

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-14**

### **PROCEDURAL HISTORY**

On March 1, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) on behalf of students who attend an elementary school in the Richland School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the education of thirty-one students (Students 1-31).

On March 1, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 8, 2017, OSPI received additional information from the Complainant, asking to amend the issues identified in SECC 17-14 to include two additional students (Students 32 and 33). On March 8, 2017, OSPI notified the District that Students 32 and 33 had been added to the complaint.

On March 17, 2017, OSPI granted the District an extension of time to submit its response to this complaint.

On March 22, 2017 and March 30, 2017, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 4, 2017. All student personally identifiable information was removed. OSPI invited the Complainant to reply with any information he had that was inconsistent with the District's information.

On April 11 and 17, 2017, OSPI requested additional information from the District, and the District provided the requested information on April 20, 2017.

On April 20, 2017, the OSPI complaint investigator conducted a site visit/interviews.

Also on April 20, 2017, OSPI received additional information from the Complainant and forwarded it to the District on April 24, 2017.

On April 24, 2017, OSPI requested additional information from the District, and the District provided the requested information on April 25, 2017.

On April 25, 2017, OSPI requested additional information from the District, and the District provided the requested information on April 26, 2017.

On April 26, 2017, OSPI requested additional information from the District, and the District provided the requested information on April 28, 2017.

OSPI considered all of the information provided by the Complainant and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit/interviews.

## OVERVIEW

During the 2016-2017 school year, thirty-three students (Students 1-33) attended a District elementary school and were eligible to receive special education services. Based on the building schedule adopted by the elementary school, many of the students were not scheduled to receive the specially designed instruction provided for in their individualized education program (IEPs). Additionally, based on the District's adopted "case manager" service delivery model, many students were not scheduled to receive services from a special education teacher, but were instead scheduled to receive services from a general education teacher or a paraeducator under the supervision of the special education teacher. The Complainant alleged that during the 2016-2017 school year, the District failed to provide Students 1-33 with the services stated in their IEPs, and failed to provide Students 1-33 with specially designed instruction that was provided by, or designed and supervised by a certificated special education teacher. The Complainant also alleged that the District failed to follow procedures for changing the Students' placements. The District admitted that it failed to provide some of the thirty-three students with the services stated in their IEPs and also failed to provide some of the students with specially designed instruction. The District denied that it failed to follow procedures for changing students' placements. The District proposed corrective actions to address the violations.

## ISSUES

1. Did the District provide Students 1-33 with the services stated in their individualized education programs (IEPs), during the 2016-2017 school year?
2. Did the District provide Students 1-33 with specially designed instruction that was provided by, or designed and supervised by a certificated special education teacher during the 2016-2017 school year?
3. If Students 1-33's placement was changed during the 2016-2017 school year, did the District follow procedures for changing the Students' placements?

## LEGAL STANDARDS

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(3)(a). On a case-by-case basis, an IEP team may determine that the individual needs of the child require that the start date of a related service should occur the first week of school or after the beginning of the school year.

Therefore, a district policy that mandates that related services for all children with disabilities will begin at a specific time after the beginning of the school year (e.g., the third week of the school year) would not be consistent with the IDEA and its implementing regulations. *Letter to Ackerhalt*, 60 IDELR 21 (OSEP 2012).

Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39; WAC 392-172A-01175.

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraprofessionals may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(g).

Transfer Students: If a student eligible for special education transfers from one Washington State school district to another Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. If a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with FAPE including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. 71 Fed. Reg. 156, 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

Transfer of Educational Records: The new school district in which the student enrolled must take reasonable steps to promptly obtain the student's records, including any documents related to the provision of special education services, from the student's previous school district. The student's previous school district must take reasonable steps to promptly respond to the request from the new school district. The school district that previously served a student is required to transmit information about the student within two school days of receiving the request. If the records are not sent at the same time the information is transmitted, the records should be transmitted as soon as possible. 34 CFR §300.323(g)(2); WAC 392-172A-03105; RCW 28A.225.330.

Parent Participation in Meetings: 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. In implementing the requirements of (a) of this subsection, 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. When conducting IEP team meetings and placement meetings and in carrying out administrative matters such as scheduling, exchange of witness lists and status conferences for due process hearing requests, the parent and the district may agree to use alternative means of meeting participation such as video conferences and conference calls. 34 CFR §300.501; WAC 392-172A-05000.

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: to the maximum extent appropriate in the general education environment with students who are nondisabled; and special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

Placements: 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: (a) The student's IEP; (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and (d) 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.

Changes in Placement: 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. If a substantial or material change in the student's educational program has occurred, then the school district must provide prior written notice. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

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. A special education program is one that includes less than 50 percent nondisabled children (i.e., children not on IEPs). Special education programs include, but are not limited to: special education classrooms in regular school buildings, trailers or portables outside regular school buildings, child care facilities, hospital facilities on an outpatient basis, or other community-based settings; separate schools; and residential facilities. *OSEP IDEA, Part Data Dictionary (Revised)*, Data Accountability Center (January 2013).

## **FINDINGS OF FACT**

### **Background Facts**

#### **2015-2016 School Year**

1. During the 2015-2016 school year, the District operated an elementary school which employed one special education resource room teacher (special education teacher

- 1). The District elementary school used a “case manager” service delivery model, in which special education teacher 1 was responsible for overseeing the development and implementation of thirty students’ individualized education program (IEPs).<sup>1</sup> Under the “case manager” model, special education teacher 1 was expected to provide specially designed instruction to some students directly, and also designed and supervised the specially designed instruction for other students on her caseload, who actually received the specially designed instruction from approximately eleven paraeducators. The elementary school’s building schedule determined which students would be provided specially designed instruction from special education teacher 1, and which students would receive specially designed instruction from a paraeducator. Special education teacher 1 stated that she would meet with the paraeducators on a weekly basis to provide curriculum. Also according to information provided by special education teacher 1, she was not given the opportunity to participate in developing the elementary school building schedule, or in determining which students she would provide direct services and which students would receive direct services from a paraeducator. As a result of the elementary school’s adoption of this service model, special education teacher 1 expressed concern that she could not provide appropriate services to meet all of the students’ needs.
2. Based on information gathered in this complaint from District staff members, the District had a practice of designating in students’ IEPs that the students would receive specially designed instruction in a general education setting, even though many students received services in a special education setting during the 2015-2016 school year.
3. At the end of the 2015-2016 school year, special education teacher 1 accepted a position at another District elementary school.

### **Summer 2016**

4. On August 15, 2016, the District hired a new special education teacher (special education teacher 2) for the resource room position at the District elementary school. Special education teacher 2 had not previously taught in the District, and was unfamiliar with the “case manager” service delivery model that had been adopted by the elementary school.
5. On August 18, 2016, the elementary school conducted training for new staff. According to information provided by the District’s elementary special education director, during the summer of 2016, special education teacher 2 received training regarding the need to update student IEPs to accurately reflect the location in which they would receive their services. It is unclear if this training occurred on August 18 or at another time prior to the beginning of the 2016-2017 school year.

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

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<sup>1</sup> The District’s documentation in this complaint includes an email, dated February 1, 2017, indicating special education teacher 1’s case load for the 2015-2016 school year was thirty students.

6. The District's 2016-2017 school year began on August 30, 2016.
7. At the beginning of the 2016-2017 school year, twenty-six of the thirty-three students identified in this complaint attended the elementary school and were eligible to receive special education services. The students are discussed in below.
8. **Student 1** – During the 2016-2017 school year, Student 1 is homeschooled, and part-time enrolled in the District. Student 1's amended May 2016 IEP in place at the beginning of the school year included annual goals in the areas of cognitive, communication, fine motor, gross motor, and social. However, Student 1's parents have elected to only have the Student receive services in the areas of communication and fine motor. Student 1's amended May 2016 IEP provided for the following special education services in a *special education setting*:
  - Communication – 30 minutes 3 times monthly (provided by an SLP<sup>2</sup>)
  - Fine Motor – 30 minutes 3 times monthly (provided by an OT<sup>3</sup>)

It is unclear from Student 1's amended May 2016 IEP and June 2014 initial evaluation from another school district, if the Student's communication and fine motor services are meant to be provided as specially designed instruction or as related services.

9. **Student 2** – During the 2016-2017 school year, Student 2 is in kindergarten. Student 2's IEP in place at the beginning of the school year was developed in May 2016 when the Student attended a District preschool program. The May 2016 IEP included annual goals in the areas of cognitive skills and social skills. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:
  - Cognitive – 90 minutes 5 times weekly (provided by a special education teacher)
  - Social – 60 minutes 5 times weekly (provided by a special education teacher)
10. **Student 3** – During the 2016-2017 school year, Student 3 was in first grade. Student 3 was not eligible for special education at the beginning of the school year.
11. **Student 4** – During the 2016-2017 school year, Student 4 is in first grade. Student 4's IEP in place at the beginning of the school year was developed in January 2016, when the Student attended another Washington school district. The January 2016 transfer IEP included annual goals in the areas of social, communication, math, reading, and writing. The IEP provided for the following specially designed instruction in a *general education setting*:
  - Reading – 150 minutes per week (provided by a special education teacher)
  - Writing – 90 minutes per week (provided by a special education teacher)

The IEP provided for the following specially designed instruction in a *special education setting*:

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<sup>2</sup> SLP – stands for speech language pathologist

<sup>3</sup> OT – stands for occupational therapist

- Math – 90 minutes per week (provide by special education staff)
- Social – 30 minutes per week (provided by special education staff)

The IEP also provided for communication as a related service 20 minutes per week in a special education setting, and provided by an SLP.

