

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-79**

### **PROCEDURAL HISTORY**

On October 31, 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 Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 31, 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 November 21, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on November 22, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 1, 2017, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On December 20, 2017, OSPI requested that the District provide additional information, and the District provided the requested information on December 20, 2017. OSPI forwarded the information to the Parent on December 21, 2017.

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

### **OVERVIEW**

During the 2016-2017 school year, the Student attended a District elementary school program and was eligible to receive special education services under the category of other health impairment. On November 9, 2016, following a reevaluation, the Student's individualized education program (IEP) was amended to include specially designed instruction in the area of writing. The amended IEP included goals related to reading, writing, and social/emotional, and social/emotional self-management. The IEP provided for progress reporting on a trimester basis for most of the goals and on a semester basis for the writing goal. In April 2017, the District scheduled an IEP meeting to develop the Student's annual IEP by April 28, 2017, but the Parent asked to reschedule the meeting and the District did not reschedule the meeting during the remainder of the 2016-2017 school year. In May 2017, a meeting was held to facilitate the Student's transition to a District middle school for the 2017-2018 school year. Neither the Parent, nor the District contend that this meeting resulted in a new annual or amended IEP. In September 2017, the Student's IEP team met to discuss completing a new IEP for the Student, but the IEP was not completed at that time. On November 7, 2017, the Student's IEP team met and finalized a new IEP for the Student, which had a start date of November 21, 2017.

In her complaint, the Parent alleged that the District failed to: 1) follow procedures for developing the Student's IEP during the 2016-2017 and 2017-2018 school years; 2) follow procedures for ensuring the composition of the IEP team at IEP meetings held during the 2016-2017 and 2017-2018 school years; 3) provide the Parent with progress reporting in June 2017; and, 4) follow procedures for implementing the Student's IEP during the 2017-2018 school year. The District admitted that: 1) the Student's annual IEP was not timely reviewed and developed by April 28, 2017, and that a new IEP was not developed and implemented prior to November 21, 2017; 2) the Parent was not provided with required progress reporting in June 2017; and, 3) the Student did not receive specially designed instruction at the beginning of the 2017-2018 school year. The District denied that it failed to ensure the composition of the IEP team at IEP meetings during the 2016-2017 and 2017-2018 school years.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation period, which began on November 1, 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 period.

### **ISSUES**

1. Did the District follow procedures for developing the Student's individualized education program (IEP) during the 2016-2017 and 2017-2018 school years?
2. Did the District follow procedures for ensuring the composition of the IEP team at IEP meetings held during the 2016-2017 and 2017-2018 school years?
3. Did the District provide the Parent with progress reporting in June 2017?
4. Did the District follow procedures for implementing the Student's IEP during the 2017-2018 school year?

### **LEGAL STANDARDS**

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications;

(k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP 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. 34 CFR §300.324(b); WAC 392-172A-03110(3).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321; WAC 392-172A-03095(5). As provided in 34 CFR §300.321(a)(2), the public agency must ensure that the IEP Team includes "[n]ot less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment) . . ." Neither the IDEA nor its implementing regulations require that an IEP Team include more than one regular education teacher. Therefore, if an IEP Team includes more than one regular education teacher of the child, the excusal provisions of 34 CFR §300.321(e)(2) would not apply if at least one regular education teacher will be in attendance at the IEP Team meeting. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question C-3).

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; WAC 392-172A-03105. 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.

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320; WAC 392-172A-03090.

## **FINDINGS OF FACT**

### **Background Facts**

1. In April 2015, the Student was initially determined eligible to receive special education services under the category of other health impairment. Based on recommendations in the Student's initial evaluation report, the Student's individualized education program (IEP) team determined that the Student needed specially designed instruction in the areas of reading and social/emotional. The Student's initial IEP was developed on April 27, 2015.

