

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-10

PROCEDURAL HISTORY

On January 23, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Mead School District (District). The Parents 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 January 25, 2018, 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 February 13, 2018, the District requested an extension of time for the submission of the response to the complaint. The deadline for response was extended to February 21, 2018.

On February 21, 2018, OSPI received the District's response to the complaint and forwarded it to the Parents on February 22, 2018. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On March 6, 2018, OSPI received the Parents' reply. OSPI forwarded that reply to the District on March 8, 2018.

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

OVERVIEW

During the 2015-2016 school year, the Student attended an out-of-state public school and was eligible to receive special education services. The out-of-state school conducted a reevaluation and developed a new individualized education program (IEP) in November 2015. During the 2016-2017 school year, the Student was homeschooled and continued to reside in the out-of-state district. On September 28, 2017, the Student enrolled in the District while continuing to remain eligible for special education services. However, the Student's out-of-state transfer IEP had been expired for almost two years at the time of enrollment with the District. The District offered to hold an IEP meeting with the Parents on numerous occasions, but did not develop a new IEP for the Student until January 23, 2018. Meanwhile, the District provided services that were similar to those in the out-of-state IEP. The Parents alleged that the District failed to implement the speech/language services, paraprofessional services, and the accommodations provided by the out-of-state IEP. The District denied the allegations.

ISSUES

1. Did the District follow special education interstate transfer procedures for the Student, including providing comparable services during the 2017-2018 school year?

2. Did the District implement the Student's individualized education program(s) (IEPs) in place during the 2017-2018 school year?

LEGAL STANDARDS

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with a free and appropriate public education (FAPE) including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. 71 Fed. Reg. 156, 46681 (August 14, 2006) (comments to the final regulations).

When Eligibility Ends: Students eligible for special education services remain eligible until one of the following occurs: a group of qualified professionals and the parent of the student determine the student is no longer in need of special education, based on a reevaluation; the student has met the high school graduation requirements established by the school district and has graduated with a regular diploma; the student turns twenty-one; or, the student's parent revokes consent in writing for the provision of special education and related services. 34 CFR §300.101; WAC 392-172A-02000(2).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in

reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

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. 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. 34 CFR §300.323; WAC 392-172A-03105.

FINDINGS OF FACT

2015-2016 School Year

1. During the 2015-2016 school year, the Student had an individualized education program (IEP) in effect and received special education services while attending a public middle school in an out-of-state district, where the Student resided.
2. On November 13, 2015, the out-of-state district conducted a reevaluation of the Student to determine if the Student remained eligible for special education services. The reevaluation report stated that the Student was, prior to the reevaluation, eligible for special education services under the categories of speech/language impairment and other health impairment.
3. On November 18, 2015, the out-of-state district held a meeting to determine eligibility and develop a new IEP. The out-of-state district proposed to change the Student's eligibility category to orthopedic impairment. The Student's November 2015 IEP included annual goals in the areas of reading, written expression, and mathematics and provided for the following specially designed instruction and related service to be provided in a special education setting:
 - Specialized Academic Instruction – 169 minutes/5 times a week
 - Specialized Academic Instruction – 135 minutes/daily
 - Speech – 30 minutes/2 times a week

The IEP also stated that the Student would receive push-in paraeducator support in general education in her social studies and science classes. The IEP provided for the following accommodations and modifications:

- Extra time to complete assignments and assessments
- Use of manipulatives
- Present one item of information at a time
- Use of multiplication chart/calculator

- Preferential seating near front or with access to board, center of instruction
 - May take/retake test if score is below 70%, flexible time, setting, location to reduce distractions for test
 - Provide feedback on assignments (what was correct, how to fix errors)
 - Show [Student] how to break down large assignments prior to submissions
 - [Student] to be allowed to retake assessment in which she scores below 70%
 - Adaptive physical education consultation
4. On December 14, 2015, the out-of-state district held an IEP meeting to address the Parents' concerns about the Student's eligibility category and speech services. As a result, the IEP team amended the Student's November 2015 IEP to change her eligibility category to other health impairment and special education services were changed to 169 minutes five times a week.
 5. On January 22, 2016, the out-of-state district held another IEP meeting. The IEP team then again amended the November 2015 IEP to add the following accommodations to the IEP:
 - Provide list of vocabulary words with definitions
 - Extra set of textbooks to have at home
 - Extra copies of worksheets for parents to view at home with [Student]
 6. On March 9, 2016, the out-of-state district held another IEP meeting. The IEP team then amended the November 2015 IEP to state:

[Student] to have the option to take class and assessments in her classroom if she chooses to. [Student] still has the option to take assessments in the Learning Center. Her teacher or case manager can also assign her to take class assessments in the Learning Center if he/she sees [Student] becoming overwhelmed.

