

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-55

PROCEDURAL HISTORY

On July 14, 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 Tacoma 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 July 17, 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 August 8, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On August 15, 2017, the OSPI investigator spoke with and obtained additional information from the Parent via telephone call.

On August 29 and 30, 2017, via phone, and September 6, 7, and 8, 2017, via email, the OSPI investigator communicated with the District to get clarification regarding documentation included with the District's response to the complaint. On September 8, 2017, OSPI forwarded emails the District provided on September 7 and 8, 2017, in response to the investigator's September 6, 2017 inquiry.

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

OVERVIEW

In September 2016, the Student transferred from another Washington district into a District middle school, and the District continued the Student's placement in accordance with his June 2016 transfer IEP. During the District's first semester, the Student was not given his 1:1 testing accommodation on one occasion and did not receive a portion of his reading or social/emotional services minutes under his June 2016 transfer IEP. In May 2017, the District made several attempts to schedule the Student's annual IEP review meeting with the Parent. The Parent declined, stating she could not attend due to her work schedule, but asked that the IEP team not make any changes to the Student's IEP and that the team send her a draft she would then sign and return. The District held the annual IEP meeting on May 30, 2017, without the Parent, and removed four of the Student's eight goals, reduced his service minutes in general education by 27%, and removed all of the accommodations related to his behavioral goals, and also altered his testing accommodations. The Parent then contacted a District administrator, stating that she had only agreed to let the meeting go on without her because she thought no major changes would be made to the IEP, and based on the changes that were made, she requested an in person meeting. The District did not schedule the in person meeting before the Parent subsequently withdrew the Student from the District and enrolled him in a charter school. The Parent alleged that the District failed to implement the Student's IEP and failed to properly develop/revise his May 2017 IEP, including a failure to properly include her in the process. The District denies all the allegations.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP)?
2. Did the District follow procedures for developing/revising the Student's IEP, including allowing for parent participation?

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.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

IEP Development: The IEP meeting serves as a communication vehicle between parents and school personnel, and enables the IEP team to make informed decisions regarding the: student's needs and appropriate goals; the extent to which the student will be involved in the general education curriculum and participate in the general education environment, and state and district-wide assessments; and services needed to support that involvement and participation, and to achieve the agreed-upon IEP goals. The IEP team must consider the parents' concerns and the information they provide regarding the student in developing, reviewing, and revising IEPs. 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34

CFR Part 300, Question 9). 34 CFR §§300.321, 300.322, 300.324 and 300.328; WACs 392-172A-03095, 392-172A-03100, and 392-172A-03110.

The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information s/he provides. The district is not required however, to adopt all recommendations proposed by a parent. The team must work toward consensus on IEP content, but if team members are unable to reach consensus, it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Parent Participation in IEP Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The notification must include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

Parent Request for Meetings: A parent may request an IEP meeting at any time. In general, when a parent believes that a required component of the student's IEP should be changed, the district must convene an IEP team or provide the parent prior written notice of its refusal to hold an IEP meeting (and include in the notice an explanation of why the district has determined the IEP meeting is not necessary to ensure the provision of a free appropriate public education to the student). 64 Fed. Reg. 48, 12476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20).

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. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

FINDINGS OF FACT

Background Facts

1. During the 2015-2016 school year, the Student attended a K-8 school in another Washington school district.
2. On May 19, 2016, the other school district completed an initial evaluation of the Student, and the Student's evaluation group determined that he was eligible to receive special education services under the category of other health impairment. The evaluation report stated that the Student's attention deficit hyperactivity disorder (ADHD) limited his alertness to classroom instruction and heightened his awareness of environmental stimuli. The report also stated that the Student's disability impacted his capacity to regulate his emotions, to not act on his impulses, to sustain his attention to teacher lessons, consistently produce work independently, and engage in appropriate classroom and student behavior. The report further stated that the Student needed 1:1 paraeducator support and that without 1:1 support, the Student would immediately look around the room for someone with whom he can interact.
3. On June 13, 2016, the Student's IEP team from the other district, including the Parent, met to develop the Student's individualized education program (IEP). The Student's IEP included annual goals in the areas of math, reading, writing, and social/emotional. The Student's social/emotional goals stated:
 - By 6/12/17, when given direction, or a non-preferred task, Student will show self-control of his body and voice (good personal space, keeping hands on his legs near body, inappropriate voice level/language) in relation to the expected levels of the classroom and peers around him for 80% of a 20 minute period, improving self-control from showing self-control of his body and voice in 0% of a 20 minute period to showing self-control of his body and voice in 80% of a 20 minute period, as measured by systematic observation and data collection.
 - By 6/12/17, when given a teacher prompt to complete a task, Student will complete the task within a teacher designated timeline improving task completion from 0% of instances to 70% of instances as measured by systematic observation and data collection.
 - By 6/12/17, when given one verbal cue, Student will attend to a non-preferred whole group, small group activity, or independent assignment, without protest, and remain on-task with no task avoidance for 20 minutes in 3/4 trials improving on-task behavior from remaining on-task without protest for 20 minutes in 0/4 trials to remaining on-task without protest for 20 minutes in 3/4 trials as measured by systematic observation and data collection.
 - By 6/12/17, when given a teacher directive, Student will comply by completing the directive without engaging in noncompliant behavior (e.g., ignoring the speaker, arguing) in 4/5 trials improving compliant behavior from complying with teacher directives in 0/5 trials to complying with teacher directives in 4/5 trials as measured by systematic observation and data collection.

