

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-110

PROCEDURAL HISTORY

On November 15, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Auburn 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 November 16, 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 December 7, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on December 10, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 21, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 24, 2018.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on November 16, 2017. 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 developing and implementing individualized education programs (IEPs) that are reasonably calculated to enable the Student to make progress appropriate in light of his circumstances, during the 2017-2018 and 2018-2019 school years?
2. Did the District follow procedures for scheduling IEP meetings in the following instances:
 - a. When the Parent requested changes to the Student's education program and that the Student's classes be changed?
 - b. When progress monitoring indicated that the Student was not making progress?
3. Did the District follow procedures for ensuring that the required IEP team members attended the Student's April 2018 annual IEP meeting and the May 2018 IEP?

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.

Provision of FAPE: An IEP is required to be “reasonably calculated to enable the child to receive educational benefit.” It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson v. Rowley*, 458 U.S. 176 (1982). For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress”, the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, ” and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). A district must implement an IEP that is “reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can ‘make progress in the general education curriculum,’ commensurate with his non-disabled peers, taking into account the child’s potential.” *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840, 69 IDELR 203 (9th Cir. 2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to received educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision-making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105.

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student’s IEP in compliance with the procedural requirements of

the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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

Progress Reporting: 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). 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).

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: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (1) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (2) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. 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: (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses received; and (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR § 300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting rights of students with disabilities 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).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice of the refusal

to the parents, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

FINDINGS OF FACT

Background Facts

1. The Student attends a District middle school and is eligible for special education services under the category other health impairment.
2. The Student's most recent reevaluation occurred in March 2016, while he attended an elementary school in another school district in Washington. The reevaluation report stated that the Student continued to be eligible for special education services under the category other health impairment (based on an asthma diagnosis). The report noted that the Student had consistently struggled with math and reading, and that he made satisfactory progress in his writing skills. The reevaluation report recommended that the Student receive specially designed instruction in the areas of reading, math, and social/emotional/behavior.
3. On April 27, 2017, the Student's District IEP team (Parent, a general education teacher, a special education teacher, and a District representative) developed his annual IEP. The IEP noted that the Student continued to struggle with basic reading skills and that he was "not functioning at the same level as his peers in Reading, Math and socially." The present levels section of the IEP included information from the Student's 2016 reevaluation. The IEP included annual goals in the areas of reading (comprehension and fluency), math (multiplication and division) and behavior/social/emotional. The IEP required progress reporting at the trimester via a copy of the goal page. The April 2017 IEP included several accommodations and provided the Student with the following specially designed instruction in a *special education setting* from April 28 through June 22, 2017:
 - Math: 30 minutes, 5 times per week (provided by special education teacher)
 - Reading: 30 minutes, 5 times per week (special education teacher)
 - Social/Emotional: 15 minutes, 5 times per week (special education teacher)

The IEP also provided the following specially designed instruction in a *special education setting* from June 23, 2017 through April 26, 2018:

- Math: 55 minutes, 5 times per week (special education teacher)
- Reading: 30 minutes, 5 times per week (special education teacher)
- Social/Emotional: 15 minutes, 5 times per week (special education teacher)

The IEP stated that the Student would spend 72.22% of his time in the general education setting.

4. In June 2017, the District entered progress reporting on the Student's April 2017 IEP goals. The progress report indicated that the Student was making sufficient progress on his reading comprehension goal, that his reading fluency, math multiplication, and behavior/social/emotional goals were emerging skills, and that he had not yet received instruction on his math division goal. The comments for each goal indicated that the Student was making progress and was working hard on his goals.

2017-2018 School Year

5. The District's 2017-2018 school year started on September 6, 2017.
6. During the 2017-2018 school year, the Student attended a middle school in the District and continued to be eligible for special education services under the category other health impairment. The Student's April 2017 IEP continued to be in place.
7. The Student's first semester schedule was as follows:
 - Robotics
 - Language Arts 6
 - Physical Education
 - Science
 - Math (Special Education)
8. The District stated in its response that the Student's counselors "developed this schedule based on input from his special education teachers, who used the IEP to make course recommendations." The District acknowledged that the Student's schedule was not in alignment with his IEP, as the Language Arts 6 class was a general education class and the Student's IEP stated that he was to receive specially designed instruction in reading in the special education setting. The District stated that the language arts class was "an extended 85-minute period, with the first 55 minutes structured as a typical language arts class and the last 30 minutes utilized for reading intervention." The District further stated that, The recommendation to place the Student in a general education language arts class occurred because the class combines reading and writing instruction, and the Student did not require specially designed instruction in writing. His reading comprehension skills, according to STAR data reported in his IEP present levels of performance...were close to grade level, and his special education reading teacher...believed that he could be successful receiving specially designed instruction (SDI) in the general education environment. She provided services daily in his general education class.

The District stated that the Student also received an additional “30 minutes per day of reading intervention with the building reading specialist” and the District stated that while it “acknowledges this as a potential procedural deficiency, the Student received SDI and was provided a [free, appropriate public education] FAPE.”

9. According to the District’s response, the special education language arts teacher worked with the Student daily for thirty minutes in his general education language arts classroom. The special education teacher adapted the general education curriculum and used “supplemental materials to enhance comprehension, breaking down the grade-level content to ensure understanding, providing graphic organizers and teaching the Student how to use them to enhance his comprehension.” The special education teacher also provided vocabulary instruction and the Student “engaged in repeated reading to increase fluency.”

