

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-32**

### **PROCEDURAL HISTORY**

On April 3, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an attorney (Complainant) representing the parents (Parents) of a student (Student) attending the [REDACTED] School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 4, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On April 27 and 30, 2018, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 30, 2018. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On May 12, 2018, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on May 14, 2018.

On May 22, 2018, OSPI received additional information from the District. OSPI forwarded the additional information to the Complainant on the same day.

On May 29, 2018, OSPI received additional information from the Complainant. Also on May 29, 2018, OSPI contacted the Complainant to request additional documentation, and the Complainant provided the documentation that same day. On May 30, 2018, OSPI forwarded the additional information and the requested documentation to the District.

On May 30, 2018, OSPI requested clarifying information from the District and spoke with the District's Attorney.

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

### **OVERVIEW**

During the 2017-2018 school year the Student attended a District junior high school and was eligible to receive special education and related services under the category of specific learning disability. In February 2018, the Student's individualized education program (IEP) team developed a new IEP for the Student, which included speech therapy services as a related service and provided for the use of a word processor/computer. The District contracted with a local hospital to provide speech therapy services. In February 2018, the District asked the Parents to sign a computer use form addressing the Student's use of a District computer. The computer use form indicated that the Parents would be responsible for paying for the computer if it was lost or damaged. Due to concerns about being able to afford to pay for a lost or damaged device, the

Parents contacted their attorney (Complainant) about the matter. Also, in March 2018, the Parents received a bill from the local hospital for the Student's speech therapy services. Due to this, the Parents believed they were responsible for the bill and contacted the Complainant. The Complainant then sent the District a letter expressing concern about the computer use form and the Parents being billed for the speech therapy services. In response, the District agreed to contact the hospital to clarify that the District should be billed for the speech therapy services, and provided an updated computer use form.

The Complainant alleged that the District failed to implement the Student's February 2018 IEP in regard to the provision of speech language services because the Parents were billed for the services, and failed to implement the IEP in regard to assistive technology because the District did not provide the Student access to a computer. The District denied the allegations.

### ISSUES

1. Did the District implement the Student's February 2018 individualized education program (IEP) in regard to the provision of speech language services and assistive technology?

### LEGAL STANDARDS

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

Assistive Technology: The term "assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, and/or improve the functional capabilities of a student eligible for special education. The term does not include a medical device that is surgically implanted, or the replacement of such device. 34 CFR §300.5; WAC 392-172A-01025. The need for assistive technology must be determined on a case-by-case basis, considering the unique needs of each student. If the IEP team determines that a student with disabilities requires assistive technology in order to receive a FAPE, and designates such assistive technology as either special education or a related service, the IEP must include a specific statement describing such service, including the nature and amount of such services. Any assistive technology needs stated

in an IEP must be provided at public expense, under public supervision and direction, and without charge. *Letter to Anonymous*, 29 IDELR 1089 (OSEP 1997). If the student's IEP team determines that the student needs to take a required assistive technology device home in order to receive an appropriate education, that device must be provided at no cost to the parents. This means that a district could not assess a charge on parents for normal use and wear and tear. State laws rather than Part B, however, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly-owned equipment used at home in accordance with a student's IEP. "Therefore,...look to State law concerning the extent to which persons lawfully in possession of the property of another are financially responsible for its damage or loss. Such State laws, however, must be implemented consistent with Part B and the right of each disabled student to FAPE. *Letter to Culbreath*, 25 IDELR 1212 (OSEP 1997).

Defacing or Injuring School Property: Any pupil who defaces or otherwise injures any school property, or property belonging to a school contractor, employee, or another student, is subject to suspension and punishment. If any property of the school district, a contractor of the district, an employee, or another student has been lost or willfully cut, defaced, or injured, the school district may withhold the grades, diploma, and transcripts of the pupil responsible for the damage or loss until the pupil or the pupil's parent or guardian has paid for the damages. If the student is suspended, the student may not be readmitted until the student or parents or legal guardian has made payment in full or until directed by the superintendent of schools. If the property damaged is a school bus owned and operated by or contracted to any school district, a student suspended for the damage may not be permitted to enter or ride any school bus until the student or parent or legal guardian has made payment in full or until directed by the superintendent. When the pupil and parent or guardian are unable to pay for the damages, the school district shall provide a program of voluntary work for the pupil in lieu of the payment of monetary damages. Upon completion of voluntary work the grades, diploma, and transcripts of the pupil shall be released. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law. Before any penalties are assessed under this section, a school district board of directors shall adopt procedures which insure that pupils' rights to due process are protected. RCW 28A.635.060.

