

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-45

PROCEDURAL HISTORY

On May 24, 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 Richland 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 May 28, 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 June 19, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on June 20, 2019. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On June 28, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 25, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.¹

¹ The District has had three Special Education Citizen Complaints regarding, in part, placement procedures and/or the issue of implementation of specially designed instruction in 2017 (see SECC 17-14, SECC 17-18, and SECC 17-32). OSPI notes that there have been improvements since the complaints filed in 2017. Specifically, the Student in this complaint was offered her specially designed instruction in the appropriate setting by certified special education teachers. However, as discussed in this complaint, the District continues to need to review its placement procedures and how it provides specially designed instruction to students to ensure that it is individualizing the educational program it provides to students with disabilities to meet the unique needs identified in students' IEPs.

ISSUES²

1. Did the District follow procedures to develop the Student's IEP during the 2018-2019 school year, including offering the Student a continuum of special education supports and services based on the Student's needs and in the least restrictive environment?
2. Did the District follow procedures to implement the Student's IEP during the 2018-2019 school year?
3. Did the District follow procedures for conducting the Student's reevaluation in April 2019?
4. Did the District follow procedures for the meeting held on April 22, 2019 to discuss the results of the reevaluation?
5. Did the District follow procedures to respond to the Parents' request for the addition of accommodations and/or modifications to the IEP during the 2018-2019 school year—including requests that the Student receive accommodations and modifications to remain in Math 3?
6. Did the District provide the Parents with progress reporting consistent with the Student's IEP during the 2018-2019 school year?

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 develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that 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 §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-0311534.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education,

² The six issues on which OSPI originally opened the complaint are organized into four conclusions: 1) IEP Development and Continuum of Special Education Services; 2) IEP Implementation; 3) April 2019 Reevaluation; and, 4) Progress Reporting. Original issues three and four are combined and answered in the conclusion three. Original issue number 5 is discussed in the second part of conclusion 1 under discussions regarding least restrictive environment.

including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with a disability's placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Temporary Changes in Placement: The IDEA does allow districts some flexibility to make temporary changes in a student's educational placement, i.e., for periods less than the one-year term of an IEP. However, if the change lasts longer than 10 school days, the IEP must be amended to reflect the change and a prior written notice regarding the amendment should be issued. If the temporary placement does not exceed 10 days, it is not a change in placement that implicates applicable procedural safeguards. *Letter to Steinke*, 25 IDELR 533 (OSEP 1996).

Physical Location is Not Placement: Although the term "educational placement" is not specifically defined, the IDEA does require that students receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). *A.W. v. Fairfax County School Board*, 372 F.3d 674, 681 (4th Cir. 2004). A student's educational placement should reflect the "mainstreaming" ideal of the LRE requirement. However, the precise physical location of where a student is educated does not need to be included in the statement of the student's placement. The LRE requirement directs that the student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. *A.W. at 681* (citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 202-03, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982)). The IDEA's concern with location focuses on the degree to which any particular assignment segregates a student with a disability from nondisabled students, rather than on the precise location of the assignment itself. *AW at 681*.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree

otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2).

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition, the student's

social and cultural background, and adaptive behavior. 34 CFR §300.306; WAC 392-172A-03040(3). The evaluation must be sufficient in scope to develop an IEP and the items and each of the items should be carefully considered. The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035. If the evaluation results in a determination that the student is eligible for special education and appropriate related services, the district must then conduct an IEP meeting to develop an appropriate IEP. A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

Difference Between Accommodations and Modifications: Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students. Modifications: (a) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide a student with meaningful and productive learning experiences based on individual needs and abilities; and (c) grading and credit are different.

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

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

1. In September 2009, the Student was evaluated by a previous district (district 1) and found eligible for special education services under the category developmental delays.
2. At the beginning of the 2011-2012 school year, the Student was enrolled in district 1 and eligible for special education services under the category of developmental delays. At some point during 2012, the Student was reevaluated by district 1 and found to be eligible for special education services under the category other health impairment, due to new diagnoses of overanxious disorder and severe sensory processing difficulties. The Student received special education services in the following areas: math calculation, math reasoning, basic reading, reading comprehension, reading fluency, writing, fine motor, work/study skills, and social/emotional skills.
3. During the 2012-2013 school year, the Student was enrolled in district 1 and continued to be eligible for special education services under the category other health impairment. During the 2012-2013 school year, the Student was evaluated by a private clinical psychologist, who diagnosed the Student with attention deficit disorder, expressive receptive language disorder, learning disability not otherwise specified, reading disorder, arithmetic disorder, and disorder of written expression.
4. During the 2013-2014 school year, the Student moved into the current District (District). She was found to continue to be eligible for special education services under the category other health impairment. The District offered a self-contained "extended resource room (ERR)" classroom, which the IEP team recommended for the Student.
5. During the 2014-2015, 2015-2016, and 2016-2017 school years, the Student was enrolled a self-contained ERR classroom in the District and continued to be eligible for special education services under the category other health impairment.

2017-2018 School Year

6. The Student was reevaluated in January 2018.
7. On March 1, 2018, the Student's individualized education program (IEP) team convened for the Student's annual review. The March 2018 IEP provided the Student with the following specially designed instruction, to be provided by a special education teacher:
 - Behavior (social): 10 minutes, 5 times weekly;
 - Reading: 100 minutes, 4 times weekly;
 - Math: 55 minutes, 4 times weekly;
 - Written expression: 55 minutes, 4 times weekly;
 - Math: 45 minutes, 1 time weekly;
 - Reading: 90 minutes, 1 time weekly;
 - Written expression: 45 minutes, 1 time weekly.

The Student's IEP indicated that she would spend 39% of her time in the general education setting.

The March 2018 IEP contained the following annual goals, to be reported quarterly:

- Behavior (social) – "By 2/28/2019, [Student] will increase her social emotional skills by demonstrating use of a checklist to help solve issues from 0% of the time to 80% usage of a checklist to solve social issues given 4 out of 5 social issues. [Student] will have an adult point of contact that she can share her checklist and converse how to help solve any social issue."
- Math – "By 2/28/19, [Student] will increase her math calculation skills from 0% correct when dividing 1 by 4 digit problems to 80% correct on division of 1 by 4 digits given 3 consistent days of scoring 80% or above on daily work."
- Reading – "By 2/28/19, [Student] will increase her reading fluency skills from 500 of the first sight words to 1000 of the first sight words given 3 consistent scores of 80% or above."

The March 2018 IEP included the following accommodations and modifications:

- Shortened assignments
- Preview test procedures
- Provide test/quiz study guide
- Simplify test wording
- Multiplication chart
- Allow breaks
- Provide individualized small group instruction
- Provide study outlines/guides
- Modify/repeat/model directions
- Preferential seating
- Prior notice of test/quizzes
- Extra time to complete assignments
- Extra time on tests/quizzes
- Allow breaks (during work, between tests, during testing, etc.)

The March 2018 IEP indicated that the Student would spend 39% of her day in the general education setting and that she would not participate with students without disabilities in the following areas: language arts, math, reading, science, written expression, art, and archery & drama.

8. On March 1, 2018, the District sent the Parents prior written notice (PWN) that it was proposing to "continue the Student's existing IEP" and that it had proposed to do a reevaluation in the area of social/emotional behavior and pre-academic achievement.
9. On March 30, 2018, data on the Student's progress was collected for the third quarter of the 2017-2018 school year in behavior (social), math, and reading annual goals and recorded in an IEP Report of Student Progress.
10. On April 2, 2018, the District sent the Parents PWN that it was proposing the Student transition from middle to high school.
11. On April 27, 2018, an IEP meeting was held for the purpose of discussing the Student's transition to high school. The Parents attended the meeting. In its response, the District stated that it discussed with the Parent that the self-contained extended resource room (ERR) classroom model the Student had been in since the 2013-2014 school year was not available to high school students. In its response, the District explained:
In [the District] there are Extended Resource Room (ERR) program classrooms in some buildings through 8th grade. That particular program doesn't extend to high school.

Students typically transition to either more of a resource room environment, a Life Skills environment, or a combination of those two (always with whatever General Education environments the team determines is appropriate). In this case, the team decided on resource room supports with general education classes also. An IEP amendment was not completed after the transition meeting to formalize the decisions made by the team.

12. The District did not provide PWN of any decisions made following the April 27, 2018 meeting.

13. In the complaint, the Parent wrote that, at the Transition meeting on April 27, 2018, we were informed that the ERR would not exist for [Student] at [high school (school 1)] for the 2018-2019 school year. Despite the absence of a program that was well suited to [Student], the District assured us that they would still provide [Student] the same level of support she was afforded in the past. Despite the District's promises, the same level of support has not been given to [Student] while at [school 1].

14. The timeline for this complaint began on May 25, 2018.

2018-2019 School Year

15. The first day of the semester for the 2018-2019 school year for the District began on August 28, 2018.³ The original March 1, 2018 IEP was in place.

³ Documentation provided by the District showed the Student was absent at least part of the day due to illness for six days during the first semester of the 2018-2019 school year.

16. During the first semester, the Student was enrolled in math 2 (resource room),⁴ English and language arts 1 (resource room)⁵, power walking/fitness, guided study (resource room for behavior/social support), studio art, and physical science 9.⁶
17. During the first semester, the Parents and District utilized a red communication binder (red book) to communicate regarding the Student's behavior. The use of a communication binder was not part of the Student's IEP but both the District and Parent had informally agreed to its use to help facilitate effective communication regarding the Student's needs.
18. On September 3, 2018, there was no school in observance of a holiday.
19. On September 17, 2018, the Parents emailed the Student's case manager regarding their concerns about the Student's grades in general education science and art. The Parents noted that the Student was behind and they wanted to make sure the teachers were "aware of [Student's] disability." The Parents also wanted to know "what classroom accommodations [were] being made to help [Student] be successful."
20. On September 18, 2018, the case manager and Parent exchanged emails regarding the Parent's concerns about the Student's accommodations and modifications.
 - **7:07 am:** The case manager emailed the Parent that, "[a]ll of [Student's] teachers have been notified that [Student] has accommodations associated with an IEP. The high school level is completely different from that of middle school. The expectations from students is much higher. [Student] is a highly capable student when she is doing the correct task. Her science teacher and I are working closely to ensure that proper accommodations are being done, but it appears that this is one of the first times she is not taking a class based on a P/F grading scale."

