

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-22**

### **PROCEDURAL HISTORY**

On April 5, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Issaquah School District (District). The Parents alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 6, 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 April 28, 2017, OSPI received the District's response to the complaint and forwarded it to the Parents on May 1, 2017. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On May 9, 2017, OSPI granted the Parents an extension of time to submit their reply.

On May 16, 2017, OSPI received the Parents' reply and forwarded that reply to the District on the same day.

On May 18, 2017, OSPI requested additional information from the District. On May 18, 2017, OSPI received additional information from the District and forwarded it to the Parents on May 19, 2017.

On May 22, 2017, OSPI received additional information from the Parents and forwarded it to the District on the same day.

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

### **OVERVIEW**

At the beginning of the 2016-2017 school year, the Student transferred into the District from a California school district. The Student's transfer individualized education program (IEP) provided for 180 minutes per week of specially designed instruction in academics. Attached to the IEP were meeting notes, which stated that the Student had not yet completed vision therapy services, which the California district was paying for, and that once the therapy services were completed, the Student's IEP team would review progress information to determine if the vision therapy services should continue. The Student completed the therapy sessions in early June 2016, but the progress information was not available until after the school year ended. Due to this, the Student's California IEP team did not have a meeting to determine if additional vision therapy services were warranted, and the Student's IEP was not amended. In September 2016, the Student began attending a District elementary school. The District agreed to accept the Student's California IEP, but did not agree to provide vision

therapy services, because the services were not reflected in the Student's transfer IEP. The Parents alleged that the District failed to follow special education transfer procedures during the 2016-2017 school year. The District denied the allegation.

## **ISSUE**

1. Did the District follow special education transfer procedures during the 2016-2017 school year?

## **LEGAL STANDARDS**

Transfer Students Who Transfer from an Out-of-State School District: 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).

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 35).

## FINDINGS OF FACT

### 2015-2016 School Year

1. During the 2015-2016 school year, the Student attended an elementary school in a California school district and was eligible to receive special education services under the category of specific learning disability (SLD).
2. The Student's individualized education program (IEP) in place at the beginning of the 2015-2016 school year was developed in June 2015.
3. On September 15, 2015, the Student's June 2015 IEP was amended to state:  
The [general education] teacher reviewed [the Student's] current progress in the classroom. [The Student] is putting forth more effort in the classroom with reading. The team reviewed the most recent psycho-educational report completed by the school site. [The Student] qualified for special education services under the disability condition of SLD due to difficulties with reading caused by an auditory processing deficit. The team reviewed the private neuro-optometric evaluation results submitted by the parent.<sup>1</sup> The team described the vision program at school. An evaluation would be necessary to identify which areas of deficit are causing [the Student] difficulty. The team agreed to conduct an assessment specifically looking at visual processing abilities. The team will reconvene within 60 days to review the assessment results to determine if she would benefit from the [school district's] vision program. An evaluation plan was signed at this time.
4. On October 6, 2015, the California school district completed a reevaluation of the Student. Also on October 6, 2015, the Student's June 2015 IEP was amended to state:  
School psychologist shared results of assessments...Psychologist explained that since [the Student] has previously passed the tracking and convergence test, it could not be readministered.  
  
Program specialist shared the vision program that is available through the school district. [The Student] is eligible for this program due to difficulties in visual sequencing and complex visual processing. Program specialist also explained the process of first right by the district to support and remediate prior to moving to parent requested outside program. The vision program (EVP) is coordinated through the [occupational therapist] OT and with the support of the education specialist and general education teacher...Vision program provided 20 minutes daily until program completion. Student progress will be monitored for 4-6 weeks with a follow up at 6 weeks.
5. On October 28, 2015, the Student's June 2015 IEP was again amended to state:  
The district began the [vision] program in the school environment on October 15<sup>th</sup>. On October 16<sup>h</sup>, after the home component of the program had not been completed, parent informed the program specialist during a conversation that they were not wanting to go forward with the program at this time. This

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<sup>1</sup> The private evaluation was conducted in the spring of 2015.

amendment is to receive formal documentation from the parent that they are revoking consent for the EVP vision program at this time.