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.

## FINDINGS OF FACT

1. During the 2017-2018 school year the Student attended a District junior high school and was eligible to receive special education under the category of specific learning disability.
2. The Student lives with his parents, and the family's native language is Spanish. The Student speaks both English and Spanish.
3. The District's 2017-2018 school year began on August 22, 2017.
4. The Student's individualized education program (IEP) in place at the beginning of the school year was developed in April 2017. The April 2017 IEP included annual goals in the areas of reading and writing, and provided for specially designed instruction to address the goals.
5. On September 7, 2017, the Complainant, on behalf of the Parents and Student, filed due process hearing no. 2017-SE-0083 alleging multiple issues with the Student's educational program. These issues included that the District had failed to address the Student's communication disorder, failed to implement the Student's IEPs in place during the 2015-2016, 2016-2017, and 2017-2018 school years, and failed to follow procedures for developing the Student's April 2017 IEP.
6. Based on the documentation in this complaint, also in September 2017, the Parents requested that the District pay for an independent educational evaluation (IEE) of the Student. In response, the District agreed to pay for the IEE.
7. In November 2017, a private evaluator conducted an IEE of the Student. The private evaluation report recommended that the Student receive services in the areas of language comprehension, language expression, reading, writing, spelling, and math.
8. On December 5, 2017, the District and the Parents reached a settlement agreement regarding the issues in due process no. 2017-SE-0083. In relevant part the agreement stated:
  - The parties agree the Student is not a candidate for online therapy in speech, language, or other areas. The District will contract for the Student to receive speech language services one-on-one through a licensed speech language therapist or a graduate intern under the supervision of a licensed speech and language therapist.
  - The District agrees that from approximately 1/20/2018 to 6/20/2022, the Student's daily school program will include:
    - One period of Speech Language Therapy [SLP] specifically for gauging development and strategies for listening comprehension.
  - The District agrees to provide the Student with a computer capable of word processing that includes a program with word recognition and Co-Writer with word prediction to facilitate written language. The IEP will clearly identify the assistive technology equipment, software and devices the Student requires. The District will ensure the Student receives appropriate assistive

technology for use at home and at school and will maintain all assistive technology in working order.

9. On December 20, 2018, due process no. 2017-SE-0083 was dismissed.
10. The District was on break December 18, 2017 through January 1, 2018.
11. Based on the documentation in this complaint on January 24, January 31, and February 6, 2018, the Student's IEP team met to review the results of the Student's IEE and develop a new IEP for the Student. The February 2018 IEP included annual goals in the areas of communication, math, reading, and writing. One of the Student's writing goals stated:  
When given instruction through the Type to Learn Program [the Student] will [l]earn the basics of typing improving [h]is keyboarding skills from 3 words per minute to 15 words per minute as measured by the type to learn program reports.

The February 2018 IEP provided for the following specially designed instruction in a special education setting:

- Reading – 42 minutes 4 times weekly
- Writing – 24 minutes 4 times weekly
- Writing – 66 minutes 1 time weekly
- Communication – 54 minutes 4 times weekly
- Communication – 40 minutes 1 time weekly
- Math – 15 minutes 4 times weekly

The IEP also provided for 45 minutes 5 times weekly of speech therapy as a related service, and special transportation 40 minutes 5 times weekly. Additionally, the IEP provided for multiple accommodations/modifications, which included in relevant part "Access/Use of the following: word processor/computer."

12. On February 1, 2018, the District negotiated a contract with a local hospital to provide the Student's speech language therapy services, as the District did not have a speech language therapist available to provide the services. The contract stated that the District would pay the hospital an hourly fee for the speech services, and that the hospital would send the District a monthly invoice. The District school board approved the contract on February 26, 2018.
13. On February 8, 2018, the Student began receiving speech therapy services at the local hospital.
14. Based on the information and the documentation provided by the parties to this complaint, at some point in February 2018, the District provided the Parents with a form to sign that would allow the Student to check out a District computer (computer use form 1). Computer use form 1 stated that the Parents would be responsible for paying for the computer if it was lost or damaged. The Parents were concerned about not being able to afford to cover the cost of a lost computer and brought computer use form 1 to the attention of the Complainant.

