

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-35

PROCEDURAL HISTORY

On May 15, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the grandparent (Complainant) of a student (Student) attending the Sequim 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 Student's education.

On May 15, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on May 16, 2017. OSPI asked the District to respond to the allegations made in the complaint.

On June 7, 2017, OSPI received the District's response to the complaint and forwarded it to the Complainant on June 8, 2017. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On June 19, 2017, OSPI received the Complainant's reply and forwarded that reply to the District on the same day.

On July 6, 2017, OSPI requested additional information from the District. On July 7, 2017, OSPI received the requested information from the District and forwarded the information to the Complainant on the same day.

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

OVERVIEW

In early January 2017, the Student transferred into the District from another Washington school district and was eligible to receive special education services under the category of speech/language impairment. Later that month, the Student's individualized education program (IEP) team, including the Student's father, met to review the Student's transfer IEP from her prior school district. The transfer IEP provided for specially designed instruction in math, reading, and communications in a special education setting. The District determined it would adopt the Student's transfer IEP, but then changed the Student's placement so that she would receive her math and reading services in a general education setting. The District also reduced the Student's communication services from 160 minutes per month to 120 minutes per month. The Complainant alleged that the District failed to follow transfer procedures and failed to implement the Student's IEP. The District denied the allegations.

ISSUES

1. Did the District follow special education transfer procedures during the 2016-2017 school year?

2. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2016-2017 school year?

LEGAL STANDARDS

Transfer Students Who Transfer from an In-State School District: If a student eligible for special education transfers from one Washington State school district to another Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. 34 CFR §300.323(e); WAC 392-172A-03105(4). "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. 71 Fed. Reg. 156, 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

Change in Placement: The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. If a substantial or material change in the student's educational program has occurred, then the school district must provide prior written notice. Letter to Fisher, 21 IDELR 992 (OSEP, July 6, 1994).

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; WAC 392-172A-03105. 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.

FINDINGS OF FACT

1. At the beginning of the 2016-2017 school year, the Student attended an elementary school in another Washington school district and was eligible to receive special education services under the category of speech/language impairment.
2. The Student's most recent evaluation was completed on May 15, 2016. The evaluation report stated the Student's cognitive functioning fell within the average range of her same age peers, that her reading comprehension was good, and that her strength was processing familiar material and retrieving it from her long-term memory. The report also stated the Student "demonstrated difficulties processing sounds and symbols associated with learning to read which was further complicated by a speech-sound (articulation) disorder". The report further stated the evaluation results "suggest that [the Student] has delays in foundational reading and spelling skills which are consistent with developmental reading disorder (dyslexia)". The report also stated the Student had weaknesses in math skill development and that she struggled with quantitative reasoning and had difficulty understanding math procedures, fractions, and that her math skills were on the low-end of her same age peers. The report recommended specially designed instruction, in reading to "build her understanding of phoneme-grapheme associations (word attack) and orthographic awareness (English language patters, spelling); in math to build applied math skills and grade level computation; and in communication to improve articulation and expressive language (grammar/syntax skills)".
3. The Student's individualized education program (IEP) in place at the beginning of the 2016-2017 school year was developed on June 15, 2016 and provided for specially designed instruction in communication, reading, and math. The IEP stated the Student's reading skills were in the low-middle range when compared to her classmates and her math skills were at the low range when compared to her classmates. The IEP also stated the Student exhibits communication difficulties in the areas of articulation and expressive language. The IEP further stated the Student would participate in the general education setting approximately 79% of the school day, and provided for measurable annual goals in the areas of communication, reading, and math. The IEP stated that progress reporting toward the annual goals would be provided every trimester. The IEP provided for specially designed instruction (SDI) as follows:
 - Communication: 20 minutes, two times per week – special education setting
 - Math: 40 minutes, four times per week– special education setting
 - Reading: 40 minutes, four times per week – special education setting

Additionally, the IEP provided for the following modifications/accommodations in the general education setting:

