

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-35**

### **PROCEDURAL HISTORY**

On April 16, 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 Bethel 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 April 17, 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 May 9, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on May 10, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On May 22, 2018, OSPI granted the Parent an extension of time until May 29, 2018, to submit her reply to this complaint.

On May 29, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 11, 2018, OSPI requested that the District provide additional documentation. OSPI received the requested documentation on June 11, 2018, and then forwarded it to the Parent on the same day.

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 an elementary school in an out-of-state school district. In April 2017, the Student was determined eligible to receive special education and related services under the category of other health impairment and her out-of-state individualized education program (IEP) team developed her initial IEP. The IEP provided for specially designed instruction in the areas of social/emotional and study skills and provided for counseling as a related service. However, the IEP did not include an annual goal in the area of study skills, but instead included a goal in the area of reading. During the summer of 2017, the family moved to Washington State and lived in a camper trailer while looking for more permanent housing. In September 2017, the Parent contacted the District about enrolling the Student and was reportedly informed she needed to provide proof of residency. The family then obtained housing on October 1, 2017. On October 2, 2017, the Student enrolled in the District and then began attending classes a week later. The Student was enrolled in a general education language arts class and a general education math class, both of which were co-taught by a general

education and a special education teacher, and also enrolled in a special education advisory class, which met first period. Over the course of the school year, the Student had multiple absences, many of which were in her first period advisory class, due to anxiety/panic attacks. From October 2017 to April 2018, when the Parent filed this complaint, the Student missed her first period class approximately seventy-six times.

The Parent alleged that the District failed to follow procedures for providing services to the Student at the beginning of the 2017-2018 school year, when the Student was homeless under the McKinney-Vento Act. The Parent also alleged that the District failed to follow special education transfer procedures and failed to follow procedures for implementing the Student's IEP, including providing specially designed instruction and related services. Additionally, the Parent alleged that the District failed to follow procedures for determining if the Student needed a shortened school day accommodation, and failed to follow procedures for scheduling the Student's annual IEP meeting at a mutually agreed upon time. The District admitted that the Student did not receive specially designed instruction as provided for in her IEP, and denied the other allegations.

### **ISSUES**

1. Did the District follow procedures for providing services to the Student at the beginning of the 2017-2018 school year, if the Student was homeless under the McKinney-Vento Act?
2. Did the District follow special education transfer procedures during the 2017-2018 school year?
3. Did the District follow procedures for implementing the Student's individualized education program (IEP), including providing specially designed instruction and related services during the 2017-2018 school year?
4. Did the District follow procedures for determining if the Student need a shortened school day accommodation?
5. Did the District follow procedures for scheduling the Student's annual IEP meeting at a mutually agreed upon time?

### **LEGAL STANDARDS**

Homeless Children: School districts must ensure that the rights of homeless children and youth eligible for special education are protected, consistent with the requirements under the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. Sec. 11431, *et seq.* WAC 392-172A-02085. Under the Act, the term "homeless children and youths" means individuals who lack a fixed, regular, and adequate nighttime residence; and includes: children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement; children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar

settings; and migratory children who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described above). *The Most Frequently Asked Questions on the Education of Children and Youth Homeless Situations* (National Association for the Education of Homeless Children and Youth and the National Law Center on Homelessness & Poverty, November 2009).

Length of Homelessness: There is no specific time limit on homelessness. Whether a child or youth meets the definition of homelessness depends upon the living situation and the individual circumstances. It is a case-specific inquiry. Families or youth may be homeless for extended periods of time, during the course of which best interest factors may change, depending on specific factors related to their education and housing situation. It is important to establish eligibility first, and then consider best interest in school selection. *The Most Frequently Asked Questions on the Education of Children and Youth Homeless Situations* (National Association for the Education of Homeless Children and Youth and the National Law Center on Homelessness & Poverty, November 2009). The McKinney-Vento Act applies to children and youth age 21 and under, consistent with their eligibility for public education services under state and federal law. 42 U.S.C. §11431(2).

Enrollment of a Homeless Student: The McKinney-Vento Act requires schools to enroll students experiencing homelessness immediately, even if the student is unable to provide documents such as previous academic records, medical records, proof of residency, or other documentation typically required for enrollment. 42 U.S.C. §11432 (g)(3)(C). Enroll means permitting the student to attend classes and participate fully in school activities. 42 U.S.C. §11434A(1). Although the Act does not define immediate, the standard dictionary definition is “without delay.” Therefore, the student must begin attending classes and participating fully in school activities within one full day of an attempt to enroll in school. *Education for Homeless Children and Youth Program: Non-Regulatory Guidance*, U.S. Department of Education (July 2004) (Standard 1, Appendix C: Draft Standards and Indicators of Quality). Each homeless child or youth shall be provided services comparable to services offered to other students in the school, including the following: (a) transportation services; (b) Educational services for which the child or youth meets the eligibility criteria, such as services provided under title I of the Elementary and Secondary Education Act of 1965 or similar State or local programs, educational programs for children with disabilities, and educational programs for students with limited English proficiency; (c) Programs in vocational and technical education; (d) Programs for gifted and talented students; and (e) School nutrition programs. 42 U.S.C. §11432(g)(4). A school district must also provide coordinated 42 U.S.C. §11432(g)(5).

Enrollment of Children Without Legal Residences: A school district shall not require proof of residency or any other information regarding an address for any child who is eligible by reason of age for the services of the school district if the child does not have a legal residence. A school district shall enroll a child without a legal residence at the request of the child or parent or guardian of the child. RCW 28A.225.215.

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with FAPE including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46,681 (August 14, 2006) (comment to 34 CFR §300.323).

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.

