

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-81**

### **PROCEDURAL HISTORY**

On November 7, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Federal Way School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On November 8, 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 9, 2017, OSPI received three requests for new citizen complaints from the Parent that raised allegations that the District violated the IDEA in its education of the Student.

On November 13, 2017, OSPI forwarded a copy of the Parent's three new complaints to the District Superintendent and notified the Parent and the District that additional complaints had not been opened, but that the information provided would be considered part of this complaint.<sup>1</sup>

On December 1, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

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

### **OVERVIEW**

During the 2017-2018 school year, the Student attended a District high school and was eligible to receive special education services under the category of other health impairment. When school started on September 6, 2017, the Student was not assigned to a class during his fifth period. On September 8, 2017, two days later, the Student's schedule was rearranged and the Student was enrolled in a special education content mastery class, which resulted in an inconsistency between the service minutes in his individualized education program (IEP) and the actual number of minutes of specially designed instruction he received. On September 13, 2017, the District contacted the Parent regarding changing the Student's schedule, but determined not to make any further changes to the Student's class schedule based on the Parent's input. On September 15, 2017, the District contacted the Parent and asked to amend the Student's IEP in order to ensure that the IEP matched the Student's current class schedule. In response, the Parent declined to make any changes without holding a meeting. That same day, the Parent requested that the Student be removed from the content mastery class and that the IEP team

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<sup>1</sup> Information provided by the Parent on November 9, 2017, was also considered as part of SECC 17-65 and SECC 17-70.

meet. On September 25, September 28, and September 29, 2017, the Parent contacted the District and requested that the Student's absences and tardiness be excused for the 2017-2018 school year. On five occasions in September and October 2017, after the Parent requested that the IEP team meet, the District contacted the Parent to schedule a meeting to review the Student's IEP and consider the requested attendance accommodation. The Parent rejected all of the proposed meeting dates and first suggested waiting until February 2018, when the Student's annual IEP was due, and then later suggested dates in early December to meet. On October 25, 2017, the IEP team met without the Parent. The IEP team amended the Student's IEP to provide additional specially designed instruction in study/organizational skills and declined to add any accommodations for absences or tardiness. After the meeting, the District sent the Parent a prior written notice, which stated that the amended IEP would go into effect on November 6, 2017. On November 9, 2017, the Parent revoked consent for the Student to receive special education services.

The Parent alleged that the District improperly held an IEP team meeting in October 2017, and that the meeting should have been held in February of 2018 when the Student's annual IEP was due. Specifically, the Parent alleged that the IEP team meeting was held without the Parent; that the District failed to schedule the meeting at a mutually agreed upon time and place; that the District failed to inform the Parent that other individuals with knowledge or special expertise about the Student could participate in the meeting; and, that the District failed to invite the Student to the meeting. Further, the Parent alleged that the District failed to send a prior written notice after the meeting and that the prior written notice did not address documents that the Parent provided the District from several different medical professionals. The District denied all allegations.

### **ISSUES**

1. Did the District follow procedures for scheduling the October 27<sup>2</sup>, 2017 individualized education program (IEP) meeting at a mutually agreed upon time and place consistent with WAC 392-172A-03100, and including all required IEP team members under WAC 392-172A-03095?
2. Did the District provide Parent with prior written notice following the October 25, 2017 IEP meeting?

### **LEGAL STANDARDS**

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. A student's parents and school personnel will develop, review, and revise an IEP for the student. Parents must be given the opportunity to participate in IEP and other meetings. 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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<sup>2</sup> The Parent alleged that the IEP team meeting was held on October 27, 2017; however, documentation provided by the District clarified that the meeting actually occurred on October 25, 2017. October 25, 2017 will be used throughout for accuracy and consistency.

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. 34 CFR § 300.328. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. An IEP invitation need not be in writing; however, the district must keep adequate documentation to show that all the components were included in the invitation. 34 CFR §300.322; WAC 392-172A-03100.

IEP Team Meeting Time: The regulations require that districts schedule IEP meetings at a mutually agreeable time for the parent and the district. 34 CFR §300.322(a); WAC 392-172A-03100(2). In general, districts often schedule meetings before or after school to ensure that all team members can be present. The U.S. Department of Education's Office of Special Education Programs (OSEP) has stated that it is not unreasonable for a district to schedule meetings during their regular hours and times before and after school. However, OSEP has also stated that if a parent is unable to participate during those times, districts should be flexible in scheduling the meeting, or make arrangements for other ways for the parent or parents to participate. *Letter to Thomas*, 51 IDELR 224 (OSEP 2008).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

The IEP team must include the student whenever appropriate, such as when the purpose of the meeting is the consideration of postsecondary goals for the student and transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the district must take other steps to ensure that the student's preferences and interests are taken into account. WAC 392-172A-03095.

