

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-94

PROCEDURAL HISTORY

On October 10, 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 Mukilteo 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 October 15, 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 November 7, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on November 8, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

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

ISSUES

1. Did the District follow procedures regarding the need to reevaluate the Student, including in the following circumstances:
 - When the Parents provided input regarding the Student's hospitalization in 2017;
 - When considering the removal of specially designed instruction in writing from the Student's individualized education program (IEP); and,
 - When reducing the frequency of specially designed instruction?
2. Did the District implement the special education services in accordance with the Student's individualized education program (IEP) from October 2017 to December 2017, including providing services from qualified staff?
3. Did the District follow procedures for placing the Student in a least restrictive environment regarding the physical education and history classes?
4. Did the District provide the Parents with prior written notice regarding the Student's 2018-2019 IEP?
5. Did the District follow procedures for amending records at the Parents' request?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met the legal standard. OSPI reviews the documentation received from the complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1).

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). 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.

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(i).

Physical Education: Physical education services, specially designed if necessary, must be made available to every student receiving FAPE. Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled unless: (a) The student is enrolled full time in a separate facility; or (b) The student needs specially designed physical education, as described in the student's individualized education program. If specially designed physical education is required in a student's individualized education program, the school district shall ensure that the public agency responsible for the education of that student provides the service directly, or makes arrangements for it to be provided through other public or private programs. The school district shall ensure that any student eligible for special education who is enrolled in a separate facility will be provided with appropriate physical education services. 34 CFR §300.108; WAC 392-172A-02030.

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

Amendment of Records and Hearing Rights: A parent of a student who believes that information in educational records collected, maintained, or used under this chapter is inaccurate or

misleading or violates the privacy or other rights of the student may request that the school district which maintains the information amend the information. The school district shall decide whether to amend the information in accordance with the request within a reasonable period of time after receipt of the request. If the school district refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing, conducted by the school district, in accordance with school district procedures. The school district, on request, shall provide the parent an opportunity for a hearing to challenge information, in the educational records, to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student. If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the agency shall amend the information accordingly and so inform the parent in writing. If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the agency shall inform the parents of the right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district in the records it maintains on the student. Any explanation placed in the records of the student in compliance with this section shall: Be maintained by the school district as part of the records of the student as long as the records or the contested portion is maintained by the educational agency; and Be disclosed to any party to whom the records of the student (or the contested portion thereof) are disclosed. 34 CFR §300.618; WAC 392-172A-05215.

BACKGROUND

This decision references events which occurred prior to the investigation time period, which began on October 11, 2017. These references are included to add context to the issue under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

FINDINGS OF FACT & CONCLUSIONS OF LAW

ISSUE 1: NEED TO REEVALUATE

2017-2018 School Year

1. At the beginning of the 2017-2018 school year, the Student attended middle school in the District and was eligible to receive special education services under the category of autism. Prior to the 2017-2018 school year, the Student was enrolled in another Washington state school district.
2. On August 31, 2017, the Parent emailed the District school psychologist that she would provide the Student's "most thorough and accurate evaluation." The Parent also stated that she would be sending the District a new independent evaluation that the Student's previous

district agreed to provide.¹ The documentation did not indicate in what area or areas in which the evaluation was being conducted.

3. On September 5, 2017, the District along with the Parent conducted a "transfer review" of the Student's previous evaluation (February 2016) and individualized education program (IEP) (January 13, 2017) from the Student's previous school district.² The previous IEP provided for 142 minutes per week of specially designed instruction in the area of writing and 285 minutes per week in the areas of math and social behavior in the special education resource room. The review stated, "...The [District] is accepting his more recent evaluation dated 2/17/16 and most recent IEP dated 1/13/17 and amended 6/5/17. [Student] is eligible for services in math, writing, and social behavior." The Student's new IEP provided for 280 minutes per week of specially designed instruction in the areas of writing, math, and social behavior in the special education classroom. On the same day, the District provided the Parent with prior written notice of the proposal to accept the previous school's evaluation and IEP.
4. On September 25, 2017, the Parent emailed the Student's special education teacher regarding a behavioral issue and stated that she had additional paperwork from Children's Medical Center that she would bring to the school. In response to the complaint, the District stated that during the fall of 2017, the Parent informed the District that the Student had some recent health issues and a hospitalization occurred before the Student started school in the District. The District also stated that the Parent did not indicate that the health issues were serious and the District stated that the hospitalization did not affect the Student's school attendance.
5. On October 11, 2017, the one-year timeline begins for this complaint.
6. On October 15, 2017, the Parent emailed the Student's special education teacher and stated, among other things:

We have just received the Harassment, Intimidation, and Bullying Investigation report from [Student's] prior school. It contains very overt and provable false information from his last district's school psychologist and several other integral staff members. We have contacted the investigator associated with the report, and are filing a citizen's complaint with the Office of the Superintendent of Public Instruction regarding his prior district and false statements to investigators and lack of reporting Spring/Summer 2017.

