

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-56A**

### **PROCEDURAL HISTORY**

On May 29, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the North Thurston 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 and the other students (Students) in the classroom.

On May 30, 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 June 5, 2018, the Parent and the District were notified that because there was a pending due process hearing, No. 2017-SE-0109, regarding the Student which contained some of the same issues identified in SECC 18-56, OSPI's investigation of SECC 18-56 regarding the Student would be placed in abeyance. OSPI's investigation of SECC 18-56 regarding the other Students would continue.

On June 21, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on June 22, 2018. All personally identifiable information regarding the Students was removed. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 6, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On July 12, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On July 26, 2018, OSPI requested clarifying information and spoke with the District special education teacher.

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 eight Students attended a District high school and received most of their specially designed instruction in a special education classroom. All of the Students attended school full time, except Student 2, who attended school on a shortened school day schedule. Sometime after March 22, 2018, the Parent observed a video tape of the class being dismissed to go to the bus ten minutes early. The Students' special education services addressed basic academics and functional skills, including supports for following routines, time management, self-regulation, sensory breaks, bathroom breaks, and wheelchair assistance,

which all occurred during and after dismissal from their class. The Parent alleged that the District was failing to provide the Students' specially designed instruction by dismissing the Students ten minutes early. The District denied the allegations.

### **ISSUES**

1. Did the District follow procedures for addressing a shortened school day in the Individualized Education Programs (IEPs) for the Student and other Students in the classroom during the 2017-2018 school year?
2. Did the District implement the special education and related services on the Student's IEP and other Students' IEPs during the 2017-2018 school year?

### **LEGAL STANDARDS**

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. 34 CFR §300.320; WAC 392-172A-03090. *See also Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010).

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(1). It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed.

### **FINDINGS OF FACT**

1. During the 2017-2018 school year, t Students 1-8's individualized education programs (IEPs) addressed needs in the areas of basic academics and functional living skills. Students 1-8 received their special education services in the same special education classroom, and spent the majority of their school day in the special education classroom. All of the Students' last class of the day was in the special education classroom.
2. On September 6, 2017, the District's 2017-2018 school year began.
3. The special education classroom's schedule, which followed the high school's schedule, was as follows:
  - (Passing time: 7:25 am – 7:30 am)
  - Period 1: Life Skills (7:30 am – 8:25 am)

- Period 2: Teacher Preparation (8:30 am – 9:25 am)<sup>1</sup>
- Period 3: Life Skills (9:30 am – 10:25 am)
- Period 4:
  - 1<sup>st</sup> Lunch (10:30 am -11:00) or Life Skills (10:30 am – 11:25 am)
  - Life Skills (11:05 am – 12:00 pm) or 2<sup>nd</sup> Lunch (11:30 am – 12:00 pm)
- Period 5: Life Skills: (12:05 pm – 1:00 pm)
- Period 6: Life Skills: (1:05 – 2:00 pm)
- (Passing time – 2:00 pm – 2:05 pm)

4. Students 1-8 attended school on a full day schedule, except for Student 2, who attended school on a partial day schedule. Student 2’s IEP reflected the reduced number of hours of services. All IEPs were reviewed by the Complaint Investigator, but details are not included in this report to maintain the confidentiality of each student.
5. In her complaint, the Parent alleged that on March 22, 2018, the Students were dismissed ten minutes early from their sixth period class to go to the school buses at the end of the day. The Parent stated she observed a video recording of the Students leaving the classroom ten minutes before dismissal. The Parent alleged that the Students were being dismissed early on a consistent basis.
6. On May 29, 2018, the Parent filed this citizen complaint.
7. In response to the complaint, the District conducted a 5-day sample taken on May 29-31, June 1 and June 4, 2018, regarding the average amount of time Students 1-8 needed to get ready to dismiss, including the activities involved. The data showed the following:

<b>Student</b>	<b>Average time for dismissal before whole school dismissal</b>	<b>Absences during 5-day sample</b>	<b>Use of time, IEP goal completion, student needs</b>
Student 1	N/A	5	Adaptive-transitions and self-regulation; time management; classroom staff support; breaks
Student 2	3.33 minutes	2	Adaptive-functional routines; classroom staff support; breaks; visual schedule
Student 3	4.3 minutes	0	Adaptive-task completion such as the end of the day routine; classroom staff support; breaks
Student 4	6 minutes	1	Adaptive-time managements goal; student uses bathroom prior to boarding bus; allow breaks; additional time; classroom staff support
Student 5	4 minutes	1	Adaptive-task completion; and self-regulation; autism diagnosis-sensory needs;

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<sup>1</sup> During teacher preparation teacher time, the Students attended classes such as physical education.

			classroom staff support; visual schedule; transitions
Student 6	5.5 minutes	1	Additional time needed to load manual wheelchair; 1:1 paraprofessional
Student 7	5 minutes	0	Adaptive-functional routines; classroom staff support; visual schedule/support
Student 8	6 minutes	0	Student uses bathroom prior to board bus; autism diagnosis-sensory needs

In the District’s response to the complaint, the District stated that no special services were missed on March 22, 2018, or any other day due to the Students’ dismissal. At the end of sixth period, prior to going to the bus, staff assisted the Students with various transition needs. The District stated that some Students may leave the class prior to dismissal time in order to access the bathroom, work on accessing locks on lockers, or to decrease the impact of all other students at the high school being dismissed, which could be a sensory overload for some of the Students. In addition, the District stated that any instructional time the Students may have lost in getting ready for dismissal was made up by the time that the Students gained by not having to transfer classrooms between all class periods during the school day. Additionally, in an interview with the special education teacher, the teacher stated the Students were dismissed early from the classroom at different times based on each Students’ needs, but instruction continued to be provided to the Students by the teacher, the classroom paraeducators, and the two one-to-one paraeducators. The teacher stated that the staff provided instruction and assistance with using the lockers, putting on coats, using the bathroom outside the classroom, transitioning to the bus area, and providing safety coaching to a student who was picked up in the parking lot. Other Students had particular needs regarding anxiety with crowds and elopement.

### CONCLUSIONS

**Issue 1: Shortened Day Schedule** – The complaint alleged that the District failed to provide a full day of special education instruction because Students 1-8 were being dismissed ten minutes early to go to the buses. A student’s individualized education program (IEP) must address and document the need for partial day attendance. Here, Student 2 was the only student in class whose IEP addressed and documented the need for partial day attendance. The remaining Students’ IEPs indicated they attended school on a full-time basis. The documentation indicated that the District followed the required procedures in addressing partial day attendance for Student 2.

**Issue 2: Implementation of Special Education Services** – The complaint alleged that the District failed to implement the special education and related services in the Students’ IEPs because the Students were dismissed ten minutes early each day to go the buses. A school district is required to implement the special education and related services in an IEP. Here, the Parent observed a video tape of the Students being dismissed one day from class ten minutes before the general dismissal time of 2:00 p.m. As a result, the Parent alleged that Students 1-8 missed their special education services. The District stated that no services were missed because the Students’ need

for services and supports extended from shortly before “dismissal” to boarding the bus. Some Students needed time to use the bathroom and others needed assistance with transitioning to or boarding the bus. While the instruction may have stopped in the classroom, the instruction and support by staff continued in the school hallway and other locations until the Students accessed their transportation home. Based on the documentation that the services continued to be provided during the time period before the school day ended, the District substantiated that it implemented the Students’ IEPs.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None

**DISTRICT SPECIFIC:**

None

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

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
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**THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT**

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