The June 2016 IEP provided for the following specially designed instruction to be delivered in the general education setting:

- Math – 50 minutes/5 times per week
- Reading – 50 minutes/5 times per week
- Writing– 50 minutes/5 times per week

The Student’s IEP also provided for specially designed instruction in the area of social/emotional to be delivered in the special education setting:

- 60 minutes/5 times per week

The IEP stated that the Student would participate in a general education setting 84% of the time, and provided for the following accommodations: adult proximity, clear expectations for behavior, positive reinforcement for appropriate behaviors, alter weight of class components, and testing accommodations for state and district testing. The testing accommodations included 1:1 test setting, “read aloud”, pass at level 2 (state), and use of a calculator. The IEP also stated that progress reporting would be provided on a quarterly basis.

2016-2017 School Year

4. The District’s 2016-2017 school year began on September 6, 2016.
5. On September 8, 2016, the Student enrolled in a District middle school.
6. The District’s middle school operates on a six period bell schedule on Monday, Tuesday, Thursday, and Friday. Every Wednesday, the middle school begins approximately 50 minutes late, and operates on a five period bell schedule. Additionally, the middle school has an A/B block schedule wherein students are assigned to two classes during each period, which alternate every other day for the duration of the semester.

7. On September 12, 2016, the Student was enrolled in the following classes at the middle school:

Period	Block A	Block B	M, T, Th, F	W
1	Algebra	Algebra	65 min.	65 min.
2	Reading	PE	65 min.	60 min.
3	Language Arts	Language Arts	65 min.	93 min.
4	Robotics	Technology	65 min.	60 min.
5	Science	Science	65 min.	60 min.
6	Study Skills	Study Skills	27 min.	0 min.

8. Based on the District’s response to this complaint, the Student was scheduled to receive social/emotional services during his special education study skills class. During this time, the study skills teacher helped the Student complete missing assignments, learn social skills and how to maintain positive relationships, develop integrity, improve self-control, and helped the Student with skills designed to help take charge of his own behavior. During the Student’s first week of school, September 12-16, 2016, the Student’s study skills class was scheduled for 108 minutes total.
9. With the A/B block model, the Student’s general education reading class met for 190 minutes in week 1; 130 minutes in week 2; 190 minutes in week 3; 130 minutes in week 4, etc. The Student’s general education math class met for 325 minutes weekly and the Student’s general education language arts class met for 353 minutes weekly.
10. The Student’s general education math class used a co-teaching model, where the Student’s IEP case manager came into the classroom daily and co-taught the math instruction. The Student’s general education language arts classes also used a co-teaching model, where a special education teacher co-

taught in the language arts classroom daily. The Student’s reading class was taught by a special education teacher in a learning resource room (special education setting).

11. On September 15, 2016, the District school psychologist reviewed and adopted the Student’s June 2016 IEP (transfer IEP) from his previous school. The District’s documentation in this complaint included a meeting notice, dated September 27, 2016, regarding a September 15, 2016 meeting at 8:00 a.m. to discuss the Student’s transfer review. The contact report attached to the notice stated that the District attempted to reach the Parent on September 27, 2016 (eight school days after the meeting was to have occurred), and the Parent did not respond. The District’s response to this complaint did not include a prior written notice regarding this meeting or any documentation to show that this meeting occurred.
12. On September 16, 2016, the Student’s IEP case manager sent an email to the Student’s general education teachers and stated, “Teachers, please remember to shoot me an email if you need to get in touch with [Parent]. [Parent] feels [Student] would do better [...] with a small test setting. Could he take [diagnostic test] in my room?”
13. On September 19, 2016, the Student’s IEP case manager emailed the Parent and copied the Student’s general education language arts teacher and stated:
 Just wanted to let you know that we are testing in language arts today and tomorrow. I asked [Student] where he would like to take the assessment (it’s on a computer), with [language arts teacher] or in my room (no student’s would be there). [Student] said he preferred to stay in class and take the assessment. [Language arts teacher] and I decide[d] we would give this a try, if it is a struggle he can take the next assessment in my room.
14. Also on September 19, 2016, the case manager emailed the principal and stated, “Just a reminder – You were going to change [Student’s] schedule by tomorrow to add [study skills teacher] for more time for social/emotional.”
15. On September 21, 2016, the District changed the Student’s class schedule so that he would no longer take a Robotics class during fourth period block A days, but would instead take an additional special education study skills class during that time period. With the addition of the fourth period study skills class, the Student was scheduled to participate in study skills classes for a total of 238 minutes per week on the A block schedule and 298 minutes per week on the B block schedule. His modified schedule is reflected below:

Period	Block A	Block B	M, T, Th, F	W
1	Algebra	Algebra	65 min.	65 min.
2	Reading	PE	65 min.	60 min.
3	Language Arts	Language Arts	65 min.	93 min.
4	Study Skills	Technology	65 min.	60 min.
5	Science	Science	65 min.	60 min.
6	Study Skills	Study Skills	27 min.	0 min.

16. On October 11, 2016, the Student received a one day in school suspension for “fighting without major injury.”
17. On November 1, 2016, the Student’s study skills teacher exchanged emails with several of the Student’s general education teachers, asking if there was any work he could help the Student

complete, as the case manager had asked the study skills teacher to help the Student get caught up on any missing work and the Parent was coming at 1:00 p.m. that day¹. The study skills teacher stated that the Parent wanted to know that the Student was being helped, per his IEP. Additionally, the study skills teacher asked to get everyone's response before the Parent came in for a meeting on November 3, 2016². The science teacher responded that the Student had not turned in his safety form and needed to retake a test, and also stated that the Student had taken a vocabulary test in the study skills classroom, but had kept the test instead of handing it in. The technology teacher stated the Student was missing two class assignments, and the language arts teacher stated she gave the Student extra time to complete assignments, which he used, and was all caught up in her class.

18. On November 8, 2016, the Student's progress report stated that he had received the following grades:

- Algebra 1 C
- Physical Education B
- Reading A-
- Language Arts B
- Technology Elective C-
- Science C-
- Study Skills A

The District did not provide any documentation indicating progress reporting was issued as provided for in the Student's IEP.

19. On January 12, 2017, an administrative assistant from the District department of student services emailed the District student services director concerning a voicemail she received from the Parent, who had stated she needed to talk about the Student's IEP. The student services director responded that she had already left the Parent a voicemail with her direct number, and that she would attempt to reach her again that same day.

20. The District's first semester ended on January 23, 2017.

21. On February 7, 2017, the District issued the Student's grades for the first semester. The Student's report card stated that he had received the following grades:

- Algebra 1 C-
- Physical Education B-
- Reading B+
- Language Arts C
- Technology Elective C+
- Science C+
- Study Skills A

The District did not provide any documentation indicating progress reporting was issued as provided for in the Student's IEP.

¹ The District did not provide any documentation on the November 1, 2016 meeting the Parent was going to attend at 1:00 p.m.; thus, it is not clear why the Parent was coming in and whether this was an IEP meeting.

² The District did not provide any documentation in reference to what the Student's November 3, 2016 meeting was about, or if it occurred.

22. On April 13, 2017, the Student had a disciplinary incident for fighting with another student, “fighting without major injury.” No disciplinary action was recorded.

23. Also on April 13, 2017, the Student’s science teacher emailed the Student’s other general education teachers, the case manager, the principal, and the Student’s study skills teacher, and relayed an incident that had occurred with a substitute wherein the Student cursed in class, threw slime, did not listen to instruction, and was not following directions. The science teacher asked what should be done, because he did not understand the “special arrangement’ with the Student’s mother regarding his behavior. The science teacher wanted to know if he could write the Student up for his behavior. The staff members then exchanged additional emails, which are summarized as follows:

- The principal advised that the Student be written up.
- The Student’s case manager stated that the “arrangement” with the Student’s mother was that the case manager would act as the go between for the Parent and the Student’s teachers. The case manager also stated that, “Discipline and consequences for his actions should always be the same for him as every other student here. Please hold him accountable for any and all of his actions, that’s what his mother is asking for, as well as holding him accountable for getting his education.”
- The science teacher also asked the case manager to tell the Parent that the Student owed him two lunch sessions to make up for his frequent trips to the bathroom during class.
- The case manager stated that he would hold the Student accountable for that as well, and stated, “I have truly tried to help this young man, but I don’t know if I can trust his words.”