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be

provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). “The amount of services to be provided must be stated in the IEP, so that the level of [the district’s] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP.” Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105. 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 Revision: A student’s IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs; or any other matters. In conducting its review of a student’s IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student’s learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student’s assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student’s IEP is the result of the most recent evaluation. When the student’s service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student’s IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student’s learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of

behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

School's Duties Upon Child's Failure to Attend School: If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall: (a) inform the parent in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences; (b) schedule a conference(s) with the parent and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after three unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the third unexcused absence, then the school district may schedule this conference on that day. If the parent does not attend the scheduled conference, the conference may be conducted with the student and school official. However the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence; and (c) at some point after the second and before the fifth unexcused absence, take data-informed steps to eliminate or reduce the child's absences. In middle and high school, these steps must include application of the Washington assessment of the risks and needs of students (WARNS) or other assessment by a school district's designee under RCW 28A.225.026. For any child with an existing individualized education program (IEP), these steps must include the convening of the child's IEP team, including a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences. If necessary, and if consent from the parent is given, a functional behavior assessment (FBA) to explore the function of the absence behavior shall be conducted and a detailed behavior plan completed. Time should be allowed for the behavior plan to be initiated and data tracked to determine progress. These steps must include, where appropriate, providing an available approved best practice or research-based intervention, or both, consistent with the WARNS profile or other assessment, if an assessment was applied, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school. For purposes of this chapter, an "unexcused absence" means that a child: has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy and has failed to meet the school district's policy for excused absences; or has failed to comply with alternative learning experience program attendance requirements as described by the superintendent of public instruction. RCW 28A.225.020.

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: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) 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: (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. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. 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-31000. Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights 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 9<sup>th</sup> 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).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g)

a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

## **FINDINGS OF FACT**

### **Background Facts**

1. During the 2016-2017 school year, the Student attended an elementary school in an out-of-state school district.
2. On April 17, 2017, the out-of-state district completed an initial evaluation of the Student and her evaluation group determined that she was eligible to receive special education services under the category of other health impairment. The evaluation report stated that the Parent had provided information that the Student had difficulty getting to school, but once she arrived, she did well, and that the Student had anxiety and panic attacks. The evaluation report recommended that the Student receive services in the areas of social/emotional and reading comprehension.
3. Also on April 17, 2017, the Student's individualized education program (IEP) team developed her initial IEP. The April 2017 IEP stated:

[The Student's] disability is characterized by her anxiety disorder, post-traumatic stress disorder (PTSD), obsessive compulsive disorder (OCD), separation anxiety, academic problems and limited strength and/or vitality due to her social/emotional disabilities.

The April 2017 IEP also stated:

The IEP team discussed [the Student's] diagnoses and how that is impacting her ability to attend a full day of school. The team feels her diagnoses have impacted her ability to fully access her education. While discussing the Special Factors section of [the Student's] IEP, the team talked about whether or not behavior was a concern. [The Student's] diagnoses do impact her ability to attend school. The team felt that, at this time, behavior is not a concern that needs to be addressed in the IEP. The team is in agreement that social/emotional needs are the primary concern for [the Student] and support in this area is her main goal.

The team discussed classroom accommodations and how to best modify coursework when [the Student] misses so much of the in-class instruction. The team is in agreement that testing during the time of day most beneficial for her is a primary concern. The team discussed the possibility of having [the Student] attend middle school [during the 2017-2018 school year] on a reduced or part day schedule.

The April 2017 IEP included the following annual goals:

- Reading – The Student will cite pieces of textual evidence to support analysis of the text both stated and inferred in literature and in informative text with 80% accuracy.
- Social/Emotional – The Student will acquire a core knowledge related to well-being as implemented by the school psychologist, as implemented by and/or school counselor.
  - Objective 1.1 – The Student will identify coping strategies to understand real or perceived stressors in four of five trials.



- Objective 1.2 – The Student will define levels of anxiety using a five point scale in four of five trials.
- Objective 1.3 – The Student will use communication and social skills to engage in activities and interact with peers.

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

- Study Skills – 30 minutes 4 times weekly
- Social/Emotional – 30 minutes 1 time weekly

The IEP also provided for the following related services:

- Counseling – 30 minutes 1 time weekly provided by a counselor
- Supervision – 15 minutes monthly provided by a special education teacher

Additionally, the IEP included the following accommodations:

- Location the Student can choose when she is feeling stressed or beginning to feel anxious
- Reduced quantity of assignments (such as excused homework)
- Reduced assignments and/or exams
- Reduced exams to focus on materials completed
- Opportunities to redo key assignments
- Extra time to complete assignments (up to two additional days without penalty)
- Testing – administer at the time of day most beneficial to the Student

### **Summer 2017**

4. Based on the information provided by the Parent, during the summer of 2017, the family moved to Washington State and lived in a camper trailer at various campgrounds in August and September 2017.

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

5. The District’s 2017-2018 school year began on September 7, 2017.
6. Based on the information provided by the Parent in this complaint, at some point in September 2017, the Parent spoke with the registrar at a District middle school and was told the family needed to provide proof of residency in the District, in order to enroll in the District.
7. Based on the information and documentation provided by the Parent in this complaint, on Thursday, September 28, 2017, the Parent went to the middle school to pick up enrollment paperwork, believing that the McKinney-Vento Homeless Assistance Act<sup>1</sup> (McKinney-Vento) allowed the Student to enroll without proof of residency, and discussed this with the registrar. Also based on the information provided by the Parent, while at the middle school, the Parent spoke with the registrar about the family looking for a home to rent, and the

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<sup>1</sup> Under the Act, the term “homeless children and youths” means individuals who lack a fixed, regular, and adequate nighttime residence; and includes: children and youths who are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations.

registrar indicated that the family needed to bring a signed lease with the completed enrollment packet in order to enroll the Student.

