

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-20

PROCEDURAL HISTORY

On March 24, 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 Sumner 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 March 27, 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 April 18, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on April 19, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On April 28, 2017, OSPI received the Parent's reply and forwarded that reply to the District on May 1, 2017.

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

OVERVIEW

During the 2015-2016 school year, the Student attended fifth grade at a District elementary school and was eligible for services under the category of autism. The Student's individualized education program (IEP) included a provision for extended school year (ESY) services. The Student's IEP team met on the last day of the 2015-2016 school year to discuss the specific components of the Student's ESY program, and sent their recommendations to the District special education director. The District did not provide ESY services for the Student in July 2016, but did provide ESY services for the Student in August 2016.

During the 2016-2017 school year, the Student attended sixth grade at a District middle school. The Student's core curriculum class was "co-taught" by a general education teacher and special education teacher. A paraeducator was also assigned to the "co-taught" class. The "co-taught" classroom used the same materials/curriculum as general education classrooms, but moved at a slower pace, and the District intended the "co-taught" classroom to serve both students who were eligible and non-eligible for special education services. The Parent understood the Student's "co-taught" classroom to be a general education classroom. In September 2016, the Student's IEP team developed the Student's annual IEP, which provided twenty-two annual goals, including two communication goals involving sequencing, monthly progress reporting, and an accommodation for providing the Parent with weekly data. The Student's IEP services included 60 minutes per week for communication skills as a related service, and 90 minutes per week for speech services, as a supplementary aid and service. The Parent

did not receive monthly progress reporting for the Student's communication goals, and did not receive weekly data. The Student's IEP team, including the Parent, revised the Student's IEP in January 2017, and again in March 2017, but a general education teacher did not attend the March 2017 IEP team meeting. As part of the March 2017 revisions, the District revised/merged the Student's communication goals, and the Parent did not agree with the revisions. The Parent alleged that the District did not follow procedures for providing the Student's ESY services, removing annual goals from the Student's IEP, excusing IEP team members, implementing the Student's placement, providing progress reporting, implementing the accommodation for providing data, or implementing the Student's communication/speech provisions. The District acknowledged it did not provide timely progress reporting for communication, weekly data, a general education teacher at the IEP meeting on March 3, 2017, and that it erroneously considered the Student's classroom to be a general education environment. The District denied the allegations pertaining to ESY, revising IEP goals, and providing the Student's communication services.

ISSUES

1. Did the District follow procedures for determining and providing the Student with extended school year (ESY) services during the summer of 2016?
2. Did the District follow procedures for removing annual goals from the Student's individualized education program (IEP) during the 2016-2017 school year?
3. Did the District follow IEP team meeting procedures for the Student, including ensuring a fully staffed IEP team, excusing IEP team members, and providing a signature page?
4. Did the District follow procedures for implementing the Student's placement during the 2016-2017 school year, as designated in the Student's IEP?
5. Did the District provide the Parents with progress reporting consistent with the Student's IEPs in place during the 2016-2017 school year?
6. Did the District implement the accommodation in the Student's IEP for providing the Parents with a copy of data, sent home weekly during the 2016-2017 school year?
7. Did the District implement the communication/ speech language therapy (SLP) provision(s) in the Student's IEP during the 2016-2017 school year?

LEGAL STANDARDS

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).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

General Education Teacher Attendance at IEP Meetings: Not less than one of the student's general education teachers must participate as a member of the IEP team, if the student is, or may be, participating in the general education environment, to assist in the determination of appropriate annual educational goals, behavioral interventions, supplementary aids and services, program modifications, and/or supports for the student. 34 CFR §§300.321, 300.324; WACs 392-172A-03095(1)(b) and 392-172A-03110. Participation by a general education teacher is an important aspect of the IEP development process because of their knowledge of how a student with a disability might benefit from being placed in a general education classroom. 62 Fed. Reg. 204, 55124 (October 22, 1997) (Appendix C to 34 CFR Part 300). The general education teacher who serves on the IEP team should be one who is, or may be, responsible for implementing a portion of the IEP. However, the general education teacher may not, depending upon the child's needs and the purpose of the specific IEP team meeting, be required to participate in all decisions made as part of the meeting, be present throughout the entire meeting, or attend every meeting. 64 Fed. Reg. 48, 12477 (March 12, 1999) (Appendix A to 34 CFR Part 300, Questions 24, 26).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

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. 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. 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.

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

FINDINGS OF FACT

1. During the 2015-2016 school year, the Student attended fifth grade at a District elementary school and was eligible for special education services under the category of autism.
2. The District completed the Student's evaluation in effect during the 2015-2016 school year on June 6, 2013. The 2013 evaluation report recommended the Student receive specially designed instruction in the areas of cognitive-academics, social skills, speech language therapy, and fine motor skills.
3. On October 20, 2015, the Student's IEP team, including the Parent, developed the Student's annual individualized education program (IEP). The Student's IEP included fifteen annual goals in the areas of reading, writing, mathematics, and social skills with progress reporting provided on a trimester basis.¹ Some of the Student's annual goals involved a group context, including responding to a teacher's request for the whole group's attention, raising her hand during group instruction, following large group instructions, and attending to classroom assignments, while refraining from extraneous distraction.

