

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-19**

### **PROCEDURAL HISTORY**

On March 22, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Shoreline School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 22, 2017, 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 April 13, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on April 14, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On April 26, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On May 16, 2017, OSPI requested additional documents from the District. The District provided the documents on May 16 and 17, 2017, and OSPI forwarded the documents to the Parent on May 17, 2017.

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

### **OVERVIEW**

During the 2016-2017 school year, the adult Student attended twelfth grade at a District high school and was eligible to receive special education services under the category of autism. His individualized education program (IEP) in place at the beginning of the school year was amended in June 2016, and included thirteen annual goals in social/emotional, study, and vocational skills. The IEP stated that the Student's services would be provided in a special education setting for 520 minutes weekly. The post-secondary transition portion of the Student's IEP stated that he would complete a Division of Vocational Rehabilitation (DVR) application, gain information on the Running Start program for his senior year, and explore different career pathways. In the fall of 2016, the Parent expressed concern that the Student was not receiving all of his vocational and social/emotional service minutes due to errors in the Student's schedule and the amount of time the Student spent as a teaching assistant (TA) in a general education class. The District then began providing the complete 520 weekly service minutes in compliance with the Student's IEP. The Parent alleged that the District failed to follow procedures for implementing the Student's IEP during the 2016-2017 school year, and failed to follow procedures for providing transitional assessments and services for the Student during the timeline of this complaint. The District denied the allegations.

## SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on March 23, 2016. 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 time period.

## ISSUES

1. Did the District follow procedures for implementing the Student's Individualized education program (IEP) during the 2016-2017 school year?
2. Did the District follow procedures for providing transition assessments and services for the Student during the timeframe for this investigation?

## LEGAL STANDARDS

Transfer of Rights at Age of Majority: All of the IDEA procedural safeguards, duties, and responsibilities transfer to a student at age eighteen. School districts must give any required notices to both the adult student and the parent after rights transfer to the adult student. When this transfer occurs, the district must notify the student and the parent of the transfer of rights. An adult student possesses the rights and responsibilities formerly given to the parent, unless: he or she (1) has been judged incapable of exercising these rights by a court of law pursuant to chapter 11.88 RCW; or (2) has been certified as unable to provide informed consent, or to make educational decisions, and has an educational representative appointed for them, pursuant to WAC 392-172A-05135(5). An adult student may elect to authorize another adult to make educational decisions on his or her behalf using a power of attorney consistent with chapter 11.94 RCW. 34 CFR §300.520; WAC 392-172A-05135.

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. 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.

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir,

2001) (parents must be able to examine records and information about their child in order to “guarantee [their] ability to make informed decisions” and participate in the IEP process). IEPs must include a statement indicating how the student’s progress toward the annual IEP goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student’s IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals. Beginning no later than one year before the student reaches the age of majority under state law (18), the IEP must include a statement that the district has informed the student of the rights under IDEA Part B that will transfer to him or her on reaching the age of majority, unless an exception applies. 34 CFR §300.320(c); WAC 392-172A-03090.

Definition of Transition Services: Transition services means a coordinated set of activities for a student eligible for special education that: are designed within a results-oriented process; is focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities, including postsecondary education, vocational training, integrated employment, supported employment, continuing and adult education, adult services, independent living, or community participation; are based on the individual student’s needs, taking into account the student’s preferences and interests; and, includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. 34 CFR §300.43(a); WAC 392-172A-01190(1).

## **FINDINGS OF FACT**

### **Background Facts**

1. During the 2015-2016 school year, the Student attended eleventh grade a District high school and was eligible to receive special education services under the category of emotional behavioral disability.
2. On December 11, 2015, the Student underwent a private diagnostic assessment conducted by the University of Washington Autism Center (UWAC). The UWAC report addressed the Student’s deficits in communication, social, interests, and behavior based on review of the Student’s records, clinical interview, teacher questionnaire, behavior observations, a Parent report, Wechsler Adult Intelligence Scale (WAIS-IV), Autism Diagnostic Observation Scale (ADOS), Child Behavior Checklist (CBC), Behavior Assessment System for Children (BASC-2) and an

Adaptive Behavior Assessment System (ABAS-II). The UWAC report found that the Student scored in the low average range on the Full Scale Intelligence Quotient (FSIQ), but with significant variability, having scored above average in verbal comprehension, but below average in working memory. The UWAC report also stated that although the Student made minimal eye contact, and had little insight into his own behavior, teachers only reported borderline concern with internalizing problems. The report also stated the Student spoke in full sentences, was talkative, and cooperative during assessment interactions, but also displayed signs of anxiety, apologized for “doing a bad job” on several tasks, and was concerned that he was not doing things correctly. The Parent completed the child behavior checklist and rated the Student as clinically significant for internalizing problems, anxiety/depression, somatic complaints, and thought problems. The Parent reported the Student’s withdrawal/depression, socialization, and attention issues were in the borderline range. The Student’s special education teacher and one of his general education teachers completed a teacher version of the child behavior checklist. The special education teacher rated the Student as borderline for internalizing problems, and all other scales were rated in the normative range by both teachers. Qualitatively, the teachers commented on the Student’s difficulties with work completion and self-advocacy. The UWAC report recommended:

- Changing the Student’s special education category to autism
- The school continue to provide support in social and pragmatic communication skills, assistance with work completion, organization, and executive functioning
- The Student participate in cognitive behavioral therapy to address anxiety
- Evaluation by child psychiatrist to consider medication for anxiety
- Continuous participation in school clubs with peers
- Programs at Bellevue College
- Continue to independently complete daily living skills
- Vocational assistance from DVR, University of Washington Employment Program (UWEP) and/or vocational counseling with the University of Washington Department of Rehabilitation

