

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-14

PROCEDURAL HISTORY

On February 2, 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 Seattle 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 February 6, 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 February 14, 2018, the Parent contacted OSPI to express that OSPI had misinterpreted the issues in her complaint. On February 15, 2018, OSPI spoke with the Parent and agreed that one of the issues previously identified for investigation, should be modified. Also on February 15, 2018, OSPI sent a letter to the District with notification of the issue modification.

On February 28, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on March 1, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On March 12, 2018, OSPI received the Parent's reply and forwarded that reply to the District on March 13, 2018.

On April 2, 2018, OSPI contacted the District to request clarifying information and spoke with the District's attorney.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of developmental delay. The Student's educational placement was a self-contained special education program for students with intensive educational needs. Due to the Student's progress in the areas of academics and adaptive/behavior, the Student's individualized education program (IEP) case manager recommended that the District review the Student's placement to determine if he should be moved to a special education program with a more academically advanced curriculum and which offered more opportunities to engage with peers. In the fall of 2017, the case manager contacted the District regional program specialist to discuss changing the Student's placement, and stated that the Parent wanted to schedule an IEP meeting to discuss the change. The case manager asked that the program specialist provide information about what steps needed to be taken to facilitate the change. The program specialist then directed the case manager to schedule an IEP

meeting to discuss the change in placement, and a meeting was scheduled for January 4, 2018. At the meeting, there was confusion about the purpose of the meeting, as the program specialist was under the impression that the meeting was not a “formal IEP meeting”, but a pre-meeting to discuss planning for the Student, while the Parent and other staff believed the meeting was to determine a new placement for the Student as an IEP meeting invitation had been provided to the Parent. Also during the meeting, the Student’s speech language pathologist (SLP) left the meeting early, without obtaining the Parent’s permission to be excused from the meeting, and the program specialist stated that she had to leave the meeting early, but did not seek the Parent’s permission to leave the meeting early. The IEP team did not make changes to the Student’s IEP at the January 4 IEP meeting, and it was unclear what decisions, if any, were reached regarding next steps to determine if the Student needed a different placement.

The Parent alleged that the District failed to follow procedures for excusing individualized IEP team members from the January 4, 2018 IEP meeting and that the District failed to follow procedures for developing the Student’s IEP in January 2018. The District admitted the allegations and proposed to conduct an expedited reevaluation of the Student and to provide training for staff as corrective actions.

ISSUES

1. Did the District follow procedures for excusing individualized education program (IEP) team members from the January 4, 2018 IEP meeting?
2. Did the District follow procedures for developing the Student’s IEP in January 2018?

LEGAL STANDARDS

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).

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). As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP Team includes “[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) . . .” Neither the IDEA nor its implementing regulations require that an IEP Team include more than one regular education teacher. Therefore, if an IEP Team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP Team meeting. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question C-3).

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A child with a disability may seek to qualify for special education benefits under more than one eligibility category. *E.M. by E.M. and E.M. v. Pajaro Valley Unified Sch. Dist.*, 114 LRP 31486 (9th Cir. 2014). A student’s eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002).

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.

Placements: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060. When making placement decisions a district must draw upon information from a wide variety of sources and ensure that any decision is made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR §300.116; WACs 392-172A-02060; *L'Anse Creuse Public School District*, 35 IDELR 284 (OCR 2001); *Seattle School District*, 34 IDELR 196 (SEA WA 2000).

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

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

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student’s educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student’s identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student attended second grade at a District elementary school and was eligible to receive special education services under the category of developmental delay. The Student had an individualized education program (IEP) in place, and his educational placement was a self-contained special education program (distinct program)¹ at the elementary school, which was taught by his IEP case manager. The Student’s most recent evaluation was completed in June 2016.

