

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-62

PROCEDURAL HISTORY

On June 13, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] 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 June 14, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 3, 2018, the District requested an extension of time for the submission of its response. On July 5, 2018, OSPI granted the District an extension until July 13, 2018.

On July 13, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on July 16, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. OSPI did not receive a reply from the Parent.

On July 17, 2018, OSPI asked the District for additional information/documentation. On July 23, 2018, July 24, 2018, and July 25, 2018, OSPI received the requested information from the District. OSPI forwarded the additional information to the Parent on July 26, 2018.

On July 25, 2018, OSPI asked the District for additional information/documentation. On July 30, 2018, OSPI received the requested information from the District and forwarded the additional information to the Parent on that same day.

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

OVERVIEW

The Student has been diagnosed with several health conditions, including blindness. Throughout the 2017-2018 school year, the Student received tech-vision therapy services as provided for in her individualized education program (IEP), and was also provided with a one-to-one paraeducator. On June 11, 2018, the Parent, the District special education director, and the Student's special education teacher met to determine if the Student needed extended school year (ESY) services in the area of orientation and mobility and tech-vision therapy during the summer of 2018. At that time, the IEP team determined that the Student would not receive tech-vision therapy ESY services. Then, on June 18, 2018, the special education director, the tech-vision specialist, the Parent, the principal, and the special education teacher met and, on the basis of input from the tech-vision specialist, reversed this decision, deciding that the Student was in need of tech-vision therapy ESY services.

The Parent alleged that the District did not follow appropriate procedures for determining the Student's extended school year services for summer 2018. The Parent also alleged that the June 11, 2018 IEP team meeting was not properly attended. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on June 14, 2017. 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 determining the amount, location, and service provider for the Student's extended school year (ESY) services for summer 2018?
2. Did the District ensure that the June 11, 2018 individualized education program (IEP) meeting was attended by a properly constituted IEP team?

LEGAL STANDARDS

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

Extended School Year – Limitations on Services: A school district may not limit extended school year (ESY) services to particular categories of disability, or unilaterally limit the type, amount, or duration of those services. 34 CFR §300.106(a)(3); WAC 392-172A-02020(4). The purpose of ESY

services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. 34 CFR §300.106; WAC 392-172A-02020.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

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); at the discretion of the parent or the school district, other 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). Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child's unique needs and ensure the provision of a free appropriate public education (FAPE) to the child, participate in the child's IEP Team meeting. The IDEA does not expressly require that related services personnel attend IEP Team meetings. However, if a child with a disability has an identified need for related services, it would be appropriate for the related services personnel to attend the meeting. *Letter to Rangel-Diaz* (OSERS April 2011).

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 to the parent and other IEP team members prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

FINDINGS OF FACT

Background Facts

1. The Student has attended schools within the District since she was three years old. Prior to this, the Student participated in a private program for children with special health care and developmental needs.
2. The Student has been diagnosed with a number of health conditions, which include blindness, due to septo-optic dysplasia (the underdevelopment of the optic nerve). The Student has also been diagnosed with the following: hypoplasia of the pituitary (which causes seizures, developmental delays, and abnormal movement), hypotonia (which causes low muscle tone), and diabetes insipidus. The Student has received treatment for epilepsy and a brain malformation. As of August 2016, the Student was dependent on a wheelchair for traveling longer distances, and needed leg braces and a walker to travel shorter distances.
3. On August 26, 2016, the "vision team" from the local educational service district (ESD) completed a reevaluation of the Student in the areas of vision and orientation and mobility. The Student's August 2016 reevaluation report referenced the Student's medical history. It also included information gathered from several observations of the Student. The August 2016 reevaluation report recommended goals and services for the Student in the areas of vision and orientation and mobility. The August 2016 reevaluation noted the following:

[Student] is trying to learn letter recognition in braille. She is functioning at a pre-braille level. [Student] does best with letters A, B, C. She typically needs cues and verbal prompts (over summer she was brailleing a and b with help in 50% of task). She completes finger placement on Braille keys with support from her Brailist. [Student] is working on reading with hand over hand support in 4/4 trials. She is able to scan letters on a page independently but will sometimes scrub the letters. She is working on page orientation and scanning from left to right in a typical reading motion...[Student] is also learning how to use her Washington Talking Book and Braille player. She is learning shapes to help her to tactually identify the player buttons for increased independent operation. We recently trialed assistive technology for [Student] and will be adding switch progression to her learning program. [Student] will start with cause and effect, simple choices, and work towards using switch navigation without cues. She is currently new to switch technology and needs tactile cues not to leave hand resting on switch. [Student] will work on isolated finder push and release this year for switch activation.

The August 2016 reevaluation report also recommended the following vision goals:

[Student] will go from 5% accuracy and hand over hand assist to keep her fingers on a Braille line to 15% accuracy scanning without hand over hand assist in 1/4 trials by 9/11/17 as observed by her TVI¹ and documented by school staff.

[Student] will go from activating an assistive technology switch with help in 2/4 trials with cues to using an isolated two finger push and lift motion to activate an assistive technology

¹ TVI stands for teacher of the visually impaired.

switch without help 100% of the time by 9/11/17 as observed by her TVI and documented by school staff.

4. On November 17, 2016, the Student's individualized education program (IEP) team completed a new IEP for the Student. The November 2016 IEP included goals in the areas of occupational therapy, reading, writing, math, life skills (vocational), speech therapy, orientation and mobility, vision services², and special education service coordination. The November 2016 IEP provided for specially designed instruction and related services to address the goals. The November 2016 IEP also provided for 1:1 paraeducator support throughout the Student's school day as an accommodation.
5. On July 15, 2017, the Student underwent an independent educational evaluation (IEE), which was paid for by the District. The Student's July 2017 IEE referenced the Student's medical history. It also included the results of school and home observations of the Student. The July 2017 IEE report noted in relevant part:

When working on Braille, [Student] was shown the Perkins Braille Writer. [Student] could verbally identify the Braille Writer. She did not know how to place paper in the Braille Writer. [The paraeducator] correctly placed the paper in the Braille Writer. Next the paraeducator placed her hands over [Student's] fingers. This technique allowed [the paraeducator] the opportunity to assist [Student] in pushing the keys down on the Braille Writer. Both [the paraeducator] and [Student] recited the alphabet. As each letter was verbalized, the appropriate keys were pushed down to form the Braille letter...once the alphabet was written, [Student] was asked to look at what she had written. [Student] did say, "a, b, c," but would not say any other letters. [Student] was then assisted in writing her name in Braille using the Braille Writer, and then shown her name in Braille.

[The paraeducator] indicated that she has been receiving Braille instruction from the teachers from the ESD. Apparently, [the paraeducator] will be taking classes over the summer to prepare for taking the PARA Braille Certification Test.

According to [the paraeducator], [Student] has only been able to write and read the first 3 letters of the alphabet independently. Instruction was provided from the staff at the ESD to work on writing and reading [Student's] first name and the alphabet. There was no instruction to work on short form words, short phrases, or words that [Student] would like to learn to read and write in Braille. When reading Braille, [Student] immediately placed her index finger of her left hand on the paper, and curled the remaining fingers into a fist. Her right hand remained on her lap or arm of her wheelchair. [Student] had to be encouraged to move the finger of her left hand across the page from left to right.

[Student] was shown a Braillenote. This is a Braille note taking device, which is similar to a computer. The device has six keys for writing Braille, enter, backspace, and space bar. The Braillenote also has a Braille display. [Student] was shown the Braille display and shown how to place both hands on the display to read. Next, [Student] was shown how to place six fingers over the six keys. She then was assisted in writing the first three letters of the alphabet. [Student] smiled and very gingerly touched the Braillenote.

² The vision goals in the Student's November 2016 IEP included those proposed in the Student's August 2016 reevaluation report.

