioral

¹⁵ For those dates where the District's documentation showed that a “combined” number of minutes of specially designed instruction in social skills and executive functioning was provided, OSPI, for analytical purposes, divided this time equally. For example, if a service provider's records showed that the Student received 50 minutes total in these areas on a particular date, then OSPI treated it as if the Student received 25 minutes in social skills and 25 minutes in executive functioning.

¹⁶ The Student continued, though, to demonstrate an unwillingness to attend his specially designed instruction after November 19, 2019.

intervention plan (BIP) for the Student. An FBA may allow the Student's IEP team to better understand the Student's refusal to engage with his specially designed instruction, as well as what positive behavioral supports and interventions might help reduce the Student's refusal.¹⁷ It is also not clear from the record whether the Student's IEP team considered the following options: a) changing the number of minutes of specially designed instruction in social skills and executive functioning based on any changed need on part of the Student; the potential need for related services, and/or, b) revising the Student's measurable annual goals in social skills and executive functioning.¹⁸ Therefore, the District will convene an IEP meeting for the Student. At that meeting, the IEP team will discuss, and come to a resolution on, the following questions:

1. Does the Student require an FBA and/or BIP to access his special education services?
2. Does the Student require related services to benefit from his special education services?
3. Should the number of minutes of specially designed instruction in social skills and executive functioning the Student receives or the location of the services be changed?
4. Should Student's measurable annual goals in social skills and executive functioning be revised?

The Student's April 2019 Amended IEP will then be amended, as necessary, based on the meeting, and OSPI will be provided a copy of the same.

In terms of whether compensatory education is warranted, though, OSPI notes: because the foregoing questions do not appear to have been addressed by the Student's IEP team, the Student's refusal to attend his specially designed instruction in social skills and executive functioning does not, in and of itself, warrant any reduction in potential compensatory education. However, in determining the potential impact of missed IEP services, and whether compensatory education is warranted, it is important to look at an additional factor: whether a student made progress on his or her measurable annual goals. Here, the record shows the following:

Social Skills

- 6/19: Regression;
- 10/19: No progress; and,
- 2/20: Regression.

Executive Functioning

- 6/19: Regression;

¹⁷ An FBA focuses on identifying the function or purpose behind a child's behavior. A BIP, at a minimum, describes: the pattern of behaviors that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behaviors being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behaviors that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behaviors for a specific pattern of behavior of the student.

¹⁸ IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability.

- 10/19: Some progress—but, importantly, the progress report itself acknowledges that the Student may have made more significant progress had he attended more specially designed instruction; and,
- 1/20: Regression.

The foregoing data shows, then, that the Student's ability to make progress on his measurable annual goals may have been negatively impacted by the fact that he did not receive all of the specially designed instruction called for in his April 2019 Amended IEP. Therefore, compensatory education is warranted. As the Student was supposed to receive services in a 1:1 setting from the special education teacher, in this instance, as compensatory education, the District will be required to provide the Student with 180 minutes of specially designed instruction in social skills and 310 minutes of specially designed instruction in executive functioning. The compensatory education will be in a 1:1 setting—meaning just the Student and the service provider, and it will take place outside of the regular school day.

Accommodations – OSPI's investigation of this complaint showed the Student's service providers materially provided him with the following accommodations during the 2019-2020 school year: accommodations 1, 3-6, 8.¹⁹

In regard to accommodation 2 ("set of books for home"), OSPI's investigation revealed the following: several of the Student's classes do not use textbooks; for Algebra, the Student has a hardcopy textbook available to him outside the classroom; and, for history and biology, the Student has access to "online textbooks." OSPI notes that it is unclear whether accommodation 2 would be satisfied by access to online textbooks. On the one hand, this would permit the Student to have access to textbooks at "home," but this access would not be to an actual, physical book. Therefore, the District will hold an IEP meeting with both the Parent and the Student. At that meeting, the Student's IEP team will address the following question: do the Student's needs resulting from the Student's disability require that he have access to a hardcopy textbook at home? Or is access to an electronic copy of textbooks sufficient?