¹ According to the District’s website, a “distinct” program is one in which the instruction significantly differs from the general education curriculum, but varies per a student’s IEP. The majority of the instruction is provided in a small

2. Also during the 2016-2017 school year, the Student's twin brother attended the same District elementary school and was eligible for special education. The brother's IEP team determined that for the 2017-2018 school year, the brother should move to a different District elementary school with a less restrictive special education program (focus program)².
3. In early spring 2017, the Student turned eight years old.
4. On June 6, 2017, the Student's IEP team met to develop his annual IEP. The IEP included annual goals in the areas of functional academics – math, functional academics – reading, functional academics – writing, social behavior, adaptive/life skills, and communication. The IEP provided for the following specially designed instruction in a special education setting:
 - Communication – 30 minutes 6 times monthly
 - Functional Reading – 80 minutes 5 times weekly
 - Functional Written Language – 60 minutes 5 times weekly
 - Functional Math – 60 minutes 5 times weekly
 - Adaptive/Life Skills – 5 minutes 20 times weekly
 - Adaptive/Life Skills – 20 minutes 5 times weekly
 - Social/Behavior – 30 minutes 5 times weekly

The IEP stated that the Student would spend 24.59% of his school week in a general education setting and would not participate in general education PE, but would instead attend a PE class with his classmates in the self-contained special education class. The IEP stated that due to the Student's age, he did not participate in state "evaluations".

5. The District's 2016-2017 school year ended on June 23, 2017.

2017-2018 School Year

6. The District's 2017-2018 school year began on September 6, 2017. At that time, the Student began attending third grade at the same District elementary school and his June 2017 IEP was in place. The Student's educational placement continued to be in the "distinct" program and the IEP case manager continued to be his special education teacher.
7. Based on the information provided by the Parent and the District in this complaint and based on the District's documentation, due to the Student making progress in the areas of academics and adaptive/behavior, the IEP case manager believed the Student might be better served in a focus program, which offered more academic challenge and provided access to

group learning environment, but varies per a student's IEP. See <http://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=13377871>.

² According to the District's website, a "focus" program is one in which students participate in the general education curriculum at their present level of performance and varies per a student's IEP. The majority of the instruction is provided in a small group learning environment, but varies per a student's IEP. See <http://www.seattleschools.org/cms/One.aspx?portalId=627&pageId=13377871>.

peers who functioned at a skill level more similar or higher than the Student's. The IEP case manager discussed this with the Parent.

8. On October 17, 2017, the Student's IEP case manager exchanged emails with a District regional special education program specialist (program specialist). The case manager asked to meet with the program specialist to review the Student's progress, with the goal of assessing his transfer to a focus program. The case manager indicated that previously, a District administrator had helped facilitate three program transfers by attending IEP meetings and finding a new placement for each of the three students involved. In response, the program specialist agreed to meet with the IEP case manager on October 23, 2017.
9. On November 29, 2017, the IEP case manager emailed the program specialist, stating that the Parent wanted to have an IEP meeting before the District's upcoming winter break to discuss moving the Student to a focus program. The case manager stated that the Student had been under consideration for some time, and that she needed help to determine if the Student was ready to transition, as the Student had a lot of strengths, but also had a lot of needs. The case manager also stated that she knew the program specialist needed to observe the Student, and asked that the program specialist inform her of the other steps in the placement change process.
10. On December 6, 2017, the IEP case manager emailed the program specialist, stating that a program change for the Student was still under consideration and that the Parent wanted to have an IEP meeting prior to the District's winter break. The case manager asked that the program specialist let her know if any forms needed to be completed, and if the program specialist planned to observe the Student that week. The case manager also asked if the program specialist was available the following week to attend an IEP meeting. In response, the program specialist stated that she would observe the Student on December 7, 2017, but then later had to cancel due to being ill.
11. On December 7 and 8, 2017, the IEP case manager and the program specialist exchanged emails regarding the case manager providing the program specialist with data about the Student's current level of functioning, and the case manager stated that the December 2017 progress reporting regarding the Student's IEP goals represented the Student's current level of functioning. The program specialist directed the case manager to schedule an IEP meeting to review the Student's needs and discuss placement, and stated that "at that point, the determination could be made." The program specialist asked that the case manager provide her with a few possible times to hold an IEP meeting during the first week of January 2018.
12. On December 14, 2017, the IEP case manager emailed the elementary school principal, speech language pathologist (SLP), and the Student's general education teacher, stating that the program specialist could attend an IEP meeting for the Student on January 4, 2018, and asked if the other staff members could attend. In response, the SLP stated that she had another meeting that same afternoon, and could only attend the Student's IEP meeting for 15-20 minutes. The IEP case manager replied that this was not a problem and she was glad the SLP could attend and give data.

