

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-36

PROCEDURAL HISTORY

On April 24, 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 South Kitsap 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 25, 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 17, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on May 18, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On May 30, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 31, 2018.

On June 7, 2018, OSPI requested clarifying information from the District and spoke to the Director of Special Services on June 11, 2018. On June 11, 2018, the District also provided additional information and OSPI forwarded that information 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 2017-2018 school year, the Student attended a District elementary school (school 1) and was placed in a self-contained life skills class. The Student's individualized education program (IEP) in place at the start of the school year was developed in November 2016, and included goals and special education services in pre-academic reading and math, social skills, adaptive skills, communication, and occupational therapy (OT). In November 2017, the Student's IEP team, including the Parent, developed the Student's annual IEP and provided him with goals and special education services in the same areas as the 2016 IEP. However, the Student's November 2017 IEP decreased his time in the general education setting from approximately 24% to 11%. In late November 2017, the Student's father requested that the Student move from the primary to the intermediate life skills class at school 1 and the District agreed to move him after the winter break. The Student started in the intermediate life skills class in January 2018, and neither his IEP nor his services changed in the new classroom. Also in January 2018, the Student began working with a private Applied Behavior Analysis (ABA) therapist, and the District agreed to allow the private ABA therapist to provide services at school 1; however, that ABA therapy was separate from the services provided for in the Student's IEP. Throughout the fall and early spring,

the Parent and District communicated frequently about the Student's activities, progress, and Parent concerns.

In early February 2018, the Parent raised concerns regarding the Student's academic progress, health, and safety, and requested an IEP meeting. Additionally, during this time, the District decided that the private ABA therapist could no longer provide services at school 1 and the Student's father requested the Student be assigned a 1:1 paraeducator. In mid-February, the Parent stopped sending the Student to school full time, due to safety concerns, and chose only to access the Student's speech and OT services. At the beginning of March 2018, the Student's IEP team met to discuss the Parent's concerns and the team decided to conduct a functional behavioral assessment (FBA) to assess the Student's need for a 1:1 paraeducator. The Parent then requested that the Student be moved to a different school in the District. At the end of March 2018, the Student's IEP team met twice to review the Student's FBA, develop a behavioral intervention plan (BIP), and agreed to transition the Student to a different District elementary school (school 2). The Student's FBA did not indicate a need for a 1:1 paraeducator. After the Student started at school 2, the IEP team met to amend his IEP. The District also agreed to allow the private ABA therapist to provide services at school 2.

The Parent alleged that the District failed to properly develop the Student's IEP, follow procedures to change the Student's placement, implement the Student's IEP, and follow procedures for scheduling IEP meetings. The District denied all allegations.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on April 25, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for developing the Students individualized education program (IEP) during the 2017-2018 school year, including addressing the Student's need for related services and/or supplementary aids and services?
2. Did the District follow procedures for changing the Student's education placement during the 2017-2018 school year?
3. Did the District follow procedures for implementing the Student's IEP during the 2017-2018 school year, including providing related services and accommodations, in the least restrictive environment?
4. Did the District follow procedures for scheduling IEP meetings at mutually agreed upon times and places consistent with WAC 392-172A-03100 during the 2017-2018 school year?

LEGAL STANDARDS

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 Development: A student's IEP must be developed annually, and reviewed and revised periodically if necessary. 34 CFR §300.324; WAC 392-172A-03110. 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. 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). The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them to make joint, informed decisions regarding: the student's needs and appropriate goals and the services needed to support that involvement and participation and to achieve agreed-upon goals. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

The IEP team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the child needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach

consensus, the public agency must provide the parents with prior written notice of the agency's proposals or refusals, or both, regarding the child's educational program, and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. IDEA, 64 Fed. Reg. 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 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 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.

Related Services: Each eligible student is entitled not only to receive special education, but also to such related services as are required to assist the child to benefit from that special education. Related services must be listed in the student's IEP. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). Related services means transportation and such developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in students, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 CFR §300.34(a); WAC 392-172A-01155(1).

Health Plans: A district is required to include the provisions of a student's health plan into their IEP. An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his or her participation in his or her education and to support his or her teachers. 34 CFR §300.320; WAC 392-172A-03090. Any nursing or health services a qualified school nurse or other qualified person provide to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service.

Placement Procedures: A student eligible for special education's educational placement is decided at least annually. When making placement decisions a district must draw upon information from a wide variety of sources and ensure that any decision is made by a group of persons, including the parents, who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR §300.116; WACs 392-172A-02060; *L'Anse Creuse Public School District*, 35 IDELR 284 (OCR 2001); *Seattle School District*, 34 IDELR 196 (SEA WA 2000). The selection of an appropriate placement for the student must be based on his IEP, least restrictive environment requirements, the student's educational program, a continuum of placement options that provide a reasonably high probability of assisting the student to attain her annual goals, the location of services, and consideration of any potential harmful effect that the placement decision might have on the student or on the quality of services that the student needs. Unless the team decides otherwise, the student shall be educated in the school that they would attend if they were not disabled. 34 CFR §300.116; WAC 392-172A-02060.

Physical Location is Not Placement: Although the term "educational placement" is not specifically defined, the IDEA does require that students receive a free appropriate public education in the least restrictive environment (LRE). *A.W. v. Fairfax County School Board*, 372 F.3d 674, 681 (4th Cir. 2004). A student's educational placement should reflect the "mainstreaming" ideal of the LRE requirement. However, the precise physical location of where a student is educated does not necessarily need to be included in the statement of the student's placement. The LRE requirement directs that the student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. *A.W. at 681* (citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 202-03, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982)). The IDEA's concern with location focuses on the degree to which any particular assignment segregates a student with a disability from nondisabled students, rather than on the precise location of the assignment itself. *A.W. at 681*.

Change in Placement: A reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016); *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services.

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

Least Restrictive Environment: Special education and related services must be provided in a student's least restrictive environment (LRE), which to the maximum extent appropriate, should be in the general education environment with students who are not eligible for special education. A student with a disability is to be placed separately from the general education environment only when, due to the nature or severity of his disability, the student cannot be satisfactorily educated in general classes with the use of supplementary aids and services. 34 CFR §300.114; WAC 392-172A-02050. A student's IEP team has the responsibility to determine the student's LRE, and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Parent Request for IEP Meeting: IEP 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. 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 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting 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 free appropriate public education 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).