The July 2017 IEE report recommended the following services be provided to the Student:

- Tech-vision – 300 minutes per week (to be provided by a braille-certified paraeducator)
- Orientation and mobility – 60 minutes per week (to be provided by a braille-certified paraeducator)³

In relation to Braille, the IEE report recommended the following:

- Student “needs daily Braille reading. This should be incorporated in ALL aspects of her education throughout the day.”
- “The PARA should be braille certified or actively working toward certification and has made significant progress toward certification before beginning with child, so can follow through on instruction given by [the tech-vision specialist].”
- “The PARA should follow through with all instruction that is provided by [the tech-vision specialist] throughout the day.”
- Student “should be taught to read and write Braille by using phrases and words that are applicable to her everyday life.”
- “PARAs, teachers, and school staff need to receive training from a [tech-vision specialist] in order to help staff follow through on blind skills in the educational setting.”

6. On August 8, 2017, the Parent and the District entered into a settlement agreement in response to the Parent filing a due process hearing request. In pertinent part, this agreement required the District to:
 - Use the results of the July 2017 IEE to develop a new IEP for the Student prior to the 2017-2018 school year.
 - Include “a dedicated one-to-one aide” for the Student in the forthcoming IEP.
 - Include the tech-vision specialist as a member of the Student’s IEP team.
 - Provide the Student with compensatory education.
7. The documentation in this record suggests that, subsequent to the August 8, 2017 Settlement Agreement, the Parent agreed to serve as the one-to-one paraeducator when the Student received her compensatory education.

2017-2018 School Year

8. The District’s first day of the 2017-2018 school year was August 22, 2017.
9. At the beginning of the 2017-2018 school year, the Student was in the eighth grade and was eligible for special education, and her November 2016 IEP was in place.
10. On September 19, 2017, the Student’s IEP team created a new IEP for the Student. In pertinent part, the ‘Team Considerations’ portion of the September 2017 IEP reads:

[Student] has used hand over hand and hand under hand assistance over the summer in order to type on the computer, read from the braille display, and read hard copy braille. She has been practicing on the words and letters: dad, mom, [her own name], like, I, and other favorite words. She was introduced to these methods during ESY. She reads braille

³ The July 2017 IEE also recommended that the Student receive separate evaluations in the areas of speech, occupational therapy, and physical therapy.

independently 0%. She types and reads from the braille display with 0%. She can repeat words and letters that she reads with an adult. She is beginning to move to the computer or braille display or hard copy braille each time with 80% movements. Her hands need to be guided with a light touch.

The September 2017 IEP included annual goals in the areas of occupational therapy, reading, writing, math, speech therapy, and orientation and mobility. Specifically, the IEP included the following reading and writing goals:

- Reading – By 09/19/2018, when given Braille-hard copy Braille and electronic braille on display [Student] will learn how to read 12 letters and five words; dad, mom, [Student's name], like, I and combinations of these letters with other vowels improving letter and word recognition skills from Needing 10 out of 10 prompts to Needing 7 out of 10 prompts as measured by teacher created checklists.
- Writing – When given a computer with talking software [Student] will type 12 letters and five words; dad, mom, [Student's name], like, I and combinations of these letters with other vowels improving braille writing skill from needing a 10 out of 10 prompts to needing seven out of 10 prompts as measured by teacher data collection.
- Writing – When given a computer with talking software [Student] will type 12 letters and 5 words; dad's, mom, [Student], like, I and combinations of the letters with other vowels improving ability to use a keyboard from needing 10 out of 10 prompts to needing 7 out of 10 prompts as measured by teacher made checklist.