13. Also on December 14, 2017, the District sent the Parent an invitation for the January 4, 2018 IEP meeting. The notice stated that the purpose of the IEP meeting was to “determine placement”.
14. The District was on break December 18, 2017 through January 1, 2018.
15. On January 2, 2018, the program specialist emailed the IEP case manager, stating that she had been going over the Student’s information and had some questions regarding the case manager’s recommendation to change the Student’s placement. The program specialist stated that she wanted to both observe the Student and meet with the case manager on January 4 prior to the IEP meeting.
16. Also on January 2, 2018, the program specialist emailed another special education teacher who worked in the Student’s special education classroom and assisted with behavior strategies and intervention (behavior intervention teacher). The program specialist stated that she wanted to get the behavior intervention teacher’s opinion on the Student. The program specialist said that the Student’s IEP case manager was proposing to change the Student’s placement, but that the program specialist had conflicting information. The program specialist asked that they set up a time to speak if the behavior intervention teacher had any insight to share.
17. On January 3, 2018, in response to the program specialist’s email, the behavior intervention teacher exchanged emails with the Student’s former kindergarten teacher (kindergarten teacher 1) and other staff that worked with the Student while he was in kindergarten at a different elementary school. The emails are summarized below:
 - The behavior intervention teacher stated that there were some questions about the Student’s placement in a distinct program versus a focus program, and asked if kindergarten teacher 1 had thoughts about this based on her time as the Student’s teacher. The behavior intervention teacher stated that the Student’s brother was in a focus program, and asked if kindergarten teacher 1 also had insight about this.
 - Kindergarten teacher 1 replied that the Student’s brother would “definitely” be a “focus student” in her opinion and that he was initially supposed to be placed in a general education kindergarten program. In regard to the Student, kindergarten teacher 1 indicated that the Student had “higher behavioral, cognitive, and communication needs” than his brother, while in the kindergarten class, and that he was very strong willed. Kindergarten teacher 1 stated that there were “numerous challenges” with both boys when they were together in the same classroom, and things were better for them when they were not in the same classroom. Kindergarten teacher 1 included two other staff members, who had worked with the Student in kindergarten, on the email.
 - The behavior intervention teacher asked if based on the time the Student was in the kindergarten classroom, kindergarten teacher 1 thought the Student’s “behavioral, cognitive, and communication needs were too much of a hindrance for him to successfully access a focus classroom.”
 - Another special education kindergarten teacher (kindergarten teacher 2) who had taught the Student then replied that she agreed with kindergarten teacher 1’s assessment that the Student had greater behavioral, cognitive, and communication needs than his brother. Kindergarten

teacher 2 stated that she currently taught in a focus program classroom, and that if the Student's performance was similar to where he was in kindergarten, it would be difficult to meet his needs in the focus program. Kindergarten teacher 2 stated that when the Student was in her class, he needed "a lot" of adult support to work independently and communicate clearly, but that was three years ago and things could have changed since then.

- Kindergarten teacher 1 replied that "that was [the Student] in kindergarten" and she did not know how much progress he had made since that time. Kindergarten teacher 1 was also unsure if the desire for the Student to be in a focus classroom was so that he could attend the same school and program as his brother.
- The behavior intervention teacher responded, indicating that she thought the desire to move the Student was based on not wanting "to hold him back academically, etc." because his current classroom in the "distinct" program had several students with intensive needs that took "all of the staff's time and focus".

18. On January 3, 2018, the Student's IEP case manager emailed the SLP, asking that the SLP complete a section in a draft IEP regarding the Student's present levels of performance in the area of communication skills. The case manager also stated that the program specialist would observe the Student on January 4, 2018.

19. According to the District's response, at some point before the January 4, 2018 IEP meeting, the IEP case manager provided the Parent with a copy of a draft IEP.

