

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-71

PROCEDURAL HISTORY

On October 16, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from an attorney (Complainant) on behalf of the parents (Parents) of a student (Student) attending the Seattle 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 October 17, 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 November 8, 2017, OSPI received the District's response to the complaint and forwarded it to the Complainant on November 9, 2017. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On November 22, 2017, OSPI received the Parents' reply and forwarded that reply to the District on the same day.

On December 4, 2017, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. OSPI forwarded the information to the Complainant on December 5, 2017.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism. The Student's individualized education program (IEP) in place at the beginning of the school year provided for the Student to receive all of his special education services in a general education setting, with the exception of his communication services. In November 2016, the Student's IEP team met to review the Student's educational needs and placement, and agreed to change the Student's placement to a part-time special education program located at another District elementary school. In January 2017, the IEP team met to develop the Student's annual IEP. The District recommended that the Student continue to participate in the part-time special education program, but the Parents disagreed, asking that the Student return to his former elementary school. The Parents then filed a due process hearing request and in response, the District, relying on the legal requirement of "stay put", continued to implement the November 2016 amendment to the Student's January 2016 IEP. In April 2017, the District provided the Parents with progress reporting regarding the Student's progress toward the IEP goals stated in the November 2016 amendment. In May 2017, the parties reached a settlement agreement and the Parents

withdrew their due process hearing request. As part of the settlement agreement, the District agreed to pay for an independent educational evaluation (IEE) and then hold an IEP meeting to develop a new IEP for the Student once the IEE was completed. In September 2017, the Student's IEP team reviewed the results of the Student's IEE and developed a new IEP for the Student. Prior to the IEP meeting, the District provided the Parents with a draft IEP, which stated that the District had been implementing the Student's November 2016 IEP amendment. The Parents then expressed concern that they had not been informed of this and subsequently filed this citizen complaint.

The Complainant alleged that the District failed to follow procedures for developing the Student's January 2017 IEP and failed to implement the January 2017 IEP. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 17, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUES

1. Did the District follow procedures for developing the Student's January 2017 individualized education program (IEP)?
2. Did the District implement the Student's January 2017 IEP?

LEGAL STANDARDS

Enforcement of Due Process Resolution Agreements: Parents and districts may resolve issues that are raised when a parent files a due process hearing request through a resolution session. The district is to hold a resolution session within fifteen (15) calendar days of receiving notice of the parent's request for a due process hearing, unless the parties agree to waive the session. If a resolution to the dispute is reached at the resolution session, the parties must execute a legally binding agreement that is: signed by both the parent and a representative of the school district who has the authority to bind the district and enforceable in any state court of competent jurisdiction or in a district court of the United States. If the parties execute an agreement pursuant to this section, a party may void the agreement within three business days of the agreement's execution. 34 CFR §300.510(d); WAC 392-172A-05090. Parents may file a citizen complaint if they believe a district has failed to implement a due process resolution agreement. 34 CFR §300.537; WAC 392-172A-05025(2)(a)(i)(B).

Enforcement of Mediation Agreements: If the parties resolve a dispute through the mediation process, they must execute a legally binding agreement setting forth their resolution and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and is signed

by both the parent and a representative of the district who has the authority to bind the district to the agreement. A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States. 34 CFR §300.506; WAC 392-172A-05070. Parents may file a citizen complaint if they believe a district has failed to implement a mediation agreement. 34 CFR §300.537; WAC 392-172A-05025(2)(a)(i)(B).

Enforcement of Private Settlement Agreements: A release has no effect on the obligation of a State educational agency (SEA) to investigate a complaint regarding the same matter. An SEA is charged both with the responsibility for assuring that the requirements of IDEA Part B are carried out and with general supervision for "all educational programs for handicapped children within the State...Thus, the SEA, in its general supervisory capacity, is obligated to ensure that the State has a policy assuring handicapped children the right to FAPE. Since the basis for [] [the] claim is that the LEA has denied him FAPE, the SEA is obligated to investigate [] [the] complaint. In answering the question raised in your letter, it is unnecessary to decide whether the release is invalid for all purposes. The validity of this release may depend on State contract law. The relevant point here is that an individual is not authorized to release an SEA from the SEA's obligations under Federal regulations." *Letter to Contrucci*, 211 IDELR 380 (OSERS 1986).

