

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-70

PROCEDURAL HISTORY

On October 10, 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 Federal Way 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 October 11, 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 November 7, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on November 8, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended ninth grade at a District high school, but was not eligible for special education services. In September 2016, the Parent referred the Student for a special education evaluation and the District agreed to conduct an evaluation. In October 2016, the District held an evaluation results meeting, which included the Parent, and determined that the Student was eligible for special education services under the category of other health impairment. In November and December 2016, the District attempted to schedule three individualized education program (IEP) team meetings to develop the Student's initial IEP, but the Parent declined to attend. In February 2017, the IEP team, including the Parent, met to develop the Student's initial IEP. Later in February, the District issued prior written notice, refusing to implement the IEP because it did not have the Parent's consent to provide special education or related services. Later in March 2017, the District discovered the Parent had provided written consent to initiate special education services for the Student at the evaluation results meeting in October 2016. In April 2017, the District began implementing the Student's February 2017 IEP. The Parent alleged that the District failed to follow procedures for implementing the Student's IEP, failed to follow procedures for developing/amending the Student's IEP, and failed to follow procedures for reevaluating the Student. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 11, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) from October 11, 2016 through June 22, 2017?
2. Did the District follow procedures for developing/amending the Student's IEP from October 11, 2016 through June 22, 2017?
3. Did the District follow procedures for reevaluating the Student from October 11, 2016 through June 22, 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; 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.

Consent for Initial Provision of Services: A school district responsible for making a free appropriate public education (FAPE) available must obtain informed consent from the parent of a student before initially providing special education and related services to the student. If the parent of a student fails to respond or refuses to consent to services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, the school district will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent. 34 CFR §300.300(b)(3); WAC 392-172A-03000.

Definition of Consent: Consent means that: the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040.

Initial IEP: For an initial IEP, a school district must ensure that: a) the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR §300.323; WAC 392-172A-03105.

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; 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 their 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 school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: either notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. Additionally, the notification must indicate the purpose, time, and location of the meeting and who will be in attendance. 34 CFR §300.322; 20 U.S.C. 1414; WAC 392-172A-03100. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. 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. 34 CFR §300.322; WAC 392-172A-03100. Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP...the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of

parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

FINDINGS OF FACT

Background Information

1. During the 2015-2016 school year, the Student attended eighth grade as a choice transfer student at another Washington school district, and was not eligible for special education services.¹
2. On March 9, 2016, the other district completed an initial evaluation of the Student, determining the Student was not eligible for special education services. The Parent did not agree with the other district's evaluation, and requested a comprehensive independent educational evaluation (IEE) from a private provider, which the other district agreed to provide.
3. Before the start of the 2016-2017 school year, the Parent withdrew the Student from the other district and enrolled him in the District, which is his resident school district.

¹ Some of the findings of facts in this complaint include information from SECC 17-08, which involved the same parties and was filed by the Parent on February 27, 2017.

4. The District's 2016-2017 school year began on September 7, 2016, and the Student began attending ninth grade at a District high school. At that time, the Student was not eligible for special education.
5. Also on September 7, 2016, the private provider, selected by the Parent, completed the Student's IEE report.
6. Also on September 7, 2016, the Parent referred the Student for a special education initial evaluation, providing the District with a copy of the Student's IEE. The District provided the Parent with a written notice, acknowledging the Parent's referral, immediately agreeing to evaluate the Student, and proposing to meet on September 30, 2016 to discuss the components of the Student's initial evaluation. The notice also indicated that the school psychologist provided the Parent with a copy of the procedural safeguards.
7. During the 2016-2017 school year, the District's high school operated on a four period bell schedule on Monday, Thursday, and Friday. On Tuesdays and Wednesdays, the high school operates on a five period bell schedule with shorter class periods to allow for a 27-minute advisory period. Additionally, the high school had an A/B block schedule wherein students alternate class periods every other day for the duration of the semester.
8. The Student's class schedule for the first semester of the 2016-2017 school year was as follows:

Period	Classes	M, Th, F	Tu, W
1	Team Sports	84 min	77 min
2	History	84 min	77 min
3	Computer Science	84 min	77 min
4	Algebra	87 min	77 min
5	College and Career Preparation	84 min	77 min
6	Lifetime Sports	84 min	77 min
7	English Language Arts	84 min	77 min
8	Biology	87 min	77 min
9	Advisory (general education)	0 min	27 min

9. On September 30, 2016, the school psychologist met with the Parent to discuss the components of the District's evaluation of the Student. That same day, the District issued a prior written notice, stating it was proceeding with the Student's initial evaluation. The notice stated the District would review information provided by the Parent, the Student's teachers, and all available educational records, along with the Student's IEE report, available from the prior district.
10. On October 4, 2016, the District completed the Student's initial evaluation and held an evaluation results meeting, which included the Parent. According to the District, the school psychologist brought copies of a draft evaluation report with her to the meeting, which consisted of seven paginated pages, and included the signature page for the evaluation report. The Parent and all professional members of the evaluation group signed the Student's

evaluation report and checked a box indicating agreement with the report. Also according to the District, during the meeting, the Parent asked that the Student's evaluation report also include information from the Student's records, and during the same meeting, the District reproduced that information and added it to the final evaluation report, requiring the District to repaginate the final two pages by hand, including the signature page. The District then provided the Parent with a copy of the final evaluation report, including the pages repaginated by hand.