3. On April 28, 2016, the District completed a reevaluation of the Student. The evaluation report changed the Student’s disability category from emotional behavior disability to autism. The evaluation report also noted the Student had significant social/emotional and study/organizational deficits, which impaired his academic progress and affected his sense of adequacy. The report recommended specially designed instruction in the areas of social/emotional, study, and vocational skills. The report stated the Student needed stronger control over his anxiety, skills to better work with peers in cooperative learning situations, and organization skills to better manage his daily assignments and tests. The report also incorporated data from the UWAC evaluation. The District’s April 2016 evaluation report stated that the Student did not appear to like making eye contact while speaking, and based on information from the Parent, the Student’s adaptive skills were extremely low, but he did not avoid social interaction and appeared to really enjoy talking with others. In the transition section, the evaluation report stated that the evaluation group rejected placing the Student in the District’s 18-21 transition program because it was primarily designed for students with developmental disabilities and significant impairments,

and the UWAC evaluation showed the Student's cognitive functioning as average to above average. The District evaluation report stated the Student's vocational skills expectations ranged from excellent to neutral, and the Student was independent, and a strong worker, but lacked social skills due to his avoidance and anxiety regarding conflict. The evaluation report also stated that the Student had reported he was not prepared to develop a resume, deal with finances, or identify opportunities for a post-secondary career. The evaluation report noted the Student was very verbal with a superior grasp of verbal communication, was social, and enjoyed leadership positions within his social networks and clubs.

4. On May 24, 2016, the Student's individualized education program (IEP) team, including the Parent and the adult Student<sup>1</sup>, met to develop a new IEP for the Student. At the meeting, the Parent indicated she was concerned that the Student had not yet indicated a path out of high school to either work or college, and that he still had needs regarding organization and social skills. Additionally, the Parent stated she was concerned the Student had not met any IEP goals for the past three years, was always behind on his work, and often did not understand what was expected of him. The present levels of performance stated (in relevant part):

- Social Emotional: The Student had received instruction in asking for help from the instructor in order to improve seeking help in or after class from 1-2 times to 4 times, but teachers usually check in with the Student, cuing him to ask for guidance. Initiating asking for help will be a target skill for the Student's incentive program. The Student has an out of room regrouping plan to lower his anxiety levels in communicating when he is frustrated. The Student will download an application for dictation onto his iPad so he can use the speech-to-text feature for written assignments.
- Study Skills: As part of developing his ability to create a priority list, the Student received instruction and succeeded at breaking down long term assignments by making a plan for reading of textbooks for English. However, he was not productive in making time for written work. The Student will receive instruction in the area of increasing assignment completion with regard to missing assignments and an emphasis on long-term assignments through prioritization and committing to a specific place and time to complete the work.
- Vocational: Eighteen skills from the Student's last evaluation were rated between excellent to neutral. All other skills were rated as good. On the transition survey it was noted the Student is independent when it comes to personal hygiene, mobility and leisure activity. The Student's major obstacle to successful post-secondary careers comes in the area of social behavioral skills. The Student avoids discussing issues that are uncomfortable for him, has trouble making decisions, especially academic ones, but has shown the capacity to make life decisions. The Student has expressed that he feels a stress to make a decision about what he should do after graduation, and expressed that he fears if he pursues a career in the area of his interest he will no longer enjoy the interest. The Student needs to complete the DVR application, ORCA card application, take the compass test without time restraint, and gain information on running start for his senior year. The Student needs to explore different career pathways after having taken two or more interest surveys to gain information on career interests.

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<sup>1</sup> The Student turned eighteen years old after the 2015-2016 school year began.

The May 2016 IEP included thirteen annual goals, with supporting objectives, and stated that progress reporting toward those goals would be provided quarterly.<sup>2</sup> The Student's goals included study skills goals (use of planner, asking for help, work completion, Cornell notes, and lowering test anxiety); social/emotional goals (emotional regulation, regrouping skills, and lowering anxiety); and vocational goals (resume, applications, interview, inventories, and locating post-secondary programs).

The IEP provided for a total of 520 minutes of specially designed instruction in a special education setting in the following areas:

- Social Emotional Skills – 40 minutes/3 times weekly
- Study Skills/Organization – 40 minutes/3 times weekly
- Study Skills/Organization – 20 minutes/2 times weekly
- Vocational Skills – 80 minutes/3 times weekly

The IEP also included the following post-secondary goals:

- Enter post-secondary education setting to train for a certificate in designing and/or developing video games
- Complete post-secondary training in the area of technology and gain full time employment

The IEP did not address whether the Student needed a post-secondary transition goal regarding independent living.

5. Also on May 24, 2016, the District sent the Parent and the Student a prior written notice, stating the May 24 IEP, with changes based on the April 2016 evaluation, would be implemented on May 27, 2016.
6. On June 10, 2016, the District sent the Student and the Parent an invitation to attend an IEP amendment meeting on June 21, 2016.
7. On June 21, 2016, the IEP team, including the Parent and the adult Student, met to amend the Student's IEP. The June IEP amendment stated the Student would download an application of dictation onto his iPad so he could use the text feature for written assignments. It also stated the Student's teachers should be aware that the Student did best when meetings were arranged by email for any additional supports he needed to complete his work. The IEP also included, under supports for school personnel: Consultation with speech language pathologist (SLP) as requested by teacher regarding social language. The District's documentation in this complaint does not show that the District sent a prior written notice to the Parent or Student, reflecting the decisions made at this meeting.