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

2. The District's 2016-2017 school year began on September 1, 2016, and the Student attended a District elementary school program.
3. The Student's IEP in place at the beginning of the 2016-2017 school year was developed on April 27, 2016, and then amended on May 24, 2016. The amended IEP included the following five (5) annual goals, all of which had a "By 05/01/2017" achievement date:
  - Reading: when given a passage at her instructional level [the Student] will read the passage improving decoding skills from 76% to 85% as measured by classroom data and informal assessment;
  - Reading: when given a passage at her instructional level [the Student] will read the passage improving word recognition from 71% to 98% as measured by classroom data and informal assessment;

- Reading: when given a passage at her instructional level [the Student] will read the passage improving fluency from 97 wpm to 150 wpm as measured by weekly data and informal assessment.
- Social/Emotional: when given an opportunity to process with an adult [the Student] will share how she managed a social situation improving self-advocacy and emotional flexibility from 0% accuracy to 90% accuracy as measured by goal setting sheets.
- Social/Emotional/Self-Monitoring: when given a processing sheet [the Student] will identify things within the school setting that are going well or causing her to worry improving ability to self-monitor feelings from 0% accuracy to 90% accuracy as measured by processing sheets.

The amended IEP stated that progress reporting for the annual goals would be provided on a trimester basis. The amended IEP provided for the following specially designed instruction in a special education setting:

- Reading – 30 minutes/4 times weekly
- Social/emotional – 5 minutes/4 times weekly

The amended IEP also identified the following modifications:

- Access to classroom technology (computer or tablet)
- Seating that allows for feet to be flat
- Tracking tool for reading
- Desk pass to go to safe space to take a break
- FM system for softer speaking teacher
- Prepare for transitions prior to classroom transitions
- Access to peer tutor when needed for clarification of directions
- Extended time for homework without grading penalty when homework is not completed by due date
- Check work frequently to ensure understanding
- Break material into manageable parts
- Digital textbooks
- Multi-sensory teaching techniques (visually, auditorily, kinesthetically)
- Preferential seating
- Checks to make sure glasses are being worn
- Text-to-Speech (Embedded Designated Support) for use on district and state assessments
- Reading (when allowable) for use during tests
- Extended time on tests during tests
- Small Group during testing
- Testing, especially DIBELS, completed with familiar person during DIBELS testing

4. On September 13, 2016, the Parent met with school staff to discuss the Student’s recent summer tutoring sessions with a private provider. The Student had attended summer tutoring four hours per day, five days per week for eight weeks to work on developing and strengthening her reading skills. The Parent and school staff discussed evaluating the Student in the area of writing. The District then provided the Parent with a “Notification of Assessment Revision” which, stated that “the [multidisciplinary] team determined that an evaluation was necessary at this time to consider adding writing as an area of Specially

Designed Instruction.” The Parent provided consent for academic testing in writing (written expression and a file review) on September 17, 2016.

5. Based on the District’s documentation in this complaint, a meeting to review the results of the Student’s assessment revision and amend the Student’s April 2016 IEP was scheduled for April 29, 2016. However, the meeting was rescheduled, per the Parent’s request, because the Student’s general education teacher was not able to attend the entire meeting. The meeting was eventually rescheduled for November 1, 2016.
6. On October 31, 2016, the Student’s special education teacher emailed the Parent a draft of the proposed amendment to the Student’s April 2016 IEP. The special education teacher stated that a writing goal had been added to the IEP and that the IEP service minutes would be updated as part of the conversation at the November 1, 2016 meeting.

**Timeline for this Complaint Begins on November 1, 2016**

7. On November 1, 2016, the Student’s IEP team met to review the results of the Student’s assessment revision and discuss amending the Student’s IEP to include annual goals related to writing. Based on the documentation in this complaint, at the meeting, District staff expressed that in their professional opinion, the Student did not need specially designed instruction in the area of writing.
8. Later on November 1, 2016, the Parent emailed the District director of special services (District director), expressing her dissatisfaction with how the meeting went. The Parent stated that the purpose of the meeting was supposed to be to amend the Student’s April 2016 IEP to add writing services and include a spelling goal, and that she had a draft IEP, which included writing services. However, the Parent had been “blindsided” when staff stated that in their professional opinion, the Student did not qualify for writing services and did not recommend the writing services. The Parent also stated that she was recommending that the Student receive services via a “push in” model, which was the Student’s least restrictive environment. The Parent then expressed concern that she was not given adequate time or proper information to prepare for the meeting that day, and that staff had already made a determination before the meeting. The Parent stated that this was a violation of her rights and the Student’s rights. In response, the District director called the Parent to discuss the Parent’s concerns and then sent a follow-up email, agreeing to hold another IEP meeting on November 9, 2016.
9. On November 9, 2016, the Student’s IEP team met to further review the Student’s assessment revision and discuss amending the Student’s April 2016 IEP. The IEP team included the following participants: the assistant principal, the District director, the Student’s general education teacher for English Language Arts (ELA), another general education teacher, the Student’s special education teacher, the Parent’s advocate, and the Parent. At the November 9, 2016 meeting, the IEP team discussed the Student’s present levels of educational performance, current goals, and the addition of a writing goal. The IEP also discussed changing the Student’s placement so that she would now receive her specially designed