2016-2017 School Year

7. On August 17, 2016, the out-of-state district's 2016-2017 school year began.
8. According to the Parents, the Student was disenrolled from public school on September 6, 2016, and was homeschooled until June 8, 2017.
9. On November 17, 2016, the Student's IEP from the out-of-state district expired.

2017-2018 School Year

10. On September 5, 2017, the District's 2017-2018 school year began.
11. On September 26, 2017, the Parents completed the registration form to enroll the Student in a District high school and provided the form to the District. The Student later started school on September 28, 2017.
12. Also on September 26, 2017, the meeting notice form stated the District sent a meeting notice, informing the Parents that an IEP meeting would be held on October 6, 2017 to discuss

the “Transfer Review.” The notice stated that the meeting would be attended by an educational specialist, the Parents, a school psychologist, and a special education teacher. According to the complaint, the Parents stated that they were not informed of the October 6 meeting, either by email or mail.

13. Also on September 26, 2017, the District conducted an “intake meeting” with the Parents that included the school psychologist and grade level counselor to explain the transfer process and the need for the Student’s records to determine the Student’s classes. The Student’s records from the out-of-state district had not arrived at the time of the meeting. According to the District’s “Student Process Log”, at the meeting, “A resource English and math class was selected for her IEP services.” According to the Parents, the school psychologist told the Parents that there was a “stay put rule” in effect for the expired IEP.”¹ No other documentation regarding the intake meeting was provided.
14. Later on September 26, 2017, the Parents emailed the school counselor, requesting more information about the Student’s class schedule and what elective classes were available.
15. On September 27, 2017, the school staff and the Parents exchanged multiple emails. The emails are summarized below:
 - The school counselor replied to the Parents’ September 26 email about the Student’s class schedule, stating that the only elective class available was photography.
 - The Parents responded: “If there is no other elective at this time such as life or study skills, we have to discuss whether this school is the appropriate school for her or having her repeat eighth grade.”
 - The school counselor replied to the Parents, in relevant part:

I didn’t think you were interested in having [Student] in Life Skills. I need to ask if we can make that placement even though her current IEP doesn’t indicate it. The other option would be the adaptive class (which provides support with organization, study skills, etc...)
 - The District educational specialist emailed the Parents the following:

I received a message inquiring about [Student’s] schedule and different elective offerings, and possible life skills or adaptive class placement options. At this time, [Student] does not have Adaptive as a qualifying area of service. This means we cannot provide Specially Designed Instruction in the area of Adaptive and she cannot be placed into the Life Skills or Adaptive Classes right now. If the team would like, the evaluation team can open up a re-evaluation for [Student], where we can explore adaptive needs to determine if she would qualify for adaptive services. In addition, if you would like to schedule a meeting with [Student’s] IEP team, please let me know and I can coordinate that...
 - The school psychologist then emailed the Parents the following:

Based on our conversation, we will grant [Student] placement into the life skills class that was being requested. We will be conducting a full reevaluation in all areas and

¹ Stay-put prevents a school district from unilaterally changing a student’s special education program or placement pending the resolution of a special education due process hearing or other judicial action. WAC 392-172A-05125.

anticipate adding an adaptive goal to her IEP. She had a lot of support within the classes she was attending a couple of years back and I believe it would be in her best interest to have more support as we learn more about her and her needs.

- The school counselor emailed the school psychologist the Student's class schedule, which stated:
 - Period 1 – Resource Mathematics
 - Period 2 – Beginning Art
 - Period 3 – Resource English
 - Period 4 – Life Skills
 - Period 5 – Life Skills
 - Period 6 - Health
- The Parents and District staff again exchanged emails about the class schedule at which point the Parents emailed the District educational specialist, school psychologist, and high school counselor, stating:

...I am glad the schedule is worked out for now but I am pretty sure it would be common to place students with IEPs into classes without full IEP meetings. If that were the case, kids would be missing almost a month of instruction waiting on meetings.