15. On March 6, 2018, the local hospital sent the Parents a \$3,500 bill for the speech and language therapy services the Student had received from February 8-28, 2018. The bill stated that the payment was due on March 20, 2018. The Parents were concerned about receiving the bill and brought it to the attention of the Complainant.
16. On March 12, 2018, the local hospital sent the District an invoice for the speech and language therapy services the Student had received from February 8-28, 2018.
17. On March 20, 2018, the Complainant emailed the District's attorney and attached a letter which stated in relevant part:

The Parents alerted me that the District has insisted that the Student will not receive the computer required to implement both the IEP and the settlement agreement unless they sign a financial guarantee to be responsible for any damage or replacement. Please let me know what law the District is relying on to require these Parent to make a financial guarantee before their child can receive a free and appropriate public education.

The March 20 letter also stated:

The Parents have received a bill for approximately \$3,000 from the speech language therapist currently providing IEP services to the Student. Can you please ask [the District special education director] to make proper payment arrangements with the provider and let me know before the end of this work week that the bill the family received has been paid and that the family's credit is not going to be impacted in any way. Please let us know what steps [the special education director] has taken to make certain the provider knows the family is not financially responsible for payment of IEP services.

18. On March 22, 2018, the District sent the Complainant a letter which stated in relevant part:

As a general policy, the District requests parents of students who use District electronic devices at home to be financially responsible for any damage to or loss of the device. However, [the District special education director] has indicated that the District will no longer request that the Parents sign this guarantee, and the Student will receive the computer without such a guarantee from the Parents.

The District has prepared a new agreement in Spanish for the Parents, which advises on how to care for the District technology in the home environment. [The District special education director] will send the agreement to the Parents and will provide the Student with a computer as soon as the Parents sign.

The March 22 letter also stated:

[The District special education director] is in the process of making proper payment arrangements with the speech language therapist to ensure that the Parents are not financially responsible to pay for the Student's SLP services. [The District special education director] indicated that the District is now paying [the local hospital] for the Student's services, and that she recently authorized a payment. [The District special education director] also stated that she will call the hospital to request that all bills be sent to the District rather than the Parents.

19. Also on March 22, 2018, the District special education director sent the Parents a letter asking that they sign and return the included updated computer use form (computer use form 2) with the Student so he could receive a laptop. Computer use form 2, which was written in Spanish, stated that the undersigned understood that the equipment could not be replaced by the District if it was damaged or lost.
20. The District was on break April 2-6, 2018.
21. On April 3, 2018, the Complainant filed this citizen complaint.
22. On April 4, 2018, the District contacted the local hospital to clarify that the District should be billed and not the Parents. The District and the hospital then exchanged emails confirming that the bill sent to the Parents had been voided.
23. Based on the District's documentation in this complaint, the District believes the Parents may have been billed, because the Student started speech therapy services on February 8, 2018 prior to the District school board approving the contract for services on February 26, 2018.
24. On April 10, 2018, the District special education director sent the Parents a letter asking that they review the included computer form (computer use form 3) and sign and return the form with the Student so he could receive a laptop. Based on a review of computer use form 2 and computer use form 3, the forms appear to be the same form.
25. On April 12, 2018, the Complainant met with the District's attorney and special education director, and the special education director shared that the computer was in her office and all the Parents needed to do was sign the computer out. The director and the District's attorney also shared that there was not a requirement that the Parents pay for the computer if it was lost or destroyed.
26. The Student's IEP team was scheduled to meet on April 24, 2018, but the meeting was rescheduled until April 27, 2018. According to the District's response to this complaint, the District special education director planned to give the Parents the computer at the meeting, even if the Parents had not signed computer use form 3.
27. On April 27, 2018, the Student's IEP team met to discuss the Student's educational program. At the meeting, the Parents signed a computer form (computer form 4) and a computer laptop was provided to the Parents. According to the meeting notes provided by the Complainant, the IEP team discussed the Student's progress toward his typing (writing) goal and that the Student continued to type at his base rate of three words per minute.