instruction in a general education setting. The IEP team agreed to further amend the Student's April 27, 2016 IEP to include the following annual goal in writing:

- Writing: "Skill: Editing", when given a draft written assignment [the Student] will edit the passage improving vocabulary usage with correct spelling from 0/5 to 4/5 as measured by writing rubric.

The IEP team also amended one of the Student's reading goals as follows:

- For Reading: when given a passage at her instructional level [the Student] will read the passage improving decoding skills from 76% to 95% as measured by classroom data and informal assessment.

The amended IEP stated that progress reporting for the annual goals would be provided on a trimester basis, except for the writing goal, which was identified as being provided each "Semester." The amended IEP provided for the following specially designed instruction in a general education setting to be delivered by a general education teacher and monitored by the special education teacher:

- Reading – 5 minutes/1 time weekly
- Social/Emotional – 5 minutes/1 time weekly
- Writing – 5 minutes/1 time weekly

The November amendment to the April 2016 IEP included all of the same accommodations as the May 2016 amendment, with the exception of the FM system for softer speaking teachers.

10. Also on November 9, 2016, the District issued prior written notice, indicating that the amended IEP would be implemented on November 14, 2016. The notice stated that "an evaluation revision was completed added writing as an area of specially designed instruction..." The notice also stated that the team reviewed where the Student's least restrictive environment was and "[t]he team determined that services would be provided for [the Student] within the general education setting." The notice said that "writing present levels and a writing goal were added to the IEP."
11. The District's calendar for 2016-2017 school year identified the following trimester and semester dates:
  - November 30, 2016 (first trimester end)
  - January 27, 2017 (first semester end)
  - March 10, 2017 (second trimester end)
  - June 16, 2017 (last day of school/third trimester and second semester end)
12. On December 5, 2016, the Parent sent two emails to the special education teacher and District director, asking for a copy of the November 9, 2016 IEP, and inquiring to see if the change in service minutes had started and where "SDI is being provided, [is the general education teacher] providing it now in social studies...? Can you please provide me an update on SDI?" The Student's special education teacher replied that the District's IEP computer system has not allowed her to add the writing goal to the Student's IEP until the prior

weekend [December 3-4, 2016]. The special education teacher said she would try to get the Parent a copy of the IEP in the next few days.

13. On December 7, 2016, the Parent emailed the special education teacher and District director, stating she still had not received a copy of the updated IEP. The Parent also stated, "I am also following up on SDI. How is the curriculum being modified? What had been done so far? When did this start? Can you please provide me an update?"
14. On December 8, 2016, the District director provided the Parent a copy of the November 9, 2016 IEP amendment via email.
15. On December 9, 2016, the special education teacher replied to the Parent's December 5 and 7 emails regarding the Student's specially designed instruction. The special education teacher stated, "We are working to find the best system and it continues to be a work in progress." The special education teacher stated that she had not been able to come to the school that week, and that this would have been her first observation in the Student's classroom. The teacher had planned to observe the Student during science class, and stated that she would observe the Student the following week. The teacher also stated that the school social worker had been working with the Student on self-talk and self-advocacy in relationship building. The teacher stated that she was delighted that the Student found support and a connection with the social worker.
16. The District was on break from December 21, 2016 – January 3, 2017.
17. On February 21, 2017, the Parent emailed the special education teacher and the District director, stating, "I am curious how [the Student's] service minutes are being met in general education and would appreciate an update on what is taking place, if it is working, etc. A service log book, or whatever you keep would be helpful as well." According to the District's response to this complaint, the Parent did not receive a response from either the District director or the special education teacher.
18. On April 13, 2017, the special education teacher emailed the Parent and other members of the Student's IEP team, proposing to hold an IEP meeting on April 28, 2017 at 2:00 p.m. The email was sent to three fifth grade general education teachers. In response, the Parent agreed to attend the meeting. Later that same day, one of the fifth grade teachers responded that she would only be able to attend the IEP meeting until 2:30 p.m. due to a medical appointment.
19. On April 26, 2017, the Parent emailed the special education teacher and copied the District director. The Parent stated that she would now be unable to attend the April 28, 2017 IEP meeting and asked that the meeting be rescheduled. The Parent asked that the special education teacher provide a list of possible meeting dates. In response, the special education teacher stated that she would "be in touch" with the District director on April 27, 2017, to discuss possible meeting dates, and stated that she had sent the Parent a draft of the



