

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-32

PROCEDURAL HISTORY

On May 7, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) on behalf of students who attend a middle school in the Richland School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the education of twenty-three students (Students 1-23).

On May 8, 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 May 30, 2017, OSPI received the District's response to the complaint and forwarded it to the Complainant on May 31, 2017. OSPI removed all student personally identifiable information from the District's response before forwarding it. OSPI invited the Complainant to reply with any information he had that was inconsistent with the District's information.

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

OVERVIEW

During the 2016-2017 school year, twenty-three students (Students 1-23) attended a District middle school and were eligible to receive special education services. Based on the "case manager" service delivery model adopted by the District, many students were not scheduled to receive services from a special education teacher, but were instead scheduled to receive services from a general education teacher under the supervision of the special education teacher. The Complainant alleged that during the 2016-2017 school year, the District failed to provide Students 1-23 with the services stated in their individualized education programs (IEPs) and failed to provide Students 1-23 with specially designed instruction that was provided by, or designed and supervised by a certificated special education teacher. The District admitted that based on the case manager model it had been using, the students had not received the specially designed instruction specified in their IEPs and proposed corrective actions.

ISSUES

1. Did the District provide Students 1-23 with the services stated in their individualized education programs (IEPs), during the time period between May 9, 2016 and May 8, 2017?
2. Did the District provide Students 1-23 with specially designed instruction that was provided by, or designed and supervised by a certificated special education teacher during the time period between May 9, 2016 and May 8, 2017?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 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(3)(a). On a case-by-case basis, an IEP team may determine that the individual needs of the child require that the start date of a related service should occur the first week of school or after the beginning of the school year. Therefore, a district policy that mandates that related services for all children with disabilities will begin at a specific time after the beginning of the school year (e.g., the third week of the school year) would not be consistent with the IDEA and its implementing regulations. *Letter to Ackerhalt*, 60 IDELR 21 (OSEP 2012).

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

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(g).

FINDINGS OF FACT

1. During the 2016-2017 school year, the twenty-three students identified in this complaint attended a District middle school and were eligible for special education services.
2. August 30, 2016 was the first day of the District's 2016-2017 school year.
3. To serve eligible students in a general education setting, the District used a service delivery model that it refers to as a special education case manager model.

Specifically, this means that for students whose individualized education programs (IEPs) provided for special education services in a general education setting, the District tasked an IEP case manager with designing, supervising, and monitoring the provision of specially designed instruction in each of these settings. Students 1-23, identified in this complaint, all have the same special education case manager.

4. **Student 1** – During the 2016-2017 school year, Student 1 was in eighth grade. The IEP in place for Student 1 at the beginning of the school year was developed in March 2016, and provided the following specially designed instruction in a *general education setting*:
- Reading – 90 minutes 5 times weekly (provided by a special education teacher)

Student 1's class schedule for the first semester of the 2016-2017 school year was as follows:¹

- Period 1: Debate
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: English Language Arts (ELA) Block Period
- Period 6: ELA Block Period

5. **Student 2** – During the 2016-2017 school year, Student 2 was in eighth grade. The IEP in place for Student 2 at the beginning of the school year was developed in February 2016, and provided the following specially designed instruction in a *general education setting*:

- Behavior (Organizational) – 50 minutes 5 times weekly (provided by a special education teacher)

Student 2's annual goal was to meet with his case manager twice a week before school to create a plan for work completion, improving from having two failing classes to passing all his classes.

Student 2's class schedule for the first semester of the 2016-2017 school year was as follows:²

- Period 1: Physical Education
- Period 2: Orchestra
- Period 3: Science
- Period 4: Geometry
- Period 5: US History
- Period 6: Language Arts

6. **Student 3** – During the 2016-2017 school year, Student 3 was in sixth grade. The IEP in place for Student 3 at the beginning of the school year was developed in May 2016, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)

¹ Unless noted otherwise, all classrooms are general education classrooms, taught by general education teachers.

² In its response to this complaint, the District stated Student 2 received his organizational services by meeting with a special education teacher before school.

