

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-15**

### **PROCEDURAL HISTORY**

On January 29, 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 Blaine 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 January 29, 2018, OSPI contacted the Parent because the request for a Special Education Citizen Complaint was missing the Parent's signature. OSPI advised the Parent that she needed to re-file a signed copy of the complaint with OSPI and the District.

On February 5, 2018, OSPI received the Parent's signed request for a Special Education Citizen Complaint.

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 27, 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. The Parent did not provide a reply.

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

### **OVERVIEW**

During the 2016-2017 school year, the Student attended a District middle school and was eligible for special education and related services under the category other health impairment. In March 2017, the Parent informed the District that she would be homeschooling the Student for the remainder of the school year. In response, the District informed the Parent that the Student could still access special education services as a homeschooled student, if the Student part-time enrolled. In May 2017, the District completed the Student's triennial reevaluation based on a review of existing data. The Parent attended the evaluation meeting and subsequently signed a statement that she was declining special education services from the District. A few days after the Student's reevaluation, the Parent filed a request for a due process hearing, alleging that the District violated the IDEA and denied the Student a free appropriate public education (FAPE) during the 2016-2017 school year. In August 2017, the Parent informed the District that the Student would be homeschool for the 2017-2018 school year, which would be his first year in high school. The Student's annual individualized education program (IEP) was due at the beginning of October 2017. The District invited the Parent to participate in the IEP meeting and the Parent initially indicated that she would attend. The Parent then indicated that she wanted

to wait to hold the IEP meeting until after the administrative law judge (ALJ) issued a decision in the due process. The District responded that the IEP team needed to meet prior to the expiration of the Student's prior IEP to remain in compliance with special education regulations. At the beginning of October 2017, the Student's IEP team met, but the Parent did not attend. A week later, the Parent emailed the District and stated that she had no intention of reenrolling the Student in the District. The District responded and stated that if the Parent changed her mind, the District had a program, placement, and IEP ready for the Student. At the end of October 2017, the ALJ issued a written decision in the Parent's due process complaint. In December 2017, the Parent requested a new IEP for the Student and stated that she wanted to meet before the end of December. The District responded that it could develop a new IEP, asked if the Parent planned to reenroll the Student, stated that the meeting may have to wait until after winter break, and advised the Parent to contact the high school to learn more about the high school's special education program.

The Parent alleged that the District failed to follow procedures for developing the Student's IEP during the 2017-2018 school year, which resulted in the Student being denied a FAPE. Specifically, the Parent alleged that the Parent was not allowed to attend the October 2017 IEP meeting, that there was no high school staff in attendance at the IEP meeting, and that the Parent's request for a December 2017 IEP meeting was improperly denied. The District denied all allegations.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation time period, which began on February 6, 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.

### **ISSUE**

1. Did the District follow procedures for developing the Student's individualized education program (IEP) during the 2017-2018 school year?

### **LEGAL STANDARDS**

Annual IEP: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is served through enrollment in the district and is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the Individuals with Disabilities Education Act (IDEA) and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. IEP team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110.

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; (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.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, 9).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (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. 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: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. 34 CFR § 300.322; WAC 392-172A-31000.

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).

Parent Request for IEP Meeting: When a parent requests an IEP meeting to discuss issues of FAPE the school district must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322, 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 to determine whether such a change is needed, the district must provide written notice to the parents of the refusal, 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. 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).

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 the Student to benefit from that instruction. *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 and services that meet state educational standards, is provided in conformance with an IEP designed to meet the student’s unique needs and includes whatever support services are necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

A School District Must Offer a FAPE: School districts must make a formal, written offer of a FAPE through a prior written notice. Providing parents a choice of programs in a manner outside of the IEP process does not amount to a formal offer of a FAPE. *Union School District v. Smith*, 15 F.3d 1519, 1524 (9<sup>th</sup> Cir. 1994). When a child with a disability re-enrolls in a public school, after

being withdrawn and temporarily enrolled in a private school or homeschooled, a district “has an obligation to convene an IEP meeting and develop an appropriate IEP for the child.” *Letter to Goldman*, 53 IDELR 97 (OSEP 2009).