Student's proposed April 2017 IEP. The documentation in this complaint does not show that the District rescheduled the April 28, 2017 IEP meeting.

20. According to the Parent's complaint, the April 28, 2017 IEP meeting was canceled because the Student's general education teacher and a District representative were unable to attend.
21. On May 23, 2017, the Parent met with staff at a District middle school to discuss the Student's transition to the middle school for the 2017-2018 school year. According to the District's response to this complaint, the meeting included a review of the Student's amended April 2016 IEP and the Student's needs. The meeting participants included the District director, a middle school special education teacher/case manager, and a middle school general education teacher. The Student's April 2017 IEP was not finalized at that time.
22. On June 1, 2017, the Parent emailed the District director, asking how "transition services" would be provided for the Student prior to the start of the 2017-2018 school year. The Parent also asked who the Student's IEP case manager would be during the Student's time at the middle school and stated that it would not be in the Student's best interest to have a different case manager each year. Additionally, the Parent asked what the Student's class schedule would be for the 2017-2018 school year and about the status of getting a new IEP in place. The District director replied that the middle school resource special education teacher would be the Student's IEP case manager for all three years of middle school and that she would follow up with the middle school regarding the Student's schedule. The director stated that she agreed that "transition services" were important and asked how many middle school visits the Parent and Student were seeking before the school year started. The director also stated, "As for the IEP, it is on my list of things to wrap up tomorrow. You should have a draft to review by the end of the day."
23. The District's 2016-2017 school year ended on June 16, 2017. There is no information to suggest that the director provided the Parent with a draft IEP prior to the end of the school year.

#### **Summer 2017**

24. The Student's middle school schedule was posted online on July 2, 2017, and showed that the Student was assigned to a special education advisory class. As a result, the Parent emailed the District director, raising concerns that the Student was assigned to a special education advisory class, and not a general education advisory class as discussed at the May 23, 2017 meeting. In response, the director agreed to have staff at the middle school change the schedule. The director then sent a follow-up email on August 4, 2017, stating that the school counselor had agreed to change the Student's schedule.
25. On August 28, 2017, the middle school's "Get Your Stuff Day", the Student's class schedule again included a special education advisory class instead of the agreed upon general education advisory class. Additionally, according to the Parent, the Student did not receive the agreed upon "transition services" prior to the beginning of the 2017-2018 school year,

and the Parent took the Student to the middle school on September 6, 2017, the day before the start of school, to have her walk through her schedule route and find her classes.

26. On September 5, 2017, the middle school counselor emailed the Parent and attached an updated copy of the Student's class schedule, showing that the Student was enrolled in a general education advisory class.