6. On December 8, 2015, the Student's June 2015 IEP was amended to state:

The purpose of the meeting was to review progress and review the district offer of FAPE...Reading fluency has increased from 109/140; Comprehension has increased for 27/36; phonics was 14 initially and now 19, moving [the Student] from intensive to strategic...Basic facts is now proficient in math. [The Student] is currently receiving private reading tutoring three times per week with 1-on-1 support; cognitive therapy...Progress toward goals was shared by education specialist. Goal #1 is on track with 75% accuracy; Goal 2 75 % accuracy; Goals 3 75% accuracy.

Current service provision is deemed adequate for student progress. Parents requested a letter of denial from district personnel, specifically the identification of medical vs. educational processing issue. District would support educational needs as a result of cognitive impact, not provide specific therapy for cognitive processing issues. Parents do not believe the support specific to educational needs is enough to provide the progress she is currently demonstrating and that specific therapy is appropriate. Dad shared their belief that vision therapy is warranted and appropriate based on conversations they had with their consultants and therapists. Program specialist explained that current progress does not include vision therapy in current services. Coordinator of special education explained process of progressive service to determine the need for additional service and/or program support. The district vision program provided is an exercise program, not a therapeutic program to address visual processing issues, which addresses the educational impact. The district does not currently see the need for vision therapy at this time.

Parents believe 80% of [the Student's] progress is due to the extensive amount of support provided outside of the school setting. Educational advocate asked about the district offering an assessment to determine the need for vision therapy...Parents requested an outside assessment provided by the district to compare to private vision therapy assessment with information specific to the test examiner. District response is that data does not show the need for this assessment or program.

Educational advocate shared that [the Student] is exhausted after school due to her convergence issues and needs to be supported in this area. Classroom teacher shared that she does not see [the Student] frustrated or overwhelmed, that [the Student] participates actively in class and discussions.

As part of the district service provision, outside assessment data is considered along with data gleaned from program support across all settings. Team discussed what assessment was conducted by outside agency providing cognitive therapy and reading support. District is interested in collaborating specific to strategies used in current support programs. Educational advocate shared that the services provided currently by outside agencies cannot be duplicated by district staff not specifically trained as experts in the area of vision therapy.

District offer of FAPE remains as previously offered, with exception of the vision exercise program offered by the district, but refused by the parents. Mom clarified that their refusal of the program is based on the belief that the program is not researched-based and that the staff administering it is not qualified and/or has enough background and specialized experience in the area of vision therapy.

7. Sometime after the IEP team's December 8, 2015 meeting, the California district agreed to pay for an independent educational evaluation (IEE) addressing vision therapy.
8. On February 6, 2016, the Student's June 2015 IEP was further amended to state:  
The district initially agreed to a VT IEE assessor that proved too difficult for student to access...district administrator agreed to use another VT IEE assessor...to expedite the VT IEE. Parent and district agree that if this new VT IEE assessor determines through assessment that [the Student] would benefit educationally from vision therapy, then the district will authorize up to 12 sessions of vision therapy from that VT provider. Further, after the initial 12 VT sessions have been completed the district will receive a progress report/update from that VT provider and the IEP team will then reconvene to discuss the data/determine the next course of action.
9. On February 12, 2016, the Student's IEE was completed. The IEE report recommended that the Student participate in an individualized optometric vision therapy program to address the Student's significantly delayed visual efficiency and visual perceptual-motor skills, so that she could "receive greater benefit from her home and classroom study and instruction." The IEE report also recommended "an estimated 36 vision therapy sessions to automate her visual efficiency skills and improve her visual processing skills to age appropriate levels. 50 minute vision therapy sessions are scheduled once a week with a vision therapist, with close monitor by the doctor, and daily homework is prescribed."
10. On March 23, 2016, the Student's June 2015 IEP was amended to state:  
Based on a recent assessment from VT provider, it was determined [the Student] would benefit educationally from vision therapy. The district authorizes exactly 12 sessions of VT to be provided by VT provider. After initial 12 sessions have been completed the district will review a progress report/update from VT provider and the IEP team will reconvene to discuss the data and determine continued need for VT services.
11. In early May 2016, the Parents contacted the District to discuss that they planned to move to the District and enroll the Student for the 2016-2017 school year.
12. On May 4, 2016, a District school psychologist who worked at the District elementary school the Student would attend during the 2016-2017 school year, faxed the California district a request for a copy of the Student's current evaluation report, current IEP, and progress notes.
13. On May 10, 2016, the Student's mother emailed the District school psychologist. Based on the email, the mother attached a copy of the following documents:

