

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-74**

### **PROCEDURAL HISTORY**

On October 3, 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 [REDACTED] School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 4, 2019, OSPI received additional information from the Parent.

On October 7, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of the complaint and the additional information received on October 4, 2019 to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On October 29, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on October 30, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On November 8, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on November 12, 2019.

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 October 4, 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.

### **ISSUE**

1. Did the District implement the specially designed instruction in math, as required by the Student's individualized education programs (IEPs), since December 6, 2018?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. 34 CFR §300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-

172A-03090 through 392-172A-03115. 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 §300.323; WAC 392-172A-03105.

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. A need for special education is not limited strictly to academics; it also may include physical education, transition services, behavioral progress, and the acquisition of appropriate social and/or organizational skills. 34 CFR §300.39; WAC 392-172A-01175.

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

Provision of a FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress," the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

## FINDINGS OF FACT

### 2018-2019 School Year

1. During the 2018-2019 school year, the Student attended a District middle school and was eligible for special education services under the category autism.
2. The District's 2018-2019 school year began on August 29, 2018.
3. The Student's schedule for the 2018-2019 school year was as follows:
  - Period 1: Academic Skills (Special Education Resource Room)
  - Period 2: Introductory Electronics
  - Period 3: Social Studies
  - Period 4: Life Science
  - Period 5: English
  - Period 6: English
  - Period 7: Math (General Education)
4. On September 4, 2018, the Student took a standardized assessment in math and reading. In math, she scored a "207," and the report indicated her "growth" and "achievement" were both "below mean."
5. On November 7, 2018, the District completed progress reporting on the Student's December 2017 individualized education program (IEP) goals.<sup>1</sup> The progress report indicated the Student was making sufficient progress on her math calculation goal and had mastered her math reasoning goal. The notes indicated the Student "averages 70% accuracy on long division problems. She uses a multiplication chart to help her. We have gone away from frequent

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<sup>1</sup> The Student's December 2017 IEP goal in math calculation read: "By 12/06/2018, when given division problems involving multiple digit numerals [Student] will calculate problems improving math calculation from completing 2/3 digits divided by 1 digit with 80% accuracy to 80% accuracy on multiple digit division problems as measured by teacher data collection." The Student's math reasoning goal read: "By 12/06/2018, when given two step word problems with extra information involving mixed operations (including +, -, x and/or division) [Student] will solve the word problem and be able to evaluate whether a solution is reasonable improving problem solving skills from completing 2 step story problems with 83% accuracy to completing 2 step story problems and be able to evaluate whether a solution is reasonable with 80% accuracy as measured by teacher data collection."

practice of long division problems to see how much she can retain after a few weeks spent on other math skills” and the Student “is finding solutions with 80% accuracy and able to evaluate her answer correctly.”

6. On November 15, 2018, the District invited the Parent to a meeting scheduled for November 29, 2018 to discuss the Student’s progress on her annual goals, review the Student’s IEP, and review her instructional needs.
7. On November 29, 2018, the Student’s evaluation group—including the Parent—met to discuss her triennial reevaluation. The evaluation report noted the Student continued to be eligible for special education services under the category autism. The evaluation group recommended the Student receive specially designed instruction in math and social/emotional, and related services in communication.
8. Also, on November 29, 2018, the Student’s IEP team developed a new IEP for the Student. The IEP noted, in the team considerations section that “most recently [the Student’s] effort in math has improved,” and provided information about her math present levels, including:

[Student] enjoys her math teacher and class, but has low test scores, even though she performs C- level work on daily work (labs and assignments). She has a C average on quizzes. [Student] comes in for math help several days a week before school, which has been minimally helpful in getting her grades up. [Student] works hard to stay in the class, but doesn’t advocate for her needs in class, and as a result, doesn’t receive the help she needs frequently enough. [Student] also seems to have an inaccurate sense of her overall success in math class, which impacts her ability to monitor and react to incomplete/missing work or advocate for her needs.

The IEP included annual goals in math, social/emotional, and communication, including the following math goals:

- **Math Calculation:** By 12/05/2019, when given a grade level math foundational skills (skills necessary for higher level math to be accurately solved) weekly pretest [Student] will apply and extend previous understandings of basic operations and fractional concepts that correlate with current math class skill topic improving math calculation from scoring in the 8<sup>th</sup> percentile in math calculation on her reevaluation to improving her pretest score by 70% as measured by weekly math skill pretest/posttest data.
- **Math Reasoning:** By 12/05/2019, when given two step word problems with extra information involving mixed operations (including +, -, x and/or division and fractional concepts) [Student] will solve the word problem and be able to evaluate whether a solution is reasonable improving problem solving skills from completing 2 step story problems with 80% accuracy to averaging >80% accuracy on mixed skill word story probes as measured by teacher data collection.

The IEP stated progress would be reported quarterly, and provided the Student with several accommodations and the following specially designed instruction in the *special education setting*:

- Math: 30 minutes, 5 times per week (special education teacher/paraeducator)
- Social/Emotional: 15 minutes, 5 times per week (special education teacher/paraeducator)
- Communication (related service): 30 minutes, 3 times per month (speech language pathologist)

The IEP stated the Student would spend 87.84% of her time in the general education setting and noted the Student participated "in the general education curriculum in a general education setting for the full day with the exception of 1 period (45 min/daily or 225 min/weekly) of specially designed instruction in math and social-emotional skills."