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

27. The District's 2017-2018 school year began on September 7, 2017. At that time, the Student began attending the District middle school.
28. On September 7, 2017, the Student's middle school case manager (IEP case manager) sent an email to the parents of students in her special education advisory class at 3:25 p.m. regarding the first day of school and what students and parents could expect from advisory during the first few days. The Parent was included on the email. At 3:30 p.m., the Parent replied and copied the District director and middle school counselor. The Parent clarified that the Student should be in a general education advisory class. The Parent stated that this had been discussed at the May 2017 meeting, and that last week, the school counselor had changed the Student's schedule. The Parent asked the IEP case manager to help clear up any confusion.
29. The IEP case manager replied at 3:44 p.m., stating that she apologized for the confusion, but she did not remember discussing the Student being in a general education advisory class. The case manager stated that typically, students with IEPs had their IEP case manager's class for advisory. The case manager stated that she had noticed the Student had not attended the special education advisory class that morning. The IEP case manager then asked to have her memory refreshed as to why the Student was not in her advisory and asked if it was due to a preference for a teacher or a familiar person. The case manager stated that she used the advisory class time to make sure her students were organized and up-to-date on assignments and grades, and that she had a smaller class than a general education class, which was one of the reasons students on her caseload were assigned to her class. The case manager stated that if the Parent wished to keep the Student in the general education advisory class and had worked out the details with "those who make the final decisions", this was fine. The case manager said that she was not aware, or did not remember, that detail.
30. Later on September 7, 2017, the Parent emailed the District director, asking for a copy of the Student's current IEP and asking for clarification about the Student's advisory class. The District director responded on December 8, 2017, stating that she was in a training and would "get out the IEP in a while. I have time scheduled during [the IEP case manager's planning period] to help clarify everything." The District director also said she would follow up with the Parent later that day.
31. On September 8, 2017, the middle school counselor emailed the Parent, stating that she had figured out what the issue was, as there had been miscommunication about the Student

having an IEP or a Section 504 plan. The school counselor stated that the IEP case manager had “never received any official paperwork that [the Student] was exited and transferred to a 504.” The Parent replied that this was incorrect, as the Student was on an IEP. The school counselor then acknowledged the Parent’s email, stating, “Ok. I think we have it figured out. I hope...”

32. On September 10, 2017, the District director emailed the Parent and attached a prior written notice and draft IEP, dated May 23, 2017. The director apologized for not getting the Parent a copy the prior week, and stated that she wanted to get together to make sure the whole team was on the “same page”. The director asked if the Parent was available to meet the following week. The May 23, 2017 prior written notice attached to the director’s email proposed to initiate the Student’s IEP and stated that “the team met to develop an annual IEP and discuss [the Student’s] transition to middle school. [The Student] will receive all of her specially designed instruction in this setting.” The notice also stated, “The team considered whether [the Student] would need resource room classes, or a sped advisory. It was determined that she would be fully included in the general education setting, however, [she] may be in a general education co-taught class.” The notice stated that the action would be initiated on May 29, 2017.
33. Later on September 10, 2017, the Parent replied to the director’s email, asking why there was an IEP dated May 23, 2017, as she had not been part of a meeting that developed the IEP. The Parent stated that the last IEP meeting<sup>1</sup> had been canceled because the teachers could not participate. The director responded that the Parent was correct, as the May 23 IEP was the last draft from when they met with the middle school team, but it was not completed, which is why there was no signature page attached. The Parent replied, stating that they would be working from the November 2016 IEP amendment and agreed to schedule an IEP meeting. The director agreed and then attached a copy the November 9, 2016 amendment to the Student’s April 2016 IEP, and inquired about dates to meet. The Parent and the District later agreed to meet on September 28, 2017.
34. According to the invitation for the September 28, 2017 IEP meeting, the meeting invitees were the District director, the Student’s general education physical education (PE) teacher, the Student’s general education humanities teacher, the IEP case manager, the Parent’s advocate, and the Parent.
35. On September 28, 2017, the Student’s IEP team met to develop an IEP for the Student. According to the District’s prior written notice, dated September 28, 2017, at the start of the meeting, no general education teacher was present, so the IEP case manager went to get the Student’s general education PE teacher, who then joined the meeting. Toward the end of the meeting, the Student’s general education humanities teacher also joined the meeting. The cover page for the draft of the Student’s September 28, 2017 IEP was signed by the District director, the IEP case manager, the Parent, the Parent’s advocate, and the general education

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<sup>1</sup> According to the Parent’s complaint, the April 28, 2016 IEP meeting was canceled because the Student’s general education teacher could not attend.

humanities teacher. It did not include a signature from the general education PE Teacher. According to the Parent's complaint, neither general education teacher stayed the entire IEP meeting, but "both came in and out". The Student's IEP was not finalized at the September 28 meeting.

36. According to the District's prior written notice, dated September 28, 2017, the Student had not yet started to receive special education services at the middle school and the IEP team would reconvene to discuss compensatory services. Additionally, the notice stated that progress reporting would be updated.