Currently our concern is inaccurate data on [the Student's] last FBA/BIP from [previous district]. It includes the misrepresentation of a General Education teacher as a Special Education teacher, and has additional notable omissions and flaws. Given our knowledge

¹ The previous district agreed to pay for an independent educational evaluation in a settlement agreement with the Parent.

² On June 6, 2017, the previous school district held a meeting to amend the Student's IEP. According to the Notice of IEP Amendment, the amended IEP increased the number of minutes of service. However, neither the District nor the Parent submitted documentation regarding this IEP amendment. It was not clear what services were amended and by how much.

of the [previous district] false statements made in other sources, we are concerned regarding the validity of some information in his file.

7. On October 17, 2017, the Parent and the school psychologist exchanged emails regarding the Student's behavior. The Parent expressed concern about "inaccurate data" from the previous school district. The Parent's email stated, in part, the following:

I sincerely believe that [middle school] is addressing my child's concerns in a manner that is encouraging his emotional academic development. It seems that his issues are already being well addressed. He is acting act out, but not like 6th and 7th grade (fetal position, grunting, drooling, and crying). My question is does he need another [functional behavioral assessment/behavioral intervention plan] FBA/BIP? I feel uncomfortable with the inaccuracies in his file, but know he is getting the help he needs now. Would you like us to proceed with the independent evaluation, or is it unnecessary?

On the same day, the school psychologist emailed the Parent, stating that the Student was doing well at the time and the IEP would be reviewed in January 2018. Regarding the independent evaluation, the school psychologist stated the following:

As far as the independent evaluation, I don't know if I can answer that one. On one hand, it is sometimes helpful to have updated information on students, however, I would also consider if it would prove to be more of a disruption for [Student]. Can't say whether the evaluation would prove to be worth the disruption, or if it would provide new insights of which we are not already aware...

According to the Parent, she did not pursue the independent educational evaluation that was agreed to by the previous district.

8. On January 5, 2018, the District held an annual review of the Student's IEP. The Parent participated in the meeting. The Student's IEP (from January 8, 2018 to January 7, 2019) continued to provide for 280 minutes per week of specially designed instruction in each of the areas of written language, math, and social behavior in the special education classroom. The services were to be provided by a special education teacher.
9. On March 21, 2018, the Parent emailed the Student's special education teacher. The email stated, in part, "The reevaluation and the reassessment of BIP/FBA just seemed unnecessary given [Student's] rapid improvement."
10. On April 15, 2018, the Parent emailed the Student's special education teacher. The Parent indicated that the District was "exemplary," but that she needed to continue her advocacy efforts regarding the Student's records. The Parent also stated:
"...I do feel a sense of concern that the hospitalization paperwork was offered initially to the school and through the year, but not reviewed. It was okay, because he regulated and was closely monitored at home and by additional professionals. It seems like it could be a potential oversight though. He was emergency referred, independently evaluated and admitted to Children's Hospital just a couple of months (or a month and a half?) prior to [District]. This need was based on his experience at his prior school, however. It's in the district paperwork. Not relevant now."

On the same day, the special education replied to the Parent, stating, "...In regards to the paperwork, your initial and consistent communication throughout [Student's] transition, combined with evaluation documentation, gave us the information necessary to build an initial intervention."

11. On June 19, 2018, the Parent emailed the District special education director (director), requesting the Student's records. In addition, the email stated, "I would like an evaluation to be conducted by [high school] Fall 2018 to determine actual [S]tudent special education needs..."
12. On August 21, 2018, the director emailed the school's special education teachers, stating that she had made contact with the Parent and "she has raised questions about [Student's] program and possible need for a reevaluation."
13. From August 21 to September 1, 2018, the Parent and the director exchanged many emails regarding the Parent's concerns about the Student's records. In response to the Parent's concerns, the District requested that they schedule an IEP meeting to discuss the Student's transition to high school.

2018-2019 School Year

14. On September 5, 2018, the 2018-2019 school year began. The Student began attending high school in the District and continued to receive services according to the January 2018 IEP.
15. The Student's first semester class schedule was as follows:
 - Health
 - English Essentials
 - Physical Science
 - Algebra Essentials
 - Social Thinking and Pragmatics
 - Reading/Writing in Content Area
16. On October 10, 2018, the Parent filed this complaint.
17. The Parent did not provide any information regarding the 2017 hospitalization for purposes of this investigation.

Issue 1 Conclusion: Need to Reevaluate – The complaint stated that the District failed to reevaluate the Student to address the Student's hospitalization. The complaint also alleged that the District failed to conduct a reevaluation before exiting writing services; changing the number of minutes of service; and not developing a new functional behavioral assessment (FBA) and behavioral intervention plan (BIP) because of inaccurate data.