Student 3's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: ELA Block Period³
- Period 2: ELA Block Period
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Physical Education
- Period 6: Middle School Math

7. **Student 4** – During the 2016-2017 school year, Student 4 was in eighth grade. The IEP in place for Student 4 at the beginning of the school year was developed in May 2016, and provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)

Student 4's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Math+8
- Period 3: Pre-Algebra
- Period 4: Science
- Period 5: ELA Block Period
- Period 6: ELA Block Period

8. **Student 5** – During the 2016-2017 school year, Student 5 was in sixth grade. The IEP in place for Student 5 at the beginning of the school year was developed in November 2015, and provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 55 minutes 5 times weekly (provided by a special education teacher)

Student 5's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Science
- Period 2: General Math
- Period 3: Language Arts
- Period 4: World Civilizations
- Period 5: Physical Education
- Period 6: No class listed

On November 22, 2016, Student 5's IEP team agreed to extend her IEP until they could meet on December 9, 2016 to develop her annual IEP. Student 5's December 2016 IEP provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 55 minutes 5 times weekly (provided by a special education teacher)

9. **Student 6** – During the 2016-2017 school year, Student 6 was in the eighth grade. The IEP in place for Student 6 at the beginning of the school year was developed in November 2015, and provided the following specially designed instruction in a *general education setting*:

³ In its response to this complaint, the District relayed information from Student 3's general education ELA teacher, who stated that if she observed a problem, she emailed the special education case manager or could meet with her on Fridays; otherwise, the ELA teacher met with the special education case manager once every two months.

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

On November 2, 2016, Student 6's IEP team agreed to extend his IEP until they could meet and develop his annual IEP on December 9, 2016. Student 6's December 2016 IEP provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 6's class schedule for the first semester of the 2016-2017 school year was as follows:

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|--------------------------------|-------------------------------------|
| • Period 1: Physical Education | • Period 4: Middle School Math |
| • Period 2: Middle School Math | • Period 5: Middle School ELA Block |
| • Period 3: Science | • Period 6: Middle School ELA Block |

10. **Student 7** – During the 2016-2017 school year, Student 7 was in sixth grade. The IEP in place for Student 7 at the beginning of the school year was developed in February 2016, and amended on May 5, 2016. As amended, the IEP provided the following specially designed instruction in a *general education setting*:

- Reading – 110 minutes 5 times weekly (provided by a special education teacher)

Student 7's class schedule for the first semester of the 2016-2017 school year was as follows:

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|--------------------------------------|--------------------------------------|
| • Period 1: Middle School ELA Block | • Period 4: Resource Room Math Block |
| • Period 2: Middle School ELA Block | • Period 5: Orchestra |
| • Period 3: Resource Room Math Block | • Period 6: Art/Health |

11. **Student 8** – During the 2016-2017 school year, Student 8 was in the eighth grade. The IEP in place for Student 8 at the beginning of the school year was developed in February 2016, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Behavior (Organizational) – 30 minutes 5 times weekly (provided by a special education teacher)

On October 11, 2016, Student 8's IEP team amended his IEP to provide 30 minutes per week, rather than 150 minutes per week, for behavior (organizational) skills. In December 2016, Student 8's IEP team developed his annual IEP, which continued to provide for the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Behavior (organizational) – 30 minutes 1 time weekly (provided by a special education teacher)

Student 8's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Art
- Period 2: Technology
- Period 3: Language Arts⁴
- Period 4: Science
- Period 5: Algebra
- Period 6: US History

12. **Student 9** – During the 2016-2017 school year, Student 9 was in eighth grade. The IEP in place for Student 9 at the beginning of the school year was developed in April 2016, and provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)
- Behavior (Organizational) – 30 minutes 5 times weekly (provided by a special education teacher)

Student 9's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Resource Room Social Skills
- Period 2: Consumer Science
- Period 3: Language Arts⁵
- Period 4: US History
- Period 5: Science
- Period 6: Pre-algebra

13. **Student 10** – During the 2016-2017 school year, Student 10 attended sixth grade. The IEP in place for Student 10 at the beginning of the school year was developed in November 2015 IEP, and amended on May 12, 2016. Student 10's IEP provided the following specially designed instruction in a *general education setting*:

- Reading – 110 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 110 minutes 5 times weekly (provided by a special education teacher)

Additionally, Student 10's IEP provided the following specially designed instruction in the *special education setting*:

- Communication – 40 minutes 3 times monthly (provided by a speech pathologist)
- Communication (consultation) – 0 minute 1 time monthly (provided by a speech pathologist)

On November 8, 2016, Student 10's IEP team developed his annual IEP, which provided the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 30 minutes 5 times weekly (provided by a special education teacher)
- Communication – 30 minutes 5 times weekly (provided by the ELA teacher)

⁴ The documentation included information from Student 8's general education Language Arts teacher, who explained how he rephrased directions, gained Student 8's attention before speaking, used visual cues, provided online and audio textbooks, preferential seating, and extra time to complete assignments. Student 8's general education Language Arts teacher also noted that Student 8's grades were consistently in the "A" and "B" range and Student 8 was successful in the class.