37. On October 1, 2017, the Parent emailed the District director a list of concerns regarding the draft IEP, and also asked that additional concerns be addressed, such as the Student's current placement, the assigned case manager,<sup>2</sup> and one accommodation. On October 2, 2017, the director emailed the Parent an updated draft IEP, to which the Parent responded with additional corrections on October 4, 2017.

38. On October 13, 2017, the District director emailed the Parent, letting her know that the Student's former elementary school resource teacher had completed progress reporting regarding the Student's progress toward the goals in the November 2016 IEP amendment, and that the Parent's requested changes had been made to the draft IEP. The director attached a copy of the updated IEP and updated progress reporting. The progress reporting is summarized as follows:

- Reading goals 1 and 2 had progress codes provided from 6/10/16, 1/27/17, and 3/24/17. The progress reporting stated that the Student had mastered both reading goals as of 3/24/17.
- Reading goal 3 had progress codes provided from 6/10/16, 1/27/17, 3/24/17, and 10/10/17. The progress reporting included a comment from 4/27/17 stating that the Student was able to read 105 wpm.
- Social/Emotional goal had progress codes provided from 6/10/16, 1/27/17, 3/24/17, and 10/10/17. The progress reporting included a comment from 4/27/17 stating that the Student was able to process with an adult and manage social situations greater than 80% of the time, but the school social worker thought this percentage may be lower with an unknown adult.
- Social/Emotional Self-Monitoring goal had progress codes provided from 6/10/16, 1/27/17, 3/24/17, and 10/10/17. The progress reporting noted that the Student had mastered the goal as of 10/10/17.
- Writing goal had progress codes provided from 1/27/17, 3/24/17, and 4/28/17. The progress reporting noted that the Student had mastered the goal as of 4/28/17.

39. On October 19, 2017, the Parent emailed the Student's IEP case manager, requesting an IEP meeting to discuss changes to the Student's accommodations. The case manager and the Parent then exchanged several emails and agreed to hold an IEP meeting on November 7, 2017.

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<sup>2</sup> According to the Parent, the middle school IEP case manager stated: a) she did not know the September 28, 2017 meeting was going to be an IEP meeting; b) she did not know who the Student was; and, c) she had not provided any service minutes, and she could not "see [the Student's IEP] information" in the District's computer system because the Student was not on her case load.

40. On October 25, 2017, the Parent emailed the Student's general education English Language Arts (ELA) teacher with concerns that the Student had not done well on an assignment and asked if the Student was receiving her accommodations. In response, the ELA teacher clarified the assignment requirements and stated that the Student could rewrite the assignment.
41. On October 31, 2017, OSPI received this complaint.
42. On November 7, 2017, the District held an IEP meeting, which included the following people: the District director, the principal, the middle school counselor, the IEP case manager, the general education PE, science, and humanities teachers, the Parent's advocate, and the Parent. At the meeting, the IEP team completed an IEP for the Student. The November 7, 2017 IEP included the following present levels of educational performance:
- The general education PE teacher indicated she has a good relationship with the Student and agreed to support being the point of contact for check-ins and social/emotional regulation.
  - The general education Humanities teacher reported that the student currently has an "A" in the class and can keep up with the general education curricula.
  - Regarding Social/Emotional: [the Student] has socially adjusted well to middle school. She has started to make friends and establish relationships with teacher. The Student tends to tell adults things are fine, even if she is having social issues. She has started to have conversations with adults and they have been having check-ins with her.
  - Regarding Reading: [The Student] continues to extend her vocabulary. At this time, the goal is to increase the variation of vocabulary in both oral and written form.
  - Regarding Writing: Student has produced benchmark writing in her general education classroom. "She has been able to edit it to meet expectations at least 4 out of 5 times. As the work expectation changes, this goal will continue as she learns the expectation[s]." The Student tends to be repetitive in her word usage in her writing. The goal is to have the Student continue to develop more complex vocabulary in her writing.