The Student's IEP provided forty-two accommodations and the following specially designed instruction:

- Cognitive-academics – 150 minutes per week, in the general education setting,
- Cognitive-academics – 60 minutes per week, in the special education setting,
- Fine motor skills – 15 minutes per month, in the general education setting,
- Speech language therapy – 15 minutes per week, in the general education setting,
- Social skills – 30 minutes per week, in the general education setting,
- Social skills – 60 minutes per week, in the special education setting, and
- Social skills – 60 minutes per week, in the special education setting.

The IEP also provided for extended school year (ESY) services, without specifying the amount or type of ESY services.

4. On April 28, 2016, the District completed a reevaluation of the Student.² The evaluation report recommended the Student receive specially designed instruction for reading, mathematics, written language, and social skills. The report further recommended the Student receive speech language therapy as a related service, and occupational therapy services as a supplemental aid and service, to provide flexible support.

¹ SECC 16-38 investigated several issues pertaining to the 2015-2016 school year. This decision does not include any issue investigated in SECC 16-38.

² In SECC 16-38, OSPI concluded the District's April 28, 2016 reevaluation was not sufficiently comprehensive. However, OSPI did not order an independent educational evaluation (IEE) because the District had already agreed to provide the Student with an IEE.

5. On May 5, 2016, the Student's IEP team, including the Parent, met to discuss her various concerns.
6. On June 15, 2016, the Parent emailed the Student's special education case manager, noting that although at the May 5, 2016 meeting, the Student's IEP team had discussed the Student's ESY services; they had not identified the specific IEP goals that ESY would address. The Parent stated it was close to the end of school, and she wanted to ensure the Student would have an appropriate ESY program.
7. On June 20, 2016, the Student's special education case manager emailed the Parent, asking for days and times the Parent could meet to discuss her concerns about the Student's ESY program.
8. On June 23, 2016, the Student's IEP team, including the Parent, met and developed an ESY addendum to the Student's IEP. The ESY addendum identified thirteen of the Student's fifteen annual IEP goals, including the four annual goals involving a group context. The ESY addendum provided the following 630 weekly minutes or 10.5 weekly hours of specially designed instruction, all in the special education setting:
 - Cognitive/Academics – 315 minutes per week, from educational staff/paraeducator,
 - Social Skills – 315 minutes per week, from educational staff/paraeducator.

However, the ESY addendum did not specify how many weeks of ESY services the Student would receive.

9. Also on June 23, 2016, the District issued prior written notice, stating that the Student's IEP team had discussed ESY services, but school staff wanted direction from the District special education director. The notice further stated that after the meeting, the District special education director instructed school staff to make ESY recommendations for the Student, and send those recommendations to him the next day. Additionally, the notice stated, "action will be initiated" on July 26, 2016.
10. June 23, 2016 was the last day of the 2015-2016 school year.
11. On June 29, 2016, the Parent emailed the District special education director, stating that the Student's June 23, 2016 IEP team meeting ended without finalizing the Student's ESY program. The Parent stated that school staff told her that they did not know who would provide the Student's ESY services, as the District did not have ESY programs to support goals requiring a group context. The Parent also stated that if she could identify an appropriate therapeutic group, she would enroll the Student, and seek reimbursement from the District, but the therapeutic groups were already full. The Parent further stated the Student's IEP team identified the District middle school as the appropriate location for services, given the Student's transition between elementary and middle school.

12. On July 5, 2016, the District special education director emailed the Parent, attaching a proposed schedule for the Student's ESY services.³
13. On July 11, 2016, the Parent emailed the District special education director, stating the proposed schedule for the Student's ESY services was less than that discussed by the Student's IEP team meeting on June 23, 2016, and would not provide sufficient time to address all of the Student's IEP goals. The Parent noted that the Student's proposed ESY was scheduled for July 11, 2016 to July 22, 2016, but also noted that her understanding was that the District had not yet identified who would provide the services, or where the services would occur. The Parent stated there was no benefit to putting the Student on a bus to an unknown location so an unknown person could provide ESY services for an unknown amount of time, and it might even be harmful to the Student. The Parent further stated that the District had acknowledged it did not have any programs suitable to address the Student's group goals, and the Parent thought an additional IEP team meeting to discuss ESY services was appropriate.
14. On July 18, 2016, the District special education director emailed the Parent, stating he understood the Parent was dissatisfied with the ESY proposal, and asking if the Parent had an alternative proposal she would like the District to consider.
15. On July 28, 2016, the District special education director emailed the Parent, stating a District elementary special education teacher would provide the Student's ESY services. The District special education director also stated he understood the Parent was concerned about a provider who had not previously worked with the Student, but school staff who had worked with the Student would advise the special education teacher.
16. The Student's ESY services began on August 1, 2016. According to the District's documentation, the Student's program consisted of one or two adult staff members and the Student.
17. During the first week of August 2016, the Student received 3.75 hours of services on August 1, and 2 hours of services on August 2, 2016, for a total of 345 minutes or 5.75 hours of ESY services that week.
18. On August 4, 2016, the Parent emailed the District special education director, stating they needed to determine the Student's compensatory time for missed ESY services in July 2016. The District special education director responded, stating he was not sure how to address that the Student did not attend ESY in July 2016, and he needed to confer with District staff.
19. On August 8, 2016, the District special education director emailed the Parent, stating it was difficult to determine compensation for the Student not attending ESY during July 2016. The District special education director noted that the Student was receiving more ESY services than proposed by the IEP team, more ESY services

