

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-30**

### **PROCEDURAL HISTORY**

On May 1, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Shoreline 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 May 2, 2017, 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 10, 2017, OSPI received additional information from the Parent, raising an additional allegation that the District violated the IDEA in its education of the Student.

On May 11, 2017, OSPI forwarded a copy of the Parent's additional information to the District Superintendent and notified the District that an additional issue had been added to SECC 17-30.

Also on May 11, 2017, OSPI granted the District an extension of time to submit its response to this complaint.

On May 26, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on May 30, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 19, 2017, OSPI received the Parent's reply and forwarded that reply to the District on June 20, 2017.

Also on June 19, 2017, OSPI requested clarifying information from the District and spoke to the District director of secondary student services.

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

### **OVERVIEW**

At the beginning of the 2016-2017 school year, the adult Student attended a District high school and was eligible to receive special education services under the category of other health impairment. In January 2017, the Student stopped attending school due to heightened anxiety and other medical issues. The Parent then requested that the Student receive home/hospital instruction. Also in January, the Parent signed consent for the District to conduct a reevaluation of the Student. In March 2017, the District agreed to provide the home/hospital services, then later determined the amount of services the Student would receive and began providing the services. Also in March, the District held a meeting to review the results of the Student's reevaluation, but the evaluation group

was not able to review the entire evaluation report at the meeting, and the District agreed to schedule another meeting. After some difficulty finding a mutually agreed upon time to hold the second meeting, the meeting was eventually held on May 2, 2017. The Parent alleged that the District failed to follow procedures for conducting the Student's reevaluation during the 2016-2017 school year, and failed to follow procedures for determining the services the Student would receive in her temporary home/hospital setting. The District denied that it failed to follow reevaluation procedures, but admitted that it failed to follow procedures for determining the Student's services in the home/hospital setting. The District proposed corrective action to address the violation.

### **ISSUES**

1. Did the District follow procedures for conducting the Student's reevaluation during the 2016-2017 school year?
2. Did the District follow procedures for determining the services the Student would receive in her temporary home/hospital setting?

### **LEGAL STANDARDS**

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 services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related

services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

Parent Participation in Meetings: The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. Each school district must provide notice consistent with WAC 392-172A-03100 (1) and (3) to ensure that parents of students eligible for special education have the opportunity to participate in meetings described in (a) of this subsection. A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. WAC 392-172A-05000.

Home/hospital instruction: Home or hospital instruction shall be provided to students eligible for special education and other students who are unable to attend school for an estimated period of four weeks or more because of disability or illness. As a condition to such services, the parent of a student shall request the services and provide a written statement to the school district from a qualified medical practitioner that states the student will not be able to attend school for an estimated period of at least four weeks. A student who is not determined eligible for special education, but who qualifies pursuant to this subsection shall be deemed "disabled" only for the purpose of home/hospital instructional services and funding and may not otherwise qualify as a student eligible for special education for the purposes of generating state or federal special education funds. A school district shall not pay for the cost of the statement from a qualified medical practitioner for the purposes of qualifying a student for home/hospital instructional services pursuant to this section. Home/hospital instructional services funded in accordance with the provisions of this section shall not be used for the initial or ongoing delivery of services to students eligible for special education. It shall be limited to services necessary to provide temporary intervention as a result of a physical disability or illness. WAC 392-172A-02100. When a child with a disability is classified as needing homebound instruction because of a medical problem, as ordered by a physician, and is home for an extended period of time (generally more than 10 consecutive school days), an IEP meeting is necessary to change the child's placement and the contents of the child's IEP, if warranted. Further, if the IEP goals will remain the same and only the time in special education will change, then the IEP Team may add an amendment to the IEP stating specifically the amount of time to be spent in special education. If a child does not receive services after an extended period of time, a subsequent individualized determination is required to decide whether a child with a disability requires compensatory education to make up for any skills that may have been lost because the child did not receive educational benefit. *Questions and Answers on Providing Services to Children with Disabilities During an H1N1 Outbreak* (OSERS 2009) (Question A-1). There is no requirement that homebound instruction be for a full school day, or that a student receive

the same number of special education minutes the student received while attending school. *In the Matter of Renton School District*, OSPI Cause No. 2011-SE-0063X (WA SEA 2011).

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(g).

### **FINDINGS OF FACT**

1. At the beginning of the 2016-2017 school year, the adult Student attended a District high school and was eligible to receive special education services under the category of other health impairment.
2. Prior to the beginning of the 2016-2017 school year, the Parent informed the District that the Student was currently in pain due to a medical condition, and was scheduled to receive arm surgery on September 12, 2016. As a result of the pain and the upcoming surgery, the Parent requested that the Student receive 1:1 aide support for assistance in toileting, eating, taking notes, typing, and carrying her backpack. In response, the District arranged for the Student to have 1:1 aide support beginning the first day of school.
3. The District's 2016-2017 school year began on September 7, 2016.
4. The Student's individualized education program (IEP) in place at the beginning of the school year was developed in October 2015. The October 2015 IEP included annual goals in the areas of reading, writing, math, speech, gross motor, and self-advocacy, and provided for specially designed instruction to address the goals.
5. On September 29, 2016, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. The IEP team then held another meeting on October 14, 2016. At the October 14 meeting, the District agreed to conduct a functional behavior assessment (FBA) of the Student and also agreed that the Student would continue to receive 1:1 aide support under the Americans with Disabilities Act (ADA) while she recovered from surgery.
6. The Student's October 2016 IEP included annual goals in the areas of reading, writing, math, communication, gross motor, and self-advocacy. The IEP provided for the following specially designed instruction in a special education setting:
  - Communication – 20 minutes 2 times weekly
  - Reading – 50 minutes 5 times weekly
  - Math – 50 minutes 5 times weekly
  - Self-Advocacy – 50 minutes 5 times weekly

- Self-Advocacy – 25 minutes 1 time weekly
- Writing – 42 minutes 5 times weekly
- Gross Motor – 20 minutes 2 times weekly

The IEP also provided for the following supplementary aids and services:

- 1:1 Adult support – 390 minutes per day (general education setting)<sup>1</sup>
- 1:1 Mobility Aide – 60 minutes 2 times daily (special education)

7. On October 27, 2016, the Student's IEP team, including the Parent, held a three-hour meeting to discuss the Parent's concerns. According to meeting notes, the Parent expressed confusion about the Student's 1:1 paraeducator being provided under the ADA, and the relationship between the ADA and a Section 504 plan. Additionally, the IEP team discussed whether to conduct a full reevaluation of the Student before the triannual due date in October 2017. After the IEP meeting, the Student's special education case manager (case manager) emailed the school psychologist, stating that the IEP team had determined an FBA was necessary, based on the Parent's reports that the Student showed a significant decline in her social/emotional behaviors at home. Also on October 27, 2016, the District added the provision of a bus aide for the Student.
8. On November 2, 2016, the District received the Parent's consent to conduct an FBA.
9. On November 15, 2016, the Parent emailed the District student services director (District director) and the District secondary student services director (District secondary director), reviewing her concerns. The Parent stated she had requested, but not received, the data used to determine the Student's present levels of performance. The Parent also stated that given what appeared to be a lack of data, "I think it may be best to do the full re-evaluation process now rather than wait some indefinite space of time." However, the Parent also asked if there was another way to gather data without a full reevaluation.
10. On November 16, 2016, the District secondary director emailed the Parent, stating the Student's case manager had sent the Parent a draft of the Student's amended IEP to address the Parent's concerns. The District secondary director also stated that he had verbally authorized the Student's 1:1 ADA paraeducator on September 1, 2016, approved the ongoing provision of the 1:1 ADA paraeducator on September 20, 2016, and had attached a spreadsheet documenting the ADA process. The secondary director further stated the Student's October 2015 IEP did not include a provision for 1:1 paraeducator support, but the draft of the Student's amended October 2016 IEP, which was emailed to the Parent that day, did include 1:1 paraeducator support on the IEP service matrix. The secondary director also asked the Parent to review the information, and let him know whether she wanted to request a reevaluation of the Student at this time.