⁴ According to the District's response, "At the start of the 2018-2019 school year, [Student] was in a resource room math class taught by her special education teacher and case manager ["case manager"]. The content of the class was focused on Pre-Algebra. The special education teacher modified content and assignments to meet the Student's needs the best he could in this setting with this focus of skills. When the team determined [Student] needed math instruction focused on more functional skills, the Student was moved to a Life Skills math class taught by another special education teacher. [The functional skills math class] focused on basic computation, number sense, and working with money and currency. That teacher created and adapted lessons in these areas, concepts and steps prior to releasing her for independent practice. Accommodations provided specifically for mathematics instruction included: providing the student with multiplication tables, calculator, enlarged print for menu activities, shortened assignments, prior notice, extra time for tests and quizzes, breaks when needed, individualized and small group instruction, repetition and re-explaining, study guides and outlines, model and repeat, proximity and location, oral response, scheduling of academic classes in the morning, and presentations done just to teacher instead of in front of the entire class."

⁵ According to the District's response, "Resource Room ELA class is taught by a special education teacher. The Teacher utilized the core content materials, My Perspectives, along with novels for the objectives of lessons. She then modified and adapted to meet the needs of students in her class."

⁶ On October 11, 2018, a meeting was held to change the Student's science class to interior design. The physical science class had 31 students in it, which was not meeting the Student's needs due to her anxiety.

- **9:39 am:** The Parent replied that the Student came home with 9 page science assignment that she felt was inappropriate given the Student's reading and comprehension levels. She additionally noted that the Student had been engaging in severe anxiety related behaviors, including pulling out her hair.
- **10:25 am:** The case manager responded to the Parent that the Student would be given "ample time and support here at school to complete [assignment]" and that "[t]his is the primary reason for the Guided Study class." The case manager explained to the Parent that he had "talked with [science teacher]" and "she assure[d] [him] each day they are working on science." The case manager told the Parent that if the Parent was concerned with the grading scale they could entertain a pass/fail system at the end of the semester but wrote that the "suggestion does not always go over well with the GenEd [general education] teachers." He additionally told her that he had worked with other students with the Student's unique disabilities and that he would remind the Student to turn in her art assignment, which should resolve issues with her grade in that class.

21. On November 11, 22, and 23, 2018, there was no school due to holidays.
22. On November 21, 2018, the director of special education (director) met with the Parents to discuss their concerns regarding the Student's transition to high school.
23. On November 27, 2018, the Parents emailed the case manager that two math assignments the Student had completed and turned in were still marked incomplete online. Further, the Parents notified the case manager that they emptied the Student's backpack and found multiple completed assignments that had not been turned in. The Parents wrote, "We're going to have to sit down and devise a better monitoring/supervising system for assignments. The current set up isn't working. We have some ideas to help, but don't have a clear picture of who her 'adult point of contact' is and some of those IEP requirements that we've let slip until now."
24. On November 27, 2018, the case manager responded to the Parent, "I am in the process of writing 6 IEPs and 2 final papers, so sadly I have not had an extra minute to go back and adjust scores for late work. I will make sure to update hers soon. As far as an 'adult point of contact' here at school, that would be the teachers for each class. Just be sure to [copy] me on anything you send to them, so I can follow up with them."
25. Also on November 27, 2018, the Parent forwarded her email exchange to the director and expressed concerns that the case manager was not following the Student's IEP:
Her IEP states, '...AN adult point of contact...' –not multiple points of contact. Her social/organizational skills are not adequate to allow for successfully communicating and self-advocating with multiple teachers regarding her assignment and classroom responsibilities. [. . .] We would love the opportunity to meet and try to resolve some of these issues.
26. As part of the District's response, the District provided documentation from the month of December, including journal entries, notes based on the behavior checklist,⁷ to show that it

⁷ Behavior checklist was based on zones of regulation curriculum, as described in Student's March 2018 IEP.

utilized an adult point of contact to check in with the Student regarding her behavior and to deliver specially designed instruction on the following dates for ten minute increments:

- December 2, 2018
- December 4, 2018
- December 6, 2018
- December 10, 2018
- December 11, 2018
- December 12, 2018
- December 13, 2018
- December 19, 2018

27. On December 13, 2018, the District emailed the Parent that an IEP meeting had been scheduled for February 27, 2019, to develop/review the Student's IEP.

28. According to the District's response, on December 13, 2018, an IEP team meeting convened. According to meeting notes, the attendees discussed how the Student was performing in physical education (PE), food science (foods), jewelry making (jewelry), English language arts (ELA), and math. No changes were made to the Student's IEP.

29. The District was on winter break December 24, 2018 through January 4, 2019.

30. As part of the District's response, the District provided documentation that during the month of January 2019, the District provided documentation, including journal entries, and notes base on the behavior checklist, to show that it utilized an adult point of contact to check in with the Student regarding her behavior and to deliver specially designed instruction on the following dates for ten minute increments:

- January 7, 2019
- January 9, 2019
- January 10, 2019
- January 15, 2019
- January 28, 2019

31. The District included a progress report with its response, dated January 20, 2019. According to the District, the District attempted to provide this progress report to the Parent on January 20, 2019. The report contained information on the Student's progress according to the goals written in the Student's March 2018 IEP. The January 20, 2019 progress report included information on the Student's progress for the following dates/quarters: "March 30, 2018, June 12, 2018, Quarter 1, and Quarter 2."

According to the January 20, 2019 progress report, the Student had made "insufficient progress" on all of her IEP goals during quarter 1.

The progress report noted that during "Quarter 2: [Student] reports that she is to[o] 'overwhelmed' to participate in classroom activities. Science is especially difficult for her to function in and a multidisciplinary team meeting was convened on 10/10 and 12/13."

The progress report additionally noted that during quarter 3:⁸ "The anxiety of [Student's] disability is still presenting as an obstacle to overcome to get her to participate in classes. Several strategies have been implemented to aid in the transition but what works one day

⁸ It is unclear what the District is referring to by quarter 3 because the progress report does not have a column for quarter 3. It is likely the District was intending to refer to quarter 1 and quarter 2, not quarter 2 and quarter 3.

does not work the next. An additional meeting was held on 1/16 to go over her schedule for next semester.”

32. In their reply, the Parents alleged that they did not receive the January 20, 2019 progress report included in the District’s response to OSPI until June 15, 2019, after they submitted their complaint to OSPI. In the District’s response, the District asserted that the reason the Parents did not receive process reporting was that the District had unintentionally sent the progress report to a wrong address the first quarter. The Parents responded in their reply that:
- [t]he District’s statement that the reports were sent to the wrong address the first semester is ludicrous. Our address was unchanged since September 2017. Further, we repeatedly requested Progress Reporting and the District’s answer to our Citizen Complaint is the first time we have heard that they had a ‘wrong address’ for us as the reason we were not receiving Progress Reporting.
33. On January 15, 2019, the Parents emailed the director regarding their concerns with the Student’s case manager. In their email, the Parent noted the following concerns:
- “On Monday, [January 14, 2019], [case manager] sent a note identifying specific math assignments that [Student] had not completed [. . .] [Case manager] has only made 4 entries in the book out of 12 days. None of those entries included a note about her missing assignments”
 - “[Case manager] had not updated [online communication platform] since before Thanksgiving until the evening of [January 14, 2019], which altered [Student’s] grade from a B- to an F.”
34. On January 16, 2019, a meeting was held to discuss the Student’s math placement and it was agreed that the Student’s math placement would be changed to a life skills class.
35. January 18, 2019 was the last day of the first semester.
36. School was closed on January 21, 2019 for a holiday.
37. The first day of the District’s second semester began on January 21, 2019.⁹ There was no school on January 22, 2019.
38. The Student was enrolled in the following courses for the second semester of the 2018-2019 school year: ELA 1 (resource room), a second section of ELA 1¹⁰, foods and nutrition, Math 1 (resource room), jewelry-metals, and fitness & sports.

⁹ Documentation showed the Student was absent due to illness 8 days during the second semester and excused 1 day.

¹⁰ According to the District’s response, “[i]nitially, the Student’s biggest struggle in the area of Behavior/Social in class was over-stimulation. This seemed to exacerbate her anxiety. In order to meet the Student’s needs, the ELA Resource Room Teacher provided the Student [Specially Designed Instruction] SDI in this area. They were using a social checklist, discussed which zone she was in (Zones of Regulation), how to move forward, etc. However, when the special education teacher when on medical leave, the Student’s case manager provided sheets for the paraeducator to go over the Student’s social goals, discuss how she’s feeling, etc.”

39. On January 23, 2019, the Student's special education teacher for ELA went on leave for the remainder of the school year. Two substitute teachers (substitute 1 and 2) served as the Student's substitute for ELA while the Student's special education teacher was on leave.
40. According to the District's response, when the ELA special education teacher went on medical leave for the remainder of the year, the class was:
taught by a couple of long-term subs [substitute 1 and substitute 2].¹¹ The [specially designed instruction (SDI)] was designed by another special education teacher in the department. At this time, the focus of instruction was on Romeo and Juliet. They used a [modified text] to help students use context clues to understand the text [. . .] The [ELA] special education teacher also created instructional tools focused on helping students with comprehension and use of vivid verbs to write more descriptively. The teacher met with the substitutes multiple times during the week to discuss student needs, resources to use, provide material, guide the modifications and accommodations that needed to be provided, and provide assessment tools to monitor student progress. Accommodations provided specifically for reading and written expression instruction included: shortened assignments, prior notice, extra time for tests and quizzes, breaks when needed, individualized and small group instruction, repetition, re-explaining, study guides and outlines, model and repeat, proximity and location, oral response, scheduling of academic classes in the morning, and presentations done just to teacher [instead] of in front of the entire class. Because the Student does not engage at the same level of when work is written the substitute teacher has provided a lot of auditory instruction, verbal response and class discussions.
41. On February 2, 2019, the District provided the Parent with a form, requesting consent to conduct a reevaluation of the Student. The form indicated that in addition to the Student's qualifying areas of "reading, writing, math, and social behavior, concerns have been expressed about [Student's] organization skills. The team would like to explore that in this evaluation."
42. On February 5, 2019, the Parent emailed the assistant principal and the director regarding her concerns about the Student's current program, the appropriateness of her placement, and that the Student was not getting the accommodations and modifications in her IEP.
43. On February 18, 2019, school was closed for a holiday.
44. On February 19, 2019, the District began implementing a new "Google Docs" communication log with the Parent in response to the Parent's concerns that the previous form of communication was not effective.