³ Neither the District's nor the Parent's documentation included a copy of this proposed ESY schedule.

than she received in 2015, and there was no requirement to provide ESY all summer. However, the District special education director also stated that the District might reimburse the Parent for some of the Student's private services during the summer, might add extra services during the 2016-2017 school year, or might add extra ESY services during the summer of 2017.

20. On August 9, 2016, the Parent emailed the District special education director, stating she liked the idea of a combination of reimbursement for private services and extra ESY services during summer of 2017 as compensation for the Student not attending ESY in July 2016. The Parent noted that the Student "really needed" the social/group work, which was not possible during the summer of 2016 because of the District's delay.
21. During the second week of August 2016, the Student received 3.75 hours of services on August 8, 2016, 5.5 hours of services on August 9, 2016, 2 hours of services on August 10, 2016, and 2.5 hours of services on August 12, 2016, for a total of 825 minutes or 13.75 hours of ESY services that week.
22. During the third week of August 2016, the Student received 3.75 hours of services on August 15, 2016, 5.5 hours of services on August 16, 2016, and 3 hours of services on August 19, 2016, for a total of 735 minutes or 12.25 hours of ESY services that week.
23. The District's documentation included a report written by the special education teacher who provided the Student's ESY services.⁴ The report included detailed data for the ten annual goals addressed in the Student's ESY program. The report stated that the Student's ESY program did not include instruction on the Student's four annual IEP goals that required a large group or classroom setting.
24. On August 18, 2016, the District held a meeting at which the Student's private speech therapist presented the results of her private speech evaluation of the Student. According to the Parent, the Student's private speech therapist recommended that during the 2016-2017 school year, the Student receive private speech language services twice weekly with each session lasting 90 minutes. According to both the District and the Parent, the District agreed to fund one 90-minute weekly session of private speech language services with the Student's private speech therapist.⁵
25. According to the Parent, on August 31, 2016, the District held an IEP team meeting for the Student, to discuss the Student's classroom and placement at the middle school. Also according to the Parent, the District explained that in addition to

⁴ The special education teacher finalized the report after completing the Student's ESY services, but the report is undated. The documentation does not specify if the Parent received a copy of this report.

⁵ This weekly 90-minute session was not compensatory services from SECC 16-38. The District paid for five private speech sessions from the private speech therapist during the summer of 2016 as compensatory services for SECC 16-38.

traditional general education classrooms, the middle school offered “co-taught” classrooms that were taught by a general education teacher, and special education teacher, and were supported by a paraeducator. According to the Parent, the District told her that the co-taught classroom served a mix of students who were eligible and non-eligible for special education services, and used the same materials/curriculum as the general education classroom, but moved at a slower pace.

26. On September 1, 2016, the Parent emailed the District middle school assistant principal, asking the class size and “make-up” for the middle school’s “co-taught” classroom, proposed for the Student during the 2016-2017 school year. The assistant principal responded, stating the class size of the co-taught classroom would be about twenty-four, and the class size of the two general education classrooms next to the proposed co-taught classroom would be at least thirty each, sometimes sixty, when all students were together for team-building/instruction.

27. September 7, 2016 was the first day of the 2016-2017 school year, and the Student began attending sixth grade in a “co-taught” classroom at a District middle school.

28. On September 9, 2016, the Student’s IEP team met to develop the Student’s annual IEP. Attendees included the Parent, one of the Student’s general education teachers, the assistant school principal, the District special education director, one of the Student’s special education teachers, a school occupational therapist (OT), a school speech language pathologist (SLP), a school behavioral technician, and a school behavior/family support specialist. The Student’s IEP provided for twenty-two annual goals with monthly progress reporting, including goals for:⁶

- Reading Comprehension,
- Reading Vocabulary,
- Written Language,
- Mathematics (problem solving),
- Mathematics (fluency, involving addition and subtraction facts),
- Mathematics (fluency, involving multiplication facts),
- Social Skills (the Student’s IEP included ten separate goals for social skills),
- Occupational Therapy,
- Communication: When given single or multisyllabic words, the Student will manipulate syllables by adding or deleting syllables, improving phonological processing for 0% with multisyllabic words to an average of 65% accuracy with words up to four syllables,
- Communication: When given common English idioms or multiple meaning words, the Student will verbally provide the correct meaning of the idiom or multiple meaning word, improving from 0% to 65% of 50 common idioms or multiple meaning words,
- Communication: When given short phrases or sentences, the Student will improve intelligibility of “r, s, z, zh, sh, ch, dz” sounds, from 15% to 30%,

⁶ This decision includes specific information about the Student’s communication goals because those goals are at issue. This decision does not include specific information about the Student’s other goals.