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<sup>2</sup> In the interest of brevity and clarity, the supporting objectives for the Student's annual goals are not included in this decision. OSPI notes that while potentially helpful, supporting objectives are required only when students will take an alternate assessment aligned to alternate achievement standards. Therefore, it is the IEP annual goals, which must be measurable and designed to meet a student's needs, without relying on underlying objectives or benchmarks.

**Timeline for the Complaint Begins on September 6, 2016**

**2016-2017 School Year**

8. On September 6, 2016, the Student's IEP case manager for the 2016-2017 school year emailed the District counselor, stating that she had received confirmation from the Parent that she and the Student could attend the September 7, 2016 IEP meeting at 2:45 pm. The case manager stated that the Parent had requested the meeting, the Student's attorney would be present, and the meeting would focus on the Student's post-secondary transition.
9. The District's 2016-2017 school year began on September 7, 2016. At that time, the adult Student began attending twelfth grade and was eligible to receive special education services under the category of autism. The Student's amended May 2016 IEP was in place.
10. During the 2016-2017 District high school year, the Student's schedule provided:

|                   |  |
|-------------------|--|
| <b>Semester 1</b> | <b>9/6/2016 – 1/28/17</b>  |
| Period 1:         | Japanese I   |
| Period 2:         | Creative Writing   |
| Period 3:         | School Service (Special Education supervised in General Education) |
| Period 4:         | Career Exploration (Special Education)                             |
| Period 5:         | Personal Finance   |
| Period 6:         | Environmental Science (30 min. Special Education Pull Out)         |

11. On September 7, 2016, the IEP team met to discuss the Student's winter quarter enrollment in PE and English courses, scheduled to begin on January 9, 2017, at a local community college through the state's Running Start program, and his plan to attend community college after high school. The team agreed the Student would use his career exploration class (4<sup>th</sup> period) to do work and role-play with the special education teacher to develop vocational skills. The team also discussed the need for practice/provision of transportation to the community college and planned to draft strategies, scripts, and lists in the Student's iPad. The team discussed the 18-21 transition program, and also agreed the Student would use his homeroom to shift management of homework support from the Parent to the Student. The District's documentation in this complaint does not show that the District sent a prior written notice to the Parent or Student, reflecting decisions made at this meeting.
12. The Student received the following special education service minutes between September 7 and October 18, 2016. The Student's amended May IEP stated the Student would receive 520 minutes per week of specially designed instruction delivered in the special education setting.

| Period | Service Area | Mon | Tues | Wed | Thur | Fri | Weekly minutes provided |
|--------|--------------|-----|------|-----|------|-----|-------------------------|
|        |              |     |      |     |      |     |                         |

|                             |   |        |                        |                        |                        |                        |                     |
|-----------------------------|---|--------|------------------------|------------------------|------------------------|------------------------|---------------------|
| 3 – TA                      | Vocational Skills (supervised by IEP Case Manager)              | 50 min |                        | 100 min                |                        | 100 min                | 250 minutes         |
| 4 – Career Exploration      | Vocational Skills and Study Skills (Concurrent)                 | 50 min | 100 min                |                        | 100 min                |                        | 250 minutes         |
| Homeroom Study 9:40 – 10:15 | Special Education Social/Emotional (SE) = 60; Study Skills = 80 |        | 15 min SE/20 min Study | 15 min SE/20 min Study | 15 min SE/20 min Study | 15 min SE/20 min Study | 140 minutes         |
|                             |   |        |                        |                        |                        |                        | Total = 640 minutes |

13. On September 8, 2016, the Student's IEP case manager exchanged emails with the Student's career exploration teacher, and the two agreed the Student would work with the case manager for the last 30 minutes of his career exploration class in order to prepare to begin taking his classes at the community college through the Running Start program. The community college courses would begin January 9, 2017, during the winter quarter.
14. On September 14, 2016, the Student's IEP case manager emailed the Student's career exploration teacher and asked that the Student not be marked absent the following day, as the Student would be out of class on September 15 to practice taking the bus to the community college.
15. On September 21, 2016, the Student's IEP case manager emailed the Student's 3<sup>rd</sup> period general education teacher and asked the teacher to pull the Student out of his class for a practice trip to the community college. The Student acted as a teaching assistant (TA) for his 3<sup>rd</sup> period teacher. In response, the 3<sup>rd</sup> period teacher agreed to allow the Student to be absent to practice his travel skills.
16. Also on September 21, 2016, the fall quarter began at the community college and the Student began his Running Start physical education class.
17. On October 4, 2016, the Student's IEP case manager emailed the Student's finance teacher, asking that she attend a meeting with the Student's IEP team on October 6, 2016. The case manager stated that the Parent had requested that the personal finance teacher attend. The case manager also emailed the other District members of the Student's IEP team to remind them of the October 6, 2016 IEP meeting focused on transition, and let them know that a representative from DVR would also attend.
18. On October 6, 2016, the Student's IEP team, including the Parent and the adult Student, met to discuss the Student's service minutes, transition planning, transportation to the community college, DVR, independent living skills, and the Student's weekly schedule. The team determined the Student had been missing his social skills services due to taking a Japanese course 1<sup>st</sup> period, and amended the

May 2016 IEP to account for the missing service minutes. The team referred the Student to a provider for bus training, and agreed to a five-minute early dismissal on Thursdays to address the Student's anxiety about taking the bus to the community college for his Running Start classes. A representative from DVR attended and discussed pre-employment transition services, career exploration after school, an independent living assessment, job shadowing, and interviewing. The District's documentation in this complaint does not show that the District issued a prior written notice after this meeting.