A district is required to reevaluate a student when there is a significant change of circumstances or when the district does not have sufficient current data on which to make educational decisions for a student.

Hospitalization – Here, the Student was hospitalized approximately four to six weeks before the Student started school in the District. The District stated in its response to the complaint that it

only received information that the Student was hospitalized from the Parent, but not any documentation regarding the hospitalization. The Parent indicated to the District that the Student had recent health issues but was not specific about what they were or how serious they were. Later, in an email in April 2018 to the Student's special education teacher, the Parent stated that she was concerned that the District did not review the hospitalization paperwork at the beginning of the school year, but it was "okay" because the Student was progressing well. The Parent stated the hospitalization was due to the previous school district and was "not relevant now." The Parent provided no further documentation regarding the hospitalization. Based on the existing documentation, there was insufficient information regarding the hospitalization to require the District to reevaluate the Student. No violation is found.

Removing Specially Designed Instruction in Writing from the IEP – The Parent alleged that the Student was exited from specially designed instruction in writing without a reevaluation. Here, the Student's January 2018 IEP provided for specially designed instruction by a special education teacher in the areas of math, social behavior, and writing. The previous September 2017 transfer IEP provided specially designed instruction in writing, also.³ There was no evidence that the Student was "exited" from writing services or that writing was removed from the IEP. Therefore, there was no change in services that might have required a reevaluation. No violation is found.

Reducing the Minutes of Service – The Parent alleged that the District failed to reevaluate the Student before reducing the number of minutes of specially designed instruction the Student was previously receiving. Here, the Student's September 2017 transfer IEP provided for 280 minutes per week of specially designed instruction in the areas of math, social behavior, and writing.⁴ The Student's January 2018 IEP also provided for 280 minutes per week of specially designed instruction in the same areas. Because there was no change in service minutes, there was insufficient evidence that a reevaluation was required. No violation is found.

Functional Behavioral Assessment/Behavioral Intervention Plan – The Parent alleged that the District failed to conduct a new FBA and develop a new BIP based on "prior false and misleading student data [previous district] incorporated into [District] data and IEP. [District] did not reassess FBA/BIP to assure adequate classroom behavioral response." Here, the previous district conducted an FBA as part of a reevaluation in February 2016, and developed a BIP in January 2017. When the Student enrolled in the District in September 2017, there was no indication that the Parent disputed the FBA or BIP. Later, in October 2017, the Parent disputed the FBA/BIP based on inaccurate data but the Parent provided the District with no specific information about any potential inaccuracies. In addition, both the Parent and District acknowledged that the Student was making progress in his behavior, and the Parent stated in March 2018 that based on the Student's improvement, she did not believe a reevaluation and revision of the FBA or BIP was necessary. Therefore, the District was not required to conduct a new FBA or develop a new BIP. No violation is found.

³ The September 5, 2017 transfer IEP was developed before the October 11, 2017 complaint timeline and thus, the development of this IEP is beyond the scope of this investigation.

⁴ See note #1 regarding the June 2017 IEP amendment.

ISSUE 2: IMPLEMENTATION OF THE IEP BY CERTIFIED STAFF

2017-2018 School Year

1. On September 5, 2017, the District conducted a "transfer review" and developed a new IEP for the Student, who had recently moved into the District. The IEP provided for, among other things, specially designed instruction in the areas of math, social behavior, and writing to be provided by a special education teacher.
2. On September 6, 2017, the 2017-2018 school year began.
3. The Student received special education from two special education teachers (teacher 1 and teacher 2). Sometime in September 2017, the special education teacher (teacher 2) who was providing specially designed instruction in the area of writing went on medical leave, according to the documentation, and a substitute teacher replaced teacher 2. The substitute teacher was certified in early childhood and elementary education.⁵
4. On October 11, 2017, the one-year timeline for this complaint begins.
5. In January 2018, teacher 2 returned to the Student's classroom.
6. On March 26, 2018, the District provided a special education progress report towards the Student's annual goals. The report stated that the Student was making sufficient progress to achieve his annual goals in math and social behavior. Regarding the annual goal for writing, the progress report stated, "Emerging skill demonstrated but may not achieve annual goal with duration of the IEP."
7. On August 11, 2018, the Parent emailed the assistant director of special education (assistant director) and asked, "...Can you explain why a paraeducator was solely responsible for teaching my child's special education writing class for the first several months of 2017?"
8. On June 13, 2018, the District provided a special education progress report towards the Student's annual goals. The report stated that the Student was making sufficient progress to achieve his annual goals in math and social behavior. Regarding the annual goal for writing, the progress report stated, "Emerging skill demonstrated but may not achieve annual goal with duration of the IEP."