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 District Board of Education v. Rowley*, 458 U.S. 176 (1982). For a district to meet its substantive obligation under the 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.” *Endrew F. v. Douglas County School District RE-1*, 137 S. Ct. 988, 999-1000, 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*, 69 IDELR 203 (9<sup>th</sup> Cir. 2017).

## **FINDINGS OF FACT**

### **Background Facts**

1. At the beginning of the 2016-2017 school year, the Student attended a District middle school and was eligible for special education and related services under the category other health impairment.
2. On October 5, 2016, the Student’s individualized education program (IEP) team, including the Student’s mother (Parent) and his father, met to develop the Student’s annual IEP. The IEP provided the Student with specially designed instruction in mathematics, reading, writing, and personal/social skills and contained goals in social communication, personal/social, reading, mathematics, and writing. The IEP listed several accommodations, including “Adult Proximity and para educator support for all parts of the day to aid in social interactions and implementation of the behavior intervention plan.” The IEP provided that the Student would remain in the general education setting for band and PE, as well as language arts and science with modified or alternative assignments. The IEP provided for the following specially designed instruction from October 5, 2016 through October 4, 2017:
  - Mathematics: 40 minutes, five times per week – special education setting
  - Personal/social: 50 minutes, five times per week – special education setting
  - Reading: 30 minutes, five times per week – special education setting
  - Social Communication: 25 minutes, one time per week – special education setting
  - Writing: 60 minutes, five times per week – special education setting

The IEP team also developed a behavioral intervention plan (BIP) that provided for intervention strategies to reduce the following target behaviors: inappropriate language, name calling, making verbal threats, and making inappropriate and distracting noises.

3. On March 28, 2017, the Parent provided the District with an “Annual Declaration to Provide Home-Based Instruction in Lieu of Public School Enrollment” for the remainder of the 2016-2017 school year.<sup>1</sup>
4. On April 10, 2017, the school psychologist sent the Parent a letter regarding the decision to homeschool the Student. The letter informed the Parent that the Student could still access special education services at his middle school as a homeschool student, through part-time enrollment. The letter indicated that the Parent should contact the District to make arrangements if she wished to continue accessing services. The school psychologist also requested that the Parent advise the District in writing if she chose to forego special education services, and included a form for the revocation of consent for services. The school psychologist also informed the Parent that the Student’s triennial reevaluation would be due in May 2017, offered several assessment options (including contracting with an outside agency), and requested that the Parent provide consent for the reevaluation.
5. The Parent did not provide consent for the Student’s triennial reevaluation.
6. On May 1, 2017, the school psychologist sent the Parent a second letter that reiterated that the Student could still access special education services and reminded the Parent that the Student’s reevaluation was due later in May. The school psychologist asked the Parent to notify the District if she wanted the Student to receive special education services.
7. Also on May 1, 2017, the District sent the Parent a “Notice of Meeting” regarding the Student’s reevaluation meeting, which had been scheduled for May 17, 2017.
8. On May 17, 2017, the District completed a reevaluation of the Student based on a review of existing data. The Parent and Student’s father attended the evaluation meeting. The evaluation group found that the Student continued to be eligible for special education and related services under the category other health impairment, and that his medical diagnosis impacted his ability to “engage and recall academic learning and to successfully problem solve when he becomes frustrated or upset.” The evaluation group found that the Student’s reading, mathematics, and writing skills were delayed and that the Student exhibited weaknesses in executive functioning and social communication. The evaluation report recommended that the Student continue to receive specially designed instruction in reading, writing, mathematics, personal/social, and social communication.
9. The District’s documentation in this complaint included a prior written notice, dated May 17, 2017, which included the following statement: “At this time, [the Student] is home-schooled

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<sup>1</sup> Between October 2016 and March 2017, a series of issues arose, including the District filing a “petition for order compelling school attendance”, which gave rise to the Parent’s request for a due process hearing and decision to begin homeschooling the Student.

and the family is rejecting any IEP service within the [District.] ([District] IEP service is available to [the Student] upon written request by the family)." The Parent signed the prior written notice next to the statement.