12. **Student 5** – During the 2016-2017 school year, Student 5 is in second grade. Student 5 transferred into the District on August 30, 2016 from another Washington school district. However, Student 5's parent did not indicate on his enrollment paperwork that the Student had an IEP, and the District was reportedly not aware of Student 5's transfer IEP until September 30, 2016.

13. **Student 6** – During the 2016-2017 school year, Student 6 is also in second grade. Student 6's IEP in place at the beginning of the school year was developed in April 2016. The April 2016 IEP included annual goals in the area of cognitive. The IEP provided for the following specially designed instruction in a *general education setting*:

- Cognitive: Reading – 45 minutes 5 times weekly (provided by a special education teacher)
- Cognitive: Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Cognitive: Writing – 15 minutes 4 times weekly (provided by a special education teacher)

14. **Student 7** – During the 2016-2017 school year, Student 7 is in third grade. Student 7's IEP in place at the beginning of the school year was developed in December 2015. The December 2015 IEP included annual goals in the areas of adaptive, behavior (organizational), behavior (social), math, reading, and writing. The IEP provided for the following specially designed instruction in a *general education setting*:

- Behavior (social) – 30 minutes 2 times weekly (provided by a special education teacher)
- Behavior (organizational) – 25 minutes 5 times weekly (provided by a special education teacher)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 60 minutes 5 times weekly (provided by a special education teacher)
- Writing – 30 minutes 5 times weekly (provided by a special education teacher)
- Adaptive – 20 minutes 5 times weekly (provided by a special education teacher)

15. **Student 8** – During the 2016-2017 school year, Student 8 is in third grade. Student 8's IEP in place at the beginning of the school year was developed in June 2016. The June IEP included annual goals in the areas of behavior (social) and reading. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Behavior (social) – 20 minutes 2 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)



16. **Student 9** – During the 2016-2017 school year, Student 9 is also in third grade. Student 9's IEP in place at the beginning of the school year was developed in October 2015, and amended in June 2016. The amended October 2015 IEP included annual goals in the areas of communication and cognitive. The IEP provided for the following services in a *special education setting*:

- Communication – 15 minutes 6 times monthly (provided by an a SLP)
- Communication (consult only) – (provided by an SLP)

The IEP provided for the following specially designed instruction in a *general education setting*:

- Cognitive: Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Cognitive: Writing – 15 minutes 4 times weekly (provided by a special education teacher)
- Cognitive: Math – 30 minutes 4 times weekly (provided by a special education teacher)

17. **Student 10** – During the 2016-2017 school year, Student 10 is in third grade. Student 10 transferred into the District on August 30, 2016 from another Washington school district. However, Student 10's parent also did not indicate on her enrollment paperwork that the Student had an IEP, and the District reportedly was not aware of Student 10's transfer IEP until December 2016.

18. **Student 11** – During the 2016-2017 school year, Student 11 is in third grade. Student 11's IEP in place at the beginning of the school year was developed in May 2016. The May IEP included annual goals in the areas of behavior (social), math, reading, and writing. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Behavior (social) – 30 minutes 4 times weekly (provided by a special education teacher)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

19. **Student 12** – During the 2016-2017 school year, Student 12 is also in third grade. Student 12 transferred into the District on August 30, 2016 from another Washington school district. However, Student 12's parent did not indicate on her transfer paperwork that the Student had an IEP, and it appears the District was not aware of her IEP until October 26, 2016.

20. **Student 13** – During the 2016-2017 school year, Student 13 is also in third grade. Student 13 did not begin attending school in the District until September 23, 2016.

21. **Student 14** – During the 2016-2017 school year, Student 14 is in fourth grade. Student 14 was not eligible for special education services at the beginning of the school year.

22. **Student 15** – During the 2016-2017 school year, Student 15 is in fourth grade, and was not eligible for special education services at the beginning of the school year.

23. **Student 16** – During the 2016-2017 school year, Student 16 is also in fourth grade. Student 16's IEP in place at the beginning of the school year was developed in February 2016. The February 2016 IEP included annual goals in the areas of behavior (organizational) and behavior (social). The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Behavior (organizational) – 10 minutes 5 times weekly (provided by a special education teacher)
- Behavior (social) – 25 minutes 5 times weekly (provided by a special education teacher)

24. **Student 17** – During the 2016-2017 school year, Student 17 is in fourth grade. Student 17's IEP in place at the beginning of the school year was developed in February 2016. The February 2016 IEP included annual goals in the areas of communication and reading. The IEP provided for the following services in a *special education setting*:

- Communication – 20 minutes 6 times monthly (provided by an SLP)
- Fine Motor – 0 minutes 1 time monthly (provided by an SLP)<sup>4</sup>

The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

25. **Student 18** – During the 2016-2017 school year, Student 18 is also in fourth grade. Student 18's IEP in place at the beginning of the school year was developed in June 2016. The June IEP included annual goals in the areas of math and reading. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

26. **Student 19** – During the 2016-2017 school year, Student 19 is in fourth grade. Student 19 did not begin attending school in the District until January 2017.

27. **Student 20** – During the 2016-2017 school year, Student 20 is also in fourth grade. Student 20's IEP in place at the beginning of the school year was developed in April 2016. The April IEP included annual goals in the areas of math and reading. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

28. **Student 21** – During the 2016-2017 school year, Student 21 is in fourth grade. Student 21 did not begin attending school in the District until November 2016.

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<sup>4</sup> This appears to be an error in Student's 17 IEP, as his evaluation report

29. **Student 22** – During the 2016-2017 school year, Student 22 is also in fourth grade. Student 22's IEP in place at the beginning of the school year was developed in May 2016. The May IEP included annual goals in the areas of math and reading. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

30. **Student 23** – During the 2016-2017 school year, Student 23 is in fifth grade. Student 23's IEP in place at the beginning of the school year was developed in April 2016. The April IEP included annual goals in the areas of reading and writing. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Reading – 60 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

31. **Student 24** – During the 2016-2017 school year, Student 24 is also in fifth grade. Student 24's IEP in place at the beginning of the school year was developed in October 2015, when the Student attended another Washington school district, and then amended by the District in January 2016. The transfer IEP included annual goals in the areas of communication, math, reading, and writing. The amended IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

The amended IEP also provided for the following services in a *special education setting*:

- Communication – 10 minutes 9 times monthly (provided by an SLP)
- Communication (consult only) – (provided by an SLP)

32. **Student 25** – During the 2016-2017 school year, Student 25 is in fifth grade. Student 25's IEP in place at the beginning of the school year was developed in October 2015, and then amended in May 2016. The amended October 2015 IEP included annual goals in the areas of math and reading. The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

33. **Student 26** – During the 2016-2017 school year, Student 26 is in fifth grade. Student 26's IEP in place at the beginning of the school year was developed in February 2016, and included an annual goal in the area of reading. The February 2016 IEP included an annual goal in the area of reading. The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a paraeducator)

34. **Student 27** – During the 2016-2017 school year, Student 27 is in fifth grade. Student 27's IEP in place at the beginning of the school year was developed in January 2016, and amended in June 2016. The amended January 2016 IEP included annual goals in the area of reading. The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a paraeducator)

35. **Student 28** – During the 2016-2017 school year, Student 28 is in fifth grade. Student 28's IEP in place at the beginning of the school year was developed in May 2016. The May IEP included annual goals in the areas of communication, math, reading, and writing. The IEP provided for the following services in a *special education setting*:

- Communication – 20 minutes 6 times monthly (provided by an SLP)
- Communication (consult only) – (provided by an SLP)

The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

36. **Student 29** – During the 2016-2017 school year, Student 29 is in fifth grade. Student 29's IEP in place at the beginning of the school year was developed in May 2016. The May IEP included an annual goal in the area of reading. The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 40 minutes 4 times weekly (provided by a special education teacher)

37. **Student 30** – During the 2016-2017 school year, Student 30 is in fifth grade. Student 30 did not begin attending school in the District until January 2017.