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<sup>1</sup> Based on the Student's first semester class schedule, the Student spent the majority of her school day in a special education setting and not in a general education setting as noted in her IEP and reflected in the provision of aide support.

11. On November 29, 2016, the Student's IEP team, including the Parent, met to review and amend the Student's October 2016 IEP. The Student's amended IEP included updated considerations of the Parent's concerns, including:

- The Student had developed balance issues, creating a greater risk of injury.
- The Student had multiple issues with chewing and swallowing, increasing the Student's pain while chewing, and creating a greater risk of choking.
- The Student was having more pain from osteoarthritis in her wrists.
- The Student felt bullied at school.
- The Student was having more behavioral issues (at home).
- The Student was not coping well with attending school.
- The Student's performance in mathematics and English showed regression.
- The Student was not meeting her annual goals, despite progress reporting stating the Student was making sufficient progress.
- Progress reporting not including data.
- The Student was refusing to go to school, and "falling apart" immediately after school.

The amended IEP also included additional input from the Parent regarding various team considerations, including considerations for state or district-wide testing, communication needs, assistive technology needs, and behavioral needs. Under team considerations for communication needs, the amendment stated the Parent had reported that the Student had been diagnosed with central auditory processing disorder, had moderate hearing loss in her left ear, and had a nonverbal learning disorder. Under team considerations for assistive technology needs, the amendment included that the Parent reported the Student needed the support of voice memo, and needed her medical issues monitored effectively. Under the team considerations for behavior, the amendment stated the Parent reported the Student's behavior/inability to cope, or self-advocate was impeding her learning, specifically, the Student was refusing to go to school, and falling apart immediately after the school day ended. The amended IEP also included some additional accommodation/modifications, such as including a scribe per essay for classroom based finals, or state assessments.

12. On December 8, 2016, the Parent emailed the Student's case manager to request a full reevaluation of the Student. The case manager replied, copying the school psychologist, and stating the school psychologist had sent the Parent the paperwork. The school psychologist then emailed the Parent and the case manager, clarifying she had not sent the Parent reevaluation paperwork, as the Parent's email was a sufficient request for an early reevaluation. The school psychologist stated that based on the Parent's written request, the school had 25 school days to consider whether to reevaluate the Student, but the evaluation group could consider it when they met on January 4, 2017 to discuss the results of the Student's FBA. The Parent then replied, stating she did not know the District had 25 school days to consider her reevaluation request, and asking whether her "first email request" began the process. The school psychologist responded, stating the 25 school days began with the Parent's first email request, which was December 7, 2016, and ended on January 26, 2017. The Parent replied, stating she had "talked about" a potential reevaluation of the Student at the September 29, 2016 IEP team meeting, and she would scrutinize her emails with school staff. Regarding the FBA results meeting, the Parent stated she would not

agree to extend the timeline, and suggested they meet in December 2016, if necessary to meet the procedural deadline.

13. The District was on break December 21, 2016 through January 3, 2017.
14. On January 4, 2017, the Student's IEP team, including the Parent and the Student, met to discuss the results of the Student's FBA. The meeting agenda included reviewing behavioral data, a discussion of behaviors of concern, and discussion of the Parent's request for the Student's early reevaluation. Later that day, the school psychologist emailed several staff members to recap what occurred at the meeting. The school psychologist stated that although they discussed the Parent's early reevaluation request, there was still discussion pending, due to the time constraints on the meeting.
15. On January 5, 2017, the Parent emailed the school nurse and the high school assistant principal, attaching the plan developed by the Student's private therapist on December 19, 2016 to help in the circumstance that the Student had thoughts of self-harm. The school nurse responded, stating she had made a copy of the Student's safety plan for the pertinent staff, including the school counselor.
16. On January 9, 2017, the school psychologist emailed the Student's providers, asking for their input regarding the Student's "shutting down" or showing disengaged behaviors. The Student's special education English teacher responded, stating she rarely saw the Student disengaged, and could not readily identify times when the Student was not engaged. Another of the Student's special education teachers also responded, stating the likelihood of the Student shutting down or showing disengaged behavior in her class was slim, specifying it was a "2" on a scale of 1-6 with 6 being high.
17. On January 10, 2017, the Student telephoned the Parent from the school nurse's office, sobbing, and reporting there were no "safe" people. According to the Parent, when the Student came home that day, she was again suicidal, and attempted to find a knife. The Parent did not return the Student to school.
18. On January 17, 2017, the school nurse emailed the Parent, stating that home instruction was a program for students unable to attend school for at least four weeks. The school nurse stated that in that program, a teacher came to the home about two days a week and acted as the liaison between the school and home. The school nurse also stated that a physician needed to write an order for home instruction. In response, the Parent stated that she thought the home instruction included a stronger component of actual teaching. The school nurse replied, stating the teacher did spend time with students in the home. The school nurse then clarified that students do not have to miss four weeks of school before the program could begin, and a home instruction program for the Student could begin as soon as her physician wrote a note, stating the Student could not attend school for four weeks.

19. Also on January 17, 2017, the high school assistant principal emailed the District special education coordinator, stating the Student had been absent the previous week, and the Parent had stated the Student was refusing to attend school and was suggesting the Student might need home/hospital instruction. The assistant principal also stated the Student had another upcoming surgery, and that she had tried twice to telephone the Parent, but they never connected. The assistant principal further stated the school nurse had connected with the Parent, and explained that to arrange home/hospital service, the District needed a doctor's note stating the Student would be out of school for four weeks. The District special education coordinator responded, stating she was glad the Parent connected with the school nurse who knew the home/hospital procedure.
20. On January 19, 2017, the assistant principal emailed the District special education coordinator and the District secondary director, stating the Student had not attended school since January 6, 2017 and although the Parent had previously stated the Student would have surgery on January 13, 2017, the Parent now stated the surgery was scheduled for March 3, 2017. The assistant principal stated she had tried to telephone the Parent three times that day, but had no response.
21. On January 20, 2017, the Parent emailed the school psychologist and copied several other staff members. The Parent expressed concern about the Student's FBA, and stated that without the services and supports the Student needed, the Parent had no choice but to keep the Student home, despite that "home bound" was not the least restrictive environment (LRE) for the Student. The school psychologist responded, providing information about the FBA process, the status of the Student's FBA, and other information. The school psychologist then listed seven questions for the Parent regarding completing the Student's FBA. The school psychologist also stated she had attached the following documents to the email: a prior written notice, proposing to reevaluate the Student; a request for release of medical information, so she could communicate with the Student's medical professionals; and a consent for evaluation, which included space for the Parent to provide feedback on the areas for evaluation.
22. The District's January 20, 2017 prior written notice proposed to initiate a reevaluation of the Student based on the Parent's request. The District also provided a consent form which stated that the reevaluation would include a review of existing data and assessments in the following areas: age appropriate transition, classroom data, communication, fine motor, general education, study skills/organization, academics, behavior, cognitive, daily living/adaptive, functional communication, gross motor, medical-physical, social/emotional, and vocational.
23. On January 25, 2017, the Parent emailed the school psychologist, stating she would not provide a release of information for access to information from the Student's medical providers, and asked to know what specific medical documentation the District wanted. The Parent also asked if the District could provide her with information about the assessments that would be completed as part of the Student's reevaluation. The Parent stated she was requesting assessments in all areas, and was adding the areas of fine motor, study skills/organization, functional communication, and



orientation and mobility to her consent form. The Parent further stated she wanted the District to assess the Student for “educational autism”, and wanted a schedule for when the District would conduct each assessment so she could prepare the Student for the disruption.