The District also provided information about how the Student’s specially designed instruction in math was provided by his special education math teacher and case manager (case manager) and how the Student’s specially designed instruction in social/emotional was provided. The District stated that the Student often refused to attend his social/emotional pull-out sessions, which were during fourth period. The District stated that when the Student did attend, the “instruction focused on review of behavioral expectations in the classroom setting and strategies for meeting those expectations. This instruction was not closely aligned with the Student’s IEP goals.”¹

10. Regarding the provision of specially designed instruction, the Parent stated in her reply to the District’s response that,

[The Student] was required to leave his general education science class to receive the instruction. [The Student] never received any social/emotional/behavioral services. According to [the Student], he was never instructed by any teacher to leave his 4th period science class for those services. He nor I knew where, when or who would be delivering the social/emotional/behavioral sessions. During [general education language arts] the students were instructed to leave class for [title reading teacher’s] class and [the Student] knew that.

The Timeline for this Complaint Began on November 16, 2017

11. The District’s elementary/middle school parent teacher conferences were held November 15 through 17, 2017. During the conferences in November 2017², the Parent discussed concerns about the Student with the Student’s special and general education language arts teacher and

¹ There is no indication in the documentation that when the Student refused to go to his pull-out sessions that the special education teacher provided specially designed instruction in the general education class or otherwise.

² The District stated that teachers recalled the Parent coming to the conferences on November 15, 2017, but could not verify the date.

the case manager. According to the Parent, she first discussed her concerns with the general education language arts teacher who asked the Parent if the Student had an IEP.

According to the Parent's complaint, she, the special education language arts teacher, and the general education language arts teacher were informed by the Student's case manager that the Student was in the wrong language arts class—he should have been in a special education language arts class. The Parent stated in her complaint that the teachers discussed making modifications to the Student's work and keeping him in the general education language arts class.

According to the District's response, at the conferences, the Parent raised concerns about whether the Student should be placed in a special education language arts class. The Student's teachers shared that "they believed he was appropriately placed in a general education language arts class because his reading was close to grade level." At the conference, the teachers shared "ways in which services would be provided and how any needed accommodations would be provided in the general education ELA class."

In her reply to the District's response in this complaint, the Parent stated that during the conference, she "did not raise any concerns about whether [the Student] should be in special education language Arts class because I had no idea he was not in a special education language class...I visited the teachers that I had the most concern for [the Student's] failing grades, language arts and math." The Parent stated that "the teacher never discussed that [the Student] was appropriately placed in a general education language class."

12. The District's first semester ended on January 26, 2018. The Student's second semester schedule was as follows:

- Technology
- Language Arts 6
- Science
- Social Studies
- Math (Special Education)

13. On February 1, 2018, the Parent called the school and spoke with the school's attendance secretary. The attendance secretary emailed the Student's case manager and asked the case manager to contact the Parent.

14. On February 5, 2018, the Parent called the school and spoke with one of the school's counselors (counselor 1). Counselor 1 emailed the case manager and the special education language arts teacher and stated that the Parent wanted to schedule an IEP meeting. The case manager emailed counselor 1 back and stated that the Student's IEP was due April 26, 2018. The case manager asked counselor 1, "if you get in contact with [the Parent] would you ask if she would like to do it sooner than that or if it needs to get scheduled immediately?"³

15. On March 1, 2018, the Parent called the school and spoke with the other school counselor (counselor 2) about her concerns that the Student's general education language arts class was

³ The District's response noted that there was no evidence that counselor 1 contacted the Parent to follow up.

not the appropriate placement. Counselor 2 emailed the Student's IEP team, including the Parent, and asked them to respond to her question about the Student's language arts class. Counselor 2 also stated that the Parent requested a copy of the Student's current IEP and "past evals/IEPs" and asked the team to send the Parent those documents.

16. Also on March 1, 2018, the general education language arts teacher responded to counselor 2's email by emailing counselor 2, the school psychologist, the special education language arts teacher, the case manager, and counselor 1. The general education teacher stated that the Parent was "telling [the Student] that he is in the wrong class. He doesn't work in ELA because he doesn't think he is responsible for any work done in my class." The teacher stated that when she asked the Student to participate, "he just blows me off" and that she had always been "willing to modify his lessons as I told mom during conferences, but he has to do the work so that I can see where help/support is needed. He is late to class almost every day and he is absent a lot."
17. On March 2, 2018, the special education language arts teacher emailed the Student's IEP team and stated that the Student received specially designed instruction for reading, not writing, and that she was "going to start some pull-out services for reading, but he needs to stay in ELA." The special education teacher stated that she would speak with the Student and talk to the Parent, and that the Student's "scores are really close to average." The case manager replied and stated that "most of [the Student's] struggles are that his attendance is poor and when he is here he does not put in effort."
18. Also, on March 2, 2018, the special education language arts teacher emailed the Parent the following:

I am one of the Special Education teachers at [school]. [The Student's] test scores are close to grade level in reading fluency, but lower in comprehension. I'm going to start some pull-out services for him, but he needs to stay in ELA with [general education teacher] to make sure he gets the writing skills that are being taught for which he is capable, but has decided not to perform to the level at which he is able. [The Student] is capable, but it going to have to put in some more effort and we are here to support him. He has been absent 8 of the last 29 school days. On days that he is here, he is tardy to [general education teacher's] class nearly every day. He is missing out on important instruction in Language Arts when he is absent or late to class. I spoke with [the Student] this morning about his grades and how he is capable of more than he is doing and that you were concerned about his grades. He told me that if there was a problem that he needed me to call and talk to you about it. I told him that he needed to begin to take responsibility for his education and take accountability to ask for help when he doesn't understand. I suggested he can talk to [general education teacher], [case manager], or myself.