24. On April 18, 2017, the Student’s progress report stated that he had received the following grades:

- Algebra 2 D+
- Reading B+
- Social Studies E
- Language Arts B-
- Technology Elective 2 C+
- Study Skills A
- Science C-
- Study Skills B

The District did not provide any documentation indicating progress reporting was issued as provided for in the Student’s IEP.

25. On April 21, 2017, the assistant principal emailed the school counselor and the Student’s case manager and stated that the Parent had called, requesting additional support for the Student, because the Student was receiving D’s in two classes. The study skills teacher stated that he was getting work from the Student’s teachers to help the Student, but stated that the Student, “[I]s not taking any ownership for [any of his] actions[...].” The assistant principal responded, via email, and asked the school counselor to please call the Parent back and confirm the Student is able to meet with a teacher to get help. The school counselor replied, stating she was, “Calling mom now.”³

26. Also on April 21, 2017, the school counselor emailed the Parent, copying the Student’s teachers, the District director of student services, and the Student’s case manager and stated (in relevant part):

³ Documentation provided by the District in this complaint does not substantiate whether the study skills teacher ever met with the Student.

Thank you for speaking with us regarding your concerns about [the Student]. We have included the emails of the teachers you requested. Teachers, please send helpful information to [Parent] to help the Student bring his grades up.

27. On April 25, 2017, the Student was issued a short-term suspension for one day due to an assault. The Student's discipline record stated the reason for suspension as hitting another student with a "metal stick," in the process of attempting to break down a bathroom stall door.
28. On May 2, 2017, the District sent the Parent an invitation to the Student's annual IEP review meeting on May 30, 2017, at 3:00 p.m. The contact attempt report attached to the invitation stated that the District left a voicemail and the Parent did not respond. The report also stated the District sent a letter in the mail⁴.
29. On May 3, 2017, the Student was issued a two-day suspension for "fighting without major injury." The Student's discipline record stated the reason for suspension as fighting with another student during lunch.
30. On May 5, 2017, the Parent called the Student's case manager to discuss the upcoming IEP review meeting. The contact attempt report stated:

[Parent] stated she has a new job and will not be able to attend any IEP conferences. She would like the IEP done when [Student] goes to high school. I explained the IEP needed to be completed by June 12, but could be changed in September. I offered to send a draft IEP home and hold a conference telephone call. She declined. Our phone call was cut short.
31. On May 10, 2017, the case manager left the Parent a voicemail message regarding the Student's May 30 IEP review meeting. The contact attempt report stated "Called – left message. Said I would be happy to reschedule, send a draft, hold a phone conference... if [Parent] leaves me a message on when is the best time to call her and I will call her back."
32. On May 17, 2017, the Student was issued a one-day suspension. The Student's discipline report stated the reason for suspension as "theft or possession of stolen property," and indicated the Student had stolen another student's cell phone.
33. On May 18, 2017, the Parent called the middle school staff member in charge of in-school suspensions. On May 19, 2017, after their conversation, the staff member emailed the assistant principal and the Student's case manager and stated:

[Parent] called me yesterday:
Per Mom:

 - Someone needs to check IEP – [Student] is to be suspended in school, not out of school⁵.
 - [Parent] does not want to talk to [case manager].
 - [Parent] does not have time to come in to sign IEP – because of work.
 - Don't change anything on IEP – email copy to her and she will sign and return.

⁴ The contact attempt report included several contact attempts, which are included chronologically in the facts of this complaint for the sake of organization.

⁵ There is no documentation in this complaint that substantiates in-school suspensions were a part of the Student's IEP.