10. On May 22, 2017, the Parent filed a due process hearing request No. 2017-SE-0049, alleging that the District violated the IDEA and denied the Student a free appropriate public education (FAPE) during the 2016-2017 school year by: (1) failing to implement the Student's October 2016 IEP by failing to provide the Student with a 1:1 paraeducator during an incident in February 2017 and failing to inform the Student's general education teacher about the interventions listed in his IEP; (2) failing to implement the Student's 2016 BIP; (3) using curriculum in the Student's general education class that was not appropriate; (4) removing the Student from his general education language arts class; (5) failing to have a general education teacher attend the Student's IEP meetings; and, (6) failing to consider the results of an outside psychological reevaluation from 2010.
11. The Parent continued to homeschool the Student for the remainder of the 2016-2017 school year, and the Student did not access any special education services from the District.
12. On August 10, 2017, the Parent provided the District with an "Annual Declaration to Provide Home-Based Instruction in Lieu of Public School Enrollment" for the 2017-2018 school year. The Student would be in ninth grade during the 2017-2018 school year.

#### **2017-2018 School Year**

13. The District's 2017-2018 school year started on August 30, 2017.
14. The administrative hearing in due process No. 2017-SE-0049 was held on September 18 and 19, 2017.
15. On September 20, 2017, the Student's former special education teacher at the middle school (special education teacher) emailed the Parent and asked if she was available to attend an IEP meeting on October 3, 2017, to develop the Student's annual IEP. The teacher wrote that the IEP team would include middle school staff in addition to high school staff because the middle school staff knew the Student best. The special education teacher also requested that the Parent provide input about anything she wanted to include in the Student's IEP.
16. On September 21, 2017, the Parent responded and stated that she would only participate in the IEP meeting if the District understood that she planned to continue homeschooling the Student until the Parent was "happy with our legal outcome [sic]."<sup>2</sup>
17. On September 25, 2017, the special education teacher responded to the Parent's September 21 email, and wrote, "We could write the IEP and hold the meeting on October 3<sup>rd</sup> at 3:00 or if you choose to homeschool we would need to write one prior to him returning. Please let

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<sup>2</sup> Because the decision in the due process hearing was pending, it is likely the Parent meant that she would be homeschooling the Student until the administrative law judge (ALJ) issued a decision.

us know how you would like to proceed.” The Parent replied that, “I think it might be the best use of everyone’s time if we wait until the OSPI Judges [sic] gives his order, but I will also try to get some in put [sic] from the Omnibus [sic] special education people see what they recommend. I will be in touch.”

18. On September 27, 2017, the special education teacher emailed the Parent and stated that in order for the District to remain in compliance with special education regulations, the IEP team needed to meet prior to the annual IEP date, which was October 5, 2017. The special education teacher asked again if the Parent was available to meet on October 3, 2017, at 3:00 p.m.
19. The Parent did not respond to the District’s September 27, 2017 email. According to the District’s response to this complaint, the District believed that the Parent was planning to attend the IEP meeting even though she did not respond to the District’s last email.
20. On October 3, 2017, a special education teacher from the high school (high school teacher) emailed the special education teacher and the District executive director of federal and special programs (executive director) regarding draft goals for the Student’s IEP. The high school teacher wrote that the Student was not appearing in her search of “IEPonline.” The email included draft template goals for mathematics, writing, and reading and the high school teacher wrote that she believed the Student’s social/emotional and behavior goals were staying the same.
21. Later on October 3, 2017, the Student’s IEP team met to develop the Student’s annual IEP. Meeting attendees included: the special education teacher, a middle school general education teacher, the speech language pathologist (SLP), the executive director, and the middle school assistant principal.<sup>3</sup> The Parent and the Student’s father did not attend the meeting.<sup>4</sup>
22. The October 3, 2017 IEP noted that the Student continued to require support in reading, mathematics, written language, and provided present levels data on the Student from February 2017.<sup>5</sup> The IEP included an age appropriate transition assessment and noted that the Student had “some social barriers that will impact his post-secondary life; one skill he continues to practice is ‘asking for help’” and that the Student was interested in being a train conductor after graduating from high school. The IEP contained goals in social

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<sup>3</sup> According to the District’s response, the SLP worked at both the middle and high school and the executive director served both the middle and high school. The District also stated that because the Student had not attended the high school yet, the IEP team included middle school staff who had worked with the Student during the 2016-2017 school year and were familiar with his educational needs.