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

IEP Development and Review: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student

provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324; WAC 392-172A-03110.

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: either notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. Additionally, the notification must indicate the purpose, time, and location of the meeting and who will be in attendance. WAC 392-172A-03100; 34 CFR §300.322; 20 U.S.C. 1414. Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a free and appropriate public education (FAPE). The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP...the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

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

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323; WAC 392-172A-03105. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and

state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Student's Status During A Due Process Hearing – "Stay Put": Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing or judicial proceeding regarding the due process hearing proceedings, the student involved in the hearing request must remain in his or her current educational placement, unless the school district and the parents of the child agree otherwise. If the administrative law judge agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the school district and the parents for purposes of subsection (1) of this section. 34 CFR §300.518; WAC 392-172A-05125. "We have interpreted 'current educational placement' to mean 'the placement set forth in the child's last implemented IEP.'" *N.D. v. State of Hawaii, Dep't of Educ.*, 54 IDELR 111 (9th Cir. 2010) (quoting *L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 902 (9th Cir. 2009), *cert. denied* 130 S. Ct. 90 (2009)).

FINDINGS OF FACT

2016-2017 School Year

1. The Student's parents (Parents) are separated and both Parents are involved in making education decisions regarding the Student.
2. The District's 2016-2017 school year began on September 7, 2016.
3. At the beginning of the 2016-2017 school year, the Student attended a District elementary school (elementary school 1) and was eligible to receive special education and related services under the category of autism.
4. The Student's individualized education program (IEP) in place at the beginning of the 2016-2017 school year was developed on January 19, 2016. The January 2016 IEP included annual goals in the areas of mathematics, reading, writing, social/behavior, and communication. The IEP provided for the following specially designed instruction:
 - Mathematics – 60 minutes 5 times weekly (general education setting)
 - Reading – 30 minutes 5 times weekly (general education setting)
 - Writing – 45 minutes 5 times weekly (general education setting)
 - Social/behavior – 30 minutes 5 times weekly (general education setting)
 - Communication – 30 minutes 6 times monthly (special education setting)

The January 2016 IEP stated that the Student spent 97.46 percent of his school week in a general education setting.

Timeline for this Complaint begins on October 17, 2016

5. On November 10, 2016, the Student's IEP team, including the Parents, met to review the Student's "academic and social/emotional needs and supports across [the Student's] school day" and to determine placement. The IEP team agreed to change the Student's placement to a "focused (SM2) classroom for academic and social/behavior instruction", which was located at another District elementary school (elementary school 2), and amended the Student's January 2016 IEP to reflect the change in placement. The amended IEP also included revised mathematics, reading, and writing goals, as well as the other remaining goals from the Student's January 2016 IEP. The mathematics goals in the amended IEP stated:
- When given a single step story problem requiring addition, subtraction, multiplication, or division the Student will draw or write the mathematical equation that correlates to the story improving story problem comprehension and solving skills from solves story problems 20% of opportunities presented to solves story problems 80% of opportunities presented.
 - When given words or phrases common to addition and subtraction story problems the Student will recognize and determine the correct math symbol (plus/minus) to use in writing the problem improving functional understanding of math vocabulary from understands math vocabulary with prompt 20% to understands math vocabulary without prompt 100%.

The Student's reading goals stated:

- When given a request to read a particular book at or close to his decoding ability level for a classroom assignment the Student will follow the instruction and read the assigned book independently without prompting from an adult improving independent reading skills from reads as instructed 0% without prompting to reads as instructed 100%.
- When given a reading passage at the mid-2nd grade level the Student will read the passage and answer comprehension questions improving reading comprehension from correctly answers comprehension question 20% to correctly answers comprehension questions 80%.

The Student's writing goals stated:

- When given a choice of topics for a writing assignment the Student will choose a topic and complete the assignment improving written expression language from chooses topic and completes writing without adult assistance 0% to chooses topic and completes writing without adult assistant 75%.
- When given a writing assignment the Student will compose complete sentences with capitals and punctuation improving correct use of capitalization and ending punctuation from 50% in a group of four or more sentences to 75% in a group of four or more sentences.