8. Based on the documentation in this complaint, the District's enrollment pack included:
  - Secondary Enrollment Form – includes sections regarding a student's name, birthdate, gender, ethnicity, primary language, previous schools attended, parent contact information, including address, custody information, and emergency contacts, prior participation in special education and other support programs, and discipline.
  - Verification of Residency Statement – which stated that documentation must be provided to in order to verify residency within the District, and that the documentation must show the name of the parent/guardian and be dated within the last thirty days.
  - Student Housing Questionnaire – which stated that the "answers to the following questions can help determine the services this student may be eligible to receive under the McKinney-Vento Act" and stated that "if you own/rent your own home, you do not need to complete this form." The questionnaire then asked that if a person did not own/rent their own home, and to indicate where they were living, and listed several options, such as motel, shelter, car, park, campsite, transitional housing.
  - Home Language Survey.
9. On Monday, October 2, 2017, the Parent went to a District middle school to enroll the Student and met with the middle school's registrar. The Parent provided enrollment paperwork for the Student. The Parent did not include a home address on the "Secondary Enrollment Form", leaving the address section blank. The Parent indicated on the form that the Student had been eligible for special education during the 2016-2017 school year, that the Student had previously received support from a therapist, and had participated in a gifted program. Additionally, the Parent completed a "Verification of Residency Statement" indicating that the family resided in the District and attached a rental agreement to the residency statement. The rental agreement was dated September 30, 2017, and stated that the Parent would begin occupying the property on October 1, 2017. The rental agreement included the address of the rental home, which was within the District's boundaries. Based on information provided by the Parent in this complaint, the Parent had planned to complete the "Student Housing Questionnaire" when she received it on September 28, 2017, indicating that the family was living at a campground, but due to the family obtaining a rental home on September 30, 2017, she did not do so. Additionally, based on the information provided by the Parent in this complaint and other documentation, the Parent also provided a copy of the Student's out-of-state April 2017 IEP, "eligibility", transcripts, immunizations, and other health related information.<sup>2</sup>

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<sup>2</sup> Based on the information provided by the District, also during the meeting, the Parent provided information that the family traveled to acquire sustenance and that a federal law governed this. The registrar was not familiar with the federal law and contacted other staff members who worked at the District administrative level to try to assist the family in finding more information about the federal law, but was unable to obtain information. Based on information provided by the Parent, the Parent provided staff with a link to a website regarding the law. The family was eventually connected with OSPI's Title 1 – Migrant Education Program, and OSPI determined the Student was eligible for the program due to the family's practice of traveling during the summer months to obtain a primary food source.

10. Based on the information provided by the District in response to this complaint, after reviewing the enrollment paperwork, the registrar also informed the Parent that the Student could not be enrolled on October 2, because it was a “count date” and per the District’s policy, no students could be enrolled, scheduled, or withdrawn on this day. The registrar also noted that the District would need to obtain a copy of the Student’s IEP and other special education records, so that special education staff could determine in what areas to provide services. The registrar then set a start date for the Student as Monday, October 9, 2017.
11. On October 3, 2017, the middle school registrar emailed a middle school special education teacher, the school psychologist, and the middle school principal and attached a copy of the Student’s out-of-state IEP and enrollment paperwork. The registrar then sent a second email to the school psychologist stating, “this is for a school psych/therapist referral.”
12. Also on October 3, 2017, the middle school registrar emailed a records secretary at the Student’s prior out-of-state district and attached a request for a copy of the Student’s educational records. Later that same afternoon, the records secretary responded and attached a copy of the Student’s April 2017 IEP and other documents. The District middle school registrar then forwarded the documents to the school psychologist and the special education teacher on the morning of October 4, 2017.
13. The District’s documentation in this complaint included a meeting notice for a transfer review meeting on October 4, 2017. The meeting notice stated that the notice was sent to the Parent on October 4, 2017, and that a District representative, general education teacher, and special education teacher would attend the meeting. The “Contact Attempt Report” regarding the October 4, 2017 transfer review meeting stated that the District contacted the Parent by letter on October 4, 2017 regarding the transfer review meeting, and that the Parent responded that same day, indicating that she could not attend the meeting and gave permission to proceed without her. The District’s other documentation in this complaint does not support that a transfer review meeting occurred on October 4, 2017, or that the Parent was contacted on October 4, 2017 regarding a transfer review meeting.
14. The District’s documentation in this complaint also included a prior written notice, dated October 4, 2017, proposing to continue the Student’s educational placement and eligibility category. The prior written notice stated, “Recommended review of iep to correlate minutes with reading recommended in in the reevaluation rather than study skills.” It is unclear from the documentation in this complaint if the Parent received a copy of the October 4, 2017 prior written notice.
15. On October 5, 2017, the middle school registrar emailed the school psychologist, the principal, and the special education teacher, asking if a special education placement had been determined for the Student. In response, the school psychologist stated that:
  - She had completed a file review;
  - The out-of-state evaluation report recommended reading and social/emotional as areas of specially designed instruction;

- There were IEP reading goals, but the out-of-state IEP listed minutes under the area of study skills rather than reading; and,
  - She was recommending a review of the IEP to consider availability of counseling as a related service and to amend the area of services and minutes.
16. Also on October 5, 2017, the Parent returned to the middle school and discussed with the registrar that the Student should have been allowed to begin school during the prior school week under the McKinney Vento law. The Parent then met with the middle school principal to discuss her frustration about the delay in enrolling the Student. According to the statement provided by the middle school principal in response to this complaint, during the meeting, the Parent shared some information about the Student's history and the Parent and the principal decided the Student would begin school on October 9, 2017. The principal then introduced the Parent to the special education teacher (IEP case manager), and also asked that the registrar have the school counselors complete a class schedule for the Student.
17. On October 6, 2017, the middle school registrar emailed multiple staff members at the middle school, informing them that the Student would begin classes on October 9, 2017.
18. Also on October 6, 2017, the Parent met with the IEP case manager to discuss the Student's placement and the class schedule. Based on information provided by the case manager in response to this complaint, the Parent and the case manager discussed the need to provide the Student with reading support and social skills instruction, and discussed that the Student's April 2017 IEP provided for 30 minutes one time per week of services in the areas of social/emotional and study skills. They discussed that the Student could be placed in a humanities/English class and math class, which were both co-taught by a general education teacher and special education teacher to receive support on assignments and study skills needed "due to frequent absences." Additionally, the case manager suggested that the Student be enrolled in the case manager's advisory class, where the case manager could provide instruction in the area of social/emotional. The IEP case manager then introduced the Parent and the Student to the middle school student assistance counselor (assistance counselor), and the assistance counselor agreed to meet with the Student on Tuesdays at the start of advisory classes to help the Student with any questions and concerns she had about being a new student. According to the Parent's reply to this complaint, at the meeting, it was agreed that the assistance counselor would meet with the Student on Tuesdays and Thursdays.
19. The District's documentation in this complaint does not show that the District issued a prior written notice regarding the decisions made by the IEP case manager, the assistance counselor, and the Parent regarding the Student's IEP services, or that the District completed an IEP amendment to reflect how the Student's services would be delivered.
20. On October 7, 2017, the Parent emailed the IEP case manager regarding the Student's class schedule. The Parent stated that she could see that the Student's math class was co-taught (by a general education and special education teacher), as the schedule listed both teachers, but she could not see a second teacher listed for the co-taught humanities/English class. The