16. On September 28, 2017, the school psychologist emailed the Parents, stating:

An IEP team meeting is offered to every family as we welcome you and your student into [school]. Please let us know if you would like this to occur prior to your regularly scheduled IEP meeting, which will occur after the reevaluation is completed (typically this date is already on the calendar, but since [Student] hasn't been served for over a year, we will need to establish that date with new data after the testing is completed). We are able to utilize the Stay Put rule to place her in the special education classes that we feel are necessary to access FAPE and LRE (least restrictive environment)...You will be receiving transfer and reevaluation paperwork in the mail shortly.

17. On October 6, 2017, the District held a transfer review meeting. The Parents did not attend the meeting. The District's documentation from the October 6, 2017 transfer review meeting included a completed a "Transfer Review" form. The form stated that the meeting was an "IEP meeting", but only the school psychologist signed the form. According to the District's response to this complaint, District school psychologists are responsible for ensuring that all transfer procedures are followed by the District. The discussion/deliberation of the "IEP Committee" section on the transfer form stated:

[Student] is a new student to the [District]. [Student] was previously enrolled with a current evaluation and an IEP from [out-of-state district]. [Student's] IEP has since expired as she was pulled out of school to be homeschooled for at least a year. [Student's] [out-of-state] evaluation is current and will be utilized to place [Student] into appropriate special education services. A reevaluation will be started immediately to determine what services [Student] will qualify for based on Washington State regulations and standards. Evaluation indicated that [Student] was eligible for excess cost funding in the category of health impairment. The current evaluation was completed on 12/6/2015.

After review of these data, the IEP team agrees to accept this student as appropriately identified with a disability in the category of Health Impaired. Identified goal areas are math, written language, and reading. [Student] will also be receiving a related service of

communication, specifically language. [Student] will be receiving 266 minutes per week of service for the goal of reading and written language and 266 minutes per week of math skills. Related service will be served weekly and will be reviewed after the reevaluation is conducted. Special education is recommended with enough time in program to accomplish academic goals while maintaining maximum exposure to the general education environment. A specially designed instructional program is viewed as appropriate to meet [Student's] educational needs.

The transfer form stated the "IEP Committee" recommended continued placement in accordance with the Student's previous out-of-state November 2015 IEP and a referral to the "eligibility committee" for a reevaluation.

18. Also on October 6, 2017, the District issued prior written notice to the Parents. The notice stated that the proposed action was the following:

Your child will be placed in special education based on current records from the previous school and requires specially designed instruction in the areas of reading, written language, math, and a related service of language.

The notice also stated that the decision was based on a file review, IEP team input, and parent input.

19. According to the complaint, the Parents alleged that the Student was not provided speech/language services, paraprofessional services, and the following accommodations were not implemented in accordance with the IEP:

- Extra time to complete assignments
- May take/retake test/assessments if score is below 70%
- Flexible time setting, and location to reduce distractions for test
- Provide feedback on assignments (what was correct, how to fix errors)
- Provide a list of vocabulary words with definitions
- Extra set of textbooks to have at home, extra copies of worksheets for parents to review at home with [Student]

20. According to the District's response to the complaint, the District stated that because the Student's transfer IEP was expired, interstate IEP transfer procedures, including the requirement for comparable services, were not applicable in the Student's situation. However, the District provided services "similar to those described in that IEP until she was evaluated and new IEP was adopted." The District stated it provided the following services:

Before the District evaluated the Student and before her new IEP was adopted, the District was providing her special education services in the areas of reading, written language, and math. Additionally, the Student was given extra time to complete assignments and assessments, was allowed to retake assessments on which she scored 70% (when she requested to retake them), was given feedback on her assignments, and was given a list of vocabulary words and definitions. Pursuant to an agreement with the parents, it was agreed the student would not receive any direct speech services, rather would be evaluated to determine whether such services were warranted...

However, the District provided documentation that speech/language services were provided on the following dates: November 3, 2017; December 6, 2017, January 12, 2018; and January 23, 2018.