38. **Student 31** – During the 2016-2017 school year, Student 31 is in fifth grade. Student 31's IEP in place at the beginning of the school year was developed in April 2016. The April IEP included annual goals in the areas of communication, math, reading, and writing. The IEP provided for the following services in a *special education setting*:

- Communication – 20 minutes 6 times monthly (provided by an SLP)
- Communication (consult only) – (provided by an SLP)

The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

39. **Student 32** – During the 2016-2017 school year, Student 32 is in fourth grade. Student 32's IEP in place at the beginning of the school year was developed in April 2016. The April IEP included annual goals in the areas of behavior (social), reading,

and writing. The IEP provided for the following specially designed instruction in a *special education setting*:

- Behavior (social) – 15 minutes 3 times weekly (provided by a counselor)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

The IEP also provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

40. **Student 33** – During the 2016-2017 school year, Student 33 is in fourth grade. In June 2016, the District conducted a reevaluation of Student 33, and determined that he continued to be eligible for special education services. The evaluation report stated that: “due to his behavior needs, significant behavior accommodations being made, and his lack of improvement in behavior/social skills; he demonstrates the need to have an increase in behavior/social support and specially designed instruction. The team is considering a change of placement to [special education behavior program] classroom. All final decision will be made by the MDT.”

On August 30, 2016, Student 33’s IEP team developed his annual IEP. The August IEP included annual goals in the areas of behavior (social), reading, and writing. The IEP also provided for the following specially designed instruction in a *general education setting*:

- Behavior (social) – 30 minutes 4 times weekly (provided by a paraeducator)
- Reading – 30 minutes 4 times weekly (provided by an instructional specialist)
- Writing – 30 minutes 4 times weekly (provided by a paraeducator)

41. During the 2016-2017 school year, the elementary school operated Monday through Thursday from 8:40 am – 3:15 pm, and on Friday from 8:40 am – 2:15 pm.<sup>5</sup> The elementary school has a fixed class schedule which divides the students’ school day into 2-3 time blocks for instruction in grade level curriculum for math, English Language Arts (ELA), and if applicable, science and social studies (core instruction), one time block for specialist classes such as music or PE, and time blocks for additional support in math, ELA, and social/emotional (interventions) are also available. Based on information provided by District staff members at the elementary school, all student support services are referred to as interventions. This includes the blending of special education services, Title 1 services, bilingual services, and other services offered at the elementary school. Based on the documentation in this complaint and information provided by staff members, intervention services (including IEP services) are not typically provided on Fridays. Instead, staff use the Friday intervention times in the schedule to conduct progress monitoring of all students.

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<sup>5</sup> According to information provided by the District, the District is currently operating on a full-day schedule on Fridays, in order to make up for school closures due to inclement weather.

42. The elementary school building schedule<sup>6</sup> includes in relevant part:

<b>Kindergarten</b>	<b>1<sup>st</sup> Grade</b>	<b>2<sup>nd</sup> Grade</b>	<b>3<sup>rd</sup> Grade</b>	<b>4<sup>th</sup> Grade</b>	<b>5<sup>th</sup> Grade</b>
RTI ELA Support 8:55 – 9:45 am	Core Reading 8:50 – 9:45 am	Core Reading 9:00 – 9:45 am	Social Emotional 9:00 – 9:30 am	Specialists 8:50 – 9:40 am	Core 9:15 – 10:05 am
RTI Math Support 12:05 -12:35 pm	Social Emotional 10:05 – 10:35 am	ELA Support 10:05 – 10:35 pm	Specialists 9:45 – 10:35 am	Core Math 9:40 – 10:40 am	ELA Support 10:05 – 10:35 pm
Specialists 2:15 – 3:05 pm	Core Math 10:00 – 11:00 am	Specialists 12:25 – 1:15 pm	Math Support 10:40 – 11:10 pm	Math Support 10:40 – 11:10 pm	Specialists 10:40 – 11:30 am
	ELA Support 11:15 – 12:00 pm	Core Math 1:15 – 1:45 pm	Core Math 11:10 – 11:50 am	Core Reading 12:10 – 1:10 pm	Core 12:30-1:20 pm
	Specialists 1:20 – 2:10 pm	Math Support 1:45 – 2:15 pm	ELA Support 1:10 – 1:40 pm	ELA Support 1:10 – 1:40 pm	Math Support 1:45 – 2:15 pm
	RTI Math Support 2:25 – 2:55 pm	Social Emotional 2:35 – 3:05 pm	ELA Support <sup>7</sup> 2:05 – 2:50 pm	Social Emotional 2:00 – 2:30 pm	Core 2:15 – 3:05 pm

43. During the 2016-2017 school year, the elementary school also continued to employ one special education resource room teacher (special education teacher 2), and also one paraeducator who was designated to assist with special education six hours per day. The elementary school also had an assigned SLP who provided communication services for eligible students and an OT who provided fine motor services for eligible students. Additionally, the elementary school employs a school counselor who provides social/emotional services to some eligible students.

44. On September 1, 2016, the elementary school instructional specialist emailed teachers at the elementary school, stating that starting the following week, most

<sup>6</sup> Based on other documentation in this complaint, the elementary building schedule may have varied at some points during the timeline for this complaint. The schedule included in this decision is taken from the schedule provided by the District in response to this complaint.

<sup>7</sup> It is assumed that the third grade schedule should reflect a Core Reading section at 2:05 pm, instead of ELA Support. Based on other documentation in this complaint, third grade is scheduled to have ELA Support from 1:10-1:40 pm.

paraeducators would start “pushing”<sup>8</sup> into the teachers’ classrooms during intervention time. The instructional specialist stated that she had created a schedule in which paraeducators would be providing support to the different grade levels, and that the grade level teachers should decide how to split the paraeducators’ time. The instructional specialist also stated that the schedule was not permanent, and would change after the staff conducted progress monitoring. However, the specialist wanted to start getting support to the teachers as soon as possible, and the teachers could use the paraeducators to work with groups of students, or however the teachers decided.

45. Based on information provided by staff at the elementary school, during the first month of the 2016-2017 school year, all students were assessed to determine their level of proficiency in the areas of reading, writing, and math. According to special education teacher 2, at the beginning of the 2016-2017 school year, she was directed by the elementary school administration not to pull students out their classes to provide any specially designed instruction, with exception of specially designed instruction in the area of behavior. The elementary school administration also reportedly indicated that eligible students would not receive specially designed instruction in the others areas stated in their IEPs until staff held a “CAST” meeting to review data regarding all students.
46. On September 9, 2016, the elementary school administrative assistant emailed multiple staff members and attached a revised schedule for Student 33. The schedule showed that Student 33 was scheduled to meet with a paraeducator to receive writing instruction from 8:45-9:15 am, ELA instruction from 1:10-1:40 pm, and behavior instruction from 2:30-3:00 pm. The administrative assistant stated that as previously discussed, special education teacher 2 should meet with a school paraeducator in the hallway on September 12 to get the writing “group” started. The email also included schedules for Student 23 and Student 32.
47. **Student 13** – On September 23, 2016, Student 13 transferred into the District from an out-of-state school district. Also on September 23, 2016, the school psychologist reviewed and adopted Student 13’s transfer IEP. The May 2016 transfer IEP included annual goals in the areas of math, literacy, and speech. However, the transfer IEP goals were not measurable because they did not contain baseline data. The transfer IEP stated that Student 13 would receive 480 minutes per week of special education services in a *special education setting*, but did not specify the amount of services Student 13 would receive in each qualifying area of service. The transfer IEP also stated that the Student would receive 30 minutes per week (120 minutes per month) of speech as a related service.

Also on September 23, 2016, the District amended Student 13’s transfer IEP. The District’s amended IEP modified one of Student 13’s speech goals, but the goal did

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<sup>8</sup> Push-in services are services in which a staff member provides services in a general education class at the same time a student is receiving regular instruction. Pull-out services are services provided by a staff member in a setting other than a student’s general education classroom.

not include baseline data. The amended IEP also changed Student 13's placement, and significantly reduced the amount of his services so that he would only receive the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

The amended IEP also reduced Student 13's speech services from 120 minutes per month to 90 minutes per month (30 minutes 3 times monthly).