### **CONCLUSIONS**

The Complaint alleged that the District conditioned the Student's receipt of speech and language therapy and assistive technology based on the Parents' ability to pay.

A student eligible for special education receives a free and appropriate public education (FAPE) when he or she receives, at public expense, an educational program that meets state educational

standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 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, at no charge to the parents.

The Student's February 6, 2018 IEP provides for speech therapy services five times per week, and due to a shortage in speech language therapists working in the District, the District contracts with a third-party contractor (local hospital) to provide these services. In February 2018, the Student began receiving speech services at the local hospital, but the local hospital inadvertently sent both the District and the Parents a bill for the speech and language therapy services the Student received in February 2018. While it is understandable that the Parents were upset in receiving a bill for the services, the billing mistake did not affect the Student's receipt of services, and the District has taken steps to ensure the Parents are no longer being billed for services and that the prior mistaken bill has been voided.

The Student's February 6, 2018 IEP also provided for access/use of a word processor/computer. If a student's IEP team determines that a student needs to take a required assistive technology device home in order to receive an appropriate education, that device must be provided at no cost to the parents. A district cannot assess a charge on parents for normal use and wear and tear. State laws rather than IDEA Part B, however, generally would govern whether parents are liable for loss, theft, or damage due to negligence or misuse of publicly-owned equipment used at home in accordance with a student's IEP.

Here, at some point in February 2018, the District asked that the Parents sign a computer use form which stated that the Parents would be responsible for any loss or damage to the computer. While it is not inconsistent with federal guidance that a parent may be liable for a district issued computer that is lost, stolen, or damaged due to negligence or misuse, the District's computer use form 1 did not specify that parents may only be charged in these specific situations, and also did not discuss that parents will not be charged for normal wear and tear of a computer. Likewise, the District's updated computer use forms (computer use forms 2 and 3), implied that the District would not replace the computer if it was lost or damaged. This statement is inconsistent with the IDEA, state regulations, and federal guidance, as even if a computer is lost or damaged, the District would have the responsibility to continue to provide FAPE, i.e., providing a replacement computer, while any liability claims are being addressed.

Additionally, the District's practice of not providing a computer specified in a student's IEP until a parent signs a computer use form can create a situation in which a student's receipt of FAPE is being predicated on a parent signing a form. While the District can choose to provide parents with notice about possible liability for loss, theft, or damage due to negligence or misuse of a District owned computer, the District cannot delay or deny a student's access to assistive technology. Here, the District's practice of requiring the Parents to sign a computer use form delayed the Student's access to a computer approximately ten weeks, and likely impacted his ability to practice his typing skills while working on class assignments and to complete assignments. The District will provide the Student with five (5) hours of compensatory services



(30 minutes per week for the ten week delay in providing his computer) in the area of writing to address typing skills and to ensure the Student is able to easily navigate/use the word processing program on his computer.

### **CORRECTIVE ACTION**

By or before **June 29, 2018, September 21, 2018, and October 12, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By **June 22, 2018**, the District will work with the Parents to develop a schedule to provide the Student with a total of five (5) hours of compensatory services in the area of typing (writing) and to ensure the Student is able to easily navigate/use the word processing program on his computer. The services will be provided outside of the District's regular school day. The services may be provided over the summer of 2018. The services must be provided by a certificated special education teacher or an occupational therapist. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than October 5, 2018. The District will provide OSPI with documentation of the schedule by **June 29, 2018**.

No later than **October 12, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed. 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.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parents for the cost of providing transportation for these services. If the District reimburses the Parents 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 **October 12, 2018**.

#### **DISTRICT SPECIFIC:**

The District will review and revise its procedures/practices for the use of assistive technology. The procedures will address the use of assistive technology provided for in a student's IEP. By **June 29, 2018**, the District will submit a draft of the procedures. OSPI will approve the written guidance or provide comments by July 13, 2018 and provide additional dates for review, if needed.

By **September 14, 2018**, all District school principals will review and discuss the procedures with all certificated staff, including educational staff associates (ESAs), who work in their buildings. By **September 21, 2018**, the District will provide OSPI with documentation that the principals have

reviewed the checklist with all required staff. The documentation will include a roster of all principals.

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

Dated this \_\_\_\_ day of June, 2018

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.)