

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-63**

### **PROCEDURAL HISTORY**

On September 7, 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 September 8, 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 October 2, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on October 3, 2017. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On October 5, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On October 23, 2017, OSPI requested additional information from the District. On October 24, 2017, OSPI received the requested information from the District and forwarded the information to the Parent on the same day.

On October 31, 2017, OSPI requested additional information from the District. On November 2, 2017, OSPI received the requested information from the District and forward the information to the Parent on the same day.

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

### **OVERVIEW**

At the beginning of the 2016-2017 school year, the Student was eligible for IDEA Part C birth-to-three services. In October 2016, the District held a meeting to review the results of the Student's initial evaluation and the evaluation group determined that the Student was eligible to receive special education Part B services, under the category of speech or language impairment. Also in October, the Student's individualized education program (IEP) team developed the Student's initial IEP. In January 2017, the Student's IEP team met to review the Student's present levels of performance and other parts of the IEP, and agreed to develop a new IEP for the Student. In June 2017, the Student's IEP team met again to review the Student's present levels of performance and review other parts of the IEP. The IEP team then developed a new IEP for the Student, which included a new communication goal and provided for a reduced amount of services in the area of communication. The Parent alleged that the District did not follow procedures for evaluating the Student, developing the Student's IEP, and implementing the Student's IEP. The District denied the allegations.

## SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on September 8, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

## ISSUES

1. Did the District follow procedures for conducting the Student's initial evaluation?
2. Did the District follow procedures for developing the Student's individualized education program (IEP)?
3. Did the District follow procedures for implementing the Student's IEP?

## LEGAL STANDARDS

Initial Evaluation Procedures for Transition from IDEA Part C to IDEA Part B Services: Under the IDEA and Washington's state regulations, the parents, a district, a public agency, or other persons knowledgeable about a student may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request must be in writing. 34 CFR §300.301; WAC 392-172A-03005(1). Existing data may provide enough information to make a special education eligibility determination. WAC 392-172A-3025(5); *D.A. and J.A. ex rel. M.A. v. Meridian Joint Sch. Dist. No. 2*, 65 IDELR 286 (9<sup>th</sup> Cir. 2015) (hearing officer's determination that student is not eligible for special education based on student's current academic performance was proper). An initial evaluation of a preschool aged child suspected of having a disability must be completed prior to the child's third birthday so that an IEP can be developed and implemented no later than the child's third birthday. 34 CFR §300.124; WAC 392-172A-02080. The purpose of the initial evaluation is to determine whether a child is eligible for special education and the nature and extent of the special education and related services required for the student to make educational progress. The child must be assessed in all areas related to their suspected disability. The evaluation must be sufficiently comprehensive to identify all of the special education and related services the student needs, whether or not they are commonly linked to the disability category in which the student has been classified. 34 CFR §300.304; WAC 392-172A-03020. The evaluation team must document and carefully consider information from a variety of sources. WAC 392-172A-03020(3)(a).

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting

the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304(b); WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304(c); WAC 392-172A-03020.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent

regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

Parent Participation in IEP Development: The IEP meeting serves as a communication vehicle between parents and school personnel, and enables the IEP team to make informed decisions regarding the: student's needs and appropriate goals; extent to which the student will be involved in the general education curriculum and participate in the general education environment, and state and district-wide assessments; and services needed to support that involvement and participation, and to achieve the agreed-upon IEP goals. The IEP team must consider the parents' concerns and the information they provide regarding their student in developing, reviewing, and revising IEPs. 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). 34 CFR §§300.321, 300.322, 300.324 and 300.328; WACs 392-172A-03095, 392-172A-03100, and 392-172A-03110.

The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information s/he provides. The district is not required, however, to adopt all recommendations proposed by a parent. The team must work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

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

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA

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

Provision of FAPE: "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

### **FINDINGS OF FACT**

1. The Student lives with her mother and her father (Parents). The Student's father filed this complaint.
2. On January 14, 2016, the Parents and staff employed by a private children's clinic developed an individualized family services plan (IFSP) for the Student based on the Student's developmental delays in the areas of cognitive, adaptive skills, social/emotional skills, and speech and language skills. The Student's IFSP provided for special instruction for 105 minutes, two times each week and speech therapy for 30 minutes, once each week.