9. The District issued a prior written notice, dated November 30, 2018, following the November 29, 2018 evaluation and IEP meetings. The prior written notice included several actions items based on the Parent requests, which are as follows, in relevant part:
  - "The team agreed that support could be arranged so the para would increase her awareness of [Student's] overall progress in math class, and increase the frequency of support for [Student] in addition to the classroom teacher."
  - The Student had been coming in to receive extra help in math and "the resource room teacher will help [Student] prioritize what she should be working on/getting help with, based on work during [Student's] resource room period. [Student] will continue to stay several days week after school to get reteaching from her math teacher."
  - The Parent asked that the Student receive an hour of math instruction daily, "with as much individualized instruction as possible" and currently the Student receives 65 minutes daily of math instruction in a general education class. The Student "will continue in her gen ed math class, and her resource room period (45 minutes daily) will be dedicated to math goal work in addition to [Student's] social emotional skills."
  - Student's "math worksheets, when written in small font (smaller than size 10 font), will be enlarged."
10. In her reply, the Parent responded to points made in the District's response concerning the November 30, 2018 prior written notice. The Parent stated, to her knowledge, "time after school was used for test retakes, and additional time was allowed for in class assignments that [Student] was unable to complete in the allotted time. This was a general session available to any student, and if time permitted the gen ed math teacher would work with [Student] to help her understand work completed in class." The Parent stated this was not an accommodation as it was available to all students. The Parent also stated the Student's attendance was "sporadic due to her forgetting often to stay after school, [etc]."
11. The Parent's complaint identified December 6, 2018 as the starting point for her concern about the provision of specially designed instruction.
12. On December 6, 2018, the District invited the Parent to a meeting scheduled for December 13, 2018 to discuss the Student's progress on her annual goals, review the Student's IEP, and review her instructional needs.
13. On December 11, 2018, the Parent emailed the Student's case manager/academic skills teacher/special education teacher (special education teacher) regarding updates to the Student's IEP that they had been discussing. The Parent noted the special education teacher said she "would work on providing [Student] with worksheets and more focused intervention during the resource period. That does not seem to be reflected." The Parent also stated, "we may need to consider [extended school year] for math, if she fails. She is just too far behind. We could do an online math course for math over the summer."

The special education teacher responded, stating they should discuss and clarify further at their meeting.

14. On December 13, 2018, the Student's IEP team—including the Parent—met to clarify and adjust accommodations and supports, and amended the Student's November 29, 2018 IEP. The Student's annual goals in math and specially designed instruction remained the same. The team modified the language in the present levels to read: "[Student] self-reports she understands what is being taught in [math] class but doesn't always realize she is lost." The amendment added and changed some accommodations, added "modified grading when necessary to reflect effort," and added supports for school personnel.
15. On December 14, 2018, the special education teacher emailed the Parent a copy of the updated accommodations discussed at the December 13, 2018 meeting. The special education teacher stated, "because we significantly altered the original accommodations that the original IEP team (teachers included) came up with on 11/29, I would like to schedule a meeting next week to do a final review with teacher input to make sure the accommodations not only make sense but are accurately implemented in their classrooms."
16. On December 20, 2018, according to a prior written notice dated the same day, the Student's IEP team—including the school psychologist, an administrator, English teacher, math teacher, special education teacher, and Parent—met "to discuss [Student's] amended accommodations that were outlined on 12/14/18."
17. The District was on winter break from December 24, 2018 through January 4, 2019.
18. On January 8, 2019, the Student took a standardized assessment in math and reading. In math, she scored a "210," and the report indicated her "growth" was "at mean" and her "achievement" was "below mean."
19. On January 18 and 21, 2019, the District had no school days.
20. On January 26, 2019, the District completed progress reporting on the Student's annual IEP goals. The Student was making sufficient progress on both her math calculation goal and math reasoning goal. According to the notes:
  - Math Calculation: Student's "improvement from pretest to posttest average increased by 20%. At this point [Student] is working on error analysis to identify skills where she needs reteaching. For the most part her errors are due to careless mistakes. Also, [Student] has a higher percentage of mistakes during tasks requiring fractional concepts. [Student's] math teacher reports [Student] is progressing excellently in class, asks questions when she doesn't understand things, and seems to be enjoying class."
  - Math Reasoning: Student "averages 83% on this goal. She has only been working on +, -, x, or / problems and will now progress into fractional, decimal and integer work incorporated into the word problem types."
21. On February 14, 2019, the Parent emailed the Student's special education teacher, the science teacher, and the school psychologist and asked to "schedule a meeting for the teachers on

this list to go over [Student's] IEP one more time?" The Parent included comments on the Student's recent report card and thoughts about several of the Student's IEP accommodations.

22. On February 15-19, 2019, the District was on mid-winter break.
23. On February 20, 2019, the special education teacher emailed the Parent regarding a meeting she (special education teacher) had with the Student's science teacher. The case manager proposed meeting with the Parent to "update how things are going" and "based on my conversation this morning, I think it would also be beneficial for me to meet with [Student] weekly about how her classes are going, and how she is feeling overall with anxiety/attention/understanding of material/tasks."

The Parent responded and expressed frustration with the Student's science teacher and noted the science teacher said "she is coming to help the kids in resource several times a week. [Student] says that is helpful, but what are we doing about the 30 min of individual instruction in Math that she misses because of that?" and asked, "are we making that up with [math teacher] after school?"

The special education teacher replied and stated they would address the Parent's concerns at their next meeting.