- Communication: When given a short story or passage presented verbally at course content level, the Student will retell material using accurate sequencing for first, next, then, and last, improving from 8% to 50% accuracy,
- Communication: When given short story or passage presented in written form at course content level, the Student will retell material using accurate sequencing for first, next, then, and last, improving from 0% to 50% accuracy.

Additionally, the Student's IEP provided for forty-seven accommodations/modifications, including that school staff would send a copy of data home weekly. The Student's IEP included the following specially designed instruction:

- Mathematics skills – 200 minutes per week, in the special education setting,
- Mathematics skills – 20 minutes per week, in the special education setting,
- Reading skills – 200 minutes per week, in the special education setting,
- Reading skills – 20 minutes per week, in the special education setting,
- Written language skills – 200 minutes per week, in the special education setting, and
- Social skills – 450 minutes per week, in the general education setting,

The Student's IEP also included the following related services:

- Communication – 60 minutes per week, in the special education setting, and
- Occupational Therapy – 30 minutes per week, in the special education setting,

The Student's IEP also included the following supplementary aids and services:

- Individualized adult support – 1,800 minutes per week, in the general education setting,
- Individualized adult support – 330 minutes per week, in the general education setting,
- Speech – 90 minutes per week, in the general education setting,⁷
- Occupational Therapy – 860 minutes per week, in the general education setting.

The Student's IEP stated the Student would spend 730 out of 1780 minutes per week in the special education setting, which constituted 59% of the time in the general education setting. The IEP stated the Student would participate in all general education areas, except when receiving specially designed instruction in reading, written language, mathematics, and communication.

29. Also on September 9, 2016, the District issued prior written notice, stating that SECC 16-38 required the District to develop a new IEP for the Student. The notice also stated the Student's IEP was based on information from private evaluations of the Student provided by the Parent and an IEE. The notice further stated the Student had transitioned to middle school and her IEP needed updated information, services, and a class schedule that would allow her to be successful.

⁷ According to the District, this provision for speech as a supplementary aid or services reflects the District's agreement to pay for one 90-minute weekly session with the Student's private speech therapist. However, the Parent states that although she asked the District to document the Student's private speech services in the IEP, the District special education director declined, but stated the provision would be listed in the meeting notes.

30. The Parent provided a copy of meeting notes for the September 9, 2016 IEP team meeting, which according to the Parent, were written by the middle school vice principal. The meeting notes stated, "90 minute SLP services are being addressed by [the Student's private speech therapist] in addition to the services that she receives at school."
31. On September 14, 2016, the District signed a contract for 37 weeks of services from the Student's private speech therapist. The documentation also included a purchase order, which stated the District agreed to pay the Student's private speech therapist for 1.5 hours per week for the 2016-2017 school year.
32. On October 6, 2016, the District issued progress reporting for most of the Student's annual IEP goals. The progress reporting included a statement of the Student's level of progress (i.e. whether the Student had demonstrated insufficient progress, emerging skill, sufficient progress, or mastered the goal). Additionally, the progress reporting included a comment with a data point for each of the Student's annual goals addressed in the progress reporting. However, the progress reporting did not include a statement of progress, data point, or information about the Student's occupational therapy or communication goals.
33. On October 18, 2016, the District issued the following progress reporting for the Student's annual communication goals.
- Communication: The Student had made sufficient progress on her goal to manipulate syllables by adding or deleting syllables, improving phonological processing for 0% with multisyllabic words to an average of 65% accuracy with words up to four syllables. The comments stated the Student was working on 3 syllable words.
 - Communication: The Student had made sufficient progress on her goal to provide the correct meaning of the idiom or multiple meaning word, improving from 0% to 65% of 50 common idioms or multiple meaning words. The comments stated the Student was providing definitions of 13 idioms independently.
 - Communication: The Student had made sufficient progress on her goal to improve intelligibility of "r, s, z, zh, sh, ch, dz" sounds, from 15% to 30%. The comments stated the Student was demonstrating intelligibility near 70%.
 - Communication: The Student had made sufficient progress on her goal to retell material presented verbally, using first, next, then, and last, improving from 8% to 50% accuracy. The comments stated limited data focus had been on the goal, but data indicated the Student could narrate 3 parts of a story with visual aids.
 - Communication: No progress level was given for the Student's goal to retell material presented in written form using first, next, then, and last, improving from 0% to 50% accuracy. The comments stated limited data focus on this goal at this time.
34. On November 15, 2016, the District issued progress reporting for the Student's annual goals. Although the progress reporting included a statement of progress, and a comment with a data point/or further information for most of the Student's annual goals, it provided the following limited information for communication:
- Communication: The Student had made sufficient progress on her goal to provide the correct meaning of the idiom or multiple meaning word, improving from 0% to

65% of 50 common idioms or multiple meaning words. The report did not include a comment or other data.