IEP Meeting Invitations: IEP meetings must be scheduled at a mutually agreeable time for the parent and the district. 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. 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.

FINDINGS OF FACT

Background Information

1. The Student lives with both his mother (Parent) and his father.

2016-2017 School Year

2. In October 2016, the Student transferred to the District from a district in another state and was eligible to receive special education services under the category of intellectual disability. The Student's May 2016 out-of-state individualized education program (IEP) provided him with special education services in the areas of communication, motor skills, social skills, and pre-academic skill development, and reflected the Student's placement in a self-contained special education classroom "more than 60%" of the day.
3. On October 6, 2016, the District reviewed the Student's evaluation and IEP from the out-of-state district. The District found that the out-of-state IEP was "confusing and incomplete, and therefore cannot be accepted by the [District]." According to the District, "adaptive skills [was] an area of need that had been identified by the evaluation received from [the other district] but was not being addressed by the IEP received." Based on the records provided, the District transfer review team recommended that the Student's educational placement be in a self-contained special education life skills classroom.
4. Also on October 6, 2016, the Student began attending a District elementary school (school 1), and his educational placement was in school 1's primary life skills special education classroom.¹

¹ According to the District, the District life skills classrooms are divided into a primary and an intermediate life skills classroom. The primary classroom generally serves students in kindergarten through second grade, and the intermediate classroom serves students in second through fifth grade. The same services are provided in both classrooms and each classroom has one special education teacher, two to five paraeducators, and no more than eleven students.

5. In November 2016, the District conducted an “assessment revision”² that included a review of existing data and the District conducted additional assessments in the areas of health and development, adaptive, communication, pre-academic, social, and gross motor skills.
6. On November 14, 2016, the Student’s evaluation group met and determined that the Student was eligible for special education in Washington State under the category of intellectual disability. The evaluation report recommended that the Student receive specially designed instruction in the areas of pre-academic skills, adaptive behaviors, and social skills in a self-contained life skills program. The evaluation report recommended discontinuing direct physical therapy services, but that the Student continued to need speech/language and occupational therapy (OT) services. The evaluation report also stated that the Student was diagnosed with epilepsy and has seizures of variable length, and that there was “a history of a health care plan due to seizure, which is in place at this time.”
7. On November 14, 2016, the Student’s IEP team, including the Parent, also developed the Student’s new, annual IEP based on the initial evaluation. The IEP included annual goals in pre-academic reading and math, social skills, adaptive skills, communication, and fine motor skills. The IEP stated that progress reporting toward the Student’s goals would be provided on a trimester basis. The IEP provided the Student with the following specially designed instruction and related services in a special education setting:
 - Pre-academics – 90 minutes, 5 times per week
 - Adaptive – 60 minutes, 5 times per week
 - Social – 118 minutes, 5 times per week
 - Communication – 30 minutes, 1 time per week (provided by a speech language pathologist)
 - OT – 30 minutes, 3 times per month (provided by an occupational therapist)

The Student’s IEP stated that he would spend 24.73% of his time in a general education setting and would receive special transportation. The November 2016 IEP did not include any modifications/accommodations or supplementary aids and services. The Student also had an individual health care plan in case of seizures.³

Summer 2017

8. On August 23 and September 1, 2017, the school nurse and Parent exchanged emails regarding any needed changes to the Student’s individual health care plan and whether the Student would need emergency medicine at school. The Parent stated that the Student’s

² While the District uses the term “assessment revision,” an assessment revision is not a process defined by the Individuals with Disabilities Education Act (IDEA) or Washington State special education regulations. Here, the District conducted an initial evaluation of the Student to determine eligibility in Washington State, based on a review of existing data and assessments.

³ According to the District, student health care plans are maintained separately from IEPs. The director of special services (director), in a phone call with OSPI, stated that health services and nursing are included as a related service in IEPs when needed, but that in this case, the Student’s IEP team had not determined that he required nursing as a related service.

only “episodes have been during sleep” and no changes were made to the Student’s health care plan.

9. Prior to the start of the 2017-2018 school year, the school nurse emailed all of the teachers at school 1 information and provided training on how to access student health care plans.

2017-2018 School Year

10. The District’s 2017-2018 school year started on September 6, 2017. At that time, the Student began attending first grade at school 1 and his November 2016 IEP was in place.
11. According to the documentation provided in this complaint, during the 2017-2018 school year, the District used a composition notebook as a daily communication tool with the Parent. The notebook was sent to and from school with the Student, and contained updates and notes on the Student, what he ate at school, and progress on IEP goals.⁴
12. On September 20, October 5, and October 12, 2017, the Student attended speech and language therapy for thirty minutes per session.
13. On October 6 and 27, 2017, the Student’s daily communication notebook stated that he attended OT.⁵
14. According to the documentation provided by the District, on either October 26 or 30, 2017, the Student’s primary life skills teacher (primary teacher) scheduled an IEP meeting on November 9, 2017 and sent an IEP meeting invitation through District mail to be sent to the Parent. The “contact attempt report” on the IEP invitation stated that the Parent “did not respond” or confirm that she could attend the IEP meeting.
15. On November 1, 2017, the Student’s father called the principal and requested information about the Student, and asked when the Student’s IEP was due.
16. On November 1 and 3, 2017, the Student attended speech and language therapy for thirty minutes per session.
17. On November 2, 2017, the principal and the Student’s father spoke regarding concerns about the Student’s IEP and home/school communication. The principal emailed the Student’s father following the call and clarified that the Student’s annual IEP was due on November 14,

⁴ According to the Parent’s reply to the District’s response to this complaint, the Parent had not previously seen several of the pages the District provided in the response. It is likely that the pages the Parent had not previously seen were internal sheets used by the Student’s teacher to collect data on his IEP goal progress and not a part of the daily communication notebook.

⁵ It is unclear from the documentation in this complaint whether the District provided the entire daily communication notebook in its response. Thus, this reference to the Student attending OT is provided as an example and is not meant to indicate that these were the only two days the Student attended OT. According to the Parent’s complaint, she received other written details of the Student’s time in OT and speech therapy.