19. On October 13, 2016, the Student's IEP case manager and a school psychologist met with the Student to discuss times during the school day when the Student felt he needed additional support in an attempt to make up the missing social/emotional service minutes. The Student and the IEP case manager determined that, in addition to the 60 minutes of social/emotional services the Student was currently receiving in class, additional social/emotional service minutes would be provided weekly by the IEP case manager for 30 minutes/2 times weekly during 6<sup>th</sup> period.
20. Also on October 13, 2016, the District sent the Parent an invitation to an IEP meeting to amend the Student's May 2016 IEP on October 20, 2016.
21. On October 18, 2016, the Student's IEP case manager emailed the Parent a draft IEP amendment, which reflected the IEP team's October 6, 2016 decisions. The draft IEP proposed reducing the Student's vocational skills services from 80 minutes 3 times weekly to 60 minutes 3 times weekly.<sup>3</sup> The Student's attorney later emailed the IEP team and stated the Parent had not received the draft IEP in time for the Student to meet with his attorney to consider it before the meeting, thus the meeting would have to be canceled.
22. The Student received the following special education minutes October 18 – January 28, 2017.

| Period                 | Service Area   | Mon           | Tues                      | Wed                      | Thur                      | Fri     | Weekly minutes provided |
|------------------------|--|---------------|---------------------------|--------------------------|---------------------------|---------|-------------------------|
| 3 – TA                 | Vocational Skills (supervised by IEP Case Manager)   | 50 min        |                           | 100 min <sup>4</sup>     |                           | 100 min | 250 minutes             |
| 4 – Career Exploration | Study Skills = 45 minutes<br>Vocational Skills = 145 minutes<br>Social/Emotional (SE) = 60 minutes | 35 Voc/ Study | 30 min SE/ 55 min Voc/ 15 | 55 min Voc/ 15 min Study | 30 min SE/ 55 min Voc/ 15 |         | 250 minutes             |

<sup>3</sup> Documentation provided by the District stated the service matrix in the draft October IEP amendment reflected 400 minutes weekly in error, and should have said 460 minutes.

<sup>4</sup> After November 14, 2016, the Student spend part of the 100 minutes on Wednesdays and Fridays completing TA tasks and tasks for the high school's student store.

|                   |  |  |              |           |              |           |                        |
|-------------------|--|--|--------------|-----------|--------------|-----------|------------------------|
|                   |  |  | minSt<br>udy |           | minSt<br>udy |           |                        |
| 6 – Env Sci       | Social Emotional<br>(pull out services<br>provided by IEP<br>Case Manager) |  | 30<br>min    |           | 30<br>min    |           | 60 minutes             |
| Homeroom<br>Study | Study Skills   |  | 35<br>min    | 35<br>min | 35<br>min    | 35<br>min | 140 minutes            |
|                   |  |  |              |           |              |           | Total = 700<br>minutes |

23. On October 20, 2016, the District’s attorney emailed the Student’s IEP case manager, stating that the Parent wanted to reschedule the October 20 IEP meeting. The meeting was later rescheduled for November 14, 2016.
24. The District’s first quarter ended on November 10, 2016, and the District completed progress reporting, but only towards the Student’s vocational skills goal. The progress reporting stated that sufficient progress was being made to achieve the Student’s annual vocational skills goals, but did not provide any information about the Student’s progress toward his other annual IEP goals.
25. On November 14, 2016, the Student’s IEP team, including the adult Student, met to finish amending the Student’s May 2016 IEP. The Parent and the Student’s attorney objected to the proposed reduction in vocational service minutes, and the team agreed vocational services would remain at 80 minutes/3 times weekly. The team decided the Student would work on learning money skills, and discussed jobs the Student could do at the high school, including working in the library and the school store. The IEP case manager and the school psychologist agreed to speak with the personal finance teacher about modifying the curriculum when the math level was too high for the Student to comprehend, per the Parent’s request. Additionally, the team discussed vocational service hours, the Student’s progress toward his current goals, and ways to implement his vocational goals in the 3<sup>rd</sup> period TA class and personal finance class (5<sup>th</sup> period). The team discussed support for the Student with his community college classes and based on meeting notes, agreed to draft an IEP prior to Thanksgiving.
26. The November 2016 IEP amendment<sup>5</sup> included new vocational goals aimed at making cash purchases and following a checklist, and a social emotional goal aimed at independent problem solving. The amended IEP provided for a total of 520 minutes of services in the following areas:
- Social Emotional Skills – 30 minutes/2 times weekly
  - Study Skills/Organization – 40 minutes/3 times weekly
  - Study Skills/Organization – 20 minutes/2 times weekly

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<sup>5</sup> The District’s documentation in this complaint includes an IEP amendment dated October 20, 2016. It is assumed the date of the amendment should be November 14, 2016 or later. Based on the District’s other documentation, it appears the District began implementing the IEP amendment on November 14, 2016. Some portions of the IEP amendment appear to have been implemented prior to November 14.

- Vocational Skills – 80 minutes/3 times weekly
- Social Emotional Skills – 30 minutes/2 times weekly

27. The District's documentation in this complaint includes a prior written notice, dated October 6, 2016, and reflects information from the October 6, 2016 IEP meeting, the Student's subsequent October 13 meeting with his IEP case manager, and IEP team's November 14, 2016 meeting. Based on this notice, it is assumed that the date of the prior written notice should be November 14, 2016 or later. The prior written notice proposed to amend the Student's IEP. The notice also stated the IEP team discussed that the Student's social/emotional minutes had not been provided for the first part of the semester due to the Student's enrollment in Japanese class for 1<sup>st</sup> period. The team discussed other options where the social/emotional minutes could be provided. The notice stated that based on the Student's October 13 meeting with the IEP case manager and school psychologist, the Student felt he could benefit from social emotional support in his environmental sciences class (6<sup>th</sup> period). Therefore, social/emotional minutes would be provided by the IEP case manager for 30 minutes/2 times weekly during 6<sup>th</sup> period. The IEP case manager would check in with the Student for the last 30 minutes of class on Tuesdays and Thursdays, and complete an anxiety sheet and check list with the Student. The notice further stated that on Thursdays, the Student took the bus to the community college and his anxiety was higher on these days. The IEP manager would work with the Student on a list of possible situations and solutions that would help decrease anxiety and emotional hindrances.

