

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-47

PROCEDURAL HISTORY

On May 15, 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 Renton School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 16, 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 May 23, 2018, OSPI granted the District an extension of time until June 14, 2018, to submit its response to this complaint.

On June 14, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on June 15, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 25, 2018, OSPI granted the Parent an extension of time until July 5, 2018, to submit her reply to this complaint.

On July 5, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

Also on July 5, 2018, OSPI requested clarifying information from the District and spoke to the District Director of Special Education.

On July 9, 2018, OSPI requested clarifying information from the District and spoke to the District Director of Special Education.

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

OVERVIEW

At the beginning of the 2017-2018 school year, the District contracted with a nonpublic agency (NPA) to provide the Student with special education services. At the beginning of November 2017, the NPA discontinued the Student's enrollment at the NPA, stating that the program was not a good fit for the Student due to the Parent's concerns about other students in the program and the Student's safety, and that the Parent did not want the Student to attend the program full time. At the end of November 2017, the District began providing the Student with special education services for six hours a week at a community location, and proposed that the Student attend a special education program at a District high school. The Parent and the Student refused to agree to the placement at the high school. The District then continued to provide the Student

special education services while it looked for other placement options, but was not successful in doing so during the remainder of the 2017-2018 school year.

The Parent alleged that the District failed to follow procedures for changing the Student's placement during the 2017-2018 school year and failed to provide the Parent with progress reporting consistent with the Student's IEP during the 2017-2018 school year. The District admitted the allegations in part.

ISSUES

1. Did the District follow procedures for changing the Student's placement during the 2017-2018 school year?
2. Did the District provide the Parent with progress reporting consistent with the Student's individualized education program (IEP) during the 2017-2018 school year?

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. 34 CFR §300.116; WAC 392-172A-02060.

Parent Participation in Determining Placement: Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. The school district must use procedures consistent with the procedures described in WAC 392-172A-03100 (1) through (3). If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement. 34 CFR §300.501; WAC 392-172A-05001.

Continuum of Alternative Placement Options: 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. When necessary, the district must also provide for supplementary services such as resource room or itinerant instruction in conjunction with general classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

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

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student was a resident of the District and was eligible to receive special education services under the category of autism. The Student was in eighth grade.
2. Also during the 2016-2017 school year, the Parent homeschooled the Student for the majority of his school day. The Student was also part-time enrolled for a general education science class at a District middle school. The Student attended the science class sporadically. Based on the documentation in this complaint, the Parent elected for the Student not to receive special education services due to her decision to homeschool the Student.
3. In November 2016, the Student's individualized education program (IEP) team developed his annual IEP, because the Student continued to be eligible for special education services. The District's documentation states that the District attempted to contact the Parent regarding

the IEP meeting, but the Parent did not attend the meeting. The November 2016 IEP included annual goals in the area of reading (5 goals), writing (2 goals), math (3 goals), and social/emotional/behavioral (2 goals). The IEP stated that progress reporting regarding the goals would be provided “at least as often as reports are issued to parents of students not receiving special education services.”¹ The IEP provided for the following specially designed instruction in a special education setting:

- Reading – 15 minutes 5 times weekly
- Writing – 15 minutes 5 times weekly
- Math – 15 minutes 5 times weekly
- Social/emotional/behavioral – 15 minutes 5 times weekly

The IEP also provided for the following related service in a special education setting:

- Communication – 15 minutes per week

4. Based on the documentation in this complaint, the Parent continued to homeschool the Student following the development of the November 2017 IEP, and did not elect for the Student to receive special education services.
5. On May 1, 2017, the Student’s IEP team met to discuss the Student attending a special education class at the middle school to receive services under his November 2017 IEP. Based on the documentation in this complaint, the IEP team agreed the Student would attend a special education class during second period and then attend a general education science class with paraeducator support during third period at the middle school. Based on the documentation in this complaint, the Student continued to be homeschooled for the remainder of his school day. The IEP team also agreed to schedule another IEP meeting at the end of May/beginning of June to discuss the Student attending a District high school during the 2017-2018 school year.
6. Based on the documentation in this complaint, the Student began attending a special education class at the middle school on May 5, 2017.
7. On May 26, 2017, the Student’s IEP team met to discuss the Student’s progress at the middle school and his attending high school during the 2017-2018 school year. Based on the meeting notes, the Student had attended the special education class at the middle school for the last nine days and it was getting easier for the Student to attend school. The IEP team discussed the Student attending a District high school for three class periods in the morning to start. Based on the documentation in this complaint, the IEP team also discussed the District contracting with a state approved nonpublic agency (NPA) to provide the Student special education services, due to concerns about the Student’s capacity to complete traditional full time school attendance and to be successful in a comprehensive high school setting. The IEP team agreed that the District would look into possible placements at local NPAs. According to the District’s response to this complaint, the Student’s November 2017 IEP was not

¹ Based on the District’s documentation, report cards are issued on a quarterly basis for middle and high school students at the beginning of November, end of January, beginning of April, and in June at the end of the school year.

amended to reflect a change in the Student's educational placement to an NPA, due to his IEP case manager sustaining an injury following the meeting and being unable to finalize an amendment.

8. The documentation in this complaint shows that following the May 26 meeting, the District contacted two NPAs (NPA 1 and NPA 2) regarding a placement for the Student.
9. Based on the documentation in this complaint, the director of NPA 1 observed the Student at the middle school during the week of June 5, 2017. On June 9, 2017, the Parent, Student, and the District director of secondary special education (secondary director) toured NPA 1.
10. Based on the documentation in this complaint, NPA 2 believed that its program could address the Student's educational needs, and suggested that the Student attend a summer program offered by NPA 2 to see if NPA 2 would be a good fit for the Student. The Parent and the Student then toured NPA 2 on June 14, 2017. The Parent and the District later agreed that the Student would participate in the summer program.
11. On June 21, 2017, the District completed progress reporting regarding the Student's twelve November 2016 IEP goals. The progress reporting for all of the goals indicated the Student had made limited progress and also stated:

[The Student] just began coming back school on May 5 he averages 2 to 4 days per week, 1 period per day. He comes in and sits in the back of the room but has only done one reading assignment in 6 weeks. Progress has not been seen in areas due to his lack of willingness to complete classwork or assessments, but he has been willing to come back to school which is a major success!

Summer 2018

12. In July 2017, the Student participated in a summer program at NPA 2.
13. During the first week of August 2017, NPA 2 notified the District and the Parent that it did not believe NPA 2 was an appropriate placement for the Student, because it did not have the supports needed to meet the Student's behavioral needs, and was declining to enroll the Student for the 2017-2018 school year.
14. On August 4, 2018, the Parent emailed the District, stating that she wanted to appeal NPA 2's decision and asked for copies of the Student's records.
15. On August 10, 2017, the District secondary director emailed the Parent, explaining that students placed in NPAs by a school district were done so by mutual agreement between the District and an NPA, and that there was not an appeal process. The secondary director also stated that there would not be an IEP meeting on August 11, 2017², as the Student's placement would not be NPA 2. The secondary director asked that the Parent contact her to

² The documentation in this complaint indicates that the IEP team was scheduled to meet to discuss the Student attending NPA 2 during the 2017-2018 school year.

discuss next steps in determining an appropriate educational placement for the Student for the 2017-2018 school year. The secondary director attached a copy of the Student's June 21, 2017 progress reporting.