- Wants to be taken off school/District call list.
34. Also on May 19, 2017, the contact report for the proposed IEP review meeting on May 30 stated that the Parent requested to have the Student's IEP emailed to her so she could sign and return⁶.
35. On May 30, 2017, the District contact attempt report stated that the case manager called the Parent regarding the Student's IEP review meeting. The contact notes stated that the Parent could not attend the meeting but gave consent to proceed, and that she wanted the IEP sent home with the Student.
36. Also on May 30, 2017, the Student's IEP team met, without the Parent, to review the Student's annual IEP. The Student's IEP team reduced the Student's goals from eight to four, leaving the Student with one goal in each social/emotional, math, reading, and writing. The Student's IEP present level of education performance stated:
- General education: When the Student focuses, he finishes his classwork and takes part in class discussions.
 - Reading: Reading comprehension is at a grade 9 level and his overall [diagnostic] score placed him 1 point below the 8th grade standard (1/17/17). His strengths are in vocabulary and decoding and it is believed that his lower scores in comprehension are due to lack of attention or testing fatigue rather than a cognitive or processing concern.
 - Writing: The Student is a strong writer with minor deficits in writing, which do not detract from the meaning he attempts to convey in his writing. The Student's writing was concise, interesting and persuasive.
 - Math: Student is engaged with his learning and enjoys working with partners or in small groups. [Diagnostic] testing indicates the Student's overall math performance placement level is at "needs improvement." The Student struggles to solve multiple step equations [...].
 - Social/Emotional: The Student has been working with the school behavior specialist on managing his behaviors and strategies to use when his frustration level escalates. The Student can be a positive student in class and likes to help other students with their assignments, talk quietly to others around him share material with others who are in need, and works well 1:1 with adults. The Student can hold mature conversations and often asks insightful questions that show he is able to understand content above his grade level. The Student struggles in defiant and manipulative behavior, and these behaviors manifest when the Student is an environment where he perceives he can get away with negative behavior without consequence. The Student will say things quietly to other students where the teacher cannot hear, argue with the teacher when redirected to be back on task, contradict teachers with alternative facts when confronted with his behavior. When redirected in class the Student will argue or ignore the teacher. Strategies used this year include "steps" to refocus and give the Student a chance to change behavior. Step 1 – refocus the student; Step 2 – ready center for brief discussion with teacher and recourse, Step 3 – loss of school privileges, Step 4 – parent contact and situation reports. The Student does not like to be on steps and will often correct his behavior with the threat of suspension of step 4. Some strategies that work with the Student include proximity to teacher, clear and appropriate expectations, and rewards and recognition for positive behavior.

⁶ During the course of this investigation, the District was unable to substantiate which version of the IEP was sent to the Parent, but the case manager reported that she did send a draft IEP to the Parent and that the Parent never signed or returned it.

The Student's IEP provided for the following specially designed instruction to be delivered in the special education setting:

- Reading – 44 minutes/10 times per month
- Writing – 44 minutes/10 times per week⁷
- Social/Behavior – 88 minutes/ 10 times per month⁸

The Student's IEP also provided for specially designed instruction to be delivered in the general education setting:

- Math - 88 minutes/5 times per week

The May 2017 IEP reduced the Student's participation in the general education setting from 84% to 57%. The May IEP also discontinued the Student's accommodations for adult proximity, clear expectations for behavior, positive reinforcement for appropriate behaviors, as well as the "read aloud" testing accommodation, and the course weight alteration accommodation, based on staff feedback and test data. The May 2017 IEP provided the following accommodations: calculator (as needed)⁹, tests in small group setting or 1:1 (determined by teacher as needed)¹⁰, multiple or frequent breaks (when an independent writing or reading assignment will take 40 minutes or longer).

37. Also on May 30, 2017, the District issued a prior written notice, proposing to initiate the Student's IEP. The notice stated that the District proposed to hold the annual review of the Student's IEP because the current IEP was expiring and the team needed to continue services and write annual goals. The notice acknowledged that the Parent was not able to attend the IEP meeting, but had given permission for the IEP team to proceed. The notice stated that the May 2017 IEP included an accommodation for frequent breaks during reading and writing due to the reading teacher's belief that the Student could read above grade level but had testing fatigue when independent assessments took longer than 40 minutes. The notice stated that the IEP would be initiated on June 5, 2017.
38. On June 12, 2017, the District issued the Student's progress reporting on the measurable annual goals¹¹. The progress reporting stated that the Student had just begun working on his social/behavior goal that day. The Student's progress reporting for the other three goals indicated the Student was

⁷ This is possibly a typo on the May 2017 IEP, and should likely be 44 minutes/10 times per month.

⁸ The 44 and 88-minute increments reflect the bell schedule of the high school the Student was scheduled to attend during the 2017-2018 school year. The case manager also noted that the Parent's input regarding continuation of services was considered in the District's decision to continue all four of the Student's prior service areas.

⁹ Notes provided by the District stated that the IEP team agreed to continue the Student's calculator accommodations, but extended the accommodation beyond District and State assessments and into the classroom setting as well.

¹⁰ Notes provided by the District also reflect that the IEP team considered the Parent's preference that the 1:1 testing accommodation should be "considered."

¹¹ This is the only progress reporting available from the District for the 2016-2017 school year. During the course of this investigation, District counsel reported to the investigator that the case manager reported she had no record of the Student's progress reporting regarding his 2016 IEP because "IEP Online" did not generate a progress reporting sheet for her to use when the Student's IEP transferred to the District in September 2016.

making sufficient progress. The District also issued the Student's report card, stating that he had received the following grades:

- Algebra 2 D
- Reading D+
- Social Studies D
- Language Arts B-
- Technology Elective 2 C
- Study Skills A
- Science D
- Study Skills S¹²

39. On June 15, 2017, the Student graduated from the 8th grade at the District middle school. On the morning of graduation, the Parent told the District student services director that she was unhappy with the Student's May 2017 IEP, but stated she understood she had instructed the IEP team to proceed without her. The director suggested scheduling another IEP meeting prior to the Student starting high school as a freshman, but the Parent declined.