- June 2015 evaluation report
- June 2015 IEP
- September 15, 2015 IEP amendment
- October 6, 2015 evaluation report
- October 6, 2015 IEP amendment
- October 28, 2015 IEP amendment
- December 8, 2015 IEP amendment
- February 6, 2016 IEP amendment
- March 23, 2016 IEP amendment

The mother also stated that the Student's next IEP team meeting would take place on May 31, 2016, and she would forward the Student's new California IEP as soon as she received it. The mother asked that the school psychologist let her know if anything was needed to get the Student set up with a comprehensive program like the one she currently had in California that included vision therapy. The mother stated that the family would move to Washington at the end of June 2016 and wanted to be proactive in setting up an IEP meeting when the District had availability.

14. In response, the District school psychologist asked if the mother had a copy of the Student's June 2015 evaluation report, as it appeared the California school district based the Student's eligibility for special education off of the findings of the report. The school psychologist also asked for a copy of the Student's February 2016 IEE report. The psychologist stated that she could not find a description of the type of vision support the Student was receiving, but it appeared that the California district made their decision to provide the services based on the data in the IEE report. The psychologist agreed to get back to the Parents about holding a transfer meeting. The mother later replied and attached a copy of the Student's June 2015 evaluation report and the February 2016 IEE report.
15. Also on May 10, 2016, the District school psychologist forwarded a copy of the Student's February 2016 IEE report to the District vision specialist, and asked that the vision specialist review the IEE.
16. On May 12, 2016, the District vision specialist emailed the District teacher of students with visual impairments, stating that she had received the Student's February 2016 IEE report and wanted to "loop" the teacher in. The vision specialist stated that at a "very brief glance", it looked like the Student received vision therapy. The vision specialist asked if the teacher wanted to respond to the school psychologist or if she should respond.
17. On May 15, 2016, the District teacher of students with visual impairments emailed the vision specialist and the school psychologist, stating that this was an interesting case, and that after doing some research, she learned that "California school districts sometimes provided vision therapy (provided by a developmental optometrist) as a related service". This was "different and distinct from what a teacher of the visually impaired can provide." The teacher asked if the Student's California IEP specifically stated that she would receive vision therapy. The teacher stated that there had not "been a consensus that vision therapy provides educational benefit" and that it was "considered by most school districts to be a medical service." The teacher also stated that "at any rate" she thought it was important to clarify that

she nor the vision specialist could provide developmental optometric vision therapy services to the Student because it was not part of their role as teachers for the visually impaired, and they were not trained in that area. The teachers could provide support in regard to reading tools.

18. On May 31, 2016, the Student's California IEP team developed her annual IEP. The May 2016 IEP included annual goals in the areas of math and reading. The IEP provided for 180 minutes per week of specially designed instruction in a special education setting, but did not specify the amount of services the Student would receive in each service area. The IEP noted that the Student did not have any health issues, but wore glasses.

19. The meeting notes from the May 31 meeting state:

Progress toward goals of the current IEP dated 6/1/15 was shared and reviewed by specialist. Present levels of academic achievement were developed and shared. Mom shared that the family will be moving to Washington over the summer. Team discussed the process of transitioning [the Student's] California IEP to one within the Washington school district. Current vision therapy sessions identified in the IEP amendment dated March 23, 2016 have not yet been completed and final report not yet issued and once finished, a meeting will be scheduled to review report and determine the need for continued vision therapy. Team discussed the addition of a goal in the area of writing fluency and conventions. Education specialist will review additional writing samples to determine a baseline and generate goal. Mom is in agreement with that. New goals were developed and shared. Mom accepted goals as written and presented. Service placement and provision were discussed and determined. Mom accepted service recommendation as presented. Team meeting notes read aloud; documents completed.

20. On June 3, 2016, the Student received a vision therapy progress evaluation. The evaluation report noted that the Student had completed 22 vision therapy sessions since April 2016, and also stated:

[The Student] demonstrates significant improvements in letter reversals, pursuits, and saccades. She also demonstrates a very significant improvement in convergence ability and visual processing skills. However, she continues to demonstrate[] borderline skills in visual [discrimination], visual form constancy, and visual figure ground. She [also] continue[s] to show deficit in visual motor integration.