### **Timeline for this Complaint Begins on September 8, 2016**

#### **2016-2017 School Year**

3. On September 15, 2016, staff employed by a private children's clinic completed an "educational re-evaluation" of the Student. The report stated the Student was: very capable and intelligent, likely to initiate social interactions with very familiar adults; responded to her name being called; and she showed awareness of her peers by observing them, playing alongside them, and would sometimes imitate their actions. The report also stated the Student could be easily distracted, was non-compliant with most adult directed activities, was not initiating or consistently responding to social interactions with peers, but was beginning to notice emotions in other people. The report stated the Student's results in the Battelle Development Inventory showed the Student demonstrated an age equivalence of 17 months in social-emotional development, and 18 months in the area of adaptive development, and that these scores were below the normal range. The report further stated that the Student demonstrated an age equivalence of 27 months in of area of personal-social, and 33 months in the area of cognition. The report said that the Student's personal-social results, "did not show a qualifying score," but that "due to [the Student's] autism diagnosis, concerns around her current social skills, and risk for development delay, [the evaluator] qualified [the Student] for services on professional judgement." The report recommended "special

education services” in the area of personal-social, social-emotional, and adaptive development.

4. Also on September 15, 2016, staff at the clinic completed a “speech therapy re-evaluation.” The report stated the Student was able to identify objects in pictures and point to various body parts, and that she demonstrated the ability to understand verbs. The report stated the Student did not demonstrate an ability to understand the use of objects, spatial and quantitate concepts, analogies, or make inferences. The report stated the results of the Preschool Language Skills-5 demonstrated the Student’s “receptive and expressive language skills were in the normal range for her age group; however, without reinforcement [the Student] will not demonstrate her skills”. The report recommended to “continue speech therapy once to twice a week”.
5. On September 16, 2015, staff at the private children’s clinic completed an initial evaluation of the Student in the area of occupational therapy. The report stated the Student demonstrated gross motor skills, which included squatting, throwing a ball, kicking a ball, and standing without falling. The report stated the Student did not demonstrate walking down steps with alternating feet or standing on one foot. The report also stated the Student demonstrated fine motor skills by placing rings on a post, removing cereal from a bottle, and using pincer grasp. The report said the Student liked to play in the park and tended to be a risk taker when climbing, going down the slide, and swinging. The report also stated the Student would tantrum easily, but had been improving her self-soothing skills. The report stated that without assistance, the Student could remove small articles of clothes, including shoes, socks, and an open jacket and that the Student required minimal to moderate assistance to put on and take off other items of clothing. The report further stated the Student’s results in the Battelle Development Inventory demonstrated an age equivalence of 23 months in fine and gross motor skills, and 24 months in adaptive and self-help-skills. The report stated the Student “would benefit from direct occupational therapy” to support [the Student’s] participation and development in fine and gross motor skills and adaptive and self-skills. The report also recommended “further exploration of [the Student’s] sensory processing profile”.
6. According to the District’s response to this complaint, on October 10, 2016, the District’s director of early learning, a school psychologist, and the Parent met to discuss the IDEA part B evaluation process and review the evaluation consent form. The consent form stated that the Student would be assessed in the area of social/emotional and communication. The Parent signed consent for the District’s initial evaluation of the Student on this same day.
7. On October 27, 2016, the Student’s evaluation group, including the Parents, met to review the results of the Student’s initial evaluation and determined the Student was eligible to receive special education Part B services, under the category of speech or language impairment. The District evaluation report stated the Student had received IDEA Part C services in the area of communication and social/emotional development since the Student was initially evaluated in December 2015. The District evaluation report incorporated the

results of the private children's clinic September 2016 reports. The evaluation report stated the Student's results of the Battelle Developmental Inventory in the area of daily living/adaptive skills "fell in the mildly delayed or below average range" and that services were not warranted at this time." The evaluation report stated a "medical evaluation report" dated June 14, 2016, diagnosed the Student with Autism Spectrum Disorder and that due to the Student's diagnosis, the District conducted observations of the Student in the area of social/emotional skills. The evaluation report also stated the school psychologist observed the Student at her private preschool and a District special education teacher observed the Student at the Student's co-op preschool. The evaluation report stated that the District's observations "did not provide conclusive support for a need of specially designed instruction" in the area of social/emotional skills. Additionally, the District evaluation report stated that the District speech language pathologist (SLP) assessed the Student's articulation using the Goldman Fristoe Test of Articulation, second edition (GFTA-II) and the results indicated the Student's single word articulation skills were below average. The evaluation report recommended the Student receive specially designed instruction in the area of communication, including speech/language therapy to address articulation skills.

