

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-16

PROCEDURAL HISTORY

On February 5, 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 Issaquah 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 February 6, 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 February 23, 2018, the District requested an extension of time to respond to the complaint. OSPI granted the request and extended the timeline to March 5, 2018 for the District to respond.

On March 5, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on March 6, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not provide a reply.

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

OVERVIEW

The Student was enrolled in the District at the beginning of the 2016-2017 school district and was eligible to receive special education services. The Student's individualized education program (IEP) in place at that time provided for specially designed instruction and other behavioral support services in a special education classroom. The Student did not attend school during the 2016-2017 school year, except for a short duration in January and February 2017. In January 2017, the District reevaluated the Student as the Student was refusing to attend school because of a post-traumatic stress disorder (PTSD). The District attempted to evaluate the Student at home, but the Student would not speak to the evaluator or leave his room. The Parent requested placement at an out-of-state residential treatment facility. The District rejected the Parent's request and attempted to provide services to the Parent and the Student in their home during the 2017-2018 school year. The Student continued to refuse to go to school or engage with the District's service providers who came to the home. In November 2017, the District proposed providing the Student with specially designed instruction in a special education classroom with additional behavioral interventions and supports. Meanwhile, the District attempted to provide services in the Student's home beginning while establishing rapport with the Student with the hope that this would eventually lead to the Student attending school. The Parent alleged that the District failed to provide the Student with a free appropriate public education (FAPE) by not providing an appropriate placement and failed to implement the Student's IEP. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on February 6, 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 Student's placement during the 2016-2017 and 2017-2018 school years?
2. Did the District implement the Student's individualized education program (IEP) during the 2016-2017 and 2017-2018 school years?

LEGAL STANDARDS

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060. When making placement decisions a district must draw upon information from a wide variety of sources and ensure that any decision is made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR §300.116; WACs 392-172A-02060; *L'Anse Creuse Public School District*, 35 IDELR 284 (OCR 2001); *Seattle School District*, 34 IDELR 196 (SEA WA 2000).

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other

service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

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). In conducting its review of a student’s IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student’s learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student’s assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110(2). Part of the information the IEP team considers when reviewing and revising a student’s IEP is the result of the most recent evaluation. When the student’s service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

FINDINGS OF FACT

Background Facts

2016-2017 School year

1. At the beginning of the 2016-2017 school year, the Student attended a junior high school in another Washington school district. At that time, the Student was eligible to receive special education services under the category of specific learning disability, and had an individualized education program (IEP) in place. The other school district had conducted a reevaluation of the Student on February 26, 2016. The February 2016 evaluation report stated that the Student attended school “regularly”. The report also indicated the Student was diagnosed with post-traumatic stress disorder because of assaults by other children in 2008 and 2010, along with poor sleep, flashbacks, reactivity, anger, irritability, and aggression.
2. On September 20, 2016, the District conducted a “transfer review” meeting, to facilitate the Student’s transfer to the District. The District agreed to accept the Student’s IEP from his prior district until the District could conduct a reevaluation of the Student. The District’s documentation in this complaint included a September 23, 2016 prior written notice to the Parent, which addressed the District’s decision to conduct a reevaluation. The notice stated:
[Student] has returned to living within [the District] attendance area and a review of the records from his previous school district revealed that the evaluation is current. [Student] continues to meet eligibility under the WAC 39-172-A funding category of Specific Learning Disability, and the Individualized Education Plan [sic] (Annual Review date: 1/20/17) may be implemented as written. However, given [Student’s] previous history of need for behavioral support, a review of his discipline history at [previous school district] and feedback from his mother and current wrap around team, the IEP team recommends

opening a reevaluation to determine present levels, eligibility, and supports and services [Student] requires at this time.