The report recommended the continuation of an individualized optometric vision therapy program to address the Student's delayed visual perceptual-motor skills, to receive greater benefit from her home and classroom study and instruction. The report also recommended that the Student continue with the initially estimated 36 vision therapy sessions with 12 additional sessions to "automate her visual efficiency skills and improve her visual processing and visual motor skills to age appropriate levels." Based on documentation in this complaint, the June 3 report was not provided to the Parents or the California district on June 3.

21. Also on June 3, 2016, the District school psychologist emailed the Student's mother, asking for a copy of the Student's new California May 2016 IEP. The mother responded on June 5, stating that she had not yet received a copy of the May 2016 IEP, but would send it as soon as possible.
22. On June 7, 2016, the Student's mother forwarded the District school psychologist a copy of the Student's May 31, 2016 IEP.
23. On June 10, 2016, the Student's California IEP team agreed to amend her May 2016 IEP without holding a meeting. The May IEP was amended to include a new annual goal, which addressed writing sentences. The June 2016 amendment did not address vision therapy services.
24. The California school district's school year ended on June 16, 2016. At that time, the district had yet not received a copy of the Student's vision therapy progress evaluation from June 3, 2016.

### **Summer 2016**

25. On August 17, 2016, the District school psychologist faxed the California school district a request for the Student's most recent IEP and "a decision for eye therapy on a prior written notice".
26. On August 25, 2016, the Student's mother emailed the District school psychologist, asking when the transfer meeting to review the Student's California IEP would occur. The mother also asked if the school psychologist had all the information she needed from the California IEP, including the vision therapy recommendations, to put together a "comprehensive" program for the Student. The mother then sent a second email and attached a copy of the February 6, 2016 amendment to the Student's June 2015 California IEP.
27. In response, the District school psychologist stated that the Student's IEP was missing a writing goal, and that she had faxed the California school district a request for any additional documentation from June 2016. The psychologist had also called the California district earlier that day to follow up on the request, and hoped to receive the new documentation soon. The psychologist stated that she would contact District staff members regarding the transfer review meeting.
28. Also on August 25, 2016, the District school psychologist faxed the California district a request for a "final prior written notice" or an IEP amendment from June 2016. The psychologist also emailed the California district.
29. On August 29, 2016, the Student's mother emailed the District school psychologist, asking if there was anything she could do to help expedite the process. The mother asked if there was any way to get a date set for the transfer IEP meeting.
30. On August 30, 2016, the District school psychologist called the Student's mother and then sent a follow-up email. The psychologist stated that she wanted to speak with



the mother about the transfer review and possible dates to hold an IEP meeting. The psychologist proposed meeting on September 6, 2016, and asked that the mother let her know when it would be a good time to discuss the Student's transfer paperwork.

31. On August 31, 2016, the District sent the Parents an invitation to attend a transfer review meeting on September 6, 2016.

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

32. The District's 2016-2017 school year began on September 1, 2016.

33. The District was on break on September 5, 2016.

34. On September 6, 2016, the Student's District IEP team met to review the Student's California May 2016 transfer IEP. Based on the District's September 6, 2016 prior written notice, the District IEP team agreed that the Student was eligible to receive special education services in Washington state under the category of specific learning disability, and that the Student's May 2016 IEP would be "implemented as written". The Student's mother asked about the Student continuing to receive vision therapy services, which had been provided by the California district. The IEP team then discussed that the Student's May 2016 IEP did not provide for continued vision therapy services, based on the records the District had received. The Student's mother then provided information that another IEP meeting had been held in June 2016 and that there was an updated report from August 2016. In response, the District executive director of special services stated that once the District received the documentation regarding any remaining vision therapy services agreed upon by the California district, the District would provide the remaining therapy session as comparable services. The mother agreed to contact the California district regarding the documentation and provide it to the District school psychologist. The school psychologist also stated the District would contact the California district again.

35. Based on the Student's class schedule, the Student was scheduled to receive the following specially designed instruction in a special education setting:

- Math – 175 minutes per week (35 minutes 5 times weekly)
- Reading/Writing – 180 minutes per week (45 minutes 4 times weekly)

36. On September 8, 2016, the Student's mother emailed the director of student services from the California school district (California director), stating that the District was having trouble obtaining a copy of the IEP amendment from the June 2016 IEP meeting, and also needed a copy of the Student's writing goal. The mother asked if the documents could be sent to her electronically. The mother also stated:

After receiving your copy of the last evaluation from [the optometrist], would you be willing to let me know in writing if [the California district] would have authorized a continuation of vision therapy for [the Student] based on the district's policy and findings that would support a continuation? I neglected to

ask for that as part of her IEP transfer and it is now turning into a challenge for [the Student] to get therapy as part of her services.