¹¹ In the complaint, the Parent raised additional concerns regarding the credentials of the long-term special education substitutes in the Student's ELA class while the Student's assigned ELA special education teacher was on medical leave. The District provided documentation to show that the long-term substitutes used during the original teacher's medical leave possessed the requisite certifications.

45. On February 21, 2019, the IEP team convened for the Student's annual IEP meeting.¹² Attendees included the Student's Parents, case manager, general education teacher, art teacher, school administrator, teacher, general education PE teacher, school psychologist, and the special education teacher.

The Student's IEP contained the following statement:

Academically, [Student] has struggled to transition to a Resource Room model at the high school level with multiple different teachers each hour of the day. Modifications to her schedule have been made throughout the year to increase her opportunities for academic progress. For her qualifying areas she is currently enrolled in a tier 3 math class: Math 1 and a 2-hr block English Language Arts tier 3 class. Standard curriculum based assessments have placed [Student's] math level at the Kindergarten to first grade level and her reading levels at a 1st grade level. It has been difficult to measure academic levels consistently this year due to the impact that the student's anxiety plays on her daily functioning. Due to this slower transition and the student's need for additional support an extension to her graduation date would be greatly beneficial.

The February 2019 IEP provided the Student with the following specially designed instruction to be provided by a special education teacher:

- Behavior (social): 20 minutes daily, 5 days a week;
- Math: 43 minutes daily, 5 days a week;
- Reading: 33 minutes daily, 5 days a week; and
- Written expression: 43 minutes daily, 5 days a week.

The February 2019 IEP included the following accommodations and modifications in the service areas of behavior (social), math, reading, and written expression:

- Shortened assignments
- Simplify test wording (multiple choice)
- Preview test procedures
- Use large print
- Provide test/quiz study guide
- Simplify test wording
- Math tools (times chart & calculator)
- Provide individualized/small group instruction
- Allow breaks (sensory intense situation)
- Provide study outlines/guides
- Modify/repeat model directions
- Preferential seating (teacher assigned peer model)
- Extra time to complete assignments (10 days)
- Prior notice of tests/quizzes
- Extra time on tests/quizzes
- Allow breaks (during work, between tasks, during testing, etc.)
- Utilize oral responses to essay tests
- Allow use of calculator/math tools
- Academic courses in morning (ELA/math)
- Modified grading (P/F for non-qualifying areas)
- Provide daily assignment report (online form)
- Remind student not to play with or pull out hair by verbally cueing with the phrase/term "purple"
- Reduced options on multiple choice assessments (1 less option)

¹² The IEP that resulted from the February 21, 2019 meeting was implemented on February 28, 2019 and is accordingly referenced throughout this complaint as the February 28, 2019 IEP or February 2019 IEP.

The Student's IEP provided that she would spend 54% of her time in the general education setting. The implementation date on the IEP is February 28, 2019.

The February 2019 IEP contained a completed and individualized transition plan.

The Student's IEP indicated that the Student's behavior "negatively impacted [her] learning or the learning of others," but indicated that she did not currently have a behavior intervention plan (BIP). Under other factors not already addressed, the IEP noted that the Student "suffers from trichotillomania and is a participant of a sleep monitoring study."

The February 2019 IEP contained the following annual goals:

- Behavior (social) – "By 2/27/20, [Student] will continue to increase initiating and demonstrating use of her checklist from 25% of the time to 70% of the time given 4 out of 5 social issues;"
- Behavior (social) – "By 2/27/20, [Student] will increase her ability to redirect when prompted by a teacher from 30% of requests to 70% of requests in 10 out of 10 situations as measured by teacher reporting;"
- Math – "By 2/27/20, [Student] will increase her ability to sum monetary values consisting of differing bills and coins from 35% accuracy in 4 trials to 65% accuracy in 4 consecutive trials;"
- Math – "After being introduced and receiving direct instruction on how to increase a recipe by adding and multiplying fractions, [Student] will be able to independently double/triple a given recipe with 50% accuracy on 3 out of 5 trials, by 2/27/20, as measured by teacher reports;"
- Reading – "By 2/27/20, [Student] will improve her reading comprehension skills by increasing her ability to identify the central or main idea of a reading passage by using context clues, from 65% accuracy as measured by monthly, common core aligned reading comprehension assessments (at [Student's] Lexile level)¹³;"
- Written expression – "By 2/27/20 [Student] will increase her written language skills from being able to write a 3-5 sentence paragraph with a topic sentence, three detail sentences, and a conclusion sentence using a graphic organizer to writing a 3 paragraph essay with a 3 paragraph essay with a topic paragraph, 1 detailed paragraph containing 3-5 sentences, and a conclusion paragraph achieving a score of 2 (average) Houghton Mifflin Harcourt 4 point writing rubric."

The February 2019 IEP provided that progress reporting will be done at the midterm and quarterly.

¹³ The February 28, 2019 IEP noted that "On 1/7/2019, [Student] was administered the Reading Inventory ["RI"]. The RI is a reading assessment program which provides immediate, actionable data on students' reading levels and growth over time. RI helps educators differentiate instruction, make meaningful interventions, forecast growth toward grade-level state tests, and demonstrate accountability. This winter, [Student] scored a Lexile of 376, which is a 1st grade level equivalency and an improvement over last year's score of 357." The Student's IEP additionally included information on the Student's progress from 2017, 2018, and 2019 on various areas of the Lexile. The IEP stated that "Student [has] shown noticeable gains in her ability to recognize and accurately report sight words. She has also improved in her ability to identify 'nonsense words' based on her understanding of unique phonic traits of the English language. Currently they are reading Romeo and Juliet in her English class. [Student] is proud to report that she is playing multiple roles during their in class group reading sessions. This text and activity is being supplemented heavily to assist in understanding and comprehension of the material."

A Parent input form is attached to the February 28, 2019 IEP, which further explains the Student's sensory processing disorder, anxiety, and what the Parent believes the Student requires to be successful in school.

46. On February 21, 2019, the District sent the Parents PWN that the IEP team "met, reviewed and drafted the annual IEP. The team agreed to the final version of the IEP, which is attached."¹⁴ The IEP stated that the following items were reviewed: "school records, progress toward IEP goals, parent input, teacher report, observation," and that the IEP will be initiated on February 28, 2019.
47. On February 25, 2019, the Parent emailed the case manager and assistant principal after reviewing the draft IEP. The Parent noted that she felt the IEP team still needed to address the Student's organization, specifically the Student's behavior organization.
48. On February 25, 2019, in response to the Parent's email, the assistant principal emailed the director and copied the case manager to ask if the Parent's email "warrant[ed] a re-eval," adding that the Student "currently doesn't qualify in behavior organization." The director responded to the assistant principal and case manager that it "looks like in a re-eval conducted in [January] 2018 behavior [organization] was discontinued. The following notes were provided regarding [Student's] progress in behavior org:"

[Student's] teacher reported that [Student's] organizational skills have improved significantly over the past three years. [Student] has learned to use her planner independently and utilize a folder system in her binder to file papers for each of her classes. She independently logs her assignments and due dates in her planner and takes it to her teacher daily for review. [Student's] special education teacher reported that she is accurately recording assignments and due dates with greater than 90% accuracy. Based on this information, the team determined that [Student] no longer needs specially designed instruction for organizational behavior.

The director suggested doing a re-evaluation in light of the Parent's email, Parent feedback form, and in light of the Student's current difficulties with transitioning. The director additionally noted that "in the [January] 2018 re-eval, a recommendation was made that [Student] would benefit in continuing to attend 5 or 6 periods in a self-contained setting as she transitions to high school. I think this is in alignment with what the [school 1] team is seeing currently with regards to supports and the needs of [Student]."

49. Also on February 25, 2019, the case manager responded to the director and copied the assistant principal:

Everything that her previous teacher has reported on the IEP and Re-Eval has not been what we are seeing at the high school level. It is also not what the parents are expecting. We have emphasized the 'independence' aspect of high school and the parents have

¹⁴ Although not an issue raised in this complaint and accordingly is not under investigation, OSPI notes that the PWN provided to the Parent on February 21, 2019 was not in compliance with the requirements of WAC 392-172A-05010. In particular, the District's practice of stating that the "team agreed to the final version of the IEP, which is attached," is not sufficient. The District is encouraged to review WAC 392-172A-05010.

repeatedly said she is unable to perform simple tasks on her own. She is not capable of 'logging independent assignments and due dates in her planner (previously the red book)', thus why we are switching to the digital reporting process. This is also true for several other areas of the student's past IEPs and progress reports. On paper the student is being presented one way, but in the classroom environment she is completely different. I am writing all of my IEP information based off of what I am seeing here in high school and it all appears like she is going backwards. I am trying to [do] right by this student, but I feel like everything I am trying to do falls flat.