3. On September 21, 2016, the Student was enrolled in the District. According to the Student's attendance record which began on October 4, 2016, during the time period of October 4, 2016 to December 20, 2016, the Student had a total of thirty-nine unexcused absences and six excused absences from school. The attendance log stated that the Student had eight unexcused part day absences in which he attended school part of the day.
4. During September 2016, according to the District, a representative from the county wraparound services contacted the District to help coordinate the Student's transition to the District's high school and address attendance issues.¹ The wraparound team, which included staff from the District, attended meetings on September 27 and October 24, 2016, to address the Student's attendance, although the Parent and Student did not attend the meetings. On November 10, 2016, the wraparound team closed the Student's case based on the lack of participation by the Student and his family.
5. The Parent's complaint stated: "The 2016-2017 school year was a particularly difficult school year for [Student]. A couple of classmates continually harassed him." According to the complaint, on November 9, 2016, students grabbed the Student's backpack and tossed it to the ground. The complaint stated the Student fought back and was suspended for three days. The District's response stated the Student was involved in a "minor disciplinary incident involving a peer." Neither the District nor the Parent submitted documentation of a suspension, although the attendance report indicated the Student had an "excused full day absence" for the next three days of school. From November 10 to December 20, 2017, the Student did not attend school. Regarding the alleged harassment, the District's response stated: "No report of harassment, intimidation or bullying was filed regarding the incident or any other incident that year."
6. Based on the District's documentation to this complaint, the District did not hold any IEP meetings from September 21, 2016 through December 2016.
7. The District was on break December 21, 2016 through January 2, 2017. After the break, the Student began regularly attending the District high school.
8. In January 2017, the District completed the Student's reevaluation. As part of the reevaluation, District staff attempted to evaluate the Student at home, but the Student would not significantly engage with the evaluators. The evaluation report showed that based on the assessments that could be given and existing data, the Student's cognitive ability was in the average range, his reading scores were in the average to above average range, math was in the average to low average, and writing scores were in the below average to superior. The evaluation report also included information about the Student's behavior, and stated that

¹ Wraparound is a team-based planning process for youth with complex needs and their families involving behavior health agencies, schools, and other community agencies.

the Student had been previously diagnosed by a hospital with post-traumatic stress disorder as a result of incidents occurring when he was younger, and that currently, the Student was exhibiting significant noncompliant behaviors, including chronic absenteeism. The evaluation report also noted that the Student infrequently engaged in physical altercations with other students. The evaluation report indicated that the Student had stated he “would prefer to stay home and play video games” instead of attend school. The evaluation report recommended the Student receive specially designed instruction in the areas of mathematics, writing, and behavior, and counseling as a related service.

9. On January 18, 2017, the District held a meeting to review the results of the reevaluation and the evaluation group, including the Parent, determined that the Student continued to be eligible for special education, but changed the Student’s eligibility category from specific learning disability to other health impairment. The Student’s IEP team then developed a new IEP, which stated that the Student’s behavior interfered with his learning or the learning of others. Regarding the Student’s behavior, the IEP specifically stated:

...[Student] is generally quiet and cooperative and he gets along with adults but struggles with interacting positively with peers. At the [junior high school], he frequently targeted a single person by saying inappropriate things or making judgmental comments about them. This has not been observed at [high school]. However, [Student] has not attended enough school yet for the team to see any patterns with his behavior with the exception of the one incident of physical aggression and attendance issues.

The IEP also noted that attendance had improved since January 3, 2017 and he was attending school daily, although he arrived late on numerous days or left school early.

10. The January 2017 IEP provided for annual goals in the areas of mathematics, writing, and behavior and for the following specially designed instruction and related service:

- Math – 265 minutes/weekly
- Written expression – 265 minutes/weekly
- Behavior – 265 minutes/weekly
- Counseling – 30 minutes/weekly

The IEP provided for the following accommodations and modifications:

Behavior:

- Break down tasks in manageable parts to avoid frustration or feeling overwhelmed
- Designate a check-in person to debrief with if [Student] feels bothered or bullied by peers
- Emphasize fresh start and move forward with completion of tasks
- Recognize and reward improvements in attendance
- Provide an opportunity for a break if needed