Parent stated that she wanted to make sure the Student was scheduled in the correct classes to access the supports she needed. The Parent asked that the case manager check to verify if the Student was in the correct humanities/English class before the Student walked into the new class. According to the District's response to this complaint, the case manager then confirmed that the Student was enrolled in the correct humanities/English class.

21. On Monday, October 9, 2017, the Student began attending the middle school. The Student's class schedule for the first trimester was as follows:

- Period 1: Advisory (30 minutes) (special education class)
- Period 2: Orchestra (53 minutes) (general education class)
- Period 3: Humanities (52 minutes) (general education class co-taught by special education teacher)
- Period 4: Humanities (51 minutes) (general education class co-taught by special education teacher)
- Period 5: Health/Fitness (57 minutes) (general education class)
- Period 6: Math (49 minutes) (general education class co-taught by special education teacher class)
- Period 7: Science (50 minutes) (general education class)

22. According to information provided by the District in response to this complaint, the assistance counselor met with the Student on Tuesday, October 10, 2017. However, after that date, the Student was either absent or late to school, so the assistance counselor attempted to meet with the Student at other times through December 2017. The assistance counselor stated that she met with the Student 6-7 times, but did not state how long the meetings were.

23. On October 19, 2017, the middle school attendance clerk emailed the Student's IEP case manager, stating that she had sent the case manager an email the prior week regarding the Student's IEP. The attendance clerk relayed that the Parent had told the clerk that the Student would be coming late, as she had that morning without a note. The attendance clerk stated that she needed some direction, and asked that the case manager let her know if she was the appropriate person to contact. In response, the case manager stated that the clerk should document the tardy, but that the Student had a plan that she could come late or have absences due to her anxiety, so the tardies/absences were excused. The case manager asked that the attendance clerk document tardies/absences, so the District had the record, but because there was a medical issue, it would be written in the Student's "new IEP".

24. According to the Student's attendance record, during the month of October 2017, the Student's absences were as follows:

- October 11: Period 1 (excused health illness)
- October 17: Periods 1-4 (excused health illness)
- October 20: Periods 1-2 (excused health illness)
- October 23-27 & 30-31: All day (unexcused family vacation)<sup>3</sup>

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<sup>3</sup> According to the Parent's reply to this complaint, these absences were prearranged with the District and approved by a District administrator, and therefore, should be reflected as excused.

In total, the Student was absent ten (10) days from her first period advisory class.

25. According to the Student's attendance record and information provided by the Parent, during the month of November 2017, the Student's absences were as follows:

- November 1: All day (unexcused family vacation)
- November 2: Period 1-2 (unexcused no note)
- November 6: Period 1 (unexcused reason)
- November 7: Period 1 (excused health illness)
- November 8: Periods 1-4 (excused health illness)
- November 14: All day (excused health illness)
- November 15: Period 1 (excused)
- November 16-17: All day (excused health illness)
- November 21: Periods 1-3 (excused health illness)
- November 27: Periods 1-4 (excused health illness)
- November 29: Periods 1-5 (excused prearranged)
- November 30: Period 1 (excused health illness)

In total, the Student was absent thirteen (13) days from her first period advisory class.

26. On December 1, 2017, the middle school's first trimester ended and the Student received the following grades:

- Period 1: Advisory – Pass
- Period 2: Orchestra – B+
- Period 3: Humanities – Pass
- Period 4: Humanities – Pass
- Period 5: Health/Fitness – F
- Period 6: Math – A
- Period 7: Science – B-

27. According to information provided by the Student's IEP case manager in response to this complaint, in December 2017, the case manager completed progress reporting regarding the Student's annual goals, but due to a mix-up, the progress reporting was not provided to the Parent. The progress reporting stated that the Student had met her reading goal. In regard to the Student's social/emotional goal, the progress reporting stated that:

- The Student met with the assistance counselor and was doing well
- Had not showed any signs of anxiety
- Was doing well, currently participated in a group after school, and engaged in working with peers in a positive manner

The progress reporting did not include any data or information about the Student's coping strategies or ability to define levels of anxiety.

28. On December 4, 2017, the middle school's second trimester began and the Student's class schedule was as follows:

- Period 1: Advisory (30 minutes) (special education class)
- Period 2: Orchestra (53 minutes) (general education class)
- Period 3: Humanities (52 minutes) (general education class co-taught by special education teacher)

- Period 4: Humanities (51 minutes) (general education class co-taught by special education teacher)
- Period 5: Theatre (57 minutes) (general education class)
- Period 6: Math (49 minutes) (general education class co-taught by special education teacher class)
- Period 7: Science (50 minutes) (general education class)

29. According to the Student's attendance record and information provided by the Parent, during the month of December 2017, the Student's absences were as follows:

- December 1,4-6: All day (unexcused prearranged)<sup>4</sup>
- December 8: Period 1 (excused health illness)
- December 11: All day (unexcused no-note)
- December 13: Periods 1-2 (excused health illness)

In total, the Student was absent seven (7) days from her first period advisory class.