- Communication: The Student had made sufficient progress on her goal to retell material presented in written form using first, next, then, and last, improving from 0% to 50% accuracy. The report did not include a comment or other data.

35. On December 2, 2016, the District issued the following progress reporting for the Student's annual communication goals.⁸

- Communication: The Student had emerging skill on her goal to retell material presented verbally, using first, next, then, and last, improving from 8% to 50% accuracy. The comments stated the Student was able to retell a story with 30% accuracy.

36. On December 5, 2016, the school SLP emailed the Parent, stating she was working on printing her notes for the Parent, but the program she used made that cumbersome. The SLP also stated she had been seeing the Student on Mondays from 1:30PM to 2:00PM and on Wednesdays from 9:00AM to 9:30AM, but the schedule might change after winter vacation.

37. On December 16, 2016, the District issued progress reporting for the Student's annual goals. However, the progress reporting did not include information regarding the Student's communication goals.

38. The District's winter break began on December 19, 2016, and school resumed on January 3, 2017.

39. On January 12, 2017, the Student's IEP team met to discuss the Student's progress toward annual goals, review the Student's instructional needs, and revise the Student's IEP. Attendees included the Parent, one of the Student's general education teachers, the assistant school principal, the District special education director, one of the Student's special education teachers, a school OT, a school SLP, two school behavioral technicians, and a school behavior/family support specialist. The team considerations stated that the purpose of the amendment was to discontinue goals the Student had mastered and develop new goals. The team considerations also stated the Student had met her mathematics fluency goals, was close to meeting several of her social goals, and needed goals to address money and telling time. Further, the team considerations stated the Parent wanted to discontinue direct related service for occupational therapy, while continuing with supplementary services for occupational therapy. The present levels of performance for communication stated

- Manipulating Syllables: The Student demonstrated proficiency on her goal to manipulate syllables by adding or deleting syllables, improving phonological processing for 0% with multisyllabic words to an average of 65% accuracy with words up to four syllables. The Student's present levels adding and deleting syllables from three syllable words and with minimal prompting for four syllable

⁸ The District also issued progress reporting for the Student's occupational therapy goal at this time.

words, and the goal would be updated to address pronunciation of multisyllabic words,

- Idioms: The Student had met the purposes of the goal to provide the correct meaning of an idiom or a multiple meaning word, improving from 0% to 65% of 50 common idioms or multiple meaning words. The Student had met the goal's purpose of increasing her identification of idioms and increasing her understanding of figurate language, and the goal would be discontinued due to preservation on idioms as a topic.
- Intelligibility of Sounds: The Student had met the goal to improve intelligibility of "r, s, z, zh, sh, ch, dz" sounds, from 15% to 30%, and her present level was 30% or greater.
- Sequencing material (from both verbal and written presentations): The Student's two remaining goals for sequencing would continue. She had improved her identification, recall, and comprehension of key details towards increased in both verbal and written presentation of short paragraphs to aid. For verbally presented material, the Student demonstrated 30% accuracy with 1 repetition an approximate Lexile 800. For written material, the Student demonstrated 50% accuracy for first, then, last with moderate prompting to identify components.⁹

The Student's IEP continued to provide for the accommodation that school staff would send a copy of data home weekly. As amended, the Student's IEP provided nineteen annual goals, including continuing to provide the two communication goals involving sequencing, specifically:

- A communication goal that when given a verbal presentation of a short story or passage, the Student would retell material using accurate sequencing for first, next, then, and last, improving form 8% to 50% accuracy,
- A communication goal that when given a written short story or passage, the Student would retell material using accurate sequencing for first, next, then, and last, improving form 0% to 50% accuracy,

The Student's IEP provided the following specially designed instruction:

- Mathematics skills – 200 minutes per week, in the general education setting,
- Mathematics skills – 20 minutes per week, in the special education setting,
- Reading skills – 200 minutes per week, in the special education setting,
- Reading skills – 20 minutes per week, in the special education setting,
- Written language skills – 200 minutes per week, in the special education setting, and
- Social skills – 450 minutes per week, in the general education setting,

The Student's IEP also included the following related services:

- Communication – 60 minutes per week, in the special education setting, and
- Occupational Therapy – 10 minutes per week, provided concurrently, in the special education setting.

The Student's IEP also continued to provide the following supplementary aids and services:

- Individualized adult support – 1,800 minutes per week, in the general education setting,

⁹ For both the verbal and written versions of these goals, mastery was 50% accuracy.

- Individualized adult support – 330 minutes per week, in the general education setting,
- Speech – 90 minutes per week, in the general education setting,
- Occupational Therapy – 860 minutes per week, provided concurrently, in the general education setting

The Student's IEP stated the Student would spend 500 out of 1780 minutes per week in the special education setting, which constituted 72% of the time in the general education setting. The IEP stated the Student would participate in all general education areas, except when receiving specially designed instruction in reading, written language, mathematics, and communication.