40. The District's 2016-2017 school year ended on June 19, 2017.

41. Also on June 19, 2017, the Parent contacted a District student services staff member and stated that during the May IEP meeting, the Student's IEP had been changed beyond what she had intended when she gave the District permission to hold the IEP review without her¹³.

42. Later on June 19, 2017, the District student services staff member emailed the principal, the case manager, and the director of special education and stated:

After two conversations with parent, it is clear that an IEP team meeting will need to be held ASAP. She indicated that when she spoke with the [case manager], she granted permission for the team to proceed without her and that the only thing she wanted changed were the Student's IEP goals. It was the Parent's understanding that there would be no other changes to the IEP. She is not happy that there were changes made to the accommodations her son receives. Per her right, Parent is now requesting a meeting with the IEP team in order to participate in person. In accordance with her procedural protections including the right to file a citizen's complaint, mediation, and due process; it is best that the district middle school staff move ahead with convening the team and making the agreed changes. Parent is not willing to wait until fall to address this matter. Parent is available Tuesday and Wednesday for the next three weeks. Please include me in the invitation.

The case manager responded to the student services director and the principal and stated, "Please explain what she wants – 1:1? It is in the IEP. I don't feel comfortable meeting with her any longer."

¹² S = Satisfactory

¹³ In its response to this complaint, the District stated that it arranged to schedule an IEP meeting for the Student where the Parent could be physically present but did not provide documentation to substantiate that this meeting was ever attempted or arranged.

43. Also on June 19, 2017, the student services director responded to the case manager's email, copying the director of special education and the principal, and stated:

She wants only the 1:1 [for testing] and not small group. There were other accommodations in the IEP linked to the transfer review that she wants in place as well. A full team should be present including a building administrator and a general education teacher, so you will not be alone. You can also amend the IEP to include all the accommodations and then you would not have to meet, I think [P]arent would agree to that. As the Student transitions to high school it may be beneficial to have more supports in place.

The case manager responded, copying the principal and the director of special education, and stated:

The team considered the accommodations and decided on the accommodations in the new IEP. I sent the IEP home and waited to lock it at least five days. I just heard from the parent last week. If you want to amend the IEP – you know what's best. I don't think I can be involved with the process.

44. On June 20, 2017, the director of special education emailed the middle school principal, and copied the director of student services and the case manager, and stated:

I know we are at the end of the year, and your building has had its share of challenges. This is an IEP meeting request that would be better served to respond to quickly rather than waiting until the fall for a new team to address. Every parent has the right to appropriate participation in her child's IEP. If she was given the reasonable assurance that the IEP would be changed only minimally in her absence then I could understand her frustration with the substantially different document. It would be a procedural violation of the IDEA to decline this request to meet and consider her input to the IEP. The student services director has indicated a willingness to provide support in the meeting. Any staff participating outside of their contracted days would be paid for their time. Effectively we need a district middle school [case manager] and general education teacher and an administrator. The parent has reasonably offered Tuesdays or Wednesdays for the next three weeks, assuming the Fourth of July is not in play. Would you please convene an IEP team to appropriately consider the Parent's input? If you want the director of student services to participate please add her to the invitation.

45. On June 22, 2017, the District received a student records request exchange email, stating that the Student had been enrolled at a charter school.

46. On July 14, 2017, the Parent filed this complaint.

47. On July 18, 2017, the director of special education forwarded his June 20 email to the District counsel and the executive director of student services and stated, "The email below is in reference to today's citizen complaint situation. The meeting below did not happen to my knowledge."

CONCLUSIONS

1. **IEP Implementation:** The Parent alleged that the District failed to implement the Student's IEP. At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

Social/Emotional Services – Although the District adopted the Student’s June 2016 transfer IEP, the Student’s schedule for his first week of school only provided the Student with 108 of his 300 required social/emotional service minutes, and 146 of his social/emotional minutes during the second week. After the District changed the Student’s schedule on September 21, 2016, and due to the A/B block schedule, the Student alternately received 238 of social/emotional services minutes one week (108 in 6th period Study skills + 130 in 4th period study skills), and 298 social/behavior services minutes the other week (108 in 6th period Study skills + 190 in 4th period study skills). Therefore, on the A block schedule, the Student was scheduled to receive 238 minutes of his required 300 minutes, and on the B block schedule, he was scheduled to receive 298 minutes of the required 300 minutes. Based on documentation provided by the District in this complaint, the District has failed to substantiate that it provided the Student with the social/emotional services stated in his June 2016 IEP.