30. The District was on break December 18, 2017 through January 1, 2018.

31. According to the Student's attendance record and information provided by the Parent, during the month of January 2018, the Student's absences were as follows:

- January 2: Period 5 (excused medical appointment)
- January 5: Period 1-2 (excused health illness)
- January 10: Period 1 (excused health illness)
- January 11: Period 1-4 (excused health illness)
- January 19: Period 1 (excused health illness)
- January 23: Period 1 (excused health illness)
- January 26: All day (unexcused no-note)
- January 29: Period 1 (excused health illness)
- January 30: Period 1-5 (excused medical appointment)

In total, the Student was absent eight (8) days from her first period advisory class.

32. On January 23, 2018, the District sent the Parent a letter, stating that the Student had "accumulated an excessive number of excused absences" and that attendance was required by RCW 28A.255.010 and RCW 28A.225.015. The letter also stated that notice to the school attendance clerk was required for every absence, and that accumulated tardies and early dismissals could be documented as absences. The letter stated, "if your child's attendance pattern continues, you will be required to supply a doctor's note to excuse any further absences, late arrivals, or early dismissals. This means that all absences without a doctor's note will be considered unexcused." The letter further stated that if there was any way the middle school could assist the Parent in correcting the Student's attendance, the school

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<sup>4</sup> According to the Parent's reply to this complaint, these absences were prearranged with the District and approved by a District administrator, and therefore, should be reflected as excused.

nurse, counselor, and/or administrator was available to meet. The letter was signed by the middle school attendance clerk.

33. On February 15, 2018, the middle school guidance counselor noted in the District's computer system that the middle school attendance clerk had asked the guidance counselor to speak to the Student about her attendance, especially during first period, which she missed a lot. The guidance counselor also noted that the Student had stated that the Parent had already spoken with the school principal early in the year about attendance and would be speaking with him again.
34. According to the Student's attendance record, during the month of February 2018, the Student's absences were as follows:
- February 5: Period 1-4 (excused health illness)
  - February 7: All day (excused health illness)
  - February 9: Period 1 (excused health illness)
  - February 12: Period 1 (excused health illness)
  - February 13: Period 1 (excused health illness)
  - February 14: Period 1 (excused health illness)
  - February 15: Period 1-3 (other health condition)
  - February 21: Period 1-5 (excused health illness)
  - February 23: Period 1-4 (excused health illness)
  - February 26: All day (excused health illness)
  - February 27: Period 1 (excused health illness)
  - February 28: All day (excused health illness)

In total, the Student was absent twelve (12) days from her first period advisory class.

35. On March 16, 2018, the middle school's second trimester ended and the Student received the following grades:
- Period 1: Advisory – F
  - Period 2: Orchestra – A
  - Period 3: Humanities – B+
  - Period 4: Humanities – B+
  - Period 5: Theatre – A-
  - Period 6: Math – A
  - Period 7: Science – A

36. On March 19, 2018, the middle school's third trimester began and the Student's class schedule was as follows:
- Period 1: Advisory (30 minutes) (special education class)
  - Period 2: Orchestra (53 minutes) (general education class)
  - Period 3: Humanities (52 minutes) (general education class co-taught by special education teacher)
  - Period 4: Humanities (51 minutes) (general education class co-taught by special education teacher)
  - Period 5: Theatre (57 minutes) (general education class)
  - Period 6: Math (49 minutes) (general education class co-taught by special education teacher class)
  - Period 7: Science (50 minutes) (general education class)



37. According to the Student's attendance record and information provided by the Parent, during the month of March 2018, the Student's absences were as follows:

- March 1: Period 1 (excused health illness)
- March 2: Period 1 (excused health illness)
- March 5: Period 1-4 (excused health illness)
- March 6: Period 1-4 (excused health illness)
- March 7: Period 1-2 (excused health illness)
- March 8: All day (unexcused no notification)
- March 9: Period 1-2 (excused health illness)
- March 12: Period 1-4 (excused health illness)
- March 13: All day (unexcused no notification)
- March 14: Period 1-2 (excused health illness)
- March 15: Period 1 (excused health illness)
- March 16: Period 5-7 (excused health illness)
- March 19-20: All day (excused health illness)
- March 21: Periods 1-2 (excused health illness)
- March 22-23: All day (unexcused no notification)
- March 26: Period 1-4 (excused health illness)
- March 27: Period 1-5 (excused health illness)
- March 28: Period 1-2 (excused health illness)
- March 29: Period 1-2 (excused health illness)
- March 30: Period 1-2 (excused health illness)

In total, the Student was absent twenty-one (21) days from her first period class.

38. On March 28, 2018, the middle school nurse emailed the principal and copied the attendance clerk and the guidance counselor. The nurse stated that it had been brought to her attention that the Student frequently came to school late or not at all. The nurse indicated that the Student was eligible for special education under the category of other health impairment. The nurse stated that the guidance counselor had already spoken to the Student about her tardies, and the Student had relayed that the Parent had spoken with the principal regarding attendance. The nurse stated that the Student's grades looked "pretty good", and that the attendance clerk had asked if there was any documentation in the Student's health record. The nurse further stated that she had asked the Parent to get updated information from the Student's private counselor "when she started", but the middle school had not received anything, although they did have documentation of a diagnosis. The nurse asked that the principal let the attendance clerk know how to manage the Students' tardies/absences, and to let the nurse know if there was any information she could use to update the Student's health record.

39. Based on the documentation in this complaint, on March 30, 2018, the IEP case manager drafted an email to the Parent regarding setting up an IEP meeting in April 2018 to develop the Student's annual IEP. However, the case manager forgot to send the email.