28. Also on November 14, 2016, the Student drafted a letter to the IEP team, giving the Parent and the Student's attorney permission to talk to the District personnel regarding the Student's IEP, and asked that the Parent and the Student's attorney be included on all emails sent to the Student.

29. On November 16, 2016, the high school librarian emailed the IEP case manager, asking if the Student could help the librarian process new books for what could be a November – December commitment toward his vocational hours.

30. On November 22-23, 2016, the school psychologist intern emailed the Student's personal finance teacher, stating that during the November 14 IEP meeting, the Parent expressed that she wanted the Student pulled from personal finance to work with the IEP case manager during times the personal finance curriculum was too complex for the Student to grasp. The personal finance teacher responded that she did not think any of the topics were too complex for the Student to grasp, and she did not think it was a good plan to pull the Student from her class because the only time she saw him really struggle with a concept, was after he had been out of class for a week due to a trip. The school psychologist intern replied that the Parent did not want him to miss full classes, but rather to pull him out for 15-20 minute sessions for social skills.

31. Also on November 23, 2016, the IEP case manager emailed the Parent a draft IEP reflecting the changes the team agreed upon at the November 14 meeting. The

case manager stated the IEP had “new goals and minutes are now displayed accurately.” She also stated she would follow up with the Parent once she spoke with the Student’s personal finance teacher.

32. The District was on break November 24-25, 2016.
33. On December 6, 2016, the Parent emailed the Student’s IEP case manager, stating that she had spent the weekend working with the Student on a paper for his Running Start physical education course. The Parent stated that they were frustrated and could not get it completed. The Parent also stated that she was surprised no one had helped the Student on Friday to get the paper completed.
34. December 6, 2016 was the last day of the fall quarter at the community college, and the Student completed and passed his Running Start physical education course.
35. On December 7, 2016, an independent employment consultant emailed the Student’s career exploration teacher, stating she would be working with the Student on a pre-employment transition services (PETS) plan, and asked the teacher if she could observe the Student during his career exploration class. The career exploration teacher responded with times the consultant could observe.
36. The District was on break December 21, 2016 – January 3, 2017.
37. On January 9, 2017, the winter quarter began at the community college and the Student began his Running Start English class.
38. On January 12, 2017, the IEP case manager emailed the Student’s 3<sup>rd</sup> period teacher, and stated that she was going to keep the Student for the first part of 3<sup>rd</sup> period to work in the student store, per the request of the Parent and the Student’s attorney. The case manager stated if the Student was not comfortable reentering his TA class midway, due to his anxiety, he would stay with the case manager until the end of 3<sup>rd</sup> period.
39. On January 18, 2017, the Parent emailed the IEP case manager, asking if the Student could complete some of his Running Start English work during his school day. The case manager responded that she could not help the Student with his Running Start work in lieu of providing the specially designed instruction identified in his IEP. The case manager also stated the Student did an outstanding job working at the store that day.
40. On January 19, 2017, the Parent emailed the IEP case manager and copied the Student’s attorney, the school psychologist, the Student, the high school assistant principal, and the District director of secondary student services. The Parent stated that she thought support for Running Start was part of the Student’s IEP.
41. Later on January 19, 2017, the Parent again emailed the IEP case manager, and copied the Student’s attorney, the school psychologist, the Student, the assistant principal, and the director of secondary student services. The Parent requested that

the District provide dates for a February IEP meeting. The Parent also stated that the Student dropped his Running Start English course at the community college, and would be attending a fifth year of high school. The Parent also included an email the Student had written to his Running Start English teacher where he explained that he was dropping the class because he was having a hard time keeping up with the due dates, and "felt suffocated." The Student further stated how much he enjoyed the teacher and the class, describing his time in the class as "[O]ne of the few really good school experiences I've had."

42. On January 26, 2017, the Parent emailed the Student's IEP team and stated again that due to the Student's anxiety, he dropped his Running Start English class. The Parent also stated the Student realized six classes were too many for him, so he decided to take a fifth year of high school, and take English and PE during the next school year. The Parent requested that the District remove the Student's English and PE classes from the Student's second semester schedule, and asked why an IEP meeting to discuss his second semester classes had not been scheduled based on the Parent and Student's previous request. In response, the school psychologist emailed the IEP case manager, asking that she meet with the school counselor and the Student to determine his schedule for the high school's second semester, no later than January 30. The school psychologist stated the Parent could be informed, but the Student needed to provide input in scheduling his classes. The IEP case manager then emailed the District members of the Student's IEP team, and asked for the counselor's availability to meet. The case manager also stated that keeping the Student as a fifth year student was not in his best interest.
43. Also on January 26, 2017, the IEP case manager emailed the Parent and stated the District would schedule an IEP meeting after finals week, and asked for the Parent's patience because teachers and staff were extremely busy due to finals.
44. The District's second quarter (and first semester) ended on January 27, 2017. The District did not provide the Parent progress reporting regarding the Student's progress toward his IEP goals during the second quarter.
45. On January 27, 2017, the school counselor met with the Student and his IEP case manager to discuss the Student's second semester class schedule.
46. Also on January 27, 2017, the Parent emailed the IEP team, stating that the Student needed to be removed from his second semester English and PE classes until the team met to figure out the Student's next step. In response, the IEP case manager stated that she would figure out a meeting time on Monday, and would contact the Parent after grades for the semester were entered.
47. On January 30, 2017, the school counselor emailed the District members of the Student's IEP team, stating that the Student and Parent met with her and asked to drop the Student's senior English course and PE from his second semester schedule. During their meeting, the counselor told the Parent that she was not going to drop senior English from the Student's second semester schedule prior to their