11. The Student's finalized evaluation report included a review of the Student's current performance in the general curriculum, teacher interviews, the Parent's input, the Student's health documentation, previous evaluations, and extensive information from the Student's IEE. The report stated the Student's academic assessments indicated average scores for total reading, basic reading, reading comprehension and fluency, and written expression, and low scores for mathematics and oral language. The report noted the Student's IEE did not recommend the Student receive specific support for reading, writing, mathematics, or communication. However, the report stated the Student had a current diagnosis of attention deficit hyperactive disorder (ADHD), an unspecified neurodevelopmental disorder, depression, anxiety, a historical diagnosis of adjustment disorder, a provisional diagnosis of post-traumatic stress disorder (PTSD), and a sleep disorder. The report stated these diagnoses currently presented an adverse impact on the Student's educational functioning, and determined the Student was eligible for special education services under the category of other health impairment. The report recommended the Student receive services in the areas of social/emotional functioning and organizational/study skills, but consistent with the IEE obtained by the Parent, did not recommend reading, writing, mathematics, or communication services.
12. Also on October 4, 2016, the District issued prior written notice, stating the evaluation group, including the Parent, determined the Student was eligible for special education services under the category of other health impairment.

Timeline for this Complaint Begins on October 11, 2016

13. On October 12, 2016, the school psychologist emailed the Parent, inquiring when the Parent would be available to attend an IEP team meeting. The psychologist also told the Parent that the Student had an opportunity to observe a special education "Content Mastery" class and inquired if the Student had provided feedback about the class to the Parent.
14. On October 25, 2016, the school psychologist emailed the Parent, inquiring if the Parent wanted to schedule the IEP team meeting on the same day as the Student's student-led conference. The psychologist also stated that she had reminded the Student to continue to go to the Content Mastery class during fifth period. The Parent responded, stating the Content Mastery class was "not a good fit" for the Student and further stated the Student "should get a class created for his disability, for 5th period".

15. On October 26, 2016, the school psychologist and the Parent exchanged emails, arranging for the Student to check in with this fifth period College and Career Preparation class teacher for attendance and then go to the Content Mastery class. The psychologist stated the IEP team needed to develop the Student's IEP within the next week and that the IEP team could "make a plan" for how the Student would receive his specially designed instruction. The psychologist then inquired if the Parent was available to attend an IEP team meeting on November 2, 2016.
16. On October 31, 2016, the school psychologist emailed the District special education learning support coordinator (support coordinator). The school psychologist stated that she had called and emailed the Parent regarding the Parent's attendance at the IEP meeting scheduled for November 2, 2016, and asked the support coordinator to also reach out to the Parent, if they did not hear back by November 1, 2016.
17. On November 1, 2016, the District sent the Parent a written invitation to attend an IEP team meeting scheduled for November 2, 2016.
18. Also on November 1, 2016, the support coordinator telephoned the Parent regarding the November 2, 2016 IEP meeting. The District's documentation included notes regarding the phone call, stating that the Parent declined to attend the meeting.
19. Later on November 1, 2016, the Parent emailed the school psychologist, the support coordinator, and the executive director of student support services (executive director), requesting that the District cancel the Student's IEP meeting. The Parent stated she had concerns that she was not provided with a draft of the Student's IEP and that she wanted a class "created so [the Student] can focus on his studies". The Parent stated that she was not aware of the Student's current levels of performance in the area of reading and that she wanted to incorporate the Student's medical history in the Student's IEP. The support coordinator responded, stating that the purpose of the IEP team meeting on November 2, 2016 was to "consider the results of the Student's evaluation and his academic, developmental, and functional needs" and "to develop a draft of the IEP together with [the Parent], as a team".
20. On November 2, 2016, the Parent emailed the support coordinator, the school psychologist and the executive director, stating she would not attend the meeting and that she was not "providing consent nor permission for [the Student] to attend any meetings". The Parent asked for a copy of all draft IEPs.
21. On November 8, 2016, the Parent emailed the support coordinator, the school psychologist, and the executive director, stating that she wanted the Student to stop attending the special education Content Mastery class.² In response, the support coordinator stated "in order to provide [the Student] with specially designed instruction to finalize and implement his IEP, it is necessary that we have an IEP meeting where we would be able to get your input and

² Based on the documentation in this complaint, it is unclear when the Student stopped attending the "Content Mastery" class.

discuss the education plan for [the Student]”. The support coordinator then inquired if the Parent would be able to attend an IEP meeting on November 15 or November 28. Attached to the email was a draft copy of the Student’s initial IEP with handwritten notes in certain areas, stating “Parent input needed” or “Student and Parent input needed”.