2017 and that the Student's father should "anticipate hearing from [the primary teacher] soon regarding getting this scheduled."

18. On November 7, 2017, the primary teacher wrote a note in the daily communication notebook to remind the Parent about the annual IEP meeting. According to the Parent's complaint, this was the first time she was notified that an IEP meeting was scheduled on November 9, 2017.
19. On November 9, 2017, the Parent met with the school psychologist, occupational therapist, primary teacher, SLP, and principal to develop the Student's annual IEP. The November 2017 IEP included goals in the areas of adaptive skills, social skills, pre-academic skills in math and reading, occupational therapy, and communication. The IEP stated that progress reporting toward the Student's goals would be provided on a trimester basis. The Student's IEP provided for the following specially designed instruction and related services in a special education setting:
 - Pre-academic – 90 minutes, 5 times per week
 - Adaptive – 45 minutes, 5 times per week
 - Social – 180 minutes, 5 times per week
 - OT – 30 minutes, 1 time per week (provided by an occupational therapist)
 - Communication – 30 minutes, 1 time per week (provided by an SLP)

The Student's IEP stated that he would spend 11.62% of his time in a general education setting and would receive special transportation. The IEP did not include any accommodations/modifications or provide for supplementary aids and services.

20. According to the District's documentation in this complaint, at the November 9, 2017 IEP meeting, the Parent raised concerns about making sure the Student ate at school⁶ and the lack of communication between the classroom and home. According to the documentation, the District attempted to address these concerns by updating the format used in the daily communication notebook and by including notes in that notebook about what the Student ate at school.
21. According to the Parent's complaint, the Student's time in the general education setting was "unilaterally" changed from "44% of his day...to 11%" and that the Student had been in "music, library, and PE in general education in [the other district] but none here." There is no documentation in this complaint that indicates when the Parent first raised this concern or whether the Parent raised this concern at the November 9, 2017 IEP meeting.

⁶ In her complaint, the Parent alleged that the Student was not receiving breakfast through the Federal breakfast program. OSPI informed the Parent that a request for a citizen complaint must describe circumstances that show a possible violation of Part B of the Individuals with Disabilities Education Action (IDEA), or the regulations implementing the IDEA, and that this allegation was not covered by the IDEA. OSPI directed the Parent to contact OSPI's Child Nutrition Program.

22. On November 9 and 13, 2017, the Student attended speech and language therapy for thirty minutes per session.
23. On November 21, 2017, the school nurse emailed the principal regarding a message the Student's father had left with the school office assistant. The Student's father called with concerns regarding a misunderstanding about a note from the school nurse and communication between home and the classroom. The Student's father requested a call back from the principal.
24. On November 27, 2017, following a phone conversation the previous week about the Student's daily communication log, the principal emailed the Student's father and the Parent. The principal suggested using a new daily communication sheet that would be taped into a composition book so that "all the communications can still be centralized in one location." The principal also stated that they could develop a new "sheet" tailored to the Student's needs. According to the District's documentation, neither the Student's father nor the Parent responded to the principal's suggested communication system.
25. According to the District's documentation, the primary teacher tracked the Student's progress towards his IEP goals throughout the fall of 2017. For example, during the week of November 27, 2017, the primary teacher filled out a tracking sheet that indicated whether the Student had achieved, worked independently, refused, or needed support on certain activities.⁷ Some of the activities listed on the tracking sheet corresponded with goals in the Student's November 2017 IEP, as follows:

November 2017 IEP	Tracking Sheet
Adaptive goal related to undressing/dressing for a pull-up change	"Pull pants up/down"
Social goal related to sustaining positive interactions with peers for 10-15 minutes	"Sustain pos. peer interaction 10-15 min."
Pre-academic goal related to matching words to pictures	"Match words to pic."
Pre-academic goal related to spelling the words "mom" and "dad"	"Put letters M, o, m & D, a, d in order"
Pre-academic goal related to counting with the teacher up to 20	Count with teacher up to 20
Pre-academic goal related to putting the numbers 1-20 in order	Put #'s 1-20 in order

⁷ According to the Parent's reply, the Parent had not seen this sheet and similar sheets, dated November 13 and 20, 2017 and December 4 and 11, 2017, before receiving the District's response to this complaint, and that these sheets were not included in the daily communication notebook. It is likely that these were internal sheets used by the Student's teacher to collect data on his goal progress and not a part of the daily communication notebook. Further, in the Parent's reply, she stated that these sheets do not match the Student's IEP goals. Some of the activities on the tracking sheet do relate to the Student's IEP goals, although there are additional activities.

The tracking sheet also included other activities and skills, such as “respond to peers personal space; put letters in name in order; match #'s to quantity; [and], wash hands.”

26. According to the District’s documentation, on November 30, 2017, the Student’s father toured the life skills classrooms at school 1 and expressed an interest in having the Student moved from the primary life skills class to the intermediate life skills class. The Student’s father also informed the principal that his employer would be paying for the Student to have a “1:1 ABA therapist working with him at school.”
27. On December 1, 2017, the principal emailed the District’s director of special services (director) and assistant director of special services (assistant director) and requested information about procedures for changing the Student’s classroom mid-year and procedures for allowing outside therapists to work with students.
28. Also on December 1, 2017, the principal emailed the private ABA provider’s office (ABA provider) with information regarding the District’s policy on allowing outside service providers to serve students in the school setting.⁸ The principal confirmed that the ABA provider, Parent, and school were scheduled to meet on December 7, 2017.
29. On or around December 4, 2017, the District’s first trimester ended. The documentation provided in response to this complaint does not indicate whether the Parent was provided with progress reporting regarding the Student’s annual IEP goals.
30. Also on December 4, 2017, the principal emailed the Parent regarding paperwork related to the ABA provider. The Parent responded that she would send the signed paperwork to school 1 the following morning.
31. On December 7, 2017, the Parent and Student’s father met with the private ABA therapist (ABA therapist), the primary teacher, and the principal. According to the District’s documentation, the group discussed the ABA services and the plan to have the Student transition to the intermediate life skills class after the District’s winter break.
32. On December 11, 2017, the principal emailed the Parent and invited her to a meeting on December 15, 2017, to discuss the Student’s transition from the primary to intermediate life skills class. The principal also invited the ABA therapist and his supervisor, and noted that the transition was scheduled to take place on January 4, 2018. The Parent responded that she and the Student’s father would be at the meeting.
33. On December 15, 2017, a series of conversations occurred over email and are summarized below:
 - The ABA therapist emailed the principal, stating that he hoped to start working with the Student the following Monday, December 18, 2017, and attached some paperwork.