- Strategic seating away from distractions
 - Breaking materials into manageable parts
 - Checking work frequently to ensure understanding
 - Providing the student with options to test in an alternative setting
4. On January 2, 2017, the Student's father signed a District registration form to enroll the Student in the District. Also that day, the Student's father authorized the Student's prior school district to release the Student's educational records to the District.
 5. On January 3, 2017, the District requested the Student's educational records from the Student's prior school district.
 6. On January 4, 2017, the Student was enrolled in the District. The District assigned the Student to a 4/5 grade split classroom located at a District middle school. According to the District's response to this complaint, it created the 4/5 grade split classroom to resolve overcrowding issues at the elementary schools, and that any new fourth or fifth grade student moving into the District in the calendar year of 2017 was enrolled into this classroom at the middle school.¹
 7. On January 11, 2017, the District sent a meeting notice to the Student's father, notifying him of a meeting to review the Student's transfer records. The meeting was scheduled for January 17, 2017.
 8. On January 17, 2017, a District special education teacher, a District general education teacher (general education teacher 1), the Student's father, the school psychologist, and the District speech language pathologist (SLP) attended a meeting to review the Student's transfer records. The District's "Transfer Review Form" stated "[the Student] will continue the IEP written in the [prior school district], with the exception of changing her service for math and reading to occur in the general education setting". The form provided for the following SDI:
 - Communication: 20 minutes, 6 times per month – special education setting²
 - Math: 40 minutes, 4 times per week – general education setting
 - Reading: 40 minutes, 4 times per week – general education setting
 9. The District's documentation in response to this complaint included a "Placement" form that indicated the Student would be in the general education setting 80%-100% of the school day with the exception of the time spent in the special education setting for speech language therapy.
 10. Also on January 17, 2017, the District issued prior written notice, proposing to initiate the Student's IEP on the same day. The notice stated the IEP team "accepted the

¹ According to the District's response to this complaint, in January 2017, there were four other students besides the Student enrolled in the 4/5 grade split classroom, and by June 2017, 1 students were enrolled in the 4/5 grade split classroom.

² The placement form states the communication services total minutes per month is 160, but this is assumed to be a typographical error and that the correct total is 120 minutes per month, a 40 minute reduction in the Student's communication services.

current IEP from [the prior district] with the exception of providing the math and reading services within the general education classroom” and “also determined that an academic evaluation and speech/language evaluation be conducted”.

11. Also on January 17, 2017, the Student’s father provided written consent for the District to evaluate the Student in the area of “academics”. The form stated the Student transferred from another district and the reevaluation would “help the team better understand [the Student’s] needs”.
12. On March 7, 2017, the Student’s father, the school psychologist, general education teacher 1, and the special education teacher met to review the results of the Student’s reevaluation. The March 2017 evaluation report stated the Student’s May 2016 reevaluation report, from her prior school district, indicated the Student’s math and reading scores “fell mostly into the average range that would not have qualified [the Student] for services in reading or math in this District” and so the Student was reevaluated because “it was believed that the new evaluation would yield results that would discontinue those services”. The District’s report further stated, the results of the evaluation indicated that the Student still demonstrated deficits in the areas of math and reading, and that the Student remained eligible for SDI in those areas.
13. Later on March 7, 2017, the District issued prior written notice, proposing to continue the Student’s “adopted” IEP. The notice stated the Student continued to require SDI in math and reading. The notice also said, the most recent evaluation indicated the Student “demonstrated deficits in her academic abilities and therefore continues to need support” as provided in the Student’s IEP developed by her prior school district.
14. The District elementary school’s second trimester ended on March 15, 2017. The District did not provide any documentation indicating progress reporting was issued as provided for in the Student’s IEP.
15. On March 21, 2017, a District secretary emailed the school psychologist and the Student’s special education teacher, stating the Complainant telephoned and left a message. The secretary stated that the Complainant said that she was the Student’s grandmother, and that the Complainant was helping to care for the Student because the Student’s father was ill. The secretary asked the psychologist and the special education teacher to “call to let [Complainant] know if an IEP meeting has been scheduled.”
16. On March 23, 2017, the special education teacher forwarded the District’s secretary email to the District learning support services teacher (support services teacher). Later that same day, the support services teacher emailed the Student’s special education teacher and copied the District secretary and school psychologist. The support services teacher stated that the Complainant “somehow thinks that there may be an IEP meeting coming up soon for [the Student] and called our office to find out. [The Complainant] just wants to make sure she doesn’t miss it”. The support services teacher further stated that the special education teacher could contact the

Complainant to “reassure [the Complainant] that she has not missed an IEP meeting” and that “it’s due in June”, and could discuss meeting dates for the IEP meeting.

17. According to the Complainant’s reply to the District’s response to this complaint, on March 23, 2017, the Complainant and the special education teacher spoke on the telephone, and that during the conversation, the Complainant “expressed [her] dismay at [the Student’s] math instruction”³ and explained that the Student had previously been in “2nd and 3rd grade math to catch up”. In response, the special education teacher reportedly stated she “modified the curriculum for [the Student] and the general education teacher delivers it to [the Student]”.