24. On February 25, 2019, the Student's IEP was amended to add an accommodation and change the frequency of another accommodation. The Student's goals and minutes of specially designed instruction remained unchanged.
25. On March 5, 2019, the District's assistant director of special services (assistant director) emailed the Parent, following up to her concerns. The Parent responded and stated, in part, "I still feel pretty certain that the 30 minutes of math instruction in the resource room did not start until January, but really it would be unfair to try to make up that time."
26. The District was on spring break April 1-5, 2019.
27. On April 8, 2019, in an email to the superintendent and assistant director regarding scheduling a meeting, the Parent again shared concerns about the Student's math instruction. The Parent stated:
- I think you need to be aware that we had issues with [Student's] resources services through December of last year. At the IEP meeting in December [special education teacher] indicated that she would begin providing additional support in Math starting in December, however that has been listed as a service since we arrived in the district in 2015. I am not even sure how to go about addressing this. To address this [Student] has had to spend time after school to catch up. This is a bit unfair to [Student.]
28. On April 24, 2019, the Parent emailed the Student's case manager and general education math teacher regarding a note on the Student's report card that stated the Student "doesn't seem to be understanding the material in Math." The Parent asked what they could do to work on that. The math teacher responded and stated it "seems to take [Student] longer than others

to initially figure out how to do something but once she has learned it she does fairly well," and suggested the Student stay after school to get extra assistance.

29. On May 1, 2019, the Parent emailed the Student's case manager regarding a discussion they had about the Student needing "to let you [special education teacher] work with her more on math." The Parent stated the Student "does get defensive, this is something we would have dealt with in ABA [applied behavioral analysis] as it is a social skills [sic]."
30. On May 27, 2019, the District had a no school day.
31. On June 10, 2019, the District completed progress reporting on the Student's annual IEP goals. The Student made sufficient progress on both her math calculation goal and math reasoning goal. According to the notes:
  - Math Calculation: Student "averaged 74% on quizzes this quarter, but only 61% on tests. Her overall effort and progress in math continues to improve. [Student] is independent in creating a note page to use on tests and is responsible enough to plan ahead to ensure she has enough time to complete the notes."
  - Math Reasoning: Student "continues to increase her mastery of similar-type word problems. Her accuracy drops when a diverse mixture of skills is produced. She had been working on identifying vocabulary hints that help her determine the appropriate operation necessary to solve the question. Her average on problems with +, - and x of integers or whole numbers is 79%."
32. In her reply to the District's response, the Parent noted she felt the progress reporting did not provide data or information regarding the Student's progress on her actual IEP goal, which the Parent characterized as to "improve retention of new facts by 80% in math." Further, the Parent stated the Student's math reasoning goal has remained the same since 2015 and questioned whether the Student had been provided specially designed instruction.
33. The Student's report cards for the year recorded the following grades in math:

<ul style="list-style-type: none"><li>• Term 1 "F has difficulty comprehending material"</li><li>• Term 2 "C-"</li><li>• Semester 1 "D tries hard and is making steady progress"</li></ul>	<ul style="list-style-type: none"><li>• Term 3 "C- has difficulty comprehending material"</li><li>• Term 4 "C+"</li><li>• Semester 2 "C tries hard and is making steady progress"</li></ul>
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34. In her reply, the Parent noted the Student's grades did not reflect "continual progress through the year," and improvement between term 1 and term 2 could be "due to the change in accommodations made on 11/30/2019" and additional accommodations and modifications added on December 13, 2019, "which amount to a more equitable grading system being put into place for [Student] so that after the first grading period teacher's began to grade based on the amount of work that [Student] was realistically able to complete." The Parent stated, "when looking at [Student's] grades...after the initial bump was made due to the new accommodations no additional increases in grades."

35. On the 2018-2019 "Smarter Balanced Assessment" (SBA)<sup>2</sup> administered during the 2018-2019 school year, the Student scored in the "Level 1" range, meaning the Student did "not yet meet the grade level expectations in mathematics."<sup>3</sup>

36. As part of its response, the District provided the following statement from the Student's special education teacher, in relevant part:

[Student] was enrolled in my resource classroom to receive her SDI...the class consisted of 16 students with IEPs...[Student] worked on her specially-designed instruction in math in the resource room setting. Within the context of general education math curriculum provided by [general education math teacher], [Student] would review:

- Current assignments with special education teacher check-ins
- Work on separate skill-drill activities such as multiple-step word problems
- Check-ins/checks for understanding daily in math and resource room
- Consult with general education teacher
- Student notes
- Test taking strategies
- Access to adult support (para[educator] assigned to support students in math class)

[Student] frequently and consistently refused teacher offers for assistance with resource room work, but used the class time efficiently (consistently working on math class packets or resource room tasks).

[Student] was interviewed multiple times each week to check in on her overall progress in math as well as her emotional health within the class. She consistently reported she was happy in class, did not worry about her progress, liked her teacher, and was understanding the material.

We did weekly grade checks in all of her classes, and discussed any classes or assignments that were difficult or stressful...[Student] consistently had B's or above in her math class. As [Student's] case manager I checked in multiple times each week with [Student's] math teacher, and he also reported she was doing well in class and was understanding the material. Before each test in math, [Student] would use the resource period to create a notes page as outlined in her accommodations that she could use on her test to help with content knowledge. While drafting test notes, [Student] and I would discuss test-taking strategies such as attempting a problem but marking it for later review, skipping over difficult/frustrating problems and then returning at a later time, and marking out answers that were unreasonable to increase the accuracy of her answers. Also in the room on a daily basis, I had a paraprofessional...to assist with student learning and management.

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<sup>2</sup> The SBA is a State-wide standardized assessment in English language arts and math. Students take the SBA for accountability purposes and as a potential pathway for high school graduation.

<sup>3</sup> On the 2017-2018 SBA exam, the Student scored in the "Level 2"/"Level 3" range, meaning the Student was between: "nearly met the achievement standard and may require further development to demonstrate the knowledge and skills in mathematics needed for likely success in entry-level credit-bearing college coursework after high school" and "met the achievement standard and demonstrates the knowledge and skills in mathematics needed for likely success in a career and entry-level credit-bearing college coursework after completing high school coursework."