21. On October 11, 2017, the Parents emailed the school psychologist about academic and social concerns of the Student. The school psychologist replied that the Parents' concerns should be addressed in an IEP meeting and they could request an IEP meeting at any time.
22. Also on October 11, 2017, the Parents met with the school psychologist and the educational specialist. The Parents expressed concerns about the Student getting frustrated in mathematics class and not knowing where to go for classes.
23. On October 17, 2017, according to the Parents, the Parents received a copy of the October 6, 2017 Transfer Review form and provided consent for the reevaluation.
24. On October 19, 2017, the Parents emailed the school psychologist with concerns about the Student fitting in with her peers. The Parents asked if the District "offers any alternative learning setting or other arrangement that could be made while still being available for the assessments."
25. On October 20, 2017, the Parents emailed the Student's IEP case manager and requested an IEP meeting to address academic and social concerns about the Student.
26. Later on October 20, 2017, the Parents emailed the assistant superintendent of special services and the director of special services, expressing a concern about alleged bullying and reiterated the inquiry about alternative learning settings. The director of special services replied that she would be looking into the special education paperwork and encouraged the Parents to "continue to communicate" with the assistant superintendent regarding the bullying.
27. Also on October 20, 2017, the educational specialist emailed the Parents and proposed an IEP meeting on the morning of October 26, 2017. The Parents replied and requested a meeting in the afternoon.
28. On October 24, 2017, the educational specialist emailed the Parents and informed them that October 26, 2017 was the earliest date available for District staff and the next available date would be November 14, 2017. The educational specialist indicated that if the Parents would agree to excuse the special education teacher, the meeting could occur on November 7, 2017.
29. On November 1, 2017, the Parents emailed the educational specialist, inquiring whether a date before November 14, 2017 was available and expressed the need to meet to address what "little support" the Student was receiving.
30. On November 2, 2017, the director of special services emailed the Parents, stating that the District would like to schedule an IEP meeting. Because one of the Student's special education teachers was on leave, the director asked the Parents which special education

teacher they would like to attend. The director asked the Parents to propose a date for the meeting.

31. On November 22, 2017, the Parents replied that they were “hoping we would get by without having a meeting until after the testing was done but there are issues that keep coming up...” The Parents requested the District to provide some possible dates to meet.
32. The District was on break November 22 and 23, 2017.
33. On November 28, 2017, the Parents emailed the director of special services, stating that while the Parents and District had been attempting to schedule an IEP meeting, the Student was not receiving some services and accommodations as stated on her previous IEP, including speech, flexible time to take tests, and retaking tests. The Parent requested that the District provide three proposed dates for the IEP team to meet. The director of special services responded to the Parents and asked for some time to look into the Parents’ concerns and asked if the Parents had any preferred dates.
34. On November 29, 2017, the Parents responded to the director of special services and proposed seven dates: December 6, December 7, December 8, December 11, December 13, and December 14, 2017.
35. On December 1, 2017, the director of special services replied to the Parents, proposing to hold an IEP meeting on December 7, 2017. The Parents’ responded that the December 7, 2017 date was acceptable, except that they would need to leave when the Student was dismissed from school. The director later replied, confirming the IEP team meeting on December 7, 2017.
36. On December 4, 2017, the District emailed a meeting invitation to the Parents. The District’s documentation in this complaint included a meeting notice, dated November 6, 2017, for the IEP meeting on December 7, 2017. The notice stated that the purpose of the meeting was to address eligibility and the IEP. The notice also stated that the participants would be the speech/language pathologist, school psychologist, general education teacher, special education teacher, educational specialist, administrator, and the Parents.
37. On December 7, 2017, the District held an IEP meeting to discuss the results of the Student’s reevaluation and develop a new IEP for the Student. The evaluation group determined the Student was eligible to receive special education services under the category of other health impairment and recommended specially designed instruction in the areas of mathematics, language, and reading. The results of the behavior assessment indicated that withdrawal was the only area in the clinically significant range; and anxiety, depression, adaptability, social skills, and functional communication were within the at-risk range. According to the District documentation, the Parents left the meeting before a new IEP could be developed. A follow-up meeting was scheduled for the next day, December 8, 2017.