2017-2018 School Year

16. The District's 2017-2018 school year began on August 30, 2017. School was not in session on September 4, 2017.
17. On September 6, 2017³, the Parent met with the director of NPA 1 to discuss the Student attending NPA 1, and the Student began attending a high school program at NPA 1 that same day. Based on the meeting notes, the Student began attending NPA 1 part-time, with a plan to expand his school week after a six-week review. The Parent and director also discussed that the Student had allergies, including a peanut allergy.
18. On September 15, 2017, the District issued a prior written notice, proposing to initiate an educational placement at NPA 1. The notice stated:
Determination of educational placement for the 2017-2018 school year. [The Student] will be placed at [NPA 1] which can provide for the specialized instruction, smaller class sizes, [and] emotional individualized support for his educational needs."

The notice also stated that the reason the District was proposing the action was:

The IEP team determined on 5/26/2017 that [the Student] would be most successful in a non-comprehensive high school setting. This decision was based upon his current educational needs and attendance of 1 period per day at the end of the 2016-2017 school year.

Additionally, the notice stated that the Student would begin the school year on a partial schedule with "AM til noon attendance only" and that the goal was to "increase his attendance to full day thru program development and educational success."

19. On September 21, 2017, the Parent emailed the District secondary director and the director of NPA 1, asking to schedule a meeting on September 22 to discuss the Student's placement. The Parent stated that she had great concerns about the Student's safety and wanted to discuss these. The Parent stated that another student had shoved and pushed the Student and had tried to throw a book at him. The Parent stated that the Student had shown great restraint from not retaliating against this student, and did not want the Student physically hurt while at school. In response, the directors agreed to meet with the Parent on September 25, 2017.

³ This date is taken from the date on the meeting notes provided by the District in response to this complaint. The Parent stated in her reply to the District's response to this complaint, that she met with the director of NPA 1 on September 4, 2017 and the Student began attending school on September 5, 2017. September 4, 2017 was Labor Day, and according to NPA 1's 2017-2018 school year calendar, there was no school on September 4 or 5. However, it is possible the Parent met with the director on September 5, 2017, as NPA 1's calendar shows that "Parent Open House" was scheduled this day, although school was not in session. Also according to NPA 1's calendar, September 6, 2017 was NPA 1's first day of school. http://www.childnow.org/sites/default/files/2017-2018%20School%20Calendar_020618.pdf.

20. Also on September 21, 2017, the Student's teacher at NPA1 emailed the Parent and provided more information about what occurred that day with the other student (student A) and the book. The teacher explained that the Student had made a rude comment toward student A in response to student A asking what the Student determined was a stupid question. Student A then picked up a book and pretended he would hit the Student on the head with the book, but was two feet from the Student. In response, the teacher asked student A not to pretend to hit with a book, because someone could accidentally get hurt, and student A said "ok". The teacher relayed that during this exchange, the Student "got very heated, very quickly", but calmed down when the teacher stated that he would keep the Student safe. The teacher said that based on the Parent's note, however, the Student was still upset, and the teacher apologized for this. The teacher stated that he could move student A away from the Student, but also stated that it had been a mild exchange. Additionally, the teacher stated that he was unsure who would have shoved the Student previously, but thought it may have been a non-verbal student (student B) who staff were working hard with on social skills, and had been diligently guarding all students from. The teacher stated that he would do his utmost to always protect the Student and that the Student was a joy to have in the classroom and a good role model for his peers. In response, the Parent relayed more details about the Student's account of what happened that day, and other issues he was having with student A.
21. On September 25, 2017, the Parent, Student, teacher, and director of NPA 1 met to discuss the Parent's concerns. The teacher provided information about the make-up of the classroom, the daily schedule, behavior interventions, and the Student's progress.
22. On September 27, 2017, the teacher emailed the Parent, stating that the Student had done okay that day, and was a little impatient with his peers again. The teacher said he had spoken a lot with the Student about processing speed being different for some of the Student's peers, which seemed to help the Student. The teacher stated that the Student followed his schedule and was mostly kind to all. In response, the Parent asked for the names of the teaching assistants who worked in the classroom, so she could figure out the initials on the Student's daily progress sheets. The Parent stated that one of the teaching assistants did not seem to have a good rapport with the Student. The Parent also stated that the Student was not a morning person and did not like to talk first thing in the morning, but liked to be quiet. The Parent said that the Student did not work well with most female staff and worked best with male staff, who he would listen to. The Parent also stated that the Student had relayed there was a camera in the classroom, and the Parent asked what the purpose of the camera was. Additionally, the Parent asked for more information about the comments that had been written on the daily progress sheet that day, specifically what inappropriate language the Student had used and how the Student was rude with staff. The Parent stated that she had asked the Student about what had prompted the comments on the progress sheet, but the Student could not figure out why the comments had been included.
23. On October 10, 2017, the Parent emailed the teacher in response to an earlier email from the teacher about the Student using his cell phone at school.

24. Based on the documentation in this complaint, on October 12, 2017, the Student's teacher was absent and the Student had a difficult day at school.