The September 2017 IEP provided for quarterly written progress reports on the Student's progress towards all of the IEP goals.⁴ The September 2017 IEP provided for the following specially designed instruction in a *special education setting*:

- Reading – 29 minutes, 5 times weekly (to be provided by a special education teacher)
- Writing – 28 minutes, 5 times weekly (to be provided by a special education teacher)
- Math – 57 minutes, 5 times weekly (to be provided by a special education teacher)
- Life skills (vocational) – 57 minutes, 5 times weekly (to be provided by special education staff)

The September 2017 IEP provided for the following related services in a *special education setting*:

- Speech therapy – 30 minutes, 1 time weekly (to be provided by a speech language paraprofessional)
- Orientation and mobility – 60 minutes, 1 time weekly (to be provided by a vision specialist)
- Vision services – 60 minutes, 5 times weekly (to be provided by a vision specialist)
- Occupational therapy – 30 minutes, 1 time weekly (to be provided by a certified occupational therapy assistant)
- Occupational therapy – 10 minutes, 1 time monthly (to be provided by an occupational therapist)

⁴ The documentation in this complaint includes a document entitled, "Progress Report." It summarizes the quarterly progress reports for some of the goals found in the September 2017 IEP. For example, each of the two speech therapy goals has data from four progress reporting dates. Only half of the occupational therapy goals include data from four progress reporting dates. Various math, reading, and occupational therapy goals include data from only one progress reporting date. Importantly, the reading and writing goals pertinent to this complaint do not include data from any progress reporting dates.

The IEP stated that the Student would spend 46.65% of her school week in a general education setting. In pertinent part, the September 2017 IEP provided for the following accommodation to be given in "classroom and school campus" settings:

- One to one teaching assistant – "throughout the school day"

11. The District was on break from December 18, 2017 through January 1, 2018.
12. On February 25, 2018, the District special education director emailed the Parent, asking if she was "interested in [ESY] for [Student this summer]?" On February 26, 2018, the Parent responded, stating that she thought the IEP team determined whether a student was eligible for ESY. The Parent also stated:

I thought ESY is based on a student's need for continuing services throughout school breaks in order to maintain skills that otherwise would be lost or would decline and to further emerging skills. The need for ESY is based on data the District collects. Do I misunderstand the purpose of ESY? I also understand ESY is based on a child's IEP goals – is that right?
13. On March 1, 2018, the special education director mailed a letter to the Parent, stating:

You are absolutely correct in your understanding of [ESY] services. When the IEP team last met, ESY was not indicated as a part of the services outlined for [Student]. I am wondering if you would like the IEP team to revisit that decision...I would prefer that the team meet as a group and develop a proposal.
14. On March 7, 2018, the Parent emailed the special education director, stating:

I got your letter and I read that you want to meet in person to present a proposal for ESY, but you already asked me via email if I wanted [Student] to receive ESY. There must be some reason for your proposal? Can you provide the reasoning behind your proposal by email?
15. The District was on break from April 2-6, 2018.
16. On May 29, 2018, the special education teacher emailed the Parent, stating:

After discussing ESY; you stated that last year [Student] was offered tele-therapy at home last summer. I believe [the special education director] was hoping to offer both tele-therapy as well as Orientation and Mobility therapy at home this summer. Can we all share our thoughts so we can ensure [Student] receives services throughout the summer?
17. On May 30, 2018, the Parent emailed the special education teacher, stating:

I never got a response to my last email regarding ESY, but I recently got your phone messages. Right now my husband and I wouldn't be able to meet in person, but would like to know what you're proposing for ESY and the reasoning for it? We'd like to make a decision together. Are you able to provide those things via email?
18. On May 31, 2018, the special education director emailed the Parent, stating:

[ESY] services are available to students with disabilities under a couple of different scenarios. Most typically, these services are provided to students who show significant loss of skills when not in school, such as winter or summer break. Another reason might be if the student was just beginning to develop a key skill and the IEP team had concern that

the window of opportunity might be missed if ESY were not put in place. These are the type of factors that IEP teams discuss when making a decision as to whether or not a student needs ESY.

In [Student's] situation, I am not sure what the team would decide since we have not been able to meet as a team. [The tech-vision specialist] suggested in September that [Student] might need six weeks of ESY services for three hours a week, presumably, in order to maintain her skills. [Student], of course, continues to be eligible for compensatory education as well. Therefore, any ESY services that the IEP team determined were necessary would be in addition to the compensatory education hours.