48. According to information provided by District staff in this complaint, the amount of services reflected in the IEPs of the students who attend the elementary school is driven by the building master schedule and the building practice of core general education instruction in lieu of agreed to services in an IEP. Staff expressed that they do not typically recommend more services for students because they do not feel this service delivery model or "system" allows for this. Special education teacher 1 expressed that in her opinion, some students needed more services than were currently provided for in their IEPs. Special education teacher 2 expressed the opinion that the amount of services may be appropriate, but that she believes the services should be provided either by a certificated special education teacher, or a special education paraeducator under the supervision of a certified special education teacher. The school psychologist expressed that it was difficult to recommend that students receive special education services in a special education setting (a pull-out setting) because of how the intervention groups are designed in the service delivery model that has been adopted at the elementary school.
49. On September 13, 2016, the elementary school principal emailed special education teacher 2 and the school instructional specialist, asking how the "push in" was going. The principal also asked that the staff make sure the entire "RTI" team was "pushing in" or "pulling out". The principal stated that a fifth grade teacher had reported that she did not have any support staff during the 9:15 am intervention time, and asked that the instructional specialist and special education teacher 2 check into this and ensure the fifth grade teacher was receiving "push-in" support. In response, the instructional specialist agreed to check into the situation, and stated that fifth grade teachers had reported not needing support until the interventions started.
50. On September 14, 2016, a general education fourth grade teacher emailed special education teacher 2, asking that other than Student 32, which students in the fourth grade class had IEPs. The fourth grade teacher asked if Student 18 had an IEP and if a new student in her class (not part of this complaint) also had an IEP. The fourth grade teacher stated that she had not yet received any information about these students, but that they were "really struggling."
51. On September 29, 2016, the elementary school principal emailed the school instructional specialist, the school psychologist, special education teacher 2, and other staff members. The principal stated that Student 27's parent had expressed concerns that Student 27's IEP was not being followed. In response, the principal had let the parent know that staff would meet later that week to review the IEP,



including the accommodations, to make sure that there was a plan of action for the following week. The principal stated that a staff meeting would occur later that day, and prior to that time, he wanted Student 27's general education teacher to speak with Student 27 to determine a couple staff members Student 27 could touch base with each day. The principal asked that staff bring the following to the meeting:

- Paraeducator/certificated staff schedules to help determine push in/pull out support for Student 27 in his qualifying areas (starting on Monday)
- Student 27's IEP and a list of all students with IEPs in order to plan for some level of support for all students with IEPs for the following week

52. In response, special education teacher 2 stated that since the beginning of the school year, general education students and students eligible for special education had been supported during their scheduled grade level RTI math, RTI reading, RTI writing, core math, core reading, and core writing intervention blocks per the elementary school's RTI schedule with paraeducators and resource room. The teacher stated that general education students and students eligible for special education would continue to have support the following week per the RTI schedule. Special education teacher 2 said that in regard to Student 27, she was never informed that fifth grade did not have supports, or she would have been providing services for Student 27. The teacher stated that staff did not like "push-in" support, and were waiting for ability groups to be formed following the upcoming "CAST" meeting. Special education teacher 2 also stated that she had met with Student 27's general education teacher, and would begin providing services on October 3, 2017.

53. On September 30, 2016, the elementary school principal sent a follow-up email regarding the meeting to review Student 27's IEP. The principal stated that special education teacher 2 would begin providing instruction to Student 27 and Student 24 on October 3 during the fifth grade ELA intervention support block. The principal also stated that the RTI team "would start living their schedules again now that benchmarking is done and pushing into classrooms (Monday-Wednesday of next week)."

54. **Student 25** – On October 4, 2016, the District completed a reevaluation of Student 25, and developed his annual IEP on October 9, 2016. The October 2016 IEP included annual goals in the areas of math, reading, and writing. The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

55. On October 6, 2016, the elementary school had a "CAST" meeting. Based on the documentation in this complaint, and information provided by District staff members, the elementary staff reviewed assessment results and other information gathered regarding all students in first-fourth grade, during the month of September 2016 at the CAST meeting. If a student was determined to not be meeting grade level

expectations, staff classified students as needing Tier 2 and Tier 3 RTI supports.<sup>9</sup> Staff then began placing those students into reading, writing, math, and behavior groups based on the students' grade and ability level within their tier classifications. The Tier 2 and Tier 3 groups were then assigned to either a general education teacher, special education teacher, or a paraeducator, who would provide instruction using one of the District's adopted Tier 2 or Tier 3 curriculums. Because the Tier 2 and Tier 3 groups were based on student grade level and ability, and did not take into account a student's special education status, some of the groups included both general education students and students eligible for special education<sup>10</sup>, and many of the students eligible for special education were not assigned to a group taught by special education teacher 2, or the special education paraeducator. Additionally, some of special education teacher 2 and the special education paraeducator's assigned groups included students who were not eligible for special education.

56. On October 6, 2016, a fourth grade teacher at the elementary school emailed the school principal and other staff members, stating that the staff had not yet discussed writing groups. The fourth grade teacher stated that "those kids" were supposed to be pulled out at 12:00 pm, and she assumed that "since things [had] been put off for so long" the writing groups were starting on October 10 as well. The teacher stated that "these kids" were in "desperate need of help" and she hoped that staff were not delaying any further. The teacher asked which staff members were coming to get the students for the writing groups or where the students should be sent. In response, the principal stated that special education teacher 2 had a fourth grade writing group, but was unsure if anyone else was scheduled to lead a writing group as well. The principal asked special education teacher 2 how many students in fourth grade had writing services in their IEPs.

57. On October 7, 2016, the elementary school held a second CAST meeting to review assessment results and other information gathered regarding students in kindergarten and fifth grade, during the month of September 2016.

58. According to the documentation provided in this complaint, special education teacher 2's Monday –Thursday class schedule is as follows:

- 9:00 – 9:45 am: Kindergarten ELA – Student 2, another student with an IEP, and three general education students
- 10:05 – 10:35 am: Fifth Grade ELA Support – Students 23, 24, 27, 29, and 30, and one general education student
- 10:40 – 11:10 am: Third Grade Math Support – Students 7, 9, 11, 12, and 13
- 12:10 – 12:40 pm: Fourth Grade Writing Support – Students 14, 18, 20, and 22
- 12:40 – 1:10 pm: Fourth Grade Core – Students 18, 20, and 22

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<sup>9</sup> Students in Tier 3 are students who the District has identified as needing the most intervention support. Students who were not identified as needing intervention support receive "extensions" to enhance their learning.

<sup>10</sup> The complaint documentation and information provided by staff indicate the ability groups also include students eligible for bilingual, Title 1 and learning assistance program (LAP) services in addition to those students eligible for special education.

- 1:10 – 1:40 pm: Fourth Grade Reading Support – Students 14, 17, 18, 20, and 22

According to information from the District, the time periods in which special education teacher 2 is not scheduled to meet with students are designated as breaks or planning time. Under the District’s “case manager” delivery model, part of the teacher’s approximate 900 minutes (15 hours) of planning time is to be used to design and supervise the specially designed instruction provided to students eligible for special education who are assigned to the intervention groups that are taught by general education teachers or paraeducators. Based on the documentation provided by the District in response to this complaint, students assigned to special education teacher 2’s case load are taught by eighteen (18) general education teachers and nine (9) paraeducators (including the special education paraeducator). According to special education teacher 2, scheduling conflicts made it difficult for her to adequately plan for specially designed instruction and then meet with the 18 general education teachers and 9 paraeducators to discuss the provision of specially designed instruction. Additionally, special education teacher 2 expressed concern that she was limited in choosing the curriculums she thought would best fit a student’s needs, because the general education teachers or paraeducators assigned to provide the student’s instruction were not trained.

59. The District’s documentation in this complaint shows that the special educator paraeducator’s Monday – Thursday schedule is as follows:

- 9:00 – 9:45 am: Kindergarten ELA – no students with IEPs that provide for special education ELA services
- 10:05 – 10:35 am: Second Grade ELA – Students 5, 6, and 18, and one general education student
- 10:40 – 11:10 am: Fourth Grade Math – Students 15, 18, 20, and 22, and Student 17 who does not qualify for special education math services
- 12:05 – 12:35 pm: Kindergarten Math – no students with IEPs that provide for special education ELA services
- 12:40 – 1:10 pm: Fourth Grade Core – Student 15 and another student with an IEP
- 1:10 – 1:40 pm: Fourth Grade ELA – Student 15 and three general education students
- 1:45 – 2:15 pm: Fifth Grade Math – Student 24, Student 27 who does not qualify for special education math services, and three general education students
- 2:25 – 2:55 pm: First Grade Math – three general education students

60. **Student 33** – According to the District’s documentation in this complaint, on October 7, 2016, Student 33’s IEP team amended his IEP without holding a meeting. However, the IEP amendment states “the IEP team met and agreed to change [Student 33’s] educational placement” from a resource room setting to a special education behavior program located at another elementary school. The amended IEP provided for the following specially designed instruction in a *special education setting*:

- Reading – 40 minutes 5 times weekly (provided by a special education teacher)
- Writing – 40 minute 5 times weekly (provided by a special education setting)
- Behavior – 213 minutes 5 times weekly (provide by a special education teacher)

Student 33 began attending his new elementary school on October 12, 2016.