38. Later on December 7, 2017, the Parents emailed the director of special services a list of the following concerns: their emails had not been returned; IEP accommodations were not being provided, specifically retesting; general education setting; course of study; input into the Student's classes; and the behavior observation that was part of the evaluation. The Parents proposed meeting on December 10, December 13, or December 15, 2017. The director of special services responded to the Parents' email and informed them that she would check with staff about their availability on the three dates.
39. Also on December 7, 2017, the District provided the Parents with prior written notice of the Student's continued eligibility for special education and the recommendation for specially designed instruction in the areas of reading, mathematics, and language.
40. On December 12 and 13, 2017, the director of special services and the Parents exchanged emails regarding scheduling the IEP meeting. The District proposed December 15, 2017 or the following week as an alternative. The Parents indicated that they would not be available on the three dates that the Parents previously proposed to meet.
41. From December 21, 2017 through January 1, 2018, the District was out of session for winter break.
42. On January 2 and 9, 2018, the director of special services emailed the Parents, inquiring about their availability for an IEP meeting. There was no response from the Parents regarding the meeting.
43. On January 16, 2018, the Parents emailed the Student's new IEP case manager about their concerns regarding the Student having a safe place to go during assemblies. The Student was knocked down while attending an assembly and walking down the hall. The case manager returned the email, stating that the Student could stay in the classroom with a paraprofessional during assemblies.
44. Also on January 16, 2018, the educational specialist emailed the Parent a "Review IEP Invitation" and a draft copy of the Student's new IEP. The Parents replied to the educational specialist, stating:

We went over the proposed IEP and we disagree with 90% of what is proposed here. We noticed that the math goals as well as others are short term. They only address fractions and there is no long term plan presented. Removal of all other accommodations that are present on the existing IEP? We will not be signing this as presented and so there is no need to attend. Also, this cannot be ratified or put into effect without our consent as the law states. Once a more reasonable IEP is proposed we will be more than willing to meet.

The Parents then emailed the educational specialist again, stating their concern about the mathematics goal. The Parents also stated that the Student previously had a paraprofessional for assignments in mathematics and English and asked if "the plan is to abandon that with no evidence she has overcome the issues of self-advocacy?"

45. Later on January 17, 2018, the Parents emailed the educational specialist and the director of special services, stating that were they were not available to attend the proposed January 22, 2018 IEP meeting. The Parents stated, "We understand that the school can hold the IEP meeting without us but the school cannot initiate services without our consent." The Parents further stated that they were willing to work with the new case manager to schedule an IEP meeting.
46. Based on the documentation, the Parents were not able to open the draft IEP that was sent on January 16, 2018. On January 18, 2018, the director of special services emailed the Parents, indicating that because the Parents were unable to open the draft IEP file, a hard copy would be sent by mail and a copy would be sent with the Student. The director also proposed the following dates to hold an IEP meeting: January 23, 2018, at different times during the day, and January 24, 2018.
47. On January 19, 2018, the Parents emailed the director of special services, stating they did not agree with the draft IEP. The Parents stated, "If the school needs to hold a meeting regarding accountability to the state, we are fine with this."
48. On January 22, 2018, the District sent the Parents an IEP meeting invitation for January 23, 2018, to discuss transition services, IEP services, graduation, instructional needs, and placement. The following people were invited: administrator; Parents; educational specialist; general education teacher; school psychologist; special education teacher; and speech/language pathologist.
49. Also on January 22, 2018, the director of special services emailed the Parents, requesting their participation in the IEP meeting to be held the next day, January 23, 2018. The director offered to allow the Parents to participate via a conference call or to reschedule the meeting. The documentation did not indicate a response from the Parents.
50. On January 23, 2018, the District held an IEP meeting to develop a new IEP for the Student. The Parents did not attend the meeting. The January 2018 IEP provided for annual goals in the areas of mathematics, language, and reading. The IEP provided for the following specially designed instruction to be provided in a separate special education classroom:
 - Reading – 53 minutes/five times a week
 - Mathematics – 53 minutes/five times a week
 - Language – 30 minutes/one time a week

The IEP provided for the following accommodations and modifications:

- Allow extra time to complete assignments up to two additional days
- Basic (L2) in state testing
- Extended time: classroom based assessments upon student request
- Pass/Fail grading option if grade falls below 60%
- Preferential seating as teacher or student requests
- Read classroom materials to student when given grade level text/content
- Separate setting or testing in special education class as student requests

- Open book/notes on classroom assessments when given general education/special education assessments
- Content Area (daily activities): reduce/modify length of assignments as determined by teacher and student

51. Also on January 23, 2018, the District issued prior written notice, which stated, “Your child continues to qualify for special education based on the most recent evaluation results and current classroom data and requires specially designed instruction in the areas of reading, math, and language.”