In regard to accommodation 7 ("color-coded folders [for] 'homework to be completed' and...'homework to be submitted'"), it does not appear that the Student's service providers regularly provided him with this accommodation. It should be noted, though, that from the record, it is not clear whether, and, if so, how much, the lack of this accommodation negatively impacted the Student's ability to make progress on his executive functioning goal. Therefore, at the required IEP meeting, the team will also discuss: do the Student's needs resulting from the Student's disability still require that he be provided with accommodation 7? If the IEP team determines that the Student does still require accommodation 7, then the District will be required to email each of the Student's service providers, highlighting the existence (and obligatory nature of) accommodation 7.

¹⁹ The Student did not receive accommodation 5 ("outlines/guides/graphic organizers") in his ASL class but the ASL teacher explained: "[This is] because our class is based on topics brought up in class. There aren't any outlines and I take the lead form [the] students about what to discuss."

Issue 2: IEP Implementation – Temporary Cessation of Services in Early November 2019 –

Here, the Parent alleged the District erred in temporarily suspending the Student’s IEP services from November 5 through 15, 2019. School districts must implement IEPs as written. Here, the Student’s IEP team did not formally amend the Student’s April 2019 Amended IEP to reflect a temporary cessation of services from November 5, 2019 through November 15, 2019. Therefore, this was a violation of the IDEA.

However, for several reasons, this was not a material violation: a) the short time period services were stopped; b) the fact that the larger issue in this case is the Student’s refusal to attend his specially designed instruction, and how the District may have better responded to the same; c) the fact that the District attempted to provide compensatory education for the period during which services were not provided; and, d) the fact that the decision appears to have been made as a result of following correct procedures—the Student’s IEP team, including the Parent and the Student’s private therapist, determined that special education teacher 2 should no longer serve as the Student’s service provider but that the Student should work with a couple different service providers before determining which one represented the best replacement for special education teacher 2. Therefore, while the IEP should have been amended to reflect this period, as this was not a material violation, OSPI orders no further corrective actions.

Issue 3: Postsecondary Goals and Transition Services – Development –

The Parent alleged the District did not follow proper development procedures in creating the postsecondary goals and transition services included in the Student’s March 2019.

A district must satisfy two principal requirements in developing a student’s postsecondary goals and transition services. First, a student must be invited to an IEP meeting when a purpose of the meeting will be the consideration of appropriate postsecondary goals—as well as the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP meeting, the school district must take other steps to ensure that the student’s preferences and interests are considered. Second, an IEP team’s determinations regarding appropriate postsecondary goals and transition services for a student must be based on sufficient, relevant, and accurate data.

Here, on March 4, 2019, the Student was invited to attend the March 11, 2019 meeting. The Student, though, did not end up attending the meeting.²⁰ In terms of the District’s efforts to ensure the Student’s preferences and interests were considered, prior to the March 11, 2019, the special education teacher “interviewed Student using questions from a staff-developed questionnaire [that concerned potential postsecondary goals].”²¹ The District, though, stated that “the IEP team’s determinations regarding postsecondary goals and transition services were not based on

²⁰ District-created “meeting notes” for March 11, 2019 read, in part: “Why is Student not participating? Parent does not want Student here.”

²¹ Information gathered from this interview was included in the ‘Age Appropriate Transition Assessments’ section of the March 2019 IEP.

sufficient, relevant, and accurate data, as the information collected [during the interview] was minimal." To remedy this failure, the District proposes to:

- Complete a more comprehensive transition assessment of the Student—specifically, the CIS assessment;
- "Have Student attend [the] IEP meeting to participate in transition planning discussions and assessment;" and,
- Update the Secondary Transition Section of the Student's IEP, as needed, based on both the results of the CIS assessment, as well as the Student's input.

OSPI finds the District in violation and agrees with the District's proposed remedies; the District will undertake these actions as part of the corrective actions for this decision.

Issue 4: Postsecondary Goals and Transition Services – Required Components – The Parent alleged the postsecondary goals and transition services section of the Student's March 2019 IEP did not include the components required by WAC 392-172A-03090(k). Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include: (i) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and, (ii) The transition services including courses of study needed to assist the student in reaching those goals.

Because the Student was 15 years old when his March 2019 IEP was created on March 11, 2019, and because the March 2019 IEP was to be effective for one year, it needed to include the information in the foregoing paragraph.