25. On October 13-15, 2017, the Student's teacher and the Parent exchanged emails. The emails are summarized below:

- October 13 – The teacher emailed the Parent, stating that the Student had done well that day, and that the Student had wanted to talk a lot about what occurred on October 12, so the teacher and the Student had a “check in”. The teacher had provided the Student with suggestions about some strategies on how to respond to others when irritated with them, and the Student had listened. The teacher had also listened to the Student's grievances. The teacher and the Student had also thought of ways the Student could say things nicer and the Student had good ideas. The teacher stated that following the Parent's observations, he was going to start working with the other school staff so they could take over with the Student and the Student could learn to trust other staff at the school besides the teacher. The teacher also stated that the Student had followed his schedule that day and was kind to all.
- October 13 – The Parent responded that she was glad the teacher was able to speak with the Student, and stated that the Student had been quite upset when he got home from school on October 12. The Parent stated that it had taken the Student nearly thirty minutes to relay what had happened, and the Student was upset regarding other teachers reporting that he hit another student, when the Student was just trying to get the student out of his personal space and stop blowing air on him. The Parent also stated that when she had reviewed the list of teaching assistants, the Student had relayed that he got along with one of the assistants, but expressed “strong negative relations” with another assistant. The Parent suggested that the teacher have the assistant the Student got along with work with the Student when the teacher was absent. The Parent stated that since the Student had such a “disastrous” day when the teacher was out, she was considering not sending the Student to school on days the teacher was absent. The Parent stated that this had been done when the Student attended school in the District.
- October 13 – The teacher replied that he understood the Parent's concern about the Student not working with other teachers, but that one of the things he hoped to work with the Student on that school year, was the Student's stamina while working with various teachers, instead of only one or two. The teacher stated that he perceived that a reason the Student was at NPA 1 was to help him build social skills. The teacher stated that he had observed the Student was very honest with others about how he feels, and that when he was honest, he often said hurtful things. The teacher indicated that these things would not bother a neuro-typical student or such students would be able to keep from responding with equal honesty, but that at NPA 1, the classroom was made up of students with lagging skills in social behavior, and if the Student was honest, other students would respond with the same level of honesty. The teacher then provided an example of a recent incident where the Student made an unkind comment and in response, the other student said something insulting, which led to additional exchanges, until the teacher stepped in and asked the students to play a game with him. The teacher stated that these kind of exchanges happened “a lot” in the classrooms, and indicated that staff worked with the students to help them make better choices. Additionally, the teacher stated that the Student seemed to take offense whenever the teacher needed to work with another student, and stated that he was not a 1:1 teacher, but had to run the whole classroom. The teacher said that classroom assistants got to do 1:1 work, when the teacher stayed with the group to teach. Further, the teacher stated that the Student wanted to “come and go” on academic work when it was not interesting to him, and that the Student would grab his cell phone or read a book during this time, and ignore the class

work. The teacher would then restate expectations for only using the phone during free time, and the Student would often ask why. The teacher said the Student would follow through with putting the phone away when the teacher directed, but the Student also needed to follow through with other staff. The teacher stated that the Student was very receptive to his coaching him on making better choices, but not as much with other staff, and the teacher wanted to build the trust the Student had with him, with other staff. The teacher stated that he was available to talk to the Parent after school or they could exchange emails.

- October 15 – The Parent responded that the Student was at NPA 1 because he was not at a 9th grade academic level and could not be in a large classroom. The Parent then expressed concerns that the District had not provided appropriate services to the Student in past years. The Parent stated that the Student was at NPA 1 per her agreement to try it on a week by week trial basis, and that she was not convinced it was the right fit for the Student and would work out. The Parent stated that the Student had never been around a classroom of neuro-typical students, and that he had not had students call him names before. The Parent stated that the Student did not want to go to school on October 13, and had only went after the Parent assured him the teacher would be there. The Parent stated the Student’s patience with other students was “wearing thin”, and that if the Student did not want to go to school, she would not physically force him. The Parent stated that the fact the Student engaged so well with the teacher “was huge”, and that she understood it would be nice for the Student to broaden his acceptance of other teachers, but thought this should be done gradually. The Parent then listed the staff the Student had indicated he was willing to work with, and stated that the Student could be inflexible at times, so she had “incorporated his interests and accommodated to his inflexibility’s in order to reach the greater goal of increasing his academics.” The Parent also suggested that the Student be allowed to use his District provided laptop during times he was bored or not interested in the group lesson, and stated that the Student did a lot multitasking at home, such as being on the computer while watching television.

26. On October 20, 2017, the Parent emailed the Student’s teacher, the director of NPA 1, and the District secondary director. The emails are summarized below.

- The Parent asked the teacher if there was a draft of the Student’s new annual IEP that she could review before the upcoming IEP meeting on October 26. The Parent also stated that she wanted to hear the teacher’s side of the story regarding what happened to the Student on October 19. The Parent stated that the Student was extremely upset by the events of October 19. The Parent said that she had mentioned to a teacher’s assistant that morning (October 20), that she was not sure how much more name calling the Student could endure, as well as other students being mean with their words and actions toward him. The Parent stated that the Student had never run out of a room before in tears, and that she was extremely concerned that this classroom environment was unhealthy for him. The Parent stated that the Student had a history of anxiety, and if it escalated to where she saw him engaging in self-harming behaviors, then he would no longer attend NPA 1. The Parent then asked what the consequences were for the other students. The Parent expressed that she understood staff may be ignoring the other students’ behaviors in order to not give the students attention, but that she did not feel like this was working, and that ignoring the behaviors was telling the students it was okay for them to engage in inappropriate behaviors, thus the behaviors seem to continue on a daily basis. The Parent stated that she believed the behaviors the other students were displaying toward the Student fell under the definition of bullying, and that she believed the District had policy against bullying. The Parent asked if NPA 1 had a policy as well.

- The teacher responded and provided details about his observation of what occurred on October 19. The teacher stated that the students were taking class pictures, and the photographer suggested a silly group photo, just for fun. Several of the students wanted to pose doing a popular dance move, but the Student did not agree and refused to do the pose. Some of the students then tried to encourage the Student in a friendly manner to do the pose and demonstrated what it would look like. The Student became angry and told the students to “shut up” and leave him alone. The students continued to talk to him in a friendly manner, such as “just try it. It’s fun.” The Student stated no, and then stomped out the classroom. He then sat in the hallway with a teaching assistant (TA 1) and took several minutes to return to a non-escalated state.
- The Parent replied that in reading the teacher’s account of what occurred on October 19 to the Student, the Student had adamantly stated, “this was not what happened exactly”. The Parent stated that in the version the Student told her on October 19, the other students had asked the Student several times to do the pose, and the Student had said “no”, three times. Another student then told the Student to get out of the picture if he wouldn’t do the pose, which upset the Student so much, that he ran out the room and sat on the stairs and cried. Later, as the other students walked by the Student, two students taunted him with candy they had received after the Student had left the room. The Student then told the other students to “shut up”, and spent the next hour “curled in the fetal position in the noodle pit in the sensory room.”
- The teacher responded that he had recollected what he saw, and he had his staff read over his account to see if he was missing anything. The staff had all agreed the teacher was being factual. The teacher stated that it is possible another student told the Student to get out of the picture, but the teacher and other staff did not hear this, and the staff were standing right behind the two students in question. In regard to students taunting the Student, TA 1 had confirmed that this occurred, and that she had redirected the students to leave the Student alone. Additionally, both TA 1 and another staff member offered the Student a piece of candy. The Student had then stated that his throat hurt and he would rather have a Popsicle. This was not available, and staff again offered candy, but the Student declined it. The Student then went to the sensory room, so he could rest and calm. The teacher stated that the Student was not curled in the fetal position in the noodle pit, but sat on a bench for a while, stating that his head and sinuses hurt. TA 1 then suggested the Student try out the noodle pit to relax, which he did. The teacher stated that the Student seemed cheerful after coming out of the quiet room with TA 1, had a good rest of the day, and seemed happy when he said goodbye to the teacher and TA 1 when he was boarding the bus.