40. Also on January 12, 2017, the District issued prior written notice, stating that based on the Parent's request, the Student's IEP team reviewed the Student's progress and agreed:

- To discontinue mathematics goals for fluency, involving addition & subtraction facts, and involving multiplication facts, based on mastery,
- To initiate mathematics goals for time-telling vocabulary, calculating elapsed time, and identifying/adding values of money,
- To discontinue social skills goal for transitions between activities and environment,
- To change social skills goal for creating and carrying out a plan to creating a plan for situations out of routine,
- To discontinue the communication goals for articulation of "R" sound, idioms, and intelligibility, while refining other communication goals, and
- To discontinue direct OT service, while maintaining supplementary services.

41. According to the Parent, at the January 12, 2017 IEP team meeting, she learned that both the school OT and the school SLP did not work with the Student one-on-one but provided the Student's related services concurrently, while the Student received specially designed instruction for academics. According to the Parent, she told the District she thought this was inappropriate because the related services were not marked concurrent on the Student's IEP. Also according to the Parent, the school OT stated the Student's service matrix should list the Student's OT services as concurrent, and changed that designation, while the school SLP changed her schedule so that she could provide the Student's related services for communication non-concurrently.

42. On January 19, 2017, the Parent emailed the Student's special education teacher, asking several questions about the Student's IEP. The Parent stated she had questions about how the 90 minutes of weekly speech services, under supplementary aids and services, were being used, noting she had previously asked for documentation showing how this service helped the Student.

43. On January 25, 2017, the Student's special education teacher emailed the Parent, answering various questions. The Student's special education teacher stated the provision in the Student's IEP for 90 minutes of weekly speech services, as a supplementary aid and service, reflected the private SLP services for which the District paid.

44. On January 31, 2017, the District issued progress reporting for all of the Student's annual goals.¹⁰
45. On February 28, 2017, the District issued progress reporting for the Student's annual goals. However, the progress reporting did not include information regarding the Student's communication goals or the Student's social goals.
46. On March 3, 2017, the Student's IEP team, including the Parent, met to discuss the Student's progress toward annual goals, review the Student's instructional needs, and make further revisions to the Student's IEP. Attendees included the Parent, the assistant school principal, the District special education director, one of the Student's special education teachers, a school OT, a school SLP, two school behavioral technicians, and a school behavior/family support specialist. However, a general education teacher was not in attendance. According to the Parent, the OT left the meeting after she presented her information, and the Parent did not excuse the OT or the general education teacher. Additionally, the March 3, 2017 IEP lacked a signature page.

The Student's IEP continued to provide for the accommodation that school staff would send a copy of data home weekly. As amended, the Student's IEP provided twelve annual goals, including the following two communication goals:

- Communication: When given multisyllabic words up to 5 syllables, the Student will accurately pronounce multisyllabic words, improving motor sequencing from 50% accuracy at 2-3 syllables with moderate to maximum prompting to words up to 5 syllables with 70% independently to minimal prompting,
- Communication: When given a short story or passage presented verbally at course content level, the Student will identify the main idea, by stating key details, improving comprehension and recall of material from 30% accuracy with at least one repetition to 80% accuracy with no repetition.

The Student's IEP provided the following specially designed instruction:

- Mathematics skills – 520 minutes per week, in the general education setting,
- Mathematics skills – 20 minutes per week, in the special education setting,
- Reading skills – 280 minutes per week, in the special education setting,
- Written language skills – 160 minutes per week, in the special education setting,
- Social skills – 360 minutes per week, in the general education setting, and
- Social skills – 20 minutes per week, in the special education setting,

The Student's IEP also included the following related services:

- Communication – 10 minutes per week, provided concurrently, in the special education setting,
- Communication – 60 minutes per week, (not provided concurrently), in the special education setting, and
- Occupational Therapy – 10 minutes per week, provided concurrently, in the special education setting.

¹⁰ Progress reporting for the Student's communication goals was dated January 27, 2017.

The Student's IEP also continued to provide the following supplementary aids and services:

- Individualized adult support – 1,800 minutes per week, in the general education setting,
- Individualized adult support – 330 minutes per week, in the general education setting,
- Speech – 90 minutes per week, in the general education setting, and
- Occupational Therapy – 80 minutes per week, provided concurrently, in the general education setting.

The Student's IEP stated the Student would spend 540 out of 1780 minutes per week in the special education setting, which constituted 70.41% of the time in the general education setting. The IEP also stated the Student would participate in all general education areas except when receiving specially designed instruction in reading, written language, mathematics, and communication.