8. Also on October 27, 2016, the District issued a prior written notice, proposing to initiate the Student's eligibility. The notice stated that results from current assessments completed by the private provider indicated the Student's social/emotional skills were age appropriate. The notice also stated that the evaluation group hypothesized the Student's improvement in the area of social/emotional skills had been due to the intensive early interventions the Student received, and recommended services continue in the area of communication, including speech and language therapy. The notice further stated the Student would participate in a District preschool classroom for three months, during which time the District would monitor the Student's social/emotional development to consider whether the Student would benefit from continued access to typically developing peers in a community-based preschool setting, or if she should require specially designed instruction in social/emotional development.
9. Additionally, on October 27, 2016, the director of early learning, the SLP, the Parents, and the school psychologist<sup>1</sup> met to develop the Student's IEP. The October 2016 IEP stated the Student had made "huge growth with birth-3 services," and the Student was "very engaged," and had a large vocabulary. The IEP stated the team was concerned with the Student's intelligibility of speech, her ability to follow directions and participate in routines, and social communication. The IEP stated the Student's speech and language delays adversely impacted the Student's functioning in a preschool classroom and in the community. The IEP included the following annual goals in communication:
  - When given structured speech activities and targeted materials the Student will produce /k, g/ in all position of single words improving accuracy from 60% to 80% as measured by SLP data.

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<sup>1</sup> The Parent excused the Student's general education teacher, who was teaching during the time of the meeting, from attending the IEP meeting.

- When given structured speech activities and targeted materials the Student will produce final consonants, with differentiated voicing, in single words and phrases improving accuracy from 50% to 80% as measured by SLP data.

The IEP also stated “first- then,” language would help the Student with transitions between activities. The IEP stated an occupational therapist would provide observation and consultation for sensory needs. The IEP provided for the following specially designed instruction in the area of communication from November 2, 2016 through January 15, 2017:

- 30 minutes, one time a week in a special education setting delivered by an SLP
- 60 minutes, two times a week in a general education setting delivered by special education staff under the supervision of an SLP

The IEP stated the Student would attend a District preschool two mornings for 330 minutes<sup>2</sup> a week for three months.

10. Also on October 27, 2016, the District issued prior written notice, proposing to initiate the Student’s IEP beginning on November 2, 2016. The prior written notice stated the Student would receive speech therapy and classroom-based instruction and that the IEP team would meet again in three months.
11. Additionally, on October 27, 2016, the Parents signed consent for the initial placement of special education and related services for the Student.
12. On October 28, 2016, the Student’s mother and the SLP corresponded via email to confirm the Student would receive speech therapy on Tuesdays from 11:40 a.m. to 12:10 p.m., beginning November 8, 2016.
13. The District’s documentation in response to this complaint included a schedule for the Student, stating the Student attended preschool on Mondays and Wednesdays from 9:00 a.m. to 11:30 a.m.
14. The Student was scheduled to begin attending preschool on November 7, 2016, but was absent, and actually began attending preschool on November 9, 2016.
15. The District’s documentation in response to this complaint included service logs and notes regarding the Student’s progress toward her IEP goals in speech therapy from November 8, 2016 through June 16, 2017. The service log was designed to show the date the Student received services, identify the setting as either group or individual, identify the speech therapy goal worked on, and track the Student’s progress.

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<sup>2</sup> The IEP service matrix stated the Student would spend 330 minutes a week in preschool, which was altered by handwriting crossing out 330 and replacing it with 435 minutes. It is unclear why the IEP contains this handwritten alteration in the October 2016 IEP when the District provided documentation showing the Student attended preschool two days a week for 300 minutes, in addition to 30 minutes a week for speech therapy.