27. Also on October 20, 2017, the teacher emailed the Parent and included a draft of the Student’s annual IEP. The teacher stated that the Parent should keep in mind that the IEP was undergoing District review, and if the District had any changes that needed to be made, they would address these at the IEP meeting. Based on the documentation in this complaint, the draft IEP included a behavioral intervention plan (BIP) which may have been based on a functional behavioral assessment (FBA). The Parent later responded that she was never consulted about doing an FBA or BIP, so these needed to be excluded from the IEP, and stated that she would never agree to an FBA or BIP.

28. On October 24, 2017, the teacher emailed the Parent, stating that the Student did okay that day. The Student had seemed very impatient with peers when he arrived, but had cheered up as the day went on and became focused. In response, the Parent stated that the Student

had relayed he could not hear while he was using his District laptop with peers/staff talking in the background that morning, and asked if the laptop came with headphones. The Parent asked to please let her know, and if the computer did not come with headphones, she would ask the District to provide headphones. The teacher replied that staff were present when the Student was on his laptop, that the other students were whispering or talking quietly, and the room was very peaceful. The teacher stated that the Student had then started complaining about how loud it was, and staff thought he was joking because it was so quiet in the room. However, when it became clear that the Student was not trying to be funny, a teaching assistant offered him a set of headphones, but the Student replied loudly that he would not use the headphones, and others needed to be quiet. The teacher stated that the District's computer did not come with headphones, and that the Student could use headphones available in the classroom, unless he wanted his own pair.

29. On October 26, 2017, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. Based on the meeting notes, the Parent expressed concerns about the Student's safety and academic delays. The IEP team also discussed the purpose and the function of a BIP, and that an FBA had not occurred without the Parent's consent. The IEP team also discussed the Student's part-time attendance and the Parent stated that she would not allow the Student to attend school full time due to his anxiety, which could rise with the behaviors of other students. The Parent also stated that she had a prior letter from a physician that stated that the Student was unable to attend school full time.

30. The Student's October 2017 IEP included present levels of performance that contained information, which directly addressed the Student's progress toward all of the math, writing, and social/emotional/behavioral goals in his prior November 2016 IEP, and directly addressed the Student's progress toward two of the five reading goals. The present levels also included information which indirectly addressed a third reading goal from the November 2016 IEP, which was aimed at the Student being able to read 70 words per minute when given a 3rd grade text, stating that the Student was able to read 88 words per minute when given a 5th grade text. The October 2017 IEP did not address the Student's progress toward the remaining two reading goals from his November 2016 IEP.

The October 2017 IEP included annual goals in the areas of reading (2 goals), writing (1 goal), math (4 goals), and social/emotional/behavioral (2 goals). The IEP stated that progress reporting regarding the annual goals would be provided on a trimester basis. The IEP provided for a total of 1,035 minutes (17.25 hours) per week of specially designed instruction in a special education setting as follows:

- Basic Reading – 90 minutes per week
- Reading Comprehension – 90 minutes per week
- Writing – 90 minutes per week
- Math – 180 minutes per week
- Social/emotional/behavioral – 585 minutes per

The IEP also provided for the following related service in a special education setting:

- Communication – 15 minutes per week

Additionally, the IEP provided for extended school year (ESY) services.

31. On October 30, 2017, the Parent emailed the teacher, asking if the Student's IEP could be emailed to her when it was finalized. The Parent also stated that the Student had refused to go to school that morning because he said he did not "have enough energy to deal with the bullies." The Student had promised to go to school the next day. In response, the teacher stated that staff would need a few more days to make the final corrections to the IEP, and thanked the Parent for letting him know about the Student.
32. On November 1, 2017, the Parent emailed the teacher, asking for information about what occurred that day between the Student and another student (student C). The Parent stated that the Student was quite upset when he got home from school and was not able to tolerate comments/remarks from student C on a daily basis any longer. The Parent also stated that the Student was upset that he had been removed from the classroom instead of student C.

In response, the teacher provided an account of what happened at school that day. The teacher stated that he had checked with the other classroom staff and they all agreed on what occurred. The teacher explained that the Student became upset when another student (student D) took more Kleenex from a box than the Student thought he should have. A teaching assistant (TA) then explained that student D had large hands and needed several Kleenexes to wipe them off. The Student began yelling at the TA, stating this was not true. Student C then became upset that the Student was yelling at student D, and told the Student to "shut up". The Student then threatened to beat up student C. In response, the TA told student C to let the teachers handle it and that he should not have said "shut up". Student C was then quiet. The TA then told the Student that teachers would handle how much Kleenex was used, and he should not worry about this. In response, the Student loudly stated that he had the right to tell other students what to do, and the TA replied that he did not have that right, as it was the teachers' job. The teacher then entered the room and the Student went over to him. A few minutes later, students in the classroom were playing board games and the Student left the room to retrieve a game from another classroom. On his way out the door, student C, who was still upset about what happened earlier, made a comment that upset the Student. The Student then, in the hallway, stated to the teacher that he would punch student C and the teacher discussed with the Student that student C was looking for a reaction and would stop when he did not get one, and that hitting others was not a good idea and would get the Student in trouble. The Student seemed to agree with the teacher, calmed down, and then played a game with the teacher for the remainder of the class period. Later that day, the Student was packing up his things from the teacher's desk and student C moved toward the teacher's desk because he thought the Student was finished and student C planned to sit at the desk. The Student then yelled at student C not to touch his laptop, and the TA stated that no one had touched the laptop. The TA also asked student C to give the Student space, and directed student C not to yell at the Student and let the teachers handle it. Student C complied. A few minutes later, student C told the Student that he did a great job that day and hoped he had a good day. The teacher stated that the Student seemed

cheerful on the way to the bus, greeted the bus driver, stated his day had been “great”, and smiled and waved to the teacher as he sat in his bus seat.

The teacher then stated to the Parent that staff were concerned that the Student seemed to leave school with his concerns addressed and resolved, but apparently reverted from a good mood back into an upset mood when relating his experiences at home. The teacher also stated that at no point was the Student removed from the classroom, nor had he ever been removed from the classroom during the school year. The teacher stated that it was deeply concerning to the staff, that the Student was relaying something to the Parent that was untrue.