⁸ The school board’s policy allows for private ABA therapists to provide limited in-school services to address gaps between home and school. These services are not included on students’ IEPs.

- The principal forwarded the email to the intermediate life skills teacher (intermediate teacher) and stated that he was waiting to hear from District administration about a start date, but that he hoped the ABA therapist would start January 4, 2018.
 - The intermediate teacher emailed the principal and stated that she wanted to meet the Parent and the ABA therapist before the Student transitioned into her classroom.
 - The principal emailed the ABA therapist and stated that December 19, 2017 would likely be the soonest the therapist could start, and that the principal would touch base the following week.
 - The principal and the director emailed several times regarding the paperwork required before the ABA therapist could start.
34. Also on December 15, 2017, the principal met with the primary and intermediate teachers regarding the Student's transition to the intermediate classroom. Neither the Parent nor the Student's father attended the meeting.
35. On December 18, 2017, the principal emailed the Parent and stated that the ABA therapist would potentially begin working with the Student on December 19, 2017.
36. Also on December 18, 2017, the principal emailed the director and confirmed that the Student would transition to the intermediate life skills class on January 4, 2018.
37. On December 19, 2017, the principal emailed the director and requested clearance for the ABA therapist to start on January 4, 2018. The principal also emailed the ABA therapist and stated that he "received the 'go-ahead' from our office of special services" for the therapist to start on January 4. Finally, the principal and intermediate teacher discussed the ABA therapist's role via email.
38. On December 20, 2017, the ABA therapist emailed the principal and stated that generally, he would be working with the Student from 9:00 a.m. – 3:00 p.m. each day.
39. The District was on break from December 21, 2017 through January 3, 2018.
40. On January 4, 2018, the Student began attending the intermediate life skills class at school 1 and the private ABA therapist began working with the Student.
41. On January 8 and 9, 2018, the Parent and the intermediate teacher exchanged several emails about how the Student was settling into his new classroom, what the plan was to provide the Student with specially designed instruction, his time in general education, the ABA therapist, and health concerns.
42. On January 8, 2018, the Student attended speech and language therapy for thirty minutes.
43. On January 9, 2018, the principal emailed the Parent to let her know that the ABA therapist was absent that day.

44. On January 11, 2018, the intermediate teacher emailed the Parent about the Parent's concerns regarding the Student's health and asked what the Parent thought about the Student going to the OT room daily to use the resources. The intermediate teacher also stated that she met with the ABA therapist to clarify academic instruction, make sure the ABA therapist had a copy of the Student's IEP goals, and make sure that the classroom paraeducators had a copy of the ABA therapy plan. The intermediate teacher stated that a paraeducator will "implement the academics to [the Student] while [the ABA therapist] supports and builds on the academic skills with [the Student]."
45. Throughout January 2018, the intermediate teacher emailed the Parent at least twice a week with updates about the Student, the Student's diet, and what the Student worked on:
- Listening to books, calendar time, and interacting with peers;
 - Sign language, numbers;
 - Tracing lines and circles, letter identification, and flashcard shapes;
 - Tracing letters, colors red, white, and blue, following directions, and sitting in chair;
 - Special education PE;
 - Participated in an assembly – singing and music; and,
 - Speech and OT.

The intermediate teacher also wrote that the Student would participate with his general education peers in music and library.

46. On January 22 and 30, 2018, the Student attended speech and language therapy for thirty minutes per session.
47. On January 30, 2018, the school nurse printed copies of the Student's health care plan and delivered it to the teachers and paraeducators in the intermediate classroom.
48. On January 31, 2018, the principal emailed the ABA therapist and asked for a copy of the therapist's schedule when he was at school 1 working with the Student.
49. Between February 5 and 14, 2018, the intermediate teacher emailed the Parent, on an almost daily basis, with updates about the Student's diet and what the Student worked on in the classroom:
- Alphabet, numbers 1-4, story time, and music group;
 - Art project and fine motor skills;
 - Sitting for increasing periods of time and following directions; and,
 - The letters "t, a, y and numbers 1 and 2", listened to oral stories, and learned about healthy foods.
50. On February 6, 2018, the intermediate teacher emailed the Parent in response to a voicemail from the Parent and stated that the Student's "goals are recent, his transition to the intermediate life skills classroom has been about 5 weeks, his AB [sic] therapist has inconsistently been present, [the Student] continues to learn the classroom norms and is making progress overall!" The intermediate teacher stated that the IEP team should discuss

the Student's inclusion during general education specialist time and how the Student's behaviors were impacting his overall academic performance.

51. On February 7, 2018, the Parent called and left a message for the principal, requesting information about a seizure the Student had at school. According to the District's documentation, the principal called the Parent back the same day to discuss her concerns.
52. On February 8, 2018, the Parent, principal, and intermediate teacher exchanged several emails. The emails are summarized below:
 - The Parent emailed the intermediate teacher and requested that they schedule an IEP meeting to update the Student's current IEP. The Parent also wrote that the Student's father's employer was paying for thirty hours of ABA therapy each week and that the ABA therapist had reported to the Parent that the Student's negative behaviors in the classroom had been increasing. The Parent stated that she wanted to discuss this topic at an IEP meeting, as well as concerns about the Student's academic goals, homework, communication from the classroom, and health concerns.
 - The intermediate teacher forwarded the Parent's email to the principal, school psychologist, SLP, and primary teacher and stated that her understanding was that the Student had exhibited similar behaviors in previous years.
 - The principal emailed the intermediate teacher and asked her to schedule a meeting with the Parent.
 - The intermediate teacher emailed the Parent and stated that she and the principal were available to meet on February 13, 2018.
 - The Parent emailed the intermediate teacher and asked if they could meet on February 14 or 15, 2018.
 - The intermediate teacher emailed the Parent again and stated that the principal was not available on February 14 or 15, and asked if the Parent was available on February 21 or 22, 2018 instead. The intermediate teacher also stated that another student pushed the Student and provided information about the response to the Student's seizure on February 7, including that the Student had been taken to the health room when he was stable.
53. Also on February 8, 2018, according to the District's documentation, the principal informed the ABA provider that he no longer wanted to continue the agreement between the District and the ABA provider to have the ABA therapist provide services at school 1.
54. On February 9, 2018, the principal emailed the school psychologist, intermediate teacher, SLP, and occupational therapist regarding the Student. The principal stated that he had spoken with the Parent and the Student's father "almost daily this week regarding a variety of questions, concerns, and general feedback they wanted to offer." The principal wrote that an IEP meeting was scheduled for February 22, 2018 to discuss the Parent's concerns, academic goals, and communication. The principal also noted that the Student's father requested a 1:1 paraeducator to provide support to the Student, and that this was something the IEP team needed to discuss because "increasing his service model to include a 1:1 para is a change of placement." The principal also stated that he had revoked the ABA therapist's access to school 1.