Given the lack of documentation to support that all of the social/emotional services were provided, and considering the lack of progress reporting, the District will provide the Student with compensatory services. Had the District properly implemented the Student’s IEP, he would have received approximately 175 hours of instruction from September 12, 2016 until June 5, 2017¹⁴. However, based on the documentation, the Student received 143 hours of services. Taking into consideration the more intensive individualized instruction that can be provided through one-to-one instruction, the District will provide the Student with approximately 1/2 the amount of hours he should have received had his IEP been implemented. The District will provide 16 hours of compensatory education in social/emotional skills to the Student. The District may choose to contract with a private company or with the Student’s charter school so that individual instructional sessions to address social/emotional skills are provided to the Student near his home. The instruction will occur outside of the District’s school day and be provided by a certificated special education teacher.

Reading and Writing Services – The Student’s June 2016 IEP provided for 250 minutes per week of writing in a general education setting. The Student’s schedule provided for 353 minutes per week in a general education language arts class. Additionally, the Student’s June 2016 IEP also provided for 250 minutes per week of reading in a general education setting. The Student’s reading class on a block A week was scheduled for 195 minutes, and his reading class on a block B week was scheduled for 130 minutes. Therefore, on the A block schedule, the Student was scheduled to receive 195 minutes of his required 250 minutes, and on the B block schedule, he was scheduled to receive 130 minutes of the required 250 minutes. OSPI notes that the Student could have received additional reading services during his language arts class. However, on B block weeks when the Student’s schedule was short 120 reading service minutes, the extra time in his language arts class would still leave him short by approximately 17 minutes weekly. According to information provided by the District during the course of this investigation, a special education teacher taught the Student’s reading class in a special education setting and co-taught the Student’s general education language arts class along with a general education teacher. Therefore, documentation provided by the District substantiates that the District provided the Student’s service minutes in writing in compliance with the June 2016 IEP, but failed to provide the Student all of his reading services. It is also noted that the Student was enrolled in a special education reading class, which was inconsistent with the general education setting stated in his June 2016 IEP.

Given the lack of documentation to support that all the reading services were provided, and considering the lack of progress reporting, the District will provide the Student with compensatory

¹⁴ The Student’s May 2017 IEP was implemented on June 5, 2017.

services. The Student's June 2016 IEP provided for 250 minutes per week of specially designed instruction in reading. Had the District properly implemented the Student's IEP, he would have received approximately 146 hours of instruction from September 12, 2016 until June 5, 2017. However, based on the documentation, the Student received 125 hours. Taking into consideration the more intensive individualized instruction that can be provided through one-to-one instruction, the District will provide the Student with approximately 1/2 the amount of hours he should have received had his IEP been implemented. The District will provide 10.5 hours of compensatory education in reading skills to the Student. The District can contract with a private company or with the Student's charter school so that individual instructional sessions to address social/emotional skills are provided to the Student near his home. The instruction will occur outside of the District's school day and be provided by a certificated special education teacher.

Math Services – The Student's June 2016 IEP provided for 250 minutes per week of math in a general education setting. The Student's schedule provided for 325 minutes per week in a general education math class. According to information provided by the District during the course of this investigation, the Student's IEP case manager co-taught the Student's math class and was in the classroom every day. Documentation provided by the District in response to this complaint substantiates that the District provided the Student's service minutes in math in compliance with the June 2016 IEP.

Accommodations – The Student's June 2016 IEP accommodations stated that the Student would take state and district testing in a 1:1 setting, and have the test "read aloud" during testing. The documentation in this complaint shows that on at least one occasion, the case manager and language arts teacher asked the Student where he preferred to take a test, let him choose a small group setting, and stated that if it did not work, he could take the assessment in a 1:1 setting. However, even if the Student completed testing in preparation for a state test in small group setting, instead of 1:1 setting on this occasion, this would not amount to a material failure to implement the Student's IEP, as there is no documentation to support that the Student was negatively impacted by completing his test in a small group setting. The Student's June 2016 IEP accommodations also provided for adult proximity, based on the 2016 evaluation recommendation that the Student have a 1:1 at all times. Although the District did not provide documentation showing any written plan for keeping an adult in close proximity to the Student, the Student's classes often had two or more adults supervising students or had a smaller class size. However, OSPI notes that the District's failure to consistently provide the adult proximity accommodation more than likely impacted the number of behavioral and disciplinary issues the Student had during the school year.