18. According to the District’s response to this complaint, the Student’s general education teacher delivers instruction to the Student using the fourth grade general education math curriculum that is “adapted to [the Student’s] needs”. The District also stated the special education teacher meets with the general education teacher twice weekly “to discuss [the Student’s] progress on goals and progress in the general education curriculum”, and that each Monday, reading and math notebooks are “shared by the special education teacher in consultation with the general education teacher” and each Friday, “the teachers consult to review progress and create the plan for the following week”.

19. The District’s documentation included the following daily classroom schedule for the Student’s class⁴:

- 8:05 am – Breakfast/Silent Read
- 9:00 am – Entry Task: Our entry tasks are typically math sprints (2). These typically consist of 75-100 math problems that include single digit multiplication and division, mixed operation crosswords, multiplication match ups (two digit numbers) simple addition and subtraction of fractions, finding common denominators, multiplying fractions/reducing etc. This time is also used to allow students [the] opportunity to complete any unfinished work, [and] get individual assistance if needed. Specialized instruction for students with IEP’s occurs during this block.
- 10:00 am – Break
- 10:15 am – Morning math lesson: [the] grade levels split into A/B blocks. A block [is] given an assignment (iReady/Zearn) [while] B block works through daily lesson/problems sets with [the] general education teacher. Specialized instruction for students with IEP occurs during this block.
- 11:45 am – Lunch
- 12:15 pm – Silent Student Reading
- 12:30 pm – Read Aloud

³ The Complainant’s reply to the District’s response to this complaint stated that the Student’s math “homework was straight out of the ‘Eureka 4th grade math workbook’. Without modification at all.”

⁴ The Complainant’s reply to the District’s response to this complaint stated that this daily schedule was “only implemented after [general education teacher 2] was hired in April” and that general education teacher 1 “first included [physical education] P.E., 5 days a week and then 2 days a week and never included Music”.

- 12:45-1:30 pm – ELA: This consists of working out of their Readers, activity books and various assignments. Specialized instruction for students with IEP's occurs during this block.
- 1:30-2:10 pm – Specialist time with me. We will do extended fun activities based on our lessons (Science) as well as Music. 4 days a week. The time is also used for extra help, typing tutor or reward time for students who have completed work.
- 2:10 pm – Break
- 2:30 pm – Silent Student Reading/End of the day procedures
- 2:45 pm – Dismissal

20. On March 24, 2017, the District removed general education teacher 1 from the 4/5 grade split classroom.

21. The District was on break from April 3-10, 2017.

22. On April 10, 2017, the District hired a new general education teacher (general education teacher 2) to teach in the 4/5 grade split classroom.

23. On May 15, 2017, the Complainant filed this citizen complaint.

24. On May 16, 2017, the District invited the Student's father to attend a meeting to review the Student's IEP scheduled for June 7, 2017.

25. On May 22, 2017, general education teacher 2 emailed the Student's special education teacher, stating the Student has been participating in regular 4th grade math program and work, and that the Student has been doing extra daily work on addition and subtraction.

26. On May 22, 2017, the Student's special education teacher emailed the District SLP, asking her to send information about the Student's "successes and struggles as well as her attendance".⁵ The SLP responded on May 24, 2017, stating that the Student has been absent, but the SLP was able to make up the times on other days. She further stated the Student "has completed her grammar goal" and "passed on her /th/ and /s/" goals". The SLP also stated the Student was currently "working on her /r/ goals" and the Student was "able to achieve 85% accuracy but once the Student leaves the speech room the accuracy rate drops to nearly 0%".

27. On June 7, 2017, the IEP team, including the Student's father, met to develop the Student's annual IEP. The June 2017 IEP provided for specially designed instruction in the areas of communication, reading, and math. The IEP stated the Student's reading skills were at a third grade level and her math skills were at a second to third grade level. The IEP also stated the Student's speech intelligibility was measured at 85%. The IEP further stated that the Student "missed significant instruction" in math and reading due to the Student's attendance in school. The IEP further stated the

⁵ According to the District's response to this complaint, the Student's "work expectations" were modified "due to the student's high number of absences". The Student's attendance record stated she was absent 19 school days from January 9, 2017 through June 6, 2017.

Student would participate in general education approximately 89% of the school day and provided for specially designed instruction as follows:

- Communication: 20 minutes, six times per month – special education setting
- Math: 20 minutes, four times per week– special education setting
- Reading: 20 minutes, four times per week – special education setting

Additionally, the IEP provided for the following modifications/accommodations in the general education setting:

- Checking work frequently to ensure understanding
- Providing the student with calculator with teacher permission

28. The District elementary school's third trimester ended on June 15, 2017. The District did not provide any documentation indicating progress reporting toward the Student's May 2016 IEP goals or her new June 2017 IEP goals was issued at that time.