24. On January 25, 2017, the Parent signed consent for a reevaluation. On the consent form, the Parent indicated that she also wanted the reevaluation to address social communication, orientation and mobility, fine motor, autism-executive functioning, and the Student’s anxiety.

25. On January 30, 2017, the school psychologist emailed the Parent regarding the Student’s reevaluation. The school psychologist stated she had spoken with the school occupational therapist (OT) and the physical therapist (PT), who had concerns about assessing the Student’s fine and gross motor skills when the Student had orthopedic restrictions. The school psychologist asked if the Student’s doctors had lifted those restrictions, and if the Student had full movement/control. The school psychologist stated that if those restrictions were still in place, the District would wait to assess the Student in those areas until the restrictions were lifted. The school psychologist also stated the District agreed to include a functional communication assessment of the Student, but was rejecting the Parent’s request to include an orientation & mobility assessment, providing language from the IDEA describing that assessment as pertaining to blind or visually impaired students. The school psychologist said that study skills/organization related to initiating, completing, and following through with work, and asked to understand the Parent’s concerns in this area, given that the Student’s teachers had not noted such concerns. Additionally, the school psychologist stated that an educational diagnosis of autism was a potential disability category, just as other health impaired was the Student’s current eligibility category, and when an evaluation group discussed multiple categories, they choose the category that most accurately described a student. The school psychologist further stated she could not make an educational diagnosis of autism. The school psychologist stated she had attached a list of tests that the District would use, except that any assessment for fine and gross motor skills was still to be determined, and a document listing what the District would request from the Student’s medical providers/specialists. The school psychologist also stated that once they finalized the areas to assess, the District would resend the consent form, but would retain the January 25, 2017 date to retain the timeframe for conducting the evaluation. The school psychologist further stated she would contact the Parent soon with potential meeting dates to review the reevaluation results, which needed to be completed by March 24, 2017.<sup>2</sup>

26. The District’s second semester began on January 31, 2017.

27. The Student’s projected schedule for the second semester was as follows:

- Period 1: English Skills (special education setting)
- Period 2: Study Skills (special education setting)

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<sup>2</sup> Based on the District’s 2016-2017 calendar, 35 school days after January 25, 2017 is March 27, 2017.

- Period 3: Math Skills (special education setting)
- Period 4: Senior Civics (general education setting)
- Period 5: Independent Living (special education setting)
- Period 6: Math Skills (special education setting)

28. On February 3, 2017, the school psychologist emailed the Parent, attaching a prior written notice, an updated consent to evaluate form, and an updated list of evaluation tools. The school psychologist stated the Student's evaluation would include assessments for fine motor skills and study/organizational skills, as requested by the Parent, but would not include an orientation & mobility assessment or pursue an educational diagnosis of autism. The school psychologist also stated that at the re-entry meeting the day before, she gave the Parent another copy of the Student's draft FBA and asked for the Parent's feedback. The school psychologist stated she was looking forward to receiving the Parent's feedback within the next week or so.
29. The District's updated prior written notice retained the January 25, 2017 date. The notice stated the District had agreed to conduct an early reevaluation of the Student in the areas of review of existing data, age appropriate transition, classroom data, communication, fine motor, general education, study skills/organization, academic, behavior, cognitive, daily living/adaptive, functional communication, gross motor, medical-physical, social/emotional, and vocation skills. The notice also stated the District had agreed to include the areas of fine motor, general education, study skills/organization, and functional communication. However, the District had considered and rejected the Parent's request for evaluating the Student in the areas of orientation & mobility and "educational autism" because the Student was not visually impaired and the District did not evaluate for "educational autism". The notice further stated the school psychologist had provided the Parent with a list of its evaluation instruments and would schedule testing sessions with the Parent. Additionally, the notice stated the Student's reevaluation was due by March 24, 2017.
30. On February 7, 2017, the school psychologist emailed the Parent, stating she would like to schedule the Student's reevaluation results meeting, and asking if March 22, 2017 was acceptable. The Parent responded, stating she was concerned that the Student did not have an IEP in place that met her needs. The Parent stated that the Student's IEP team needed to meet to discuss "homebound services" for the Student and that her email was a formal request for another IEP team meeting. The school psychologist replied the next day, stating she would let the Student's IEP team know that the Parent wanted another IEP team meeting for the Student prior to the evaluation results meeting.
31. On February 8, 2017, the District received a home/hospital request for the Student, signed by the Student's psychiatric nurse practitioner. The form stated the Student had a severe anxiety disorder, additional pain issues, and certified the Student would be unable to attend public school for "4+ weeks."
32. On February 9, 2017, the school nurse emailed the Parent, stating that the District student services department was unable to process the Student's home/hospital

paperwork, as it was incomplete. The school nurse stated there was a section that she (the school nurse) needed to complete, but needed information from the Student's medical providers to do so. The school nurse offered to contact the Student's medical providers personally, if the Parent signed a medical release. Alternatively, the school nurse stated the Parent could obtain a note from the Student's medical provider recommending the amount of time per day for the Student's schoolwork, including instruction. The Parent responded, stating she would obtain and provide the needed document.

33. On February 10, 2017, the high school assistant principal emailed the Parent, stating that on February 2, 2017, they had met and discussed a reentry plan for the Student. The assistant principal then outlined the proposed reentry plan, which included a meeting with the Student's teachers, and noted that the Student's safety plan was complete except for the identification of the Student's "safe" person at the high school. The assistant school principal also stated she had previously arranged the meeting with the Student's teachers for February 3, 2017, but the Parent emailed, stating that a meeting would not be possible. The assistant school principal stated she realized the Parent had requested home/hospital services, and in a telephone call, stated the Student was not ready to return to school full time, but the meeting with the Student's teachers could occur as soon as the Parent wished, and the Student's 1:1 paraprofessional was still available to serve the Student.
34. Also on February 10, 2017, the Student's case manager emailed the Parent, asking to know the specific section of the Student's IEP the Parent was requesting to review, and what supports and services the Parent was requesting for the Student. The Parent responded, stating she had understood that the Student's IEP team needed to amend the Student's IEP to provide the Student with appropriate supports and services. The Parent further stated that the Student's IEP was also inaccurate because the Student was "on homebound" and that should be reflected in the Student's IEP.<sup>3</sup> The Parent also emailed the assistant principal, stating she had expected further communication from the District about the plan for the Student's reentry into school, which had been discussed on February 2. The Parent also stated that after the February 2, 2017 meeting, the school psychologist had implied that if the Student did not attend school full time, the District would not be responsible for the Student's IEP goals or for any regression, and advised the Parent to follow through with "homebound services." The Parent stated that the Student's IEP needed to be amended before the Student returned to school.
35. On February 12, 2017, the Parent emailed the school psychologist, stating she did not agree with the results of the FBA "reported to [her] as a draft." The Parent then requested an independent educational evaluation (IEE) at public expense for an FBA by a board certified behavior analyst (BCBA).

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<sup>3</sup> The District had not placed the Student on home/hospital services at this time. Rather, this appears to reflect the Parent's position that the Student needed home/hospital instruction.