50. On February 27, 2019, the District telephoned the Parents to notify them that a meeting had been scheduled for April 22, 2019, to discuss the Student's reevaluation. The District also sent the Parents PWN that they were proposing to conduct a reevaluation of the Student. The Parents provided consent for the District to conduct the reevaluation the same day.
51. On March 8, 2019, school was closed for spring professional day.
52. During the month of March, the District documented the provision of specially designed instruction in behavior (social) on March 18 and 19, 2019 through the use of behavior checklists, journal entries and notes, which were included with the District's response.
53. From March 2019 through May 2019, the Student's teachers made entries in the Google Docs communication log regarding the Student's performance in class, what work needed to be completed at home, and recorded any other information the Parent needed to know. Entries were not made daily, as email communications stated was the original intention, but the following patterns of behavior were regularly noted by the Student's teachers:

On the following dates, the Student's teachers noted the Student putting down her head or sleeping during class:

- March 4, 2019 (food & nutrition)
- March 27, 2019 (math)
- April 8, 2019 (ELA)
- April 10, 2019 (math)
- April 19, 2019 (ELA)
- April 22, 2019 (math)
- May 14, 2019 (ELA)
- May 15, 2019 (ELA)

On the following dates, the Student was tardy for class:

- February 25, 2019 (fitness & sports)
- March 6, 2019 (fitness & sports)
- March 12, 2019 (food & nutrition)
- March 14, 2019 (fitness & sports)¹⁵
- March 29, 2019 (food & nutrition)
- May 28, 2019 (math)

On the following dates, the Student was observed engaging in work refusal or anxiety related behaviors other than putting down her head (including refusing to write or respond to questions):

- March 4, 2019 (food & nutrition)
- March 6, 2019 (ELA)
- March 21, 2019 (fitness & sports)
- March 22, 2019 (food & nutrition)
- March 27, 2019 (math)
- April 8, 2019 (ELA)

¹⁵ The entry in the Google documents noted that as of March 14, 2019, the Student had accumulated seven absences that were impacting the Student's grade.

- April 15, 2019 (math)
- April 15, 2019 (food & nutrition)
- April 16, 2019 (ELA)
- April 18, 2019 (ELA)
- April 23, 2019 (fitness & sports)
- May 1, 2019 (fitness & sports)
- May 2, 2019 (ELA)
- May 14, 2019 (math)
- May 15, 2019 (fitness & sports)
- May 17, 2019 (fitness & sports)

On the following dates, the Student's inability to pay attention and/or stay focused, or stay on task, was documented as interfering with her learning or ability to participate:

- March 4, 2019 (math)
- March 4, 2019 (food & nutrition)
- March 19, 2019 (fitness & sports)
- March 25, 2019 (fitness & sports)
- March 28, 2019 (fitness & sports)
- April 15, 2019 (fitness & sports)
- May 7, 2019 (math)
- May 13, 2019 (fitness & sports)
- May 14, 2019 (math)

54. On March 11, 2019, the Parent emailed the Student's case manager and assistant principal that she was going to be submitting a request for an assistive technology (AT) evaluation. The Parent noted that she was particularly interested in "speech-to-text" technology. In her email to the assistant principal, the Parent wrote, "With the change of semester, we're seeing a trend from the general education teachers for [Student] to be able to take written notes off of presented material. We just wanted to give you both a heads up that that we will be requesting an Assistive Technology evaluation."

55. On March 11, 2019, the assistant principal responded, "Thank you for the information. I am currently out of the office but wanted to note there have been some difficulties filling out the form since I have transitioned it to a shared drive. I will problem solve them once I return on Thursday."

56. On March 12, 2019, the Parents emailed the Student's case manager the following, regarding concerns that the Student's modifications were not being met in her general education art class:

Attached is a recent assignment that [Student] was given in her metals class. Many of the words in this paper are way above her reading and comprehension level, the font size is incredibly small, the paper is very distracting (3 ring impressions, large black borders, etc.) and the scientific concepts are way over her understanding. Is this level of work a reality for her given her learning issues? [Student] is unable to read this paper, let alone have a clue what it says without her mother or I basically doing all of the work for her. I find it hard to believe that the assignment has been simplified/shortened as per her IEP. We are curious as to your thoughts.

57. On March 13, 2019, the director emailed the assistant principal regarding the Parent's requests that the Student's assistive technology needs be considered:

[Case manager] should wrap the [school 1] itinerant team into the AT process. Depending on what the team could be considering for if a device is needed or not and which device, [case manager] should work with the [occupational therapist (OT)] and [speech language pathologist (SLP)] to discuss and make decisions [. . .].

58. Also on March 13, 2019, the case manager emailed the Student's general education art teacher (art teacher), requesting a modified assignment per the Student's IEP: "I am passing along a concern from [Student's] parents. Do you have a shortened or modified version of this assignment? Or perhaps do you have a copy with just the key information being highlighted? I just want to ensure that her accommodations are being met."
59. Later on March 13, 2019, the art teacher emailed the Parents to respond to their concerns about the assignment. She explained in her email that the Student had been absent when they went over the difficult concepts in class and noted that with support from the Parent at home, the Student would be able to navigate the material in class. The art teacher expressed that she hoped she would be able to communicate with the Parent regarding the Student's needs moving forward so that she could support the Student.
60. The evening of March 13, 2019, the Parent responded to the art teacher that she felt it was the responsibility of the case manager to regularly monitor the classwork of the Student and oversee the class expectations of the Student to make sure the Student's accommodations and modifications were being met, according to the Student's IEP. The Parent expressed that she was always willing to help the Student with her homework but had concerns that the materials the Student was receiving in class were significantly above the Student's reading abilities and that the Student's IEP was not being followed. The Parent additionally expressed concerns that the Student may be experiencing additional anxiety because she was not receiving her accommodations and modifications.
61. On March 13, 2019, the Parent reached out to the case manager and asked who was responsible for making sure the Student received her IEP accommodations and modifications, especially in her general education classes. The Parent noted that the incident in the Student's art class was not the first time the Student had not received her accommodations and modifications that year. The case manager responded that same day:
- It is on the teacher of that specific class to comply with the accommodations/modifications. If there is a concern about an assignment then you can bring it to my attention and communicate directly with that teacher, much like we are doing for this assignment. It would be impossible for me to review every assignment, every day, for all 40 students on my caseload to ensure that all accommodations are being met.
62. On March 14, 2019, the Parent reached out to the case manager and explained that their "ongoing advocacy of [Student] is not meant to be a personal attack [. . .]," but explained they felt the District was not meeting the staffing needs of students who fell between life skills and general education." The Parent explained that she agreed the Student could be successful in the general education setting with a lot of support but did not believe that level of support, especially in light of a reduction in paraeducators, was being provided to the Student.
63. On March 22, 2019, the food and nutrition teacher wrote in the Student's communication log that "[a]s discussed in her IEP meeting, I will give her a smaller packet to complete and a head start on the project before the end of the week. They will have a little over a week to work on it in class."

64. On March 27, 2019, the food and nutrition teacher wrote the following entry in the Student's communication log:
- We have a worksheet given today that needs completed in the next couple of days. I have told [Student] that she can shorten the assignment to two meals instead of the three on the assignment. They are given a list of ingredients that are left in the pantry at the end of the month and have to create two meals using just those ingredients. I told [Student] that I would like her to have a couple ideas of things she would like to make on the worksheet to show she was working in class and then she could take it home for help in putting the recipes together. The recipes need to have the exact amount of the ingredients used, and directions that are easy to follow.
65. On March 29, 2019, the Student's food and nutrition teacher wrote the following entry in the Student's communication log:
- I will be working tonight to design a shortened version of the Nutrient Packet for the project we will be starting after the break. There are two videos we will be watching to prepare for the project, if she is laying her head down and listening to the video, this one should be fine to answer the questions that way. There isn't a need to watch it, but she should be able to listen and answer the questions. Most of the kids have two worksheets per video, I will only give [Student] one and shorten the presentation she is given.
66. March 29, 2019 was the end of spring quarter.
67. The District was on spring break from April 1, 2019 through April 5, 2019.
68. On April 8, 2019, substitute 2 wrote the following entry in the Student's communication log:
- [Student] was in shut down mode today [. . .]. Today the class assignment was writing a paragraph on their Spring vacation. [Student] wrote one sentence but did complete a concept map with [teacher]. She will need to complete a rough draft for tomorrow, I will check it and then she can write her finished draft on her chrome book so it can be printed off.
69. On April 11, 2019, the math teacher wrote the following entry in the Student's communication log: "Did very well today, we worked through and corrected yesterday's problems. Also worked through using a calculator and making sure that all numbers entered were entered correctly [. . .]."
70. On April 17, 2019, the math teacher wrote the following entry in the Student's communication log: "She started on the Hubby's Pizza Menu Packet today. She finished #1 and 2...#3's answer was not done correctly as she answered with [names] and not dollar amounts."
71. Also on April 17, 2019, the fitness and sport's teacher wrote the following entry in the Student's communication log: "Excellent job today. Handled an awkward situation with another student with great poise and maturity. Very proud of her!"
72. On April 17, 2019, the Parent emailed the assistant principal that she "wanted to touch base with [her] to remind [her] that with the end of the 3rd Quarter on March 29th, [they] expected to see some sort of Quarterly assessment by now letting [them] know how [Student] is doing

in her progress towards her annual goals as outlined in her IEP." The Parent's email continued to say that she had not "yet received anything."

73. On April 18, 2019, the Student's case manager responded to the Parent's email:

I wanted to address your concerns about the testing updates. From our discussion at the meeting, the school Psych is currently administering a full re-evaluation to determine [Student's] present levels of academic performance and look at requalifying her for behavior (organization) since she was exited from this service area at the end of her 8th grade year. Her most recent Math Inventory [MI] assessment was conducted on February 25 and she will be taking another MI towards the end of this month. The date for the Reading Inventory score was on 1/7/2019. To address your second concern regarding the 510, the chart shows the first row of data is a reading inventory score [. .]."

74. According to the District's response, on April 22, 2019, the District completed a reevaluation of the Student. The District included an evaluation with its response, dated April 22, 2019. The Student was evaluated in the following areas: academic achievement, adaptive, health information, classroom performance, behavior/organization, behavior/social, and intellectual/cognitive development. The evaluation recommended the Student receive specially designed instruction in the following areas: behavior (organization), behavior (social), math, reading, and written expression.

The evaluation was signed on April 22, 2019 by the art teacher, district administrator, special education teacher, general education teacher, Parents, and school psychologist. The evaluation indicated the Parent was provided a copy on April 29, 2019 by the case manager.

75. According to the District's response, "Team members signed the re-evaluation report at the conclusion of this meeting, but parents were not given a copy at that time because the copies still needed to be made. The Parents' copy which included documentation of determination of eligibility and Prior Written Notice was mailed to the parents by 4/29/19."