33. On November 2, 2017, the teacher emailed the Parent, stating that the Student had a “fairly good day”. The Student had been a “bit defensive”, but cooled down quickly and got to work, and participated well in all activities, seeming to have a good day.
34. NPA 1 had a teacher in-service day on November 3, and there was no school for students.
35. Also on November 3, 2017, the Parent emailed the teacher, the director of NPA 1, and other staff members. The Parent stated that on November 2, 2017, the Student ran into student C in the hall and student C said something like, “on no, you’re here today”. In response, a staff member said something to student C to stop the “verbal bullying”. The Parent thanked the staff member for doing this, and stated that she thought bullying by student C needed to be addressed immediately and not be ignored anymore, as the Parent had discussed with the director of NPA 1 and a staff member on November 2. The Parent stated that the method of ignoring bullying was not acceptable and then provided a list of things she thought should be done to address student C’s “bullying”. The Parent stated that since the bullying occurred every day, when the Student first arrived at school, she planned to accompany him to school in the morning the following week and escort him to his desk. The Parent also stated that she planned to file an official complaint with NPA 1, the District, and OSPI. The Parent stated that she hoped they could resolve the issue soon, as it was taking a toll on the Student emotionally. The Parent also expressed that the Student had a right to go to school and be educated in a “non-hostile” environment.
36. On November 5, 2017, the director of NPA 1 responded to the Parent’s November 3 email, thanking her for letting the team know of her concerns and ideas. The director also asked that the Parent keep the Student home beginning Monday, November 6, 2017, and stated that he had reached out to the District secondary director and would have a plan with how to proceed. The Parent replied, expressing that she no longer planned to escort the Student to school, as the Student felt this would make things worse and was concerned about his reputation. The Parent stated that she was therefore counting on the staff at NPA 1 to come up with a plan to address the Student’s arrival at school, which seemed to trigger the other student. The Parent asked why this student did not want the Student there. The next morning (November 6), the director of NPA 1 replied, asking that the Parent keep the Student home until a plan could be made moving forward, and stated that he would be in touch

shortly. Based on the documentation in this complaint, the Student did not attend NPA 1 on November 6 or thereafter.

37. On November 9, 2017, NPA 1 issued a prior written notice, proposing to discontinue the Student's placement at NPA 1. The notice stated that NPA 1 was discontinuing the placement because the placement was not a good fit for the Student for the following reasons:
- Parent concerns that the Student was repeatedly being exposed to adverse behavior.
 - Parent concerns around the Student's safety.
 - Parent stated that the Student will not attend the program full time.
38. NPA 1 and the District were on break on November 10, 2017, in observance of Veterans Day.
39. From November 14-16, 2017, the Parent exchanged emails with the District secondary director. The emails are summarized below.
- November 14 – The Parent emailed the secondary director, asking if the Student was still enrolled at NPA 1 or if he had been expelled. The Parent stated that she assumed the Student had been expelled.
 - November 15 – The secondary director responded that they needed to discuss the Student's educational needs and environment, as NPA 1 did not feel that it could "meet those needs in either context." The secondary director asked that the Parent "provide opportunities" for them to discuss this further by phone or in person.
 - November 15 – The Parent replied, asking that if the Student was not allowed to stay at NPA 1, where was the notification. The Parent stated that she had not received a letter from NPA 1, stating that the Student was no longer allowed to attend NPA 1 and the reason why. The Parent said that the secondary director had already stated in a prior email that there were no other options for the Student, so the Parent was unclear about the secondary director's November 15 email. The Parent stated that they had already discussed the Student's educational needs and had a very good IEP for him from NPA 1. "The environment though at [NPA 1] was the problem and not an appropriate placement from him in my opinion." The Parent also stated that for NPA 1 to exclude the Student because of her November 3 email seemed "suspicious", and that she may be able to meet in person or by phone in the afternoon on November 17, but that otherwise her work schedule was very busy.
 - November 16 – The secondary director responded that she had attached a prior written notice from NPA 1, and that it was her intention to share it with the Parent if they could meet that week. The secondary director stated that they needed to determine an educational placement for the Student, as he was "legally entitled to and deserved this". The secondary director stated that their options were "more constrained and [would] require clearer understandings". Additionally, the secondary director indicated that she was not available in the afternoon on November 17, and asked that the Parent let her know if she had options for the following week or in the morning on November 17. Attached to the secondary director's email was the November 9, 2017 prior written notice from NPA 1.
40. On November 21, 2017, the Parent emailed the District secondary director, indicating that because the Student was no longer receiving the special education services he was supposed to receive, the District would need to provide the family financial compensation for the

Student's education. The Parent asked what the District could do in the meantime, and if the Student could have access to a computer with a math program, so he could work on his math goals at home. In response, the secondary director stated that they needed to set up contracted school services while the Student's educational program was being developed. The secondary director explained that contracted services were individualized instruction provided by a special education teacher while a student was not in school. The secondary director stated that the District would provide contracted services until another educational placement could be obtained for the Student, and that the services would be provided for six (6) hours per week at a mutually agreed upon time and location. The secondary director also stated that the contracted services could begin the following week and that the special education teacher would provide a computer for the Student. Additionally, the secondary director stated that a meeting needed to be scheduled to "define" the Student's educational services and placement, and asked that the Parent provide information regarding her availability to meet. The next day, the Parent replied that she could meet on December 1, 2017, and the District agreed to the meeting date.

41. The District was on break November 23-24, 2017. From November 6-24, the Student missed twelve school days.
42. On November 28, 2017, the Student began receiving contracted services from a District high school special education teacher. The District's documentation shows the Student received the following services in November 2017:
 - November 28-30: 4 hours
43. On December 1, 2017, the Parent and the Student met with the secondary director and the District's secondary education facilitator to discuss the Student's educational program. Based on the meeting notes, the group discussed that the Student had begun receiving services and had been provided a District laptop on November 30. The group also discussed the Student's placement and that the Student wanted a placement that was "nut free" due to his allergies. According to the meeting notes, the group determined a "plan" which included the Student receiving the contracted services until "break"⁴ and the District contacting another NPA (NPA 3) to see if it had a program that would meet the Student's needs. The "plan" also indicated creating a schedule for the Student to attend a District high school for part of the school day and potentially the need for the Student to eat lunch in a classroom due to his allergies. The "plan" also stated that the Student needed twenty-four high school credits to graduate, and that the District could explore the Student returning to NPA 1 in January 2018, after student C left. The documentation in this complaint does not show that the District issued a prior written notice regarding any decisions reached at this meeting.
44. The District's documentation shows the Student received the following services in December 2017:
 - December 4-8: 6 hours
 - December 11-15: 6 hours

⁴ It is assumed the term "break" is in reference to the District's winter break, which began on December 18, 2017.