The special education teacher stated that she would be happy to meet with the Parent, the Student, and the rest of the Student's teachers whenever the Parent was available.

19. On March 7, 2018, the Parent responded to the special education language arts teacher and stated the following:

Thanks for the notice but how do you know what [the Student] is capable of if he's never been in your class? Isn't he supposed to be in your class? Now you want to start some pullout when you should have done that three quarters ago. I'm also aware of how many days he missed last semester and this quarter. Last semester He passed science with a B, PE with a C and robotics with a C but he failed math and ELA. I also know that he told you to talk to me about him failing his classes because I told him to tell any staff member that has a problem or concern with him to email or call me. I would like to meet with you and his other teachers excluding [the case manager] to discuss some strategies on how we can help him.

20. On March 8, 2018, the special education language arts teacher responded with some times for a meeting and explained her role. The special education teacher stated that she monitored the Student's progress by working with the general education teacher "about his deficit areas in her class and what areas he needs more support." The special education teacher stated that she had not pulled the Student out of his general education class previously because "his skills are very close to grade level with some deficits in reading comprehension. To have him out of a general education class would be a disservice to him due to his higher capabilities in reading fluency and writing according to his most recent evaluation with the school psychologist."
21. On March 12, 2018, the Parent and special education language arts teacher scheduled a meeting for March 15, 2018, to discuss the Student's IEP and language arts class.
22. Also on March 12, 2018, the Parent called and spoke to counselor 1. The Parent requested a meeting to change the IEP and requested copies of any past evaluations.
23. Later on March 12, 2018, the school psychologist called the Parent to discuss her concerns. According to the school psychologist's call notes, the Parent had concerns about the Student's IEP and wanted to meet to change the IEP. The school psychologist stated that they could meet any time to address concerns and that the IEP was due in April, but that they could meet early or wait until the IEP due date. The school psychologist stated that she would touch base with the case manager about setting up an IEP meeting.
24. On March 15, 2018, the Parent and Student met with the special education language arts teacher, the general education social studies teacher, and the dean of students. At the meeting, the group discussed the Student's grades and the special education language arts teacher indicated that she would begin to provide the Student's specially designed reading instruction in the special education setting through pull out sessions. The group also discussed supports that were available for the Student and how the Student could advocate for himself to get caught up on work. According to the meeting notes, the Student's general education social studies teacher stated that the Student's attitude was improving, but that he was often disruptive and that he needed to retake tests.

According to the Parent's complaint, she had requested a copy of the Student's April 2017 IEP and current evaluation prior to this meeting, and the District did not bring the documents to the meeting.

25. In its response, the District stated that, following the March 15, 2018 meeting, the “plan was that the Student would be pulled out into a special education setting during part of his general education language arts class, but the Student refused to go to the special education class.” And, as a result, “services continued to be provided in the general education setting. Parent was not made aware of the Student’s refusal.”
26. According to the Parent’s reply, the Student stated that “he was never pulled out of his general language arts class.” And the Parent stated that the Student “stated the only time he was taken out of [the general education teacher’s] class was to talk to [the special education language arts teacher] about why he was not asking for help and to do [State] testing.”
27. On April 17, 2018, the case manager emailed the Parent to schedule an IEP meeting. The email stated that the “meeting is due no later than 4/27” and asked if April 25, 2018 would work to meet.
28. On April 18, 2018, the Parent emailed the case manager back and stated:
Actually I don’t know what you mean by you actually meant 4/26.⁴ 4/26 is the deadline or 4/26 is when you would like to hold the meeting? I talked to [the school psychologist] and she said we could have the IEP meeting early so I don’t believe 4/26 is the deadline and if it is then you shouldn’t wait until the last minute to hold an IEP meeting. Further more I didn’t know you were his case manager. So I have to wonder now as [the Student’s] case manager did you do anything to support him in his classes or did you let his general education teachers know that he has an IEP? Did you make sure he was in the appropriate classes according to his IEP? I’m asking these questions because I was unaware that you are his case manager and he’s been failing your class from the beginning...Anyway, I can make the IEP meeting after school but not before if you can get back with me on the clarification of the date you would like to hold the meeting.
- The case manager emailed the special education language arts teacher and asked how she should respond to the Parent. The special education language arts teacher replied and stated that she would respond to the Parent.
29. Also on April 18, 2018, the case manager emailed the school psychologist, the special education language arts teacher, the general education language arts teacher, the general education science teacher, the general education technology teacher, the general education social studies teacher, the school’s Native American liaison, the principal, and the assistant principal and stated that the Student’s IEP meeting had been scheduled for April 26, 2018. The case manager stated, “If you cannot make it can I please get some general feed back about academics, attendance, behavior?”
30. On April 19, 2018, the District mailed the Parent an invitation to the IEP meeting scheduled for April 26, 2018.