Measurable Postsecondary Goals – Here, the March 2019 IEP does include a measurable postsecondary goal in education/training ("Student will be able to apply at a post-secondary institution of choice"). It also includes a measurable postsecondary goal in employment ("Student will be able to apply for an entry level job (in an area of interest)").²²

Transition Services – The March 2019 IEP also included the transition services needed to assist the Student in reaching these postsecondary goals: education/training ("Staff/Student [will] complete application forms"); employment ("Staff/Student [will] complete a variety of forms"). Therefore, the March 2019 IEP includes the components required by WAC 392-172A-03090(k).

OSPI finds no violation related to these elements of the postsecondary goals and transition services. However, in this instance, OSPI does have several recommendations for the IEP team to consider in relation to the Student's transition services. See 'Recommendations' section below.

Courses of Study – The March 2019 IEP does not detail the "courses of study" needed to assist the Student in reaching his postsecondary goals; it merely reads, "Course of Study: Student will enroll in those courses required for graduation." This is a violation of the IDEA. To remedy this violation,

²² The March 2019 IEP does not include a postsecondary goal in independent living skills; but, according to the District, that is because, as of March 2019, the Student's IEP team determined the Student had no needs in this area—in other words, as of March 2019, Student was fully capable of living independently.

OSPI endorses the District's proposal: amend the Student's March 2019 IEP to add "the specific courses Student will need to complete in high school to meet graduation requirements and achieve his postsecondary pursuits."

CORRECTIVE ACTIONS

By or before **March 18, 2020** and **May 5, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **March 13, 2020**, the Student's IEP team will meet.

The Student will be invited to participate in this meeting. If the Student chooses not to participate, the District must make an effort to obtain the Student's input as to the appropriate postsecondary goals and transition services.

Prior to this meeting, the District will complete a more comprehensive transition assessment of the Student—namely, the CIS assessment.

At the meeting, the IEP team must address the following topics:

1. Does the Student require an FBA and/or BIP to access his special education services?
2. Does the Student require related services to benefit from his special education services?
3. Should the number of minutes of specially designed instruction in social skills and executive functioning the Student receives or the location of the services be changed?
4. Should the Student's measurable annual goals in social skills and executive functioning be revised?
5. Do the Student's needs resulting from the Student's disability require that he have access to a hardcopy textbook at home? Or is access to an electronic copy of textbooks sufficient?
6. Do the Student's needs resulting from the Student's disability still require that he be provided with accommodation 7? (If the IEP team determines that the Student does still require accommodation 7, then the District must email each of the Student's service providers, highlighting the existence—and obligatory nature of, accommodation 7.)
7. Update the Secondary Transition Section of the Student's IEP, as needed, based on both the results of the CIS assessment, as well as the Student's input.
8. Add "the specific courses Student will need to complete in high school to meet graduation requirements and achieve his postsecondary pursuits."

Each District staff member on the Student's IEP team will review this decision before the meeting. A copy of this decision will also be brought to the meeting, to reference if and as needed.

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

By or before **March 13, 2020**, the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 180 minutes of specially designed

instruction in social skills and 310 minutes of specially designed instruction in executive functioning.

The District will provide OSPI with documentation of the schedule for services by or before **March 18, 2020**.

The compensatory education will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **May 1, 2020**, including those needing to be rescheduled.*

No later than **May 5, 2020**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for Student to access these services, or reimburse Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **May 5, 2020**.

DISTRICT SPECIFIC:

None.

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

RECOMMENDATIONS

Regarding the transition services related to the Student's education/training goal, OSPI recommends the IEP team consider identifying the specific "application forms" the Student will practice filling out—for example, "For practice, the Student will complete the application form for admittance to Columbian Basin College."

Regarding the transition services related to the Student's employment goal, OSPI recommends the IEP team consider identifying the specific "variety of forms" the Student will practice filling out—for example, "For practice, the Student will complete job applications for entry-level roles at the following three businesses: ___; ___; ___."

Regarding the transition services for both of the Student's postsecondary goals, OSPI recommends the IEP team consider establishing a timeline—for example, "Student will complete two college applications and two job applications each semester."

Dated this ____ day of February, 2020.

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)