45. On December 4, 2017, the secondary director emailed a director of NPA 3 to see if NPA 3 may have an appropriate program for the Student and provided information about the Student. In response, the director of NPA 3 stated that after reviewing the Student's information, NPA 3 would not be a good fit for him.
46. On December 15, 2017, the Parent emailed the secondary director, asking for an update about the Student attending school in January 2018, and if the Student would receive contracted services the first week of January 2018. On December 18, the secondary director replied that she had received notice that NPA 3 would not be able to meet the Student's needs. The secondary director said that the District would continue with contracted services as they moved forward with a placement in a special education program at a District high school. The secondary director asked if the Parent was able to attend an IEP meeting on January 5 or 12, to review the Student's program and develop a schedule, which as had been discussed, would begin with a partial day. The secondary director also stated that the high school's second semester began on January 30, 2018, and that it was critical that the Student began attending the high school as soon as possible following the District's winter break, so that the Student could adjust and be supported in order to begin second semester classes and credit acquisition.
47. The District was on break December 18, 2017 through January 1, 2018.
48. On January 4 and 8, 2018, the Parent and the secondary director exchanged emails. The emails are summarized below:
- January 4 – the Parent responded to the secondary director's December 18, 2017 email, stating that she was not available to attend an IEP meeting on January 5 or 12, and that the Student stated that he would not go to the District high school for some of the same reasons the IEP team had decided in May 2017 that the Student should attend an NPA. The Parent asked if the Student could return to NPA 1, as the Parent believed student C would no longer attend the school after January. The Parent stated that the Student was tired of starting over and that the Student had relayed that his teacher at NPA 1 was the only one that "got him". The Parent stated that it had been difficult for the Student even with the contracted services, and she did not think the Student was getting much out of the services. The Parent stated that the Student wanted to return to NPA 1 and stated that she thought the secondary director was going to contact the director at NPA 1 to discuss this.
 - January 4 – The secondary director replied that it was the District's responsibility to provide a free and appropriate public education (FAPE) to the Student regardless of his placement, and that this responsibility sometimes required an out-of-district placement that the District was not able to secure for a variety of reasons. The secondary director stated that during this time, the District continued to provide in-district educational programming and placement to continue the student's FAPE. The secondary director stated that they needed to continue to move forward with the placement at the high school as they continued to explore other educational options. The secondary director also restated the desire to get the Student settled into classes before the high school's second semester began, proposing the Student begin the week of January 22. Additionally, the secondary director reiterated that out-of-district placements were mutually agreed upon by the District and an NPA, and stated that NPA 1 believed it could not meet the Student's educational needs at this time. The secondary director stated that the District could re-

present the Student to NPA 1 when there was a change in learner profile that would indicate a greater likelihood of success based on the Student's profile and not that of other students. The secondary director then explained that students who attended NPA 1 had behaviors and needs beyond the scope of a comprehensive public school placement and there would likely continue to be students at NPA 1, like the one the Student had issues with. The secondary director asked that the Parent let her know the soonest date the Parent was available to meet with staff at the District high school.

- January 4 – The Parent responded that the Student refused to attend the District high school so the family would not proceed in that direction. The Parent stated that she would not put the Student in a placement where he would not succeed and would set him up for failure once again. The Parent stated that the family would wait until the Student could go back to NPA 1, where his needs could be met. The Parent stated that when the student who was bullying the Student, was no longer there, she would not object to the Student being around other students with adverse behaviors. Additionally, the Parent stated that the Student “had inappropriate language with the contract schooling teacher” and significant issues/frustration with constantly starting over, so his next placement would be for the long term.
- January 8 – The secondary director replied, asking that the Parent let her know a good day and time they could talk, as the director believed this may be the easiest “route to clarity”. The secondary director stated that NPA 1 had indicated that they would not reconsider the Student for placement without a successful long-term educational placement occurring elsewhere since his departure. The secondary director said that the District’s plan for the second semester placement was a special education program at the District high school for the remainder of the 2017-2018 school year. The secondary director stated that the District could not legally provide contract school as the Student’s ongoing educational program, and the contract school would not meet the requirements for NPA 1 to reconsider.
- January 8 – The Parent responded that she was available to meet on January 19, as this was her only day off. The Parent also stated that there was no way the Student would go to the District high school, as he absolutely refused. The Parent said that in reference to NPA 1, the information provided did not make sense, and she indicated that she wanted more information about why NPA 1 would not reconsider the Student. Additionally, the Parent stated that the contract schooling was not going very well and she believed that it was a waste of time. The Parent stated that the Student was quite upset with the special education teacher the prior week and had thrown a “tantrum” when he became upset with the teacher. The Parent said that the Student was not doing the work the teacher provided and that it took a lot of persuasion from the Parent to get the Student to do work. The Parent asked what other schools may be available for the Student.

49. On January 23, 2018, the assistant principal at the District high school emailed the Parent, welcoming the family to the high school and stating that the high school staff looked forward to the Student starting the following week at the beginning of the new semester (January 30, 2018). The assistant principal stated that the Student was scheduled to attend math and language arts courses for fifth and sixth period from 12:00-2:03 pm. The assistant principal stated that she knew the Parent had been working with the secondary director, but the assistant principal wanted to make sure the Parent was also introduced to the high school team. The assistant principal stated that she had copied one of the Student’s assigned special

education teachers on the email and that the teacher would be the Student's IEP case manager.

50. Later on January 23, 2018, the Parent emailed the District executive director of student support services (executive director) with concerns about the secondary director's handling of the Student's educational program and requested that another District administrator be assigned to assist the family. The Parent also expressed that the Student had been "bullied" by another student at NPA 1, and that the Student was excluded from NPA 1 after she complained about this. The Parent further expressed concern that she had not been informed by the District that federal laws that apply to students in public school do not apply to students in private schools, and expressed that parents should be informed of this when a student is placed at an out-of-district placement. The Parent stated that if she had known this, then the Student would still be attending NPA 1, where he had done the best. Additionally, the Parent expressed concern that the secondary director had stated that another NPA the Parent had asked about, only provided tutoring and not school services, but that when the Parent had contacted the NPA, it stated otherwise, and that District students attended the school.
51. The District's documentation shows the Student received the following services in January 2018:
- January 1-5: 4 hours
 - January 8-12: 6 hours
 - January 15-19: 6 hours
 - January 22-26: 2 hours
 - January 29-31: 2 hours
52. On February 5, 2018, the District completed progress reporting regarding the Student's October 2017 IEP goals. The progress reporting for all nine goals stated, "emerging skill demonstrated but may not achieve annual goal within the duration of the IEP." The progress reporting did not include other information about the Student's progress toward his goals. According to the Parent, she did not receive a copy of the February 2018 progress reporting until June 2018.
53. On February 9, 2018, the Parent and the Student met with the District executive director and the District special education director to discuss the Parent's concerns about placement and the events that had occurred since the spring of 2017. Based on the meeting notes, the executive director stated that the District would get back to the Parent in the next week.
54. On February 15, 2018, the executive director emailed the Parent, stating that the District was still investigating the possibility of another program for the Student, and that the special education director was looking into the possibility of working with a tutoring company⁵, as the Parent had suggested. The executive director stated that the District would be scheduling an IEP meeting after the District's break, and hope to have more information about a school for the Student. Based on the documentation in this complaint, an IEP meeting was not scheduled in February 2018.

⁵ The tutoring company is not an OSPI approved nonpublic agency.