⁴ Based on the text of the Parent’s April 18, 2018 email, it appears there was a previous email that identified April 26, 2018 as a potential date for the meeting, which was not included in the complaint record.

31. According to the Parent's complaint, she informed the case manager that she could not attend the IEP meeting and the case manager "informed [the Parent] that she and the other teachers would have to the meeting without me due to deadlines. Ironically, [the case manager], [special education language arts teacher], and [general education language arts teacher] were the only teachers that attended and signed the IEP."

According to the District, the Parent notified the District that she could not attend on April 26, 2018, prior to the scheduled meeting time.

32. On April 26, 2018, the case manager (and special education math teacher), special education language arts teacher (signing as the District representative), and the general education language arts teacher met and developed the Student's annual IEP. The IEP noted that the Student was a "very capable young man" and that there were concerns from the Parent that "his IEP accommodations are not being followed resulting in failing grades." The present levels section of the IEP contained the following information from the Student's teachers:

- General Education Teacher: The Student is "late everyday; he will not work in my class, even with modifications and; he doesn't give a hoot about school...he has not met his goals. He read 108 wpm at the 4th grade level today. He is unable to work independently or ask for assistance...I have no information on his comprehension because he refuses to try to work...and will not participate orally."
- Special Education Teacher: The Student's "test scores are close to grade level in reading fluency, but lower in comprehension...[the Student] is capable, but is going to have to put in some more effort and we are here to support him."

The IEP stated that the special education language arts teacher was going to begin doing pull-out sessions with the Student, but that he should remain in the general education language arts class to "get the writing skills that are being taught for which he is capable, but has decided not to perform to the level at which he is able." The IEP noted that the Student had been absent eight of the last twenty-nine school days and that he was late to his language arts class nearly every day. The April 2018 IEP included annual goals in the areas of reading (comprehension and fluency), math (multiplication and division), and behavior/social/emotional. All of the annual goals were the same as the annual goals in the Student's April 2017 IEP, and required progress reporting at the trimester via a copy of the goal page. The April 2018 IEP also included several accommodations and provided the following specially designed instruction:

- Reading: 55 minutes, 5 times per week (provided by the general education teacher, in a general education setting, monitored by the special education teacher)
- Math: 55 minutes, 5 times per week (provided by the special education teacher, in a special education setting)
- Social/Emotional: 30 minutes, 1 time per week (provided by the special education teacher, in a special education setting)

The IEP stated that the Student would spend 83.06% of his time in the general education setting.

33. The District's prior written notice, dated April 26, 2018, stated that the "team met to review the three year re-evaluation and to discuss [the Student's] educational placement. We also discussed [the Student's] grades and behavior in the classroom." The notice also stated that "in order to best serve [the Student's] educational needs, we decided as a team to keep [the Student's] placement the same."
34. In its response, the District acknowledged that the Student's IEP goals remained the same from his previous IEP and that "current data are not included in the present levels of performance." The District also acknowledged that while the Student's teachers had concerns about the Student's behavior, work refusal, and attendance at school—factors impacting the Student's progress—and that "formal interventions to address the concerns were not implemented."
35. According to the Parent's complaint, at the end of April, she contacted the District office and the District provided the Parent with copies of the Student's current IEP and evaluation.
36. The Parent indicated that she still wanted to meet to review the IEP and mentioned April 30, 2018 as a possible date to meet. According to the District, no meeting was officially scheduled on April 30. And on April 30, 2018, the Parent came to school, but a meeting did not occur because the case manager had left earlier that day due to illness.
37. On May 4, 2018, the case manager emailed the Parent, the special and general education language arts teachers, the general education science teacher, general education technology teacher, the general education social studies teacher, and the principal regarding rescheduling the IEP meeting. The case manager stated that she would send home a copy of the April 2018 IEP with the Student that day, and she listed several dates as options to schedule a meeting.
38. An IEP meeting was scheduled for May 10, 2018 at 7:15 a.m.
39. On May 10, 2018, the Parent met with the case manager, the special education language arts teacher, the general education science teacher, and the general education technology teacher and discussed the Student's placement. The District stated that "it was the impression of school team members that the Parent was in agreement" with the decision to keep the Student in the general education setting.
40. On May 15, 2018, the Parent emailed the special education language arts teacher regarding her concerns about the Student's April 2018 IEP, which she stated was "written unprofessionally and [was] inappropriate." The Parent stated that the only people who attended the IEP meeting on April 26, 2018 were the special education and general education language arts teachers and the case manager, "the three that know he's in the wrong ELA class." The Parent stated that "clearly you three came up with your own negative input on my son and didn't ask any of his other teachers anything." The Parent also listed the following concerns:
 - The title reading teacher was not invited;

- The special education teacher wrote the general education section of the IEP, but is not the Student's general education teacher;
- The special education teacher is not actually his teacher at all;
- The general education teacher "passed judgment and assumptions" and contradicted herself about the Student's willingness to work;
- The case manager did not explain a "single part of that IEP"; and,
- That the Parent had not been notified until now that the Student was "misbehaving" in class.

The Parent stated that IEPs need to be followed, that she did not agree with how the IEP was written and wanted it to be changed, and that she wanted the Student's writing skills reevaluated.