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress

in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of free appropriate public education (FAPE) to their child. Parents must be part of the group that determine what additional data are needed as part of an evaluation of their child, their child's eligibility, and educational placement. 34 CFR §§300.304, 300.306(1), 300.501; WAC 392-172A-03020(2), WAC 392-172A-03040, WAC 392-172A-05000(3)(c). IEP teams must consider the parents' concerns regarding their child when developing and reviewing their child's IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b). If the parent cannot attend an IEP team meeting, the district must use other methods to ensure parent participation, such as video or telephone conference calls. WAC 392-172A-03100(5).

An IEP team meeting may be conducted without a parent in attendance when the district is unable to convince the parents that they should attend. A school district is not relieved of its obligation to provide FAPE to eligible students even when parents fail or refuse to cooperate. When a district conducts the IEP meeting without parents in attendance, the district must keep a record of its attempts to arrange a mutually agreed on time and place, such as: detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits. 34 CFR § 300.322(d); WAC 392-172A-03100(6).

Prior Written Notice: Prior written notice ensures that a parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. A district must provide prior written notice after a meeting of the decisions made as a result of that meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. 34 CFR 300.503; WAC 392-172A-05010.

#### **FINDINGS OF FACT**

1. During the 2017-2018 school year, the Student attended tenth grade at a District high school and was eligible to receive special education services under the category of other health impairment.

2. The District’s 2017-2018 school year began on September 6, 2017.
3. The Student’s individualized education program (IEP) in place at the beginning of the 2017-2018 school year was developed on February 3, 2017. The Student’s IEP stated the Student’s disability adversely impacted his organizational/study and social/emotional skills. The IEP stated the Student had good peer relationships, but that he needed to increase his self-advocacy skills and increase his use of coping strategies when he was anxious or upset. The IEP also stated the Student had established an organizational system that he was beginning to use, but that the Student needed to complete his work and maintain the organizational system. The IEP provided for two goals in the area of organizational/study and two goals in the area of social/emotional skills. The IEP provided for the following specially designed instruction from February 3, 2017 through February 2, 2018:
  - Social emotional/behavioral: 10 minutes, one time per week – special education setting
  - Organizational/study skills: 20 minutes, one time per week – special education setting

The IEP also provided for the following specially designed instruction from February 3, 2017 through June 21, 2017:

- Organizational/study skills: 150 minutes, one time per week – general education setting

The February 2017 IEP stated that “the IEP team agreed to provide organizational support through the College & Career prep class. Since this is only a ninth grade class, the team will need to revisit where [the Student] will receive additional minutes if needed” for the next school year. The IEP further stated that during the 2017-2018 school year, the Student would participate with non-disabled peers during the school day, except for the 30 minutes of his specially designed instruction.

4. On September 6, 2017, the Student was enrolled in the following classes:<sup>3</sup>

Period	Classes	M, Th, F	Tu, W
1	English Language Arts	84 min	77 min
2	Chemistry in Earth Systems	84 min	77 min
3	Spanish	84 min	77 min
4	Web Design	88 min	77 min
5	<i>No class assigned</i>	84 min	77 min
6	Geometry	84 min	77 min
7	Team Sports	84 min	77 min
8	World History	88 min	77 min
9	Advisory	0 min	27 min

5. Based on the District’s documentation, the Student was scheduled to receive special education services during his advisory class on Tuesdays and Wednesdays. The instructor of the Student’s advisory class is a special education teacher who is also assigned as the Student’s case manager (case manager). The District’s documentation in this complaint stated that typically, all students have an advisory class where students: work on homework,

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<sup>3</sup> This complaint incorporates SECC 17-65 findings of fact no. 7 – 10, herein as findings of fact no. 4 – 7.

meet with teachers to get extra help, attend a club activity, meet with mentors, write in planners, check grades with an advisor or individually, work on “Master Portfolios,” meet with case managers to discuss schedule changes, organize binders and materials, and work with peers and for Positive Behavior Interventions and Supports (PBIS) lessons.