⁵ The documentation included information from Student 9's general education Language Arts teacher, who explained that he provided several accommodations on Student 9's IEP and that the Read 180 program provided instruction at each student's level.

Student 10's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: General Math
- Period 2: Science
- Period 3&4: ELA Block⁶
- Period 3&4: ELA Block
- Period 5: Spanish/Art
- Period 6: Physical Education

14. **Student 11** – During the 2016-2017 school year, Student 11 was in eighth grade. The IEP in place for Student 11 at the beginning of the school year was developed in March 2016, and provided the following specially designed instruction in a *general education setting*:

- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)
- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)

Student 11's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Middle School Math⁷
- Period 3: Language Arts
- Period 4: Middle School Math
- Period 5: WA State History
- Period 6: Science

15. **Student 12** – During the 2016-2017 school year, Student 12 was in eighth grade. The IEP in place for Student 12 at the beginning of the school year was developed in December 2015, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Additionally, Student 12's IEP provided the following specially designed instruction in the *special education setting*:

- Communication – 30 minutes 1 time weekly (provided by a speech pathologist)

On December 2, 2016, Student 12's IEP team developed his annual IEP, which continued to provide the same special education services.

Student 12's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

⁶ The District stated that a speech language pathologist provided the Student's communication services. However, the documentation does not specify when, in the Student's schedule, those services occurred.

⁷ The documentation included information from Student 11's general education Language Arts teacher, who explained that he provided several accommodations on Student 11's IEP and that the Read 180 program provided instruction at each student's level.

16. **Student 13** – During the 2016-2017 school year, Student 13 was in seventh grade. The IEP in place for Student 13 at the beginning of the school year was developed in November 2015, and provided the following specially designed instruction in a *general education setting*:

- Reading – 25 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 25 minutes 5 times weekly (provided by a special education teacher)

On October 20, 2016, Student 13's IEP team developed his annual IEP, which continued to provide the same special education services.

Student 13's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: WA State History
- Period 2: Language Arts⁸
- Period 3: Physical Education
- Period 4: Office Aide/Mythology
- Period 5: Pre-algebra
- Period 6: Science

17. **Student 14** – During the 2016-2017 school year, Student 14 was in the sixth grade. The IEP in place for Student 14 at the beginning of the school year was developed in April 2016, and amended on May 19, 2016. The amended IEP provided the following specially designed in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 14's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Middle School ELA Block
- Period 2: Middle School ELA Block
- Period 3: Resource Room Math
- Period 4: Resource Room Math
- Period 5: Art/Health
- Period 6: Science

18. **Student 15** – During the 2016-2017 school year, Student 15 was in the eighth grade. The IEP in place for Student 15 at the beginning of the school year was developed in November 2015, and provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 15's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

⁸The documentation included information from Student 13's general education Language Arts teacher, who explained that she provided several accommodations on Student 13's IEP, communicated with the parent about accommodations/modifications, attended Student's 13's annual IEP team meeting, and communicated with the case manager on one occasion. Additionally, the general education teacher stated she received an email from the special education case manager, reminding her of IEP testing accommodations for state testing.

On November 23, 2016, Student 15's IEP team developed her annual IEP, which provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 55 minutes 5 times weekly (provided by a special education teacher)

19. **Student 16** – During the 2016-2017 school year, Student 16 was in seventh grade. The IEP in place for Student 16 at the beginning of the 2016-2017 school year was developed in March 2016, and provided the following specially designed instruction in a *general education setting*:

- Behavior (Social) – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 16's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Resource Room Social Skills
- Period 2: Middle School Math
- Period 3: No Class Listed
- Period 4: Middle School Math
- Period 5: Middle School ELA
- Period 6: Middle School ELA Block

20. **Student 17** – During the 2016-2017 school year, Student 17 was in the eighth grade. The IEP in place for Student 17 at the beginning of the school year was developed in December 2015 IEP, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 17's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

On December 9, 2016, Student 17's IEP team developed his annual IEP, which provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 55 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

21. **Student 18** – During the 2016-2017 school year, Student 18 was in the seventh grade. At the beginning of the school year, Student 18 was not eligible for special education services.