The special education language arts teacher responded and stated that at the IEP meeting, they discussed the Student's placement for language arts. The teacher stated she must have misunderstood because she "thought we agreed in the conversation that he would stay with [the general education language arts teacher] because he was so close to grade level and the Special Education class would be too slow of a pace for him and would mainly be focusing on reading." The special education language arts teacher stated that if the Parent preferred, she would move the Student to her special education language arts class. The teacher stated, "I held the meeting and went through the IEP because you told me you didn't want [the case manager] there. We can certainly meet again and look at the parts you are concerned about." The teacher asked the Parent to let her know if the Parent wanted to take the Student out of the general education class and move him to the special education class and let her know that "it may involve a significant change in his schedule because I only have one class for each grade."

41. On May 21, 2018, the Parent contacted the District special education office and spoke with the assistant director of special education (assistant director). The Parent requested a reevaluation. Following the phone call, the assistant director emailed the school psychologist and stated that she let the Parent know that she would "reach out to [the school psychologist] to have you set up a reevaluation meeting to discuss areas needed for the evaluation as soon as possible."
42. On May 22, 2018, the school psychologist called the Parent to discuss her concerns and the reevaluation. According to the school psychologist's call notes, the Parent had concerns about the Student's placement and whether the Student needed to be in the special education setting for more time during the day. The Parent also asked if a reevaluation could be completed early. The school psychologist let the Parent know that a reevaluation could be completed any time the team decided it needed more information and that they would be in touch to discuss dates "to look at testing." The school psychologist also "indicated that due to it being late in the year, we may not get to it this school year."
43. On June 4, 2018, the Parent emailed the special education language arts teacher and asked to schedule a meeting to discuss changes to the Student's IEP. The special education teacher

responded and stated that the Parent needed to contact the Student's case manager to schedule the meeting.

44. On June 6, 2018, the school psychologist emailed the case manager, the special education and general education language arts teachers, and the Parent and stated that a meeting had been scheduled for June 12, 2018 to plan for the reevaluation.
45. According to the District's response, the Parent did not come to the meeting scheduled on June 12, 2018. According to the school psychologist's notes, she called the Parent and let the Parent know that they would "be looking to reevaluate [the Student] at the very start of the year." The school psychologist let the Parent know that a consent form would be sent home, and the notes stated that the Parent "agreed and stated that this would be fine."
46. On June 22, 2018, the District's school year ended.
47. According to the District's attendance log, during the 2017-2018 school year, the Student was absent 48 school days (46 excused absences and 2 unexcused) and the Student was marked late to class 109 times.
48. According to the District's response, throughout the year, the Student's "service provision was reviewed multiple times, due to parent and teacher concerns. At each meeting, it was determined that the student would continue to receive his specially designed reading instruction in the general education environment, while his specially designed math and social/emotional instruction was delivered in the special education setting." The Student also "was placed in Title reading class in order to provide additional reading intervention. School staff members believe that student progress was impacted by attendance." The District also acknowledged that throughout the 2017-2018 school year, IEP goal progress reporting was not completed.

2018-2019 School Year

49. The District's 2018-2019 school year began on September 5, 2018, and according to the District's response, the Student did not re-enroll in the District in September 2018.
50. On September 19, 2018, the District received a "Release of Attendance" request from the Parent, requesting that the Student attend school in a different district in Washington. The District contacted the Parent and stated that because the Parent's home address was within the boundaries of the other district, a release should not be required.
51. On or around November 11, 2018, the District received a request for records from a third school district in Washington, which indicated that the Student had enrolled in the other district.

CONCLUSIONS

Issue 1 – IEP Development and Implementation: The Parent alleged that the Student's individualized education programs (IEPs) were written inappropriately and unprofessionally and

that the services in the IEPs were not provided. A district is required to provide students who are eligible for special education with a free appropriate public education (FAPE). A student receives a FAPE, when he or she receives an educational program that meets state educational standards and is provided in conformance with an IEP. A student's IEP must be reasonably calculated to enable that student to receive an educational benefit and make progress appropriate in light of that student's circumstances. A student should have an educational program that enables him or her to make progress, is appropriately ambitious in light of the student's circumstances, and that provides the student with the opportunity to meet challenging objectives.

IEP Implementation: April 2017 IEP⁵: IEPs should be in place and implemented at the start of each school year, and a district must provide all services in a student's IEP, consistent with the student's needs as described in that IEP. Each district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, or any other service provider who is responsible for its implementation.

The Student's April 2017 IEP, which was in place when the complaint investigation timeline began on November 16, 2017, included annual goals in the areas of reading, math, and social/emotional and included a list of several accommodations. The April 2017 IEP provided the following specially designed instruction in a *special education setting* from June 23, 2017 through April 26, 2018:

- Math: 55 minutes, 5 times per week
- Reading: 30 minutes, 5 times per week
- Social/Emotional: 15 minutes, 5 times per week

The District admitted that the Student's April 2017 IEP was not implemented as written during the 2017-2018 school year, as the Student's schedule was not aligned with his IEP. Despite the IEP stating that the Student would receive reading instruction in the special education setting, the Student was scheduled and attended a general education language arts class. The District did state that the last 30 minutes of the language arts class was utilized for reading interventions for all students, and during this time, the special education language arts teacher worked with the Student daily to provide specially designed instruction. The District provided information about how specially designed instruction was provided by the Student's special education teachers in the areas of reading, math, and social/emotional.