76. In their reply, the Parents wrote that it was their understanding that the reason the evaluation discussed at the April 22, 2019 meeting was not provided to them at the meeting was because the evaluation had not yet been completed. The Parents stated that additional testing for the evaluation was conducted on April 25, 2019 and April 29, 2019, which was after the meeting ended, and that accordingly, they believed the evaluation was not completed within the 35 day timeline.

77. In their reply, the Parents further alleged that the evaluation report provided to OSPI with the District's response was different from the copy they received on April 22, 2019, and that the copy provided to OSPI had included information from the additional testing that had been conducted after April 22, 2019.¹⁶ The Parents noted the following differences in language included under "Form 4.51 "other Information needed to Develop the IEP."

¹⁶ The evaluation report the Parents alleged they received, which was submitted to OSPI with the Parent's reply, is attached as Appendix A. The evaluation report the District submitted with its response is attached as Appendix B.

(Version provided to OSPI with District's Response)¹⁷

"[Student] continues to need goals written in social behavior, writing, reading, and math."

"The team now recommends that [Student] will benefit from specially designed instruction in organizational behavior."

"Team acknowledges [Student's] adaptive deficits but note that these deficits can be served under the social behavior domain."

"The IEP team recommends continued placement in such manner as to provide significant support in a special education setting. The amount of inclusion time will be determined by the IEP team based on student's readiness to access the general education setting for her education."

(Version Parent's received on April 29, 2019, and included with Parent's reply)¹⁸

"[Student] continues to need goals written in social behavior, writing, reading and math."

"The team now recommends that [Student] will benefit from specially designed instruction in organizational behavior."

The Parents further stated that the results of the additional testing were not discussed at the April 22, 2019 IEP meeting and alleged that the District had falsified the copy of the April 22, 2019 evaluation it provided to OSPI.

78. On April 22, 2019, the District sent the Parents PWN that it was proposing to add additional testing without reevaluation to the Student's current reevaluation in the area of adaptive skills. The PWN stated that "[a]t the team meeting on 4/22/19, it was discussed that [Student's] adaptive skills may be impacted, and the team wanted further information." The PWN indicated the proposed action would be implemented on May 10, 2019.
79. On April 29, 2019, the District sent the Parents PWN that it was "proposing to continue [Student's] eligibility under the category of [other health impairment] OHI receiving services in social behavior, written expression, reading, and math. The team is also recommending [adding] services in organizational behavior to support her academic setting."
80. On May 7, 2019, the Student's IEP was amended without reconvening the IEP team for the purpose of revising or modifying the IEP regarding the "frequency, location, and/or duration of special education services provided," and the "present levels of educational achievement and functional performance." The description of the proposed revision stated:
[Student's] significantly delayed academic skills, coupled with social/emotional/organizational functioning, negatively impacts the acquisition of new knowledge and school progress/performance. [Student's] co-occurring health disabilities continue to impact her educational progress. [Student] continues to demonstrate skills that are not commensurate to that of her same age peers. She continues to need support and scaffolding when she is learning new concepts in reading, writing and math. Her progress

¹⁷ See Appendix B.

¹⁸ See Appendix A.

continues to be slow and the gap continues to widen between [Student's] skill level and grade level expectations. She requires specially designed instruction in academics (reading, writing and math) along with organizational and social behavior to make gains in the classroom setting.

The amended IEP included a service matrix, which provided the Student with the following specially designed instruction, to be provided by a special education teacher:

- Behavior (organization): 20 minutes, 5 days per week;
- Behavior (social): 20 minutes, 5 days per week;
- Math: 53 minutes, 5 days per week;
- Reading: 33 minutes, 5 days per week; and
- Written expression: 33 minutes, 5 days per week.

The amended IEP indicated that the Student would spend 54% of her time in the general education setting and that she would participate in the following activities with students without disabilities: language arts, math, reading, and written expression.

The amended IEP added the following goal: "By 2/27/20, [Student] will increase her ability to fill out a daily task log (planner) in her Guided Study class from instruction (0%) to 70% with teacher assistance/prompting."

Under "present level of performance related to this goal," the District wrote, "[Student] is coming from ERR environment, where class sizes are very small and students work primarily with only one teacher throughout the day. Her transition to high school has been filled with new challenges. [Student] is learning to manage the changes in environment (class sizes/multiple locations) well, she is doing much better transitioning to new teachers (multiple 5-6 teachers each day vs. 1-2 each day), and her homework/task completion is showing improvements."¹⁹

The IEP amendment was signed by the District administrator, substitute 1, case manager, and the assistant principal.²⁰

81. On May 7, 2019, the District sent the Parents PWN that it was proposing to change the Student's IEP. Under the description of the proposed or refused action, the PWN stated that "a recent evaluation has determined that your child is eligible for additional special education support." The PWN indicated that a "review of school records, teacher report, parent input, and observation" were used as the basis for the planned action. The PWN stated the planned action would be initiated on May 10, 2019.

¹⁹ The IEP amendment contains the following statement: "Upon teacher and parent request, [Student] was reevaluated to determine if she needed additional support for behavior (organization). Upon completion of the reevaluation it was concluded that these additional services are required to aid in [Student's] academic growth. Here is a summary of the psych's report..." The IEP amendment continued to include information from the psychologist in the following areas: adaptive behavior and teacher observation.

²⁰ The Parent was provided notice of the amendment via email, but never provided written consent for the amendment.

82. Also on May 7, 2019, the case manager emailed the Parent to ask if the Parent had been able to tour the structured program at another school in the District (school 2). The case manager added the following language regarding the proposed amendment:

I wanted to attach a copy of the amendment pages to [Student's] IEP. Since, we decided at the reevaluation meeting to requalify her for Behavior (organization) I have to modify and add some pages to her IEP. The attached document is a copy of the proposed additions as per our discussions at the meeting. Since we are not modifying her schedule this school year, I had to adjust her minutes page. At the beginning of next year there will need to be another amendment done to reflect her enrollment in the Guided Study class. If you are satisfied with the information enclosed, you can simply print and sign the front page in the 'Parent/Guardian' line and send it to school with [Student] Let me know if you have any comments or concerns.

83. On May 7, 2019, the Parents responded to the case manager's email: "We are scheduled to tour the [structured program at school 2] on Thursday. We'll look over the attached info and get back to you. Thanks!"

84. On May 9, 2019, the Parents visited school 2. Following their visit, the Parents emailed a special education teacher at school 2, thanking her for answering their questions. They wrote that they were not sure which direction they were going to go yet but said the teacher at school 2 "made a transfer very tempting!"

85. The District included an IEP report of the Student's progress, dated May 29, 2019, with its response. The progress report documented the Student's progress on the annual IEP goals as written in the February 28, 2019 IEP. According to the progress report, the Student's progress had not yet been initiated during quarter 3²¹ and adequate progress was being made on all but one IEP goal by quarter 4, as measured by a curriculum based assessment.

The progress report included the following progress notes for quarter 4:

Reading:

Reading Assessment 1 = 55% (RI comprehension)

Assessment 2 = 92% (Romeo & Juliet comprehension)

Assessment 3 = 86% (Sherman Alexie)

Average = 77%

[Student] is performing well on preferred reading tasks. But, when she is presented with a non-preferred tasks, her scores diminish greatly.

Written Expression: Has progressed from 1-3 sentences, to 8 sentences in most recent sample. Her ability to express information relevant to the topic she is interested in has improved greatly. Her writing on [Romeo and Juliet] was well constructed and uses examples from the text to support her opinions.

²¹ The progress report included the following note for quarter 3: "IEP meeting was recently held it was determined at this meeting that [Student] requires a reevaluation to properly determine her present levels of academic performance and to determine if she requires services in the area of behavior (organization) in accordance with IEP team members' requests."

Math: Scored 52% on most recent assessment working with buying food items off a menu.

Behavior (social): Last 10 checklists: 7 green, 1 yellow, 1 red. ELA teacher reports that she is redirecting more quickly when prompted to do so.

Behavior (organizational): not yet initiated, however she is still utilizing the 'mailbox method' of submitting assignments with [teacher].

86. On May 27, 2019, school was closed for Memorial Day.

87. On May 30, 2019, the case manager emailed the Parents and proposed the following plan to address the Student's absences in fitness and sports in light of her IEP, illnesses, and medical appointments:

Here is the plan [. . .] to help [Student] reach her goal of passing [fitness and sports]. Currently [Student] has 3 absences due to appointments and those will now be waived, bringing the total days missed from 14 to 11. The next step would be for her to attend the remaining school make-up days after school: 5/31, 6/3, 6/7, 6/10 to bring that number from 11 to 7. The last thing is for [Student] to complete mile 'run' today in class or next Tuesday [. . .].

88. On May 30, 2019, the Parents emailed the case manager that they agreed to his plan for how the Student would make up absences in fitness and sports in light of her IEP accommodations.

89. On May 31, 2019, the math teacher wrote the following entry in the Student's Google communication log:

Got [Student's] menu assignment graded today, she scored a 13/25. [M]any of the mistakes were simple fixes. Adding when she should have subtracted. Not finishing a problem completely or address vs. WEB address. [. . .] Her anxiety seems to be ramping up as the school year comes to an end[.] I see this with many of our kids due to the change in their routine.

90. According to the Parent's reply, the Parents received a copy of the May 29, 2019 progress report by U.S. mail on June 15, 2019. The Student's January 20, 2019 progress report was included with the May 29, 2019 progress report.

CONCLUSIONS²²

Issue One – IEP Development and Continuum of Special Education Services: The Parent alleged that the District failed to follow procedures to develop the Student's individualized education program (IEP) during the 2018-2019 school year, including offering a continuum of special education supports and services based on the Student's needs in the least restrictive environment.

²² OSPI originally opened six issues to investigate based on the Parent's complaint. See fn. 2. Upon investigation into the issues, it became clear that the issues were more appropriately divided into four conclusions. Issues originally numbered three and four are combined into conclusion three, "Reevaluation." Original issue number five is discussed under conclusion one as part of the discussion regarding the Student's least restrictive environment.