22. On November 8, 2016, the Parent emailed the executive director, the support coordinator, and the school psychologist. The Parent asked the executive director to confirm the Student was no longer attending the Content Mastery class and to confirm that school staff were “creating a class for [the Student] to be able to focus on his work”. Later that same day, the executive director responded that she would answer the Parent’s email the next week. On November 10, 2016, the Parent replied that she would not “be able to make the meeting if you cannot provide me with clear guidance before hand.”
23. According to the District’s response to this complaint, on November 9, 2016, the Parent attended a “Student Led Conference” and at that time, agreed to schedule and attend an IEP meeting on November 28, 2016.
24. On November 10, 2016, the District sent the Parent a written invitation to attend an IEP team meeting schedule for November 28, 2016.
25. On November 15, 2016, the Parent emailed the executive director, stating the Student functioned at a higher level than the other students in the special education Content Mastery class and requested that, instead, the Student have a study hall class and “a direct tutor while in school”. On November 16, 2016, the executive director replied, presenting ways the District could provide the Student with specially designed instruction other than enrolling the Student in the special education Content Mastery class and stated they could further discuss the Parent’s concerns and requests at the IEP meeting scheduled for November 28, 2016.
26. On November 18, 2016, the Parent emailed the school psychologist and the executive director, stating she had been attempting to meet with the school psychologist to provide her with the Student’s medical information and “missing data”. The email included the Parent’s complaints against the school psychologist and stated she would not attend the IEP meeting scheduled for November 28, 2016, until “all these items have been resolved”.
27. On November 23, 2016, the Parent emailed the executive director and the District superintendent, stating that she had not received a response to her November 18, 2016 email and that she would not attend the IEP meeting scheduled for November 28, 2016, until her concerns were resolved.
28. On November 24, 2016, the executive director responded to the Parent’s email and copied the superintendent and the high school’s interim chief academic officer (academic officer). The executive director responded to the Parent’s complaints about the school psychologist and provided additional information about the complaint process. The executive director stated that the Parent’s request for a study hall with a direct tutor while in school was not appropriate for the Student as it equated to a 1:1 assignment for instruction and was

considered the most restrictive environment. The executive director also stated that an IEP team meeting was scheduled for November 28, 2016, and that “the meeting is essential in order to move forward with the creation, finalization, and implementation” of the Student’s initial IEP. The executive director further stated that the District required the Parent’s consent to provide the Student with any special education services.

29. On November 25, 2016, the Parent emailed the executive director, the superintendent, and the school psychologist, requesting to meet with the superintendent. The Parent also requested that the Student’s IEP include specially designed instruction during the Student’s advisory class, and provided a list of accommodations “[the Student] needs for school”. The Parent also stated that she would not attend the IEP team meeting on November 28 and that she did not give her son permission to attend the IEP team meeting.
30. On November 28, 2016, the executive director met with school staff during the time scheduled for the IEP meeting to discuss the Parent’s November 25, 2016 email requests regarding the development of the Student’s IEP. The meetings notes showed that the staff reviewed the requests and identified ways the District could accommodate the Student’s needs.
31. On November 29, 2016, the Parent, the academic officer, and the executive director met to discuss the Parent’s concerns. According to the District’s meeting notes, the Parent expressed her concerns about the special education “Content Mastery” class and the IEP process. The notes stated the Parent said that the Student was more advanced than the other students in the “Content Mastery” class and that the District was not “considering all [the Student’s] other needs/disabilities in the IEP”. The notes further stated the Parent agreed to provide “any/all additional medical information” to the school psychologist by November 30, 2016.
32. On November 30, 2016, the Parent emailed the executive director, the District executive assistant, the superintendent, and the school psychologist, stating that on November 29, 2016, she met with the executive director and the academic officer and did not need to meet with the superintendent. The executive director responded, stating that on November 28, 2016, she told the IEP team about the Parent’s requests for accommodations and that the IEP team was revising the draft IEP based on the Parent’s input. On December 1, 2016, the Parent replied, requesting to meet with the District deputy superintendent “for the additional items needed.”³
33. On December 5, 2016, the executive director emailed the Parent and copied the academic officer and the deputy superintendent. The executive director stated that the Student’s draft IEP had been updated based on the Parent’s November 25, 2016 email and provided for 200 minutes of specially designed instruction in the general education setting and 25 minutes of specially designed instruction in a special education setting during the Student’s advisory class. The executive director then inquired when the Parent was available to meet to review

³ Based on the Parent’s email, it is unclear what additional items the Parent was referencing.

the final draft of the Student’s initial IEP and sign consent for special education services. Attached to the email was “cross-reference documentation” that included one column outlining the Parent’s requests for accommodations and one column outlining how the requests had been incorporated into the Student’s draft IEP.