While the documentation does indicate that the Student was provided some amount of specially designed instruction, OSPI notes several concerns. First, the District acknowledged that the Student's social/emotional instruction focused on classroom behavior expectations and was not closely aligned with the Student's IEP goals. According to the Parent, the Student stated that he was never pulled out of class for his social/emotional instruction and did not receive any specially designed instruction in this area. Second, according to the Parent, at the November 2017 parent teacher conference, the Student's general education language arts teacher did not seem to know that the Student had an IEP. OSPI reminds the District that all teachers and providers responsible

⁵ The timeline for this citizen complaint investigation began on November 16, 2017. As the development of the Student's April 2017 IEP is outside the one-year timeline, the development of that IEP will not be addressed.

for the implementation of a student's IEP should have access to the IEP and are responsible to access it.

Further, the District acknowledged that progress reporting was not completed on the Student's April 2017 IEP goals and that the Student's April 2018 IEP repeated the goals from the previous IEP. The District stated that the Student's teachers reported that the Student did not make progress and that this was likely due in part to attendance and behavior challenges in the classroom setting. The Student's teachers also connected his lack of progress with the Student's refusal to work even when he did attend class. However, as discussed below, the District did not implement interventions to address attendance concerns or amend the Student's IEP.

The District did not implement the Student's April 2017 IEP as written. But, the overall documentation in this complaint indicates that the Student was being provided specially designed instruction when he attended class, and that any lack of progress was related to the Student's work refusal and attendance. The failure to address these concerns will be addressed in issue 2. Because the District failed to implement the Student's IEP as written, the District violated the IDEA and will be required to complete the corrective actions the District proposed (i.e., guidance, IEP audit, and training).

IEP Development: April 2018 IEP: Parents of students eligible for special education are expected to be equal participants along with school personnel in the development and revision of IEPs. The IEP should reflect the recommendations made in a student's evaluation and should include all of the elements required by the IDEA and state law, including a statement of the student's present level of academic achievement and functional performance. IEPs are developed at least annually, and after the IEP is developed (or any other decision is made—i.e., the district is proposing or refusing to take an action), the district must issue a prior written notice.

As discussed below (see issue 3), the Parent did not attend the Student's April 26, 2018 IEP meeting and therefore, did not participate in the development of the Student's annual IEP. The April 2018 IEP contained some information about the Student's effort, attendance, and reading level. In its response, the District acknowledged that the Student's IEP goals remained the same from his previous IEP and that "current data are not included in the present levels of performance." The new April 2018 IEP increased the Student's minutes of specially designed instruction in reading from 30 minutes to 55 minutes daily and changed the location of services from the special education to the general education setting. This change was made without the Parent present and despite the fact that the Parent had previously expressed concern about the whether the Student should be in a general or special education language arts class. Finally, even with documented concerns about the Student's lack of progress, attendance, and behavior, the IEP team did not propose or discuss any support strategies to address these concerns.

Based on the fact that the Parent did not attend or participate in the development in the IEP and the lack of adequate present levels in the IEP, OSPI finds that the Student's April 2018 IEP was not properly developed nor was the IEP reasonably calculated to enable the Student to make progress appropriate in light of his circumstances. OSPI finds the District in violation. The District will be

required to conduct training on the topic of IEP development, and particularly IEP considerations for students with attendance and behavioral challenges.

IEP Implementation: April 2018 IEP

According to the District's response, the services outlined in the Student's April 2018 IEP were implemented. The April 2018 IEP provided the Student with a list of accommodations and the following specially designed instruction:

- Reading: 55 minutes, 5 times per week (provided by the general education teacher, in a general education setting, monitored by the special education teacher)
- Math: 55 minutes, 5 times per week (provided by the special education teacher, in a special education setting)
- Social/Emotional: 30 minutes, 1 time per week (provided by the special education teacher, in a special education setting)

As discussed above, the District provided documentation about how the special education teachers provided specially designed instruction—although again, the District acknowledged that the social/emotional instruction did not focus on the Student's goals specifically. This does not necessarily indicate that specially designed instruction was not provided, as instruction does not only have to focus on IEP goals. However, the District again failed to complete or provide any progress reporting on the Student's April 2018 IEP goals, making it difficult to gauge the Student's progress. The overall documentation in this complaint indicates that the Student was being provided specially designed instruction when he attended class, and that a lack of progress was related to the Student refusing to go to class or to participate in class. This concern will be addressed further in issue 2. The District substantiated that it implemented the Student's April 2018 IEP, no violation is found.

Issue 2 – Scheduling IEP Meetings: The Parent alleged several times throughout the year that she requested IEP meetings or requested changes to the Student's IEP, and that the District either delayed meeting or failed to make the requested changes to the Student's IEP. When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must hold an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. If the district declines to hold an IEP meeting, because no change is necessary for the provision of FAPE, the district must provide written notice to the parent explaining the refusal to hold a meeting.

Requests to Change Class Schedule: During the 2017-2018 school year, the Student was enrolled in a general education language arts class despite his IEP stating that he would receive specially designed instruction in reading in the special education setting. Several times throughout the school year, the Parent expressed concerns about the Student's grades in language arts or the fact that he was supposed to be in a special education language arts class; the Parent also specifically requested that they schedule an IEP meeting several times (i.e., November 2017 parent teacher conference, February 5, 2018, March 1 and 12, 2018).