37. On September 12, 2016, the California director responded to the mother's September 8 email, stating that he would forward a copy of the Student's May 2016 IEP and her October 2015 evaluation report. The California director stated that according to the present levels in the May 2016 IEP, the Student was at grade level in writing, so there was not a writing goal. The director also stated:

That as for putting something in writing about students who continue with vision therapy, if the student's IEP team approved vision therapy as part of a student's IEP, after a stated number of VT sessions our district requires an updated assessment by the vision therapist to determine if the student has made adequate gains, and if more sessions are recommended. It has been our practice to accept the recommendation of the vision therapist after following the above practice. There is no written policy for this. And in [the Student's] case, we would have approved a continuance of VT, based upon the reassessment and recommendation from [the optometrists].

38. In response, the Student's mother thanked the California director for explaining the district's position on VT. The mother then asked if the Student's "IEP transfer amendment" could reflect that the Student would be given another 12 vision therapy sessions based on what the director had stated. The mother also stated that despite the Student meeting grade level in writing, the Student's California IEP team had agreed to add a writing goal to the Student's May 2016 IEP, because it would be in the Student's best interest to transfer to the District with a writing goal. The mother stated that when the California director found the Student's June 2016 IEP amendment, it would reflect this.

39. Also on September 12, 2016, the Student's mother emailed the District school psychologist, stating that she had requested the documents from the California district, and would provide them to the psychologist when she received them. In response, the psychologist stated that she had also contacted the California district, and the California district only had the June 2016 IEP amendment regarding the writing goal. The psychologist thanked the mother for helping to obtain the additional documentation.

40. On September 13, 2016, the California director emailed the Student's mother a copy of the June 2016 IEP amendment. The mother then forwarded a copy of the amendment to the District school psychologist, along with the prior emails she had exchanged with the California director.

41. On September 21, 2016, the District school psychologist emailed the Student's mother, asking that the Parents sign a release so the District could obtain a copy of the Student's June 3, 2016 vision therapy progress evaluation. In response, the mother stated that she had been in contact with the Student's California optometrist, and that she had also asked the Student's vision therapist to write up her findings, so it was taking a "little longer" than expected.

42. On September 23, 2016, the Student's mother forwarded the District school psychologist a copy of a neuro-optometric evaluation and related documentation from 2015. The mother also provided medical research regarding the benefits of vision therapy services for students who have convergence issues.
43. On October 4, 2016, the Student's mother provided the District school psychologist with a copy of the Student's vision therapy progress evaluation from June 3, 2016. Also that day, the school psychologist emailed the Student's mother, stating that she had received all the information the Parents had provided, and had forwarded the information to the District office for review.
44. On November 1, 2016, the District school psychologist emailed the Student's mother, proposing to hold an IEP meeting on November 18, 2016 to discuss "next steps".
45. On November 18, 2016, the Student's IEP team, including the Parents, met to discuss the documentation provided by the Student's mother and the California school district. Based on the District's prior written notice, at the meeting, the IEP team reviewed the Student's progress, and her general education teacher and special education teacher shared that the Student was making positive growth in all academic areas, as well as socially. The Parents expressed concern about the Student's ability to recall math facts, and the Student's stamina, as the Student came home "very tired" after school. The IEP team also discussed that the California school district had not documented in the Student's May 2016 IEP or the June 2016 IEP amendment the Student's need for continued vision therapy services. The Parents then asked if they went back to the California district "and had them fix the error in the IEP to include the vision services", would the District provide the services under the comparable services obligation. The District director of special education stated that she did not believe that families could go back to a previous school district to make amendments to IEPs when a student had left the state, but that she was unfamiliar with California law. The District director also stated that the Parents were welcome to ask the California district for any follow up documentation that the District had not yet received. Additionally, the District's vision teacher attended the meeting to answer any questions the Parents had and provided information about getting the Student access to the talking book library.
46. The District was on break December 21, 2016 through January 2, 2017.
47. On January 3, 2017, the California director emailed the Student's mother, stating that he was including information from a prior December 2016 email he had sent to the Parents. The included information stated:

It was documented in the transferring IEP. The notes page from the annual IEP held on May 31, 2016 clearly indicate she was receiving vision therapy, and that, if recommended when the initial sessions were complete, the district would continue to offer these. And, as you know that was the recommendation. As for her "transferring IEP", when a student comes to a new district, the receiving school is to receive the most recent annual IEP, and match like for like. With that

said, I am confused on what else they would have needed. This what we have as the “transferring IEP.”