40. The District was on break April 2-6, 2018.

41. On April 9, 2018, the middle school attendance clerk responded to the school nurse's March 28 email, asking if there was an answer to the nurse's questions/requests. In response, the school principal stated that he had met with the Parent and the Student when the Student enrolled, and had not had any further contact regarding attendance. The principal stated that the attendance clerk should follow normal attendance procedures. The attendance clerk then replied, directing her response to the middle school assistant principal who had been included on the email. The attendance clerk asked how she should proceed in regard to the Student, and stated that the middle school had not sent a doctor's note required letter. The attendance clerk stated that the Student had 40.57 total absence days – 22.57 excused absences and 18 unexcused absences. On April 10, the attendance clerk sent a follow-up email, stating that the assistant principal had suggested that they move forward with a doctor note required letter for the Student, and indicated that she was not sure if she should just send the letter or if this should be done another way.
42. Also on April 9, 2018, the IEP case manager emailed the Parent, stating that an IEP meeting needed to be set up and that the Student's annual IEP was due on April 17, 2018. The case manager explained that she thought she had sent an email regarding the meeting prior to the District's break, but forgot to hit send, and apologized to the Parent. The case manager stated that she could email the Parent a draft IEP by April 10, so the Parent would have time to review it before the IEP meeting. The case manager then asked if the Parent was available to attend a meeting that week (April 9-13) or the next (April 16-17), and the IEP case manager stated that she could meet on April 12, 13, or 16 and provided times she could meet.
43. On April 11, 2018, the Parent replied that she was unable to rearrange her schedule before April 16, 2018, and that she would talk to the Student's other mother to determine when she was able to take leave from work so they coordinate a time to hold the IEP meeting.
44. In response, the case manager stated that she could reschedule for the "following week" if that worked better, and that she could send home a draft IEP and hold the meeting when the parents were available. The case manager stated that she did not want the parents to have to take leave, and asked that the Parent let her know when they could meet, stating that they could "make it work" if they held the meeting by the end of the month. The case manager stated that she could send a draft of the proposed IEP by April 16, and the Parent could let the case manager know if there were any concerns that were not addressed in the IEP. Additionally, the case manager stated that all of the Student's teachers were "very happy" with her effort, and that it seemed the Student was doing well overall. The case manager stated that the IEP team could discuss the Student coming in late to her advisory class and maybe come up with a plan that was better for her. The case manager thanked the Parent and again stated that they could meet when the Parent had availability.
45. On April 13, 2018, the Parent filed this citizen compliant.
46. According to the Student's attendance record and information provided by the Parent, from April 1-13, the Student's absences were as follows:
  - April 9: Period 1-4 (excused health illness)

- April 10: Period 1-4 (excused health illness)
- April 11: Period 1-4 (excused other health condition)
- April 12: Period 1 (excused other health condition)
- April 13: Period 1-2 (excused other health condition)

In total, the Student was absent five (5) days from her first period class.

47. Based on the documentation in this complaint, in April 2018, the Student was receiving the following grades:

- Period 1: Advisory – unknown
- Period 2: Orchestra – F
- Period 3: Humanities – B+
- Period 4: Humanities – B+
- Period 5: Theatre – B
- Period 6: Math – C-
- Period 7: Science – A

48. The documentation in this complaint included progress reporting from the spring of 2018. The progress reporting stated that the Student saw the “at-risk” counselor on a check-in basis, and that it had been difficult to provide the Student consistency due to attendance. The progress reporting also stated that the Student was involved in an after school program ran by the assistance counselor, and that the Student came to weekly meetings. The progress reporting did not include any data or address the Student’s progress toward her goals.

49. Based on the information provided in this complaint, on April 17, 2018, the District provided the Parent with a draft of the Student’s annual IEP.

50. According to the District’s May 1, 2018<sup>5</sup> prior written notice, the Student’s IEP team met on May 2, 2018 to develop her annual IEP. The IEP team did not complete the IEP at the meeting, but agreed to add additional information to the present levels of performance regarding the Student’s anxiety and hold another meeting. According to the Parent’s reply to this complaint, at the meeting, the IEP team discussed how the Student’s disability was impacting her ability to access her education, and that the IEP team discussed that the Student’s high IQ was allowing her to manage familiar information with “more ease”, but that as soon as she faced new or academically challenging materials, her high intelligence would not be able to make up for missed instruction time, due to her disability.

51. On May 24, 2018, the IEP team met to finish developing the Student’s annual IEP. The May 24, 2018 IEP included goals in the areas of social/emotional, reading comprehension, and organizational skills. The IEP provided for the following specially designed instruction from May 30 – June 30, 2018:

- Reading – 50 minutes 5 times weekly (general education setting)
- Study Skills – 15 minutes 5 times weekly (special education setting)
- Social/emotional – 15 minutes 5 times weekly (special education setting)

The IEP provided for the following specially designed instruction from July 1, 2018 – May 29, 2019:

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<sup>5</sup> It is assumed the date of this prior written notice is incorrect and should reflect a date of May 2, 2018 or later.

- Reading – 30 minutes 5 times weekly (special education setting)
- Study Skills – 15 minutes 5 times weekly (special education setting)
- Social/emotional – 30 minutes 4 times weekly (special education setting)

Additionally, the IEP provided for 30 minutes per week of counseling as a related service from July 1, 2018 – May 29, 2019. The IEP also provided for the following accommodations:

- Ability to redo assignments and tests
- Access to phone
- Additional time to complete assignments (up to two day without penalty)
- Allow additional time – when testing and on state assessments
- Extra time to turn in assignments
- If accommodations or modifications are used documentation on report cards is needed
- Need a safe location to report if feeling stressed or anxious – to be determined in partnership with Student, Parent, and staff
- Preferential seating
- Provision of notes or outlines
- Reduced workload due to absences

## CONCLUSIONS

**Issue 1: McKinney Vento** – School districts must ensure that the rights of homeless children and youth eligible for special education are protected, consistent with the requirements under the McKinney-Vento Homeless Assistance Act. Under the Act, the term “homeless children and youths” means individuals who lack a fixed, regular, and adequate nighttime residence; and includes: children and youths living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations and migratory children who qualify as homeless.