61. Also on October 7, 2016, a fifth grade teacher at the elementary school emailed the instructional specialist, school principal, the administrative assistant, school psychologist, and special education teacher 2. The fifth grade teacher stated that Student 28 had an IEP for reading, and she was going to have him use the curriculum "I Read" for his intervention. The teacher stated that the student had participated in "I Read" the prior school year with special education teacher 1 and it worked "really well." The teacher said that this was also on the student's IEP. The teacher also stated that the instructional specialist would get this set up for the student, and she was hoping he could start on October 10. The teacher further stated that she may have Student 31 join Student 28, if she could get a "password" for Student 31 to access the reading curriculum on a computer.
62. On October 10, 2016, the elementary school counselor emailed multiple staff members at the elementary school, stating "we're attempting to have our social/emotional groups start up the week of October 17<sup>th</sup> and need some assistance to identify kids to fill the groups." The counselor provided a list of students who had already been placed in groups. The list showed that Students 4, 7, 8, 11, 16, and 32 had been placed in groups according to their grade levels.
63. On October 11, 2016, a third grade teacher at the elementary school emailed the school principal and the other third grade teachers, stating that the students had participated in the first "Walk to Read", and special education teacher 2 had picked up some of the students. However, most of the students did not return from the reading time, and staff had to look for the students. The third grade teacher stated she thought that special education teacher 2 was taking a small group during "Walk to Math" and "Walk to Read" time, and asked if this was the case.
64. In response, another third grade teacher spoke with the school principal about the issue and then sent a follow up email to the principal and the school administrative assistant, and copied the other third grade teachers, special education teacher 2, and the school instructional specialist. The third grade teacher stated that the main issue was that there were five students from third grade, who were the most challenged in reading, who were not being provided services during the arranged "intervention time" from 1:10-1:40pm. The teacher stated that she was unsure if the solution was to pull one of the paraeducators who was currently providing classroom support, and reassign her to provide the students' services managed by special education teacher 2. The third grade teacher then listed the students who were not receiving reading services – Students 7, 8, 11, 12, and 13. The teacher stated special education teacher 2 was already teaching a fourth grade reading group at 1:10 pm, and also stated that staff needed to ensure that students, especially those she listed, were getting the services/interventions they deserved in the area of reading. The school principal later replied, listing the paraeducators who had been assigned to support third grade students during their schedule ELA support time block, and apologized for the misinformation that special education teacher 2 would provide reading services during that time.

65. On October 12, 2016, a third grade teacher responded to the school principal, stating that the third grade teachers were confused when the third grade students eligible for special education would receive their reading services. The teacher asked if the students would only receive services in math, and stated that it was unclear how to meet the students' needs in reading. In response, the principal stated that the needs of students eligible for special education would need to be addressed along with the rest of the third grade students by the four third grade teachers, and the four assigned paraeducators during the ELA time block. The principal apologized for any confusion.

66. **Student 24** – On October 12, 2016, Student 24's IEP team developed his annual IEP. The October 2016 IEP included annual goals in the areas of communication, math, reading, and writing. The IEP provided for the following services in a *special education setting*:

- Communication – 10 minutes 9 times monthly (provided by an SLP)
- Communication (consult only) – (provided by an SLP)

The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 1 time weekly (provided by a special education teacher)

67. **Student 6** – On October 26, 2016, the District completed a reevaluation of Student 6 and then developed a new IEP for Student 6 on November 18, 2016. The November 2016 IEP included annual goals in the areas of math, reading, and writing. The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

68. **Student 12** – Based on the District's documentation in this complaint, on October 26, 2016, the District became aware that Student 12 had an IEP from her previous Washington school district. On October 29, 2016, the District school psychologist reviewed and adopted Student 12's transfer IEP. The District's transfer paperwork stated that the IEP was accepted with amendments to the service matrix, but an amendment was not completed. The transfer paperwork also includes a "Consent for Placement of Student Under Current IEP" form,<sup>11</sup> which Student 12's parent signed. Student 12's transfer IEP was developed in December 2015 and amended in June 2016. The amended December 2015 transfer IEP included annual goals in

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<sup>11</sup> The District's Consent for Placement of Student Under Current IEP" form states "I, as parent or guardian of the above named child, give my consent for the placement of my child in the special education program based on a current Individualized Education Program (IEP), with understanding that the need for this placement will be reviewed at least annually. I understand that my consent is voluntary and may be revoked at any time. Placement is contingent upon: attached IEP or verification of current IEP."

the areas of reading and math, and provided for the following specially designed instruction to be provided in a *special education setting*:

- Math – 120 minutes per week (provided by a special education teacher/paraeducator)
- Reading – 240 minutes per week (provided by a special education teacher/paraeducator)

69. **Student 5** – On October 27, 2016, the school psychologist reviewed and adopted Student 5's transfer IEP, which the District had received on September 30. The District's transfer paperwork stated that the transfer IEP was accepted with amendments to the services matrix; however, the District's documentation in this complaint does not show that an amendment was completed. Student 5's transfer IEP was developed in June 2016 and included annual goals in the areas of reading, writing, and math. The transfer IEP provided for the following specially designed instruction to be provided in a *special education setting*:

- Math – 120 minutes per week (provided by a special education teacher)
- Reading – 120 minutes per week (provided by a special education teacher)
- Writing – 120 minutes per week (provided by a special education teacher)

70. **Student 9** – On October 29, 2016, Student 9's IEP team developed her annual IEP. The October 2016 IEP included annual goals in the areas of communication, math, reading, and writing. The IEP provided for the following specially designed instruction in a *special education setting*:

- Communication – 20 minutes 6 times monthly (provided by an SLP)

The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

71. **Student 32** – On November 4, 2016, the District held a manifestation determination meeting because Student 32 had been suspended for ten school days. At the meeting, the IEP team determined that the Student's behavior was a manifestation of his disability. The IEP team also agreed to conduct a reevaluation to determine if Student 32's placement should be changed.

72. **Student 21** – On November 21, 2016, Student 21 transferred into the District from an out-of-state district. On December 13, 2016, the school psychologist reviewed and adopted Student 21's transfer IEP. The District's transfer paperwork stated that the District had accepted the transfer IEP with an amendment to the service matrix; however, the District's documentation in this complaint does not show that an amendment was completed. Student 21's transfer IEP was developed in April 2016, and included annual goals in the areas of reading, writing, and math. However, the transfer IEP goals were not measurable because they did not contain baseline data. The transfer IEP provided for 180 minutes of specially designed instruction per week (45 minutes 4 times weekly) in a *general education setting*, but did not specify the amount of services Student 21 would receive in each qualifying area.

73. On November 21-23, 2016, the elementary school had parent/teacher conferences and school was not in session. The District was on break November 24-25, 2016.

74. **Student 4** – On November 29, 2016, the District completed a reevaluation of Student 4. The evaluation report recommended that Student 4 receive specially designed instruction in the areas of behavior (social), fine motor, math, reading, and writing.

75. **Student 32** – On December 6, 2016, Student 32's evaluation group met to review the results of the reevaluation. The parent did not attend the meeting. The evaluation group determined that the Student continued to be eligible for special education. The evaluation report recommended that Student 32 continue to receive services in the areas of reading, writing, and behavior (social) and that the IEP team was recommending a more intensive placement with a higher adult to student ratio.

On December 20, 2016, Student 32's IEP team amended his IEP without holding a meeting. The amended IEP stated that "the IEP team met and agreed to change [Student 32's] educational placement" from a resource room setting to a special education behavior program located at another District elementary school. The amended IEP provided for the following specially designed instruction in a *special education setting*:

- Reading – 40 minutes 5 times weekly (provided by a special education teacher)
- Writing – 40 minute 5 times weekly (provided by a special education setting)
- Behavior (social) – 198 minutes 5 times weekly (provide by a special education teacher)

Student 32 began attending his new elementary school on January 4, 2017.

76. **Student 12** – On December 7, 2016, Student 12's IEP team developed her annual IEP. The December 2016 IEP included annual goals in the areas of reading and math. The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)

77. **Student 7** – On December 18, 2016, Student 7's IEP team developed his annual IEP. The December 2016 IEP included annual goals in the areas of adaptive skills, behavior, math, reading, and writing. The IEP provided for the following specially designed instruction in a *general education setting*:

- Adaptive – 30 minutes 4 times weekly (provided by a special education teacher)
- Behavior (organizational) – 30 minutes 4 times weekly (provided by a special education teacher)
- Behavior (social) – 30 minutes 4 times weekly (provided by a special education teacher)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

78. The District was on break December 21, 2016 through January 3, 2017.

79. **Student 27** – On January 18, 2017, Student 27's IEP team developed his annual IEP. The January 2017 IEP included an annual goal in the area of reading. The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

80. **Student 4** – On January 22, 2017, Student 4's IEP team developed his annual IEP. The January 2017 IEP included annual goals in the areas of behavior (social), fine motor, math, reading, and writing. The IEP provided for the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)
- Behavior (social) – 30 minutes 4 times weekly (provided by a special education teacher)

The IEP also provided for fine motor services for 30 minute 3 times monthly provided by an OT in a *special education setting*.

81. On January 27, 2017, a fourth grade teacher at the elementary school emailed special education teacher 2, stating that some changes had been made to the fourth grade ELA groups and that new hires would be starting on January 30, 2017. The fourth grade teacher stated that she thought the changes would benefit students who were struggling. The teacher stated that the students in special education teacher 2's writing group would now remain with special education teacher 2 during reading time. The fourth grade teacher said that the change would eliminate the students having to transition classrooms and would provide the students with some direct, intensive instruction.