22. **Student 19** – During the 2016-2017 school year, Student 19 was in the eighth grade. The IEP in place for Student 19 at the beginning of the school year was developed in May 2016, and provided the following specially designed instruction in a *general education setting*:

- Behavior (Organizational) – 10 minutes 5 times weekly (provided by a special education teacher)
- Behavior (Social) – 40 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by special education teacher)

Student 19's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Resource Room Social Skills
- Period 2: WA State History
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

23. **Student 20** – During the 2016-2017 school year, Student 20 was in the eighth grade. At the beginning of the school year, Student 20 was not eligible for special education services. On November 18, 2016, the District completed Student 20's evaluation, determining he was eligible for special education services. On December 7, 2016, Student 20's IEP team developed his initial IEP, which provided for the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)

Student 20's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: WA State History
- Period 3: Pre-algebra
- Period 4: Science
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

24. **Student 21** – During the 2016-2017 school year, Student 21 was in the sixth grade. The IEP in place for Student 21 at the beginning of the school year was developed on May 9, 2016, and provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)

Student 21's class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1-2: Middle School ELA
- Period 1-2: Middle School ELA
- Period 3: Resource Room Math
- Period 4: Resource Room Math
- Period 5: Band
- Period 6: Science

25. **Student 22** – During the 2016-2017 school year, Student 22 was in the seventh grade. The IEP in place for Student 22 at the beginning of the school year was developed on April 3, 2016, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)

- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 45 minutes 5 times weekly (provided by special education teacher)
- Behavior (Organizational) – 30 minutes 5 times weekly (provided by a special education teacher)

Student 22's class schedule for the first semester of the 2016-2017 school year was as follows:⁹

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|--------------------------------|--------------------------------|
| • Period 1: Language Arts | • Period 4: Physical Education |
| • Period 2: WA State History | • Period 5: Science |
| • Period 3: Middle School Math | • Period 6: Middle School Math |

26. **Student 23** – During the 2016-2017 school year, Student 23 was in the sixth grade. The IEP in place for Student 23 at the beginning of the school year was developed in February 2016, amended on May 20, 2016, and provided for the following specially designed instruction in a *general education setting*:

- Reading – 110 minutes 5 times weekly (provided by a special education teacher)

Student 23's class schedule for the first semester of the 2016-2017 school year was as follows:

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|-------------------------------------|--------------------------------|
| • Period 1: Middle School ELA Block | • Period 4: Middle School Math |
| • Period 2: Middle School ELA Block | • Period 5: Orchestra |
| • Period 3: Science | • Period 6: Middle School Math |

27. The District's first semester ended on January 20, 2017.

Second Semester

28. The District's second semester began on January 24, 2017.

29. **Student 1** – At the beginning of the second semester, Student 1's March 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Reading – 450 minutes 5 times weekly (provided by a special education teacher)

On February 23, 2017, Student 1's IEP team developed his annual IEP. The February 2017 IEP provided the following specially designed in a *general education setting*:

- Reading – 110 minutes 5 times weekly (provided by a special education teacher)

Student 1's class schedule for the second semester of the 2016-2017 school year was as follows:

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|--------------------------------|-------------------------------------|
| • Period 1: Physical Education | • Period 4: Middle School Math |
| • Period 2: Middle School Math | • Period 5: Middle School ELA Block |
| • Period 3: Science | • Period 6: Middle School ELA Block |

⁹ The documentation does not address where Student 22 received services for behavioral (organization).

30. **Student 2** – At the beginning of the second semester, Student 2’s February 2016 IEP was in place, and provided for the following specially designed instruction in a *general education setting*:

- Behavior (Organizational) – 50 minutes 5 times weekly (provided by a special education teacher)

On February 10, 2017, Student 2’s IEP team developed his annual IEP. The February 2017 IEP provided the following specially designed in a *general education setting*:

- Behavior (Organizational) – 30 minutes 5 times weekly (provided by a special education teacher)

On April 28, 2017, Student 2’s class schedule for the second semester of the 2016-2017 school year was as follows:¹⁰

- Period 1: Technology
- Period 2: Orchestra
- Period 3: Science
- Period 4: Geometry
- Period 5: US History
- Period 6: Language Arts

31. **Student 3** – At the beginning of the second semester, Student 3’s May 6, 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)