55. On February 12, 2018, the school psychologist responded to the principal's February 9 email and stated that she would likely need to conduct a functional behavioral assessment (FBA) to "inform the level and nature [of] behavioral supports for [the Student] to access education."
56. On February 13, 2018, the SLP emailed the Parent regarding the Student's use of the same "core word communication board" at home and at school. The SLP also stated that she was targeting a few core words per week, and the words they are working on that week were "go", "happy", and "here." The Parent responded and stated that she agreed that it would be helpful to use the same word board at home and at school, and that the Parent would bring the board to school so the SLP could see it.
57. Also on February 13, 2018, the Student attended speech and language therapy for thirty minutes.
58. According to the District's documentation, on February 14, 2018, the Parent requested, in person, that the February 22 IEP meeting be changed to February 19, 2018.
59. On February 15, 2018, the principal emailed the Parent and stated that they would not be able to meet February 19, 2018, because that day was a holiday and there was no school. The principal stated that the intermediate teacher would be in touch to reschedule. The Parent responded that scheduling was becoming frustrating and that it seemed like the school was putting the Student's "well-being on the back burner while the school seems to have more important issues than addressing what our child's needs are that are NOT being met."
60. Also on February 15, 2018, the Student's father and the principal exchanged emails regarding an incident in which another student bit the Student's hand and that "due to a staff shortage [the Student] was placed on the bus with a known soiled diaper." The principal forwarded the father's email to the intermediate teacher who responded to the Student's father. The intermediate teacher explained what happened when the other student bit the Student and stated that the Student was immediately taken to the health room. The intermediate teacher also explained the procedures in place so that the teachers and paraeducators can "try to have students 'dry' when going home."
61. Later on February 15, 2018, the Student's father emailed the intermediate teacher and requested that the assistant director attend the IEP meeting that they were currently in the process of rescheduling.
62. According to the District's documentation, on February 15, 2018, the Parent began bringing the Student to school 1 for speech and OT only. In her complaint, the Parent stated that she was "very pleased with feedback from the [occupational therapist] and SLP. They have written details about what [the Student] does during their sessions."
63. On February 16, 2018, the school psychologist emailed the intermediate teacher, assistant director, principal, SLP, and occupational therapist about a phone call she had with the

Parent. The school psychologist stated that the Parent requested that the Student be assigned a 1:1 paraeducator. The school psychologist stated that she explained the FBA process to the Parent and stated that the school also needed to get a health and behavioral update. The school psychologist also stated that the Parent would like an IEP meeting “aside from the evaluation [and that] she reported requesting the [meeting] for the past 6 weeks.”⁹

64. Also on February 16, 2018, the intermediate teacher emailed the Parent about rescheduling the IEP meeting (originally scheduled for February 22) for March 2, 2018, so that the assistant director could attend.

65. The District was on break February 19 and 20, 2018.

66. On March 2, 2018, the Parent and the Student’s father met with the intermediate teacher, school psychologist, SLP, occupational therapist, principal, and assistant director. At the meeting, the Parent raised concerns regarding the Student’s “IEP goals and educational plan, peer interactions in the classroom...participation in the life skills program...behavior monitoring of students who may be aggressive, [and] communication between home-school.” The Parent also requested that the Student have a 1:1 paraeducator to supervise the Student, help ensure his safety from other students, and to provide instructional assistance. According to the documentation provided in response to this complaint, the team discussed the following:

- Weekly communication and monthly progress reporting;
- The adequacy of the current IEP goals;
- Activities for the Student to practice at home;
- Extended school year services;
- Documentation of the Student’s seizure activity and review of the health plan;
- Moving the Student to a different school in the District; and
- Placement and general education inclusion.

The District determined that it would need to collect additional information in order to determine the need for more intensive resources and would need to conduct an FBA. The Parent signed consent for the FBA at the meeting. According to the prior written notice, the team recommended that the Student continue in his current program at school 1 and that “transition to another building and program would not necessarily better meet his educational needs. Rather, the services provided in his current school are available if parents choose, and remaining in the program will provide continuity in educational services and environments.” The Parent stated that she would keep the Student at home and continue to request a different school.

67. On March 5, 2018, the intermediate teacher, assistant director, school psychologist, principal, SLP, and occupational therapist discussed, by email, the possible need for a 1:1 paraeducator. The school psychologist also mentioned the Parent’s request for monthly progress reporting.

⁹ There was no documentation provided that indicated that the Parent requested an IEP meeting prior to the beginning of February.

The intermediate teacher responded and stated that she would provide progress reporting in the same manner she did for all students, “twice a year along with the IEP meeting,” and stated that she did not agree to provide progress reporting more frequently because the topic was not “brought to the table and discussed as a team.”

68. Also on March 5, 2018, the Student’s father spoke, in person, with the director and the executive director of staff and student support (executive director) about his ongoing concerns. The executive director then emailed the director, assistant director, and deputy superintendent, stating that the Student’s father had concerns and that he did not want the Student to return to school 1. In response, the director stated that the District was taking steps to address the father’s concerns, including initiating a reevaluation and having staff meet with the assistant director to discuss next steps.