6. On September 6, 2017, the Parent emailed the Student’s case manager, and inquired who was assigned as the Student’s school counselor because the Student wanted “to speak to someone about his classes.”
7. On September 8, 2017, a school counselor emailed the Student’s case manager and stated that the school psychologist had changed the Student’s class schedule that morning. The school counselor attached a copy of the Student’s updated schedule, which showed the Student was now enrolled in a special education content mastery class. The Student’s updated schedule was as follows:

<b>Period</b>	<b>Classes</b>	<b>M, Th, F</b>	<b>Tu, W</b>
1	World History	84 min	77 min
2	Chemistry in Earth Systems	84 min	77 min
3	Spanish	84 min	77 min
4	Web Design	88 min	77 min
5	English Language Arts	84 min	77 min
6	Geometry	84 min	77 min
7	Team Sports	84 min	77 min
8	Content Mastery	88 min	77 min
9	Advisory	0 min	27 min

8. According to the District’s documentation, on September 13, 2017, two high school assistant principals (assistant principal 1 and 2) called the Parent to ask whether they could change the Student’s schedule to remove him from the content mastery class, as the Student’s placement in the class was inconsistent with his IEP. According to the District’s documentation, the Parent declined to change the Student’s classes because the Student was happy with his schedule.
9. According to the District’s documentation, on September 15, 2017, assistant principal 1 and the assistant director of student support (assistant director) called the Parent. Assistant principal 1 told the Parent that because the Student was currently enrolled in the content mastery class, the District needed to amend the Student’s IEP so that his IEP minutes aligned with his schedule. The District proposed amending the IEP without a meeting. According to the District’s documentation, the Parent declined to amend the Student’s IEP without a meeting and requested that all communication be done in writing.
10. Also on September 15, 2017, the Parent sent the assistant director an email with the subject line “Request for a meeting ASAP.” The email stated that the assistant director was “attempting to illegally change [the Student’s] IEP,” that the Student needs to be in the correct classes, and that all “request [sic] should be in writing.”

11. Later that same day, the assistant director responded by email to several of the Parent's concerns about the Student's IEP and the content mastery class. The assistant director wrote that "there has been no change to [the Student's] initial IEP from 2/3/2017." The assistant director also wrote that the Parent "made it clear during our phone call on 9/15/2017 that you do not agree to an amendment without convening the IEP team. Therefore, we will not be sending you an IEP and PWN on Monday, 9/18/17, and will be setting up an IEP team meeting." Further, the assistant director stated that the Student's class "schedule can be adjusted as soon as Monday, September 18th, to offer an alternative class during the 8<sup>th</sup> period."
12. According to the Student's class schedule, as of September 18, 2017, the Student was removed from the content mastery class and enrolled in a culinary arts class during eighth period. According to the District's documentation, the Student was only scheduled to attend the content mastery class for three school days on September 8, 12, and 14, due to the high school's alternating bell schedule. While enrolled in the content mastery class, the Student received approximately 253 minutes of specially designed instruction in excess of his IEP, delivered by a special education teacher in a special education setting.<sup>4</sup>
13. On September 21, 2017, assistant principal 1 emailed the Parent and confirmed that the Student had been moved out of the content mastery class, and invited the Parent by email to an IEP meeting on either October 16 or October 17, 2017, at 2:05 p.m. The email stated that the purpose of the meeting was to "collaborate with [the Parent] in providing support to [the Student]." The Parent responded by email the same day and asked for a detailed description of the purpose of the meeting, and stated that both she and the Student were unavailable those dates. The Parent suggested that the meeting be held in February 2018, when the Student's annual IEP was due.
14. On September 22, 2017, assistant principal 1 emailed the Parent, inviting her to an IEP team meeting on November 2, 2017, since the Parent was not able to attend either of the previously proposed dates. Assistant principal 1 stated, in the email, that the purpose of the meeting was to "collaborate with [the Parent] in providing support for [the Student], also communicated in [the assistant director's] email dated 9/15/17 in the evening." Additionally, assistant principal 1 reminded the Parent that the Parent had requested a meeting in her September 15, 2017 email. Attached to assistant principal 1's email was an "IEP Meeting Request," which stated that the purpose of the meeting is to "develop an IEP, including transition planning as appropriate." The document also listed the following individuals as being invited to attend and participate in the meeting: the Student, the Parent, assistant principal 1, the case manager, two general education teachers, the principal, the assistant director, and the executive director of student support services (executive director). Further, the meeting request stated that the Parent was "permitted to bring guests to the meeting, and are encouraged to invite the child's support coordinator if the student is served by another public agency, but are requested to inform the team ahead of time."

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<sup>4</sup> SECC 17-65 finding of fact no. 19, incorporated herein as finding of fact no. 12.