36. On February 13, 2017, the school psychologist emailed the Parent, stating she would inform the District secondary director of the Parent's IEE request. In a separate email to the Parent, the school psychologist stated she had not advised the Parent to follow through with "homebound" services, but had handed the Parent a draft of the Student's FBA, and discussed how the information can be difficult to gather when the Student was not at school. The school psychologist stated the FBA hypothesis was a hypothesis, and she did not say anything about regression, IEP, or "homebound" services.
37. Also on February 13, 2017, the Student's case manager emailed the Parent, asking to schedule an IEP meeting to review the Student's IEP and discuss the Student's needs and supports. The case manager offered March 1 or 3, 2017, at 7:15 a.m. The Parent responded, stating the Student was having surgery March 3, 2017 and she had a conflict on March 1, 2017 at 7:15 a.m. On February 14, 2017, the case manager again emailed the Parent, offering to meet on March 1, 2017 at 2:45 p.m. The Parent declined, stating the Student had appointments, and did not suggest another date. The next day, the case manager emailed the Parent, asking for dates when the Parent could attend an IEP meeting.
38. On February 14, 2017, the Parent emailed the school nurse an updated letter from the Student's psychiatric nurse practitioner.<sup>4</sup> The letter stated the Student was medically fragile due to several diagnosis and was scheduled for surgery later that month, and suffering from juvenile arthritis. The Student's psychiatric nurse practitioner stated the Student had a complicated medical history, listing several diagnoses, and had significant anxiety. The Student's psychiatric nurse practitioner further stated that "home schooling" was a reasonable "short-term support" for the Student's educational needs, and recommended 90 minutes of daily instruction with up to 30 minutes of homework, and other services specified in the Student's IEP, in addition to the academic instruction time. Additionally, the Student's psychiatric nurse practitioner recommended that academic services occur at a community location, such as a library.
39. On February 15, 2017, the school SLP emailed the District secondary director, copying the District director, the assistant principal, school PT, and the school psychologist, stating she had completed the Student's communication assessment.<sup>5</sup> The school SLP stated that afterwards, the Parent stated she did not want the Student to receive her "homebound services" at home, or at the high school, but wanted the Student's IEP services provided in a public place, such as a library. The SLP stated she told the Parent that providing services in a public space was not appropriate because of the Health Insurance Portability and Accountability Act (HIPPA) regulations, but the Parent stated the District had told her that HIPPA did not protect speech, fine motor, or gross motor services. The SLP asked if it was okay to provide

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<sup>4</sup> The District's documentation in this complaint includes an undated letter from the Student's psychiatric nurse practitioner. It is assumed that the undated letter is the one the Parent provided to the school nurse on February 14, 2017.

<sup>5</sup> This assessment appears to have occurred in the Student's home.

the Student's services in public places and whether the District considered speech, fine motor, and gross motor therapies protected by HIPPA. The school PT responded, stating her understanding was that the District had yet to receive the paperwork to initiate home services. The District secondary director also responded, stating that the Student's service providers should not be providing home services at that time, because the District had not approved home/hospital for the Student. The secondary director stated that although the assessments for the Student's reevaluation could take place elsewhere, the provision of the Student's services should occur only at the high school. The District secondary director then stated the District had offered to provide a re-engagement plan for the Student, which the Parent had not followed up, and the District's offer of services at the high school was still available. The District secondary director also noted that this was a school refusal case, and providing services in another location would only serve to reinforce that behavior. The District director responded the following day, stating that FERPA not HIPPA governed all school district services, but that materials/information protected under HIPPA were protected under FERPA. The District director also clarified that in some circumstances, the District could provide services in public locations, but the goal here was to help the Student return to a program at her neighborhood school.

40. On February 16, 2017, the District secondary director emailed the Parent, attaching copies of the District's IEE criteria and a list of providers. The District secondary director stated the District's reevaluation of the Student, including the FBA, was not yet complete. The District secondary director stated there had not been a feedback meeting to review all of the data gathered, or a completed final report, and therefore, the Parent did not have the right to an IEE at public expense. However, the District secondary director stated that if the Parent withdrew her IEE request, she would have the right to request an IEE once the District completed the Student's reevaluation. The District secondary director further stated that if the Parent did not withdraw her IEE request, the District would file a due process hearing request, asking an administrative law judge (ALJ) to deny the Parent's request because it was premature. The Parent responded, stating the District had not previously informed her the FBA was not complete, and she assumed the District would notify her when it was completed. The District secondary director replied the next day, stating the District had not completed the Student's FBA and the District would complete the FBA as part of the Student's comprehensive reevaluation, which the Parent had previously requested. The District secondary student services director stated they would hold a feedback meeting to review the results of the entire reevaluation, including the FBA, in March 2017. Additionally, the District secondary student services director stated that if the Parent withdrew her IEE request now, she had the option to request an IEE after the District completed the Student's reevaluation.

41. On February 17, 2017, the Parent emailed the school physical therapist, asking when the Student would receive homebound gross motor services. The school physical therapist responded, stating that she understood the Student still received her services at school. The Parent responded, copying the District secondary director on the email, stating gross motor services at the high school would not work for the

Student, and she understood they needed to have an IEP team meeting to change the Student's placement to homebound.

42. Also on February 17, 2017, the Parent emailed the Student's case manager, stating she wanted to have an IEP team meeting to change the Student's placement to homebound, and offered to meet on February 28 at two different times. The case manager responded, stating that given the District's mid-winter break, and staff schedules, they could not meet on that day. The Parent then replied, proposing to meet on March 6 or March 9, 2017. In a separate email, the Parent stated the Student needed a change of placement, and asked the Student's case manager to identify other programs/alternate placements.
43. Also on February 17, 2017, the District director emailed the Parent, stating that home/hospital services were for students who were temporarily unable to attend school, and the Student's issues of severe pain and anxiety did not appear to be temporary. The director also stated the Parent had not provided a release of information, which would help the District understand the Student's condition, and based on the information provided, the Student was not eligible for home/hospital services. Additionally, the director stated the Student's upcoming surgery might necessitate home/hospital services, if she was unable to attend school for four weeks or more, and that "could be pursued" after the surgery. The Parent responded, asking for an explanation of how the two letters from the Student's medical providers requesting "short term support" for the Student was consistent with the District's denial of home/hospital services.
44. The District was on break February 20-24, 2017.
45. On February 22, 2017, the District filed a due process hearing request, asking an ALJ to deny the Parent's request for an IEE at public expense. The District's filing stated that its reevaluation of the Student was not yet complete.
46. On February 24, 2017, the Parent filed special education citizen complaint 17-12, alleging that the District failed to follow procedures for developing/revising the Student's IEP, determining the Student's placement, implementing the Student's IEP, or completing the Student's FBA/reevaluation.
47. On March 2, 2017, the school psychologist emailed the Parent, stating that to meet the timeline and the Parent's schedule, the Student's reevaluation results meeting would be March 21, 2017. The District then sent the Parent a meeting invitation for the March 21 meeting.
48. Also on March 2, 2017, the Student's case manager emailed the Parent, stating that she had been able to arrange an IEP meeting on March 9 and that the agenda would include discussing the Student's "placement for services and programs to consider." The case manager asked that the Parent send her the names of any participants she planned to invite to the meeting. Also that day, the school psychologist emailed the Parent and included information about how the Parent could complete behavior rating

scales that would be used as part of the Student's reevaluation. The psychologist also provided information about assessments related to vocational and post-secondary transition.