16. The District's documentation also included daily classroom notes authored by the paraeducator who provided the Student's communication services in the general education setting from November 7, 2016 through June 12, 2017. The daily notes included information about the Student's efforts toward her IEP goals and information about the Student's communications and play with other students in her classroom. The daily notes also included information about events and activities that occurred during the Student's school day.
17. Based on the District's speech service log, the SLP met with the Student on November 8, 22, and 29, 2016. The Student was absent on November 15, 2016. The speech service log showed that during the month of November, the Student was producing /g/ sounds in initial words with seventy-one percent accuracy, final consonants sounds in single words with eighty percent accuracy, and in phrases with twenty percent accuracy.
18. On December 2, 2016, the Student's speech therapy schedule changed and the Student began meeting with the SLP on Fridays from 12:30–1:00 p.m. The District's service log showed the SLP met with the Student on December 2 and 16, 2016. The Student did not receive communication services on December 9, 2016, when the District was closed due to inclement weather.
19. The District was on break from December 21, 2016 through January 3, 2017.
20. On January 10, 2017, the director of early learning, the general education preschool teacher, the SLP, the Parents, and a District paraeducator who provided the Student's communication services in the general education classroom met to review the Student's October 2016 IEP. The IEP team agreed to develop a new IEP for the Student. The January 2017 IEP stated the Student's strengths included her fine and gross motor skills, and that she was showing growth in her communication and play skills. The IEP stated the Student had difficulties self-regulating during "an emotional meltdown" and often refused to go to the bathroom so the IEP team decided to "pause potty training at school." The IEP also stated the Student was responding well to positive behavior support strategies, including visual schedules and verbal and visual prompts, and that the Student was getting familiar with classroom routines and participated with prompting. The IEP said that the Student made "significant progress in the amount and clarity of [her] communication," but her speech and language delays continued to have an adverse impact on the Student's functioning in a preschool classroom and in the community. The IEP included the following communication goals:
  - When given structured speech activities and targeted materials the Student will produce /k, g/ in all position of single words improving accuracy from 70% to 80% as measured by SLP data.
  - When given structured speech activities and targeted materials the Student will produce final consonants, with differentiated voicing, in single words and phrases improving accuracy from 55% to 80% as measured by SLP data.

The IEP stated an occupational therapist would provide observation and consultation for sensory needs. The IEP provided for the following specially designed instruction in the area of communication from January 15, 2017 through June 23, 2017:

- 30 minutes, one time a week in a special education setting delivered by an SLP
- 60 minutes, two times a week in a general education setting delivered by special education staff under the supervision of an SLP

The IEP stated the Student would attend preschool for 300 minutes a week.

21. Also on January 10, 2017, the District issued prior written notice, proposing to continue the Student's IEP. The notice stated the Student was making progress toward her goals in her current educational setting. The notice also stated the IEP team discussed potty training, "play and learn" group opportunities, and considered, but rejected, increasing the number of days the Student attended preschool.
22. According to the District's documentation in response to this complaint, the Student continued to attend preschool on Mondays and Wednesdays from 9:00 a.m.–11:30 a.m., and the SLP delivered communications services on Friday's from 12:30–1:00 p.m. This schedule conflicts with the amount of service minutes indicated in the Student's January 2017 IEP, which stated that the Student would attend school for 300 minutes per week, instead of the 330 minutes per week she actually attended.
23. Based on the District's speech service log, the SLP met with the Student on January 6, 13, and 27; February 3, 10, and 17; and March 3, 10, 17, and 24, 2017. The Student did not receive her communication services on January 10, the day of her IEP team meeting, nor on January 20, and March 31, due to the SLP's absence. The speech service logs during the month of January showed the Student was producing /f/ and /k/ sounds in the initial position with one hundred percent accuracy. During the month of March, the Student was producing /k/ sounds in conversation with ninety-five percent accuracy, /k/ sounds in multisyllabic words with seventy percent accuracy, and /g/ sounds in all positions with ninety-two percent accuracy.
24. On March 20, 2017, the SLP and the Student's mother corresponded via email and agreed to change the Student's communications services delivered by the SLP from 12:30–1:00 p.m. to 1:00–1:30 p.m.
25. The District was on break from April 17–21, 2017.
26. On April 26, 2017, the Student's mother emailed the director of early learning, inquiring whether to register the Student for the District's preschool program during the 2017-2018 school year. The mother stated that she "need[ed] to know what you guys recommend. If [the Student] gets placed in a different class with no teacher['s] aid, if she would do alright." The director of early learning responded that "although this will be an IEP meeting decision, I would suspect we would [be] offering her a placement similar to this year," and also stated "if you wanted her in school more days or for more time, you could register her and we would send a staff to work with her for her special ed[ucation] minutes for her IEP time". The director of early learning also stated the SLP would be on campus next year, so the Student

could receive services at the same site, and then referred the mother to the special education teacher and paraeducator to discuss staffing in the classroom.