15. On September 23, 2017, the Parent emailed the District superintendent, the assistant director, assistant principal 1, and other District staff and requested that the IEP team include the Student's father, a person that "understand [sic] [the Student] that is in the school," and a medical provider.
16. The next day, on September 24, 2017, the Parent emailed the superintendent, the assistant director, assistant principal 1, and other District staff and reiterated her request regarding IEP team membership, and added that she wanted certain members of the team removed, including the assistant director, the school psychologist<sup>5</sup>, and the executive director. The Parent also requested that the meeting be scheduled on December 8, 2017, to allow for the Student's father, a medical provider, and a representative from OSPI to attend.
17. On September 25, 2017, the Parent emailed the superintendent, executive director, assistant principal 1, and other district staff and requested that the Student's absences and tardiness from September 2017 to June 2018 be excused. Attached to the email were two notes, both dated September 22, 2017, from two different medical professionals (medical professional 1 and 2). Medical professional 1 stated that the Student "requires accommodation [sic] that addresses his ability to arrive at school and to class in a timely manner." The note further stated that "this accommodation is to be worked out with school administration, counselor, and or [sic] IEP team." Medical professional 2's note addressed the content mastery class and stated that the Student should be allowed to have "additional help in each class separately."
18. On September 27, 2017, assistant principal 1 responded to the Parent's September 24, 2017 email and stated that parents are "permitted to bring guests to the meeting, and are encouraged to invite, the child's support coordinator if the student is served by another public agency but are requested to inform the team ahead of time." Assistant principal 1 also stated that she had received the Parent's request for an accommodation regarding the Student's absences and tardiness, and that the "IEP team needs to convene as soon as possible to consider this request for an accommodation and review available data." Assistant principal 1 requested that the Parent send her availability to meet.
19. Early morning on September 28, 2017, the Parent emailed the superintendent, assistant director, assistant principal 1, and other district staff and asked the District to "[p]lease update [her] with the full names of the IEP team ASAP." Several minutes later, the Parent sent a second email to the superintendent, executive director, assistant principal 1, and other district staff stating, "the attendance request is not an IEP change or update request" and requested that the District "implement the accommodations for [the Student's] attendance ASAP, without changing the IEP."
20. Several minutes after the second email on September 28, the Parent emailed the superintendent, assistant director, assistant principal 1, and other district staff a third time

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<sup>5</sup> On the IEP meeting invitation, dated September 22, 2017, the school psychologist is not listed, so it is unclear why the Parent requested that she be removed.



and repeated her requests regarding IEP team membership and stated that “[p]er the WAC [the Student’s] father must be on the team and a trusted individual and all that is positive for [the Student].” The Parent again requested that the assistant director, school psychologist, and executive director be removed from the IEP team. The Parent also repeated that she wanted the IEP meeting to be held on December 8, 2017, and that she wanted a representative from OSPI to attend the meeting by phone.

21. On September 29, 2017, the Parent resent the third email from September 28, 2017, with a document attached from a third medical professional (medical professional 3). The attached note, dated September 29, 2017, stated that “[t]o ensure positive and successful outcomes for [the Student’s] school year please add his father, mother, and medical provider to the IEP team to come to agreement in all decisions made in the interest of [the Student].”
22. Later the same day, the Parent emailed the superintendent, assistant director, assistant principal 1, and other district staff and again asked that the Student’s absences or tardiness during the 2017-2018 school year be excused. The Parent also stated that she had attached medical documents, which were “separate from the IEP request.” Attached to the Parent’s email was a note, dated September 29, 2017, from medical professional 3 that stated, “[w]e are working on health issues, please allow [the Student] to be tardy at times for school and classes as well as have the occasional absences without penalty as soon as possible. To last one school year.”
23. Also on September 29, 2017, assistant principal 1 emailed the Parent to address several of the Parent’s concerns. Assistant principal 1 referenced her previous email to the Parent on September 27, 2017, and reiterated that in order to consider the requested accommodations and opinions of the medical professionals provided on September 22 and September 29, 2017, the IEP team needed to meet as soon as possible. Assistant principal 1 explained that the Parent’s proposed date of December 8, 2017 was seventy (70) calendar days away and that the District could not wait that long to consider the attendance accommodation. Further, assistant principal 1 again reminded the Parent that the Parent herself had sent an email on September 15 with the subject line “Request for a meeting ASAP.” Assistant principal 1 stated that because “time is of the essence,” the District was inviting the Parent to an IEP team meeting on October 25, 2017, and attached a notice of team meeting. The attached notice stated that the purpose of the meeting was to “consider possible amendments to scholar’s IEP and consider request for accommodations.” The notice also stated the Parent could “invite other individuals who have knowledge or special expertise about your child.” Finally, the notice listed the following individuals as being either invited or required to attend: the Parent, the Student, assistant principal 1, the case manager, two general education teachers, the principal, the executive director, and the assistant director.