<sup>4</sup> The District stated in its response that when the Parent did not appear at the meeting, it believed that the parents had declined to attend based on prior hostile communications to the IEP team. The District proceeded with the meeting because the Student’s annual IEP was due on October 5, 2017.

<sup>5</sup> The IEP team’s most recent present levels data were from February 2017, because the Student had been home schooled since March 2017.



communication, personal/social, reading, mathematics, and writing. The IEP continued to provide several accommodations, including “Adult Proximity and para educator support for all parts of the day to aid in social interactions and implementation of the behavior intervention plan.” The IEP provided that the Student would be in general education language arts and science classes, with a modified or alternate curriculum and paraeducator support, and that he could participate in PE and band with his general education peers. The IEP provided for the following specially designed instruction from October 3, 2017 through October 2, 2018:

- Mathematics: 40 minutes, five times per week – special education setting
- Personal/social: 50 minutes, five times per week – special education setting
- Reading: 30 minutes, five times per week – special education setting
- Social Communication: 25 minutes, one time per week – special education setting
- Writing: 60 minutes, five times per week – special education setting

The IEP also incorporated the BIP that was developed on October 5, 2016.

23. On October 3, 2017, the District sent the Parent a prior written notice, stating that the District was proposing to continue the Student’s IEP because the Student continued to qualify for specially designed instruction in reading, writing, and mathematics.
24. On Monday, October 9, 2017, the Parent emailed the special education teacher and stated that she had heard back from the administrative law judge (ALJ) and that the ALJ “did not believe the stay put order applied to the new IEP.” The Parent also wrote, “Just so you are aware [the Student] has no intention of stepping foot on the [District] school campus so the IEP has to be done regarding [the Student’s] concerns of mistreatment by staff.” The Parent went on to state that she was available to meet that week, preferably on Thursday.
25. Later on October 9, 2017, the executive director emailed the Parent in response to her email and stated, “if you choose to discontinue homeschooling and have [the Student] come back to school we have a program, placement, and IEP ready for him at the High School.”<sup>6</sup> The Parent replied, “I don’t have any idea how you have an IEP put together for [the Student] with out [sic] our participation, looks like our legal issues are not at all over on to the next step.”
26. On October 28, 2017, the ALJ issued a written decision in due process No. 2017-SE-0049. The ALJ found that the District violated the IDEA by failing to have a general education teacher attend the October 5, 2016 IEP meeting, but awarded no remedy to the Parent because the procedural violation had not denied the Student a FAPE.
27. On December 6, 2017, the Parent emailed the executive director and stated that she and her husband had been advised to request a new IEP for the Student and that they would like to meet before the end of December. In response, the executive director responded that the

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<sup>6</sup> It appears that the special education teacher forwarded the Parent’s October 9, 2017 email to the executive director, although the documentation provided by the District in response to this complaint does not contain a copy of the teacher’s email to the executive director.

IEP team could put together a new IEP and asked if and when the Parent planned to enroll the Student at the high school. The executive director also noted that because there were limited school days before the District's winter break, the meeting may have to wait until January 2018.

28. On December 9, 2017, the Parent emailed the executive director and stated, "It depends on the IEP and we would like an IEP before the start of the next semester we asked for one before but did not get a response other than one had already been written."
29. On December 11, 2017, the executive director emailed the Parent and stated that the Parent chose not to attend the October 2017 IEP meeting. The executive director suggested that the Parent enroll the Student in the high school and that an IEP would be developed by the high school life skills teacher. The director also suggested the Parent email or call the life skills teacher to learn more about the high school programs.
30. According to the District's response to this complaint, the Parent did not respond to the executive director's December 11 email, nor did she enroll the Student at the high school or request further information about the high school program. Further, the District stated that it continued to be "ready, willing, and able to convene an IEP team meeting for Student, upon Parents' request."