20. On the morning of January 4, 2018, the SLP, the program specialist, and the IEP case manager exchanged emails, which are summarized below:

- The SLP stated that she had been informed that there would be an IEP meeting later that day to discuss the possibility of changing the Student's placement. The SLP stated that she wanted to clarify the procedures for this kind of change. The SLP also stated that there seemed to be confusion, as a new IEP for the time period of January 2018 to January 2019 had been opened for the Student, but there had been little to no updated information added to the present levels of performance or the annual goals in the new IEP. The SLP asked if would suffice to complete an amendment to the Student's June 2017 IEP instead, or if a new IEP needed to be completed. The SLP apologized for the short notice, but did not want the Student to end up with the same IEP goals from June 2017 through January 2019.
- In response, the program specialist stated that the IEP meeting was not "going to be a formal IEP meeting", but would be a "pre-meeting" to discuss forward planning for the Student, so there was no need to amend his June 2017 IEP at that time.
- The IEP case manager replied that this was the IEP meeting the program specialist had requested in the fall, and that the program specialist's involvement was due to there being "a change of program IEP".
- The program specialist responded that they communicated about a potential change, and she apologized for the misunderstanding, and indicated she was settling into the role of a program specialist. The program specialist stated that at this time, they needed to discuss this further to get a "clearer picture" of the case manager's recommendations and the implications of the data. The program specialist stated that a change of placement did not "trigger a new IEP", so there were "no worries about that", but if there were any changes to the IEP, the IEP could be amended. The program specialist asked that in the interim, that the staff be sure to complete progress notes within the current IEP, so that it accurately reflected the Student's progress.

21. In the afternoon of January 4, 2018, the Student's IEP team met to discuss the Student's placement. According to the District response, the following people attended the meeting:

- Parent
- IEP case manager
- Program specialist
- School principal
- SLP
- Student's general education teacher
- Instructional assistant

Based on the information from the Parent, at the start of the meeting, the program specialist stated that she had to leave the meeting early and the Parent was not asked to sign an excusal form. The program specialist also reportedly stated that she was not aware that the meeting was an IEP meeting. During the IEP meeting, the program specialist presented information from the Student's former kindergarten teachers and the Parent questioned the relevance of the information, since the Student was now in third grade. The IEP team discussed that there was not a focus program or a similar type program at the Student's elementary school, which was why the case manager was recommending the Student be transferred to another elementary school. In her complaint, the Parent expressed that at the meeting, the program specialist did not provide clear information about the steps the case manager needed to take in order to make changes to the Student's IEP that would support a change to a focus program. According to the District's response to this complaint, the SLP left the meeting after thirty minutes and the Parent was not asked to sign an excusal form. The District also stated that the IEP team discussed strategies to gather additional information that would be relevant in determining the appropriate educational placement for the Student, and that no changes were made to the Student's June 2017 IEP at the January 4 meeting. In her reply to the District's response to this complaint, the Parent disputes that strategies were discussed at the meeting. The District did not provide the Parent with a prior written notice following the January 4 meeting.

22. On January 9, 2018, the IEP case manager emailed the elementary school principal, asking if the principal had a chance to see if there was a current kindergarten level reading group teaching guided reading, word work, or letter knowledge that the Student could try to join, or a math group teaching beginning addition and subtraction.

23. Based on the documentation in this complaint, at some point after the January 4, 2018 IEP meeting, the Parent contacted the District special education ombudsperson with concerns that the Student's placement had not been changed. In response, the ombudsperson contacted the regional special education supervisor about the Parent's concerns, and the supervisor in turn contacted the elementary school principal.

24. On January 12, 2018, the special education ombudsperson emailed the Parent to follow up on their prior discussion and to relay information from the District supervisor and the school principal. The ombudsperson stated the principal agreed that the Student had made "some very good progress", but believed that the next step was for the Student to participate in some additional general education and small group settings in order to collect data to make sure the IEP team was making the right decision before moving the Student to a focus program. The ombudsperson stated that there was the "thought that the next year

(September 2018) would be a good time to move” the Student, and that staff were reluctant to move the Student at present, because they thought the Student needed to “try some different settings” at his current elementary school. The ombudsperson asked if this made sense. On January 16, 2018, the Parent responded that this did not really make sense, and indicated that she did not like the Student’s current classroom, as she had stated at the January 4 meeting. The Parent expressed that the school staff still had not specifically stated why they were holding the Student back.