37. The Parent, in her reply to the District’s response, pointed out that many of the points listed in the special education teacher’s statement detail “the provision of accommodations and supports...[and did] not describe an organized or planned instructional method. Providing accommodations and supports is not equivalent to [specially designed instruction] SDI.” The Parent provided a comparison of the accommodations in the Student’s IEP as compared to the special education teacher’s statement:

<b>IEP Accommodation</b>	<b>Proposed Statement of SDI from Classroom Teacher</b>
Accommodation: Check for understanding of the topic presented on a daily and weekly basis	<ul style="list-style-type: none"> <li>• Teacher statement: Current assignments with special education teacher check ins</li> <li>• Teacher statement: Check ins daily for understanding daily in math and resource room</li> </ul>
Accommodation: Practice test taking strategies in resource room	<ul style="list-style-type: none"> <li>• Teacher statement: Work on separate skill drills such as multiple step word problems</li> <li>• Teacher statement: Test taking strategies</li> </ul>
Accommodation: Copy of lecture notes provided before presentation is given to allow additional information to be added by Student	<ul style="list-style-type: none"> <li>• Teacher statement: Student notes</li> </ul>
Accommodation: Full-page sheet of Student generated notes to be allowed on math tests	<ul style="list-style-type: none"> <li>• Teacher statement: With teacher instruction, the Student used the resource room class to draft test notes and used these notes during the tests in the general education classroom.</li> <li>• District Statement: Full page of Student generated notes to be allowed on math tests</li> </ul>
Support: Utilize extra adult support in general education classroom to increase individual support for Student	<ul style="list-style-type: none"> <li>• Teacher statement: Access to adult support (para assigned to support student in math class)</li> <li>• District statement: Further support (beyond 30 min per day) was provided by a special education para in the general education math class</li> </ul>

In reply to the special education teacher’s statement that “SDI was not provided because of ‘frequent and consistent’ student refusal,” the Parent provided the following information:

- “Student is diagnosed with autism (ASD). Preference of preferred over non preferred tasks is common for children with ASD. While at home we do have times that [Student] refuses a task, she usually complies with repeated requests. This was communicated [to] the teacher...”
- “No evidence provided of teacher efforts to seek out behavioral supports for the child.”
- Prior written notice from February 26, 2019 did not document concerns about “‘frequent and consistent’ refusal by student” and the IEP listed some of the Student’s strengths as “She works to please teachers, and is respectful. She puts forth appropriate effort within her classes. Most recently her effort in Math has improved.”
- “There is no current behavioral intervention plan in place to address refusal, or other negative behaviors.”

38. The District’s 2018-2019 school year ended on June 14, 2019.

## Summer 2019

39. On August 15, 2019, the Student's new 8th grade case manager and math co-teacher (case manager) emailed the Parent and Student's father regarding the upcoming year. In part, the case manager explained the school used a co-teacher model and was "looking at a full inclusion model for the 7<sup>th</sup> and 8<sup>th</sup> graders where all students will receive their special education services in the general education classroom in a co-taught environment with a general and special education teacher." The case manager stated, "this is almost exactly what your child experienced last year with a small change" and, "as a result of the full inclusion model, there will not be a separate resource room period." The case manager stated, "with your permission, an amendment will be completed to reflect the change of services in the general education setting."

The Parent responded and stated that it "sounds like a good idea," but that she did "not give permission to make the change without meeting with me first." (Emphasis in original.) The Parent stated the Student was "probably one of the hiccups, as she reported no additional math instruction last year in the resource room." The Parent stated she was okay with the scheduling and placement in the classroom, but wanted to explore "some sort of extended school day for her" as, "last year, in order to keep up she had to meet with the teacher several times a week, and still barely passed the class. If we could continue that with you after school that would be great."

40. On August 16, 2019, the case manager responded to the Parent's August 15, 2019 email that she would love to meet and the full IEP team would need to consider the changes the Parent was proposing. The Parent replied with available times to meet.

41. On August 22, 2019, in response to an email about scheduling the IEP meeting, the Parent emailed the case manager and stated the Student was willing to try the change to her schedule. The Parent also stated:

I'd like to know how we can monitor the special instructions and how often she will actually be working on her goals under the new system. As we discussed, even with a resource period she fell behind in Math. If we don't see evidence of positive academic growth pretty quickly we will have to go back to what we had. Before I approve the change to her IEP, I would like to see exactly what you are proposing to change...

42. On August 23, 2019, in response to the Parent's August 22, 2019 email, the case manager provided the following information, in part:

...The special education instruction will be imbedded into the curriculum as often as possible. When it is not possible, [Student] and I will spend some time together in the classroom going over whatever skill she needs to work on a bit. [General education math teacher] is planning on setting up an 8<sup>th</sup> grade math lab...but he is willing to set aside extra days for [Student] if she needs more one to one attention. [Math teacher] and I talked yesterday about [Student's] math calculation goal and how we can gauge her learning, as per the goal's instruction. [Math teacher] and I decided that this goal would be beneficial for the whole class. Therefore, we are going to do a pretest on Mondays and a posttest on Fridays to gauge the whole class level of learning for the week. This will give us a chance

to decide whether to go on to the next set of lessons or review the previous lessons to ensure mastery of the current standard.

The only changes you will see on [Student's] IEP will be: her math service location will move to the general education setting and the service provided will change to the General Education and Special Education teachers. The minutes will remain the same.

The case manager stated the Student's speech services and social/emotional instruction would remain the same.

The Parent replied to the case manager's email with some questions about the Student's social emotional instruction, and stated she liked the "pretest goal." She stated she could "agree to the change in IEP, if at the end of November she is not getting 80% on her post test at least 3 weeks out of the month, then we would need to look at resource." The Parent also stated they would need to look at when the Student gets pulled out for speech because she is "always slightly behind other kids, and really struggles to keep up, so she is going to get behind where ever she is pulled out."