On April 28, 2017, Student 3’s IEP team developed her annual IEP. The April 2017 IEP provided for the following specially designed in a *general education setting*:

- Reading – 30 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 15 minutes 5 times weekly (provided by a special education teacher)

Student 3’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: ELA Block Period
- Period 2: ELA Block Period
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Concert Choir/Health
- Period 6: Middle School Math

32. **Student 4** – At the beginning of the second semester, Student 4’s May 2016 IEP was in place and provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)

On May 12, 2017, Student 4’s IEP team developed his annual IEP. The May 2017 IEP continued to provide the following specially designed in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)

¹⁰ As in the first semester, the Student received his behavior (Organizational) services by meeting before school with a special education teacher three times per week.

Student 4's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Debate
- Period 2: Mathematics+8
- Period 3: Pre-Algebra
- Period 4: Science
- Period 5: ELA Block Period
- Period 6: ELA Block Period

33. **Student 5** – At the beginning of the second semester, Student 5's November 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Behavior (Social) – 10 minutes 5 times weekly (provided by a special education teacher)
- Math – 55 minutes 5 times weekly (provided by a special education teacher)
- Reading – 55 minutes 5 times weekly (provided by a special education teacher)

Student 5's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Science
- Period 2: General Mathematics
- Period 3: Language Arts 6
- Period 4: World Civilizations
- Period 5: Art 6
- Period 6: Technology 6

34. **Student 6** – During the second semester, Student 6's December 2016 IEP was in place, which provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 6's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: WA State History
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA
- Period 6: Middle School ELA

35. **Student 7** – At the beginning of the second semester, Student 7's February 2016 IEP, as amended on May 5, 2016, was in place. On February 3, 2017, the District completed a reevaluation of Student 7, which determined the Student continued to be eligible for special education services in reading, but did not include a mathematics assessment. Also on February 7, 2017, Student 7's IEP team developed her annual IEP, which provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)

Student 7's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Middle School ELA Block
- Period 2: Middle School ELA Block
- Period 3: Resource Room Math Block
- Period 4: Resource Room Math Block
- Period 5: Orchestra
- Period 6: Technology

36. **Student 8** – At the beginning of the second semester, Student 8’s December 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Reading– 45 minutes 5 times weekly (provided by a special education teacher)
- Behavior (Organizational) – 30 minutes 1 time weekly (provided by a special education teacher)

Student 8’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Teacher’s Aide
- Period 3: Language Arts
- Period 4: Science
- Period 5: Algebra
- Period 6: US History

37. **Student 9** – At the beginning of the second semester, Student 9’s April 2016 IEP was in place. On March 24, 2017, Student 9’s IEP team developed his annual IEP, which provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)
- Behavior (Organizational) – 45 minutes 5 times weekly (provided by a special education teacher)

Student 9’s class schedule for the first semester of the 2016-2017 school year was as follows:

- Period 1: Resource Room Social Skills
- Period 2: Physical Education
- Period 3: Language Arts
- Period 4: US History
- Period 5: Science
- Period 6: Pre-algebra

38. **Student 10** – At the beginning of the second semester, Student 10’s November 8, 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 30 minutes 5 times weekly (provided by a special education teacher)
- Communication – 30 minutes 5 times weekly (provided by the ELA teacher)

Student 10’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: General Math
- Period 2: Science
- Period 3: ELA Block
- Period 4: ELA Block
- Period 5: Choir/Speech
- Period 6: Technology/Health

39. **Student 11** – At the beginning of the second semester, Student 11’s March 22, 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)
- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)

On March 17, 2017, Student 11's IEP team developed his annual IEP, which continued to provide the same specially designed instruction.

Student 11's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Consumer Science
- Period 2: Middle School Math
- Period 3: Language Arts
- Period 4: Middle School Math
- Period 5: WA in the World
- Period 6: Science

40. **Student 12** – At the beginning of the second semester, Student 12's December 2, 2016 IEP was in place, and provided the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Additionally, Student 12's IEP provided the following specially designed instruction in the *special education setting*:

- Communication – 30 minutes 1 time weekly (provided by a speech pathologist)

Student 12's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: WA State History
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

41. **Student 13** – At the beginning of the second semester, Student 13's October 20, 2016 was in place, and provided the following specially designed instruction in a *general education setting*:

- Reading – 25 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 25 minutes 5 times weekly (provided by a special education teacher)