⁵ On October 21, 2016, the District issued the substitute teacher an "Out of Endorsement Assignment." The plan of assistance included the following: 1) the teacher will receive training in the collection of data related to writing IEP goals; she will have mentoring on the writing of IEP goals, and a special ed mentor teacher will be available to co-conduct IEP meetings; 2) the teacher will have access to District-provided professional development. Professional development classes are offered throughout the school year in the areas of alternative assessment, IEP goal writing, and policies; and, 3) the teacher will be assigned a Special Education mentor to meet with her on a trimester basis, and by request throughout the school year.

9. On September 6, 2018, the assistant director replied, stating, “[Substitute teacher] was a certified teacher who replaced [special education teacher 2] during her medical leave. Your son was not under the sole supervision of a paraeducator at any time.”
10. In response to the complaint, the District’s response stated that the Student’s specially designed instruction was provided by “qualified certificated staff.” Teacher 1, who was a certified special education teacher, continually provided specially designed instruction during the period in question, October 11 to December 14, 2017. When teacher 2, the Student’s other special education teacher, became unavailable, a “certificated teacher” served as a substitute for interim period of time.
11. In response to the complaint, teacher 2 provided the following information:

Prior to going on maternity leave during the 2017-2018 school year, I met with [substitute teacher] on multiple occasions. We planned out what would be taught in each class, while I was out. It was decided that she would be following the Words Their Way curriculum in the Reading/Writing Content class. I gave her the curriculum guide, as well as a CD with electronic copies of all assessments. I walked her through how to use the guide, as well as the pre-assessment to place students. She had this about five weeks prior to the start of the term. I was included on all emails for Student while I was out. I did respond to Mother on at least one occasion during my maternity leave. Additional, I was in frequent contact with [substitute teacher], including coming into the classroom. I was in the classroom on at least five different occasions during my leave.
12. In response to the complaint, the assistant director provided the following information:

During the time that [substitute teacher] served as the long-term substitute in resource program at [middle school] I served as her contact in the special education department, speaking with her regularly about IEP questions, as well as questions related to instructional materials. I was also available to attend IEP meeting as needed, but she did not request his support.

Issue 2 Conclusion: Certified staff – The complaint stated that from September 2017 to December 2017, one of the Student’s special education teachers was “not fully qualified as a special education teacher.” The Parent alleged that the specially designed instruction in writing was provided by a paraeducator and not a certified special education teacher.

Special education and related services must be provided by appropriately qualified staff. Specially designed instruction must be provided by and student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. Other staff, including general education teachers and paraprofessionals, may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services, by a certificated educational staff associate. A district is also required to implement the IEP as written.

Here, the Student’s IEP provided for specially designed instruction in the areas of math, social behavior, and writing by a special education teacher. The Student’s special education teacher for writing was on leave from September to December 2017. The District provided a certified

substitute teacher, although she was not certified in special education. Despite being on leave, the special education teacher provided the substitute teacher with assistance regarding instruction and visited the classroom. However, this is not a substitute for active supervision and monitoring progress. The Student's IEP required that a certified special education teacher implement the Student's specially designed instruction in writing.⁶

Although the District and Parent made statements regarding the Student's overall progress, the Student's special education progress reports in March and June 2018 indicated that the Student was not making sufficient progress to meet his annual goal in writing. Although it was unlikely that the lack of progress was due only to the use of a substitute teacher since the special education teacher returned to the classroom in January 2018, the lack of a certified special education teacher did have a negative impact on the Student's education based on the progress reports.

There was also no indication from the documentation that the District notified the Parent of the substitute teacher. Parent participation does not end when the parent attends the IEP meeting. A parent must be able to use the IEP to monitor and enforce the services in the student's IEP. Without notification of the substitute, the Parent was left without input about what could mitigate any potential loss of benefit to the Student due to the substitute teacher. The District should have notified the Parent about the substitute teacher, as it was contrary to the Student's IEP, and held an IEP meeting to address any potential negative impact on the Student.

A violation is found based on the District failing to implement the Student's IEP by not providing writing services by a certified special education teacher and not reconvening the IEP team. In addition, although the District and Parent made comments that the Student made overall progress, the special education progress reports stated the Student was making insufficient progress in writing. As a result, the District is required to develop guidance on this topic and provide ten hours of compensatory services of writing services to address the Student's lack of progress. Between October 11, 2017 and December 14, 2018, the Student was supposed to receive 280 minutes of specially designed instruction in writing per week. During this time period, there were five (5) weeks of school and the Student should have received 1,400 minutes (23.33 hours) of instruction. Taking into consideration that instruction provided in a one-on-one setting can be delivered more efficiently and that the Student was still receiving some amount of instruction during this period, the District will provide approximately half of the missed hours. The District will provide ten (10) hours of compensatory education to the Student in individual instruction sessions to address writing. The instruction will occur outside the District's school day and be provided by a certificated special education teacher.