43. On August 24, 2019, the case manager emailed the Parent back, stating she liked the recommendation "about tying the change of setting to her math calculation goal and setting a timeline." The case manager stated she would write that in the prior written notice and write herself a reminder to set up a meeting in November to review data and discuss the change. The case manager also addressed the Parent's concern about the Student being pulled out for speech.
44. On August 24, 2019, the Student's IEP was amended—with the Parent's permission to proceed without meeting. The amendment added several new accommodations and changed the setting for the provision of the Student's specially designed instruction in math from the special education setting to the general education setting. The minutes of specially designed instruction remained unchanged, but the instruction would be provided by a "special education teacher/general education teacher." The IEP noted the Student would spend 94.73% of her time in the general education setting and stated the Student participated "in the general education curriculum in a general education setting for the full day with the exception of 98 min/weekly of specially designed instruction in social emotional and communication skills."
45. On August 27, 2019, the Parent emailed the case manager regarding the amended IEP. The Parent stated she thought a part of the IEP was missing because the "math goals are no longer there." The Parent stated the Student had been "working on one of the same math goals since we moved to the district" and that "she has not really met any of her Math goals since we moved to [District]." The Parent asked to add these concerns to the prior written notice and stated, "I strongly suspect that she hasn't really been working on these goals the last two years in resource. This is a relevant factor to her progress."

The case manager responded and stated she could add a statement to the prior written notice that the Parent had "a concern that [Student] has not met mastery of her goals the past couple

years and that this is an area of concern regarding her services and specially designed instruction.”<sup>4</sup>

The Parent replied and listed her concerns, summarized in part:

- Lack of progress toward meeting math academic goals over the last four years;
- Concern the Student did not receive “special instruction aimed at helping meet her math goals during the 2018/2019 school year;”
- The resource room had twenty students and two staff, “had the school been able to fully support [Student] in 2018/2019 she would have made progress towards meeting her academic goals;”
- Concern they would need to request additional support in and outside school to help the Student catch up; and,
- Student was “still missing some foundation skills that need to be addressed.”

The Parent stated she would “support [Student’s] decision to try the co teach model. Her decision was based on being able to attend more classes, but mainly the desire to be more like the other kids.” The Parent stated this was especially true because “there would be no resource classes offered specifically for kids at her grade level” and, “She doesn’t want to go to resource with the 6<sup>th</sup> graders and that was explained as the only alternative.”

### **2019-2020 School Year**

46. The District’s 2019-2020 school year began on August 28, 2019. The Student continued to be eligible for special education services and her IEP, amended on August 24, 2019, remained in place.

47. The Student’s schedule for the 2019-2020 school year was as follows:

- Period 1: Spanish
- Period 2: Algebra
- Period 3: Algebra
- Period 4: English
- Period 5: Science
- Period 6: Fitness/Health
- Period 7: Social Studies

48. On September 3, 2019, the Student took a standardized assessment in math and reading. In math, she scored a “221,” and the report indicated her “growth” was “above mean” and her “achievement” was “below mean.” The Student’s achievement percentile increased from the 17th percentile in January 2019 to the 38th percentile in September 2019.<sup>5</sup>

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<sup>4</sup> The Parent’s concerns, outlined in the August 27, 2019 email, were added to the prior written notice, dated August 24, 2019. The prior written notice also appears to have been updated with information from a later meeting on September 4, 2019, where the Parent met with the Student’s teachers to discuss the Student’s needs in the classroom.

<sup>5</sup> The Parent noted in her reply that the growth between the winter of 2019 and the fall of 2019 “occurred during the summer when [Student] was not in school. This could potentially be attributed to a global change to the way that (MAP) tests were scored from winter 2019 to fall 2019.”

49. Also, on September 3, 2019, the Parent met with the superintendent. In an email from the superintendent to the Parent summarizing the meeting, dated September 13, 2019, the superintendent addressed the topics discussed at their meeting, as follows, in relevant part:

- Acknowledged Parent's concerns about the co-teaching versus resource room model and suggested the Parent "schedule a meeting with the IEP team to share your concerns with them."
- Acknowledged the concern that Student was not provided "direct instruction in accordance with the IEP on multiple occasions (last year) and that the teacher notified you via email." The superintendent asked the Parent to provide him the emails and he would look into the matter.
- Acknowledged the concern that the Student "has not met her IEP goals in 4 years" and asked the Parent to provide the specific goals.
- Stated he would have one of the "special education administrators review IEP goals progress" and provide a summary to the Parent.
- Provided suggestions for the IEP team to discuss at the meeting scheduled for September 4, 2019 (e.g., "describe what the co-teaching model looks like...ask specific questions...observe the classroom...ask for weekly communication").
- Addressed Parent's questions about tutoring and compensatory time, and stated "if there is evidence that the district did not meet the obligations for the IEP we would provide compensatory services."

50. On September 4, 2019, the Parent met with the Student's teachers to discuss the Student's IEP accommodations and so the Parent could provide input on the Student's needs.

51. On September 14, 2019, the Parent emailed District staff, including the assistant director and the District's assistant superintendent and special education director (director), and requested "a formal investigation into the provision of SDI [specially designed instruction] to [Student] during the 2018-2019 school year." The Parent listed the following reasons for her concerns, summarized in relevant part:

- At November/December 2018 IEP meetings, the seventh-grade special education teacher "indicated that she had been planning to work on getting [Student's] SDI together but had not had an opportunity due to class size concerns."
- The Student did not make sufficient progress on her math reasoning goal.
- The Student's math reasoning goal had been worded similarly since 2016.
- Data tracking mentioned in spring 2019 meetings had never been implemented.
- Special education teacher "mentioned that there were students that required more attention than [Student] and that she was often neglected because of this."