In the same email, assistant principal 1 stated that the Parent had been invited to the IEP team meeting and that the Student’s father could participate. Assistant principal 1 noted that the District was unable to invite the Student’s father directly because he was not listed on the Student’s registration materials. The email further stated that the decision to remove

staff members from the IEP team was under the sole discretion of the District. Assistant principal 1 reminded the Parent that the full names of the IEP team members had been provided to the Parent by email on September 22, 2017, and were also listed on the attached notice of team meeting. Finally, assistant principal 1 again referenced the September 27, 2017 email, which made it clear that the Parent could invite other individuals who had knowledge or special expertise about the child.

24. On October 3, 2017, the Parent emailed assistant principal 1 and wrote, “as stated I have a doctors [sic] appointment and [the Student] has doctor appointments all month of Oct [sic].” The Parent stated that her “suggestion for 12/8/17 still stands.”
25. The District’s documentation indicated that the District resent the October 25, 2017 IEP notice of team meeting by certified mail on October 17, 2017, which was received and signed for by the Parent on October 20, 2017.
26. On October 20, 2017, the Parent emailed the Student’s case manager and acknowledged that she received the meeting invitation, but stated that she was not available to meet on October 25, 2017. The Parent also stated that it was “irresponsible to meet and the IEP team has not been confirmed and there are many complaints outstanding.”<sup>6</sup> The Parent stated that she had asked for the meeting to be held on December 1, 2017, or sometime during the first week of December.<sup>7</sup>
27. On October 25, 2017, the Student’s IEP team met to address the Parent’s request that the Student receive additional accommodations and review the Student’s services. The Parent did not attend. According to the District’s response to this complaint, the District acknowledged that the IEP team met without the Parent and stated:

Staff made multiple attempts through multiple modes of communication to attempt to find a mutually available time and place to conduct an exigent IEP meeting. [The District] kept a record of its attempts to arrange a mutually agreed on time and place including detailed records of telephone calls and copies of correspondence sent to the parents<sup>8</sup> and any responses received.

The District’s response further stated that due to the nature of the Parent’s complaints to OSPI’s Office of Professional Practices, in which she alleged “child abuse and stalking/harassment by multiple staff members supporting her student’s IEP services,” the

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<sup>6</sup> As of October 20, 2017, the Parent had filed three complaints with OSPI against the District: SECC 17-65, filed on September 15, 2017; SECC 17-70, filed on October 10, 2017; and, this complaint, SECC 17-81, filed on November 7, 2017. The Parent had also filed several professional practice complaints with Educational Service District (ESD) 121.

<sup>7</sup> In emails sent on September 23 and 28, 2017, the Parent proposed December 8, 2017, to hold a meeting. October 20, 2017, was the first time the Parent suggested December 1 or the first week of December.

<sup>8</sup> This appears to be a typo in the District’s documentation. The District only invited the Parent and notified her in an email on September 29, 2017, that the Student’s father was welcome at the IEP meeting, but that the District could not invite him directly because he was not listed in the Student’s registration materials.

District determined that “it would be unproductive to attempt home visits or visits to the Parent’s place of employment.” The District’s response also noted that because “during one of the phone calls and in multiple emails...the Parent demanded that all communication should be in writing. This precluded the team from attempting to phone the Parent and have her participate in the IEP meeting by phone.”

28. Based on documentation provided by the District in this complaint, on October 25, 2017, the IEP team discussed the Student’s present levels of performance, service delivery, the request for accommodations around attendance, and next steps. According to the District’s documentation, the following people attended the IEP team meeting: the case manager, the executive director, two general education teachers, and assistant principal 1. The IEP team discussed email input from the Parent regarding the Parent’s belief that the content mastery class would harm the Student and the medical opinions provided by the Parent. The team discussed several options, which included the content mastery class, having the Student retake the 9<sup>th</sup> grade “College and Career Readiness” class, giving him more teaching time during the advisory period, or providing additional help after school. The IEP team decided that the Student would “benefit from direct instruction in study skills and organization.” The team amended the Student’s IEP to provide for the following specially designed instruction:

- From February 3, 2017 through November 5, 2017: Study/organizational skills – 20 minutes, one time per week – special education setting
- From November 6, 2017 through February 2, 2018: Study/organizational skills – 200 minutes, one time per week – special education setting

The Student’s service minutes for social/emotional skills remained unchanged. Further, the amended IEP stated:

The IEP team had agreed to provide organizational support through the College & Career Prep class in 9<sup>th</sup> grade at the initial 2/3/2017. Since there is no related general educational class for organizational support in 10<sup>th</sup> grade on, and [the Student’s] [independent educational evaluation] from [evaluator] and evaluation recommends organizational and study skills supports, in addition to [the Student’s] present levels and need for [specially designed instruction] in organization the team has recommended that he receive such supports in a content mastery class.