34. On December 6, 2016, the Student’s IEP case manager emailed the Parent, inquiring if she was available to attend an IEP team meeting on December 7, 2016. The Parent responded that she “need[s] a few weeks to review [the District’s] proposal” and to “meet with the district about a few items within [the District’s] proposal”, and then stated she would respond once “all issues have been resolved”.⁴
35. According to meeting notes included in the District’s response to this complaint, on December 6, 2016, the Parent, the academic director, and the deputy superintendent met to discuss the Parent’s concerns. The notes stated the Parent was concerned about how the IEP process was going and provided a list of items she wanted incorporated into the Student’s IEP. The notes also stated the District agreed “to create a document that lists the items that [the Parent] would like be addressed and then show where that items are translated into the IEP-where possible-and where the IEP team makes recommendations in relation to those items”.
36. On December 10, 2016, the Parent emailed the Student’s case manager, the executive director, the school psychologist, the assistant principal, the support coordinator, and the deputy superintendent, requesting the District update the “cross-reference documentation” to include the recommendations of the Student’s September 2016 IEE report.
37. The District was on break December 19, 2016 through January 2, 2017.
38. On January 24, 2017, the executive director emailed the Parent and copied the school psychologist, the academic officer, the support coordinator, the principal, the assistant principal, and the case manager. The executive director invited the Parent to an IEP meeting scheduled for February 3, 2017, stating “the team sincerely hopes that you will attend, provide input, and provide consent for services for your student; however, if you do not provide consent, the IEP cannot be implemented”. Attached to the email was an updated “cross-reference documentation”, which included the recommendations of the Student’s September 2016 IEE report.
39. On January 30, 2017, the District’s second semester of the 2016-2017 school year began. The Student’s class schedule for the second semester was as follows:

Period	Classes	M, Th, F	Tu, W
1	Team Sports	84 min	77 min
2	History	84 min	77 min
3	Computer Science	84 min	77 min

⁴ Based on the Parent’s email, it is unclear what “items within the proposal” the Parent wanted resolved prior to an IEP team meeting.

4	Algebra	87 min	77 min
5	College and Career Preparation	84 min	77 min
6	Family Health	84 min	77 min
7	English Language Arts	84 min	77 min
8	Biology	87 min	77 min
9	Advisory (general education)	0 min	27 min

40. On January 30, 2017, the high school assistant principal and the Parent participated in a telephone call to discuss the Student’s grades and whether the Parent would attend the IEP team meeting scheduled for February 3, 2017. The District’s documentation included notes regarding the phone call, stating that the assistant principal said the purpose of the February 3 meeting was to review the draft of the Student’s IEP and also stated that “the IEP team really wanted to get [the Parent’s] input”.

41. On February 3, 2017, the Student’s IEP team, including the Student and the Parent, met to develop the Student’s initial IEP. According to the meeting notes, the IEP team began to review the Student’s IEP, but did not complete the review before the end of the meeting because of the amount of time spent answering the Parent’s questions.

42. The Student’s February 2017 IEP stated the Student’s disability adversely impacted his social/emotional skills and organizational/study skills. The IEP stated the Student had good peer relationships, but that he needed to increase his self-advocacy skills and increase his coping strategies when he was anxious or upset. The IEP also stated the Student had established an organizational system, but the Student needed to complete his work and maintain the organizational system. The IEP provided for two goals in the area of social/emotional and two goals in the area of organizational/study skills. The IEP provided for the Student to receive accommodations/modifications such as:

- Maintain close communication with home via email. The parent will email teachers once per week to check in. Please email the parent when [the Student] has missing work or whenever the parent emails staff to check in.
- Please provide missing work to the Student or his case manager with written instructions for completion, and give him reminders to place it in his folder/binder for that class period as well as record the information in his (electronic or paper) planner.
- Allow fifty (50) percent extended time on assignments and tests.

The IEP also provided for the following specially designed instruction from February 3, 2017 through February 2, 2018:

- Social/emotional: 10 minutes, one time per week – special education setting
- Organizational/study skills: 20 minutes, one time per week – special education setting

The IEP provided for the following specially designed instruction from February 3, 2017 through June 21, 2017:

- Organizational/study skills: 150 minutes, one time per week – general education setting

The February 2017 IEP stated, “the IEP team agreed to provide organizational support through the College & Career prep class. Since this is only a ninth grade class, the team will

need to revisit where [the Student] will receive additional minutes if needed” for the next school year. The IEP further stated that during the school year, the Student would participate with non-disabled peers during the school day, except for the 30 minutes of his specially designed instruction.