The Parent specified this was not a complaint about any of the Student's teachers, but a complaint "against District level special education services, for failure to provide sufficient staffing and resources to [Student's] teachers so that she could meet targets."

52. On September 25, 2019, the director responded to the Parent's September 14, 2019 email and encouraged the Parent "to bring [her] concerns to the IEP team the next time it is convened."

53. On September 30, 2019, the Parent filed a request for this special education citizen complaint, which OSPI received on October 3, 2019.

54. On October 1, 2019, the Student's IEP team—including the Parent and Student—met to amend her IEP. According to the meeting notes, the team discussed the Student's math goals and progress in math. The team discussed the minutes of specially designed instruction and additional supports for the Student and resources for the Student to increase her self-sufficiency. The meeting notes also indicated the team planned to discuss the IEP goals further at the next IEP meeting. The amendment changed one of the Student's accommodations and provided the following specially designed instruction:

- Math: 30 minutes, 5 times per week (general education setting, general education/special education teacher)
- Social/Emotional: 20 minutes, 2 times per week (special education setting, school psychologist/counselor)
- Social/Emotional: 35 minutes, 1 time per week (special education teacher)
- Communication (related service): 30 minutes, 3 times per month (speech language pathologist)

The IEP stated the Student would spend 94.73% of her time in the general education setting.

55. A prior written notice, dated October 2, 2019, documented the changes made to the Student's IEP at the October 1, 2019 meeting, including the changes to staff responsible for providing social emotional instruction and amendments to accommodations. The prior written notice also documented that the Student did miss instruction in social emotional earlier in the school year and indicated the District proposed to "add 12 minutes to [Student's] social and emotional weekly services for 21 weeks to 'make up' the lost time." The notice summarized the team's discussion and noted, "the team realized that [Student's] services have [been] being done in the general education setting rather than the special education setting as indicated in the IEP. The team discussed how the missed service minutes (330 min) would be added to current programming and made up by the end of the school year."

The prior written notice also recorded a discussion of the Student's progress in math, including that the Parent "stated in her opinion the math goal has remained unchanged since 2016, and states [Student] has made minimal progress, and did not see SDI happening the math class the day of her observation...the team discussed how SDI works in the inclusive co-teaching classroom, and that [Student's] goals were not reflected in the class, due to it being a re-teaching day for students who did not master previous concept."

56. On October 3, 2019, the Parent emailed the director, stating she had received the director's letter, which suggested she address her concerns at an IEP meeting. The Parent stated she met with the Student's teachers on March 25, 2019 to "address problems with accommodations in science, problems with social emotional SDI, and problems with math ie [sic] I did not feel that they were happening." The Parent stated she also met on June 4, 2019 to address other problems, including the "lack of staffing in the classroom, and my very strong suspicion that there was not enough staff to provide SDI as indicated on my child's IEP." The Parent stated she did not ask for compensation, but expected the situation to be remedied. The Parent expressed concerns over the current staff in the Student's classroom and stated she expressed these concerns on August 24, 2019, and that the concerns about "math SDI are noted in the prior written notice attached to the current IEP." The Parent stated she observed the Student's

class on October 2, 2019 and "did not see any math related SDI provided on that day, and [Student] did not receive any worksheets that worked on her goals to complete." The Parent stated, "later that day I addressed the issue with the team." The Parent stated she had mailed a "formal citizens complaint to OSPI" as she felt the director's September 25, 2019 email indicated the District "would not be looking into the matter any further at the district level."

57. As of October 7, 2019, the Parent and the case manager were communicating via email regarding scheduling an IEP meeting at the end of November 2019.

58. As part of its response, the District provided a statement from the Student's current case manager and special education teacher, who provided the following information:

Currently [Student] is seen in a co-taught classroom for 65 minutes a day/ 5 days a week. This class consists of 31 students; 14 with IEPs and 504s which brings the student to teacher ratio 15.5/1. [Student] receives SDI through the instructional setting of the classroom environment with intentional strategies being provided to meet the needs of all students in the class. Those strategies include:

- Using diagrams and drawing concept maps
- Presenting activities in all sensory modalities
- Arranging peer assistance through the seating chart
- Use colored pencils to differentiate problems
- Use mnemonic devices to teach steps of math concepts
- Practice new strategies until student is comfortable with them
- Explain why learning math strategies helps with life skills/concepts
- Encourage and monitor use of strategies to ensure correct usage and generalization
- Teaching students to understand a problem, develop a plan to solve, carry out the plan, and look back to ensure the answer has been found
- Practicing concepts in small increments and providing immediate feedback before more practice occurs
- Having student self-check/chart progress in mastering concepts

At times, when [Student] demonstrates a need for reteach or further instruction on any given standard or concept, she is pulled into a small group setting to receive additional instruction until mastery is shown.

59. The District also provided a data sheet recording the amount of time the Student received specially designed instruction in math calculation and math reasoning over a six-week period between September 10 and October 18, 2019. Based on the data, the Student received between 100 and 185 minutes a week of specially designed instruction in math (an average of 140 minutes a week.)

60. In her reply, the Parent stated the District "has shown improvement in providing SDI over the past few months." And stated, if the District "continues to maintain the same level of service and continues to make up the minutes owed from the first few weeks of school it should be adequate to repay minutes owed since August 28, 2019." The Parent requested "a copy of the data tracking form monthly" in order "to ensure progress towards completion."

61. The District additionally provided samples of the Student's math work (unit quiz, pre-assessments, and post-assessments) from September and October 2019, which generally indicated the Student's scores improved between the pre- and post-assessments. The Student received full points on her unit 1 quiz 1.