The McKinney-Vento Act requires schools to enroll students experiencing homelessness immediately, even if the student is unable to provide documents that are typically required for enrollment. Enroll means permitting the student to attend classes and participate fully in school activities. Although the Act does not define immediate, the standard dictionary definition is “without delay.” Therefore, the student must begin attending classes and participating fully in school activities within one full day of an attempt to enroll in school.

Based on the information provided by the Parent, in September 2017, she contacted the District middle school to enquire about enrolling the Student, and was reportedly told that she needed proof of residency in order to enroll the Student at the middle school. This is inconsistent with the requirements of the McKinney-Vento Act and is also inconsistent with state law (see RCW 28A.225.215). Instead, the District should have informed the Parent of her right to enroll the Student immediately due to the Student’s status as a homeless youth. Additionally, when the Parent came to the middle school on September 28, 2017, the District should have immediately enrolled the Student and allowed her to begin classes the next day per her status as a homeless youth. Further, because a student’s status as a homeless youth continues throughout a school year, even if a youth becomes permanently housed, the Student had the right to immediately

enroll and begin attending classes, when the Parent returned with the enrollment paperwork on October 2, 2017. The Student also had the right to receive services offered to homeless youth. The District failed to follow enrollment procedures under the McKinney-Vento Act, which resulted in a delay in accessing her specially designed instruction for at least six school days. The District will provide the Student with compensatory services to address the services she missed due to the delay in enrollment. The District will provide the Student with thirty (30) minutes of specially designed instruction in social/emotional, thirty (30) minutes of counseling services, and two (2) hours of specially designed instruction in reading. The services will be provided outside of the District's regular school day. The specially designed instruction must be provided by a certificated special education teacher, and the counseling services must be provided by a school counselor, or the District can contract with a licensed mental health professional to provide the services.

**Issue 2: Special Education Transfer Procedures** – When a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect for the current school year, the Washington school district, in consultation with the parents, must provide the student with FAPE, including services comparable to those provided in the transfer IEP, until the Washington district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington State standards; and, develops, adopts, and implements a new IEP. “Comparable services” means services that are similar or equivalent to those described in the transfer IEP.

Here, the Student transferred to the District from an out-of-state district and had an IEP in place that provided for the following services in a special education setting:

- Study Skills – 30 minutes 4 times weekly (specially designed instruction)
- Social/Emotional – 30 minutes 1 time weekly (specially designed instruction)
- Counseling – 30 minutes 1 time weekly provided by a counselor (specially designed instruction)
- Supervision – 15 minutes monthly provided a special education teacher (related service)

However, the District did not provide the Student with comparable services to those stated in the transfer IEP and did not develop a new IEP for the Student until May 2018. While the District did hold a meeting with the Parent on October 6, 2017 to review the Student's transfer IEP, the District did not propose providing comparable services at this meeting, but instead agreed to adopt the Student's transfer IEP, which is not an option under WAC 392-172A-03105, and provided services in a different amount and location than stated in the IEP.

This is problematic for two reasons. First, the District adopted, and then kept in place for seven months, an IEP that does not meet the definition of an IEP as stated in WAC 392-172A-03090, as the IEP failed to provide for specially designed instruction in the area of reading to address the Student's annual reading goal, but instead provided for specially designed instruction in study skills. Additionally, neither the Student's reading goal nor the social/emotional goal were measureable, as the IEP did not contain baseline information, and therefore makes it difficult to determine the amount of progress the Student made toward her goals. Further, it is unclear what “supervision” as a related service means and how this would be provided. It is also noted

that the District's own October 4, 2017 prior written notice identified the issue with the IEP not providing for specially designed instruction in the area of reading, and recommended that the IEP be reviewed to address this.

The second reason this is problematic, is that the District's choice not to provide comparable services and also not to amend the Student's transfer IEP, makes it nearly impossible to determine the amount of services the Student was to receive during the 2017-2018 school year. Based on the documentation in this complaint, it appears the District agreed to provide the Student with the following services:

- Study Skills – some minutes, up to ten class periods per week, provided by a special education teacher (humanities/English class – general education setting)
- Study Skills – some minutes, up to five class periods per week, provided by a special education teacher (math class – general education setting)
- Social/emotional – 30 minutes three or four days per week, provided by the IEP case manager (special education setting)
- Counseling – some minutes, one or two days per week, provided by the assistance counselor (special education setting)

The amount of services a district will provide must be stated in an IEP, so that the level of the district's commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be appropriate to the specific service, and stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP. The District failed to follow both special education transfer procedures and procedures for developing/amending the Student's IEP.

**Issue 3: IEP Implementation** – A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Here, the Student transferred to the District from an out-of-state district and had an IEP in place that provided for the following services in a special education setting:

- Study Skills – 30 minutes 4 times weekly (specially designed instruction)
- Social/Emotional – 30 minutes 1 time weekly (specially designed instruction)
- Counseling – 30 minutes 1 time weekly provided by a counselor (specially designed instruction)
- Supervision – 15 minutes monthly provided a special education teacher (related service)

However, as discussed above in issue no. 2, the District changed the amount of the services to be provided, as well as the location in which the study skills instruction would be provided, but did not document this in an amendment to the Student's transfer IEP. And, as also discussed above, this makes it nearly impossible to determine the amount of services the Student was supposed to receive. What is certain, is that the Student was scheduled to receive her specially designed instruction in the area of social/emotional and her counseling services during her first period advisory class, but due to the Student's frequent absences related to her anxiety and other diagnoses, which the District did not take steps to address (discussed further below in issue no. 4), the Student did not receive counseling services after December 2017, and did not receive at least fifty (50) days of instruction in the area of social/emotional. This is most concerning because

the services to be provided during the Student's advisory class were meant to specifically address the Student's behaviors that were leading to the absences. Additionally, the District failed to keep data and provide meaningful progress reporting regarding the Student's IEP goals. The District failed to implement the Student's IEP. The District will provide the Student with compensatory services to address the services she missed.