The Student's social/behavior goals stated:

- When given a frustrating situation in class the Student will use an "inside voice" and calm body to request a break improving socially acceptable coping strategies from uses "inside voice" and calm body to request a break when frustrated 50% to uses "inside voice" and calm body to request a break when frustrated 90%.
- When given a frustration level that he cannot regulate in class and his desire to leave the room the Student will ask permission or notify teacher that he is leaving the room with the agreed-upon system improving safety communication skills and socially expected behavior from three times a week he leaves room without consent to zero times a week he leaves room without consent.

- When given request to begin assignment the Student will be a self-starter and begin the assignment within 10 seconds without adult prompt improving independence and work production from 10% of the time he is a self-starter to 90% of the time he is a self-starter.

The Student's communication goals stated:

- When given "who", "what", "where", "what happened" or "how" questions regarding text read to him, pictures or events in and out of the communication session, the Student will accurately answer these wh-question types improving expressive language from 55% accuracy for all to 75% accuracy.
- When given structured and unstructured activities in the therapy environment the Student will accurately use irregular plurals, regular and irregular past tense verbs in his spontaneous speech, improving expressive language (syntax) from rubric score of 7 to rubric score of 11.
- When given instruction and opportunities to practice tone of voice in a variety of role play and real situations within the therapy room, the Student will use adult feedback (pointing to loudness meter or signal determined by speech language pathologist (SLP) and the Student) to alter tone of voice to match the social situation improving social communication from tone of voice matching social situation 60% to tone of voice matching social situation 80%.
- When given a story read aloud, comprehension questions, and the opportunity to re-tell the story, the Student will accurately answer comprehension questions and re-tell the story including important elements such as character, setting, and action/events improving oral expression skills from Rubric score of 4 to Rubric score of 10.

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

- Mathematics – 45 minutes 5 times weekly
- Reading – 50 minutes 5 times weekly
- Writing – 30 minutes 5 times weekly
- Social/behavior – 30 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly

The amended IEP stated that the Student would receive a total of 820 minutes of special education services per week in a special education setting and spend 53.8 percent of his school week in a general education setting.

6. Based on the documentation in this complaint, the Student began attending the SM2 program at elementary school 2 on November 28, 2016.
7. The District was on break December 19, 2016 through January 2, 2017.
8. On January 11, 2017, the District special education program specialist (program specialist) emailed the Student's mother. The program specialist stated that she had just spoken with the Student's father to offer assistance prior to the IEP meeting that was scheduled for January 18, 2017, and the father had asked that the program specialist make sure that elementary school 2 had all of the proper transfer files and other documentation from elementary school 1. The program specialist stated that she would make sure that elementary school 2 received the records, and asked that the mother let her know if anything

additional came up prior to the meeting. In response, the mother stated that she wanted a copy of the Student's educational records prior to the IEP meeting. The mother said that she had contacted elementary school 1 about the Student's education records, and had been told that as of January 3, 2017, elementary school 1 no longer had the records. The mother asked if she could get a copy of the records by the end of the week.

9. On Thursday, January 12, 2017, the program specialist responded that she would see if she could track down the Student's educational records, and that she assumed they had been sent to elementary school 2 through the District's mail system. The program specialist stated that she would bring the records to the IEP meeting on Tuesday¹, as there was no school on Monday due to a holiday, and the specialist would not be able to get the records to the mother on Friday. The program specialist also stated that school staff had relayed that the Parents may be planning to bring their attorney to the IEP meeting. The program specialist stated that this was "fine", but that the District needed to know, as the District's attorney would be required to attend as well.
10. On January 13, 2017, the program specialist exchanged emails with a staff member at elementary school 2 regarding the Student's educational records. The staff member stated that the school had received the Student's cumulative file, but not the Student's special education file, as the special education file never "comes" to the school. The program specialist responded that all of the Student's "IEP files" were online in the District's computer system, so "we are good with that".
11. Based on the documentation in this complaint, also on January 13, 2017, the Student's special education teacher sent a draft IEP home with the Student for the Parents to review.
12. The District was on break January 16, 2017.
13. On January 17, 2017, the Parents' attorney emailed the District's attorney, stating that she had been asked to attend the Student's IEP meeting on January 18, 2017. The Parents' attorney asked if the District's attorney would be able to attend the meeting or if the District would prefer to reschedule. The Parents' attorney then sent a second email, stating that she had been told there was confusing information about the date of the meeting, and asked that the District clarify the date of the meeting. The attorneys then exchanged additional emails and agreed to reschedule the meeting.
14. Also on January 17, 2017, the Student's grandfather, who also acted as the Parents' attorney, emailed the program specialist and the Student's special education teacher, confirming that the Parents had hired an attorney and had agreed to reschedule the IEP meeting. The grandfather expressed concerns that the January 18 meeting invitation did not list the correct meeting participants and also expressed other concerns about the draft IEP that had been