43. On February 3, 2017, the Parent emailed the assistant principal, the executive director, the academic officer, the school psychologist, the principal, the support coordinator, the case manager, the deputy superintendent, and the superintendent. The Parent stated the IEP meeting “was a disaster” and that “we did not go over the draft as [the executive director] promised”. The Parent then requested that the Student’s IEP include a “customized class of one on one instruction” and additional accommodations regarding time management and missing assignments. The Parent asked that the IEP team incorporate her request for additional accommodations into the Student’s IEP and then send the IEP to her for her review and signature.
44. On February 4, 2017, the Parent emailed the executive director, the academic officer, the principal, the case manager, the assistant principal, the school psychologist, the support coordinator, the Student’s teachers, the school nurse, the school secretary, and the deputy superintendent, requesting that the District provide the Student services in the area of reading skills. Attached to the Parent’s email was a copy of the February 2017 IEP with handwritten notes requesting clarification and providing commentary.
45. On February 9, 2017, the academic officer and the Parent participated in a telephone call to discuss the Parent’s concerns about the IEP meeting held on February 3, 2017. The District’s documentation included notes regarding the phone call, which stated that the Parent wanted to review a draft IEP, that she wanted the IEP to include information regarding the Student’s reading skills, and that she wanted to know more about the IEP draft writing process. The notes further stated the Parent and academic officer agreed to schedule a meeting to discuss the IEP process, the Student’s IEP, and the Student’s current academic performance.
46. Later on February 9, 2017, the Parent emailed the superintendent. The Parent inquired about the status of the Student’s academic reading performance, why the Student’s February 2017 IEP did not include reading services, who drafted the IEP, and what options the District could provide to assist the Student with his tardiness. Later that same day, the deputy superintendent responded to the Parent’s email on behalf of the superintendent, stating that District staff would contact the Parent to schedule a meeting to discuss her concerns.
47. On February 14, 2017, the Parent met with the academic officer, the deputy superintendent, the executive director, the learning improvement officer, the principal, and the assistant principal. According to the District’s meeting notes, the Parent stated she wanted the Student to receive services in the area of reading skills and the District responded that the Student’s evaluations, including his September 2016 IEE, indicated the Student’s “composite score was in the average range for reading” and services in this area were not recommended. Additionally, the notes stated that the student support officer reviewed the “cross-reference documentation” with the Parent.

48. On February 24, 2017, the District issued prior written notice, stating “an IEP has been developed for the Student” but that the Student’s IEP could not be implemented without the Parent’s written consent for the initial provision of special education services. The notice also stated the IEP team, including the Parent, met to develop an initial IEP and the Parent also provided feedback following the meeting. The notice stated the Student “did not qualify for special education services in reading, as the data does not indicate [the Student] demonstrates an adverse impact or need for [specially designed instruction] in this area”. The notice further stated the District was prepared to provide the Student with “specially designed instruction and implement the IEP in the area of organizational/study skills and social/emotional skills upon [the Parent’s] consent”.
49. On February 27, 2017, the Parent filed SECC 17-08, alleging that the District failed to follow procedures governing a special education referral or initial evaluation. Specifically, the Parent alleged that the District’s initial evaluation of the Student was insufficient because it did not recommend that the Student receive special education services for reading, and further alleged that the Student’s evaluation group did not include a person who could interpret the results of the Student’s IEE.
50. Also in February 2017, the Parent requested that the District pay for an IEE because she disagreed with the District’s initial evaluation.
51. On March 1, 2017, the District filed due process hearing request No. 2017-SE-0025, in response to the Parent’s request for an IEE at public expense. As a result, on March 16, 2017, OSPI placed its investigation of SECC 17-08 in abeyance because the issues identified in the complaint overlapped with the issues in the due process hearing request No. 2017-SE-0025.
52. On March 30, 2017, the executive director emailed the Parent regarding implementing the Student’s February 2017 IEP. The executive director stated:
- When you attended the Evaluation Results Meeting on October 4, 2016, at [the high school], you signed a document providing your consent for initial placement for special education services for [the Student]. On February 16, 2017, the IEP team finalized [the Student’s initial IEP that was reviewed and discussed at the IEP meeting on February 3, 2017. The District plans to begin providing those services. Implementing the IEP will only require a small change to [the Student’s] schedule in order to attend his case manager’s advisory class. We recognize that you have expressed multiple concerns regarding the evaluation and the IEP developed by the team over the last several months; however, unless you have changed your decisions regarding consent, the District is required to implement the IEP as written and will begin doing so on Monday, April 10, 2017.

The District’s documentation in response to this complaint included a consent form signed by the Parent on October 4, 2016. According to the District’s response to this complaint, the District inadvertently overlooked the Parent’s signed written consent to initiate special education services because the District’s common practice was to obtain parent consent at the initial IEP meeting. The District’s documentation did not include a prior written notice proposing to implement the Student’s IEP beginning on April 10, 2017.