69. On March 6, 2018, the Student attended speech and language therapy for thirty minutes.

70. On March 8, 2018, the executive director emailed the deputy superintendent, director, assistant director, and principal a copy of the Student’s father’s written concerns. The notes attached to the email included the following concerns:

- Inadequate/unattainable IEP and no known education plan since joining the school in 2016;
- Unsafe learning environment;
- No IEP meeting notes;
- Medical plan not being followed properly since spring 2017;
- Lack of proper communication concerning IEP goals and documentation of goals;
- When notified of request for IEP meeting, told it was still up to date, even though at the time of the transition to the new classroom we requested that a meeting occur at 6 weeks to create new goals due to the new IEP created;
- Inadequate prior written notice for November 2017 IEP meeting;
- Poor nutrition programing;
- Loss of general education setting without an IEP meeting in September 2017;
- Inconsistent version of injury in February 2018 from teacher and principal;
- Student sent home with known soiled diaper in February 2018;
- Principal called the ABA therapist a liar with no evidence;
- No finalized IEPs received by Parents;
- Failed to consider Parent request for a new setting; and
- Refused to change setting due to new plan, which Parents feel is unachievable due to personnel.

71. On or around March 9, 2018, the District’s second trimester ended. The documentation provided in response to this complaint does not indicate whether the Parent was provided with progress reporting regarding the Student’s annual IEP goals.

72. On March 12, 2018, the Parent requested that the Student’s IEP team meet again to discuss the Parent’s concerns. After speaking with the Parent on the phone and in person, the District scheduled a meeting on March 14, 2018. According to the District, the meeting was then rescheduled for March 23, 2018, because a District member of the IEP team was unavailable.

73. On March 13, 2018, the Student attended speech and language therapy for thirty minutes.
74. Also on March 13, 2018, the school psychologist emailed the director, assistant director, and principal about a conversation she had with the Parent. The school psychologist informed the Parent that the IEP team recommended having the Student remain at school 1. The school psychologist stated that the Parent "has made it clear to me that she would like another school."
75. On March 19, 2018, the Parent sent a letter to the District superintendent that described the ongoing concerns the Parent had about school 1 and the changes she wanted for the Student. This letter repeated many of the concerns that the Parent had already brought up in emails and meetings, but also included an allegation that the Student did not receive specially designed instruction on half days or days when there was a substitute teacher. According to the District's response, the primary and intermediate teachers had substitute plans in the event of any absences. Further, the District stated that "in the case of absence, there are five para-professionals in the classroom who are familiar with the academic routine in the classroom and continue to implement academic instruction for the Student and his peers under the oversight of a substitute teacher."
76. On March 23, 2018, the principal emailed the assistant director and outlined concerns about the ABA therapist, including potential violations of other students' Family Education Rights and Privacy Act (FERPA) rights, excessive phone use, unilaterally changing his schedule, unapproved contact with other students, negatively impacting staff's ability to perform job duties, and the lack of communication from the therapist and his employer.
77. Also on March 23, 2018, the Student's IEP team, consisting of the Parent, the Student's father, the assistant director, occupational therapist, ABA therapist, the principal of another District elementary school (school 2), school 1 SLP, school psychologist, school 2 primary and intermediate life skills teachers, and school 2 SLP, met. The group determined that the Student would start at school 2 the week of March 26, 2018. The group discussed the Student's schedule, access to general education classes, communication between school and home, and the Student's medical history. The group also discussed the FBA and tentatively scheduled a meeting to discuss the results of the FBA and develop a behavioral intervention plan (BIP) on March 28, 2018.
78. Also on March 23, 2018, the Student's health care plan was updated for his transition to school 2.
79. On March 26, 2018, the Student started at school 2.
80. Also on March 26, 2018, the District sent the Parent a meeting invitation for the IEP meeting scheduled on March 28, 2018.
81. On March 28, 2018, the Parent met with the school psychologist, school 2 principal, school 2 primary and secondary life skills teachers, a school nurse, and the assistant superintendent

to review the FBA and develop a BIP. The FBA report identified target behaviors, contributing factors and settings, antecedents, and recommendations and strategies. The FBA did not support a need for a 1:1 paraeducator. The IEP team then developed a BIP for the Student to address his behaviors around following directions and engagement, which included a series of intervention and consequence strategies. The IEP team also discussed the Student's current IEP goals and agreed that some goals were reachable and others were unachievable. The IEP team scheduled an IEP amendment meeting for May 2, 2018, and agreed to send the parents a draft IEP on April 25, 2018.

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

83. On April 24, 2018, the Parent filed this citizen complaint.

84. On April 25, 2018, the District called the Parent and sent an IEP meeting invitation to the Parent that confirmed the May 2, 2018 meeting.

85. On May 2, 2018, the Parent met with school 2 SLP, occupational therapist, the primary and intermediate life skills teachers, principal, and the director to amend the Student's IEP. The Student's amended IEP stated that he needed "1:1 paraprofessional support to provide maximum assistance, in order to complete tasks and monitor behavior."¹⁰ The IEP included updated goals in the areas of pre-academic literacy and math, social skills, adaptive skills, communication, and occupational therapy. The IEP included the following accommodations and modifications:

- Break longer assignments into small chunks
- Postural support chair
- Provide area for sensory breaks to calm down and refocus
- Provide individualized/small group instruction
- Adult supervision at all times¹¹
- Safety restraint device on bus
- Use of visual schedule and visual cues

The amended IEP provided for the following specially designed instruction and related services in a special education setting:

- Pre-academic – 120 minutes, 5 times per week
- Adaptive – 90 minutes, 5 times per week
- Social – 120 minutes, 5 times per week
- Motor – 30 minutes, 1 time per week (provided by an occupational therapist)
- Communication – 30 minutes, 1 time per week (provided by an SLP)

¹⁰ According to the director, this statement in the Student's IEP was meant to indicate that he needed behavioral support and adult supervision. The Student's IEP team determined, based on the results of the FBA, that the Student did not require an assigned 1:1 paraeducator.

¹¹ According to the director, this is an accommodation that is considered for all of the students in the life skills classroom and refers to the fact that there is one special education teacher and two paraeducators in the room providing supervision.

The Student's IEP stated that he would spend 7.57% of his time in a general education setting and would receive special transportation.

86. According to the documentation provided in this complaint, the Student's ABA therapist is providing him support and services at school 2. The ABA therapy is not part of the Student's IEP.