¹ Based on the documentation in this complaint, there was confusion regarding what day the meeting would occur. The meeting invitation sent to the Parents stated that the meeting was scheduled for Wednesday, January 18, 2017.

provided to the Parents. The grandfather asked that he be included on all future email communications, as the Student's father did not have access to email. In response, the special education teacher provided clarifying information about the IEP draft and an updated meeting invitation. The program specialist also responded that staff would coordinate with the Parents to reschedule the IEP meeting.

15. From January 17-22, 2017, the parties exchanged multiple emails regarding rescheduling the IEP meeting and agreed to hold the meeting on the afternoon of January 23, 2017.
 16. On the morning of January 23, 2017, the Parents' attorney emailed the District's attorney and attached a letter, which the Parents wanted the IEP team to consider at the meeting later that day. The letter noted the Parents' concerns about the decision to move the Student to the SM2 program at elementary school 2 and their concerns that the Student was not making academic progress or building peer relationships at elementary school 2. The letter stated that the Parents were proposing to restore the Student's prior placement at elementary school 1 and were requesting that the Student be provided the same level of paraeducator support that he had been provided in past school years. The District's attorney then forwarded a copy of the letter to the program specialist, a District special education program supervisor (program supervisor), and other members of the Student's IEP team.
 17. On the afternoon of January 23, 2017, the Student's IEP team, including the Parents and their attorney, met to develop the Student's annual IEP. The Parents and the District were unable to agree on the Student's placement. Based on the meeting notes, the District agreed to provide a copy of the proposed January 2017 IEP to the Parents and the Complainant and allow them to "process" the IEP.
 18. The proposed January 2017 IEP included goals in the areas of communication, mathematics, reading, writing, and social/behavior. The Student's communication goals stated:
 - When given a 5-6 paragraph story the Student will retell the story using key story elements (character, setting – place and time, events/actions, and connecting/sequence words) improving narrative language skills from retelling stories using 2/5 story components to retelling stories using 4/5 story components for each of 5 different stories over each of 2 data days.
 - When given role-playing activities or a structured conversation with a peer or an adult, the Student will have a complete conversation with a peer including a greeting, an initiating comment/question, two questions or comments about what the peer or adult has said, a short explanation for leaving the conversation, and a farewell improving social communication skills from having a conversation with all the above components in 0% of opportunities to having a conversation with all of the above components in 80% of opportunities.
- The Student's mathematics goals:
- When given 5 digit and 4 digit numbers with regrouping the Student will subtract the numbers and improving calculation from 14 out of 35 problems to 28 out of 35 problems.

- When given two digit by two digit multiplication problems the Student will use a variety of methods (partial product, area model, or standard logarithm) to solve the problems improving calculation from 13 out of 32 problems 26 out of 32 problems.

The Student's reading goals stated:

- When given an end of year third grade text the Student will answer who, what, where, why questions improving comprehension from 0 out of 4 questions to 4 out of 4 questions.
- When given an end of year third grade text the Student will retell a story using a topic sentence, two details, and a conclusion improving retell from 1 out of 4 retells to 4 out of 4 retell.

The Student's writing goals stated:

- When given a writing prompt the Student will write up to eight sentences correctly using capitals, word choice, and dialogue improving conventions from 4 sentences using conventions to 8 sentences using conventions.
- When given a writing prompt the Student will write 10 sentences including a topic sentence, details, and a concluding sentence improving writing from 2 sentence to 10 sentences.