Student 12's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: WA in the World
- Period 2: Language Arts
- Period 3: Art/Health
- Period 4: Consumer Science/Spanish
- Period 5: Pre-algebra
- Period 6: Science

42. **Student 14** – At beginning of the second semester, Student 14's IEP, as amended on May 19, 2016, was in place. Student 14's IEP provided the following specially designed in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 14's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Middle School ELA Block
- Period 2: Middle School ELA Block
- Period 3: Resource Room Math
- Period 4: Resource Room Math
- Period 5: Physical Education
- Period 6: Science

43. **Student 15** – At the beginning of the second semester, Student 15’s November 23, IEP was in place, which provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 55 minutes 5 times weekly (provided by a special education teacher)

Student 15’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Physical Education
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5-6: Middle School ELA
- Period 5-6: Middle School ELA

44. **Student 16** – At the beginning of the second semester, Student 16’s March 10, 2016 IEP was in place, which provided the following specially designed instruction in a *general education setting*:

- Behavior (Social) – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

On March 9, 2017, Student 16’s IEP team developed his annual IEP, which continued to provide the same special education services.

Student 16’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Resource Room Social Skills
- Period 2: Middle School Math
- Period 3: Technology/Health
- Period 4: Middle School Math
- Period 5 -6: Middle School ELA
- Period 5 -6: Middle School ELA

45. **Student 17** – At the beginning of the second semester, Student 17’s December 9, 2016 IEP was in place, which provided the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 55 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by a special education teacher)

Student 17’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Art
- Period 2: Middle School Math
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

46. **Student 18** – At the beginning of the second semester, Student 18 was not eligible for special education services. On February 17, 2017, the District completed Student 18's evaluation report, determining the Student was eligible for special education. On February 24, 2017, Student 18's IEP team developed her initial IEP, which provided the following specially designed instruction in a *general education setting*:

- Mathematics – 110 minutes 5 times weekly (provided by a special education teacher)

Student 18's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: WA in the World
- Period 2: Language Arts
- Period 3: Middle School Math
- Period 4: Health/Consumer Science
- Period 5: Science
- Period 6: Middle School Math

47. **Student 19** – At the beginning of the second semester, Student 19's May 9, 2016 IEP was in place, which provided for the following specially designed instruction in a *general education setting*:

- Behavior (Organizational) – 10 minutes 5 times weekly (provided by a special education teacher)
- Behavior (Social) – 40 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 90 minutes 5 times weekly (provided by special education teacher)

Student 19's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Resource Room Social Skills
- Period 2: Physical Education
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Middle School ELA
- Period 6: Middle School ELA

48. **Student 20** – At the beginning of the second semester, Student 20's December 7, 2016 IEP was in place, which provided for the following specially designed instruction in a *general education setting*:

- Reading – 55 minutes 5 times weekly (provided by a special education teacher)

Student 20's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Choir
- Period 2: Physical Education
- Period 3: Pre-algebra
- Period 4: Science
- Period 5: Middle School ELA Block
- Period 6: Middle School ELA Block

49. **Student 21** – At the beginning of the second semester, Student 21's May 9, 2016 IEP was in place, which provided the following specially designed instruction in a *general education setting*:

- Reading – 90 minutes 5 times weekly (provided by a special education teacher)

Student 21's class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Middle School ELA Block
- Period 2: Middle School ELA Block
- Period 4: Resource Room Math
- Period 5: Band

- Period 3: Resource Room Math
- Period 6: Science

50. **Student 22** – At the beginning of the second semester, Student 22’s April 3, 2016 IEP was in place, which provided for the following specially designed instruction in a *general education setting*:

- Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Written Expression – 45 minutes 5 times weekly (provided by a special education teacher)
- Mathematics – 45 minutes 5 times weekly (provided by special education teacher)
- Behavior (Organizational) – 30 minutes 5 times weekly (provided by a special education teacher)

Student 22’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Language Arts
- Period 2: WA in the World
- Period 3: Middle School Math
- Period 4: Health/Mythology
- Period 5: Science
- Period 6: Middle School Math

On March 31, 2017, Student 22’s IEP team developed his annual IEP, which continued to provide the same services.