⁶ Although the Student did not receive the services in writing from a certified special education teacher from September to December 2017, this complaint could only address the time period from October 11, 2017 to December 14, 2017. Services provided, or not provided, prior to October 11, 2017, fall outside the one-year timeline for special education citizen complaints.

ISSUE 3: PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

2017-2018 School Year

1. During the 2017-2018 school year, the Student attended middle school in the District.
2. The Student's January 2017 and 2018 IEPs stated that the Student received his specially designed instruction in the special education classroom. The IEP team considered providing the specially designed instruction in the general education classroom, but "academic benefit cannot be satisfactorily achieved." Regarding the least restrictive environment, the IEP stated the following:

[Student] will not be participating with nondisabled peers in general education class, and in nonacademic and extracurricular activities when he is receiving specially designed instruction in the areas of math, written expression, and social, emotional areas in the special education classroom. No adaptations for participation in physical education are required.
3. According to the Student's January 2017 and 2018 IEPs, the IEP contained a check box for general physical education and the box was checked "yes."
4. The Student's 2017-2018 school schedule was as follows:
 - Strategies for Success
 - Science
 - Art
 - Language Arts
 - Math
 - Reading and Writing
5. On April 4, 2018, the Parent emailed the Student's special education teacher and stated, "I looked at [Student's] class request prior to submitting and asked my husband to modify Physical Education, that they modify to 'aerobic walking' or something comparable. Apparently he submitted with no modification. The high school psychologist mentioned aerobic walking would be a possibility that could work for [Student]."
6. On April 5, 2018, the Parent emailed the Student's special education teacher and asked about the Student taking a physical education (PE) class next school year. The Parent reported that the Student previously had some difficulty with prior physical education teachers. The email stated, "...Starting PE with a relatively low stress environment would probably be helpful or all involved." The teacher emailed a District staff person asking what could be done to address the Student's schedule so he could participate in the "proper PE class."
7. On May 23, 2018, the Parent emailed the Student's special education teacher and inquired about the middle school history class not being provided in eighth grade and stated, "They simply cut PE, etc..."
8. On May 24, 2018, the Student's special education teacher replied:

To address [Student's] emotional, behavioral, and academic needs upon transitioning to [middle school], he was placed into special education setting for 48% of his school day. His needs are currently being met in specialized Reading/Writing, Math, and Social Support

classes without his typically developing peers. In order to receive both Reading/Writing and Social Support classes he had to miss out on his 8th grade Social Studies class...

Issue 3 Conclusion: Least Restrictive Environment – The complaint stated, “My child was pulled from Physical Education without accommodation (2015 to currently) and is missing an 8th grade required history course (2017-2018) due to poor evaluation data and screening.”

A district is required to provide the student with special education and related services in the least restrictive environment along a continuum of placements. Regarding physical education, a district must make physical education services available to every student receiving FAPE, unless the district does not provide students physical education services to students without disabilities. A district must provide physical education to students with disabilities whose IEPs include physical education as part of their special education and related services regardless whether the district provides physical education to nondisabled students. Physical education services must be implemented in the least restrictive environment.

History Class – Here, the Student was receiving his specially designed instruction (in math, social/behavior, and writing) in a special education classroom during the 2017-2018 school year. The Student’s remaining classes were in the general education classroom. The District stated the Student’s class schedule did not allow for the Student to take the history course because of time allotted to provide the specially designed instruction. While the Parent may have preferred for the Student to take different general education classes, the class schedule does not fall within the authority of OSPI and its regulation of special education, provided that general education classes do not conflict with the implementation of the Student’s services in the least restrictive environment. In this case, the District was providing the three special education classes as required by the Student’s IEP. There was no dispute regarding the Student’s special education placement, only what classes were scheduled. No violation is found.

Physical Education Class – Here, the Parent requested that the Student take a physical education class during the 2018-2019 school year. The District agreed to look into providing the Student a “proper PE” class, but there was no indication that the District followed up with the Parent about the physical education class. Although the Parent was requesting a physical education class, the request was based on the Student possibly needing physical education as part of his special education program. Like any other special education or related service the Parent may request, the District was required to consider the Parent’s request for physical education services by initially determining if there was sufficient current data to determine the Student’s needs in the area of physical education. Insufficient data about the need for physical education services would warrant a reevaluation in the area. If there was sufficient data, the IEP team should have addressed the Parent’s request and determined if the Student needed physical education services in order to receive FAPE and provided the Parent prior written notice regarding its decision.

A violation is found based on the District not following up with the Parent’s request for physical education services and determining whether the Student needed physical education services to receive FAPE.