The California director also stated:

Attached is the meeting minutes page from the most recent annual IEP. These notes indicate she was receiving VT, and that the additional sessions would be determined based upon a meeting being held to review the updated VT provide progress report. According to these minutes, the report had not yet been completed. I believe you have the completed report. And, if I recall, it came after the last day of school so an IEP meeting was never held. However, the notes indicate approval for continual sessions would be decided in a meeting to discuss the report.

48. On January 7, 2017, the Student’s mother emailed the District school psychologist and included a copy of the California director’s January 3, 2017 email. The mother had also spoken with the California director. The mother stated that the California director’s email showed he had done all he could or should have to do “to support the current annual IEP his district provided including written recommendations for like to like services, as it relates to vision therapy, be continued as an active part of [the Student’s] current annual IEP.” The mother also stated that the director’s email explained that, “the June vision therapy sessions and completed report from the vision doctor came in after the end of the school year, so no IEP [meeting] after that report was scheduled and that’s why he sent the notes he did, which we have provided to you.” Additionally, the mother stated that the California director “would not or could not make any additions to the [Student’s] annual IEP because her vision therapy is already clearly part of the current school year IEP. He is also adamant that all the other notes and documentation he’s provided is more than sufficient for any district to determine and provide like for like services.” The mother stated that the Parents were frustrated that so much time had been wasted going back and forth regarding the vision therapy services. The mother asked if the District director of special education would call the California director to request whatever documentation was needed to offer the Student “like for like services”. The mother also asked for a prompt response. In response, the school psychologist forwarded the mother’s email to the District director of special education.

49. On January 20, 2017, the Student’s mother emailed the District school psychologist, asking if there was an update on the Student’s vision therapy services. In response, the psychologist stated that she had not heard back, but would forward the mother’s email to District administration.

50. On January 26, 2017, the Student’s mother again emailed the District school psychologist, stating that she wanted to speak with the District director of special education. In response, the school psychologist provided the director’s contact information.

51. Also on January 26, 2017, the District director of special education emailed the Student’s mother, stating that the school psychologist had forwarded the mother’s email and notes from the California school district. The director stated that while she

understood the California district was saying they would have recommended the private vision services had the IEP team met to amend the IEP, the IEP team had not done so, and the Student's current IEP did not state that the California district would pay for additional vision therapy services. The director stated that the District was providing comparable services to the transfer IEP, and that she had attached a prior written notice, which more fully explained what occurred at earlier IEP meetings and the decisions reached. The director asked that the mother let her know if she had additional questions. The attached prior written notice stated that the District was refusing to change the Student's IEP to include private, outside vision therapy services because the Student's current IEP did not include the service, and the Student was making progress with current services and supports. In response, the Student's mother stated that the Parents had clearly shown more than ample documentation to warrant "like for like" services for the Student. The mother then requested a meeting with the District executive director of student services.

52. On March 7, 2017, the Student's mother emailed the District director of special education, the executive director of student services, and other staff members. The mother expressed concerns that the District was not following special education transfer procedures, despite the Parents providing documentation that the Student should receive vision therapy services. The mother then requested that the District pay for a reevaluation of the Student's vision therapy needs using an optometrist with credentials like the Student's California doctor, and provide comparable vision therapy services. In response, the District executive director stated that it appeared the District had already addressed the issue of vision therapy services in a prior written notice, and that she was not in a position to second guess the IEP team's decisions. However, the Parents could exercise their rights as noted in the procedural safeguards, and should let the director of special education know if they needed another copy of the safeguards. The executive director also stated that she was not aware if the Parents had previously requested a reevaluation, and that the director of special education would follow up regarding the request.