25. On January 12, 2018, the Student was observed by a University of Washington (UW) inclusion coach while participating with general education peers in a “tech” class at his elementary school. On January 16, 2018, the UW inclusion coach emailed the IEP case manager, the Student’s general education teacher, and another staff member with information about her observation of the Student, and provided recommendations to better help the Student interact with his general education peers.
26. On January 18, 2018, the IEP case manager sent a follow-up email to the school principal, as the case manager had not received a response to her January 9 email. The next day, the principal responded and apologized for missing the case manager’s earlier email. The principal also stated that he could support the case manager “regarding inquiries” and when she had a “challenge setting things up and try and don’t find options”, but did not have “the capacity to take the lead in setting things up for individual students in classes.” The principal stated that he was sorry if the case manager had perceived that he would set this up, but had meant that he could support the case manager as she tried to set this up. The principal stated that it made sense for the case manager’s first step to be to email the “K-1, Access, and Resource” teachers to ask for information about the reading and math groups they were teaching. The principal stated that after the case manager got a response, he could consult regarding “possible matches”, next steps, and how they might support the Student’s participation in a group.
27. On February 2, 2018, the Parent filed this citizen complaint.
28. According to information provided by the District, after the Parent filed this complaint, the District agreed to conduct an expedited reevaluation of the Student, which is expected to be completed on April 5, 2018.

CONCLUSIONS

Issue 1: Procedures for excusing IEP team members from the January 4, 2018 IEP meeting – An IEP team is composed of the parents; not less than one regular education teacher; not less than one special education teacher; a representative of the school district; any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the student. 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 prior to the meeting.

The District admitted that it failed to follow procedures for excusing IEP team members from the January 4, 2018 meeting and proposed to provide staff with training as a corrective action. OSPI accepts the proposed corrective action.

Issue 2: Procedures for Developing the Student's IEP in January 2018 – Based on the documentation in this complaint, the Student's IEP team did not develop an IEP for the Student in January 2018, as the IEP team could not reach a consensus regarding the decision to change the Student's placement due to the confusion amongst staff members regarding what steps needed to be taken to determine the Student's placement. The District admitted in its response to this complaint that it did not follow procedures for determining whether the Student's placement should be changed, and has already begun conducting an expedited reevaluation of the Student (estimated to be completed on April 5, 2018), in order to inform his IEP team about his current level of functioning. The District also proposed to hold a facilitated IEP meeting to review the results of the Student's reevaluation and determine the Student's placement. OSPI accepts this proposed corrective action. It is also noted, that even if the Student was not in need of a change of placement, the District was still required to conduct a reevaluation of the Student, as he was approaching nine years old in the early spring of 2018 and would have no longer met the criteria to be eligible for special education under the category of developmental delay, as this is only available for students ages three through eight.

CORRECTIVE ACTIONS

By or before **April 30, 2018** and **May 25, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **April 27, 2018**, the District will hold a facilitated IEP meeting to review the results of the Student's reevaluation, develop a new IEP, and determine the Student's appropriate placement. The IEP will address the Student's participation in state testing for the 2017-2018³ and 2018-2019 school years and any needed testing accommodations. By **April 30, 2018**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the reevaluation report; 3) a copy of the new IEP; and, 4) a copy of any related prior written notices. If the Student's IEP team determines that the Student is in need of a new placement for the remainder of the 2017-2018 school year, the District will submit documentation by **May 25, 2018**, that the Student has been transferred to his new placement.

³ The testing window for students who are in third grade to participate in the state English Language Arts (ELA) and math Smarter Balanced Assessment (SBA) during the 2017-2018 school year is open from March 5-June 8, 2018. It is recommended that the IEP team consult with the District assessment coordinator prior to the IEP meeting, and if needed, also consult with OSPI's assessment office.

DISTRICT SPECIFIC:

OSPI accepts the District's proposal to provide staff with training regarding: 1) procedures for changing a student's placement; and, 2) procedure for excusing staff members from IEP meetings. The training will also address: 3) when it is appropriate to qualify a student for special education under the category of developmental delay; 4) procedures for determining whether students will participate in state assessments, and any needed testing accommodations; and, 5) the requirement for providing prior written notice. The training will include examples.

By **April 30, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by May 11, 2018 and additional dates for review, if needed.

By **May 25, 2018**, the District will submit documentation that staff participated in the training. This will include a 1) sign-in sheet from the training and 2) a roster of all District special education certificated staff, educational staff associates (ESAs), and school administrators who work at the Student's elementary school and regional District special education administrators, so OSPI can verify that all required staff participated in the training. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. *If any of the staff are unable to participate, the District will hold a follow-up session(s) within the required timeframe.*

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

Dated this ____ day of April, 2018

Glenna L. 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.)