Content Areas

- Allow extra time to respond across all school environments
- Provide a copy of the notes/study guides in digital if available across all schools environments
- Visual supplement oral instruction across all school environments

Testing Modifications

- Test individually, in a small group, or in an alternative setting

- Extended time
- Passes state testing (ELA/Mathematics/Science) with Basic Level 2/Off Grade Level/Local Determined Assessments

Regarding placement in the least restrictive environment, the IEP stated that placement in the regular class 40%-79% of the school day was the only option considered. The IEP stated: “[Student] participates with his non-disabled peers in all settings except when receiving specially designed instruction for writing, math, and behavior.”

11. The District issued two prior written notices to the Parents following the January 18, 2017 IEP meeting. One prior written notice, dated January 18, 2017, stated that the Student’s eligibility category changed from specific learning disability to other health impairment due to the diagnosis of post-traumatic stress disorder (PTSD) and oppositional defiant disorder. A January 23, 2017 prior written notice stated that the Student’s new IEP provided for a behavior goal and the Student would be able to earn a “pass” in his English and Algebra 1 class, rather than an A-F grade.
12. From January 2, 2017 to February 7, 2017, the Student attended school and had no unexcused absences.
13. The District’s first semester ended on approximately January 20, 2017. The Student passed all of his classes except for one class and earned 2.5 credits high school credits during the first semester towards his graduation.

The Timeline for this Complaint Begins on February 6, 2017

14. From February 8, 2017 to June 19, 2017, the Student did not attend school and there was no indication that the Student received any special education services.
15. According to the documentation in this complaint, the Student’s former mental health therapist sent an undated letter to the District. The letter stated that during the “latter part of 2016 to the middle of 2017,” the Student received counseling from a behavioral health agency. The therapist indicated that the Student expressed fears about attending school and was hospitalized because of anxiety and depression due to negative interactions with others. The therapist recommended a setting that was “all-inclusive” with intense therapeutic and academic supports with a low teacher/therapist to student ratio.
16. From April 1-4, 2017, the Student was hospitalized due to making threats to harm the Parent and himself. Based on the District’s documentation, the discharge recommendations included individual therapy, working with the Parent, and consideration of a Children’s Long-Term Inpatient Program application if the Student continued “to struggle despite multi-system involvement and high levels of community support.”
17. From April 6-12, 2017, the Student again was hospitalized due to aggression and property damage. There was no indication that other community behavioral health services were

provided to the Student or Parent since the hospitalizations. According to the District, the District was unaware of the hospitalizations at the time.

18. On April 12, 2017, the District filed a truancy action against the Parent. The truancy action was subsequently withdrawn by the District.
19. The District was on break April 10-14, 2017.
20. The documentation in this complaint does not show that during the time period from February 8, 2017 to June 11, 2017, the District or the Parent requested an IEP meeting to address the Student's non-attendance or hospitalizations.
21. On June 12, 2017, the Parent's attorney wrote a letter to the District, stating that because the Student had over ninety-two absences and failing grades, the District had failed to take the necessary steps to ensure the Student received a free and appropriate public education (FAPE). The letter stated that the Student required a "therapeutic learning environment" that provided the necessary supports. The letter requested that the District schedule an IEP meeting.
22. On June 19, 2017, the District's attorney emailed the Parent's attorney and proposed meeting on August 29, 2017. On July 10, 2017, the Parent's attorney emailed the District back, agreeing to the August 29 meeting date.
23. On June 20, 2017, the District's 2016-2017 school year ended. The District's second semester also ended that day. The Student was absent eighty-seven days during the second semester. The Student passed one class and earned one-half credit towards graduation.
24. On July 20, 2017, an out-of-state residential treatment facility, which the Parent had contacted, sent the Parent a letter, informing her that the Student was accepted for admission.
25. On August 10, 2017, the Parent's attorney sent a letter to the District, stating it was the Parent's unilateral intent to place the Student at a residential treatment facility in another state.
26. On August 29, 2017, the District held an IEP meeting to review the Parent's request for a residential treatment facility. The participants included the Parent, the Parent's attorney, the District's attorney, the director of special services, the high school assistant principal, a general education teacher, the Student's special education teachers, the school psychologist, the director of secondary special education, and the assistant director of student interventions. The District's documentation in this complaint did not include meeting notes from the August 29, 2017 IEP meeting, but the District's August 29, 2017 prior written notice stated the following:

The IEP team convened to discuss [Student's] attendance with ways to encourage him to attend school this year. [Student's] mother reported that [Student] had two hospitalizations for suicidal ideation last spring. Upon being admitted for 14 days in a

group home through [organization], [Student] received therapy and responded well. Mom also conveyed that [Student] was accepted to [residential treatment facility], but she does not have funds to pay for it. [Student] does not want to return to [high school]. The team discussed the idea of [Student] attending a different high school and proposed that he attend [another high school] and receive services offered through the [program] which include a Unique Needs Specialist and a therapist. This would be a diagnostic placement for initial period of 4-6 weeks. Mom agreed to take a tour of the school.

According to the District's response to this complaint, this was the first time the District was aware of the hospitalizations. The IEP team discussed "placement options" and determined the Student would attend another District high school because it was a smaller setting and the Student would receive services in a special education behavioral-focused classroom that also addressed the mental health needs of the students. In addition, the District would involve a private mental health agency to provide direct support to the Student and staff. (The District had an ongoing contract with the mental health agency for evaluation purposes, mental health services, and behavioral support in the District.) The District also agreed to conduct a reevaluation and gather exiting mental health information to address the Student's attendance issue. The reevaluation would include assessments that would be completed with input from the Parent.

27. The documentation in this complaint did not indicate whether the Parent visited the school.
28. On September 5, 2017, according to the District, the District held a "meet-and-greet" for the Student, District, and new school staff at the new high school. The Student did not attend. The District's documentation about the meeting indicated the District behavioral specialist would meet with the Student and provide trauma therapy to address the Student's PTSD. No other details about decision were provided in the documentation.

2017-2018 School Year

29. On September 6, 2017, the District's 2017-2018 school year began.
30. According to the District's response to this complaint, also on September 6, 2017, the assistant director for the mental health agency (agency assistant director), which the District was contracting with, went to the new high school to observe the Student and meet with District staff. However, the Student did not attend school on that day.
31. Based on the Student's attendance record, he did not attend school in September 2017.
32. On September 11, 2017, the District stated that the school psychologist provided the Parent with "Release of Information" forms to permit the District to exchange information with a number of agencies and hospitals that were involved with the Student. The Student refused to sign consent for any of the information to be shared with the District.²

² Per Washington State law, if a student is over thirteen years old, the student must sign a release of information for his/her mental health records to be shared. See RCW 70.02 and RCW 71.34.

33. According to the District's response to this complaint, on September 18, 2017, the District behavioral specialist and the agency assistant director met with the Parent to discuss working with the Student.
34. On September 20, 2017, the District behavioral specialist and the agency assistant director visited the Student at home. The Student refused to engage with them and played video games. The behavioral specialist and the agency assistant director talked with the Parent about the Student's history.
35. According to the District's response to this complaint, District staff made home visits to meet with the Student on the following dates: September 29, October 9, October 13, and October 19, 2017. The documentation indicated that home visits were mostly unsuccessful in attempting to engage with the Student.
36. On October 24, 2017, the District held an IEP meeting, which included the Parent, to review the results of the Student's reevaluation. The reevaluation results were limited because the Student refused to engage with evaluators and did not provide the District with consent to contact the agencies and hospitals that were involved with the Student. Additionally, the Parent did not complete the parent-designated portions of the behavior assessments. The reevaluation stated the following recommendation:

Due to a lack of access to [Student], social skills rating scales and interviews with [Student] could not be completed. It is recommended that the IEP team consider if the area of social be reassessed when [Student] is able/willing to participate in sharing information and/or when he is in a school environment and staff members can share observations of [Student's] social skills. Given [Student's] diagnoses and school refusal history, the team does recommend adding counseling as a related service.