IEP meeting, and that the Student was not currently enrolled in a PE class for the second semester. The counselor also told the Parent that the Student could likely satisfy his remaining PE credit requirement through an IEP substitution. The school counselor stated in her email that the IEP team could substitute the needed PE or English credit for vocational training, which would also be an IEP team decision. In response, the school psychologist asked if a non-PE class could substitute for a PE class or if the Student should participate in a PE class where he could work with the nurse and keep an activity log. The school psychologist stated he agreed this needed to be discussed at the next IEP meeting.

48. Also on January 30, 2017, the IEP case manager emailed the Student’s personal finance teacher, stating that the Parent wanted to make the Student a fifth year senior. The case manager stated that she, the school counselor, and the assistant principal agreed the Student did not need to return as a fifth year senior, and asked the personal finance teacher to share her positive feedback regarding the Student, in order to help the Parent understand the Student’s capabilities at the upcoming IEP meeting.

49. Also on January 30, 2017, the IEP case manager emailed the Parent and proposed a date and time for the IEP meeting. The Parent responded that she was not available and suggested alternate dates.

50. On January 31, 2017, the District’s second semester began. The Student’s class schedule for the second semester was as follows:

|          |  |
|----------|--|
| Period 1 | Japanese I   |
| Period 2 | Study Skills (Special Education)                                   |
| Period 3 | School Service (Special Education supervised in General Education) |
| Period 4 | Career Exploration (Special Education)                             |
| Period 5 | Senior Civics  |
| Period 6 | Earth Science  |

51. On January 31, 2017, the Parent emailed the high school attendance office and the Student’s IEP team, including the Student’s attorney and the assistant principal, and stated the Student was having stomach issues and, “Until there is an IEP meeting to resolve this, he will be home.” The Parent kept the Student home from January 31 – February 10, 2017.

52. The Student received the following special education minutes as of January 31, 2017. The November IEP amendment stated the Student would receive 520 minutes per week of specially designed instruction delivered in the special education setting.

| Period           | Service Area   | Mon                | Tues               | Wed | Thur               | Fri | Weekly minutes provided |
|------------------|--|--------------------|--------------------|-----|--------------------|-----|-------------------------|
| 2 – Study Skills | Social Emotional = 125 min<br>Study Skills = 125 min | 25 SE/<br>25 Study | 50 SE/<br>50 Study |     | 50 SE/<br>50 Study |     | 250 minutes             |

|                        |  |                     |                     |              |                     |              |                     |
|------------------------|--|---------------------|---------------------|--------------|---------------------|--------------|---------------------|
| 3 – TA                 | Vocational = 260 min                                 | 60 min              | 100 min             |              |                     | 100 min      | 260 minutes         |
| 4 – Career Exploration | Study Skills = 45 min<br>Vocational Skills = 205 min | 35 Voc/<br>15 Study | 85 Voc/<br>15 Study |              | 85 Voc/<br>15 Study |              | 250 minutes         |
| Homeroom Study         | Vocational Skills = 35 min<br>Study Skills = 105 min |                     | 35 min Voc          | 35 min Study | 35 min Study        | 35 min Study | 140 minutes         |
|                        |  |                     |                     |              |                     |              | Total = 900 minutes |

53. On February 1, 2017, the Parent emailed the high school attendance office again to excuse the Student's absence, stating that the Student was having stomach issues due to anxiety over scheduling the IEP team meeting. That same day, the IEP case manager and the Parent exchanged emails, attempting to schedule a February IEP meeting.

54. Also on February 1, 2017, the Parent and the District transition program teacher from the District's community based transition program exchanged emails regarding the following:

- District transition program teacher stated she would typically attend the senior year IEP and asked if the Student was DDA eligible and asked for his long term 1-5 year goals
- The Parent stated she had filled out the DDA paperwork but did not know where to send it and that the Student is working with DVR but needs to find a way to support himself
- The Parent stated the Student needs to work on goals but she does not know where to start, and this discussion causes the Student a great deal of anxiety
- The Parent and the transition program teacher discussed details about the function of transition program
- The transition program teacher explained that the transition program was funded by the school district and the Student's participation in the program would just have to be stated in his IEP
- The Parent requested that the transition program teacher speak with the Student regarding the appropriateness of a transition program teacher attending the IEP meeting
- Parent stated the Student misses some IEP meetings to avoid getting upset from hearing discussion of areas where he is not doing well
- Parent stated the District determined the Student did not qualify for 18-21 program due to his cognitive scores being normal to high, but the Student's private doctor and the Parent thought he would benefit from the program

55. On February 2, 2017, the Parent emailed the high school's attendance office and the IEP team again, stating the, "[Student's anxiety is causing physical symptoms from the stress of not resolving his IEP. I dropped him off at school with hopes he can finish out the day.]"