The IEP team also discussed the Parent’s request for an attendance accommodation. The Student’s special education teacher stated that the Student was often tardy at the start of the day and after lunch. The Student’s general education teacher stated that the Student was on time for his class, so the teacher knew the Student was able to get to class on time. The IEP team discussed the need to know where all students were and that it was not safe to give the Student a blanket excuse to be absent or tardy. The team noted that the school has a duty to report when students are absent or tardy. Finally, the team noted that the medical opinions provided by the Parent are vague and that the “excuses are not tied to a specific condition or disability.” The IEP team decided that the Student would not be provided with a blanket excusal for when he was absent or tardy, but that instead they would “build tier 1 [positive behavioral intervention and supports] supports” around attendance for the Student.

29. On October 31, 2017, the District sent a prior written notice to the Parent by certified mail. In the prior written notice, the District proposed to implement the amended IEP on November 6, 2017, which provided the Student with additional minutes of specially designed instruction in study/organization skills in the content mastery class. The notice stated that this decision was based on:

1) The current [District] evaluation (10/4/2016) and [independent education evaluation] (IEE)...(9/7/2016) [that] recommend that [the Student] receive support in study/organizational skills. 2) The previous IEP (2/3/2017) included [specially designed instruction] in study/organizational skills via a general education class (specifically 9<sup>th</sup> grade College & Career Prep class) through 6/21/2017, and noted that 'since this [College & Career Prep class] is only a ninth grade class, the team will need to revisit where he will receive additional minutes if needed.' 3) [The Student] is now in 10<sup>th</sup> grade, and there is no 10<sup>th</sup> grade version of a College & Career Prep class. (*Internal page numbers omitted.*)

The notice also explained that the District refused to add accommodations for absences and tardiness because:

- The Student's evaluation and IEE recommended that the Student have structure and routine in his schedule;
- The Student was "provided support for attendance and timeliness through school-wide supports available to all students...as well as a schoolwide [sic] system for Positive Behavior Intervention and Supports (PBIS)";
- The Student had a pattern of tardiness that occurred at the first class of the day and right after lunch, but otherwise the Student was able to get to class on time;
- An accommodation to "miss or be late for class would interfere with the provision of FAPE"; and,
- District absence procedures require parent excusals to be for specific absences, and "a blanket accommodation excusing future absences or tardies [sic] would be inconsistent with those procedures, if not adequately supported by documentation of medical or related need."

The notice further stated that to grant an attendance accommodation, the District would need additional details regarding the Student's "medical condition and need for an attendance accommodation in light of the more detailed, comprehensive neuropsychological evaluation from [the Doctor] recommending to 'maintain as consistent and daily class schedule as possible to assist with [the Student's] difficulties.'" The prior written notice also documented the data reviewed by the IEP team, the other options considered and why those options were rejected, and the District's attempts to schedule the meeting to include the Parent.

30. According to the District's documentation, the certified mail envelope containing the prior written notice was refused by the Parent on November 2, 2017. The envelope was returned to the District office on November 6, 2017.

31. On November 4 and November 5, 2017, the Parent emailed the District and alleged that the District was illegally changing the Student's IEP. According to the Parent's emails, a District staff person approached the Student on November 3, 2017, and told him that his classes would be changing due to his IEP. Further, the Parent stated that no changes should be made

to the Student's IEP because the entire team was not present and especially because the Parent was not at the meeting. The Parent stated that the meeting was not scheduled at a mutually agreed upon time and place. Further, the Parent alleged that the IEP team failed to consider the opinions of the medical professionals, that the Student was not provided with notice of or invited to the meeting, and that the Parent was not notified that other individuals could participate in the meeting.

32. On November 7, 2017, the executive director emailed the Parent a copy of the prior written notice and a response to concerns compiled from the emails sent by the Parent on November 4 and November 5, 2017. In response to the Parent's allegation that the IEP team could not make any changes to the Student's IEP unless the entire team was present and that the meeting was held without the Parent, the executive director stated that an IEP team meeting could be conducted without a parent in attendance if the district was unable to convince the parent to attend. In response to the Parent's allegation that the IEP meeting was scheduled at a mutually agreed upon time, the executive director stated that the IEP team meeting was held because the Parent made a request for an accommodation and because the Student was not making progress in the general education curriculum and on his IEP goals. The executive director noted that the District attempted on September 21, 22, 29, and October 18, 2017, to schedule a meeting with the Parent. The executive director's email stated that "[w]aiting until your proposed date of 12/8/17 was not a mutually agreed upon time for the District which has an obligation to act when the student is not making adequate progress and when a request for accommodation has been made that is time sensitive."