The November 2017 IEP included the annual goals in the areas of reading, writing, and social/emotional and stated that progress reporting toward the goals would be provided on a quarterly basis. The November 2017 IEP provided for the following specially designed instruction in general education to be delivered by a general education teacher and monitored by the special education teacher:

- Reading – 5 minutes/1 time weekly
- Social/Emotional – 5 minutes/1 time weekly
- Writing – 5 minutes/1 time weekly

The IEP also provided for the following accommodations:

- Altered grading for timed tests (Content specific classes will allow for extra time to process. Skill specific classes may decrease number of items or only grade completed.)
- Allow additional time during testing
- Allow the Student to ask clarifying questions on tests
- Allow to take photos on iPad of notes from classroom
- Break assignments in to manageable parts
- Check frequently for understanding

- Content/questions/tests delivered in a different way to ensure understanding
- Copies of classroom presentations
- For longer assignments extended time on homework without grading penalty
- No penalty for spelling on written assignments
- Notify parent via email ahead of time for the following weeks' reading, content, and assignments
- Simplify/clarify questions - during instruction and testing
- Testing setting:
  - during SBA tests, extra time per test protocol
  - during SBA tests, text-to-speech Embedded Designated Support – Questions only
  - for non-SBA tests, text-to-speech during tests
  - small group, as requested
- Study guide/review sheets if available provided the Friday before a test
- Tracking tool for reading
- Classes where math skills are needed, use of math tools (i.e., manipulatives, conversion charts, calculator, etc.) during instructional and test times

43. On November 14, 2017, the District issued a prior written notice, proposing to implement the Student's IEP on November 21, 2017.

## CONCLUSIONS

**Issue 1: Procedures for Developing the Student's Individualized Education Program (IEP) During the 2016-2017 and 2017-2018 School Years** – 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. The Student's amended April 27, 2016 IEP was in place during the 2016-2017 school year and was required to be reviewed and revised by April 27, 2017. The District admits that it failed to hold a new annual IEP in a timely manner. While the documentation in this complaint shows that a meeting was scheduled for April 28, 2017, outside of the timeline for review, the meeting was canceled and the District failed to reschedule the meeting. A meeting was held on May 23, 2017, at the middle school with the Parent, middle school staff, and the director of special education, to discuss the student's progression to middle school and changing the Student's goals, but no new IEP was proposed or resulted from that meeting.

Additionally, the District was aware at the end of the 2016-2017 school year when the Student transitioned to a District middle school that a new annual IEP had not been developed, but no IEP meeting was scheduled prior to the start of the 2017-2018 school year. The District was also aware that the Parent had concerns about middle school staff, including the Student's IEP case manager, understanding the provisions of the Student's IEP, but still no meeting was scheduled until September 28, 2017. That meeting did not result in a completed IEP and a second meeting was not held until November 7, 2017. At the November 7, 2017 IEP meeting, the team finalized a new IEP. The Parent received prior written notice of the new IEP on November 7, 2017, and that it would be initiated on November 21, 2017. Thus, the District failed to follow procedures

for developing the Student's IEP and failed to have a current IEP in place for the Student from April 27, 2017 to November 21, 2017.

**Issue 2: Composition of the IEP team at IEP Meetings During the 2016-2017 and 2017-2018 School Years** – An IEP team must be comprised of: the parent(s); at least one regular education teacher; not less than one special education provider; and a representative of the school district. An IEP team member can be excused from attending an IEP meeting, in whole or part, if parents and districts agree, in writing, that an IEP team member's participation is not necessary and the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to, or discussion of, the team member's area of the curriculum or related services, the IEP team member may also be excused if the parties both consent in writing to the excusal and the excused team member submits written input into the development of the IEP prior to the meeting.

In her complaint, the Parent alleged that the District failed to have a general education teacher and a District representative available to attend the Student's April 28, 2016 IEP meeting, and that due to this, the April 28 IEP meeting was canceled. The documentation in this complaint shows that three general education teachers were invited to the April 28, 2016 IEP meeting and that one teacher indicated she would only be able to attend part of the meeting. If an IEP team includes more than one regular education teacher, the excusal provisions do not apply if at least one regular education teacher will be in attendance at the IEP team meeting. Given that three teachers were invited to the meeting and only one teacher indicated that she could not attend the whole meeting, the District was not required to obtain consent for the excusal from the Parent. Additionally, there is no documentation to show that a District representative was unable to attend the meeting. However, the documentation does show that the Parent asked that the meeting be rescheduled because she was unable to attend, and that the District agreed to reschedule the meeting.