CONCLUSIONS

Issue 1: IEP Development – The Parent alleged that the District failed to properly develop the Student's individualized education program (IEP) during the 2017-2018 school year, and specifically that the District failed to address the Student's need for related services and/or supplementary aids and services.

A student's IEP must be developed annually, and reviewed and revised periodically if necessary. The parents of a child eligible for special education are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP. The IEP must include, among other things, annual goals; necessary accommodations and modifications; necessary special education services, related services, and supplementary aids; and, the student's least restrictive environment (LRE). The student's IEP should include such related services as required to assist the student to benefit from special education, such as transportation, speech-language pathology, occupational therapy, or health/nursing services. Health and nursing services include individualized health plans, emergency action/care plans, emergency evacuation plans, and any necessary medical accommodations.

On November 9, 2017, the Student's IEP team, including the Parent and the Student's father, met to develop the Student's annual IEP. The Student's IEP provided him with goals and specially designed instruction in the areas of adaptive skills, social skills, and pre-academics, and related services in occupational therapy and communication, which is consistent with the services recommended in the Student's November 2016 evaluation report. The Student's November 2017 IEP did not include any accommodations or supplementary services. The Student's 2016 evaluation also stated that the Student had a health care plan. The Student's health care plan was maintained separately from his November 2016 IEP and prior to the start of the 2017-2018 school year, the District and the Parent determined that no changes were required to the plan. According to the District, generally, health care plans are not attached to a student's IEP. The Student's 2016 evaluation stated that the Student had a health care plan, which should have been incorporated into or attached to his IEP. The District failed to properly develop the Student's November 2017 IEP with respect to the Student's health care plan.

At the beginning of February 2018, the Parent voiced concerns about the Student's academic progress, health, behavior, and adequacy of the Student's November 2017 IEP, and about communication between the school and home. There is no indication in the documentation that the Parent raised these concerns or requested any other services or accommodations at the November 2017 IEP meeting. On February 9, 2018, the Student's father requested that the Student have a 1:1 paraeducator. In response to the Parent's request, the District asked the

Parent to sign consent for a functional behavioral assessment (FBA) in order to determine the Student's behavioral needs and help inform the IEP team's decision on whether the Student required 1:1 paraeducator support. On March 2, 2018, the Parent signed consent for the FBA and on March 28, 2018, the Student's IEP team met and discussed the results of the FBA and developed a behavioral intervention plan (BIP) for the Student. The FBA did not recommend that the Student have a 1:1 paraeducator. On May 2, 2018, the Student's IEP team, including the Parent and the Student's father, amended the Student's IEP. The Student's May 2018 IEP includes an accommodation for "adult supervision at all times" and states that the Student needed "1:1 paraprofessional support," which appears to contradict the findings of the FBA. According to the District, this statement indicates that the Student needed general behavioral support and adult supervision, not that he would have an assigned 1:1 paraeducator.

Based on the documentation in this complaint, the District properly considered the Parent's request for a 1:1 paraeducator and amended the Student's IEP in May 2018. The Parent and the Student's father had many opportunities to provide input and voice concerns, which the District consistently addressed. There is no indication in the documentation that the Parent requested additional related services, supplementary services and supports, or accommodations that were not addressed by the District. The District has acknowledged that the statement about "1:1 paraprofessional support" in the Student's current IEP is confusing given the results of the FBA. The documentation substantiates that the District properly developed the May 2018 IEP; however, the District should amend the Student's IEP to clarify the statement about 1:1 support.

Issue 2: Change of Placement – The Parent alleged that the District failed to follow procedures for changing the Student's educational placement during the 2017-2018 school year. A student eligible for special education's placement is decided at least annually and the decision must be based on information from a variety of sources, including the parents, the evaluation data, and the placement options. The selection of an appropriate placement for the student must be based on the student's IEP, least restrictive environment (LRE) requirements, the placement options that provide a reasonably high probability of assisting the student in attaining his/her goals, and the consideration of any potential harmful effects. The precise physical location of where a student is educated does not need to be included in the statement of placement, nor is it generally. A reevaluation must be completed before a significant change in placement is made.

At the start of the 2017-2018 school year, the Student's placement was in a special education primary life skills class at elementary school 1 and per his November 2016 IEP, spent approximately 24% of his time in a general education setting.¹² The Student's annual IEP was developed in November 2017 and his placement in the primary life skills class remained the same, although his time in the general education setting decreased to approximately 11%. In the complaint, the Parent expressed disagreement with the decrease in the Student's access to the general education setting; however, there is no documentation that the Parent raised this

¹² The Student's placement at the start of the 2017-2018 school year was the same as his placement the previous school year and was based on the Student's November 2016 IEP. The original placement decision, made when the Student transferred into the District in October 2016, is outside of the one-year timeline for investigation, which began on April 25, 2017.

concern at the IEP meeting in November 2017. In late November 2017, the Parent and the Student's father requested that the Student move to the special education intermediate life skills classroom at school 1. The District agreed to change the location of the Student's classroom assignment after the District's winter break, and on January 4, 2018, the Student began attending the intermediate class. While the Student's service location changed when he moved from the special education primary to intermediate classroom at school 1, the Student's placement (his program, IEP goals and services, and LRE) did not change.

At the beginning of March 2018, the Parent requested that the Student be moved to a different elementary school in the District. Initially, the District members of the Student's IEP team recommended that the Student continue in his current program at school 1 because they felt that another school or program would not necessarily better meet the needs of the Student. The Parent then chose to only send the Student to school 1 for his speech and OT services. The IEP team met on March 23, 2018, and decided that the Student would be moved to a different District school (school 2). On March 26, 2018, the Student started at school 2 in a special education life skills program. The Student's transfer to school 2 did not change his educational placement, but only changed the location in which he would receive his special education services.

On May 2, 2018, the Student's IEP team amended the Student's IEP to update his special education minutes and that IEP stated that he would spend approximately 7% of his school week in a general education setting. While the amendment decreased the amount of time the Student would spend in a general education setting from 11% to 7%, this was not a significant change in placement and did not require the District to first conduct a reevaluation. The District followed procedures for changing the Student's placement in May 2018.