53. The District was on break April 3 – 7, 2017.
54. On April 11, 2017, the Student was enrolled in a special education advisory class. Based on the District's documentation, the Student was scheduled to receive special education services during his advisory class on Tuesdays and Wednesdays and during his general education fifth period College and Career Preparation class.
55. The District's documentation in this complaint included a "summary of services" authored by the case manager who designed and supervised the Student's specially designed instruction from April 10, 2017 through June 22, 2017. The case manager stated that she worked with the Student during his special education advisory class and a paraeducator provided instruction and assistance to the Student during his general education College/Career Preparation class. The case manager also stated she "collected [the Student's] missing work, put it in his binder with written directions on how to complete it" and that she "communicated with "[the Student's teachers] on how to modify the Student's assignments (especially in Health and College/Career classes)".
56. The District's documentation also included notes co-authored by the case manager and the paraeducator regarding the "minutes served according to the IEP for [the Student]". The notes included information from April 18, 2017 through May 30, 2017, indicating the Student's efforts toward completing his work and what services the case manager and the paraeducator provided to the Student. Generally, the documentation showed that special education staff provided services between 15-30 minutes in each of the Student's advisory class periods and College/Career Preparation class periods. Depending on the alternating block schedule, the staff provided between 30-50 minutes of services in his advisory class each week and 50-75 minutes of services in his College/Career Preparation class each week.
57. On April 18, 2017, the Parent emailed the principal, the assistant principal, the deputy superintendent, the superintendent, the executive director, the academic officer, the support coordinator, the case manager, the school psychologist, and the District's attorney. The Parent stated that she did not agree to change the Student's advisory class to a special education setting and requested the Student's class schedule remain the same.
58. On April 22, 2017, the District's attorney responded to the Parent's April 18, 2017 email. The attorney stated that the Student's advisory class was changed because the District was legally obligated to implement the Student's IEP.
59. On May 2, 2017, OSPI received notice that due process hearing No. 2017-SE-0025 was dismissed because the Parent withdrew her request for an independent educational evaluation (IEE) at public expense. On May 3, 2017, OSPI notified the parties that it would resume its investigation of SECC 17-08 and set new timelines.
60. On May 8, 2017, the Parent emailed the executive director, asking for a copy of the Student's February 2017 IEP and also asking when the District began to implement the Student's IEP.

61. On May 8, 2017, the Parent emailed the Student's teachers and other District staff, requesting an update on the Student's current grades and inquired how the Student could bring up his grades.
62. On May 10, 2017, the Parent emailed the assistant principal, the principal, the District teaching improvement officer, the executive director, and the deputy superintendent. Attached to the email were two handwritten notes. The first note was from the Student, and requested that all his missing work and study guides be sent to the Parent's email address. The second note was from the Parent and stated that she had not been getting updates from each teacher when she checked in and that the teachers had not provided any missing work. The Parent then requested that the Student's teachers provide her with the Student's missing assignments.
63. On May 11, 2017, the Parent emailed the executive director, stating that the Student was not receiving his accommodations and requested a copy of the Student's February 2017 IEP.
64. Also on May 11, 2017, the assistant principal emailed the Parent, stating she was "compiling all of [the Student's] grades and current progress information" and would provide the Parent with the information the next day. Later on May 11, 2017, the Parent forwarded the email communication to the principal and the deputy superintendent, stating the Student's teachers had not been providing the Student with his accommodations and the Parent "should have been provided the information and all missing work."
65. On May 12, 2017, the assistant principal emailed the Parent a "compilation of [the Student's] progress as [the Parent] requested."
66. Also on May 12, 2017, the executive director responded to the Parent's May 11 email, stating that the assistant principal was providing the Parent a list of the Student's missing assignment. The executive director also stated the assistant principal confirmed with the Student's teachers that they were providing his accommodations as identified in the February 2017 IEP. The executive director said that a copy of the Student's IEP had "previously been sent to [the Parent] through multiple means including certified mail and email".
67. On May 15, 2017, the Parent emailed school and District staff to request "a private area in each class" so the Student could retake assessments during that class period and also asked for copies of the Student's missing assignments.
68. On May 19, 2017, the Parent emailed school and District staff, requesting copies of all the Student's missing assignments and a "study guide needed to complete [the] missing work".
69. On May 23, 2017, the assistant principal emailed the Parent, stating she was continuing to collect updates on the Student's assignments from his teachers and provided the updates that she had collected thus far.
70. On May 24, 2017, the Parent emailed school and District staff, inquiring why the Student was not "given the opportunity to retake his test during class time". The assistant principal replied

to the Parent, stating that after school and advisory were ideal times for the Student to retake assessments because the Student would not miss new instruction. The Parent replied, requesting confirmation that the Student would be provided time during his classes to retake assessments.