The reevaluation report noted the following interventions that had been attempted by the District and community agencies:

- Involvement with the Family Reconciliation Services and "RRS" programs according to the Children's report
 - Previous tiering at Valley Cities
 - Consultation with truancy specialist
 - WRAP team with SMH-initiated in September 2016 and case was closed because of "lack of participation and willingness of the client (student)" on November 10, 2017 ("In October of 2016, [Student] had reported that although he didn't mind school, he just didn't want to go.")
 - Therapist at a behavioral health clinic
 - Specially designed instruction to address the new behavior goal and additional accommodations were added to the Student's January 18, 2017 IEP
37. Also on October 24, 2017, the District provided the Parent with prior written notice. The notice stated the Student continued to qualify for special education services and that adding "social" as an area of specially designed instruction was considered. However, instruction in the social area was rejected because there was insufficient contact with the Student to determine his need.

38. As of October 24, 2017, the date of the evaluation meeting, the Student had thirty-four unexcused absences from school for the 2017-2018 school year. The Student had not attended school.
39. On October 25, 2017, the Parent emailed the director of secondary special education, the school psychologist, and the District behavioral specialist, requesting to convene an IEP meeting within the next ten days to discuss the Student's placement. The District sent the Parent a reply, stating that the earliest that District staff could meet was November 16, 2017.
40. On October 30, 2017, the agency assistant director emailed the Parent to propose meeting with the Student and the Parent before the IEP meeting on November 16, 2017. The agency assistant director proposed meeting on November 2, 8, or 15, 2017. On October 31, 2017, the Parent replied and offered meeting on November 8, 2017 at a different time and November 13, 2017.
41. Sometime during the week of November 6-10, 2017, staff from the mental health agency met with the Parent. According to an email, dated November 13, 2017, from the agency assistant director to the District director of special services, the agency assistant director and another staff member went to the Parent's house the previous week, but the Student had refused to come out of his room. The assistant director had scheduled a phone call with the Student for November 13, 2017, but the documentation indicated that the agency assistant director did not make contact with the Student.
42. On November 16, 2017, the District held an IEP meeting to develop a new IEP and discuss placement. Based on the District's response to this complaint, at the IEP meeting:
The IEP team agreed that [Student] would be placed in the [program] at [the high school] and would receive in-home support services from [the mental health agency] in partnership with the District to facilitate the Student's ability to participate in the program. The team agreed that [Student] would begin with a two-period day schedule with classes of high interest to him. The Parent requested placement at [out-of-state facility]. The IEP team instead agreed that the intensive in-home support program offered to facilitate Student's attendance in the [district program] was appropriate at the time.
- In response to Parent's request for [out-of-state residential facility], District staff raised particular concerns with potentially removing Student from his home, against his will, and having him transported to an unfamiliar setting in [another state] with unfamiliar adults, without first having attempted less restrictive support options available within Washington. This concern was shared by the [mental health agency] professionals particularly given the Student's reported trauma background. The team discussed other state agency supports available for Parent and Student through the Department of Social and Health Services, but Parent indicated her unwillingness to pursue other agency supports.
43. The IEP provided annuals goals in the areas of mathematics, written expression, and behavior. Specially designed instruction in each area would be provided for a total of 860

minutes a week in a special education classroom, based on a full day at school. The IEP provided the following related services:

- Behavior specialist – 30 minutes/one time weekly
- Counseling – 30 minutes/one time weekly
- Unique Needs Specialist – 30 minutes/four times weekly
- Parent training – 60 minutes/one time weekly

The accommodations and modifications for the Student remained the same from the previous January 2017 IEP.