49. On March 6, 2017, the Parent emailed the Student's case manager, asking that she provide a list of all meeting participants and a detailed agenda for the March 9 IEP meeting. The Parent stated that it would be helpful to have as much information as possible on the agenda and provided in writing to reduce the time it would take to fully document the information being provided by the District members of the IEP team at the meeting. The Parent stated that she would send a list of additional meeting participants once she received their confirmation. Also on March 6, the Parent and the school psychologist exchanged emails regarding assessments being used as part of the Student's reevaluation.
50. On March 7, 2017, the Student's case manager emailed the Parent and the Student's father. The case manager provided a list of District staff who would attend the meeting, and stated that the agenda would include a discussion of homebound/home hospital services, and eligibility requirements and program and placement options for the Student. The program/placements options included but were not limited to community based transition program, shortened school day at the high school, or an off-campus placement. The case manager asked if the Student had been informed of the IEP meeting and whether she wanted to attend, or was opting out of the meeting. In response, the Student's father stated that he would attend the meeting, and wanted to discuss reintegration of the Student back into the high school.
51. On March 9, 2017, the school psychologist emailed the Parent a "completed list of tests" being used as part of the Student's reevaluation.
52. Also on March 9, 2017, the District held an IEP team meeting for the Student to discuss the Student's placement. Based on the District's meeting notes, the IEP team discussed the difference between a homebound placement and home/hospital instruction. The IEP team also discussed the Student's current health issues, several placement options for the Student, and the Parent's questions and concerns about the Student's educational program.
53. On March 10, 2017, the Student's case manager emailed the Parent and the Student's father, and attached notes from the March 9 IEP meeting and a prior written notice, dated March 8, 2017, addressing the March 9 IEP meeting. It is assumed the date of the prior written notice is in error and should reflect a date of March 9 or later. The prior written notice stated that the District was proposing to continue the Student's IEP, and that the IEP team had agreed to hold another meeting with the Student to discuss program options and get her input. The notice also stated that given the Parent's report of the Student's anxiety about school, it was important that the Student have a say in developing her plan, and stated that the Student had been absent and not participating in her IEP program since January 11, 2017. The prior written notice also listed the program options that the IEP team had discussed, which included reintegration into the high school, a community college transition program, a

combination of the transition program and attending the high school, increased time in a self-contained special education classroom, and a private placement. The notice also stated that the District was rejecting the private placement option because the team believed the Student's educational needs could be served within the District, and these options represented her least restrictive environment.

54. On March 14, 2017, the school psychologist emailed the Parent and the Student's father and attached a draft copy of the Student's reevaluation report. The case manager stated that the draft copy was a working document, and would be revised/edited based upon the discussion at the March 21 meeting. The school psychologist then clarified why some of the sections in the report had not yet been completed. The school psychologist also included a list of meeting participants, and stated that the meeting would focus solely on the evaluation, and that questions regarding the IEP or other topics would be addressed at a different time. The next day, the school psychologist sent an updated version of the evaluation report, which reflected behavior rating scales the Parent had completed.

55. On March 16, 2017, the Parent emailed the District director and the school nurse, stating that she had attached "further clarification of the prior two requests and a form that were provided" to the District regarding the Student receiving home/hospital services. The attached letter from the medical provider stated that the Student was "medically fragile due to severe anxiety and pain issues secondary to bilateral Ulnar Impaction Syndrome and Juvenile Idiopathic Arthritis...She also has significant anxiety symptoms which are currently being treated with anti-anxiety medication and mental health therapy." The letter also stated that:

Home/Hospital Services are needed on a temporary basis to provide for [the Student's] educational needs while her providers are addressing the heightened levels of anxiety she is experiencing. Our team is working very hard to implement intensive interventions to help improve her current presentation. It is recommend[ed] that [the Student] be allowed 90 minutes of home instruction daily and up to 30 minutes of homework. It is also recommended that she is allowed to receive others services specified in her IEP in addition to academic instruction time.

56. In response, the District director stated that in order to approve home/hospital services, the District needed a statement from the Student's medical provider confirming that the Student was unable to receive instruction in a school or a community setting. The director stated that the letter indicated what the medical provider believed the instruction program needed to look like, and that designing the instruction program was the job of the IEP team, not the medical provider. The director said that for home/hospital services, it was the role of the medical provider to confirm that the Student was unable to receive instruction in a school or community setting, and if the District received that, the IEP team would work to design instruction in the home setting. Additionally, the director stated that the District needed a specific statement from the medical provider as to the length of time the Student was unable to receive instruction in a school or community setting.

57. On March 20, 2017, the Parent replied to the District director's March 16 email, asking that the director refer the school nurse to the recommendations in the Student's nurse



practitioner's letter. The Parent stated that she was told the District needed to have the nurse practitioner provide additional information regarding her recommendations for the Student's services after the practitioner's first letter and the completed District form were provided to the District. The Parent stated that she was confused that the District was now requiring confirmation that the Student was unable to be served in a school or community setting. The Parent asked to be provided a copy of any District policy that would clarify home/hospital services, and also asked for clarification on the specific information the District was requiring for the home/hospital request, so that the Student's care providers could provide more accurate information. The Parent also stated that the Student had surgery on March 3 and then returned to the hospital on March 7 due to other medical issues.

58. Also on March 20, 2017, the school psychologist emailed the Student's evaluation group, including the Parent and the Student's father, and attached a meeting agenda for the March 21 meeting. The case manager stated that the group would discuss the results of the Student's early reevaluation and determine eligible areas of specially designed instruction. The case manager also stated that in order to honor the scheduled time, the group would only discuss the reevaluation results. The case manager also attached "score charts" that she planned to discuss at the meeting. In response, the Parent provided the names of two additional meeting participants she had invited.

59. On March 21, 2017, the Student's evaluation group met to review the results of her reevaluation. Based on the District's March 21, 2017 prior written notice, the evaluation group agreed that the Student continued to be eligible for special education under the category of other health impairment and to receive specially designed instruction in the areas of gross motor, self-advocacy, reading, math, writing, communication, social/emotional, daily living/adaptive, vocational, and study skills/organization. The notice also stated that the evaluation group was not able to review the entire evaluation report at the March 21 meeting, and agreed to hold another meeting. Based on the meeting notes, the group discussed meeting at 7 a.m. on March 30, but the Parent indicated she was not available to attend a meeting that week, and stated first thing in the morning rarely worked for her. The secondary director discussed that to respect the teachers, the District was proposing to meet at 7 a.m. and have the teachers participate from 7-7:50 a.m. The secondary director then suggested meeting on April 4, 5, or 6, and the Parent stated that she would figure out her work schedule and suggest dates.

60. Also on March 21, 2017, the Parent emailed the school psychologist, asking that she confirm that she was sending out an updated draft of the Student's evaluation report reflecting the changes made at the meeting earlier that day. The Parent stated that she wanted to use time efficiently, and wanted to make sure she knew what had already been changed in the report before she tried to figure out what changes she could send in advance of the next meeting. The Parent also asked for a copy of the meeting notes.

61. Also on March 21, 2017, the Parent emailed the District secondary director, stating that she wanted to make sure she was looking at the correct dates to hold the next meeting to review the Student's evaluation report, and stated, "the request to find times I could meet the week of 4/3." The Parent stated that she understood non-school days were often not free days for staff, but given the concerns about teachers missing classes to attend the IEP meeting, she wanted to confirm that a meeting on April 3<sup>6</sup> was not a possibility, before she looked for availability on other days that week. In response, the school psychologist, who had been copied on the email, stated that she would be sending out an online scheduling poll to determine availability to hold the follow-up evaluation meeting, and stated that April 3 was not a possibility for a meeting date. The school psychologist also stated that she would make edits to the evaluation report and send the Parent an updated draft on March 23, 2017. The psychologist stated that the evaluation report was still a draft, and a working document. The psychologist attached a copy of the March 21 meeting notes.
62. On March 23, 2017, the school psychologist emailed the Parent and the Student's father, and attached a copy of the Student's updated evaluation report. The psychologist asked that the parents review the draft, and send staff any questions and/or edits so that the group could use time efficiently at the next meeting, and stated that the questions and/or edits may be addressed prior to the meeting, per the staff decisions. In response, the Parent said that as previously stated at the March 21 meeting, her "questions led to responses that led to additional questions", which did not "lend themselves to prepared answers that might save time." The Parent stated that some of the edits that she requested were a result of staff responses to her questions, so sending potential edits without responses to her questions did not save time, and would be confusing, as they did not reflect her "intent to clarify something before requesting an edit." The Parent also stated that before she sent in any edits, she wanted information about how changes would be made to the evaluation report.
63. Also on March 23, 2017, the school psychologist emailed the Parent, the Student's father, and District staff members, asking that they complete an online poll to determine availability to hold the follow-up evaluation meeting. The psychologist stated that the meeting would take place from 7-8:30 a.m., and those who had classes would be excused at 7:45 a.m. The psychologist asked that the group complete the scheduling poll by March 27, 2017. Based on the District's documentation in this complaint, the scheduling poll included dates during the week of March 27 and the week of April 3.
64. On March 26, 2017, the Parent emailed the school psychologist, stating that she had completed the online scheduling poll, and then expressed concern that the poll included meetings at 7 a.m., which was a time that rarely worked for her to attend. The Parent also stated that at the meeting, she was asked to check her availability for April 4-6<sup>th</sup>, and that she had been told that the week of March 27 was not an option. Additionally, the Parent stated that in looking at the sections that remained in the evaluation report to be reviewed, she was concerned that the District was stating that