27. On April 27, 2017, the Student's mother emailed the director of early learning, stating the Parents wanted to enroll the Student in extra days of preschool and asked:

Assuming [the Student] does qualify for 2 days a week like she is doing now, would the days be the same...Monday's and Wednesday's? I'm trying to figure out what extra days to select for her. I know these questions are premature but it seems like the Children's Center fills up quickly and I want to get her set up hopefully in the same classroom. I am confused about how to go about this.

The director of early learning responded to the email by offering to discuss the matter via telephone.

28. Based on the District's speech service log, the SLP met with the Student on April 7, and 28, and on May 5, 12, and 26, 2017. The Student was absent on April 14, 2017, and the SLP was absent on May 19, 2017. The speech service log showed that during the month of April, the Student was producing /k/ sounds in multisyllabic words with seventy-five percent accuracy and /g/ sounds in medial phrases with eighty-eight percent accuracy. During the month of May, the Student was producing /g/ and /k/ sounds with one hundred percent accuracy in sentences.

29. On June 16, 2017, the director of early learning, the general education teacher, the SLP, the Parents, and the Student's private speech therapy provider met to review the Student's January 2017 IEP. The IEP team agreed to develop a new IEP for the Student. The June 2017 IEP stated the Student was playful and was a quick learner. The IEP stated the Parents wanted to continue to work on the Student's potty training and communication skills, including the rate of the Student's speech. The IEP stated the Student had made significant gains toward meeting her January 2017 IEP goals, as she was articulating single syllable words with age appropriate skills, and her receptive and expressive language skills were continuing to develop. The Student was able to articulate 13 of 14 single syllable words correctly, but the Student had difficulty articulating multi-syllabic words, had low volume, and a rapid speaking rate. The IEP said the Student's intelligibility was at eighty-two percent and that the IEP team anticipated the Student's intelligibility rate would be at ninety percent on her fourth birthday. The Student continued to be "quite verbal, often talking to [the staff], but more and more with peers." The IEP stated the Student participated well during group activities and was sometimes distracted, but not usually disruptive. The IEP further stated the Student's language delays continued to have an adverse impact on her functioning in a preschool classroom and in the community. The June 2017 IEP included the following annual goal in communication:

- When given opportunities to retell a familiar story or personal experience, the Student will produce early developing sounds /p b m n t d k g f v/ in all positions of multi-syllabic words, phrases and sentence improving accuracy from 70% to 80% as measured by SLP data.

The IEP stated an occupational therapist would provide observation and consultation for sensory needs. The IEP provided for the following specially designed instruction in the area of communication from June 21, 2017 through January 26, 2018:

- 20 minutes, one time a week in a special education setting delivered by SLP
- 20 minutes, one time a week in a general education setting delivered by SLP

The IEP provided for the following specially designed instruction in the area of communication from January 27, 2018 through June 20, 2018:

- 20 minutes, one time a week in a special education setting delivered by SLP.

The June 2017 IEP stated the Student would attend preschool for 600 minutes a week from June 21, 2017 through June 28, 2018. The IEP also stated that the Student would “participate with students with and without disabilities in the community and at preschool, to the extent that her parents enroll her in preschool, except for the time that she receives specially designed instruction in communication. During that time, she may participate with other students with disabilities.”