ISSUE 4: PRIOR WRITTEN NOTICE FOR THE 2018-2019 SCHOOL YEAR

2017-2018 School Year

1. On January 4, 2018, the District held an annual review of the Student's IEP. The IEP provided the Student with 280 minutes per week of specially designed instruction for each area of the areas of math, social behavior, and writing.
2. On the same day, the District provided the Parent prior written notice of the District's proposal to accept the previous district's February 2016 evaluation and January 2017 IEP.
3. On June 7, 2018, the Parent emailed the Student's special education teacher and stated, "I just wanted to assure that we would be receiving 'prior written notice' regarding changes to [the Student's] individualized education plan for 2018-2019. I am thankful that [District] continues to support appropriate parental involvement in your students' public education experience."
4. On June 19, 2018, the Parent emailed the director, requesting a list of records, including the "Plan for special education minute and service modifications 2018-2019 (compliant with prior written notice and parental involvement)."
5. From June 19 to August 22, 2018, the director and Parent exchanged numerous emails about the Parent's request for records. The District recommended to the Parent that they hold an IEP meeting to address the Parent's concerns.
6. On August 22, 2018, the director emailed the Parent, inviting her to an IEP meeting for the Student on August 27, 2018. The Parent replied that the proposed meeting date was not acceptable. The email stated, "I take issue with direction of meeting time. We have been previously assigned times to meet by prior District that were not receptive to our family needs as a family with working parents. These meeting were not constructive, we will not engage with tone and direction that promotes school based retaliation again."
7. On August 23, 2018, the director replied to the Parent, stating, "please coordinate directly with [assistant special education director] in scheduling a mutually agreeable date and time for the team meeting."
8. On August 27, 2018, the assistant director emailed the Parent, stating that the District was willing to meet at a mutually convenient time to answer the Parent's questions and have the Parent provide input in the Student's IEP at [high school].

2018-2019 School Year

9. During the 2018-2019 school year to date, the Student attended a District high school and continued to receive special education services per his January 2018 IEP.

10. According to the documentation, the District made no revision or amendment to the Student's IEP during the 2018-2019 school year, at least up to October 10, 2018, the date of the complaint.

Issue 4 Conclusion: Prior Written Notice – The complaint stated, "No parental signatures asked for, or prior written notice provided, regarding proposed changes to 2018-2019 IEP and exit/change in services.

A district is required to provide the parent with written notice before the district proposes to initiate or refuses to initiate a change in the identification, evaluation, or educational placement of the student or the provision of FAPE. Also, a parent signature is not required for the IEP. A signature on the IEP can be used to document attendance but it does not represent agreement.

Here, the documentation showed that the District provided the Parent prior written notice at the January 2018 IEP meeting. Also, there was no evidence that any of the Student's services were dropped or changed during the 2018-2019 school year. In addition, there was no documentation that the District held an IEP meeting to propose any changes to the Student's IEP or refused any changes to the Student's IEP. Because the District made no proposals or refusals to the Student's IEP or engaged in any other actions that would require a prior written notice, the District was not required to provide the Parent with additional written notice. No violation is found.

ISSUE 5: REQUEST TO AMEND THE RECORDS

2016-2017 School Year

1. Prior to the 2017-2018 school year, the Student attended school in a different Washington school district. On February 17, 2016, the previous school district conducted a reevaluation along with a functional behavioral assessment (FBA). On January 13, 2017, the previous district conducted an annual review of the IEP and developed a behavioral intervention plan (BIP).

2017-2018 School Year

2. On September 5, 2017, the District and the Parent held a transfer review IEP meeting where the District accepted the February 2016 evaluation and the January 2017 IEP from the previous school district.

3. On October 15, 2017, the Parent emailed the Student's special education teacher and stated, among other things:

We have just received the Harassment, Intimidation, and Bullying Investigation report from [Student's] prior school. It contains very overt and provable false information from his last district's school psychologist and several other integral staff members. We have contacted the investigator associated with the report, and are filing a citizen's complaint with the Office of the Superintendent of Public Instruction regarding his prior district and false statements to investigators and lack of reporting Spring/Summer 2017.

Currently our concern is inaccurate data on [the Student's] last FBA/BIP from [previous district]. It includes the misrepresentation of a General Education teacher as a Special Education teacher, and has additional notable omissions and flaws. Given our knowledge of the [previous district] false statements made in other sources, we are concerned regarding the validity of some information in his file.

4. On November 14, 2017, the Parent emailed the special education teacher and stated:
...I am currently speaking with multiple agencies regarding [previous district's] misrepresentation of special education services, teacher qualification and omissions to official record. I know the approximate date that [previous district] provided your district with flawed data. Would you mind providing me with any additional transfer information provided by [previous district] such as phone calls times and dates and information regarding services given to [Student]? This information will be a matter of record.