44. From October 24, 2017 to November 16, 2017, the Student had sixteen unexcused absences from school. The Student did not attend school any days during that time period. The Student did not receive any services during that time period, but the District attempted to meet with the Student twice before the November 16, 2017 IEP meeting. However, the Parent was not available to meet and the Student did not respond to a District phone call.
45. The District was on break November 23-24, 2017.
46. On November 30, 2017, the District behavioral specialist emailed the Parent, stating that the District was working with the contracted mental health agency to “create a plan to provide home support to help [Student] return to school” and proposed December 5 and December 12, 2017 to work with the Parent on a crisis/safety plan for home. On December 1, 2017, the Parent replied, stating that other days of the week would be better, and the behavioral specialist later agreed to meet on December 18, 2017.
47. On December 18, 2017, a board certified behavior analyst (BCBA) from the mental health agency (agency BCBA) met with the Parent to gather information about the Student’s attendance problems. According to the meeting notes, the Parent had difficulty in providing information about the nature of the Student’s behavior problems other than the Student was refusing to attend school. The notes also indicated that the agency BCBA would be asking the District for more information and following up with the Parent. The notes stated that the goal was to get to know and establish trust with the Student.
48. On December 20, 2017, the District behavioral specialist emailed the Parent, requesting an opportunity to work with the Parent on a crisis plan. The specialist proposed the following dates: January 8, 9, 11, or 12, 2018.
49. From September 6, 2017 to December 20, 2017, the Student had total of seventy-two unexcused absences from school. The Student did attend any days of school during this period.
50. From December 21, 2017 through January 1, 2018, the District was out of school for winter break. The Student did not attend school after the winter break.
51. On January 19, 2018, the District behavioral specialist emailed the draft crisis plan to the Parent and proposed January 24 or 30, 2018 for a home visit. The draft crisis plan identified

the specific target behavior as propelling or projecting items across the room and aggressive behaviors, including hitting, kicking, and biting others. The crisis plan identified the behavioral triggers, de-escalation procedures, and management of crisis behaviors. The plan included calling 911 if the Student could not be managed safely.

52. On January 23, 2018, the Parent responded to the District behavioral specialist, stating she refused to call 911 because it would be traumatizing to the Student and criminalize his behavior. The Parent stated the plan should focus on his fear of bullying at school. According to the documentation, the Parent proposed meeting on January 24, 2018. On the same day, the behavioral specialist confirmed the January 24, 2018 date for the meeting. The documentation did not indicate if there was any follow up regarding the crisis plan.
53. On January 24, 2018, the District behavioral specialist and the agency BCBA met with the Student at his home. According to the District, the Student answered one question and was unresponsive the remaining time.
54. On January 25, 2018, the agency BCBA emailed the Parent about scheduling follow-up sessions with the Student and proposed meeting on January 29, 30, and 31, 2018. The agency BCBA expressed a need to establish a consistent schedule with the Student. On January 26, 2018, the Parent responded, stating that the proposed dates would not work and requested meeting the following week.
55. The District's first semester ended January 29, 2018. The Student did not attend school any days during the first semester, and as a result, did not pass any of his high school courses or earn any credit.
56. On February 4, 2018, the Parent emailed the agency BCBA, asking when the District was "going to address the bullying that [Student] has had to endure in the [District]?" The Parent stated: "If you truly want to help [Student], you have to help him get over the trauma from being bullied in school."
57. On February 5, 2018, the agency BCBA replied to the Parent, stating the District would be addressing the Student's school history and the bullying that occurred, and that there was no specific timeline, but the first step was [to] build rapport with the Student and "incorporating therapeutic techniques to help [Student] get to school."
58. Also on February 5, 2018, the agency BCBA made a home visit to the Student but the Student would not leave his room. The agency BCBA reiterated to the Parent that the bullying would be addressed, but they must first establish rapport with the Student.
59. From January 2, 2018 to February 1, 2018, the Student had twenty-one unexcused absences. The Student did not attend school any days during this time period.
60. On February 1, 2018, the complaint was filed with OSPI.

61. According to the District, the District has continued to attempt to provide counseling to the Student and support to the Parent at home after the complaint was filed. The plan is for the Student to begin attending high interest classes and gradually increase the number of classes the Student will take.