52. Also on January 23, 2018, the Parents filed this complaint.

53. In the complaint, the Parents alleged that the Student never received speech/language services and paraprofessional support was not provided in the Student’s general education classes. The Parents also provided documentation that the Student did not have the opportunity to retake or redo classwork or quizzes on the following dates:

Mathematics

- November 3, 2017
- November 9, 2017
- November 17, 2017
- December 1, 2017

Reading

- December 13, 2017
- December 19, 2017

Health-Fitness

- November 22, 2017

CONCLUSIONS

Issue 1: Special Education Interstate Transfer Procedures – When a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect for the current school year, the new school district, in consultation with the parents, must provide the student with a free appropriate public education (FAPE), including services comparable to those provided in the IEP from the prior serving district, until the new district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington State standards; and, develops, adopts, and implements a new IEP.

Here, when the Student transferred to the District, she did not have an IEP that was in effect, as her out-of-state IEP had lapsed in November 2016, while the Student was being homeschooled. Therefore, interstate transfer procedures do not apply to this case because there was no IEP in effect.

However, despite the Student’s transfer IEP being over two years old, the Student remained eligible for special education services. When a student enrolls in a district and has an IEP that is not current, the school district must develop an IEP for the Student to ensure that an IEP is in place at the beginning of the school year. Therefore, the District was required to develop a new IEP for the Student, which met the requirements of WAC 392-172A-03090. According to the documentation in this complaint, the District had an “IEP meeting” on October 6, 2017, to complete the transfer review, but based on the lack of required participants, including the

Parents, the meeting did not constitute an IEP meeting and no new IEP was developed. Both the District and Parents subsequently made other offers to meet, but did not develop a new IEP until January 23, 2018.

Issue 2: IEP Implementation – The complaint alleged that the District failed to provide speech/language services, paraprofessional services, and accommodations that were included in the Student’s November 2015 out-of-state IEP. The accommodations included the following: including extra time to complete assignments; retesting if the score is below 70%; flexible time; location to reduce distractions for test; feedback on assignments; providing a list of vocabulary words with definitions; and an extra set of textbooks and copies of worksheets at home. As stated above, if a student enrolls in a school district with an expired IEP, then the school district is required to hold an IEP meeting to determine the student’s current needs. Here, the District was not required to implement the special education services and accommodations provided for in the Student’s expired out-of-state IEP, but should have promptly developed a new IEP with the participation of the Parents, and implemented the IEP as soon as possible, rather than on January 23, 2018. Failing to do so caused the Parents to continue to assume that the accommodations provided in the expired out-of-state IEP would be implemented, and the assumption was reinforced by the “stay-put” statements by the District. The District’s offers to hold an IEP meeting out of courtesy rather than proceeding under the affirmative obligation to expeditiously develop a new IEP after the Student was enrolled in school added to the confusion.

Despite the District’s failure to timely develop a new IEP for the Student, the District implemented services that were “similar” to the expired IEP until the new January 2018 IEP was developed. The Student received 266 minutes per week of services for the goals of reading and written language and 266 minutes per week of services for mathematics skills, along with four sessions of speech/language therapy. Additionally, the Student received services and support in her special education life skills classes. Accommodations, including retesting, were offered but according to the District, the Student did not request to retake tests.

Based on the recommendations of the Student’s December 2017 reevaluation, the Student’s January 23, 2018 IEP did not include speech/language services or paraprofessional support, and the IEP team determined that the Student did not require accommodations for retaking a test, feedback on assignments, providing a list of vocabulary words, and providing an extra set of textbooks and worksheets at home. If the Parents believe that the Student is in need of additional accommodations, they can request an IEP meeting to discuss this with the IEP team, which will make those decisions and provide prior written notice.

CORRECTIVE ACTION

By or before **April 20, 2018** and **May 25, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District school psychologists, IEP case managers, and administrators that addresses the IEP transfer procedures for students with current and expired IEPs. The guidance will include examples.

By **April 20, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by April 30, 2018 and provide additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District school psychologists, IEP case managers, and administrators with the written guidance by **May 25, 2018**. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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 March, 2018

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.)