71. Later on May 24, 2017, the Parent emailed the learning improvement officer and the superintendent, stating that the Student's teachers refused to provide the Student with his accommodations to retake assessments during his class time or provide the Parent with copies of the Student's missing assignments.
72. On May 26, 2017, the assistant principal emailed the Parent and provided an update regarding the Student's assignments. The Parent responded that she had not received copies of the Student's missing assignments since March 2017.
73. On May 30, 2017, the learning improvement officer emailed the Parent regarding the Student's accommodations. The learning improvement officer stated that the February 2017 IEP did not provide for sending copies of the Student's missing assignments to the Parent each week and also stated she confirmed the accommodations regarding the Student's missing assignments were implemented. The learning improvement officer also stated the Student and the assistant principal were "ensuring that all [the Student's] missing and current work is organized in his binder, and the assignments are written in his planner" and that the assistant principal was sending weekly emails to the Parent with a list of missing assignments and assessments. The learning improvement officer said that the Student was also provided extra time to complete his assignments and assessments. The learning improvement officer then inquired when the Parent was available to meet with her, the deputy superintendent, and the executive director to further discuss the Parent's questions about the Student's assignments. The Parent replied that she was available to meet that same week and asked for copies of any documents that were going to be reviewed at the meeting.
74. On June 1, 2017, the learning improvement officer emailed the Parent, inquiring if she would be available for a thirty-minute telephone conference on June 6, 2017. The Parent responded to the emailed, requesting the meeting to be scheduled for an hour.
75. On June 5, 2017, the learning improvement officer emailed the Parent, inquiring if she was available to meet for an hour, on June 20, 2017. The Parent responded, requesting an agenda for the meeting. The improvement learning officer replied, stating the Parent's prior questions would be used to develop the agenda and inquired if the Parent had additional questions.
76. On June 9, 2017, the Parent emailed the learning improvement officer, inquiring how, when, and where the Student's accommodations for "curriculum, behavior, and instructional strategies" were implemented. The Parent requested "a clear explanation" of how the Student's accommodations were defined. The Parent also stated that the Student's IEP provided for the Parent to receive emails when the Student was missing assignments, but that she "did not receive those emails at all". The learning improvement officer responded,

stating they could discuss the Parent's questions at a meeting on June 20, 2017, and inquired if the Parent was available to attend. The Parent replied that she had "a disability of her own and need[ed] these items in writing".

77. Also on June 9, 2017, the assistant principal emailed the Parent an update on the Student's grades and his missing assignments.
78. On June 13, 2017, the learning improvement officer emailed the Parent, stating that the District administration was still willing to meet with the Parent on June 20, and would provide a written summary of the meeting to meet the Parent's needs. The Parent responded, stating "please put your explanation in writing ASAP".
79. On June 16, 2017, the learning improvement officer responded to the Parent's June 9, 2017 email regarding the implementation of the Student's IEP accommodations. The learning improvement officer stated the Student's accommodations are "implemented on an as needed basis. They are implemented during classes, when [the Student] needs them." The learning improvement officer then offered "to schedule an informational meeting with the school team to go over this in person" and asked when the Parent was available.
80. Also on June 16, 2017, the assistant principal emailed the Student's teachers, inquiring about the Student's grades, missing assignments, and what the Student needed to accomplish to pass the classes he was failing. The assistant principal stated she needed to compile the information to email to the Parent later that day.
81. On June 22, 2017, the District issued prior written notice, stating that the District was issuing progress reporting for the Student from April 10, 2017, when the District began implementing his IEP, through June 22, 2017, the end of the school year. The progress reporting stated that the Student made progress toward one of his organizational/study goals, but his progress was not sufficient to meet his two social/emotional goals and other organizational/study goal by the time the IEP would end.
82. Also on June 22, 2017, the assistant principal emailed the Parent, stating the Student had passed all his classes during second semester and that "most of his grades were improved from first semester".
83. The District's 2016-2017 school year ended on June 22, 2017.
84. On June 30, 2017, OSPI issued a decision in SECC 17-08, finding that the District substantiated that it followed special education referral procedures and procedures for conducting the Student's initial evaluation.

CONCLUSIONS

IEP Implementation: The Parent alleged that the District failed to follow procedures for implementing the Student's individualized education program (IEP). A school district must obtain informed parental consent for the initial provision of special education services. Here, on