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<sup>6</sup> According to the District's 2016-2017 calendar, April 3, 2017 was a non-student staff workday.

the teachers would be limited to participating for forty-five minutes. The Parent then requested that “staff that participated in the various parts of the evaluations participate in the review of those areas of the evaluation at the meeting and part of discussions in the meeting about SDI recommendations.” The Parent then stated that she was available to meet March 29-31, and provided possible times. The Parent stated that scheduling inadequate time for the March 21 meeting had continued to delay the team’s ability to provide the Student with FAPE in her least restrictive environment. The Parent then expressed additional concerns, and stated she believed that limiting time for staff participation in the upcoming meeting would lead to the need to have additional meetings to clarify and respond to questions that were likely to come up during the review.

65. On March 27, 2017, the school psychologist responded to the Parent’s email, stating that in the March 21 meeting notes, the evaluation group had discussed at length why 7 a.m. was an ideal time to meet, and the Parent had stated that she was not available to meet at 7 a.m. the week of March 27. As a result, the group had discussed meeting the following week, and the task was to find which date April 4-6 would work to hold the meeting. The psychologist also stated that the group had already met for 1.5 hours with teachers, and the plan continued to be that teachers would be involved at the second meeting for forty-five minutes, which would be a total of two hours and fifteen minutes of participation from teachers. The psychologist said that the District could continue to arrange additional meetings in order to have the teachers participate and discuss areas of specially designed instruction, with the consideration that teachers had classes to attend starting at 7:50 a.m. The psychologist then provided information regarding how any additional edits would be made to the draft of the Student’s evaluation report. The Parent responded, asking additional questions about scheduling the meeting.

66. Also on March 27, 2017, the Student’s father emailed the school psychologist, the assistant principal, and the secondary director, stating that he wanted to bring his attorney to the next meeting. The father asked if the District’s attorney would attend the meeting if his attorney attended. In response, the secondary director stated that the District attorney would attend the meeting if the father’s attorney attended, and asked that the father clarify if he was referring to the meeting to further review the Student’s evaluation report.

67. Also On March 27, 2017, the Parent agreed to withdraw her request for an IEE. In response, the District withdrew its request for a due process hearing, and the ALJ issued an order of dismissal on March 29, 2017.

68. Also on March 27, 2017, the District director emailed the Parent in response to her March 20 email regarding home/hospital services. The director stated that she had again reviewed the documents related to the request for home/hospital services with the school nurse. The director attached a copy of the District’s home/hospital policy and stated that the District followed OSPI’s guidelines and requirements. The director also stated that a statement from the Student’s medical providers must state that the Student was unable to receive instruction in a school setting, and state the specific

number of weeks she was unable to receive instruction in a school setting. The director said that if the District received a letter from a medical provider that stated that the Student was unable to receive instruction in a school setting, and stated the specific number of weeks she is unable to receive instruction, then the “team” would work to design home/hospital instruction in the home setting. The Parent replied that she did not see in the District’s policy where it indicated that the provider was required to state specific number of weeks, and asked that the director provide such wording in the policy.

69. On March 28, 2017, the Director responded to the Parent, stating that a medical provider must state the anticipated number of weeks he/she estimated a student would be out of school due to a medical disability or illness, and stated that home/hospital services would not start unless a student was anticipated to be out of school for at least four weeks. The director also included language from the District’s home/hospital policy and the state regulation regarding home/hospital instruction. Later that same day, the Parent emailed the District director, the school nurse, the District secondary director, and the high school assistant principal to provide a clarification letter from the Student’s medical provider. The letter stated:

This letter is to clarify the three letters and form that have been provided to request home/hospital services through the school district for [the Student]. The anticipated length of time that [the Student] will need home/hospital services is 18 weeks from the first letter of February 2, 2017. The Student is unable to receive instruction in a school or community setting.

70. Also on March 28, 2017, the school psychologist emailed the Parent, stating that the scheduling poll had included additional dates for that week, in case it might work as an option, but because legal counsel was now involved, the earliest the District could meet was April 5, 6, 11, or 12 starting at 7 a.m. The psychologist stated that she would update the online poll to reflect these dates, and that because the group would still be meeting at 7 a.m., two meetings should be scheduled to ensure full participation of the team. The psychologist also stated that as a reminder, she needed all the Parent’s edits to the evaluation report three days before the meeting, but that questions, comments, and edits would still be discussed at the meeting. In response, the Parent stated that she was unable to meet at 7 a.m. on any of the proposed dates. The Parent later replied, asking if the District’s attorney was going to attend the meeting, and for the District’s policy on an attorney attending a meeting when a parent did not have an attorney.

71. On March 29, 2017, the Student’s father emailed the school psychologist, stating that his attorney planned to attend the next evaluation meeting. The father also stated that he was no longer available to attend a meeting on April 6 and asked to be provided the new date for the meeting.

72. On March 30, 2017, the District secondary director emailed the Parent and the Student’s father, stating the District was willing to meet for up to two hours on April 10-13, and provided a list of proposed meeting times. The secondary director stated that if the meeting was during the school day, the meeting participants would be limited

to those who were “legally required” to be present, and that if the group met as early as 7 a.m., it could increase participation from other teachers. The secondary director stated that the school psychologist would send out a new online scheduling poll. The secondary director also stated that it was the District’s policy to have an attorney at meetings when a parent brings an attorney, and that the Student’s father had informed the District he would bring his attorney to the upcoming meeting.

73. Also on March 30, 2017, the District approved home/hospital services for the Student. That same day, the school nurse emailed the Student’s teacher and other District staff members, stating that the Student had been approved for home/hospital services and that the home/hospital facilitator and/or her substitute would be contacting the teachers.

74. Also on March 30, 2017, District staff members exchanged emails about creating a schedule for the Student’s home/hospital instruction. The District director stated that staff needed to ensure that “all areas are addressed when working with the [home/hospital] teacher – including IEP areas (i.e. SLP/PT/academic).” The director suggested prioritizing speech and physical therapy services first, and reminded staff that the Student’s nurse practitioner had recommended no more than 90 minutes of instruction per day or 450 minutes per week. The District special education coordinator proposed providing reading and writing services 90 minutes per week, math services 120 minutes per week, self-advocacy services 60 minutes per week, and speech and physical therapy services 30 minutes per week. The staff then agreed to hold a meeting to further discuss the instructional schedule.

75. On April 3, 2017, several District staff members met to discuss the amount and type of services the Student would receive as home/hospital instruction. The staff members included the following:

- District special education coordinator
- SLP
- PT
- School Nurse
- Assistant Principal
- Case manager
- Special Education Math Teacher
- Special Education Life Skills Teacher
- Special Education Study Skills Teacher
- District Home/hospital Tutor

The Student’s special education English teacher was also invited to the meeting, but could not attend. There is no documentation to show the Student’s general education teacher was invited to the meeting. The Parent was not invited to the meeting. Based on the meeting notes, the group decided that the Student would receive the following home/hospital instruction:

- Reading/writing/self-advocacy – 60 minutes 2 times weekly
- Math/self-advocacy – 60 minutes 2 times weekly
- Speech – 30 minutes 1 time weekly
- Physical therapy – 30 minutes 1 time weekly

The notes also stated that the home/hospital tutor, PT, and SLP would contact the Parent to arrange a schedule to provide the services, and that the Student's father would be informed of the schedule and plan once it was confirmed.