The Student's social/behavior goals stated:

- When giving a situation (doing class work, working on a worksheet, not following a rule) or a mistake (said the wrong thing, not following a direction, incorrect answer, not reading a just-right book) is made the Student will express his feelings verbally without self-harm or stomping improving self-regulation from 0 out of 10 observations.
- When given a frustrating situation (classmates not following rules, noises in the classroom, or during music, art, etc., need more processing time) the Student will be to express his anger non-aggressively (taking deep breaths, doing an Oreo talk, ignoring, quietly reminding classmates to be quiet) improving self-regulation from 0 out of 10 observations to 10 out of 10 observations.

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

- Mathematics – 30 minutes 5 times weekly
- Reading – 45 minutes 5 times weekly
- Writing – 60 minutes 5 times weekly
- Social/behavior – 25 minutes 5 times weekly
- Communication – 30 minutes 6 times monthly

The IEP stated that the Student would receive 845 minutes per week of special education services in a special education setting and spend 51.71 percent of his school week in a general education setting. The IEP also included an accommodation for shared instructional assistant support on a daily basis in all school settings.

19. On January 25, 2017, the Student's mother emailed the Student's special education teacher. The mother stated that she had asked the program specialist to provide a copy of the educational records before the January 23 IEP meeting, but the records had not been provided. Additionally, the mother stated that at the January 23 IEP meeting, the program specialist had "surprised" the Parents with a "number of discrepancies" between the Parents'

records and the District's records. The mother stated that she would appreciate the special education teacher's help in obtaining a complete set of records as soon as possible, which included all draft and final IEPs, prior written notices, daily data sheets, progress reports, incident reports, report cards, evaluations, test scores, and staff emails related to the Student. The mother said that it was a top priority to get all of the Student's IEPs from the current school year and last school year, because the Parents had been told at the January 23 meeting that the Parents had "never received what the District ha[d] been implementing". The special education teacher then forwarded the mother's email to the District's attorney, who responded that the District office would process the records request.

20. Also on January 25, 2017, the District program specialist emailed the District program supervisor, asking that he review the prior written notice regarding the January 23, 2017 IEP meeting. The program supervisor agreed to do so.
21. The District's documentation in this complaint included a prior written notice, dated January 23, 2017, proposing to change the Student's IEP. The notice stated that the Student's IEP team met to develop his annual IEP and that the IEP team agreed on the present levels of performance, goals, accommodations, and service minutes, but not on the location of the services. The notice also stated that the IEP team had considered and rejected the following options:
 - The Student returning to elementary school 1 with services in the general education setting with an instructional assistant.
 - The Student remaining at elementary school 2 with special education services in a special education setting 51% of the time, with the remainder of the day in a general education setting.
 - Reassessment of the Student in the area of math given data that the Student was able to do grade level math.

Additionally, the prior written notice stated that the IEP team was "still discussing the considered options and [would] meet again at a future date." The notice stated that the IEP team "worked through the IEP and in the end was not able to come to a consensus regarding location of services", and that the special education teacher would "send home a copy of the IEP that was created during the meeting and a copy of [the Student's] proposed daily school schedule to reflect the IEP draft created in the meeting." The notice said that the action would be implemented on February 6, 2017.

22. The District's fall semester ended on January 31, 2017. The District was on break on February 1, 2017.
23. On February 7, 2017, the Parents filed due process hearing request No. 2017-SE-0016, alleging that the District deprived the Student of a free and appropriate public education (FAPE) when it:
 - Reduced the amount of the Student's instructional assistant support in June 2016.
 - Moved the Student to a more restrictive placement during the 2016-2017 school year.
 - Failed to implement the November 2016 amendment to the Student's January 2016 IEP.