Throughout, the Student's teachers maintained that it was appropriate for the Student to remain in the general education language arts class because his reading skills were close to grade level and that this setting provided writing instruction as well. However, despite acknowledging that the IEP was not being implemented as written, the Student's class schedule and IEP remained the same.

After the Parent's request to meet on March 1, 2018, the teachers discussed concerns regard the Student's progress in language arts, his effort, and his attendance. The special education teacher also emailed the Parent with information about the Student's test scores, reading level, placement, effort, attendance, and behavior. After some email back and forth, a meeting was scheduled for March 15, 2018 and the Parent and Student met with the special education language arts teacher, a general education teacher, and the dean of students. At the meeting on March 15, 2018, the team discussed the Student's grades and the special education teacher stated she would begin providing the Student's reading instruction through pull-out sessions.⁶ Despite the decisions made at this meeting and the failure to implement the IEP as written, the Student's IEP was not amended and no prior written notice was issued.

After the Student's April 26, 2018 annual IEP meeting, which the Parent did not attend, the Parent requested an IEP meeting, which was scheduled for May 10, 2018. After the May 10, 2018 meeting, the Parent continued to express concerns (see May 15, 2018 email) and requested that the Student be reevaluated on May 15, 21, and 22, 2018. On June 4, 2018, the Parent requested that the Student's IEP team meet and a meeting was scheduled for June 12, 2018. According to the District, the Parent did not attend the meeting on June 12, 2018, and the school psychologist discussed meeting at the start of the 2018-2019 school year instead. The District stated that the Parent agreed to this plan.

The District admitted that an IEP meeting should have been scheduled and the IEP amended after the Parent expressed concerns in November 2017 and February 2018. The concerns raised by the Parent related to the failure to implement the IEP as written and potentially impacted the provision of FAPE. The District did, however, appropriately responded to the Parent and scheduled IEP meetings in March, May, and June 2018. OSPI finds the District in violation and accepts the District's proposed corrective actions.

Lack of Progress: OSPI notes that the documentation in this complaint indicates that throughout the school year, the Student's teachers expressed concern related to the Student's progress, behavior, and attendance. The teachers identified the Student's struggles with attendance as the primary reason for his lack of progress on his IEP goals. However, despite several requests for meetings and several IEP meetings, these concerns were not sufficiently addressed. In addition to the meetings that were scheduled, these concerns also placed an obligation on the District to request that an IEP meeting be held. IEP meetings are not only held when a parent requests a

⁶ According to the District, the Student refused to leave the classroom and therefore, pull-out sessions did not occur. The District stated that the special education language arts teacher continued to provide the Student's reading instruction in the general education setting. Further, the District stated that the Parent was not made aware of the Student's refusal to participate.

meeting. Here, the District should have scheduled an IEP meeting prior to the first meeting in March 2018. As the District has proposed corrective actions to remedy this violation, OSPI accepts the District's proposal.

Issue 3 – Required IEP Team Members: The Parent alleged that only the Student's special and general education language arts teachers and case manager attended his April 2018 IEP meeting and that not all the Student's teachers were included in the May 2018 IEP meeting. An IEP team is composed of: the parent of the student, at least one general education teacher, at least one special education teacher, a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, an individual who can interpret the instructional implications of evaluations results (who may one of the teachers or the district representative), any individuals who have knowledge or special expertise regarding the student, and the student when appropriate.

April 2018 IEP Meeting: A school district must ensure that one or both of the parents of a student attends or is afforded the opportunity to participate in the student's IEP meeting. If a parent cannot attend, the 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. Parental participation in the IEP meeting is central to the IDEA's goal of providing students eligible for special education a FAPE. If the district 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 courts have repeatedly stressed the vital importance of parental participation in the process of creating an IEP. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit.

On April 17 and 19, 2018, the District invited the Parent to the Student's annual IEP meeting. After some discussion of the date, the Parent indicated that she planned to attend the IEP meeting scheduled for April 26, 2018. At some point prior to the meeting, the Parent informed the case manager that she could not attend the meeting. According to the Parent, the teacher informed her that the teachers would meet without the Parent to maintain compliance with the annual IEP deadline. According to the District's response, the Parent notified the District that she could not attend on the afternoon of April 26. The Student's case manager (also the Student's special education math teacher), special education language arts teacher (signing as the District representative), and the general education language arts teacher therefore proceeded to meet without the Parent and developed the Student's annual IEP. The District stated that both of the Student's special education teachers are able to interpret the instructional implications of the evaluation results.

While an explanation for why the Parent could not attend the April 26 meeting was not provided, nothing in the documentation indicates that the refused to attend the April 26 meeting. The documentation indicates that the Parent continued to want to participate in the development of the Student's IEP as she asked to meet on April 30, 2018, and then continued to request that the Student's IEP team meet.

OSPI reminds the District that the parent is an equally participating member of the IEP team, and as such, the IDEA places an obligation on the District to ensure parental participation in IEP development. This includes affording the parent an opportunity to attend and fully participate in IEP meetings. Here, the District did not meet its obligation to ensure the Parent's participation. The IEP meeting was held without the Parent and there is no indication that the District offered an alternative means of parent participation (such as a conference call). The District could have pushed the meeting back by a few days to ensure parent participation. The District is reminded that when faced with the choice between parental participation and compliance with annual IEP deadlines, the courts have repeatedly stressed the importance of parent participation over strict compliance with deadlines. Delays in meeting the IEP deadlines, so long as they do not deprive the student of any educational benefit, do not deny a student FAPE.