82. **Student 15** – On January 27, 2017, the District completed Student 15's initial evaluation and developed Student 15's initial IEP on February 2, 2017. The February 2017 IEP included annual goals in the areas of behavior (organization), reading, and writing. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Behavior (organization) – 30 minutes 1 time weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

83. **Student 19** – On January 30, 2017, Student 19 transferred into the District from another Washington school district. On February 17, 2017, the school psychologist reviewed and adopted Student 19's transfer IEP. The November 2016 transfer IEP included annual goals in the areas of reading, social/emotional, and communication. The transfer IEP provided for the following specially designed instruction in a *special education setting*:

- Reading – 120 minutes per week (provided by a special education teacher)



- Social/Emotional – 40 minutes per week (provided by a special education teacher)
- Communication – 90 minutes per month (provided by an SLP)

The transfer IEP also provided for 15 minutes per month of communication services in a *general education setting* from an SLP.

Also on February 17, 2017, the District amended Student 19's transfer IEP and changed his placement. The amended transfer IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Social/Emotional – 20 minutes 2 times weekly (provided by a special education teacher)

The amended IEP also provided for the following services in a *special education setting*:

- Communication – 10 minutes 9 times monthly (provided by an SLP)

**84. Student 30** – On January 31, 2017, Student 30 transferred into the District from another Washington school district. On February 17, 2017, the school psychologist reviewed and adopted Student 30's transfer IEP. The April 2016 transfer IEP included annual goals in the areas of reading and communication. However, one of the reading goals was not measurable, because the target was not specific. The transfer IEP provided for the following specially designed instruction in a *special education setting*:

- Reading – 240 minutes per week (provided by a special education teacher)
- Communication – 90 minutes per month (provided by an SLP)

The transfer IEP also provided for 15 minutes per month of communication services in a *general education setting* from an SLP.

Also on February 17, 2017, the District amended Student 30's transfer IEP and changed his placement. The amended transfer IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 60 minutes 4 times weekly (provided by a special education teacher)

The amended IEP provided for the following specially designed instruction in a *special education setting*:

- Communication – 20 minutes 6 times monthly (provided by an SLP)

**85.** Based on the District's documentation in this complaint, in February 2017, the District held another "CAST" meetings to review student assessment data. At that time, some changes were made to the students in the Tier 2 and Tier 3 intervention groups and some staff members were reassigned. The special education paraeducator's schedule was changed beginning on February 6.

**86. Student 17** – On February 1, 2017, Student 17's IEP team developed his annual IEP. The February 2017 IEP included annual goals in the areas of communication

and reading. The IEP provided for the following specially designed instruction in a *special education setting*:

- Communication – 10 minutes 12 times monthly (provided by an a SLP)

The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

**87. Student 10** – On February 6, 2017, the school psychologist reviewed Student 10's January 12, 2016 transfer IEP, which the District received on January 30, 2017. The District's transfer paperwork stated that the District would create a new IEP for the student because her transfer IEP had expired. The January 2016 transfer IEP included annual goals in the areas of reading, writing, and math. The IEP provided for the following specially designed instruction to be provided in a *special education setting*:

- Math – 30 minutes 5 times weekly (provided by a special education teacher)
- Reading – 30 minutes 5 times weekly (provided by a special education teacher)
- Writing – 30 minutes 5 times week (provided by a special education teacher)

On March 2, 2017, Student 10's IEP team developed a new IEP for Student 10 to replace her transfer IEP, which expired on January 12, 2017. Although invited to the meeting, the parents did not attend. Student 10's March 2017 IEP included annual goals in the areas of reading, writing, and math. The March IEP changed Student 10's placement and provided for the following specially designed instruction to be delivered in *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times week (provided by a special education teacher)

**88. Student 14** – On February 7, 2017, the District completed Student 14's initial evaluation and developed his initial IEP on February 17, 2017. The February 2017 IEP included annual goals in the areas of reading, and writing. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

**89. Student 3** – On February 16, 2017, the District completed Student 3's initial evaluation and developed Student 3's initial IEP on February 22, 2017. The February 2017 IEP included annual goals in the areas of behavior (social), reading, and writing. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Behavior (social) – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times weekly (provided by a special education teacher)

90. **Student 16** – On February 19, 2017, Student 16’s IEP team developed her annual IEP. The February 2017 IEP included annual goals in the areas of behavior (organizational) and behavior (social). The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Behavior (organizational) – 5 minutes 5 times weekly (provided by a special education teacher)
- Behavior (social) – 30 minutes 4 times weekly (provided by a special education teacher)

91. **Student 26** – On February 22, 2017, Student 26’s IEP team developed his annual IEP. The February 2017 IEP included an annual goal in the area of reading. The IEP provided for the following specially designed instruction to be provided in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

92. On March 1, 2017, the Complainant filed this citizen complaint.

93. After the complaint was filed, the elementary school principal met with special education teacher 2 to create a schedule detailing when special education teacher 2 would meet with the general education teachers and paraeducators assigned to provide students with specially designed instruction. The schedule shows that special education teacher 2 would meet once a month with the paraeducators for fifteen minutes each. The schedule also shows that special education teacher 2 would attend 30-minute monthly grade level meetings with general education teachers. The “goal” of the grade level meetings is for staff to discuss the “progress, needs, changes, instruction, etc.” of students classified as Tier 2 or Tier 3, and students with IEPs.

94. According to the District’s documentation in this complaint, the elementary school has agreed to allow special education teacher 2 to have input into the design of the building schedule for the 2016-2017 school year, and to have input into scheduling the special education paraeducator’s time.

95. Also according to the District’s response to this complaint, on March 16, 2017, the general education teacher’s for Students 3, 4, 5, 7, 11, 13, 15, 25, 26, 28, and 31 received a copy of their IEPs for the first time. With the exception of Student 13, the general education teachers had been designated as being responsible for providing specially designed instruction in at least one of the students’ service areas.

## CONCLUSIONS

**Issue 1: Implementation of IEP Services** – The District admitted that some of Students 1-33 did not receive the services stated in their IEPs.

At the beginning of each school year, each district must have in effect an IEP for every student who is eligible to receive special education services. On a case-by-case basis, an IEP team may determine that the individual needs of the child require that the start date for services should occur the first week of school or after the beginning of the

school year. Here, the District's documentation and information provided by staff members shows that the elementary school did not begin providing all special education services at the beginning of the school year, but instead waited until approximately October 10, 2017, nearly six weeks after school began, to begin implementing its intervention groups consistent with the service delivery model the elementary school had adopted. The elementary school's practice of delaying the provision of special education services is inconsistent with the IDEA and its implementing regulations. As a result, this practice is a failure to implement many of Student 1-33's IEPs. The District's documentation in this complaint also shows that many of the Students 1-33 were not scheduled to receive the services stated in their District developed or adopted IEPs from October 10, 2016 through March 1, 2017, when this complaint was filed. Several of the students are discussed below:

- **Student 2** – During the 2016-2017 school year, Student 2 is in kindergarten. Student 2's IEP in place at the beginning of the school year was developed in May 2016, and provided for the following specially designed instruction to be provided in a *general education setting*:
  - Cognitive – 90 minutes 5 times weekly (provided by a special education teacher)
  - Social – 60 minutes 5 times weekly (provided by a special education teacher)

The elementary school's building schedule does not show that kindergarteners were scheduled to receive intervention services in the area of social/emotional, and the District's documentation also does not show that a school counselor offered a social group for kindergarten students. The District has not substantiated that Student 2 was scheduled to receive social/emotional services. Additionally, Student 2's IEP provides for cognitive services 5 days per week, but the District's documentation and information provided by staff members shows that special education services are not provided 5 days per week at the elementary school. The District failed to implement Student 2's May 2016 IEP.

- **Student 4** – During the 2016-2017 school year, Student 4 is in first grade. Student 4's IEP in place at the beginning of the school year was developed in January 2016, when the Student attended another Washington school district. The IEP provided for the following specially designed instruction in a *general education setting*:
  - Reading – 150 minutes per week (provided by a special education teacher)
  - Writing – 90 minutes per week (provided by a special education teacher)

The IEP provided for the following specially designed instruction in a *special education setting*:

- Math – 90 minutes per week (provide by special education staff)
- Social – 30 minutes per week (provided by special education staff)

The District's documentation in this complaint shows that Student 4 was not scheduled to receive instruction in math and social/emotional a special education setting. This is a failure to implement Student 4's January 2016 IEP.

- **Student 5** – Student 5 transferred into the District on August 30, 2016; however, Student 5’s parent did not indicate on his enrollment paperwork that he had an IEP, and the District was reportedly not aware of Student 5’s transfer IEP until September 30, 2016. On October 27, 2016, the school psychologist reviewed and adopted Student 5’s transfer IEP. Student 5’s transfer IEP was developed in June 2016 and included annual goals in the areas of reading, writing, and math. The IEP provided for the following specially designed instruction to be provided in a *special education setting*:
  - Math – 120 minutes per week (provided by a special education teacher)
  - Reading – 120 minutes per week (provided by a special education teacher)
  - Writing – 120 minutes per week (provided by a special education teacher)

The District’s documentation in this complaint shows that Student 5 was not scheduled to receive all of his instruction in a special education setting. This is a failure to implement Student 5’s June 2016 IEP.