Further, in response to the Parent's allegation that she never received follow up regarding the IEP team's investigation and findings, and that medical opinions were not considered, the executive director stated that the prior written notice explained the IEP team's decisions and indicated that the team considered the medical documents provided by the Parent. The executive director attached a copy of the October 31, 2017 prior written notice to the email. In response to the Parent's allegation that the Student was not provided notice or invited to the IEP meeting, the executive director wrote that the Student attended the February 3, 2017 IEP meeting, at which the IEP team considered postsecondary goals for the Student and transition services and that, "until the child reaches the age of majority...only the parent has the authority to make educational decisions for the child under Part B of the Act, including whether the child should attend an IEP meeting." Finally, in response to the Parent's allegation that the District failed to inform the Parent about provisions relating to the participation of other individuals who have special knowledge or expertise, the executive director stated that "each formal IEP meeting invitation includes the following statement: 'You may invite other individuals who have knowledge or special expertise about your child. Please contact us if you plan to invite others not listed on this invitation to this meeting.'" The executive director noted that assistant principal 1 responded to this concern on September 27 and September 29, 2017.

33. Later on November 7, 2017, the Parent emailed the executive director and the deputy superintendent three times and repeated the same concerns that the executive director had

already responded to earlier that day. The Parent stated that the Student's schedule was not to be changed, and requested a meeting with OSPI and the District to "obtain a clear understanding of the rules that we are having disputes [sic]...a meeting to understand the rules of the IEP."

34. Also on November 7, 2017, OSPI received this citizen complaint.

35. On November 9, 2017, the Parent emailed the District and revoked consent for the provision of special education services, effective immediately. The Parent emailed again on November 12, 2017, and stated, "[p]lease be clear that the IEP is terminated and consent is revoked, regardless of any pending complaints filed with ospi [sic] or upcoming meetings."

36. On November 13, 2017, the District provided the Parent with a prior written notice, documenting the revocation of consent for special education. According to the District's documentation, the prior written notice was emailed and mailed by certified mail. According to the District's response, the envelope containing the prior written notice was returned to the District office on November 30, 2017, as "refused" by the recipient.

## CONCLUSIONS

**Issue 1: IEP Meeting** – The Parent alleged that the District improperly held an IEP meeting in October of 2017 and that the IEP meeting should have been held when the Student's annual IEP was due in February of 2018. IEP team meetings must be held annually to develop the IEP, but may be held more often to revise or review an IEP as necessary. The Parent emailed the District on September 15, 2017, and requested a meeting and the Parent also requested attendance accommodations for the Student on September 25, September 28, and September 29, 2017. Further, the District determined that the Student was not making progress on his IEP goals and was not demonstrating success in the general education setting. Based on the Parent's requests and the District's determinations, the District properly determined that an IEP meeting to review the Student's IEP and consider requested accommodations was warranted.

**IEP Meeting Scheduling** – The Parent alleged that the District failed to schedule the meeting at a mutually agreed upon time and place. A district must ensure that parents are given an opportunity to attend meetings or otherwise afforded an opportunity to participate at the IEP team meeting. This includes notifying parents of a meeting early enough to ensure that they can attend and scheduling the meeting at a mutually agreed on time and place. If a parent is unable to attend in person at the scheduled meeting, the district should make arrangements for other ways for the parent to participate, such as video or telephone conference calls. In situations where a district is unable to convince the parents to attend the IEP team meeting, the district must keep a record of its attempts to arrange a mutually agreed on time and place, such as: records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parent and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits.

Here, the Parent initially requested, on September 15, 2017, that an IEP team meeting be scheduled, after the District called the Parent and attempted to either change the Student's class schedule or his IEP. The District responded on the same day, agreeing to set up an IEP meeting. After that, the District attempted on five different occasions to schedule an IEP team meeting on a date and time that worked for both the Parent and the District. The District provided documentation of the following scheduling attempts: emailed the Parent on September 21, 2017, and suggested meeting on October 16 or 17, 2017; emailed the Parent on September 22, 2017, an invitation to a meeting on November 2, 2017, after the Parent said that the October dates did not work; emailed the Parent on September 27, 2017, and requested that the Parent send her availability to meet; emailed the Parent on September 29, 2017, a meeting notice for October 25, 2017; and finally, mailed a copy of the October 25, 2017 meeting notice to the Parent by certified mail on October 17, 2017. The District stated that it did not attempt to visit the Parent's home or place of employment to persuade her to attend a meeting based on the nature of the Parent's abuse/stalking/harassment complaints against the District, and based on the fact that the Parent made multiple requests that all communication be in writing. The District also stated that it did not attempt to have the Parent participate by phone or video conference in the meeting because the Parent had, on multiple occasions, requested that all communication be done in writing.