30. Also on June 16, 2017, the District issued a prior written notice, proposing to continue the Student’s IEP. The notice stated the Student made significant progress toward her January 2017 IEP goals. The notice also stated the Student’s June 2017 IEP included updated goals and service minutes. Additionally, the notice stated that the IEP team made plans for the Student “to receive weekly communication SDI in her classroom session for the fall semester and weekly in the fall and spring semesters, to support her continued growing independence. Progress will be reviewed at semester to determine continued needs and intensity of services needed.”
31. Based on the District’s speech service log, the SLP met with the Student on June 2, 9, and 16, 2017. The speech service log showed that during the month of June, the Student was producing /k/ and /g/ in initial phrases with one hundred percent accuracy.
32. The District’s 2016-2017 school year ended on June 23, 2017.
33. On August 17, 2017, the Student’s mother emailed the District’s director of early learning and copied the Student’s father. The mother stated that she received a bill for the Student’s preschool and was inquiring, “if [the Student’s] preschool is not covered by her IEP this year.” In response, the director of early learning stated that the Student’s June 2017 IEP provided for the SLP to deliver services to the Student, in the special education setting and general education setting. The father then replied to the director of early learning, stating that “this certainly wasn’t clear and not handled appropriately”.
34. On August 29, 2017, the director of early learning emailed the Parents, offering to enroll the Student in the Tuesday/Thursday afternoon class from 12:15–3:15 p.m., which had a teaching assistant to “work with [the Student’s] language needs”.

35. On August 30, 2017, the Parents responded, stating that the Student's previously scheduled medical treatments conflicted with the Tuesday/Thursday schedule. The Parents also stated that the transition from the Student's "[private provider] to the District has not gone well enough, and [Student] should be receiving more services." The Parents requested the District provide "preschool services at no charge," and provide a paraeducator in the morning classes that the Student was scheduled to attend.
36. On September 1, 2017, the director of early learning responded and stated that since the Parents disagreed with the Student's IEP services, the District would reevaluate the Student to determine her current needs.

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

37. The District's 2017-2018 school year began on September 6, 2017.
38. The Parents filed this complaint on September 7, 2017.
39. According to the Parents' reply to the District's response to this complaint, the District has now agreed to pay for an independent education evaluation (IEE) of the Student.

### **CONCLUSIONS**

1. **Initial Evaluation:** The purpose of the initial evaluation is to determine whether a student is eligible for special education and the nature and extent of the special education and related services required for the student to make educational progress. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. Here, the District obtained the Parents' written consent to evaluate the Student in the areas of social/emotional and communication. In determining the Student's eligibility for special education, the District assessed the Student's articulation using the GFTA-II. Additionally, the District reviewed data and information from the Student's medical records and the Student's private children's clinic September 2016 reports and observed the Student at her private preschool and at her co-op preschool. Although the Parents now disagree with the results of the District's evaluation, the documentation shows the District followed procedures for conducting an initial evaluation of the Student.
2. **IEP Development:** An IEP must contain a statement of the special education services, related services, and supplementary aids to be provided to the student. The Parents alleged that the District did not follow procedures for developing the Student's June 2017 IEP because the June 2017 IEP did not provide for special education staff to deliver specially designed instruction in the Student's general education setting. School districts have discretion in making personnel decisions. The Student's June 2017 IEP provided for 20 minutes of communication services in a general education setting delivered by an SLP, which differed from the Student's prior IEPs where a paraeducator would provide the services under the

supervision of an SLP. While the Parents may disagree with the District's choice to have an SLP deliver the Student's communication services in a general education setting, the District did not error in making this decision. The Parents also alleged that the Student did not meet the speech goals in her January 2017 IEP. The SLP's speech therapy logs documented the progress the Student was making in her speech goals during the school year and showed that the Student met her goals. Additionally, the June 2017 IEP included present levels of the Student's performance, which stated the Student made significant progress in her communication goals and the IEP team developed new IEP goals to meet the Student's current needs.

- 3. IEP Implementation:** At the beginning of each school year, each district must have an IEP in effect for a student who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Here the Student's October 2016 IEP and January 2017 IEP provided for an SLP to deliver 30 minutes of services per week in a special education setting. The service log provided by the SLP showed the Student received her services each week during the 2016-2017 school year, except for December 9, 2016, when the District was closed for inclement weather; January 10, 2017, the day of the Student's IEP meeting; January 20, 2017, March 31, 2017, and May 19, 2017, the days the SLP was absent. The District's failure to reschedule the Student's missed services constitutes a minor discrepancy between the services required by the Student's IEPs and those provided, and is not a material failure that denied the Student a free and appropriate public education (FAPE). Additionally, the Student's October 2016 IEP and January 2017 IEP provided for a special education staff to deliver 120 minutes of services per week in the general education setting. The classroom notes provided by the paraeducator assigned to the Student, documents the paraeducator's daily work with the Student. The District's documentation substantiates it followed procedures to implement the Student's IEP.

### **CORRECTIVE ACTIONS**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

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

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

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

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