56. On February 3, 2017, the District transition program teacher emailed the director of secondary student services and forwarded her prior conversations with the Parent.
57. On February 10, 2017, the District transition program teacher emailed the Student's IEP case manager and the school psychologist, and shared an email from a supported employment vendor regarding the Student.
58. On February 12, 2017, the school psychologist emailed the IEP case manager and stated that the Parent and the Student's attorney once again raised the possibility of placing the Student in the District 18-21 transition program. The case manager responded that she thought the IEP team had decided the 18-21 program was not appropriate for the Student, and reiterated her opinion that keeping the Student at the high school for another year would be a great disservice to him.
59. On February 13, 2017, the IEP team, including the Student, met to discuss the Student's second semester class schedule and whether the Student would attend a fifth year of high school. Based on the meeting notes, the Student stated he wanted to take less classes during the second semester and delay his graduation. The Student's attorney stated the Student could do the Running Start English class during a fifth year of high school, and that was what the Student would like to do. The counselor stated she would find out if a fifth year student could take Running Start, as it may not be an option. The IEP team decided to substitute the Student's required PE credit with the Student's TA class. The Student's attorney stated the family should have a say in whether or not substitutions are made in the Student's schedule. A District IEP team member stated that typically, the District did not allow students to come back for a fifth year when the goal is to graduate them in four years. The Student's attorney stated the Student still needed support with advocacy and special education through the District high school. The director of secondary student services reminded the team how hard they worked all year to help the Student graduate, but the team wanted to support the Student. The team discussed that DVR contracted with a vocational training service, and discussed the Student participating in internship during 2<sup>nd</sup> period for 240 vocational hours a week. The Parent asked how much support the District offers for community college courses and the District stated it works on IEP goals.
60. On February 14, 2017, the school psychologist emailed the IEP case manager, stating that the Student was being considered for a post-high school planning cohort that would meet on Tuesdays. The case manager responded that the Student and another student in class were very excited about the cohort, especially since they could attend together. The case manager and the school psychologist also exchanged additional emails, confirming the Student would be part of the DVR work-study class.
61. On February 15, 2017, the IEP case manager emailed the District transition program teacher and asked if she and the school psychologist could visit the 18-21 transition program to see if it was a good fit for the Student.

62. The District was on break February 20 – 24, 2017.

63. On March 13, 2017, the school psychologist emailed the director of student services and stated it was unclear where the Student would attend school the next year, but that DVR recommended the 18-21 transition program. The school psychologist also stated that she and the Student's IEP case manager observed the transition program and it was "definitely a possibility" for meeting the Student's needs. The school psychologist also stated she would make sure the transition program teacher attended the Student's May IEP meeting.

64. On March 13, 2017, the District transition program teacher emailed the Parent with a copy of the Student's final DVR PETS plan, and asked that she share it with the Student, or reply with the Student's email address. The Parent then shared the report with the District. The Student's DVR report was conducted over November 16, 2016 – February 17, 2017, and stated in summary:

- Synopsis of overall experience – Over the course of three months the Student worked with transition services to discover job related skills and interests. The Student effectively communicated his ultimate career goal of becoming a writer for literary component of video games. Transition services recommended college courses that would help fulfill those job requirements but the Student expressed little interest and great anxiety about enrolling in college courses.
- Entry Level Job: The Student struggled to find entry level work in which he would be interested. The Student did not want to attend career fairs or develop profiles on career finding websites as suggested by transition services. The Student expressed an interest in working at a video game store, but did not want to job shadow at a game store. The Student only showed preference for a job that could be customized to match his level of comfort and expertise.
- College: The Student stated considering college was an option and showed interest in utilizing disability services in a college setting. However, the Student was not ready to attend an informal enrollment session. The Student stated the community college curriculum development for students who are not quite ready for a job or college out of high school seemed to be a good opportunity for him and this program would be open for enrollment in the fall of 2017.
- Vocational Program: The transition service introduced the Student and his Parent to the community based transition program (CBPT) and introduced them to the transition program teachers, one of whom would attend the Student's next IEP meeting to determine if CBPT was a good fit for the Student.
- Key Points Learned: The Student has impressive verbal communication skills, is polite, and demonstrates social leadership skills in his student group. The Student speaks positively of his creative writing skills and set personal goals to write for professionally in the future. The Student also has a tendency to experience anxiety and frustration when discussing topics regarding post high school graduation. The transition service recommends that the Student develop stronger study skills, time management, and organization for greater academic success. The Student would also benefit from gaining more control over his anxiety to aide in decision-making skills and problem solving.

65. On March 16, 2017, the Parent left a voicemail for the District transition program teacher, stating that she wanted to visit the transition program to get more information.

66. On March 22, 2017, the Parent filed this citizen complaint.

67. On March 28, 2017, the Parent left a voicemail for the transition program teacher, stating that she wanted to set up a time to visit class at the community college.

## CONCLUSIONS

**Issue 1: IEP Implementation** – The documentation substantiates that the District followed procedures for implementing the Student's IEP, including providing the Student service minutes in all areas. The Parent alleged in her complaint that the District did not provide all of the Student's service minutes since the beginning of the 2016-2017 school year. The Student's amended May 2016 IEP stated the Student would receive 240 minutes of vocational services in a special education setting weekly. The District's documentation shows the Student received vocational services for up to 250 minutes weekly during his career exploration class and 250 minutes weekly in his 3<sup>rd</sup> period TA class, under the supervision of his IEP case manager. The IEP case manager designed a checklist for the Student to use to complete the vocational tasks in the student store while he worked as a TA in his 3<sup>rd</sup> period general education class, and instructed him on a daily basis while he learned the routines and procedures. During his time working as a TA in a general education classroom, the general education teacher followed through with his daily instruction and reported his progress to the IEP case manager, who used time during the Student's 3<sup>rd</sup> period to address vocational skills, like following a checklist and communicating with others. The Student's amended May 2016 IEP also stated the Student would receive 120 minutes weekly of study skills in a special education setting. The Student received up to 250 minutes weekly of study skills in his career exploration class, as well as 80 minutes a week in homeroom study, for a total of 330 minutes a week of study skills services, supervised by his IEP case manager.