October 4, 2016, the District obtained written consent from the Parent to initiate special education services for the Student, but the Student's initial IEP was not finalized until February 2017 (discussed further below), and the Parent continued to express disagreement with the IEP, eventually filing SECC 17-08, and requested that the District pay for an IEE because she disagreed with the results of the Student's initial evaluation. Additionally, although the Parent had signed consent for the initial provision of services on October 4, the District mistakenly believed that the Parent had not yet provided consent for special education services and attempted to work with the Parent to obtain consent, but she did not provide consent during those requests. Once the District discovered that the Parent had provided consent in October 2016, the District notified the Parent and began providing services on April 11, 2017. The District's failure to review its own documentation and recognize that it had consent to provide special education services denied the Student access to services from February 3, 2017, when it finalized his IEP, until April 10, 2017, when it began providing services. The District will provide the Student with compensatory services to address the services he was not provided. From February 3, 2017 until April 10, 2017, there were eight weeks of school. During that time period, the Student should have received 1,360 minutes (twenty-two and a half (22.5) hours) of social/emotional services and 80 minutes (1.3 hours) of organizational/study skills services. The District will provide compensatory services to address the missed 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. The Student's February 2017 IEP provided for 30 minutes per week of specially designed instruction in a special education setting. The District's documentation shows that the Student was receiving 30 minutes each week of specially designed instruction in his special education advisory class from his case manager. The Student's February 2017 IEP also provided for 150 minutes per week of specially designed instruction in organizational/study skills in a general education setting. The District's documentation shows the Student was receiving 50-75 minutes of specially designed instruction each week in his general education College/Career Preparation class from a paraeducator under the supervision of the case manager, which is 75-100 minutes less per week than provided for in his IEP. This is a failure to implement the Student's IEP and the District will provide the Student with compensatory services to make up for the services he was not provided. From April 11, 2017 through June 22, 2017 there were eleven weeks of school. During that time period, the Student should have received 1,650 minutes (27.5 hours) of services. However, the Student generally received 50 minutes of services per week, which was approximately 550 minutes (9.5 hours). Had the District fully implemented the IEP, the Student should have received eighteen (18) additional hours of instruction from April 11, 2017 through June 22, 2017.

Taking into consideration the more intensive individualized instruction that can be provided through one-to-one instruction, as well as the progress made on one goal, the District will provide the Student with approximately 1/3 the amount of the forty-two hours he should have received had his IEP been implemented. The District will provide fourteen (14) hours of compensatory education to the Student in individual instruction sessions to address organizational/study skills. The instruction will occur outside of the District's school day and be provided by a certificated special education teacher.

IEP Development/Amendments: The Parent alleged that the District did not follow procedures for developing the Student's February 2016 IEP. For an initial IEP, a school district must ensure that the district holds an IEP meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education services, and as soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. Here, the Student's evaluation group determined that the Student was eligible for services on October 4, 2016, and therefore, his initial IEP should have been developed by November 3, 2016. The documentation in this complaint shows that the Student's initial IEP was not developed by November 3, 2016. However, the documentation shows the District and Parent exchanged emails regarding the development of the Student's IEP beginning in October 2016 and that the District attempted to schedule an IEP meeting on November 2, 2016, within in the thirty-day timeline, but the Parent declined to attend. The District then offered to schedule a meeting on November 15 or November 28, but the Parent would not agree to attend a meeting until all her questions and concerns were resolved, even though an IEP meeting is the appropriate avenue for that to occur. District staff then met with the Parent on December 6, 2016, to discuss her questions about the IEP process and also addressed the Parent's request for accommodations. In January 2017, District and school staff continued to engage in email communication with the Parent regarding the development of the Student's IEP and offered to hold an IEP meeting on February 3, 2017. The Parent then attended the February 3 meeting, but was unsatisfied with the outcome of the meeting and continued to express concerns about the IEP. The District then held a telephone conference with the Parent on February 9, to discuss and answer her questions about the IEP process, and held a meeting with the Parent on February 14 to discuss and respond to the Parent's requests to provide the Student with specially designed instruction in the area of reading. On February 24, 2017, the District issued notice, stating it had developed the Student's initial IEP, but could not initiate special education services without the Parent's written consent, which at that time, the District mistakenly believed it had not yet obtained. Although the Student's initial IEP was not finalized until February 3, 2017, which is more than thirty days after the Student was found eligible for special education, the District's documentation demonstrated the District's good faith efforts to provide the Parent with the opportunity to participate in the IEP development process over its obligations to meet procedural timelines.

Reevaluation Procedures: The documentation provided by the District and the Parent shows the District did not reevaluate the Student during the timeline for this complaint.

CORRECTIVE ACTIONS

By or before, **January 26, 2018, March 16, 2018, May 18, 2018, and July 6, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

- By or before **January 12, 2018**, the District will meet with the Parent to develop a schedule for a total of fourteen (14) hours of compensatory services in the area of social/emotional and organizational/study skills. Services will occur in a one-on-one setting and be provided

by a certificated special education teacher. The instruction will occur outside of the District's school day and be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **June 20, 2018**. The District will provide OSPI with documentation of the schedule for services by or before **January 26, 2018**.

The District must provide OSPI with documentation by **March 16, 2018** and **May 18, 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. By or before **July 6, 2018**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must 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. The District must provide OSPI with documentation by **July 6, 2018**.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI recommends the District consider using OSPI's third-party IEP meeting facilitator for future IEP meetings with the Parent.

Dated this ___ day of December, 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.)