While the Parent notified the District that she and the Student were unavailable the entire month of October and requested that the IEP team meet in December 2017 or February 2018, the District told the Parent that this was not a mutually agreed upon date for the District because the District had an obligation to act when it believed that the Student was not making progress and because the Parent's request for an attendance accommodation was time sensitive. The District did what was required of them under the IDEA. The documentation in this complaint substantiates that the District made a good faith effort, using multiple modes of communication, to schedule an IEP meeting at a mutually agreed upon time and place. Further, the documentation substantiates that the District considered the Parent's input, despite the Parent not attending the meeting, by considering concerns found in multiple emails from the Parent and the medical recommendations from several medical professionals that the Parent emailed to the District on September 25 and September 29, 2017.

**IEP Team Membership** – The Parent alleged that the District failed to inform the Parent that other individuals with knowledge or special expertise about the Student could participate in the meeting. The Parent also alleged that the District failed to notify the Student about or invite him to the IEP team meeting. An IEP team is composed of: the parent(s); at least one regular education teacher; at least one special education teacher; a representative of the school district; an individual who can interpret the instructional implications of evaluation results; any individuals who have knowledge or special expertise regarding the student; and, when appropriate, the student. For example, the student must be included when the purpose of the meeting is to consider postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. The IEP invitation should indicate who will be in attendance at the IEP team meeting and inform the parents of the provisions that relate to the

participation by other individuals on the IEP team who have knowledge or special expertise about the student.

The District's documentation in this complaint shows that the District communicated with the Parent several times regarding who was or could be invited to attend the upcoming IEP meeting. The IEP meeting invitation, sent on September 22, 2017, listed the Student, the Parent, assistant principal 1, the special education teacher/case manager, two general education teachers, the assistant director, and the executive director as being either invited to or required to attend the IEP team meeting. The September 22 meeting invitation also stated that the Parent was permitted to bring guests to the meeting. On September 27 and 29, 2017, the District emailed the Parent that she was both permitted to bring guests to the meeting and encouraged to invite individuals with knowledge or special expertise about the Student. The September 29, 2017 email also specifically addressed the Parent's request that the Student's father be invited to the meeting, stating that the Student's father could participate, but that the District was unable to invite him directly because the Student's father was not listed on the Student's registration materials. Additionally, the IEP meeting invitation sent on September 29, 2017, listed the Student and the Parent, as being either invited to or required to attend the IEP team meeting, and stated that the Parent could invite other individuals who had knowledge or special expertise about the Student to the meeting. The documentation provided in this complaint substantiates that the District invited the Student to the IEP meeting and made the Parent aware that she was entitled to invite other individuals with knowledge or special expertise about the Student.

**Issue 2: Prior Written Notice** – The Parent alleged that the District failed to send a prior written notice after the IEP team meeting on October 25, 2017, and that the prior written notice did not address the documents the Parent had provided the District from several medical professionals. A district must provide prior written notice, after a meeting, of the decisions made as a result of the meeting. The prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a change, and the notice should document the following: that the district has considered input provided by the parent, any disagreement with the parent, what the district proposed or refused to initiate, any other options the district considered, and the reasons for rejecting alternative options. The prior written notice should include a statement that the parent has procedural safeguards.

On October 31, 2017, the District sent the Parent a prior written notice via certified mail. The prior written notice indicated that the Student's amended IEP would be implemented six calendar days later, on November 6, 2017. According to the documentation in this complaint, the envelope containing the prior written notice was returned to the District office on November 6, 2017, after having been refused by the Parent on November 2, 2017. The District then emailed the Parent a copy of the prior written notice on November 7, 2017. The prior written notice contained a detailed record of the decisions made at the IEP team meeting, including the decision to provide the Student with additional specially designed instruction in study/organizational skills and the decision to not add an accommodation to the IEP for absences and tardiness. The prior written notice listed the reasons for the IEP team's decisions, the data and documents the team reviewed in order to develop the amended IEP (including Parent input from emails and the notes



from several medical professionals), and the other options the District considered and why they declined to adopt those options. Finally, the prior written notice noted that the Parent had been provided with a copy of the procedural safeguards. The documentation provided in this complaint substantiates that the District did send the Parent a copy of the prior written notice within a reasonable time before implementing the amended IEP. Further, the prior written notice contained all of the required elements.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI recommends the District consider using OSPI's third-party facilitator for future meetings with the Parent.

Dated this \_\_\_\_ day of January, 2018

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

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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