53. On March 13, 2017, the Parent emailed the District executive director of student services and copied the director of special education. The mother stated that she was still waiting for the director of special education to contact her about next steps for a "fair and impartial evaluation" conducted by an optometrist, experienced in "neuro ophthalmology". The mother stated that an evaluation, other than one comparable to what the Student had in the past, would not be in the Student's best interest, and was of no value to the District.

54. On March 14, 2017, the District director of special education emailed the Student's mother to clarify if the Parents were requesting a reevaluation. In response, the mother confirmed she was requesting a reevaluation. The director then stated that the school psychologist would provide the Parents with a consent form for the reevaluation.

55. On March 20, 2017, the Student's mother emailed the District executive director of student services, the director of special education, and the school psychologist. The

mother stated that she had received the reevaluation notification, and was disappointed that the District continued to conduct themselves in a manner that was delaying resolution and working collaboratively with the Parents. The mother stated that the Student was not visually impaired so it was a waste of time and resources to have a District vision specialist, who was not credentialed, evaluate her needs. The mother stated that the Parents were specifically requesting a reevaluation from a specialist who had the ability to determine the Student's needs, as was done for her past IEPs. The mother then provided information regarding local optometrists who could evaluate the Student. In response, the school psychologist stated that the executive director and the director of special education were out of the office that week, and that she would forward the mother's email on March 27, 2017 to ensure they received it.

56. On March 29, 2017, the Student's mother emailed the District executive director of student services, stating that the Parents' request for a reevaluation was "very specific and based on past documentation in her March 2016, May 2016, and June 2016 IEP." The mother stated that the District's proposed assessments for the reevaluation would not address the Student's needs because she did not have a "vision problem" the District's vision specialist could evaluate. The mother said that the District's vision specialist was not trained, or qualified to accurately and effectively determine the Student's needs, and how they affect her educational performance. The mother expressed her concern that the District's proposed reevaluation was not in compliance with special education regulations, and requested that the District pay for a reevaluation conducted by a credentialed optometrist with a "neuro-ophthalmology developmental" specialty.

57. On April 5, 2017, the Parents filed this citizen complaint.

## **CONCLUSIONS**

The Parents alleged that the District failed to follow special education transfer procedures by failing to provide the Student with vision therapy services. When a student eligible for special education transfers from an out-of-state district and has an IEP in effect, the new 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 out-of-state district, until the new district: 1) conducts an evaluation to determine if the student is eligible for special education services in this state, if the new district believes an evaluation is necessary; and, 2) develops, adopts, and implements a new IEP. 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.

Here, the Student transferred into the District with an amended May 2016 IEP from California in place. The amended May 2016 IEP provided for 180 minutes per week of academic instruction in a special education setting. The meeting notes attached to the May 2016 IEP stated that the vision therapy sessions identified in the March 23, 2016 amendment to the Student's June 2015 IEP, had not yet been completed, and also that

a final report had not yet been issued. Once the report was completed, the California IEP team intended to review the report, and determine if the Student continued to need vision therapy. By the time the Student transferred into the District in the summer of 2016, she had already completed her 12 sessions of vision therapy services, and the California district did not amend the Student's IEP to reflect that any such additional services would be provided, or document in another manner, that additional vision therapy services in the form of neuro-optometry would be provided. Due to the absence of an IEP amendment or other documentation, the District was not required to provide comparable vision therapy services. Given the on-going ambiguity associated with the provision of vision therapy services in California, the District correctly suggested a reevaluation of the Student in March of 2017, and the Parents countered with a request for an independent educational evaluation (IEE) shortly before she filed this complaint. It is also noted that the District should not have accepted the Student's amended May 2016 IEP from California as written because the IEP was not compliant with Washington state requirements, in that it failed to specify the amount of specially designed instruction the Student would receive in each area of service. The District should have either reevaluated the Student or developed a new IEP for the Student, which clearly specified the services she would receive in the District.

### **CORRECTIVE ACTION**

By or before **June 16, 2017**, the District will provide documentation to OSPI that it has completed the following corrective action.

**STUDENT SPECIFIC:** If the District has not already done so, the District will develop an IEP for the Student, which clearly specifies the amount of specially designed instruction the Student will receive in reading, writing, and math. By **June 16, 2017**, the District will provide: 1) a copy of any meeting invitations; 2) a copy of the new IEP; 3) a copy of a prior written notice; and, 4) any other related documentation.

**DISTRICT SPECIFIC:** None

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 May, 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.)