- **Student 6** – Student 6’s IEP in place at the beginning of the school year was developed in April 2016, and provided for the following specially designed instruction in a *general education setting*:
  - Cognitive: Reading – 45 minutes 5 times weekly (provided by a special education teacher)
  - Cognitive: Math – 30 minutes 4 times weekly (provided by a special education teacher)
  - Cognitive: Writing – 15 minutes 4 times weekly (provided by a special education teacher)

Student 6’s IEP provided for reading services 5 times weekly, but the District’s documentation and information provided by staff members show that special education services are not provided 5 days per week at the elementary school. The District failed to implement Student 6’s April 2016 IEP.

- **Student 7** – Student 7’s IEP in place at the beginning of the school year was developed in December 2015 and provided for the following specially designed instruction in a *general education setting*:
  - Behavior (social) – 30 minutes 2 times weekly (provided by a special education teacher)
  - Behavior (organizational) – 25 minutes 5 times weekly (provided by a special education teacher)
  - Math – 30 minutes 4 times weekly (provided by a special education teacher)
  - Reading – 60 minutes 5 times weekly (provided by a special education teacher)
  - Writing – 30 minutes 5 times weekly (provided by a special education teacher)
  - Adaptive – 20 minutes 5 times weekly (provided by a special education teacher)

Student 7’s IEP provided for behavior (organizational), reading, writing, and adaptive services 5 times weekly, but the District’s documentation and information provided by staff members show that special education services are not provided 5 days per week at the elementary school. The District failed to implement Student 7’s December 2015 IEP.

- **Student 10** – Student 10 transferred into the District on August 30, 2016; however, Student 10’s parent did not indicate on her enrollment paperwork that she had an IEP, and the District reportedly was not aware of Student 10’s transfer IEP until December 2016. On February 6, 2017, the school psychologist reviewed Student 10’s January 12, 2016 transfer IEP, which the District received on January 30, 2017. The January 2016 transfer IEP provided for the following specially designed instruction to be provided in a *special education setting*:
  - Math – 30 minutes 5 times weekly (provided by a special education teacher)
  - Reading – 30 minutes 5 times weekly (provided by a special education teacher)
  - Writing – 30 minutes 5 times week (provided by a special education teacher)

On March 2, 2017, Student 10’s IEP team developed a new IEP, which provided for the following specially designed instruction to be delivered in *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Writing – 30 minutes 4 times week (provided by a special education teacher)

When a student transfers to a new school district, the new school district must take reasonable steps to promptly obtain the student’s records, including any documents related to the provision of special education services, from the student’s previous school district. Here, Student 10 enrolled in the District on August 30, 2016, but the District was not aware of her special education status until December 2016 and did not receive her educational records from her prior district until January 30, 2017. While the District states it was unaware of Student 10’s special education status because the parent failed to indicate on the enrollment paperwork that Student 10 was eligible for special education, the District has provided no explanation as to why it took five months to obtain Student 10’s educational records, which would have included her January 2016 IEP.

Additionally, when a student eligible for special education transfers from one Washington State school district to another Washington State school district, and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student’s IEP, until the new school district either: adopts the student’s IEP from the previous school district, or develops, adopts, and implements a new IEP. Here, while there is documentation to show that Student 10 was scheduled to receive comparable services in the area of math, there is no documentation provided in this complaint that the District provided comparable services in the areas of reading and writing, as the Student was not scheduled to receive these services in a special education setting. Further, when the District developed Student 10’s new March 2017 IEP, the District changed Student 10’s placement from a special education setting to a general education setting, presumably to fit the elementary school’s building schedule (discussed further below in Issue no. 3), without first conducting a required reevaluation.

- **Student 12** – Student 12 transferred into the District from a neighboring school district on August 30, 2016; however, Student 12’s parent also did not indicate on

her transfer paperwork that she had an IEP, and it appears the District was not aware of her IEP until October 26, 2016. On October 29, 2016, the District reviewed and adopted Student 12's amended December 2015 transfer IEP, which provided for the following specially designed instruction to be provided in a *special education setting*:

- Math – 120 minutes per week (provided by a special education teacher/paraeducator)
- Reading – 240 minutes per week (provided by a special education teacher/paraeducator)

On December 7, 2016, Student 12's IEP team developed her annual IEP. The December 2016 IEP included annual goals in the areas of reading and math. The IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 30 minutes 4 times weekly (provided by a special education teacher)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)

As discussed above, the district must take reasonable steps to promptly obtain the student's records from the previous school district. Here, Student 12 enrolled in the District on August 30, 2016, but the District apparently did not receive records from Student 12's prior school district until nearly eight weeks later on October 26, 2016. The District needs to ensure it is actively taking steps to obtain a student's records in a timely manner. Additionally, despite the District adopting Student 12's transfer IEP, which provided for 240 minutes of reading instruction per week in a special education setting, Student 12 was never scheduled to receive any reading instruction in a special education setting. This is a failure to implement Student 12's amended December 2015 transfer IEP. Further, when the District developed Student 12's annual IEP in December 2016, the District significantly reduced the amount of Student 12's reading services and then changed Student's 12's placement from a special education setting to a general education setting without first conducting a required reevaluation.

- **Student 13** – On September 23, 2016, Student 13 transferred into the District, and the District reviewed and adopted Student 13's transfer IEP that same day. The May 2016 transfer IEP included annual goals in the areas of math, literacy, and speech. However, the annual goals were not measurable, because they did not contain any baseline data. The transfer IEP stated that Student 13 would receive 480 minutes per week of special education services in a *special education setting*, but did not specify the amount of services Student 13 would receive in each qualifying area. The transfer IEP also stated that the Student would receive 30 minutes per week (120 minutes per month) of speech as a related service.

Also on September 23, 2016, the District amended Student 13's transfer IEP. The District's amended IEP modified one of Student 13's speech goals, but the goal still did not include baseline data. The amended IEP also changed Student 13's placement, and significantly reduced the amount of his services, so that he would only receive the following specially designed instruction in a *general education setting*:

- Math – 30 minutes 4 times weekly (provided by a special education teacher)
- Reading – 30 minutes 4 times weekly (provided by a special education teacher)

The amended IEP also reduced Student 13's speech services from 120 minutes per month to 90 minutes per month (30 minute 3 times monthly).

When a student eligible for special education transfers from a school district located in another state to a school district in Washington State and has an IEP in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with FAPE, including services comparable to those provided in the IEP from the prior serving district, until the new school district: conducts an evaluation to determine if the student is eligible for special education services in this state if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. Here, Student 13 transferred from an out-of-state school district, but the District failed to develop a new IEP for Student 13. This is particularly concerning since Student 13's out-of-state IEP did not contain measurable annual goals. It is also noted that when the District amended Student 13's transfer IEP, it significantly reduced the amount of his reading and math services in the transfer IEP, and changed his placement from a special education setting to a general education setting without conducting a reevaluation.

- **Student 30** – On January 31, 2017, Student 30 transferred into the District from another Washington school district. On February 17, 2017, the school psychologist reviewed and adopted Student 30's transfer IEP. The April 2016 transfer IEP included annual IEP goals in the areas of reading and communication. However, one of the reading goals was not measurable, because the target was not specific. The transfer IEP provided for the following specially designed instruction in a *special education setting*:
  - Reading – 240 minutes per week (provided by a special education teacher)
  - Communication – 90 minutes per month (provided by an SLP)

The transfer IEP also provided for 15 minutes per month of communication services in a *general education setting* from an SLP.

Also on February 17, 2017, the District amended Student 30's transfer IEP and changed his placement. The amended transfer IEP provided for the following specially designed instruction in a *general education setting*:

- Reading – 60 minutes 4 times weekly (provided by a special education teacher)

The amended IEP provided for the following specially designed instruction in a *special education setting*:

- Communication – 20 minutes 6 times monthly (provided by an SLP)

As discussed above, when a student with an IEP transfers from one Washington State school district to another Washington State school district, the new district, in consultation with the parents, must provide comparable services to those described in



the student's IEP, until the new school district either: adopts the student's IEP from the previous school district, or develops, adopts, and implements a new IEP. Here, there is no documentation provided in this complaint that the District provided comparable services to those stated in Student 30's April 2016 transfer IEP, while it determined if it would adopt the transfer IEP some two weeks later. Additionally, the District inappropriately agreed to adopt the transfer IEP, because one of the IEP goals was not measurable, and the District did not agree with the amount of services to be provided. When a student transfers into the District from an in-state district, the District has two options: 1) adopt the transfer IEP as written, or 2) develop a new IEP. The District cannot agree to adopt a transfer IEP, and then immediately amend the IEP to change the provision of services, and a student's placement based on the District's choice of a service delivery model at the elementary school.