47. Also on March 3, 2017, the District issued prior written notice, stating that based on the Parent's request, the Student's IEP team reconvened to review the Student's progress and revise the Student's IEP. The notice stated the Student's IEP team agreed:¹¹

- To discontinue mathematics goals for fluency, involving addition & subtraction facts, and multiplication facts,
- To initiate mathematics goals for time-telling vocabulary, calculating elapsed time, and identifying/adding values of money,
- To discontinue social skills goal for transitions between activities and environment,
- To change social skills goal for creating and carrying out a plan to creating a plan for situations out of routine,
- To discontinue the communication goals for articulation of "R" sound, idioms, and intelligibility, but include new goal for auditory discrimination, and production of multisyllabic words,
- To reword verbal and written comprehension goals from "first, next, last" to "main idea and key details,"
- To increase SLP related services (concurrent) by 10 minutes weekly,
- To decrease OT service to 10 minutes weekly, while maintaining supplementary services, and
- To correct minutes on service matrix.

48. According to the Parent, at the March 3, 2017 IEP team meeting, the school SLP stated she was going to rewrite the Student's communication goals that involved recall of a story (presented verbally and in writing) and sequencing for first, next, then, and last, because, as currently written, those goals were too hard for the Student. According to the Parent, the Parent understood she would have an opportunity to review the revised goal(s) before the District finalized the Student's IEP.

¹¹ Some of the information in the March 3, 2017 prior written notice is repeated from the January 2017 prior written notice.

49. On March 12, 2017, the Parent emailed the Student's special education teacher, asking if the District had finalized the March 3, 2017 IEP and asking for a copy of the IEP. The Student's special education teacher responded, stating she had asked the school vice principal and District special education director to take another look at the service matrix in the Student's IEP because it was so complicated, but it should now be complete, and she would send the Parent a copy of the final IEP the next day.
50. On March 13, 2017, the Parent received a copy of the finalized IEP, as developed for the Student on March 3, 2017. Also on that day, the Parent received the prior written notice issued on March 3, 2017. According to the Parent, she did not agree with the revisions to the Student's communication goals.
51. On March 22, 2017, the Parent emailed the Student's special education teacher, stating she was especially concerned with the rewriting of the Student's communication goals for sequencing. The Parent stated she wanted to see the justification for removing the sequencing goals (the goals that formerly required the Student to identify "first, next, and last") from the Student's IEP, and she wanted to see the SLP data that would support that change. The Parent also stated she had not received consistent data or progress reporting for speech/communication during the 2016-2017 school year. The Parent further stated she did not believe the Student received all of her service minutes for communication, and did not believe the Student's communication service minutes were sufficient for the Student's needs.
52. On March 23, 2017, the Student's special education teacher emailed the Parent, attaching a copy of the Student's progress reports for communication, and asking permission to forward the Parent's concerns about the Student's communication services to the District special education director. The Parent responded, stating the Student's special education teacher could forward her concerns to the District special education director, and she thought the District was already aware of her concerns.
53. On March 24, 2017, the Parent filed this complaint with OSPI.
54. On April 7, 2017, the school principal emailed the District special education director, providing information regarding the ratios of students who are eligible for special education services in the Student's classroom at the middle school. The school principal stated that the Student's classroom for English language arts, social studies, and mathematics/science was co-taught by a general education and special education teacher, it served twenty students with IEPs, and one student without an IEP, and the Student was "pulled-out" for an hour each block class. The school principal also stated that regarding the Student's 60-minute "intervention class," all students had IEPs. The school principal further stated that regarding the Student's 60-minute fitness class, eight students had IEPs, and twenty-three students did not have IEPs. The school principal stated that the Parent agreed to the "co-taught" classroom because it had three adults to support students (one general education

teacher, one special education teacher, and one classified support personnel). According to the Parent, although she questioned the ratio of students who were eligible/ineligible throughout the 2016-2017 school year, she did not learn the ratio of the classroom until she received the District's response to this complaint.

CONCLUSIONS

1. ESY Services: The documentation substantiates that the District followed procedures for determining and providing the Student's ESY services during the summer of 2016. The purpose of ESY services is the maintenance of learning skills, not the teaching of new skills or behaviors. There is no requirement that ESY services address every annual goal included on a student's IEP, occur throughout the summer, or that a parent agree to the selection of the service provider. Although the District's procedures state that an ESY meeting should occur before May 15 of each school year, this is not a requirement under the IDEA. It is unfortunate that the District failed to communicate these parameters to the Parent and to its own staff, but additional ESY services is not a remedy for a lack of communication.

2. Removing IEP Annual Goals: The documentation also substantiates that the District followed procedures for discontinuing and/or revising the Student's IEP annual goals. Although the Parent disagreed with the revisions to and/or discontinuation of the Student's communication goals involving sequencing of first, next, then, and last, the District appropriately used the IEP meeting process to revise the Student's goals, based on the Student's needs. OSPI notes that revising/removing IEP goals is not the equivalent to revising/removing IEP services. Additionally, while students must have an IEP goal for each area of specially designed instruction, there is no requirement for an IEP goal to correspond to a related service. Further, there is no requirement to address every educational need through simultaneous IEP goals. Rather, it is appropriate for IEP teams to select priority areas, and limit IEP goals to a manageable number. Here, at the March 3, 2017 IEP team meeting, the Student's IEP team discussed rewriting the Student's "sequencing" communication goals because the school SLP shared her observation that the goals were too difficult for the Student. Apparently, the Parent was not opposed to potential revision, but did not have an opportunity to review the revisions before the District finalized the Student's March 3, 2017 IEP. In her reply, the Parent stated that the District is now in the process of revising the Student's "sequencing" communication goals to reflect the Parent's wording preferences. OSPI encourages districts and parents to work together, but notes that districts have the responsibility to ensure the proper development of the IEP, and are not required to adopt all recommendations proposed by a parent.