The Student's amended May 2016 IEP also stated the Student would receive services in the area of social/emotional skills for 120 minutes weekly; however, the Student's enrollment in a foreign language class resulted in him only receiving 60 of the 120 social/emotional service minutes during the first six weeks of school. To address the failure to provide the services, the District then addressed the issue by determining the IEP case manager would pull the Student from his general education science class for 60 minutes weekly, based on the Student's input that he needed support during the science class. The failure to provide the Student with 360 minutes (60 minutes x 6 weeks) of social/emotional, coupled with the failure to provide progress reporting to support that the Student made progress toward his goal (discussed further below), is a material failure to implement the Student's IEP. The District will provide the Student with 6 hours of compensatory services in the area of social/emotional to address his IEP goal of seeking help from instructors in or after class, and other self-advocacy skills.

OSPI reminds the District that the IEP team needs to meet prior to a change in a student's schedule, and amend the IEP if necessary, to ensure services are provided consistent with the IEP.

It is further noted in the documentation provided by the District, that the Parent stated she did not believe that the Student had met any of his goals over the prior three years. The purpose of progress reporting is to provide sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals, and the extent to which that progress is sufficient to enable the child to achieve those goals. The Student's May 2016 IEP stated that progress toward the Student's goals would be reported quarterly. However, the District provided the Parent with only partial progress reporting (addressing only four of the Student's thirteen goals) in November 2016, and failed to provide any progress reporting in January or April 2017. OSPI reminds the District that progress reporting must be provided at the time periods set forth in the IEP.

**Issue 2: Transition Assessments and Services** – The documentation also substantiates that the District provided transition assessments and services for the Student during the timeframe for this investigation. A student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals.

The Student's April 2016 evaluation report shows that transition assessments were completed as part of the District's April reevaluation, and the Student's evaluation group considered the Student's need to control his anxiety, and organizational skills to better interact with peers and manage daily assignments. The group considered and rejected placing the Student in the District's 18-21 year old transition program based on the Student's average to above average cognitive functioning. The group also considered the private UWAC evaluation, and observations reported by the Parent and the Student's teachers, and developed the Student's subsequent IEP to provide transition services designed to address the Student's social/emotional, vocational, and study skill needs. The IEP also included post-secondary goals in education/training and employment. However, the IEP did not discuss whether the Student needed a goal regarding independent living.

The Parent alleged in her complaint that the District failed to provide transition services for the Student when it rejected the Student as a candidate for the District's 18-21 year old transition program. Transition services are a coordinated set of activities for a student eligible for special education, designed within a results-oriented process and focused on improving the academic and functional achievement of the student to facilitate his or her movement from school to post-school activities. When the Student's November IEP amendment was drafted, the Student was on track to graduate in June of 2017. The IEP stated the Student would enter a post-secondary education setting to train for a certificate in writing the dialogue for video games, and gain full time employment. The IEP included measurable annual vocational skills goals focused on interviewing, drafting applications, resumes, creating inventories of career interests, and

locating post-secondary programs. Although the IEP team rejected the Student for the 18-21 year old program due to his cognitive abilities, the District implemented the Student's IEP by providing individualized education focused on self-direction, following a checklist, and making cash purchases during special education and general education classes under the supervision of the Student's IEP case manager. Additionally, the Student's IEP case manager worked with him throughout the semester on adaptive skills, including the use of public transportation, working under supervision, and meeting work standards as a TA and in the student store. During his career exploration class, the Student's special education teacher also worked with him on the use of communication skills while interviewing and creating applications and resumes. The school psychologist and IEP case manager also observed the District community based transition program, and arranged for the transition program teacher to attend the Student's May 2017 IEP meeting to determine whether the transition program was an appropriate placement for the Student during the 2017-2018 school year. Therefore, OSPI finds that the District provided transition assessments and services for the Student during the 2016-2017 school year.

### **CORRECTIVE ACTIONS**

By or before **June 23, 2017, July 14, 2017, September 1, 2017, and November 3, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By **June 23, 2017**, the District will provide the Parent with progress reporting for all of the Student's goals in his IEP, and also provide the Parent with copies of the data collected to measure the Student's progress from November 11, 2016 through the Student's fourth quarter, June 23, 2017.
2. By **June 9, 2017**, the District will meet with the Student to develop a schedule to provide the Student with a total of 6 hours of compensatory services in the area of social/emotional to address his IEP goal of seeking help from instructors in or after class, and other self-advocacy skills. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **October 20, 2017**. The District will provide OSPI with documentation of the schedule by **June 23, 2017**.

The District must provide OSPI with documentation by **November 3, 2017** of the compensatory services provided to the Student. 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. No later than **November 3, 2017**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Student or the Parent for the cost of providing transportation for these services. If the District reimburses the Student or the Parent for transportation, the District must reimburse the Student or the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **November 3, 2017**.

**DISTRICT SPECIFIC:**

The District will develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), and principals at District high schools which addresses the requirements for providing progress reporting. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, and other service providers responsible for monitoring student progress. The guidance will include examples.

By **July 14, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by July 28, 2017, and provide additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, and principals with the written guidance by **September 1, 2017**. 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.

**Recommendation**

OSPI recommends that the District review WAC 392-410-135, WAC 392-410-136, and WAC 180-51-115 before allowing a student to substitute a physical education course with a non-physical education course. A student cannot be excused from participating in physical education for the sake of prolonging the student's graduation date by preventing the completion of a graduation requirement course.

Dated this \_\_\_\_ day of May, 2017

Douglas H. Gill, Ed. D.  
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.)