On the same day, the special education teacher replied and stated that he did not have some of the information the Parent requested.

5. On February 1, 2018, the Parent emailed the special education teacher about the issue regarding the previous school district. The Parent requested the teacher write a statement about the "gaps" in the Student's education in the prior district. The teacher replied back and stated that he was unable to comply with her request.
6. On February 15, 2018, the Parent emailed the special education teacher and stated, "I just need to check in quickly and assure no record of disciplinary action was sent from [previous district]. The only documentation on file should be my submitted documentation verifying cleared record. Is this correct." The teacher replied that he had not seen any record of disciplinary action regarding the Student.
7. On April 25, 2018, the Parent emailed the special education teacher and stated:
Prior to the end of the year I would like assurance that my personal email correspondence is not part of [Student's] official school file. If needed will provide a synopsis of email information in letter form. I provided the school with a letter attachment at the start of the year, a short explanation of events and the [Office of Administrative Hearings] OAH mediation settlement form. I understand the importance of inclusion of this information in file. I also understand that my correspondence will be retained as part of general record.

On the same day, the teacher replied that the Parent's emails would not be sent to the new IEP team at the high school next year.

8. On May 5, 2018, the Parent emailed the teacher the following documentation:
 - "Letter with basic items described in 2017-2018 emails to [District]."
 - "(First) letter from counselor to OAH supporting [Student's] statements (letter from additional providers exist, however this offers most in the way of explanations."
 - "Letter to [District] prior to [middle school] entry."
 - "Math test (minus teacher comments) demonstrating prior lack of basic Math education provision (in addition to initial social or writing [previous school district]-identified service

needs. [Student] would attempt every question but was not able to hear lessons regularly. He was too embarrassed to tell us. We had to read most issues via email."

- "Letter to [previous district] school board as basic explanation of events. This was written prior to most intense incidents, and before full knowledge of false statements/representation of services and roles. This letter does not detail full retaliation towards family..."

9. On May 23, 2018, the Parent emailed the teacher and stated, among other things, that the District was "not provided wholly accurate information from (previous) district based on evidence."

10. On June 19, 2018, the Parent emailed the director and requested the following records:

- "All communications from [school psychologist] regarding [Student] including notes and interoffice email."
- "Any email, telephone record and file communication from [previous school district] presented to your District."
- "Copy of my son's (parent signed) IEP September 2017."
- "Current breakdown of minute and service documentation (if not included in September 2017 IEP)."
- "Plan for special education minute and service modifications 2018-2019 (compliant with prior written notice and parental involvement)."

In addition, the email from the Parent stated, "Misleading and false data is included in my child's educational record from [previous district]. I would like 2016 [previous district] evaluation and BIP/FBA removed from record. Please let me know if additional proof or documentation is required related to this imperative request..."

11. On the same day, the director acknowledged the Parent's records request and responded to the Parent's request for removal of certain records as follows:

Your final paragraph in the email below seeks the removal of certain records created by [previous district]. We do have the authority to remove a child's records from his or her compliance file. If a parent believes that a record is inaccurate, misleading, or violates the privacy or other rights of a student, a parent may request to amend the disputed record. This process is further spelled in WAC 392-172A-05215, available here <http://app.leg.wa.gov/wac/default.asp?cite=392-172A-05215>. Although the District currently maintains copies of the disputed records, it is unclear whether we would be able to meaningfully respond to any request to amend those records as we were not involved in the creation of the records. It may be most efficient to contact [previous district] regarding a request for their staff to consider amending the disputed records in response to your specific concerns.

12. On August 15, 2018, the Parent emailed the director and stated the following:

We will need 2016 BIP and associated re-evaluation corrections/removal addressed promptly and with consideration for OSPI/OAH filing deadlines. This paperwork contains false and misleading information. Please let us know if additional information is required. Office of Administrative Hearings paperwork was submitted prior to our child's school year. Additional unanswered questions/concerns will be submitted in line item form.

13. On August 21, 2018, the director emailed the Parent back and stated:

As I previously indicated to you in our email string below from June 2018, there is little [District] can do in reviewing your concerns about false and misleading information in records prepared and created by [previous district] regarding your son. You still have the right, to my understanding, to take up those concerns directly with [previous district], as you indicated were going to do in the June 19th email below...To the extent you have any particular concerns with [District] records for your son and you are requesting an amendment of those records under WAC 392-172A-05215, please provide me with a copy of any [District] record with particular portions of concern highlighted for our review.
14. From August 24 to September 6, 2018, the Parent and District exchanged numerous emails regarding the Parent's request for records and information.
15. On October 10, 2018, the Parent filed this complaint.
16. The District's policy for amending student records stated the following:

The right to request the amendment of student's education records that the parent or eligible student believes is inaccurate or misleading.