CONCLUSIONS

Issue 1: Placement – The Parent alleged in her complaint that the District denied the Student a free appropriate public education (FAPE) by not placing the Student in an appropriate placement.

Each school district must ensure that a continuum of alternative placements is available to meet the needs of students eligible for special education and related services. That continuum is required to include instruction in general classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. Each school district must ensure that an eligible student is placed in an appropriate program that meets the unique needs of the student in the least restrictive environment. The placement must be determined by a group of persons, including the parents, and other person knowledgeable about the student, the evaluation data, and the placement options. The placement decision must be based on the placement option(s) that provide a reasonably high probability of assisting the student to attain his or her annual goals and consideration of any potential harmful effect on the student or the quality of services, which he or she needs.

2016-2017 School Year (February 2, 2017 – June 2017) – On February 2, 2017, when the timeline for this complaint began, the Student’s placement was a part-time special education placement in which he received specially designed instruction in a special education classroom for part of his school day, and then attended general education classes for the remainder of his school day. On February 7, 2017, the Student stopped attending school and did not return to school for the remainder of the 2016-2017 school year. The District did not propose any IEP meetings to review the Student’s placement and determine if his placement continued to be appropriate. As a result, the Student received no special education services for several months and made no progress toward his IEP annual goals. The Parent subsequently requested placement at an out-of-state residential facility because of the Student’s placement in the special education classroom did not meet the Student’s needs, but the District did not promptly schedule an IEP meeting to address the request or the Student’s lack of progress, but instead proposed holding a meeting in August 2017. The District failed to follow procedures for determining the Student’s placement during the 2016-2017 school year.

2017-2018 School Year –

At the August 2017 IEP meeting, the District rejected the Parent’s proposal for a residential treatment facility based on the Student’s reluctance to work with anyone and the concern that the Student would be placed in an out-of-state facility with unfamiliar adults and the placement would be against his will. While the District may have had valid reasons for not agreeing to a placement in a residential treatment facility at that time, the District’s proposal to continue placement in a high school part-time special education classroom was not consistent with the needs and abilities of the Student. As the District had more than enough information to show

that the placement did not have a reasonably high probability in assisting the Student in attaining his IEP goals. The District had a responsibility to discuss a full continuum of placement options, such as a homebound placement or partial enrollment in an online program, in order to ensure that the Student's placement was appropriate, but the District failed to do so.

At the beginning of the 2017-2018 school year, the District involved a mental health agency to attempt to work with the Student at his home to establish sufficient trust and rapport to begin working with the Student to attend school. Despite repeated efforts, there was little progress engaging the Student and no progress towards the annual goals. At the November 16, 2017 IEP meeting, the District recommended the mental health agency continue to work with the Student and gradually transition him back to school where he could receive other behavior supports and assistance. The District's plan would have the Student attend one or two high interest classes and gradually increase the time in school. Meanwhile, the Student would be receiving counseling and other behavioral supports at home and school. The plan included parent training because of the Parent's inability to engage the Student in attending school. Although there was a recommendation by a previous mental health therapist for a setting that was "all-inclusive" with intense therapeutic and academic supports with a low teacher/therapist to student ratio, the IEP team discussed the potential harmful effects of a placement in an out-of-state residential treatment facility. Despite the plan to provide some services in the Student's home, the IEP continued to state that the Student's placement was in the special education classroom while attending general education classes at school. Therefore, the District did not follow placement procedures.

Issue 2: IEP Implementation – The complaint alleged that the District failed to provide the Student with special education services during the 2016-2017 (February 2, 2017 through June 2017) and 2017- 2018 school years.

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. It must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The IEP must also be reviewed and revised periodically, but not less than annually, to address any lack of unexpected progress towards the annual goals or in the general curriculum; the results of any reevaluations; information about the student provided by the parents; or the student's anticipated needs.