3. IEP team meetings: The District acknowledges that at the Student's March 3, 2017 IEP meeting, no general education teacher was present, and the District failed to follow procedures for excusing the general education teacher. Additionally, the District acknowledges that it failed to print a signature page for the March 3, 2017 IEP team meeting. The District has addressed these issues with the middle school staff, reminding school staff of these procedures. Additionally, the District proposes

the further corrective action of holding a training meeting with middle school staff to review OSPI's "IEP review checklist."

4. IEP Implementation of Placement: The District acknowledges that it miscalculated the Student's placement on her IEP because it erroneously considered the Student's "co-taught" classroom for core curriculum instruction to be a general education classroom. Here, a general education teacher and a special education teacher co-taught the Student's classroom for core curriculum. However, the students in the co-taught classroom were predominantly students who are eligible for special education services (only one student in the co-taught classroom was not eligible for special education services). Therefore, the Student's access to general education peers was not consistent with what was indicated in her IEP. The District has taken, or is in the process of taking, several corrective actions regarding this issue. The District has provided technical assistance to the middle school principal regarding categorization of general and special education classrooms. Additionally, the District has tasked the middle school administration with reviewing the IEPs of all students who have IEPs in co-taught classes at the middle school to ensure that the general education minutes listed on those students' IEPs are accurate, and those students are placed in their least restrictive environment. OSPI reminds the District that in addition to the District's review of the IEPs of all students in the co-taught classroom who have IEPs, the District must communicate the placement implications with the parents of students with IEPs in the co-taught classrooms, so that IEP teams can make accurate and appropriate placement decisions.
5. Progress Reporting: The District acknowledges that the Student's progress reporting lacked timely information about the Student's communication goals. The District has addressed the issue of timeliness with the individual staff member, and proposes additional training for special education staff at the middle school, using OSPI's "IEP review checklist."
6. Accommodation of Weekly Data: The District acknowledges that until it received this complaint, it did not provide the Parent with weekly data per the accommodation in the Student's IEP. The District stated it discovered through its investigation that the Student's special education case manager recorded weekly data, but had confused and conflated providing the data with providing the progress reporting. According to the District's response, after the District clarified that staff should provide the Parent with data weekly, the Student's special education case manager provided the Parent with the data already collected, and began providing ongoing data on a weekly basis. The District stated it has since checked with the Student's special education case manager to ensure that the District is meeting this accommodation.
7. Implementation of the communication/SLP provisions: The documentation substantiates that the District generally implemented the Student's IEP communication provisions during the 2016-2017 school year. Although the Parent questions what services the Student received at school to fulfill the 90 minutes per week of speech supplementary aids and services, the District has clarified with the Parent that this service refers to the District's contract with the Student's private

SLP, which the District has implemented throughout the 2016-2017 school year. Additionally, the Parent notes that the District provided the Student's related services for speech concurrently before the Student's IEP described those services as concurrent. However, this discrepancy does not constitute a failure to implement speech services that would require compensatory services, particularly given that the Student mastered some of her communication goals early.

CORRECTIVE ACTION

By or before **June 28, 2017**, the District will provide OSPI with documentation showing the District has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

OSPI accepts the District's proposed corrective actions to provide written guidance/training based on OSPI's "IEP Review Checklist," and other pertinent materials. The District will provide the written guidance/training to the middle school's administration and all certificated special education staff at the middle school, including educational staff associates (ESAs).

By or before **June 28, 2017**, the District will provide OSPI with documentation that it provided the pertinent District staff with the written guidance/training. The District will also provide a list of the staff members who received the written guidance and a roster of the staff members who should have received the written guidance so OSPI can cross-reference the list for verification.

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.

RECOMMENDATIONS

OSPI recommends that the District's proposed corrective actions include training on the requirement to complete a District reevaluation after receipt of information from an IEE or private evaluations. As part of this investigation, the District informed OSPI that after providing the Student with a publicly funded IEE, the District considered the results of the IEE, and considered the results of the Student's other private evaluations, but failed to develop its own evaluation of the Student that incorporated that new information. The District then informed OSPI that it would promptly rectify this omission. OSPI recommends that in addition to completing a reevaluation of the Student, which might consist solely of a review of existing information, the District include training on this subject with its other staff training.

Dated this ____ day of May, 2017

Douglas H. Gill, Ed. D.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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