[The orientation and mobility specialist] indicates that she has provided...services to her clients in the past and she is willing to do so with [Student]. However, [the orientation and mobility specialist] was not able to document any loss of skill after [Student] came back from winter or spring break. I could see the IEP team deciding that three or four [orientation and mobility] sessions over the summer might be appropriate.

These are the issues I have been hoping to discuss with you both. When would you be available to have this type of discussion?

19. On June 1, 2018, the tech-vision specialist emailed the special education director regarding the Student, stating:

Summer is fast approaching and would like you to think about how you would like to arrange ESY...Regular ESY goes for 6 weeks so 18 times (but want to make sure she has 9 week covered so she does not forget skills)—we can spread it out around your vacations, etc.
20. On June 2, 2018, the special education director emailed the Parent, requesting that the Parent tell her if she was "interested in ESY services for [Student] (both from [the tech-vision specialist and the orientation and mobility specialist]) in addition to the compensatory education services you have planned for the summer."
21. The District's last day of school for the 2017-2018 school year was June 6, 2018.
22. The documentation in this complaint included a June 6, 2018 meeting notice, proposing a meeting for June 11, 2018 at 2:45 p.m., to "develop [an] ESY IEP." This meeting notice invited the following individuals to attend and participate in the ESY IEP meeting: "administrator/designee," "attempt to have in attendance, General Education Teacher," the Parent, the special education teacher.
23. On June 11, 2018, before the IEP meeting scheduled for that afternoon, the Parent emailed the tech-vision specialist. In this email, the Parent: (a) expressed "surprise that [the special education director] already knows that the team will recommend ESY for 6 weeks 3 hours a week" since "we have not met as a team yet;" and (b) expressed concern that the District was conflating its compensatory education requirements with the Student's right to ESY services. The Parent also stated:

I made a commitment to you that I would be present for [Student's] compensatory service hours. [The special education director] pretty much told me, in other words, that the school

district expects me to make the same commitment for ESY. That is not fair to my family. ESY is a current school obligation that is necessary to meet my daughter's current education needs and it should be provided by school staff. I told [the special education director] that I feel the District should have [Student's] para[educator] work with her during ESY. Basically, [the special education director] told me that wouldn't be possible and that I could refuse ESY if I wanted. Essentially, the District wants me to serve as an unpaid para[educator] or my daughter won't get ESY.

Shortly thereafter, the tech-vision specialist responded that the District's compensatory education obligation and the Student's need for ESY services were separate, and that, in her opinion, the Student required "3 [hours] for ESY for 6 weeks." The tech-vision therapist also told the Parent to "ask for a para to do the ESY hours", and stated that she had not been invited to the June 11, 2018 meeting.

24. Based on the documentation in this complaint, later on June 11, 2018, the Student's IEP met to determine if the Student was in need of ESY services. Based on the District's June 11, 2018 prior written notice, the meeting was attended by the special education director, the Student's special education teacher, and the Parent (via phone). According to the District's June 11, 2018 "Extended School Year Services" document, the general education teacher was "unavailable" to attend the meeting. The IEP team determined that the Student would receive ESY services in the area of orientation and mobility. The "Extended School Year Services" document provided for the following ESY services to take place in a *special education setting* from June 18-August 17, 2018:

- Orientation and mobility – one hour, 4 times annually (to be provided by a vision specialist)

It also stated that the following IEP goals would be addressed by the ESY services in orientation and mobility:

- Orientation and mobility – When given a location, such as the bathroom or lunchroom, [Student] will provide the correct directions starting from a designated starting point improving her ability to navigate around the school from no success to being able to give correct directions to the bathroom or lunchroom on three of five successive trials as measured by teacher made checklist.
- Orientation and mobility – When given an object placed near her body [Student] will locate the object and provide its correct direction in relation to where her body is located in relation to the object improving her sense of direction and location from no success to giving correct information on four out of five trials as measured by teacher collected data.

25. On June 11, 2018, after the IEP meeting, the special education director emailed the Parent and the orientation and mobility specialist, stating, "[W]e agreed to four 1 hour O&M sessions over the summer for [Student]."