Here, the Student's January 18, 2017 IEP, which was in place when the timeline for this complaint began, provided for 265 minutes a week of specially designed instruction in each of the areas of mathematics, writing, and behavior.

During January and early February 2017, the Student began attending school and had no unexcused absences. However, after February 7, 2017, the Student began again to routinely miss school. This pattern continued through the end of the 2016-2017 school year and was interrupted only by the fourteen days the Student was hospitalized, which the District eventually became aware of. The District chose not to hold any IEP meetings to review and revise the Student's IEP despite the repeated unexcused absences that made implementing the IEP

impossible. It was not until the Parent and her counsel requested an IEP meeting on June 12, 2017, that the District agreed to meet to review the Student's IEP, and that meeting did not occur for two months. The District failed to implement the Student's IEP during the 2016-2017 school year during the timeframe for this complaint.

2017-2018 School Year – At the beginning of the 2017-2018 school year, the Student's January 2017 IEP continued to be in place and the plan was for the Student to attend a new District high school with support from a mental health agency the District contracted with. However, the Student continued to refuse to attend school. Despite the refusals, the District did not hold an IEP meeting to determine if the Student's IEP needed to be amended or whether he needed a new placement, as discussed in issue no. 1. While the District took some steps to engage the Student and collaborate with the Parent, with limited success, the Student continued not to attend school and receive any services.

On November 16, 2017, the District, along the Parent and her counsel, developed the new IEP to address the Student's needs. The November 2017 IEP continued to provide for specially designed instruction in mathematics, written expression, and behavior in the special education classroom. Behavior interventions and supports were added that included counseling, a behavior specialist, a unique needs specialist, and parent training. The District continued to attempt to provide counseling to the Student and work with the Parent, but the District failed to revise the IEP services to reflect the services the Student was receiving.

CORRECTIVE ACTIONS

By or before **April 27, 2018, May 3, 2018, May 18, 2018, June 26, 2018, and September 14, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **April 26, 2018**, the District will meet with the Parent to develop a schedule to offer the Student with a total of twenty (20) hours of compensatory services during the summer break of 2018. The compensatory services will include twenty (20) hours of counseling and academic specially designed instruction. The number of compensatory hours takes into account the individual delivery of service (rather than group instruction) and the Student's capacity to receive services. If the provider is unable to attend a scheduled activity session, the session must be rescheduled. If the Student refuses to participate, or otherwise does not attend an activity session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. However, the Parent and the District must reconvene if there is an ongoing lack of attendance by the Student. The services must be completed no later than **September 5, 2018**. The District will provide OSPI with documentation of the schedule by **May 3, 2018**.

By **September 14, 2018**, the District will provide OSPI with documentation that the compensatory services were implemented as required. 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.

By **April 26, 2018**, the District will hold an IEP meeting to review and revise the IEP to reflect the services and appropriate placement to be provided to the Student by the District, including a plan that addresses his absences and includes ongoing frequent monitoring of progress, with a plan to meet again to address lack of progress. By **May 3, 2018**, the District will provide OSPI a copy of the meeting notice, IEP, prior written notice, and meeting notes, if taken.

DISTRICT SPECIFIC:

By **June 19, 2018**, the District will ensure the school staff from the Student’s IEP team and high school administrators from both schools receive training regarding the requirements of reviewing and revising the IEP, placement, and implementation of services, including the need to address lack of attendance and/or lack of progress. The trainer will not be an employee of the District.

- By **April 27, 2018**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
- By **May 18, 2018**, the District will submit a draft of the outside trainer’s training materials to OSPI for review. OSPI will approve the materials or provide comments by May 28, 2018 and additional dates for review, if needed.
- By **June 26, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. *If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.*

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.

RECOMMENDATION

It should also be noted that as of August 2017, the District was required to reconvene the IEP team, including a behavior specialist or mental health specialist, to consider the reasons for the absences, as part of Washington RCW 28A.225.026, which applies to all Washington students. It is recommended that any staff training also include these requirements.

Dated this ____ day of April, 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.)