51. **Student 23** – At the beginning of the second semester, Student 23’s February 22, 2016 IEP, as amended on May 20, 2016, was in place, which provided for the following specially designed instruction in a *general education setting*:

- Reading – 110 minutes 5 times weekly (provided by a special education teacher)

Student 23’s class schedule for the second semester of the 2016-2017 school year was as follows:

- Period 1: Middle School ELA Block
- Period 2: Middle School ELA Block
- Period 3: Science
- Period 4: Middle School Math
- Period 5: Orchestra
- Period 6: Middle School Math

CONCLUSIONS

1. **IEP Implementation:** The documentation in this complaint does not substantiate that the District implemented IEP provisions as written for Students 1-23. As discussed below, the District acknowledges that its service delivery model did not support the provisions for specially designed instruction. Additionally, even if the instruction given by general education teachers qualified as specially designed instruction, the IEPs stated that a special education teacher, not a general education teacher, would provide the instruction. Further, although Students 9, 16, and 19 received their special education behavioral services, they received those services in a special education setting, despite their IEPs specifying a general education setting. Similarly, although Student 14 received her special education mathematics services, she received them in a special education setting, despite her IEP specifying a general education setting. Even more concerning, Students 7 and 21 were placed in a special education mathematics classroom, despite no such provision for mathematics services in their IEPs. OSPI reminds the District that it must ensure the provision of all IEP services,

as described in each individual IEP, and accepts the District's proposed corrective actions.

2. Specially Designed Instruction: The District acknowledges that the system of assigning a single case manager to several students (here 23 students, each with several general education teachers) did not provide sufficient time for the special education case manager to supervise, plan, and collaborate with the general education teachers. The District states it is in the process of making comprehensive changes to bring the District into compliance. OSPI accepts the District's proposed corrective actions as detailed below.

CORRECTIVE ACTIONS

By or before **August 18, 2017, September 29, 2017, November 20, 2017, December 1, 2017, February 2, 2018, and April 2, 2018**, the District will provide OSPI with documentation that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. OSPI accepts the District's proposed corrective action to hold IEP team meetings for Students 1-23 within the first 45 school days of the 2017-2018 school year. Specifically, the District will convene IEP team meetings, including parents, for Students 1-23. After the IEP teams review each Student's progress toward IEP goals and grade level curriculum, the IEP teams will determine the amount of services each Student should receive in each eligible service area. The IEP teams will then determine the appropriate placement for each Student within a full continuum of options. If an IEP team believes a Student needs a change in placement as a result of their unique needs, the District will seek consent to conduct an expedited reevaluation. The District will also ensure that the class schedules developed for each Student reflects and enables the delivery of his or her IEP services in the appropriate setting for the 2017-2018 school year.

By or before **November 20, 2017**, the District will submit the following documentation regarding Students 1-23:

- A copy of any IEP meeting invitations;
- A copy of any evaluation reports;
- A copy of any new or amended IEPs;
- A copy of any prior written notice associated with IEP development, IEP amendment, or a student's placement;
- A copy of the students' class schedules.

If the District needs additional time for completing the reevaluations, the District will contact OSPI to arrange for additional due dates.

2. During the 2017-2018 school year, the District will offer a tutoring program for Students 1-23, unless they no longer attend school in the District. For those students amongst Students 1-23 who have transitioned to the high school, the District will invite them to participate in the tutoring program at that location, as ordered in SECC 17-18.

The tutoring program will operate four days per week for 1.5 hours per day, consistent with the middle school's 2017-2018 school calendar, and will be offered after school. Students can elect to access the program on any of the offered days and times. A certificated special education teacher will staff the program, with assistance from two paraeducators. The program must begin the second week of the school year and will continue until May 1, 2018. The District may choose to extend the program until the end of the 2017-2018 school year. The District will also provide transportation for the Students in the tutoring program.

- By **August 11, 2017**, the District will notify the parents of Students 1-23 (unless the students no longer attend school in the district), informing them of this complaint decision, and that the District will offer compensatory services during the 2017-2018 school year. The letter must be in the parents' primary mode of communication, and will include the dates, times, and location of the after school tutoring program.
- By **August 18, 2017**, the District will submit copies of all letters sent to the parents of Students 1-23.
- By **August 18, 2017**, the District will submit documentation that it has entered into contracts with a certificated special education teacher(s) and paraeducator(s) to provide services from at least September 5, 2017 – May 1, 2018.
- By **September 29, 2017, December 1, 2017, February 2, 2018, and April 2, 2018**, the District will provide attendance records for the after school tutoring program.

DISTRICT SPECIFIC:

In SECC 17-14 and SECC 17-18, OSPI ordered training for all certificated special education staff. No additional actions are required.

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 June, 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.)