Issue 3: IEP Implementation – The Parent also alleged that the District failed to implement the Student's IEP during the 2017-2018 school year, stating specifically that the Student was not provided related services and accommodations in the least restrictive environment (LRE). A school district must ensure that it provides all services in a student's IEP, consistent with the student's needs, as described in that IEP. A student's IEP must be implemented in the student's LRE, which to the maximum extent appropriate, should be in the general education environment with students not eligible for special education. A student with a disability is to be placed separately from the general education environment only when, due to the nature of the student's disability, the student cannot be satisfactorily educated in general education classes with the use of supports. A student's IEP team determines his LRE, when determining the student's placement.

The Student's November 2016 IEP, which was in place at the beginning of the 2017-2018 school year, provided for the following related services:

- Communication – 30 minutes, 1 time per week (provided by an SLP)
- OT – 30 minutes, 3 times per month (provided by an occupational therapist)

And, the Student's annual IEP, developed in November 2017, provided for the following related services:

- Communication – 30 minutes, 1 time per week (provided by an SLP)
- OT – 30 minutes, 1 time per week (provided by an occupational therapist)

Neither the 2016 IEP nor the 2017 IEP provided the Student with accommodations or supplementary aids and services. Based on the information provided in the Student's home/school communication log and the SLP's service log, the District substantiated that it provided the Student with the related services as outline in his IEP during the 2017-2018 school year, and that these services were provided in a special education setting consistent with his IEP. While the Parent has raised concerns about the Student's access to a less restrictive environment, a student's LRE is determined by the student's IEP team. Here, if the Parent believes the Student's current placement in the life skills program at school 2 is not his LRE, she can request an IEP meeting to discuss increasing the Student's participation in the general education setting.

The Parent also raised concerns that the Student's private ABA therapist was not allowed to provide him ABA therapy at school 1. The Student's ABA therapy was separate from the services provided for in the Student's IEP; therefore, the District is not responsible to ensure their implementation, and it is within the District's discretion to allow a private provide to provide services at a District building. The District did not fail to implement the Student's IEP when it declined to allow the ABA therapist access to the Student's classroom.

The Parent also alleged that the Student was not provided specially designed instruction on half-days and days when substitute teachers were present. Both the Student's November 2016 and his November 2017 IEP provided him with annual goals and specially designed instruction in the areas of pre-academic reading and math, social skills, and adaptive skills. According to the documentation in this complaint, including the frequent communications from the Student's teachers on his daily activities and the progress tracking sheets, the Student was provided specially designed instruction and related services as required by his IEP. Further, the District stated that on half days and days with substitute teachers, the Student was provided with specially designed instruction and related services. While it was unclear whether the District provided the Parent with progress reporting each trimester as required by the Student's IEP, the District's documentation does support the conclusion that the Student was provided specially designed instruction throughout the 2017-2018 school year.

Issue 4: IEP Meetings – Finally, the Parent alleged that the District failed to give her adequate notice for IEP meetings or schedule meetings at a mutually agreed upon time, and that the District failed to take notes during IEP meetings. IEP meetings must be scheduled at a mutually agreeable time for the parent and the district, and a district must notify parents of the meeting early enough to ensure that parents have an opportunity to attend. If the parent requests an IEP meeting, the district must either schedule the meeting at a mutually agreeable time and place, or provide written notice to the parents as to why the district is refusing to meet if the district determines that holding a meeting is not necessary to ensure the provision of a free appropriate public education to the student. There is no requirement that a district take notes during an IEP meeting.

On November 9, 2017, the Student's IEP team met to develop the Student's annual IEP. According to the District's documentation, the District mailed the Parent a meeting invitation for the November 9 meeting on October 26 or 30, 2017, and the District's meeting invitation indicates that the Parent never confirmed attendance. The Student's special education teacher then sent a reminder about the meeting to the Parent on November 7, 2017, via the Student's home/school communication notebook. While ideally, the District should have followed up with the Parent earlier than November 7 to confirm that she could attend the November 9 IEP meeting, the late notice did not affect the Parent's ability to attend the IEP meeting. The District followed procedures for scheduling the November 9 IEP meeting.

On February 8, 2018, the Parent request that the Student's IEP team meet to discuss concerns. In response, the District proposed holding an IEP meeting on February 13. However, the Parent was not available that day, and proposed meeting on February 14 or 15. The District was unable to meet on those days and proposed meeting on February 21 or 22, and the Parent agreed to meet on February 22, 2018. However, the Parent then requested that the meeting date be changed to February 19, 2018. In response, the District stated that it could not schedule the meeting on February 19, 2018, as this was a holiday and school was not in session. The District and the Parent then agreed to meet on March 2, 2018. While the Parent was upset about the delay in holding the March 2, 2018 meeting, the District's documentation substantiates that it worked with the Parent to find a meeting date at a mutually agreed upon time, and was willing to reschedule the meeting per the Parent's request.

On March 12, 2018, the Parent requested that the IEP team meet and a meeting was scheduled for March 14, 2018. This meeting was then rescheduled to March 23, 2018, to accommodate all team members' availability and the Student's IEP team met to discuss the Student's transition to a new school. At the meeting on March 23, the team scheduled another meeting on March 28, 2018, to discuss the results of the FBA and develop a BIP. And, at the meeting on March 28, 2018, the team scheduled a meeting to amend the Student's IEP on May 2, 2018. On April 25, 2018, the District called the Parent and sent an IEP meeting invitation, confirming the May 2, 2018 meeting. The District followed procedures for scheduling the March 23 and 28 and May 2, 2018 IEP meetings.

CORRECTIVE ACTION

By or before **September 7, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **August 31, 2018**, the District will convene an IEP meeting to discuss the Student's health and behavioral needs. The IEP team will amend the Student's IEP to incorporate the health care plan and clarify the statement about 1:1 paraprofessional support. By **September 7, 2018**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the amended IEP, which meets the specifications stated above; and, 3) a copy of related prior written notices.

DISTRICT SPECIFIC:

None.

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

RECOMMENDATIONS

It is recommended that the District inform staff that health care plans relating to students eligible for special education must be included with their IEPs. Additionally, the District’s response to this complaint and documentation indicates that the District believes providing a student with a 1:1 paraeducator impacts the student’s least restrictive environment. Paraeducator support is a supplementary aid and service, not a placement option on the continuum of alternative placements, and does not factor into a students’ LRE. OSPI recommends that the District review guidance on this topic.

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.)