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent alleged the District failed to provide the Student specially designed instruction in math. The Parent's complaint specifically raised concerns regarding the Student's progress in math and the Student's measurable annual goals in math. A district must have in effect an individualized education program (IEP) for every student it is serving eligible for special education and ensure it provides all services in the student's IEP, consistent with the student's needs as described in that IEP. 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 the student has access 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.

### 2018-2019 School Year

During the 2018-2019 school year, the Parent raised concerns that the Student was not receiving specially designed instruction in math per her IEP, in particular beginning in December 2018 (e.g., March 5, 2019 email from Parent, stating, "I still feel pretty certain that the 30 minutes of math instruction in the resource room did not start until January"; and, email to superintendent on April 8, 2019: "I think you need to be aware...we had issues with...resource services through December...At the IEP meeting...[special education teacher] indicated...she would begin providing additional support in Math starting in December, however that has been listed as a service since we arrived in the district"). The Student's IEP in place, dated November 2018, provided the Student with 30 minutes a day of specially designed instruction in math, five times a week.

The District stated the Student was scheduled to and received specially designed instruction in math in her resource room class, and also received math instruction in her general education math class. The prior written notice, following the Student's November 2018 IEP meeting, noted the Student's resource room period "will be dedicated to math goal work." And a statement from the special education teacher reflects that some amount of specially designed instruction was provided through skill-drill activities and potentially through check-ins for understanding.

However, the documentation provided in this complaint largely indicates the Student likely did not receive the full amount of specially designed instruction she was supposed to receive in the resource room. In an email to the special education teacher on December 11, 2018, the Parent stated her understanding was that the teacher would be providing the Student with worksheets and more focused intervention in the resource room, and that "that does not seem to be reflected." **The statement provided by the special education teacher stated the Student "worked on her specially-designed instruction in math in the resource room setting;" however, based on the descriptions and other documentation, it seemed the resource room often functioned more**

as a study hall type setting. For example, the Student would prepare her note sheet for math tests or work on test taking strategies. The teacher's statement largely reflects the provision of accommodations that were listed in the Student's IEPs, rather than specially designed instruction: checks for understanding, practice test taking strategies, copy of lecture notes, Student generated notes for math tests; preparation work: consult with general education teacher; and, supports: extra adult (paraeducator) support. Further, the Parent's February 20, 2019 email reflected conversations with the Student's science teacher that indicated the science teacher for some period of time was coming to the resource room period several times a week to help students with science. This meant the Student was receiving other instruction during the time she was supposed to receive specially designed instruction in math.

The special education teacher also emphasized the Student "frequently and consistently refused teacher offers for assistance with resource room work," but did use class time efficiently ("working on math class packets or resource room tasks.") OSPI finds this troubling as the special education teacher was supposed to be *teaching* the Student. Teaching should not be wholly dependent on a student accepting or refusing "offers for assistance with work." Further, the Parent pointed out, the Student is diagnosed with autism and a preference for preferred over non-preferred tasks was common for her, and something the Parent communicated to the teacher. The Student's refusal to accept help does not excuse the special education teacher's responsibility to provide specially designed instruction.

Finally, the District pointed out the Student received extra help in math by staying after school with the general education math teacher. However, the general education teacher was not responsible for delivering specially designed instruction in math, nor was there any indication he was doing so.

OSPI recognizes that some of the above described activities are important in a school setting: testing taking strategies, study skills, time to prepare resources/notes, etc. While instruction in these areas may have enabled the Student to better benefit from specially designed instruction, the availability of such instruction is not a substitute for the actual provision of specially designed instruction in math. Further, the provision of accommodations—while important—is also not a substitute for specially designed instruction. If the Student needs time to learn study skills or extra time for science instruction, she should have access to a study hall period *in addition* to her specially designed instruction in math.

While the Parent feels the Student did not make enough progress (or that any progress made was solely attributable to accommodations and modifications), the documentation in this complaint reflects that the Student did make some progress. While the Student's SBA scores dropped from a level 2/3 in the 2017-2018 school year to a level 1 in the 2018-2019 school year, the Student's scores on another standardized test increased between September 2018 and September 2019 (further, her "growth" scores moved from "below mean" to "above mean," indicating progress). And, while the Student's report card grades in math remained at around a C average, the Student's progress reporting on her IEP annual goals indicated she made sufficient progress. The Student's general education math teacher reported the Student was "progressing excellently" and, while at times did not seem to understand materials, "tries hard and is making steady progress." The IDEA

does not require the absolute best or potential-maximizing education for a student. Rather, a district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a student with a disability. Here, the Student did make some progress and received some educational benefit. Of course, had the Student received the full number of minutes of specially designed instruction she was entitled to, she likely would have made even more progress.

Ultimately, OSPI finds the Student likely did receive *some amount* of specially designed instruction in math during the 2018-2019 school year; however, the District did not substantiate it consistently provided the Student the *full amount* she was scheduled to receive or entitled to per her IEP. OSPI thus finds the District in violation. There were approximately 22 weeks between December 2018 (when the Parent specifically raised concerns) and the last day of school in June 2019 (excluding breaks and non-school days). As the Student was scheduled to receive 150 minutes per week of specially designed instruction in math, this represents up to 3,300 minutes or 55 hours missed instruction.

Given the Student likely received some amount of specially designed instruction in math and did make some amount of progress, the compensatory services will be provided at the rate of 1/3 the potential missed time, requiring the District to provide 18 hours of compensatory services in math.

#### 2019-2020 School Year

During the 2019-2020 school year, the Student was scheduled to receive 30 minutes of specially designed instruction in math, 5 times a week. This instruction was provided by the special education and general education math teacher in a co-taught math class. The Student continued to work on the annual goals in her November 2018 (amended in August 2019) IEP. The Student was scheduled to attend algebra periods 2 and 3.