The documentation in this complaint contained a prior written notice, dated June 11, 2018, proposing to initiate ESY. It stated:

Description of the proposed action: The IEP team proposes that [Student] receive extended school year orientation and mobility services. Those in attendance [at the June 11 IEP meeting] were [the special education director], [the special education teacher], and [Parent]

participated by phone. The school team offered to postpone until a time could be scheduled when [the tech-vision specialist could be available. [Parent] chose not to wait.

The reason we are proposing or refusing to take action is: Students with vision impairments sometimes receive ESY services...[T]he O & M specialist was unable to document that [Student] lost skills over extended time away from school, such as winter break. However, the family was interested in having O & M services over the summer in the home and the district was understanding of this extension of services.

Description of any other options considered and rejected: The IEP team did not recommend that [Student] receive ESY services from the [tech-vision specialist].

The reasons we rejected those options were: The team was aware of [the tech-vision specialist's] recommendation for ESY from the fall of 2017. No new information regarding loss of skills over break periods was presented. There was also no evidence of an anticipated skill break through about to occur. Also, [Parent] did not feel that her family plans could accommodate ESY services from [the tech vision specialist] this summer.

[Data]...used as the basis for taking this action is as follows: [Student's] evaluation, IEP, staff observations, and parent input.

Any other factors that are relevant to the action: The school team is willing to revisit this with a more complete IEP team if [Parent] is interested.

26. On June 12, 2018, the special education director emailed the tech-vision specialist and the Parent, stating, "I am sharing with you the prior written notice I sent to [Parent]...if you and [Parent] want to revisit the issues of ESY for TVI services [the special education teacher] and I are available most days."

- Later that same day, the Parent responded, stating: (a) that she was upset that the tech-vision specialist had not been at the meeting but that she did not want to push the meeting back "because summer school had already started" and because she thought the meeting should have taken place earlier than it actually did; and (b) that she had not refused ESY services for the Student that summer, but that she had refused to serve as her paraeducator for the proposed ESY services.
- In a separate reply that same day, the tech-vision specialist emailed the special education director, stating that the Student experienced a significant regression in her ability to use braille from "the end of ESY [last summer] and [the] start of services for [Student] after school had begun." The tech-vision specialist further stated:

Another was the consistency of a para. Once [the paraeducator] had taken over full time, [Student] really responded to this consistency of a para determined to help her in any way necessary. Continuing with a structured program at school this summer with a para ready to make a commitment to her progress will enable us to enter a reading program with her this fall rather than starting over with just the alphabet and numbers and relearning skills that she has gained thus far.

27. On June 13, 2018, in response to the Parent's concerns, the special education director amended the District's June 11, 2018 prior written notice. The special education director replaced the last sentence in the paragraph under the heading "The reasons we rejected those

options were.” In the updated prior written notice, this sentence now read: “[Parent] objected because the school is not providing her daughter a 1 on 1 para to work with her during ESY in the same learning environment as during the school year.”

28. Also on June 13, 2018, the Parent filed this citizen complaint.
29. The documentation in this complaint contained a meeting notice, dated June 18, 2018, proposing a meeting for that same day to discuss further development of the Student’s ESY IEP. This meeting notice included an “Excused Team Members” form, purporting to allow the general education teacher to not attend the meeting because “during the summer none of [Student’s] regular education teachers are available to attend.” The Parent and the special education director signed this form.
30. The documentation in this complaint contained a document, dated June 18, 2018, entitled, “Extended School Year Services.” According to this document, the following individuals attended the June 18, 2018 IEP meeting: the special education director, the tech-vision specialist, the Parent, the principal, and the special education teacher. This document stated that certain ESY services will be provided to the Student.⁵ It stated that the following IEP goals will be addressed by the ESY services in tech-vision therapy:
- Reading – When given Braille-hard copy braille and electronic braille on display [Student] will learn how to read 12 letters and five words; dad, mom, [Student’s name], like, I and combinations of these letters with other vowels improving letter and word recognition skills from needing 10 out of 10 prompts to needing seven out of 10 prompts as measured by teacher created checklists.
 - Writing – When given a computer with talking software [Student] will type 12 letters and five words; dad, mom, [Student’s name], like, I and combinations of these letters with other vowels improving braille writing skill from needing a 10 out of 10 prompts to needing seven out of 10 prompts as measured by teacher data collection.
 - Writing – When given a computer with talking software [Student] will type 12 letters and 5 words; dad, mom, [Student’s name], like, I and combinations of the letters with other vowels improving ability to use a keyboard from needing 10 out of 10 prompts to needing 7 out of 10 prompts as measured by teacher made checklist.
31. According to emails between the Parent, the special education director, and the tech-vision specialist, the following agreement was reached at the June 18, 2018 meeting:
- Student will receive the orientation and mobility services described in the June 11, 2018, “Extended School Year Services” document, but those services will now be provided in the Parent’s home.
 - Student will receive eighteen one-hour tech-vision therapy sessions, including the aid of a 1:1 paraeducator. These services will be provided at the Student’s school, Monday through