Special education placement is based on a student's unique, disability-related needs, not determined based on a student's schedule or the availability of a particular program. An IEP must accurately reflect the IEP team's placement decision, and the IEP team must consider a full continuum of placement options when making this decision. Further, while the IDEA allows districts some flexibility to make temporary changes in a student's educational placement, if the change lasts longer than 10 school days, the IEP must be amended to reflect the change and a prior written notice regarding the amendment should be issued. Districts may not make a significant change in a student eligible for special education's placement without a reevaluation.

Here, an IEP a meeting was held on March 1, 2018, to revise and develop the Student's IEP following a reevaluation of the Student. The resulting IEP indicated the Student's LRE required she would spend 39% of her time in the general education setting. Documentation showed the Student's LRE was determined by the Student's participation in an extended resource room program which resulted in the Student spending 39% of her time in the general education setting.

Following the meeting in March, the District completed an additional reevaluation of the Student in social emotional behavior and pre-academic achievement and then met again in April 2018, to determine the Student's placement. At the April 2018 meeting, the Parent was told the Student's previous extended resource room (ERR) program was not available at the high school the Student was supposed to attend. Instead, the IEP team recommended a resource room setting. The Parent explained in her complaint and reply that the resource room setting offered by the District was only program at the Student's high school that offered services for students who needed support that fell somewhere a between a full time self-contained special education classroom and full time general education placement. Following the April 2018 IEP meeting, the District sent the Parent PWN, which stated only that the Student would be "transitioning to high school."

Documentation, including the Student's 2018-2019 class schedule (which indicated her time in the general education setting), showed the Student's new program in the resource room setting at the high school increased the Student's general education time to between 44% and 54% of the school day (the fluctuation was due to changes in the Student's schedule during the first semester). The change in percentage of time the Student spent in the general education setting accordingly increased from 39% to up to 54%. This constituted a significant change in placement as well as moved the Student from an LRE setting of <40% in the general setting to between 40-79%. However, there is no documentation that the Student's IEP team discussed increase in general education time, discussed a continuum of placement options based on the Student's needs, discussed whether further reevaluation was necessary for the purpose of changing the Student's placement (although the Student was reevaluated prior to the Student's placement changing), or amended the Student's IEP to reflect the changed placement. Here, the District's placement of the Student in a program with a schedule where she was to receive instruction for an increasingly greater percentage of time in the general education setting than provided for on her IEP, was contrary to the required procedures for determining placement. The District further violated procedures by not providing the Parent with prior written notice of the change in placement and by not amending the Student's IEP.

The District is in violation and will be required to hold an IEP meeting for the Student to review her placement, with consideration of a full continuum of options within the District. The IEP team's placement discussions should consider the Student's most recent evaluation, review of and/or development of IEP goals, and discuss her progress toward the grade level curriculum. The IEP team will then determine the appropriate amount of services the Student should receive in each eligible service area, and also determine the Student's appropriate placement against a full continuum of options within the District. If the IEP team believes a significant change in placement is needed, then the District will discuss whether further assessment or an expedited reevaluation is necessary to determine the Student's needs in light of the evaluations recently conducted. The District will also develop a class schedule for the Student to ensure the Student is scheduled to receive her IEP services in the appropriate setting during the 2019-2020 school year. In addition, the District will be required to complete District level training on change in placement procedures.

Supplementary Aids and Services to Support LRE:

The Parent alleged that the District failed to provide the Student with necessary supports and services—including a behavior plan and assistive technology as necessary to remain in her LRE. Although the term "educational placement" is not specifically defined in the IDEA, the IDEA does require that students receive a free appropriate public education (FAPE) in the Student's LRE. A more restrictive environment should not be recommended only because supports and services are denied in a general education classroom. At the end of the 2018-2019 school year, the Parents and District discussed the Student returning to a placement where she would spend an increased amount of time in a self-contained classroom. Although the Parents expressed that they may be in agreement with a change to a more restrictive placement, they also expressed that they felt they had no other option because they felt the District had not provided the Student with the supports and services necessary to be successful in her LRE.

Based on the documentation, the District has never considered whether the Student required a functional behavioral assessment (FBA) or behavior plan, despite indication in the Student's IEP that she has behaviors related to her disability that interfere with her learning. There is no record of the Parent formally requesting an FBA prior to submission of this complaint. However, on several occasions throughout the 2018-2019 school year, the Parent notified the District in emails and during IEP meetings that the Student needed additional behavior support and that her requests were ignored. The Parent also made requests that the District consider the Student's assistive technology (AT) needs—specifically the Student's need for speech-to-text technology. While the District started the process to respond to the Parent's request for AT, the District did not follow through and it is unclear where the District is in the process of making additional AT available to the Student. The District asserted in its response that it implemented new strategies to improve communication with the Parent regarding the Student's behaviors, including an online communication log. However, while Parent communication is encouraged, it is not a substitute for providing the Student with the behavior supports and assistive technology necessary to ensure the Student is able to access her least restrictive environment.

While the IEP team may ultimately decide that a more restrictive placement is appropriate for the Student, behavior supports, such as an FBA and/or behavior plan, as well as the Student's AT

needs, should also be part of that conversation to ensure the Student is accessing services in her LRE. The IEP team should also not make placement decisions for the Student simply because the District was unwilling to provide necessary supports to the Student, including an FBA and AT, in the general education setting.

At the above required IEP meeting, the District will additionally be required to discuss the following issues: 1) whether the Student requires an FBA; 2) whether the Student requires a behavior plan while waiting on the completion of an FBA; and, 3) the AT needs of the Student as necessary to ensure the Student is able to access her LRE.

Issue Two – IEP Implementation: The Parents alleged that the District failed to implement the Student’s IEP during the 2018-2019 school year. At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. It must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. Each school district must ensure that 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. Upon investigation, the two issues related to IEP implementation at issue in this complaint are whether the District provided the Student with the specially designed instruction, as well as the accommodations and modifications in her IEP. Each are discussed below.

Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students.

From the commencement of the 2018-2019 school year through February 28, 2019, the Student’s March 2018 IEP was in place. According to the March 2018 IEP, the Student was supposed to receive the following specially designed instruction, provided by a special education teacher in a special education setting:

- Behavior, 50 minutes weekly;
- Reading, 490 minutes weekly;
- Math, 265 minutes weekly; and
- Written expression, 265 minutes weekly.

It was difficult to determine how much specially designed instruction the Student received during the first semester of the 2018-2019 school year, because the March 2018 IEP that was in place from August 2018 until February 28, 2019 did not accurately reflect the Student’s placement, and the District did not provide documentation to show that the Student was receiving her specially designed instruction while in the special education setting according to her IEP. Instead, the District equated the amount of time the Student spent in the special education setting and type of course the Student was enrolled in, as the amount and type of specially designed instruction the Student received. In its response, the District often confused the curriculum being provided to all students in the Student’s special education classes, and the accommodations the Student

received, with specially designed instruction. While the District asserted in its response that it generally attempted to “modify the curriculum based on the Student’s needs,” to the best of its ability and that at times the Student received “one on one instruction,” with the exception of the Student’s English language arts (ELA) class during the Student’s second semester, and journal entries showing that an adult checked in with the Student on behavior issues, the District did not provide sufficient documentation to show it implemented the Student’s specially designed instruction according to the Student’s IEP during the first semester.

The District is in violation and will be required to complete training on specially designed instruction, including what specially designed instruction is, how it differs from accommodations and modifications, and best practices for the documentation of the provision of specially designed instruction. The District will also be required to provide the Student compensatory educational services.

First semester (August 28, 2018 – January 18, 2019)²³

The first semester began on August 28, 2018 and ran until January 18, 2019. There were 88 days in the first semester. The Student was absent due to illness for eight of those days and accordingly, should have received specially designed instruction during 80 school days (about 12 weeks) during the first semester.

The Student’s March 2018 IEP provided the Student with 50 minutes of weekly specially designed instruction in behavior (social). During the first semester, the Student should have received 600 minutes of specially designed instruction in behavior. During the first semester, the District provided examples of entries documenting work with the Student on behavior needs on the following dates: December 2, 4, 6, 10, 11, 12, 13, and 19, 2018, and January 7, 9, 10, and 15, 2019. The notes indicated the Student received instruction for 10 minutes each time. In its response, the District stated the Student received most of her instruction in guided study and some of her instruction in behavior in English language arts (ELA). The Student’s schedule showed the Student was in guided study for 440 minutes weekly or a total of 5,280 minutes during the first semester. Therefore, the Student likely received her minutes of specially designed instruction in behavior, and possibly received extra specially designed instruction in this area. No compensatory sessions in behavior are ordered, but this is another indication that the Student’s specially designed

²³ During the first semester of the 2018-2019 school year, with the exception of behavior, OSPI was unable to determine how much progress the Student made as a result of any specially designed instruction provided to the Student. This was because the progress report provided was based on the March 2018 IEP goals, which did not align with the instruction the Student was receiving at the high school. The progress report accordingly recorded the Student as having made “insufficient progress” on all areas of her IEP when she may have had made some progress on the material she was working on. Because the District was not collecting meaningful progress data or documenting the specially designed instruction it was providing during the first semester, OSPI was only able to estimate the amount of specially designed instruction provided and owed to the Student as necessary for the Student to receive a FAPE, by determining how many minutes of instruction the Student received in the proper setting against the amount the District was obligated to provide her according to her IEP.

instruction was provided according to the building's schedule rather than the Student's IEP or needs.