Progress Reporting – The Student's June 2016 IEP stated that progress reporting would be provided on a quarterly basis. Documentation provided by the District in response to this complaint failed to substantiate that the District sent any progress reporting to the Parent prior to June 12, 2017. OSPI finds the District failed to implement the Student's IEP when it failed to send quarterly progress reporting on a quarterly basis, as stated on the Student's June 2016 IEP. OSPI notes that according to information provided by the District during the course of this investigation, the case manager stated that she hand-wrote progress reports and provided the originals to the Parent. However, the District was unable to provide copies of the hand-written progress reports or other documentation to verify the Parent received any progress reporting prior to June 12, 2017.

2. **IEP Development/Revision:** The Parent alleged that the District failed to properly develop/revise and include the Parent in the Student's IEP during the May 2017 IEP meeting. A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected

progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. A district must ensure that parents are given an opportunity to attend each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. A meeting may be conducted without a parent in attendance if the district is unable to convince the parent to attend. The district must keep a record of its attempts to arrange a mutually agreed on time and place. Here, the District attempted to coordinate with the Parent to hold the Student's annual IEP meeting on May 30, 2017, but the Parent stated that she could not attend the May 30 meeting and indicated that she did not wish to schedule the meeting at another time, and that the IEP team could proceed without her. The District then appropriately held the IEP meeting on May 30, 2017, prior to the Student's June 2016 IEP lapsing. While the Parent later expressed concern that the Student's May 2017 IEP did not include all of the same goals, services, and accommodations, this is not in itself a violation of the IDEA and state regulations. However, the District was required to follow procedures for developing the Student's IEP so that it meets the requirements of WAC 392-172A-03090.

The May 2017 IEP present levels indicated that the Student was progressing well in his classes, both academically and behaviorally. However, the District was unable to provide any progress reporting for the Student based on his June 2016 IEP goals demonstrating progress toward his IEP goals, and the Student's grades showed a decline in all of his classes – over the course of the year – except for two. Additionally, the Student's discipline report showed that the Student's behavioral issues were escalating toward the end of the second semester, where he had four behavioral disciplinary actions over the course of April and May 2017. Therefore, the present levels of performance in the May 2017 IEP do not appear to accurately reflect the Student's actual performance. Additionally, on the May 2017 IEP, the present levels in the area of social/emotional stated that the strategies that worked with the Student were adult proximity, clear and appropriate expectations, and positive reinforcements; however, the IEP team removed these behavioral accommodations in the May 2017 IEP. The IEP team also did not include a behavioral intervention plan (BIP) for the Student or document the reason why one was not needed.

Additionally, the IEP team reduced the Student's time in general education by 27%, changing his placement so that he would no longer receive the majority of his services in a general education setting. A school may not make a significant change in a student with disabilities placement without a reevaluation. 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. Here, the District did not conduct a reevaluation prior to changing the Student's placement and failed to provide any documentation to substantiate its decision to make the change in placement. The District failed to follow procedures for developing the Student's May 2017 IEP.

CORRECTIVE ACTIONS

By or before **September 29, 2017, October 6, 2017, October 20, 2017, October 27, 2017, December 8, 2017, January 12, 2018, March 9, 2018, and June 15, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By or before **September 29, 2017**, the District will work with the Parent to develop a schedule for 26 hours of compensatory services in the areas of reading (10 hours), and social/emotional (16 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 **October 6, 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 (details below).

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

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 Parent for travel reimbursement.

2. Should the Student re-enroll in the District by or before **June 15, 2018**, the District will notify OSPI immediately and **within two weeks of the Student's re-enrollment**, the District will meet with the Parent to review the Student's IEP, determine if the IEP present levels appropriately address the Student's current performance, if a behavioral intervention plan (BIP) is appropriate for the Student, if additional accommodations are needed, and if the Student's placement is appropriate. The District will clearly document the review and any decisions made by the IEP team in a prior written notice. The District will provide OSPI with a copy of the prior written notice, if applicable, a copy of the amended IEP, and a copy of the Student's proposed class schedule within one week of the IEP meeting.

DISTRICT SPECIFIC:

By **November 17, 2017**, The District will ensure all District special education certificated staff at the Student's former middle school, including educational staff associates (ESAs), and principals, receive training regarding IEP development/revision and IEP implementation. The training should specifically address progress reporting per the student's IEP, the importance of keeping records on progress reporting, and what constitutes/what is required for a change of placement. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers. The trainer will not be an employee of the District. The training will include examples.

- By **September 29, 2017**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing training materials.
- By **October 20, 2017**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by November 3, 2017 and additional dates for review, if needed.

- By **December 8, 2017**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session within the required timeframe.

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 September, 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.)