The District provided documentation (e.g., a statement from the Student's case manager/special education teacher, work samples, and data on minutes of instruction), which indicated the Student was receiving specially designed instruction in math. The Student's current teacher sufficiently described the instructional strategies used, which indicate the content, methodology, and method of instruction was being adapted to the Student's needs; thus, indicating specially designed instruction was being provided.

However, OSPI is concerned the Student is not getting the amount of specially designed instruction her IEP requires. Based on the data provided by the District, during a 6-week period, the Student received, on average, 140 minutes a week, instead of the required 150 minutes a week. While 10 minutes may seem minor, if continued, this would amount to a fair amount of lost instruction over the course of a school year.

As compensatory services have already been ordered above, and the Parent, despite articulating concerns regarding the co-taught math class—given her concerns regarding the provision of specially designed instruction the previous school year—stated she believes the District “has shown improvement in providing SDI over the past few months,” OSPI will not order additional

compensatory services at this time. However, while OSPI finds that the District has been providing specially designed instruction, it has not provided the full number of minutes. Thus, OSPI finds the District in violation. The District will be required to provide OSPI and the Parent a monthly data tracking form regarding the Student's number of minutes received between now and June. If at the end of this period, the Student is still not receiving the full amount of specially designed instruction, OSPI will order further compensatory services.

#### Other Math Concerns: Goals

Throughout the 2018-2019 and 2019-2020 school years so far, the Parent has several times shared her concern that the Student has had the same math goals for her entire academic career in the District, and that the Student "has not really met any of her Math goals since we moved to [District]." In particular, in an email to the special education director on September 14, 2019, the Parent stated the Student's math reasoning goal had been worded similarly since 2016.

Upon review, the Student's December 2017 and November 2018 IEPs (the IEPs that were in effect during the one-year complaint investigation timeline), the Student's *math calculation* goals were not substantially similar. The 2017 goal specifically involved division and the 2018 goal involved grade level math foundational skills. However, the Student's *math reasoning* goals were almost identical:

- **2017 IEP:** "By 12/06/2018, when given two step word problems with extra information involving mixed operations (including +, -, x and/or division) [Student] will solve the word problem and be able to evaluate whether a solution is reasonable improving problem solving skills from completing 2 step story problems with 83% accuracy to completing 2 step story problems and be able to evaluate whether a solution is reasonable with 80% accuracy as measured by teacher data collection."
- **2018 IEP:** "By 12/05/2019, when given two step word problems with extra information involving mixed operations (including +, -, x and/or division and fractional concepts) [Student] will solve the word problem and be able to evaluate whether a solution is reasonable improving problem solving skills from completing 2 step story problems with 80% accuracy to averaging >80% accuracy on mixed skill word story probes as measured by teacher data collection."

(Underline indicates differing wording.)

In general, similarity between goals from year to year can be a cause for concern as it can indicate a student is not making progress or that the IEP is not reasonably calculated to enable a student to receive educational benefit. However, similarly worded goals are not necessarily or automatically a violation of federal or state special education regulations. Here, the Student's math reasoning goals are similar, but the 2018 goal is more advanced as it adds fractional concepts and moves the goal target to above 80% accuracy on mixed skill word problems.

Documentation in the complaint indicates the Student's case manager has noted and responded to the Parent's concern regarding the goals. The Student's IEP team also planned to meet in November 2019 to further discuss the Student's math goals and progress in math. If this meeting has not already occurred, OSPI strongly recommends the District schedule an IEP meeting soon.

## CORRECTIVE ACTIONS

By or before **December 6, 2019, December 31, 2019, January 31, 2020, February 28, 2020, March 31, 2020, April 30, 2020, May 29, 2020, June 15, 2020,** and **June 19, 2020,** the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

#### Compensatory Education

By **December 6, 2019,** the District will coordinate with the Parent and Student to develop a schedule for a total of 18 hours of compensatory services in math. Services will occur in a one-on-one setting and instruction will occur outside of the District's school day and may be accessed over District breaks. Services will be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **December 6, 2019.**

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. Regardless of any rescheduling, the services must be completed no later than **June 12, 2020.**

The District must provide OSPI with updates on the amount of compensatory services provided to the Student by providing documentation on **February 28, 2020** and **April 30, 2020** of the compensatory services provided to the Student at those points. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. By or before **June 19, 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 related to transportation or reimbursement by **June 19, 2020.**

#### Tracking Specially Designed Instruction

The District will provide OSPI and the Parent a monthly data tracking form, documenting the number of minutes of specially designed instruction in math the Student received between now and June. The tracking form may be structured like the "2019 math SDI data sheet" the District provided in this complaint (District response pages 4-5). The District will also provide OSPI copies of the Student's quarterly progress reporting, when that documentation is available.

On **December 31, 2019, January 31, 2020, February 28, 2020, March 31, 2020, April 30, 2020, May 29, 2020,** and **June 15, 2020,** the District will provide the data tracking form to OSPI and provided documentation that the form was provided to the Parent.

If at the end of this period, the Student is still averaging fewer minutes of specially designed instruction than her IEP requires, OSPI will review to determine if further compensatory services are warranted.

**DISTRICT SPECIFIC:**

None.

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

**RECOMMENDATIONS**

OSPI strongly recommends the District schedule an IEP meeting soon, if it has not done so already, to discuss the Student's math goals. OSPI also encourages the IEP team to consider the language from the caselaw in *Andrew F.*, which states district must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." And the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

OSPI also notes the language used to describe the co-teaching model raises some concerns as to whether the District has a full continuum of placement options for students. 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. The District's response included information that the school was moving toward a full inclusion model, with co-taught classes, and that "there will not be a separate resource room period" available. OPSI strongly recommends the District review their continuum of alternative placements for students to ensure the full range of placement options is available for students based on their unique needs.

Dated this \_\_\_\_ day of November, 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.)