- Failed to allow the Parents the opportunity to meaningfully participate, including a failure to provide the Parents with the Student's educational records in response to requests on January 11 and January 25, failure to provide prior written notice after the January 23 IEP meeting, and failure to provide a copy of the finalized January 2017 IEP.
24. Based on the District's documentation, a copy of the Student's January 2017 IEP was sent home with the Student on February 10, 2017. According to the District's response to this complaint, a copy of the District's January 23, 2017 prior written notice was also sent home with the Student that same day.
 25. The District was on break February 20-24, 2017.
 26. On March 1, 2017, the Parents' attorney emailed the District's attorney and attached a discovery request. The request asked for all documentation relating to the issues raised in the Parents' due process request.
 27. On April 4, 2017, the Student's special education teacher emailed the Student's mother regarding the Student's progress reporting for the District's second trimester. The special education teacher stated that she was also sending home a copy of the Student's progress reporting from the "November IEP". Attached to the email was an attachment entitled "[Student] progress report November", and the attachment included a copy of progress reporting, which addressed all of the Student's IEP goals from the November 2016 amendment to his January 2016 IEP.
 28. Later on April 4, 2017, the Student's speech language pathologist (SLP) emailed the Student's mother, stating that she wanted to let the Parents know about a mistake regarding the Student's communication services. The SLP stated that although the Student's January 2017 IEP was still under discussion, it had been "locked" in the District's computer system, and seeing that the IEP had been "locked", the SLP had begun working with the Student on some of the January 2017 IEP communication goals and objectives. The SLP said that the Student's special education teacher had now informed her that even though the Student's January 2017 IEP was "locked" in the system, the Student's current IEP was still his amended January 2016 IEP. The SLP stated that all future speech/language therapy sessions would only be focusing on the Student's communication goals from his amended January 2016 IEP. The SLP apologized for any confusion, and stated that she had attached progress reporting regarding the Student's communication goals from his January 2017 IEP and his amended January 2016 IEP. The SLP asked that the Parents let her know if they had questions.
 29. The District was on break April 10-14, 2017.
 30. According to the Complainant's complaint, on April 20 and 21, 2017, the District provided the Parents with the Student's educational records in response to the Parents' discovery request. Also according to the Complainant's complaint, the records addressed the time period through mid-February 2017, but the records did not include a "post-meeting" copy of the Student's January 2017 IEP or a prior written notice regarding the January 23, 2017 meeting.

31. On May 31, 2017, the parties finalized a “Final Settlement and Release Agreement”. The agreement stated:

This agreement constitutes a full and final resolution of all past and present, known, and unknown claims against the District arising from or related to the Student’s education, including any claims related to requests for records, through the date of execution of this agreement.

The agreement also stated that the District would:

Reimburse the Parents in an amount not to exceed \$18,000 for services related to the Student’s education, including compensatory education, educational services, assessments, attorneys’ fees and costs, and/or any remedies the Parents sought and/or could have been ordered in OSPI cause No. 2017-SE-0016.

Further, the agreement also stated that the District would pay for an independent educational evaluation (IEE) and then hold an IEP meeting to review the results of the IEE and “revise the Student’s IEP appropriately”. Additionally, the agreement stated:

The Family accepts the terms of this agreement as full consideration for the release of any and all claims against the District through the date of execution of this Agreement. The Family agrees to release the District from all liability or potential liability as described...above, including the right to file a request for a due process hearing with OAH or a complaint with OSPI, or any other court or state or federal agency, arising from or related to the Student’s educational program through the date of execution of this Agreement.

32. On June 2, 2017, the Parents notified the Office of Administrative Hearings (OAH) that the parties had entered into a settlement agreement and requested that due process hearing No. 2017-SE-0016 be dismissed.² On June 6, 2017, due process hearing No. 2017-SE-0016 was dismissed.

33. The District’s 2016-2017 school year ended on June 23, 2017.

34. The District’s documentation in this complaint included progress reporting from June 2017, which addressed the goals from the November 2016 amendment to the Student’s January 2016 IEP.

2017-2018 School Year

35. On September 5, 2017, the Student’s mother and the Parents’ attorney met with District staff to review the results of the Student’s IEE report.

36. The District’s 2017-2018 school year began on September 6, 2017. The Student began attending school on September 8, 2017.

37. On September 11, 2017, the District program specialist sent the Student’s mother a draft copy of the Student’s new September 2017 IEP to review for the upcoming September 12,

² This is information taken from a June 6, 2017 Order of Dismissal, which OAH sent to OSPI on June 19, 2017.