55. The District's documentation shows the Student received the following services in February 2018:
- February 1-2: 2 hours
 - February 5-9: 6 hours
 - February 12-16: 6 hours
 - February 19-23: District Break
 - February 26-28: 4 hours
56. Based on the documentation in this complaint, on March 2, 2018, the Parent attempted to meet with the District executive director, but the executive director was not available.
57. On March 5, 2018, the District executive director emailed the Parent, apologizing for not being available to meet on March 2, and stated that typically, it was best to set up an appointment with her, in order to ensure she was available. The executive director stated that she had reached out to the private tutoring company over a week ago, but did not get a response until late on March 2. The executive director stated that she would be speaking with the tutoring company and also looking into other options for the Student. The executive director stated that she was available to meet on March 7 and asked if this was worked for the Parent. The executive director also stated they could speak, via telephone, prior to March 7.
58. On March 8, 2018, the District secondary director emailed the director at an NPA (NPA 4), asking if NPA 4 could meet the Student's educational needs and had openings for enrollment.
59. On March 8, 2018, the Parent responded to the executive director, expressing concerns about errors on the Student's attendance record for the 2017-2018 school year and how she would like the errors corrected. The Parent also stated that she wanted to get a copy of any progress reports or report cards for the 2017-2018 school year, as she had not received any that school year. The Parent stated that she wanted this information as soon as possible, as she had been asking for it for months. The Parent stated that she was not available to meet until March 16. The Parent asked what the executive director had found out from the tutoring company and NPA 1, and asked about other options.
60. On March 9, 2018, the executive director replied that she was still playing "phone tag" with the tutoring company, as the director of the company had been out of the country. The executive director also stated that the Parent should contact the District high school about the Student's attendance record. The executive director then agreed to check on the progress report, stated that she was not available to meet on March 16, and asked if there was a time after March 19 that the Parent was available to meet. The Parent responded that she had already spoken to someone at the high school about the Student's attendance record and was informed she needed to speak to the District's special education department. On March 12, the executive director responded, stating, "Ok, We'll see what we need to do."
61. On March 19, 2018, the District secondary director sent a follow-up email to the director at NPA 4 regarding a possible placement for the Student. On March 22, the director at NPA 4 responded that NPA 4 would not be able to support the Student.

62. On March 20, 2018, the Parent emailed the executive director, asking if there were any updates, and stated that she was available to speak, via telephone, on March 22, or possibly meet on March 23. On March 22, the executive director responded, apologizing for the slow response. The executive director stated that she had never been able to speak to anyone at the private tutoring company and was currently looking for other placement options.
63. On March 23, 2018, the executive director emailed the Parent, stating that the District wanted to give the Parent an update on the work the District had done to find a placement for the Student, and proposed meeting on March 26. The Parent and the executive director then exchanged additional emails and agreed to meet on March 27.
64. Based on the documentation in this complaint, the Parent met with the executive director and special education director on March 27. At the meeting, the group discussed possible placement options for the Student. The group also discussed the District amending the Student's attendance record.
65. On March 29, 2018, the Parent emailed the executive director and special education director, asking for the name of an NPA (NPA 5) that the staff had mentioned at the March 27 meeting. On April 2, the special education director responded and provided the name of NPA 5.
66. The District's documentation shows the Student received the following services in March 2018:
- March 1-2: 2 hours
 - March 5-9: 6 hours
 - March 12-16: 6 hours
 - March 19-23: 6 hours
 - March 26-30: 6 hours
67. The District was on break April 9-13, 2018.
68. On April 16, 2018, the Parent emailed the executive director and special education director, asking how a visit to NPA 5 went, and if the staff had checked out another NPA (NPA 6), which was similar to NPA 5, but closer to the District. Additionally, the Parent asked if NPA 1 had given the staff any specific information about why it would not allow the Student to return. The Parent also asked about updates regarding amending the Student's attendance record, and also stated that she still had not received any progress reports for the 2017-2018 school year. In response, the executive director stated that the staff had not been able to visit NPA 5 during the District's spring break, but she thought there was a plan to visit the following week. The executive director also stated that in the meantime, she was trying to get in touch with the private tutoring company.
69. On April 23, 2018, the District special education director emailed the Parent, stating that staff would not be able to visit NPA 5 until May 17, 2018, and would be providing the Student's records in advance of the visit, so staff would "know as much as possible if there is a fit for the program". The special education director stated that she did know there was an opening in the 9th grade program. The Parent later replied, asking if the District was also looking into NPA 6, which was closer to the District.

70. On April 24, 2018, the special education director contacted NPA 6. In response, the director at NPA 6 stated that there was a possible opening for 9th grade in the fall of 2018 and that a tour of the school could be scheduled. NPA 6 later provided additional information about scheduling a tour, and the District special education director stated that the District would be in touch.
71. The District's documentation shows the Student received the following services in April 2018:
- April 2-6: 4 hours
 - April 9-13: District Break
 - April 16-20: 5.5 hours
 - April 23-27: 3 hours
 - April 30: 1.5 hours
72. On April 30, 2018, the District completed progress reporting regarding the Student's October 2017 IEP goals. The progress reporting for all nine goals stated, "emerging skill demonstrated but may not achieve annual goal within the duration of the IEP." The progress reporting did not include other information about the Student's progress toward his goals. According to the Parent, she did not receive a copy of the February 2018 progress reporting until June 2018.
73. The District's documentation shows the Student received the following services in May 2018:
- May 1-4: 3 hours
 - May 7-11: 3 hours
 - May 14-18: 4.5 hours
74. On May 10, 2018, the executive director spoke with the director of the private tutoring company about the tutoring program.
75. On May 15, 2018, the Parent filed this citizen complaint.
76. Based on information provided by the District on July 9, 2018, the Student began attending NPA 5 in July 2018 to receive ESY services, with plans for the Student to continue to attend NPA 5 during the 2018-2019 school year. The District planned to set up an IEP meeting during the summer of 2018, to review the Student's October 2017 IEP.

CONCLUSIONS

Issue 1: Procedures for Changing the Student's Placement During the 2017-2018 School Year –

Change of Placement to NPA 1: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements.

At the beginning of the District's 2017-2018 school year, the Student's November 2016 IEP was in place and stated that the Student would receive 300 minutes per week of special education services and would spend 49% of his school day in a general education setting. On September 6, 2017, the District and the Parent agreed that the Student would attend NPA 1, which operates a program for students eligible for special education, on a part-time basis (approximately 1,050 minutes per week), and that the Student would not be educated with nondisabled peers. However, the District did not take steps to determine whether the change to the Student's placement was a significant change in placement and therefore required a reevaluation, or at the very least, take steps to review the Student's current October 2015 reevaluation to see if the reevaluation report supported the change in placement.⁶ Additionally, the District failed to amend the Student's November 2016 IEP to reflect the change in placement and accurately reflect the amount of services the Student would receive at NPA 1.

Change of Placement to Home/Community Setting: When determining the educational placement of a 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; the placement option(s) that provides a reasonably high probability of assisting the student to attain his annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he needs. A school district must ensure that a parent is a member of any group that makes decisions regarding the educational placement of the student.