**Issue 2: Specially Designed Instruction** – Special education and related services must be provided by appropriately qualified staff. Other staff including general education teachers and paraeducators may assist in the provision of special education, provided that the instruction is designed and supervised by special education certificated staff. The District has admitted that many of Students 2-33<sup>12</sup> did not receive specially designed instruction that was designed and supervised by a special education teacher, because in this case, special education teacher 2 did not design or supervise the student's specially designed instruction delivered by a general education teacher or paraeducator. It should also be noted that paraeducators are not qualified to provide specially designed instruction without being under the direct supervision of special education certificated staff. There were numerous instances in this complaint where paraeducators appeared to be providing specially designed instruction outside of this context. The elementary school administration points to special education teacher 2's failure to use her assigned 15 hours of weekly planning time to meet with the 18 general education teachers and 9 paraeducators, who were to provide the students with specially designed instruction as the reason the students did not receive this instruction, and has offered information that the administration has now attempted to rectify the situation by scheduling specific times for special education teacher 2 to meet with each of the 9 paraeducators for 15 minutes a month, and attend 30-minute monthly grade level teachers meetings. Appropriately designing and supervising specially designed instruction requires more than a 15-minute monthly meeting or attending a 30-minute monthly meeting with multiple staff members to discuss multiple students. Appropriately designing and supervising specially designed instruction requires a special education teacher to design a plan of instruction for a student based on the student's unique needs, and then regularly meet with the general education teacher or paraeducator to discuss, and if necessary, provide training regarding the intended plan of instruction. Absent the provision of specially designed instruction, students are not eligible for state or federal special education funding. Here, given special education teacher 2's schedule, it would have been nearly impossible for her to design a plan of instruction for the 28 students on her case load that were scheduled to receive instruction from a general education teacher and/or paraeducator, and then meet with 27 different staff

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<sup>12</sup> As discussed above, Student 1's parents have elected for the student to only receive communication services provided by an SLP and fine motor services provided by an OT.

members on a regular basis to supervise the instruction. The elementary school's currently adopted "case manager" service delivery model results in an impossible task for any special education teacher, and does not provide students with an adequate opportunity to receive specially designed instruction.

**Issue 3: Procedures for Changing Placement** – Placement is determined by a student's IEP team based on the student's IEP, the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, 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. Additionally, a school may not make a significant change in a student with disabilities placement without a reevaluation.

Placement is not determined based on a district policy or the adoption of a general education model such as Response to Intervention. Here, the District's policy of designating on IEPs that students would receive instruction in a general education setting, when the students may in fact more appropriately receive those services in a special education setting, is contrary to the required procedures for determining placement and the provision of services in a full continuum of options that are individually determined. An IEP must accurately reflect the IEP team's placement decision, and the IEP team must be allowed to consider a full continuum of placement options when making this decision. While the District provided information that it recognizes this practice is not appropriate, and stated that it had provided staff training on this topic, the impact of such training was not evidenced in OSPI's review of Students 1-33's IEPs.

Placement is also not determined based on a building practice or a building schedule. The elementary school's adopted practice of grouping students by ability and grade level, and then unilaterally assigning an available staff member to lead the ability groups, fails to take into account a student's placement as designated in his/her IEP, and is contrary to the required procedures for determining placement, and the required procedures for changing a student's placement. Additionally, the elementary school's practice of limiting the amount of services a student can receive based on the building schedule and/or changing IEP service matrixes to align with the building schedule is contrary to the required procedures for determining placement and changing a student's placement. Again, it is the IEP team, which includes parents, that makes placement determinations while considering a variety of factors relating to a student's *individualized* (emphasis added) educational needs. These factors do not include acquiescing to a predetermined building's service delivery model, or schedule.

The District will hold IEP meetings for Students 2-31<sup>13</sup> to review the student's progress toward his/her IEP goals and the grade level curriculum that is most appropriate to achieve those goals. The IEP team will then determine the appropriate amount of

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<sup>13</sup> Based on the documentation in this complaint, the IEP teams for Students 32 and 33 have already determined their placement in a District special education behavior program is appropriate to meet the students' individual needs.

services the student should receive in each eligible service area, and also determine the student's appropriate placement against a full continuum of options within the District. Therefore, the District will allow each IEP team to consider a full continuum of placements, and will not limit the IEP team's options. If the IEP team believes a significant change in placement is needed, then the District will first conduct an expedited reevaluation to evaluate the student's needs. The District will also develop class schedules for each student to ensure the student is scheduled to receive his/her IEP services in the appropriate setting during 2017-2018 school year.

### **CORRECTIVE ACTIONS**

By or before **June 5, 2017, June 26, 2017, July 10, 2017, July 17, 2017, September 1, 2017, September 5, 2017, and September 15, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. By the beginning of the District's 2017-2018 school year, the District will hold IEP meetings for Students 2-31 to review the student's progress toward his/her IEP goals, and the grade level curriculum or methodology that is most appropriate to achieve those goals. The IEP team, *which must include a parent*, will then determine the appropriate amount of services the student should receive in each eligible service area, and also determine the student's appropriate placement against a full continuum of options within the District. Therefore, the District will allow each IEP team to consider a full continuum of placements, and will not limit the IEP team's options. If the IEP team believes a significant change in placement is needed, the District will first conduct an *expedited reevaluation (within 30 calendar days)* to evaluate the student's needs. The District will also develop class schedules for each student to ensure the student is scheduled to receive his/her IEP services in the appropriate setting during the 2017-2018 school year. All IEP services must be provided starting the first week of the 2017-2018 school year, unless otherwise determined by a student's IEP team based on a student's individual need.
  - By **September 5, 2017**, the District will submit the following documentation regarding Students 2-31: 1) a copy of any meeting invitations; 2) a copy of any evaluation reports; 3) a copy of any new or amended IEP; 4) a copy of a prior written notice clearly documenting the IEP team's reason for selecting the student's placement; 5) any other related prior written notices; and, 6) a copy of the student's class schedule.
2. OSPI accepts the District's proposed corrective action of providing compensatory services to the affected students over the summer of 2017.
  - By **August 25, 2017**, the District will provide Students 1-33 with 80 hours of compensatory services consistent with the service areas and specially designed instruction identified in each student's current IEP, (e.g in the areas of reading, writing, math, and behavior, etc). The 80 hours of compensatory services will be delivered over a four or five-week period, not to exceed four hours per day. The services will be provided by certificated special education teachers with support from paraeducators and the summer program will be staffed at a ratio of 1

certificated special education teacher and 1 paraeducator per 10 students (1:1:10). The District will also provide transportation for the students in the summer compensatory program.

- By **May 31, 2017**, the District will notify the parents of Students 1-33 (in the parents primary mode of communication as necessary) informing them of this complaint decision and that compensatory services will be offered during the summer of 2017. The letter will include the dates and times the summer compensatory services will be offered, as well as the location of the summer program. The letter will specify that parents must inform the District if their student will participate in the summer program by June 19, 2017.
- By **June 5, 2017**, the District will submit copies of all letters sent to the parents of Students 1-33.
- By **June 26 2017**, the District will submit a roster of all students who will participate in the summer program.
- By **July 10, 2017**, the District will submit documentation that it has entered into contracts with a certificated special education teacher(s) and a paraeducator(s) to provide services for 80 hours over 4-5 weeks in the summer of 2017.
- By **September 1, 2017**, the District will provide attendance records for the summer program. The District will also provide documentation that it provided parents progress reporting regarding any of the students' IEP goals addressed during the summer program.

#### **DISTRICT SPECIFIC:**

1. The District will modify its transfer enrollment form to include a section that specifically addresses a student's participation in special education, and will position the section on the form so parents are able to clearly see it. By **June 5, 2017**, the District will provide OSPI with a copy of the revised enrollment form and provide documentation that the updated form has been distributed to all District schools for use.
2. The District will develop written procedures addressing requesting records for transfer students. The procedures will align with WAC 392-172A-03105 and RCW 28A.225.330. By **June 5, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by June 23, 2017 and provide additional dates for review, if needed. By **July 10, 2017**, the District will provide OSPI with documentation showing that the records procedures have been provided to all staff responsible for requesting records. This will include a roster of all staff members who are responsible for requesting records, so OSPI can cross reference the list with the actual recipients.
3. The District will ensure all District special education certificated staff, including educational staff associates (ESAs), special education administration, principals, and assistant principals receive training regarding: 1) procedures for determining placement; 2) procedures for changing a student's placement; and, 3) special

education transfer procedures. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The trainer will not be an employee of the District. The training will also include examples.

- By **June 5, 2017**, the District will provide OSPI with the names of three proposed trainers. By June 16, 2017, OSPI will approve a proposed trainer.
- By **June 26, 2017**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
- By **July 17, 2017**, 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 July 28, 2017 and additional dates for review, if needed.
- By **September 15, 2017**, 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.

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

Douglas H. Gill, Ed. D.  
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.)