From October 9, 2017, when the Student began attending the middle school, through April 16, 2018, when the Parent filed this complaint, there were approximately twenty-four weeks of school. Based on the Student's out-of-state transfer IEP, during that time period, the Student should have received twelve (12) hours (30 minutes per week) of specially designed instruction in the area of social/emotional and twelve (12) hours (30 minutes per week) of counseling as a related service. Given that the Student had approximately two weeks of absences not related to her disability and received some services during the school year, and also taking into account the impact of the Student's disability, the District will provide the Student with (16) hours of compensatory services to address her missed instruction in the area of social/emotional (8 hours) and to address her missed counseling services (8 hours). The services will be provided outside of the District's regular school day. The specially designed instruction must be provided by a certificated special education teacher, and the counseling services must be provided by a school counselor, or the District can contract with a licensed mental health professional to provide the services.

**Issue 4: Procedures for Determining if the Student Needed a Shortened School Day Accommodation** – A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning.

Here, the Student's behavior, which manifested in anxiety and panic attacks, resulted in the Student missing numerous class periods during the school year, and impeded her ability to: access her specially designed instruction in the area of social/emotional and her related counseling services, make progress toward her social/emotional goal, and in some case, make progress in the general education curriculum. However, the District did not take any steps to address the Student's lack of attendance, other than to have the guidance counselor speak to the Student and send a letter regarding attendance to the Parent. The District did not schedule an IEP meeting to discuss whether the Student needed additional supports in the form of services or accommodations, or if she needed to attend school on a shortened school day schedule due to her difficulties attending school in the morning. The District failed to follow procedures for determining if the Student needed a shortened school day or other supports and accommodations. Additionally, the District is reminded that Washington law (RCW 28.225.020) requires the District to convene an IEP team when a student has three unexcused absences in a

month, and include a behavior specialist or mental health specialist where appropriate, to consider the reasons for the absences.

The District will hold an IEP meeting prior to the beginning of the 2018-2019 school year, to ensure the Student's IEP addresses the Student's disability as it relates to potential absences and whether an accommodation is needed to address this, and to ensure the Student is scheduled to receive her specially designed instruction and related services. The IEP team will consider the impact of the Student's disability on her attendance in early classes when developing her class schedule.

**Issue 5: Procedures for Scheduling the Student's annual IEP meeting** – A student's IEP must be reviewed and revised periodically, but not less than annually. Additionally, a school district must ensure that one or both of the parents are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) notifying the 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.

Here, the District was required to develop a new IEP for the Student by April 16, 2018. The Student's IEP case manager emailed the Parent on April 9, 2018, asking to schedule an IEP meeting to develop the Student's annual IEP, and proposed three dates to hold the meeting. The Parent responded that the dates would not work, and the case manager offered to schedule the meeting when the Parent was available to meet. While the Parent has expressed concern that she was not contacted ten days prior to the proposed IEP meeting date(s) and did not receive a copy of the draft IEP, there is no requirement that the District provide ten days' notice before a meeting or provide a draft of an IEP for review. It is noted that the IEP case manager intended to invite the Parent to an IEP meeting more than ten days ahead of time, but that she forgot to send the email. While ideally, the District would have contacted the Parent sooner and the IEP team would have been able to meet prior to April 16, 2018, the District's willingness to hold the IEP meeting at a later date demonstrates a willingness to allow for parent participation in the IEP development process, despite the annual IEP review date lapsing. The documentation in this complaint also shows that the Student's IEP team, including the Parent, has now met on May 2, 2018 to develop the Student's IEP, and then finalized the IEP at a later meeting on May 24, 2018.

#### **CORRECTIVE ACTIONS**

By or before **July 20, 2018, September 7, 2018, September 21, 2018, October 31, 2018, January 4, 2019, and February 15, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. The District will hold an IEP meeting prior to the beginning of the 2018-2019 school year, to ensure the Student's IEP addresses the Student's disability as it relates to potential absences and document whether the Student requires an accommodation to address this, and to ensure the Student is scheduled to receive her specially designed instruction and related



services. The IEP team will consider the impact of the Student's disability on her attendance in early classes when developing her class schedule.

By **September 7, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the amended IEP, if appropriate; 3) a copy of any related prior written notices; and, 4) a copy of the Student's class schedule.

2. By **September 14, 2018**, the District will work with the Parent to develop a schedule to provide the Student with a total of (19) hours of compensatory services to address her missed instruction in the areas of reading (2 hours) and social/emotional (8.5 hours), and to address her missed counseling services (8.5 hours). The services will be provided outside of the District's regular school day. The specially designed instruction must be provided by a certificated special education teacher and the counseling services must be provided by a school counselor, or the District can contract with a licensed mental health professional to provide the services. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than January 11, 2019. The District will provide OSPI with documentation of the schedule by **September 21, 2018**.

The District must provide OSPI with documentation by **October 31, 2018** and **January 4, 2019**, of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

No later than **February 15, 2019**, the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **February 15, 2019**.

**DISTRICT SPECIFIC:**

The District will develop and/or review and revise its special education transfer procedures to ensure the procedures align with WAC 392-172A-03105, and also review and revise its enrollment procedures and enrollment paperwork to ensure they align with the requirements of the McKinney-Vento Homeless Act and Washington enrollment laws. This will include reviewing the District's practice of not enrolling students on "count days".

By **July 20, 2018**, the District will submit a draft of the procedures. OSPI will approve the procedures or provide comments by August 6, 2018 and provide additional dates for review, if needed.

By **September 7, 2018**, the District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, principals, and assistant principals, and building registrars with the procedures. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. This will include a roster of all staff members who were required to receive the procedures, so OSPI can cross-reference the list with the actual recipients.

By **September 14, 2018**, all District principals will review and discuss the procedures with all certificated special education teachers, school psychologists, guidance counselors, and registrars assigned to work in their buildings. By **September 21, 2018**, the District will provide OSPI with documentation that the principals have reviewed the procedures with all required staff. The documentation will include a roster of all principals.

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

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

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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