## **CONCLUSIONS**

**Annual IEP and Offer of FAPE** – The Parent alleged that the District failed to follow procedures for developing the Student's annual individualized education program (IEP) during the 2017-2018 school year, and thus denied the Student a free appropriate public education (FAPE). At the beginning of each school year, each district must have in effect an IEP for each student within its jurisdiction who is enrolled in the district and is eligible to receive special education services. When a child has withdrawn from public school to be enrolled in a private school or be homeschooled, and then re-enrolls in the district, the district has an obligation to offer a FAPE to the child.

At the beginning of the 2017-2018 school year, the Student was not enrolled in the District and the Parent continued to homeschool the Student. Therefore, until the Parent re-enrolled or part-time enrolled the Student in the District, the District did not have an obligation to develop a new IEP for the Student. Nevertheless, the District developed a new IEP for the Student in October 2017, before his October 2016 IEP lapsed. Additionally, the District agreed to hold another IEP meeting to further develop an IEP for the Student once the Parent choose to re-enroll the Student on a full or part-time basis, but to date, the Parent has elected not to do so. The District did not violate special education regulations when it developed an IEP for the Student in October 2017 and when it refused to develop a new IEP for the Student in December 2017.

**Parent Attendance** – Additionally, the Parent alleged that she and her husband were not allowed to participate in the October 2017 IEP meeting. When developing, reviewing, or revising a student's IEP, the parents of a child with a disability are expected to be equal participants. The

district must ensure that at least one of the parents of a student eligible for special education is present at each IEP meeting or is afforded the opportunity to participate. The IEP meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend.

While the District was mistaken that it had an obligation to develop the Student's annual IEP, the District scheduled an IEP meeting on October 3, 2017, and was therefore required to take steps to allow the Parent to participate in the IEP meeting. On September 20, 25, and 27, 2017, the special education teacher invited both the Parent and the Student to the meeting. Initially, the Parent indicated that she would be available to attend the meeting as long as the District understood that the Student would be homeschooled until a decision was issued in the due process proceeding, and then a few days later, indicated that she wanted to wait to meet but needed to get more information. As of September 27, 2017, the District believed that the Parent and Student would be attending the IEP meeting. On October 3, 2017, the IEP team met and the Parent and Student did not attend. At that point, the District reasonably believed that the Parent had refused to attend the meeting and proceeded to update the Student's IEP.

The District followed procedures for ensuring the Parent had an opportunity to participate in the October 2017 IEP meeting, and did not violate special education regulations when it made the decision to proceed with the IEP team meeting.

**IEP Team Membership** – The Parent also alleged that the IEP team at the October 2017 IEP meeting did not include high school staff. An IEP team must be composed of: the parent(s); not less than one regular education teacher of the student; not less than one special education teacher of the student; a representative of the school district; an individual who can interpret the instructional implications of evaluation results; any other individuals who have knowledge or special expertise regarding the student; and the student, when appropriate.

The Student's IEP team at the October 2017 IEP meeting, included the Student's middle school special education teacher, a middle school general education teacher, the speech language pathologist (SLP) for the middle and high school, the District executive director, and the middle school assistant principal. The parents and the Student were invited but did not attend the meeting. Additionally, a special education teacher from the high school provided written input, a draft template for goals in mathematics, writing, and reading, and stated that she believed the Student's social/emotional and behavior goals would remain the same. Given that the Student had not been enrolled in the District since March 2017, it was not inappropriate to have middle school teachers and staff who had worked with the Student participate in the meeting, in lieu of high school staff who had never taught the Student. The District has substantiated that it followed procedures for ensuring a both a special education and general education teacher attended the October 2017 IEP meeting.

## **CORRECTIVE ACTIONS**

### **STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

**RECOMMENDATIONS**

OSPI recommends that the District review the regulations and its policies and procedures for when students who are eligible for special education are homeschooled. Specifically, the District should review WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE) and WAC 392-172-03105 When IEPs must be in effect.

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

Glenna Gallo, M.S., M.B.A.  
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**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.)