2017 IEP meeting. The present levels of educational performance for the area of communication stated:

Due to the lack of agreement on the IEP dated January 2017, [] SLP, was directed by the [] District to follow communication goals set forth in the IEP amendment dated 11/10/16. Thus, progress and present levels of performance are reported on the goals from this amendment. Present data is based on the last data points listed in progress notes from June 2017.

Additionally, the IEP included other information from the Student's June 2017 progress reporting, which addressed his goals from the November 2016 amendment to the Student's January 2016 IEP.

38. On the morning of September 12, 2017, the Parents' attorney emailed the District's attorney and attached a letter, which included the Parents' concerns and an "IEP proposal" for the IEP team to review at the IEP meeting that afternoon. The letter stated:

On February 7, 2017, the Parents initiated a due process complaint, which was settled on May 31. The complaint described, among other issues, that the District failed to provide a final version on the IEP discussed at the last IEP meeting on January 23, 2017, and never issued a prior written notice responding to the Parent proposals presented at the meeting. The District *repeatedly denied* these allegations, which were part of the parents' larger claim that they were excluded from meaningful participation in the IEP process.

Yet after insisting that the January 2017 IEP was completed and that the Parents were given a copy along with formal notice of the decisions made, suddenly the District is telling the Parents *it has been implementing the November 2016 IEP [amendment] – not the January 2017 IEP – all along...* This information contradicting the District's official position comes as a surprise, and has major implications that need to be addressed...It should be noted that the due process complaint did not challenge the appropriateness of the IEP goals presented in January 2017.

39. On the afternoon of September 12, 2017, the Student's IEP team, including the Parents, met to develop a new IEP for the Student. The September 2017 IEP included annual goals in the areas of mathematics, reading, writing, social/behavior, and communication. The IEP provided for the following specially designed instruction:

- Mathematics – 30 minutes 5 times weekly (special education setting)
- Reading – 45 minutes 5 times weekly (special education setting)
- Writing – 30 minutes 5 times weekly (general education setting)
- Social/behavior – 25 minutes 3 times weekly (special education setting)
- Social/behavior – 25 minutes 2 times weekly (general education setting)
- Communication – 30 minutes 6 times monthly (special education setting)

The IEP stated that the Student would receive 495 minutes per week of special education services in a special education setting and spend 72.11 percent of his school week in a general education setting. The IEP also provided for 1,280 minutes per week of additional classroom instructional assistant support in a general education setting.

40. On October 16, 2017, the Complainant filed this complaint.

CONCLUSIONS

Issue 1: Development of the January 2017 IEP – The Complainant alleged that the District failed to update the Student’s IEP at least annually. In the District’s response to this complaint, the District asserts that the parties’ May 31, 2017 settlement agreement precludes the Parents from pursuing resolution of issues relating to the Student’s January 2017 IEP (prior to June 1, 2017) through the citizen complaint process. OSPI has authority under the IDEA and state regulations to enforce mediation agreements facilitated by OSPI’s third party mediation contractor and resolution agreements reached under WAC 392-172A-05090. OSPI does not have authority to enforce settlement agreements reached by parties outside the IDEA’s mediation and resolution processes. Additionally, an individual is not authorized to release OSPI from OSPI’s obligation under federal and state regulations to investigate a citizen complaint. Therefore, OSPI is not limited in its authority to investigate the issues raised in the Complainant’s complaint.

A student’s IEP must be reviewed and revised periodically, but not less than annually. When a district is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, such as parental participation and timely annual review of the IEP, courts have repeatedly stressed the critical importance of parental participation in the IEP process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. Here, the Student’s January 2016 IEP was developed on January 19, 2016. Therefore, the District was required to hold an IEP meeting by January 18, 2017 to develop a new IEP for the Student. The documentation in this complaint shows that the District scheduled an IEP meeting for January 18, 2017, and that the Parents agreed to attend the meeting. However, the Parents then determined that they wanted their attorney (Complainant) to attend the IEP meeting and agreed to reschedule the meeting. An IEP meeting was later scheduled for January 23, 2017, and the Parents and the Complainant attended. Although the District held the IEP meeting on January 23, 2017, after the annual review deadline on January 18, 2017, the District has substantiated that the failure to meet the deadline was a result of allowing the Parents an opportunity to participate in the IEP meeting with their attorney present, and there is no documentation to show that the delay deprived the Student of educational benefit.