Parents or eligible students may ask the District to amend a record that they believe is inaccurate or misleading. They should write the school principal, clearly identify the part of the record they want changed, and specify why it is inaccurate or misleading.

If the District decides not to amend the record as requested by the parent or eligible student, the District will notify the parent or eligible student of the decision and advise them of their right to a hearing regarding the request for amendment. Additional information regarding the hearing procedures will be provided to the parent or eligible student when notified of the right to a hearing.

Issue 5 Conclusion: Amending the Records – The complaint stated that the District failed to amend the Student's records as requested by the Parent.

A parent who believes that information in a student's educational records maintained by a district is inaccurate or misleading may request the district amend the information. The district will determine whether to amend the information as requested. If the district refuses to amend the information, it must inform the parent of the right to a hearing conducted by the school district and in accordance with district procedures.

Here, the Parent requested that the District amend the Student's records, specifically regarding the evaluation, the FBA and the BIP, which were evaluations conducted and documents created by the Student's previous school district. The District reasonably requested that the Parent provide more detail regarding the specific information the Parent wanted to amend and on what basis. The District provided the Parent with information regarding the Washington State regulation that addresses requesting that student records be amended.

The District also stated that it was not the proper party to amend the records because it did not create the records (the records in question were created by the Student's previous school district). It is logical that a district would be hesitant to change records it did not originally create, and it

may be in fact more practical for the Parent to address this concern with the Student's previous district. However, the regulation does not limit amending records to only those documents created by a student's current district – the regulation states that parents may request that student records be amended if inaccurate, or misleading. The regulation also pertains to districts who maintain the records, such as the District in this case. Rather than just defer to the previous district, the District should have acknowledged to the Parent its responsibility to address the Parent's request. The District did this, in part, by requesting more information from the Parent. If the Parent continues to seek amendments to the records, the Parent should follow the District's policy. In other words, the Parent needs to provide the District with the specific written information she wishes to amend and the basis for the request. While the District's policy for amending student records is consistent with the IDEA's requirements, referring the Parent to the previous school district to address records, even for records that the District did not create, it is not consistent with the requirements. A violation is found based on the District referring the Parent to the previous district to amend the Student's records.

CORRECTIVE ACTIONS

By or before **December 15, 2018, January 4, 2019, January 11, 2019, January 18, 2019, February 15, 2019, and April 12, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. IEP Meeting

Physical Education – By **December 21, 2018**, the District and the Parent will hold an IEP meeting to discuss the Student's need for physical education services by first determining whether there is sufficient current data to address the Student's needs. If there is sufficient data, the District and the Parent will proceed with an IEP to determine what, if any, physical education services the Student requires to receive FAPE. If there is not sufficient data, the District will conduct a reevaluation in the area of physical education by **January 25, 2019** and then, by **February 8, 2019**, the IEP team will make the determination regarding services. By **February 15, 2019**, the District will provide OSPI with a copy of the evaluation, if conducted, the IEP, prior written notices, and meeting notes, if taken.

Compensatory Services – By **December 21, 2018**, the District and the Parent will develop a schedule to implement ten hours of compensatory services for specially designed instruction in the area of writing. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may be accessed over District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The District will provide OSPI with the schedule by **January 11, 2019**. The services must be completed no later than **March 30, 2019**. The District will provide OSPI with documentation that the services were completed by or before **April 12, 2019**.

2. Parent Notice

By **December 21, 2018**, the District will provide the Parent with the District's policy for amending student records along with an explanation that the Parent is not required to make the request to the previous district. The District will inform the Parent of its responsibility to address the Parent's request to amend the records in accordance with its policy once the Parent submits her proposed amendments and the basis for amending the records.

- By **January 4, 2019**, the District will provide OSPI with documentation that the Parent was notified of the District's policy and its obligation to review the Parent's request.

DISTRICT SPECIFIC:

1. Written Guidance

By **January 11, 2019**, the District will provide all District special education administrators and the Student's IEP team at the middle school with written guidance regarding a parent's request to amend student records and the requirement that an IEP be implemented as written, as well as notifying the parent if the IEP is not being implemented and convening the IEP team to address any potential negative effect. The guidance will also address that specially designed instruction can be provided by a certified special education teacher, a general education teacher, or a paraeducator, but if the IEP designates a special education teacher, the instruction must be provided by a special education teacher. If a general education teacher or paraeducator is providing the specially designed instruction, the instruction must be designed, supervised, and progress monitored by a certified special education teacher.

- By **December 15, 2018**, the District will submit to OSPI a draft of the written guidance. OSPI will approve the materials or provide comments by December 22, 2018 and additional dates for review, if needed.
- By **January 18, 2019**, the District will provide documentation that the written guidance was provided to District special education administrators and the Student's IEP team.

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

Dated this ____ day of December, 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.)