The March 2018 IEP provided the Student with 755 minutes weekly (9,060 per semester) in reading and written expression (490 minutes weekly in reading and 265 minutes weekly in written expression). Based on the Student's class schedule and the length of class periods during the first semester, the Student could have only received 265 minutes of instruction per week in reading and written expression combined, or 3,180 minutes (53 hours). Therefore, the Student was at minimum not provided with 5,880 minutes (98 hours) of instruction during the first semester due to the constraints caused by her schedule. The instruction the Student did receive while in her ELA class first semester was received in the special education setting and was provided by a special education teacher. However, during the first semester, the District did not provide documentation that the instruction was specially designed instruction according to the Student's IEP. The District did provide a description of the how the Student's instruction was specially designed for the Student according to the Student's IEP once the Student's assigned teacher went on medical leave the second semester and the Student was assigned a substitute teacher. Further, the Student's substitute teacher the second semester documented his provision of specially designed instruction in the narrative comments he sent to the Parent using the Student's Google communication log. However, this was not applicable the first semester. Accordingly, while OSPI believes it is likely the Student was receiving some specially designed instruction while in her ELA class first semester based on what was documented the second semester, it is unclear what specially designed instruction the Student received or how much and accordingly, cannot substantiate whether the Student received her specially designed instruction according to her IEP the first semester.

The documentation shows the Student's schedule did not contain enough minutes in ELA for the Student's reading and written expression minutes to be implemented. The District will be required to provide approximately 1/3 the amount of missed instruction or 32 hours (21 hours provided in reading and 11 provided in written expression).

The March 2018 IEP provided the Student with 275 minutes weekly in math (3,300 per semester). During the first semester, the Student's schedule provided her with 265 minutes in math instruction per week, or 3,180 minutes for the first semester. Therefore, the Student was not provided 120 minutes (2 hours) of math instruction during the first semester. The Student's math instruction was provided in a special education setting by a special education teacher. However, during the first semester, the District did not provide documentation that the instruction was being specially designed for the Student's needs. The Student also made insufficient progress in math according to the progress report the District stated it sent out at the end of the first semester. Accordingly, the District will be required to provide 1 hour of compensatory instruction in math.

Second Semester-Part 1: (January 18, 2019 – February 28, 2019)

From January 18, 2019 through February 28, 2019, the Student's March 2018 IEP was in place and the Student was on her second semester schedule. She attended 27 days of school during this time. No absences were recorded.

From January 18, 2019 through February 28, 2019, the Student's March 2018 IEP provided the Student with 270 minutes of specially designed instruction in behavior. According to the District's response, the Student received behavior specially designed instruction during ELA. The Student had ELA for 530 minutes a week. The District provided examples of notes kept on the implementation of specially designed instruction in behavior during second semester. While it is unclear how much specially designed instruction the Student received, it appears the Student received behavior instruction during the 530 minutes of ELA.

From January 18, 2019 through February 28, 2019, the Student's March 2018 IEP provided her with 4,077 minutes (about 68 hours) (151 minutes daily x 27 days) of reading and written expression. From January through February 28, 2019, the Student's second semester schedule allowed her 2,862 minutes (about 48 hours) of ELA (106 minutes daily x 27 days). The District accordingly denied the Student about 20 hours of instruction in reading and written expression during this time period. The District is in violation and will be required to provide 6.5 hours of compensatory instruction in the area of reading and written expression. The hours must be provided individually by a special education teacher.

From January 18, 2019 through February 28, 2019, the Student's March 2018 IEP provided the Student with 1,431 minutes (about 24 hours) (53 minutes daily x 27 days) in math instruction. The Student's schedule allowed her 2,430 minutes (about 40.5 hours) (90 minutes daily x 27 days) of math instruction. The District met its obligation to provide the Student instruction in math.

Second Semester-Part 2: (February 28, 2019 – June 11, 2019)

From February 2018 through the end of the 2018-2019 school year (June 11, 2019), the Student's February 28, 2019 IEP was in place. The February 28, 2019 IEP provided the Student with the following specially designed instruction:

- Behavior (organizational), 100 minutes (beginning May 7, 2019), weekly;
- Behavior (social), 100 minutes, weekly;
- Math, 265 minutes, weekly;
- Reading, 165 minutes, weekly; and,
- Written expression, 165 minutes, weekly.

From February 28, 2019 through June 11, 2019, the Student was on her second semester schedule. There were 66 days of school. The Student missed nine days of school. Accordingly, the Student attended about 11.5 weeks of school.

On February 21, 2019, the Student's IEP team met and amended the Student's IEP so that the amount of specially designed instruction on the Student's IEP aligned with the Student's high school schedule.²⁴ The decision to amend the IEP was made despite concerns raised by the Parent and shared by the District in emails that the Student was not making sufficient progress. In

²⁴ Documentation showed that there was a practice at the high school of changing the minutes of specially designed instruction in the IEP by amendment to reflect the Student's schedule. Documentation showed the practice was reinforced by case managers. This is a violation. Training will accordingly be required to occur at the building level to address this practice to prevent it from occurring in the future.

particular, it significantly reduced the number of minutes of specially designed instruction in reading and written expression. The District is in violation by making determinations about the Student's specially designed instruction based on the high school schedule instead of on the Student's needs. The District will be required to have an IEP meeting prior to the commencement of the 2019-2020 school year to discuss the Student's needs and determine how much specially designed instruction the Student requires.

From February 28, 2019 through May 7, 2019, the Student's IEP provided the Student with 100 minutes weekly of specially designed instruction in behavior. According to the District's response, the Student was receiving her specially designed instruction during ELA. The District provided examples of behavior checklists completed during this time, as indicated by her IEP. The Student had ELA for 530 minutes a week. The Student was receiving 330 minutes weekly of specially designed instruction in reading and written expression, which left 200 minutes for behavior. On May 7, 2019, the IEP team added an additional 100 minutes weekly of behavior specially designed instruction. The Student's schedule was able to accommodate the amount of specially designed instruction indicated in the Student's IEP. No compensatory instruction is ordered.

From February 28, 2019 through June 11, 2019, the Student's IEP provided her with 330 minutes of specially designed instruction in reading and written expression per week. The Student's schedule provided that she spent 530 minutes per week in ELA. No additional specially designed instruction as compensatory instruction is ordered.

From February 28, 2019 through June 11, 2019, the Student's IEP provided the Student with 265 minutes weekly in Math. The Student's schedule provided that she would spend 1,620 minutes per week in math. No additional specially designed instruction is ordered.

Accommodations and modifications:²⁵ The Parent alleged that the District failed to implement the Student's accommodations and modifications as provided in her IEP. An IEP must include a statement of the program modifications and accommodations that will be provided to enable the student to advance appropriately toward attaining her annual IEP goals and to be educated and to participate with his or her non-disabled peers.

The documentation showed the implementation of the Student's accommodations and modifications when she was in the general education setting was inconsistent at best. The Student's reading and writing abilities were several grade levels below her peers and she required significant modifications to her assignments and setting accommodations that her general education teachers were often unable to provide without significant support from her special

²⁵ In the original complaint, the Parent additionally alleged that the District failed to provide additional requested accommodations, including those that would enable the Student to remain in Math 3. Upon further investigation, it was revealed that the Parent was referring to the implementation of existing accommodations (which are addressed in this section), and her requests for the addition of a functional behavioral assessment, behavior plan and/or assistive technology, which are more appropriately discussed in the section discussing whether the Student received the appropriate supports and services to remain in her least restrictive environment.

education teacher and case manager. Email communications between the Parent and case manager documented the case manager frequently telling the Parent that he was “too busy,” his case load was too large, and that it would be impossible for him to be responsible for modifying or overseeing all of the accommodations the Student required in her general education classes, while also doing the same for his other students with IEPs. Regardless of the model a district chooses to support the needs of general education teachers who have students in their classrooms with IEPs, the District has a responsibility to ensure its students with IEPs are able to access their LREs as indicated in their IEPs, and that their IEPs are otherwise being implemented.

The District is in violation and will be required to review its policy for how it implements IEP accommodations and modifications in the general education setting. As part of its review, it will be required to consider whether the general education staff at the District high school require training on how to implement accommodations and modification for students with disabilities.

The District will additionally be required to hold a staffing meeting at the commencement of the 2019-2020 school year with this specific Student’s special education and general education teachers to discuss the Student’s IEP, including all accommodations and modifications required on the IEP. At that meeting, all of the Student’s general education teachers will be provided a copy of the Student’s IEP. The District will provide documentation to OSPI that all of the Student’s teachers for the 2019-2020 school year attended the meeting and received a copy of the Student’s IEP.

Issue Three: April 2019 Reevaluation: The Parent alleged that the District failed to follow procedures for conducting the Student’s reevaluation in April 2019 and for the meeting that followed to review the results of the reevaluation. Districts must conduct a reevaluation of eligible students whenever it determines the student’s needs warrant a reevaluation, or if the parent or teacher requests one. When a district determines that a student should be reevaluated, it must provide prior written notice (PWN) to the student’s parents, obtain the requisite consent, and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. If the evaluation group holds a meeting to review the evaluation, parents must be provided with notice and afforded an opportunity to participate. The school district must provide a copy of the evaluation report to the parent at no cost to the parent.

The need for a reevaluation arose when the Parents expressed concern over the Student’s previous removal of services in behavior (organization) in light of the Student’s current behavior in school—a concern shared by the District. The Parent provided consent on February 27, 2019. The evaluation was completed in the areas specified on the original assessment plan by April 22, 2019, which was within the required 35 day timeline. An IEP meeting convened on April 22, 2019, to review the results of the evaluation. The Parent was provided notice of the meeting and attended. The Parent signed the evaluation.

In its response, the District stated that “[t]he school psychologist completed testing in the areas of cognitive, academic, organizational behavior, social behavior, and adaptive” by the reevaluation meeting date of April 22, 2019. This statement is not entirely accurate. Documentation shows the

adaptive behavior test was not actually added to the evaluation until after the April 22, 2019 IEP meeting, and that the District and Parents agreed at the April 22 meeting to extend the 35-day evaluation timeline to include an additional adaptive behavior test. Agreement to extend the timeline to include the additional testing is supported by the meeting notes and PWN provided by the District to the Parents after the April 22, 2019 IEP meeting. The adaptive behavior test was completed on April 29, 2019. While this was after the 35-day timeline, because both parties agreed on April 22, 2019 to add the additional testing, there is no violation for extending the timeline.