At the January 23, 2017 IEP meeting, the IEP team was unable to reach a decision regarding the Student’s placement and the IEP team agreed to allow the Parents time to review the proposed IEP and to continue discussions. While the District failed to finalize an IEP at the January 23, 2017 IEP meeting, again, the documentation shows the District was attempting to work toward a consensus with the Parents, and allow the Parents to participate in the IEP development process. However, it is noted that the District should have promptly provided the Parents with a copy of the proposed January 2017 IEP and a prior written notice, and immediately attempted to schedule another IEP meeting to finalize an IEP. The two week delay in providing the Parents with documentation inevitably led to confusion amongst not only the Parents, but also District staff members. Additionally, the January 23, 2017 prior written notice, which is misdated, is not clearly written and makes it difficult to understand what actions, if any, the District was proposing to take. The District will provide training for its special education administrators regarding prior written notice.

On February 7, 2017, the Parents filed a due process hearing request regarding the proposed January 2017 IEP. The parties continued to discuss the issues with the IEP over the next few months, until they finalized a settlement agreement on May 31, 2017. The settlement agreement provided that the IEP team would meet once the Student's IEE was completed, and the documentation in this complaint substantiates that the District held an IEP meeting in September 2017 to develop a new IEP for the Student.

Issue 2: Implementation of the January 2017 IEP – The Complainant alleged that the District failed to implement the Student's January 2017 IEP during the 2016-2017 school year because the District did not implement the goals in the January 2017 IEP, failed to provide the Parents notice that it was not implementing the January 2017 IEP, and improperly applied the "stay put" law. Except for due process hearings involving special education discipline procedures, during the pendency of any administrative hearing, the student involved in the hearing request must remain in his current educational placement (stay put), unless the school district and the parents agree otherwise. Current educational placement means the placement set forth in the student's last implemented IEP. As discussed above, the Student's IEP team met on January 23, 2017 to develop his annual IEP, but the District and the Parents were unable to reach an agreement and agreed to further discuss placement. Therefore, when the Parents filed their due process hearing request on February 7, 2017, the Student's January 2017 IEP had not yet been finalized or implemented. As such, the District continued to implement the Student's last implemented IEP, which was the November 2016 amendment to his January 2016 IEP. While the Complainant has expressed that the Parents were not aware of the District's intent to continue to implement the November 2016 IEP amendment, the documentation in this complaint shows that on April 4, 2017, the Student's mother received an email with an attached copy of the Student's trimester progress reporting, which included all of the goals from the November 2016 IEP amendment and information about the Student's progress toward those goals. Also on April 4, 2017, the Student's SLP emailed the Parent, explaining that moving forward, she would be implementing the goals from the November 2016 IEP amendment. Additionally, the Student's June 2017 progress reporting also addressed the goals for the November 2016 IEP amendment. Based on the documentation, the Parents were aware as early as April 4, 2017, that the District was continuing to implement the Student's November 2016 IEP amendment, and the Parents could have addressed the issue of "stay put" with the District and the administrative law judge assigned to due process hearing No. 2017-SE-0016 at that time. The documentation in this complaint substantiates that the District followed procedures for implementing the Student's IEP, when it continued to implement the Student's November 2016 IEP amendment relying on the requirement of "stay put".

CORRECTIVE ACTIONS

By or before **January 19, 2018, February 9, 2018, and March 23, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **March 16, 2018**, the District will ensure all District special education administrators (program supervisors, program specialists, etc.) receive training regarding the purpose and requirements for prior written notice. The trainer will not be an employee of the District. The training will include examples.

- By **January 19, 2018**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
- By **February 9, 2018**, the District will submit a draft of the outside trainer’s training materials to OSPI for review. OSPI will approve the materials or provide comments by February 19, 2018 and additional dates for review, if needed.
- By **March 23, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of December, 2017

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

THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

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