76. On April 4, 2017, the Student's father emailed the school psychologist, stating that the Student's psychiatric nurse practitioner wanted to attend the upcoming evaluation review meeting by phone, or possibly in person, and copied the practitioner on the email. The father stated that he was not available to meet on April 6, 7, 10, or 12, and asked that the psychologist resend the scheduling poll with those dates blacked out and to include the nurse practitioner in the poll.

77. On April 6, 2017, the Parent responded to the online scheduling poll, indicating that she could meet on April 10 or 12. The District secondary director then emailed the Parent and the Student's father, stating that he had received the updated poll from the Parent indicating her availability, but unfortunately the notice was too late to hold a meeting on Monday, April 10, and that another student's IEP meeting had already been scheduled for April 12. The secondary director asked that the Parent provide 4-5 dates she was available over the next several weeks, not including spring break, and stated that the District needed at least four business days to make necessary arrangements and include its legal counsel. The secondary director also stated that the Student's father had asked that the Student's nurse practitioner participate in the meeting, but that this was not a decision the District would make, as the parents should address this. The secondary director stated that the District did not have a release of information to speak with the nurse practitioner and would not send her meeting invitations.

78. Also on April 6, 2017, the Student's case manager emailed the Parent and the Student's father, and copied the Student's SLP, PT, and the home/hospital tutor, and attached a copy of an April 6 prior written notice, proposing to implement home/hospital services, and the outline of the proposed home/hospital instruction created on April 3, 2017. The prior written notice stated that the initiation date would be determined by "guardian input" with home/hospital providers. The notice also stated that the initiation of home/hospital services was verified by the Student's health care provider, and that no meeting was held as this was a temporary service. "Service staff providers provided consult and will contact guardian to initiate." The notice also stated that "guardian" would be contacted by the District home/hospital teacher as well as the Student's speech language pathologist (SLP) and physical therapist (PT) "to set up times within, by not exceeding the parameter[s] set by her health care provider." The case manager asked that the providers contact the Parent to arrange a schedule to provide the instruction.

79. In response, the Parent stated that she did not agree with the proposed services. The Parent stated that the school nurse had requested that the Student's medical provider advise the amount of services the Student could tolerate for academics, and the provider had stated 90 minutes per day. The District was proposing only one hour of services per day, four days per week. The Parent stated that she wanted the Student to receive 180 minutes per week of reading/writing services and 120 minutes per week

of math services. The Parent also asked if the Student could receive reading, writing, and math services each day, or if it was required that the Student receive only one area of service on an assigned day. The Parent stated that given the Student's challenges, she wanted to make sure that the District provider had flexibility to meet the Student's needs, and suggested that it may work better to address 30 minutes in reading, writing, and math each day. The Parent also stated that she understood the Student's medical provider did not determine the amount of services the Student would receive, and noted that the Parent's request for 300 minutes per week of academic services was well under the 450 minutes of services the medical provider had recommended. The Parent expressed further concern about the amount of the proposed services, and stated that while the services were temporary, they were intended to keep the Student caught up with her classes. The Parent also asked that she be provided with the specific goals on which the home/hospital services would focus, and expressed concern about the proposed self-advocacy goals the staff had previously discussed. The Parent stated that given the Student's anxiety and mental health concerns, she thought it would be best to focus on math, reading, and writing, along with PT and SLP.

80. Also on April 6, 2017, the Parent emailed the school psychologist, asking that she compare the Student's test results to information from a private assessment, which the Parent included in the email. The Parent stated that the private provider had done this testing many times with the Student, and the results the District had on file from 2013 were consistent with the private report. The Parent wanted to know how the private report compared to the District's current test results and "what might be causing what appear to be wide variations in the results for the various areas and overall scoring."

81. On April 10, 2017, the Parent emailed the school psychologist, stating that she had not received the District secondary director's April 6 email, and asked that it be resent. The Parent also stated that she would look at her schedule and provide dates that she was available after the District's spring break. The Parent stated that the District was now requesting that the "review of evaluation feedback and final report" be completed more than one month after the date it was initially scheduled to be completed, and that she did not agree to any extension of the process. The Parent stated that delays in the completion of the evaluation was denying the Student an IEP that provided FAPE in her least restrictive environment. In response, the school psychologist forwarded the Parent a copy of the secondary director's April 6 email.

82. Also on April 10, 2017, the District director responded to the Parent's April 6 email regarding the home/hospital instruction. The director stated that she understood that the Parent had worked with the home/hospital tutor, the SLP, and the PT to set a schedule. The director also stated that in regard to the Parent's request for an IEP meeting, an IEP meeting was not required because home/hospital instruction was a temporary deviation from an IEP placement and was not to be, in and of itself, an IEP placement. The director stated that the Student's "service providers" believed the scheduled minutes would be enough to benefit her and enable her to return to her placement when the temporary illness ended. The director said that in regard to the

Parent's question about goals, the goals that the providers focused on would be the Student's IEP goals. In response, the Parent stated that she had not yet been contacted by the SLP to schedule the services. The Parent also stated that she did not believe the District was acknowledging her concerns, and expressed further concern about working on self-advocacy goals.

83. The Student began receiving home/hospital instruction on April 11, 2017.

84. The District was on break April 17-21, 2017.

85. On April 24, 2017, the Parent emailed the school psychologist to follow up on her April 6, 2017 email, and asked that the psychologist review the Student's private test results against the District's current assessment results. The Parent asked that she be provided the information she requested in her prior email. The Parent also stated that she was available to attend an evaluation review meeting on April 27 and 28, and May 2, and provided possible meeting times. In response, the school psychologist thanked the Parent for providing dates of availability, and stated that she would get back to the Parent. The school psychologist also asked that the Parent provide clarifying information about her request to compare the District's assessment results with the Student's private evaluation results. The Parent and the school psychologist then exchanged additional emails about the prior testing results.

86. On April 25, 2017, OSPI issued a decision in SECC 17-12. OSPI found in relevant part, that the District failed to follow procedures for conducting the Student's FBA, as the District did not complete the Student's FBA within the 35-school day timeline or obtain the Parent's agreement to extend the timeline. OSPI also found that the District failed to follow procedures for determining the Student's placement as it applied to home/hospital services, as the District delayed providing home/hospital services to the Student once it received a written statement from the Student's medical provider. As a result, OSPI ordered the District to provide the Student with 36 hours of compensatory services based on the amount of services recommended by the Student's medical provider. OSPI also ordered the District to provide written guidance for staff, which addressed special education procedural requirements.

87. Also on April 25, 2017, the school psychologist emailed the Parent and the Student's father, stating that the evaluation review meeting would be held on May 2, 2017, and asked that the parents let her know who they would invite to the meeting. The psychologist stated that since the meeting was during the school day, staff would be limited to those who were "legally required" to attend – a general education teacher, special education case manager, specialists, nurse, school psychologist, and administrator. The psychologist also stated that so far, she was only aware of edits to three sections of the report. In response, the Parent asked for a list of meeting participants, and expressed concern that the only special education teacher attending the meeting did not provide input into any of the assessments being discussed at the meeting. The Parent asked if the special education teacher would be prepared to explain the "details and inconsistencies" reported in the assessments for the special



education staff who did not attend the meeting. The Parent asked that she be provided an agenda for the meeting.