However, the Parents noted in their reply that the evaluation report they received from the District on April 29, 2019 was different from the report the District submitted to OSPI as part of this complaint investigation. Both the copy the Parent and District submitted to OSPI are dated April 22, 2019. Neither were labeled as a draft and both contain the same signature page, which includes the Parent's signature dated April 22, 2019. The copy provided by the District appears to have been updated by the evaluation team after the adaptive behavior testing was completed, without the Parent being present, and without the District having notified or having provided a copy to the Parent. This is in violation of procedures, which require the Parent to be notified and afforded an opportunity to participate if the evaluation group meets. While an evaluation team may meet to consider existing data, the results of the adaptive behavior test were new and should not have been reviewed without the Parent. It is especially problematic that the additional language added to the updated evaluation report includes recommendations regarding the lack of additional services for adaptive behavior ("The team acknowledges [Student's] adaptive deficits but note that these deficits can be served under the social behavior domain") and recommendations for placement ("The IEP team recommends continued placement as to provide significant supports in a special education setting..."). It is also problematic that the signature page contained both the Parent and Student's signature from a previous meeting, when neither participated in discussions about adaptive behavior services or placement. Although the District later added information to the Student's IEP based on the evaluation utilizing an amendment, the District did not follow proper procedures to review the results of the adaptive behavior evaluation prior to amending the IEP. The evaluation report was therefore misleading and appears to indicate that both the Parent and Student participated in the review of the full evaluation, including its recommendations for placement and revision of the new adaptive behavior data, when in fact, neither participated or had an opportunity to review the new data and full report.

The District is in violation and will be required to discuss the results of the Student's adaptive behavior evaluation with the Parent (and Student, if Student wishes to attend) at the required IEP meeting. Further, all members of the Student's evaluation team will be required to attend the Student's IEP meeting for the purpose of reviewing the adaptive behavior evaluation.

Issue Four – Progress Reporting: The Parents alleged that the District failed to provide progress reports during the 2018-2019 school year. IEPs must include a statement, indicating how a student's progress toward the annual goals will be measured and when the district will provide those periodic reports to the parents. The purpose of progress reporting is to ensure that, through whatever method the district chooses, 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.

The Student's March 2018 IEP, which was in place from August 2018 through February 28, 2019, indicated that the Parents were to receive quarterly progress reports. However, the documentation showed the Parents did not receive any progress reports from the District regarding the Student's progress until they filed this complaint. The District stated in its response that they had attempted to provide the Parents with progress reporting the first semester but that the progress report dated January 20, 2019 (which they provided to OSPI in their response) was accidentally sent to the wrong address. Even if the District sent a progress report to the Parents on January 20, 2019 that was lost in the mail, the District is still in violation because the IEP indicated the District was to provide quarterly progress reports, which it did not do. Further, the progress report dated January 20, 2019 did not contain any additional narrative or quantitative data recorded after June 12, 2018, which was collected and recorded by the Student's previous school. The District accordingly did not conduct any progress reporting as indicated in the Student's IEP from August 2018 through February 2019 and is in violation.

The Student's February 2019 IEP also provided for quarterly progress reports to the Parents. The District provided a progress report to the Parents on May 29, 2019, which reports on progress during quarter 3 and quarter 4. The Parents reported that they did not receive any progress reporting until they received the May 29, 2019 progress report. Even though the District sent out a progress report on May 29, 2019, according to the Student's IEP, the District should have provided a report at the end of quarter 3 and again at the end of quarter 4, rather than one report at the end of quarter 4. During the second semester, the District began implementing an online "Google communication log" with the Parents. Communication between the Parents and District improved significantly after the implementation of the online communication log, especially between the Parent and the Student's general education teachers. The content of the progress report sent to the Parents on May 29, 2019 provided narrative and quantitative information consistent with the communication the teachers had been having with the Parent throughout the second semester via the Google communication log. The documentation provided indicates that the District has been communicating regularly with the Parents regarding the Student's progress. Accordingly, while the documentation shows the District only began providing the Parents with IEP goal progress reporting after the Parent filed a complaint with OSPI, and although the District should have been providing IEP progress reporting quarterly, the Parents began receiving regular communications regarding the Student's progress during the second semester. This is an improvement because it has made it possible for the Parents to stay informed of the Student's overall progress, including progress towards her IEP goals; however, the District should be providing quarterly progress reports in addition to the Google document consistent with the terms of the Student's IEP.

Overall, throughout the 2018-2019 school year, the District has not provided progress reporting consistent with the Student's IEP, and OSPI finds a violation. The District will be required to submit the progress reporting it provides the Parents for the next two reporting cycles for verification by OSPI that it is meeting the requirements of progress reporting as specified in WAC 392-172A-

03090, and conduct training on progress reporting. Further, the District will be required to complete training on progress reporting.

CORRECTIVE ACTIONS

By or before **August 23, 2019, September 6, 2019, September 13, 2019, October 18, 2019, November 1, 2019, November 7, 2019, January 3, 2020, and January 17, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting:

By the **August 27, 2019**, the District will hold an IEP meeting for the Student to discuss the following issues:

- Review the Student's progress and the grade level curriculum or methodology that is most appropriate to achieve those goals.
- Determine if any of the Student's IEP goals need to be revised.
- Discuss how progress on the Student's goals will be reported to the Parents, including how frequently progress reports will be made available to Parents and what information progress reports will include.
- Review the results of the Student's most recent adaptive behavior evaluation, including recommendations for services based on the results of the most recent evaluation.
- Determine the appropriate amount of services the Student should receive in each eligible service area and in what setting the services will be provided.
- Determine the Student's appropriate placement against a full continuum of options within the District. If the IEP team believes a significant change in placement is needed, the District will determine if the Student requires an *expedited reevaluation (within 30 calendar days)* to evaluate the Student's needs.
- Determine what specially designed instruction the Student requires. The determination of specially designed instruction must be based upon the Student's needs, as determined by the Student's evaluations, and by the members of the evaluation team and evaluation report. The determination about how much specially designed instruction the Student requires should not be based on building level or scheduling needs.
- The District will also develop class schedule for the Student to ensure the Student is scheduled to receive her IEP services in the appropriate setting as determined by the IEP team during the 2019-2020 school year.
- If the IEP team recommends a more restrictive setting for the Student for the 2019-2020 school year, it should also recommend a functional behavioral assessment (FBA) because an FBA should have been attempted prior to recommending a more restrictive placement and the District has not yet attempted an FBA or behavior plan.
 - If the District recommends an FBA, it should also discuss whether a temporary behavior plan needs to be developed for use while an FBA is being developed in order to provide the Student with behavior supports, as none are currently in place.
- The assistive technology needs of the Student, including whether the Student requires speech-to-text technology.

By **September 6, 2019**, the District will submit the following documentation regarding the IEP meeting: 1) a copy of the meeting invitation; 2) a copy of any new evaluation report(s); 3) a copy

of any new or amended IEP; 4) a copy of a prior written notice; 5) a copy of any meeting agenda and/or meeting notes; 6) a copy of the sign-in sheet to show that all members from the evaluation team were present, and if any were not present, documentation to show that proper excusal procedures were followed; 7) documentation of the IEP team's reason for selecting the Student's placement; 8) a copy of the Student's class schedule; and, 9) any other relevant documentation from the meeting.

OSPI strongly recommends the District consider utilizing IEP facilitation for its IEP meeting. IEP facilitation is a voluntary process that both parties must agree to.

If necessary, the District and Parent may agree to hold the IEP meeting over two days in order to give ample time to cover all required issues.

Compensatory Instruction:

By or before **August 27, 2019**, the District will work with the Parent to develop a schedule for delivering a total of 21 hours of specially designed instruction in reading, 11 hours in written expression, and 1 hour in math. Services will occur in a one-on-one setting and be provided by a special education teacher. 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 **December 20, 2019**. The District will provide OSPI with documentation of the schedule for services by or before **September 6, 2019**.

The District must provide OSPI with documentation by **October 18, 2019** and **November 7, 2019** of the compensatory services provided to the Student. This documentation must include the dates, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **January 3, 2020**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation that it has fulfilled this requirement by **January 3, 2020**.

Staffing Meeting on Student's IEP:

By **August 27, 2019**, the District will be required to hold a staffing meeting with the Student's 2019-2020 special education and general education teachers to discuss the Student's IEP, including all accommodations and modifications required on the IEP. At that meeting, all of the Student's general education teachers will be provided a copy of the Student's IEP.

By **September 6, 2019**, the District will submit the following documentation to OSPI: 1) a sign-in sheet to OSPI of who attended the staff meeting; 2) an official roster from HR, verifying the

position of those who attended the meeting, and an agenda from the meeting document; and, 3) verification that each of the attendees received the Student's IEP.

Progress Monitoring:

By the end of the first quarter, around **November 1, 2019**, and at the end of the first semester, around **January 17, 2020**, the District will provide the Student's progress reports to OSPI to review. The documentation will include verification that the progress reporting was provided to the Student's Parents.

DISTRICT SPECIFIC:

Training:

By **September 30, 2019**, the District will ensure all District special education certificated staff, special education administration, principals, and assistant principals at the high school identified in this complaint receive training regarding: 1) procedures for determining placement; 2) procedures for changing a student's placement; 3) the implementation of specially designed instruction (including how specially designed instruction differs from accommodations and modifications, policies and procedures for changing the amount of specially designed instruction on a Student's IEP, including—including that changes must be based on a Student's need for specially designed instruction and not on scheduling or administrative needs, and best practices for documenting its implementation); and, 4) progress reporting. The training will also include examples. The trainer will not be an employee of the District.

- By **August 23, 2019**, the District will provide OSPI with the name of the proposed trainer. The trainer must not be an employee of the District. By August 30, 2019, OSPI will approve the proposed trainer.
- By **September 6, 2019**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
- By **September 13, 2019**, the District will submit a draft of the proposed trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by September 27, 2019 and additional dates for review, if needed.
- By **October 18, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.

Policy Review:

By **September 13, 2019**, the District will be required to review its policy for how it implements IEP accommodations and modifications in the general education setting. As part of its review, it will be required to consider whether the general education staff at the District high school require training on how to implement accommodations and modification of students with IEPs. It will be

required to provide its policy to OSPI to review. OSPI will be available for technical assistance as the District reviews its policies.

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

Dated this ____ day of July, 2019

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.)