The team that met on April 26, 2018 to develop the Student's annual IEP did not contain all of the required members as it was missing the Parent. Therefore, the District is in violation. Given that the District attempted to rectify this violation by holding an IEP meeting in May 2018, no Student specific corrective actions are required. The District will be required to do training on the topic of parent participation.

May 2018 IEP Meeting: After the April 26, 2018 IEP meeting, the Parent continued to indicate that she wanted to meet to review and make changes to the Student's IEP. A meeting was scheduled and held on May 10, 2018, and attended by the Parent, the case manager, the special education language arts teacher, the general education science teacher, and the general education technology teacher to discuss the Student's placement. All of the required members of the IEP team attended this meeting—the parent, at least one general education teacher, at least one special education teacher, a District representative, and someone qualified to interpret the results of evaluations. Here, the special education teachers functioned as the District representative and were qualified to interpret evaluations.

The documentation in this complaint indicated that the Parent was primarily concerned that the Student's title reading teacher did not attend the meeting. However, there is no requirement that every teacher a student has attend all meetings. Here, the title reading teacher was providing additional reading interventions—and would be considered a general education teacher—while the special education language arts teacher was providing the specially designed instruction in reading. The title reading teacher was neither prohibited from attending nor required.

The District substantiated that all required members attended the May 2018 IEP meeting. No violation is found related to the May 2018 meeting.

CORRECTIVE ACTIONS

By or before **January 25, 2019, February 4, 2019, March 1, 2019, April 12, 2019, April 26, 2019,** and **June 28, 2019,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Guidance

By or before **February 1, 2019**, the District will develop written guidance on appropriately responding to parent requests for meetings (including best practices for scheduling meetings in a timely manner), amending IEPs when appropriate, and providing prior written notice to document decisions made at meetings. Per the District proposal, the guidance will also include information for IEP teams on determine appropriate class placement based on IEPs and how to appropriately consider whether changes to service delivery should be made.

The guidance will be provided to all certificated special education staff, including educational staff associates (ESA) in the District. ESAs include school psychologists, physical therapists, speech language pathologists, school counselors, and other service providers. The guidance will also be provided to building administrators.

By **February 4, 2019**, the District will submit a draft of the written guidance to OSPI. OSPI will approve the guidance or provide comments by February 15, 2019 and provide additional dates for review, if needed.

By or before **February 28, 2019**, the District will provide the written guidance to the above listed individuals and ensure that the staff have an opportunity to review the guidance and ask questions. By **March 1, 2019**, the District will provide OSPI with documentation that the staff has reviewed the written guidance. The documentation will include an official human resources roster of the required staff, so OSPI can cross-reference the list with the actual recipients.

Training

By **April 5, 2019**, the District will provide training for all special education teaching and ESA staff regarding topics identified in this complaint, including:

- IEP team considerations related to students with attendance and behavioral challenges;
- Progress monitoring methods;
- Appropriate responses when progress monitoring indicates a lack of progress;
- Provision of progress reporting to parents; and,
- Parent participation in IEP meetings and IEP development.

The training should also touch on the topics from the above required guidance or provide the guidance memorandum as a resource to reinforce those topics. The training may be provided by District special education administrative staff or Puget Sound Educational Service District staff.

By or before **January 25, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **March 1, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by March 15, 2019 and additional dates for review, if needed.

By **April 5, 2019**, the District will conduct the training regarding the topics raised in this complaint decision.

By **April 12, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

File Audit

The District will conduct a file audit and review of the special education files at the middle school identified in this complaint. Specifically, this will include the following:

- The identified case manager's current IEPs will be reviewed by or before **April 19, 2019**, to ensure that goals have been updated from the previous year and that present levels include current data for the students. By **April 26, 2019**, the District will provide OSPI with a list of the students whose IEPs were reviewed and any follow up actions the District has identified. Follow up actions may include amending IEPs, scheduling IEP meetings, and/or conducting reevaluations. By May 3, 2019, OSPI will review the results of the audit and provide additional dates for review, if needed.
- By **February 1, 2019** and **June 21, 2019**, the District will review the case manager and special education language arts teacher's progress reporting for all students eligible for special education at the identified middle school. By **February 4, 2019** and **June 28, 2019**, the District will provide OSPI with copies of the progress reporting for each student reviewed and documentation that indicates how and when the progress reporting was provided to the student's parents. Additionally, the District will notify OSPI if any further follow up actions have been identified. By February 15, 2019 and July 5, 2019, OSPI will review the results of the audit and provide additional dates for review, if needed.

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 notes that the documentation in this investigation indicated that the Parent requested a copy of the Student's evaluation and IEP at the beginning of March 2018 and did not receive those records until the end of April 2018. OSPI did not open this as an issue because the Parent was ultimately provided with the requested documents. However, OSPI reminds the District that parents are entitled to a copy of their student's evaluation and IEP, at no cost, under WACs 391-172A-03040 and 392-172A-03100. OSPI also reminds the District that under WAC 392-172A-05190, when a parent requests student records, the "school district shall comply with a request

promptly and *before any meeting regarding an individualized education program* or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school district shall respond, in no case, more than forty-five calendar days after the request has been made.”

OSPI strongly recommends that the District have staff responsible for responding to requests for student records review these obligations.

Dated this ____ day of January, 2019

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.)