In her complaint, the Parent also alleged that the District failed to ensure that a general education teacher attend the entire September 28, 2017 IEP meeting in order to participate in clarifications and decision making. As discussed above, if an IEP team includes more than one regular education teacher, the excusal provisions do not apply if at least one regular education teacher will be in attendance at the IEP team meeting. The documentation in this complaint shows that there was no general education teacher present at the start of the September 28 meeting, and as a result, the IEP case manager went and asked the Student's general education PE teacher to attend the meeting. Later, the Student's general education humanities teacher joined the meeting, but based on the documentation in this complaint, it appears the PE teacher then left the meeting before it ended. Therefore, because neither general education teacher was present for the entire meeting, the District was required to obtain the Parent's consent to excuse the teachers from the meeting. The District has not substantiated that it followed procedures to ensure that a general education teacher was present or properly excused from the September 28, 2017 IEP meeting.

**Issue 3: Progress Reporting for June 2017** – The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. The Student's amended April 2016 IEP provided for progress reporting on a trimester basis for five of the annual goals and a semester basis for one annual goal. Additionally, as discussed above, the District failed to develop a new IEP for the Student in April 2017; therefore, the District should have continued to monitor the Student's progress toward the goals in her amended April 2016 IEP and provided progress reporting at the end of each trimester or semester as appropriate. The District acknowledges in its response, that the District did not provide the Parent with progress reporting regarding the Student's amended April 2016 IEP in June 2017, and that it did not provide the Parent with progress reporting until October of 2017. The District failed to timely and adequately provide progress reporting.

**Issue 4: Implementation of the Student's IEP During the 2017-2018 School Year** – At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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. The Student's IEP in place at the beginning of the 2016-2017 school year was the November 9, 2016 amendment to her April 2016 IEP, which as discussed above, had lapsed in April 2017 and not been updated. The November 2016 amendment provided for specially designed instruction in a general education setting to be delivered by a general education teacher and monitored by a special education teacher for 5 minutes/1 time weekly in each of the areas of reading, social/emotional, and writing. The District admitted in its response that the Student did not receive specially designed instruction for the first three weeks of the 2017-2018 school year because the Student was not in any special education classes and the Student's IEP case manager struggled to identify how to provide the services. The District offered to provide the Student with three (3) hours of compensatory services to address the missed instruction and to provide staff with training regarding the monitoring of specially designed instruction in a general education setting. OSPI accepts the District's proposed corrective actions.

#### **CORRECTIVE ACTIONS**

By or before **January 24, 2018, February 9, 2018, March 9, 2018, April 6, 2018, and April 20, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By **January 19, 2018**, the District will hold a meeting with the Student's IEP case manager and all of the Student's general education teachers to review the Student's current November 2017 IEP and ensure that the teachers understand their responsibilities for implementing the



Student's specially designed instruction and/or accommodations. By **January 24, 2018**, the District will submit documentation that staff participated in the review. This will include a roster of who should have attended and a sign-in sheet of attendees so OSPI can verify that staff participated.

2. By or before **February 2, 2018**, the District will meet with the Parent to develop a schedule for 3 hours of compensatory services (1 hour of reading, 1 hour of writing, and 1 hour of social/emotional services). Services must occur outside of the District's regular school day. The services must be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **April 1, 2018**. The District will provide OSPI with documentation of the meeting and a schedule of the compensatory services by **February 9, 2018**.

No later than **April 6, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **April 6, 2018**.

**DISTRICT SPECIFIC:**

The District will provide training for the director of special services and the principals and all special education certificated staff, including educational staff associated (ESAs), at the elementary school the Student attended in the 2016-2017 school year and the middle school the Student currently attends, as well as the Student's 2016-2017 school year elementary resource teacher who now works at a different District school. The training will address: 1) IEP development; 2) IEP meeting requirements; 3) Providing timely progress reporting toward annual IEP goals; and, 4) Implementing IEP services and accommodations, including providing and monitoring specially designed instruction in general education settings. The trainer will not be an employee of the District. The training will include examples.

By or before **February 9, 2018**, the District will provide OSPI with the name of the trainer and documentation that the trainer has been provided a copy of this decision for use in preparing training materials.

By **March 9, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will identify any concerns or provide approval by March 19, 2018.

By or before **April 20, 2018**, the District will submit documentation that staff participated in the training. This will include a roster of who should have attended and a sign-in sheet of attendees so OSPI can verify that staff participated.

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

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



Glenna L. Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
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**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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