⁵ The June 18, 2018, “Extended School Year Services” document is missing the service matrix—it appears to have been cut off when the document was saved. Nothing in the record indicates that the services that were listed here in the original document differed from the terms agreed to by the parties at their June 18, 2018, meeting.

Thursday from June 19-July 19, 2018. The District will provide transportation for the Student to and from school.

32. The documentation in this complaint included a prior written notice, dated June 18, 2018, proposing to initiate ESY services. However, this June 18 prior written notice contained the exact same information as that in the amended June 11, 2018, prior written notice and does not detail the agreement that the Parent and the District worked out at the June 18, 2018 meeting.)⁶

CONCLUSIONS

Issue 1: Determination of ESY – The Parent alleged that the District did not follow procedures for determining the amount, location, and service provider for the Student’s ESY services for summer 2018.

No Cost to the Parent: If a student’s IEP team determines that the student needs ESY services in order to receive a free appropriate public education (FAPE), those services must be provided at no cost to the parents of the student. In this case, the documentation suggests that the District’s initial offer of tech-vision therapy ESY on June 11, 2018, was dependent on the Parent serving as an unpaid 1:1 teaching assistant for the Student. For example, on June 11, 2018, the Parent emailed the tech-vision specialist, stating:

I made a commitment to you that I would be present for [Student’s] compensatory service hours. [The special education director] pretty much told me, in other words, that the school district expects me to make the same commitment for ESY. That is not fair to my family. ESY is a current school obligation that is necessary to meet my daughter’s current education needs and it should be provided by school staff. I told [the special education director] that I feel the District should have [Student’s] para work with her during ESY. Basically, [the special education director] told me that wouldn’t be possible and that I could refuse ESY if I wanted. Essentially, the District wants me to serve as an unpaid para or my daughter won’t get ESY.

Additionally, on June 13, 2018, the District amended its June 11, 2018 prior written notice to read, “[Parent] objected because the school is not providing her daughter a 1 on 1 para to work with her during ESY...as during the school year.” The revised written prior notice demonstrates that the District was attempting to provide clarification as to their refusal. This was an opportunity for the District to address the Parent’s perception that the District was requiring her to serve as the paraeducator; however, it was not specific in nature as to why the District was refusing. In conclusion, the District’s offer of tech-vision therapy ESY for the Student at the June 11 meeting was dependent on the Parent serving as an unpaid 1:1 teaching assistant. This would have been a “cost” to the Parent. If this arrangement had taken place, it would have been a violation of the IDEA.

⁶ According to the District’s response to this complaint, the redundancy of these two prior written notices is the result of the District’s use of the “IEP Online” system. In its response to this complaint, however, the District did not provide clarity on the substance of the June 18, 2018, prior written notice – for example, the District did not state that the June 18, 2018 prior written notice was, at any time, substantively different from the June 11, 2018 prior written notice.

Basis for Decision: ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. In this case, the District made two separate decisions regarding the provision of tech-vision therapy ESY.