As of November 6, 2017, the Parent was asked to keep the Student home from NPA 1, and as of November 9, the Student was no longer allowed to attend NPA 1. Once the District was made aware that the Student could no longer attend NPA 1, it should have immediately notified the Parent of this and scheduled a meeting to determine if the Student should attend another NPA or if another placement option was appropriate for the Student. Instead, however, the District delayed in notifying the Parent, and then delayed in meeting with the Parent, which resulted in the Student not receiving special education services for several days. While it was appropriate for the District to propose providing the Student contracted services from a special education teacher, while the District waited to hold the meeting, the District should have allowed the Parent to participate in determining the amount of services that would be appropriate for the Student in order to receive FAPE, rather than determine the amount outside of the IEP team process. Additionally, the District did not offer to provide communication services provided by a speech language pathologist as stated in the Student's October 2017 IEP. The District failed to follow procedures for determining services for the Student when he could no longer attend NPA 1. The District will provide the Student with compensatory services in the area of communication. From November 6, 2017, when the Student was no longer able to attend NPA 1, to June 20, 2018, the last day of the District's 2017-2018 school year, there were approximately twenty-two (22) weeks. During that time period, the Student should have received 15 minutes per week of

⁶ While it is possible a review of the Student's evaluation took place at the May 26, 2017 IEP meeting, it is unclear from the District's meeting notes, and no prior written notice was issued after the May 26 meeting.

services, which is 330 minutes (5.5 hours) of communication services. The District will provide the Student with 5.5 hours of compensatory services.

On December 1, 2017, the District held a meeting with the Parent and it was agreed that the Student would continue to receive contracted services in a home/community setting until the beginning of the District's break on December 18, in order to allow the District time to contact another NPA (NPA 3). The group also discussed the Student attending a District high school to receive services. However, the District did not issue a prior written notice after this meeting, so it is difficult to determine what was actually agreed upon regarding the Student's placement after December 18. Further, it is noted that the District became aware that NPA 3 did not have a placement for the Student on December 4, 2017, but delayed in informing the Parent of this for two weeks, and then informed the Parent that the Student would attend the District high school. Again, the District is required to allow the Parent to provide input in determining a placement. Once the District learned that NPA 3 was not a placement option, the District should have immediately scheduled another meeting to discuss additional placement options. However, it is also noted, that the Parent also delayed the process by waiting almost three weeks to respond to the District's December 18 proposal to meet in early January 2018, and then stated that she was only available to meet on January 19.

The documentation in this complaint is unclear regarding any communication between the Parent and the District from January 8 and January 23, and any steps the District took to schedule a meeting with the Parent during that time period. But documentation from January 23 shows the District continued to state that the Student would attend the high school despite the family stating that it disagreed with this placement. Also on January 23, the Parent requested that a different District administrator be assigned to oversee the Student's program, and in response, additional District staff met with the Parent on February 9, 2018. However, the District's documentation in this complaint does not show that the District issued a prior written notice after the February 9 meeting, and it is unclear what decisions were made. After the February 9 meeting, the District did take steps to contact NPAs that might be able to meet the Student's needs; however, the District did not do so for several weeks, which further caused a delay in determining an appropriate placement for the Student. The District failed to follow procedures for changing the Student's placement and/or determining a new location for the Student to receive services.

Since the Parent filed this complaint, the District and the Parent have agreed that the Student will attend NPA 5 to receive ESY services and to receive services during the 2018-2019 school year. Prior to the beginning of the 2018-2019 school year, the District will hold an IEP meeting to either develop a new IEP for the Student or amend his October 2017 IEP to address his placement at NPA 5.

Issue 2: Progress Reporting – An IEP must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents regarding the student's progress toward meeting those annual goals. A

school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

The Student's IEP in place at the beginning of the 2017-2018 school year was developed in November 2016 and included twelve annual goals. The IEP provided for progress reporting regarding the Student's annual goals "at least as often as reports are issued to parents of students not receiving special education services." Based on the District's documentation, report cards are issued four times per school year on a quarterly basis for middle and high school students at the beginning of November, end of January, beginning of April, and in June at the end of the school year. In late October/early November 2017, the Parent was provided a copy of the Student's October 2017 IEP, which included information regarding the Student's progress toward ten of the twelve goals in the Student's November 2016 IEP. The documentation in this complaint does not show that the Parent was provided progress reporting regarding the other two goals. This is a failure to provide the Parent with progress reporting.

The Student's October 2017 IEP included nine annual goals and stated that progress reporting regarding the annual goals would be provided on a trimester basis. The documentation in this complaint includes progress reporting completed by the District in February 2018 and April 2018, but according to the Parent, she did not receive the progress reporting until June 2018. The District's documentation does not show if the progress reporting was provided to the Parent earlier than June 2018. Additionally, the February and April 2018 progress reporting does not provide any information about the Student's actual progress toward meeting the annual goals, but instead only states "emerging skill demonstrated, but may not achieve annual within the duration of the IEP." The District failed to provide the Parent with progress reporting regarding the Student's October 2017 IEP.

CORRECTIVE ACTIONS

By or before **August 10, 2018, September 7, 2018, October 31, 2018, and December 21, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. The District will hold an IEP meeting prior to the beginning of the District's 2018-2019 school year (unless NPA 5's school year begins sooner; in that case, prior to the beginning of NPA 5's school year), to: 1) review the Student's progress toward his October 2017 IEP goals; and 2) either develop a new IEP for the Student, or amend his October 2017 IEP, to address the amount of specially designed instruction and related services the Student will receive. The special education teacher who provided the Student's contracted services during the 2017-2018 school year will be invited to participate in the meeting. If the teacher cannot participate in the meeting, the District will provide detailed information about the Student's progress toward his October 2017 IEP goals, for the IEP team to review and discuss.

By **September 7, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the amended or new IEP; 4) a copy of any related prior written notices; and, 4) a copy of any other relevant documentation.

2. Also by **September 7, 2018**, the District will provide documentation that it has addressed the errors in the Student's attendance record for the 2017-2018 school year.
3. Prior to the beginning of the 2018-2019 school year, the District will work with the Parent to develop a schedule to provide the Student with a total of 5.5 hours of compensatory services in the area of communication. The services will be provided outside of the District's regular school day. *The services may be provided over the summer of 2018.* The services must be provided by a speech language pathologist. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than December 14, 2018. The District will provide OSPI with documentation of the schedule by **September 7, 2018**.

The District must provide OSPI with documentation by **October 31, 2018**, of the compensatory services provided to the Student. 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.

No later than **December 21, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **December 21, 2018**.

DISTRICT SPECIFIC:

The District will develop and/or review and revise its special education procedures for determining/changing placement. The procedures will address the requirement to provide prior written notice and address the steps to take when an NPA discontinues enrollment of a student.

By **August 10, 2018**, the District will submit a draft of the procedures. OSPI will approve the procedures or provide comments by August 20, 2018 and provide additional dates for review, if needed.

By **September 7, 2018**, the District will provide OSPI with documentation showing it provided all District special education administrators, certificated special education staff, including ESAs,

principals, and assistant principals, with the procedures. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. This will include a roster of all staff members who were required to receive the procedures, so OSPI can cross-reference the list with the actual recipients.

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 July, 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.)