CONCLUSIONS

Issue 1: Transfer Procedures – When a student eligible for special education transfers from one Washington State school district to another Washington State school district, and has an IEP that is in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district, or develops, adopts, and implements a new IEP. Here, the District stated it was adopting the Student's transfer IEP, but then changed the Student's placement so that her reading and math services would be provided in a general education setting, instead of a special education setting, and also reduced the Student's communication services from 160 to 120 minutes per month. When a student transfers into the District from an in-state district, the District has two options: 1) adopt the transfer IEP as written, or 2) develop a new IEP. The District cannot agree to adopt a transfer IEP, and then immediately amend the IEP to change the provision of services and a student's placement. Additionally, if a district determines it needs to develop a new IEP for a student, the district must follow IEP development procedures, and the district cannot make a significant change in a student's placement without a reevaluation. Here, if the District believed the Student's transfer IEP was not appropriate, then it should have provided comparable services until it completed a reevaluation and developed a new IEP. The District failed to follow transfer procedures.

Issue 2: IEP Implementation – The Complainant alleged that the District failed to implement the Student's June 2016 transfer IEP by failing to provide specially designed instruction for math services in a special education setting. As discussed above, while the District "adopted" the Student's June 2016 transfer IEP, it did not implement it as written, but instead changed the Student's placement so that she would receive her services in a general education setting, without first conducting a reevaluation. Further, even after the District completed a reevaluation, it still did not develop a new IEP for the Student, but continued to keep the Student's transfer IEP, although amended, in place. Therefore, the District was still required to provide the Student with comparable services to those stated in her June 2016 transfer IEP, until it develop her new IEP on June 7,

2017. Further, while the failure to provide the Student math and reading services in the general education setting, instead of a special education setting, may not be a material failure to implement the Student's IEP, the District has not provided any documentation to show that the Student actually received specially designed instruction in the general education setting, and did not issue progress reporting to show whether the Student made progress toward her annual reading and math goals. Given the lack of documentation to support that the services were provided in any setting, and the lack of progress reporting, the District will provide the Student with compensatory services.

The Student's June 2016 IEP provided for 160 minutes per week of specially designed instruction in reading and 160 minutes per week of specially designed instruction in math, to be delivered by a special education teacher in a special education setting. Had the District properly implemented the Student's IEP, she would have received approximately 90 hours of instruction (45 hours of reading instruction and 45 hours of math instruction) from January 4, 2017 until May 15, 2017, when the Complainant filed this complaint. Taking into consideration the Student's absences, and the more intensive individualized instruction that can be provided through one-to-one tutoring, the District will provide the Student with approximately 1/3 the amount of hours she should have received had her IEP been implemented. The District will provide 30 hours of compensatory education to the Student in individual tutoring sessions to address reading and math skills. The tutoring will occur outside of the District's school day and be provided by a certificated special education teacher.

CORRECTIVE ACTIONS

By or before **August 18, 2017, September 8, 2017, September 29, 2017, October 27, 2017, January 12, 2018, and March 9, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **August 25, 2017**, the District will meet with the Student's father to develop a schedule for 30 hours of compensatory services in the areas of reading (15 hours) and math (15 hours). Services may occur after school, or over vacations, and must occur outside of the District's school day. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **September 8, 2017**.

The District must provide OSPI with documentation by **October 27, 2017**, and again, by **January 12, 2018**, 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 **March 9, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District either must provide transportation necessary for the Student to access these services, or reimburse the Student's father for the cost of providing transportation for these services. If the District reimburses the Student's father for transportation, the

District must reimburse the Student's father for round trip mileage at the District's privately owned vehicle rate. By or before **March 9, 2018**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation will 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. Additionally, this documentation will include payments, if any, made to the Student's father for travel reimbursement.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District special education certificated staff, including educational staff associates (ESAs), and principals and assistant principals, which will address special education transfer procedures. The guidance will emphasize that if the District determines it cannot adopt a transfer IEP, including implementing that IEP as written, the District must follow IEP development procedures. The guidance will include examples.

By **August 18, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by September 1, 2017, and provide additional dates for review, if needed. By **September 22, 2017**, the District will provide all District special education certificated staff, including ESAs, and principals and assistant principals with the written guidance. By **September 29, 2017**, the District will provide OSPI with documentation showing all required staff received the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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

Dated this ____ day of July, 2017

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)