At the June 11, 2018 meeting, "the IEP team did not recommend that [Student] receive ESY services form [the tech-vision specialist]." Throughout the 2017-2018 school year, the Student received related services provided by the tech-vision specialist. The purpose of the June 11, 2018 IEP meeting was to discuss whether the Student needed ESY services in the area of tech-vision therapy to address her use of Braille. The documentation in this complaint suggests that the vision-tech therapist was the only person who could provide information regarding the Student's progress in using Braille. Therefore, the District should have invited the vision-tech therapist to the June 11 meeting, or, at the very least, had the therapist provide written input to the entire IEP team prior to the meeting. Without the tech-vision specialist's attendance or input, it was impossible for the District to make an informed decision as to whether the Student needed tech-vision therapy ESY in order to receive FAPE. (It is also noted that the parties' August 2017 settlement agreement stated that the vision-tech therapist would be considered part of the Student's IEP team.) This is a violation of the IDEA.

However, the District corrected this error by holding a subsequent meeting on June 18, 2018, where the IEP team, which included the tech-vision therapist, reviewed relevant information regarding the Student's need for ESY services in the area of tech-vision therapy, and determined that the Student would receive the services with support from a District paraeducator. Given that the District has already held another IEP meeting to address this issue, no Student specific corrective actions are required.

Prior Written Notice: Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement, or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. At the June 18, 2018 IEP meeting, the team decided that the Student needed tech-vision therapy ESY services. However, the District's June 18, 2018 prior written notice stated, "The IEP team did not recommend

that [Student] receive ESY services from the [tech-vision specialist].” The June 18 notice also does not document the nature of the tech-vision therapy ESY services that the IEP team determined the Student needed, and the June 18, 2018 “Extended School Year Services” form also did not include this information. Therefore, the District failed to provide the Parent with prior written notice, documenting the decision to provide the Student tech-vision therapy ESY services.

Issue 2: IEP Team Membership – The Parent alleged that the June 11, 2018 IEP meeting was improperly attended. An IEP team is composed of: the parent; not less than one general 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. Additionally, an IEP team can include, at the discretion of the parent or school district, any individuals who have knowledge or special expertise regarding the student, including related services personnel. Under the IDEA, a public agency must ensure that all individuals who are necessary to develop an IEP that will meet the child’s unique needs and ensure the provision of a free appropriate public education (FAPE) to the child, participate in the child’s IEP team meeting. 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 prior to the meeting to both the parent and the other members of the IEP team.

Here, the following individuals participated in the June 11, 2018 IEP team meeting: the special education director, the special education teacher, and the Parent.

General Education Teacher – During the 2017-2018 school year, the Student participated in general education classes. Despite this fact, a general education teacher did not attend the June 11, 2018 IEP meeting. The documentation submitted with this complaint does not contain written permission from the Parent and the District permitting the absence of the general education teacher. Therefore, this is a violation of the IDEA.

Tech-Vision Specialist – For the reasons discussed in Issue 1 above, it was a violation of the IDEA for the District to not include the tech-vision specialist at the June 11 IEP meeting – or, alternatively, to not require the tech-vision specialist to provide input to all IEP team members prior to the meeting. Given that the District has already held another IEP meeting to address this issue with the June 11 IEP meeting, though, no Student specific corrective actions are required.

CORRECTIVE ACTIONS

By or before **August 31, 2018** and **October 16, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC: None.

DISTRICT SPECIFIC:

By **October 12, 2018**, the District will ensure that special education administrators, the principal, the assistant principal, and certified staff, including educational staff associates (ESAs), at the Student's school receive written guidance regarding the requirements of WAC 392-172A-02020(c) (No cost requirement of ESY or other services), WAC 392-172A-03095 (IEP team membership), and WAC 392-172A-05010 (Prior notice and contents). ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The guidance will include examples.

By **August 31, 2018**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 6, 2018.

By **October 16, 2018**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's school: special education administrators, the principal, the assistant principal, and certified staff, including educational staff associates (ESAs). This roster will allow OSPI to verify that all required staff members received the guidance.

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 August, 2018

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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