88. On April 26, 2017, the school psychologist responded to the Parent's email, providing an agenda for the meeting, and clarified who would attend the meeting. The Parent and the psychologist later exchanged additional emails.
89. On April 28, 2017, the District secondary director emailed the Parent and the Student's father and included an updated meeting agenda and complete list of meeting participants. The District's documentation in this complaint indicates that the Parent did not receive the secondary director's email due to technical issues. The school psychologist later forwarded the Parent a copy of the secondary director's email on May 1, 2017.
90. Also on April 28, 2017, the Parent emailed the District director about the Student's home/hospital services. The Parent stated that the director had not addressed the Parent's prior concerns, and that she had continued to have concerns that the services being provided were not enough to benefit the Student, and enable her to return to her placement when the temporary period of illness ended. The Parent said that while the Student's medical provider had stated that the Student was allowed up to 90 minutes of services per day for academics and her IEP services, the District was stating that only 240 minutes of academics per week was enough. The Parent expressed that the lack of services was not enough to help the Student keep up, and had the potential to leave her more overwhelmed if the "goals were pushed into fewer minutes of service." The Parent stated that she thought the Student needed the full 90 minutes per day that the medical provider had recommended in order to benefit during her temporary period of illness. The Parent wanted the IEP team to increase the amount of services.
91. On May 1, 2017, the Parent filed this citizen complaint.
92. On May 2, 2017, the Student's evaluation group, including the Parent and the Student's father, met to continue reviewing the Student's evaluation report. The group agreed to make additional changes to the report. The group also agreed that the parents would send any additional questions or disagreements directly to the "evaluator" by May 4, and that the evaluation would be completed on May 5. The school psychologist agreed to provide the Parent with an electronic copy of the draft evaluation report by the end of the day on May 3.<sup>7</sup>
93. On May 4, 2017, the District director emailed the Parent in response to the Parent's April 28 email regarding home/hospital instruction. The director stated that if the Parent believed the current services were not meeting the Student's needs, the Parent could request an IEP meeting to discuss the services. The director also stated that

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<sup>7</sup> Based on the District's documentation in this complaint, the school psychologist emailed the Parent and the Student's father an electronic copy of the draft evaluation report, but due to technical difficulties, the parents did not receive the email. The school psychologist then delivered a copy of the report to the Parent's home.

the amount of time a medical provider indicates was the amount of time a student can do schoolwork, including receiving instruction, and that when students were home due to a temporary disability, much of the schoolwork was completed outside the time staff provided instruction. The Parent responded on May 7, 2017, continuing to express concerns about the amount of home/hospital instruction the Student was receiving, and stated she was available to meet on May 12, 15, or 16. Based on the District's response to this complaint and the Parent's reply, an IEP meeting occurred on May 30, 2017 where the IEP team, including the Parent, discussed the Student's home/hospital instruction. The Parent stated in her reply that her questions and concerns about the home/hospital instruction were not addressed at the meeting. However, the District did agree to provide instruction to address the Student's general education civics class.

94. Also on May 4, 2017, the Student's father emailed the school psychologist and included a list of revisions he wanted made to the evaluation report. In response, the school psychologist updated the report to reflect most of the proposed revisions.

95. On May 5, 2017, the Parent emailed the school psychologist and included a list of revisions she wanted made to the evaluation report. In response, the school psychologist updated the report to reflect most of the proposed revisions and stated that the Parent could sign a disagreement statement, which could be attached to the evaluation report. The school psychologist also stated that she would mail the Parent a copy of the evaluation report.

## CONCLUSIONS

**Issue 1: Reevaluation Procedures** – The IDEA and state regulations do not require that a school district hold a meeting to review the results of a reevaluation and determine eligibility. However, if the district chooses to hold an eligibility meeting, parents must be afforded an opportunity to participate in the meeting. Participation in an eligibility meeting extends only to notifying parents of the meeting early enough to ensure they have an opportunity to attend and providing information as to the purpose, time, and location of the meeting, as well as a list of meeting participants. A school district is not required to hold an eligibility meeting at a mutually agreed upon time. Additionally, the IDEA and state regulations do not specify who must attend a meeting to review the results of an evaluation or determine eligibility. Therefore, there is no requirement that an eligibility meeting include a general education teacher, special education teacher, or other specific staff members. Further, a district is not required to provide parents with a draft copy of an evaluation report prior to a meeting, and as long as the information in an evaluation report is accurate and reflects the opinion of the professional members of a student's evaluation group, a district is not required to make changes to an evaluation report based on parent feedback. Parent approval of an evaluation report while perhaps desirable, is not required. An evaluation report is only required to meet the requirements in WAC 392-172A-03035. Here, the District appropriately allowed the Parent and the Student's father to participate in an evaluation meeting on March 21, 2017 to determine eligibility. The District was not required to hold another eligibility/evaluation meeting, but was required to complete the Student's evaluation report by March 27, 2017 when the 35-school day

timeline for the evaluation ended. Following the March 21 meeting, the District should have corrected any errors in the evaluation report, obtained the signatures of the professional members of the evaluation group, which does not include parents, and then provide the Parent and the Student's father a copy of the report by March 27, 2017. While the District failed to complete the Student's reevaluation by March 27, the documentation in this complaint shows that the District made numerous good faith efforts to schedule a follow-up evaluation meeting with the Parent and the Student's father at a mutually agreed upon date, and made multiple changes to the Student's evaluation report to reflect the parents' input.

**Issue 2: Home/hospital Services** – The District admits that it did not follow procedures for determining the amount of services the Student would receive while in her temporary home/hospital setting because it did not include the Parent in the IEP meeting to determine the amount of instruction. The District also failed to include the Student's general education civics teacher in the IEP meeting, and did not schedule any time for the Student to receive instruction for the civics class until May 30, 2017, almost six weeks after the Student's home/hospital instruction began. Additionally, it is unclear from the District's documentation how the Student's IEP team determined the amount of home based instruction the Student would receive, as the amount of services did not align with the recommendations of the Student's medical provider, and no other explanation for the amount determined was provided. The amount of home/hospital instruction a student receives must be based on a student's individualized needs, including current medical circumstances, and the instruction should provide for adequate time to allow a student to make progress toward his/her IEP goals, receive related services, and to make progress in the general education curriculum, as determined appropriate. While there is no requirement that the services be for a full day, or that a student receive the same number of special education minutes the student received while attending school, a district must consider a student's needs when determining the amount of instruction to provide, and document an IEP team's rationale for such services in a prior written notice.

In her complaint, the Parent alleged that the Student's home/hospital instruction was not provided by the Student's special education teachers, and that the Student was not provided adequate instruction to be able to complete her assignments. The IDEA and state regulations allow for general education teachers and paraprofessionals to assist in the provision of special education for students, provided that the instruction is designed and supervised by special education certificated staff, and a student's progress is monitored and evaluated by special education certificated staff. Here, given the Parent's concerns about the Student not being able to complete her assignments, it is unclear if the Student's special education teachers were designing and supervising her instruction, and/or monitoring and evaluating her progress. The District needs to ensure that home/hospital instruction is provided in a manner consistent with special education regulations, and should document how special education certificated staff are overseeing and monitoring the provision of home/hospital instruction.

## CORRECTIVE ACTIONS

By or before **August 14, 2017** and **September 15, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

None

### DISTRICT SPECIFIC:

1. OSPI accepts the District's proposed corrective actions of revising its internal practices and procedures regarding home/hospital instruction. By **August 14, 2017**, the District will provide OSPI with a copy of the revised practices. By August 28, 2017, OSPI will provide comments and additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, ESAs (including school nurses), principals, and assistant principals with the written guidance by **September 15, 2017**. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.
2. The District will revise its internal practices and procedures regarding conducting reevaluations. This will include responding to requests for reevaluations, the steps for completing a reevaluation, and holding eligibility meetings. By **August 14, 2017**, the District will provide OSPI with a copy of the revised practices and procedures. By August 28, 2017, OSPI will provide comments and additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, principals, and assistant principals with the written guidance by **September 15, 2017**. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients. ESAs include all school nurses.

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

Dated this \_\_\_\_ day of June, 2017

Douglas H. Gill, Ed. D.  
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.)