

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-43

PROCEDURAL HISTORY

On May 2, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) on behalf of students (Students) eligible for special education attending Des Moines Elementary School in the Highline School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Students' education.

On May 3, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 11, 2018, the District provided a list of students eligible for special education, who attend Des Moines Elementary School. On May 16, 2018, OSPI requested that the District provide documentation regarding twenty-one of the listed students.

On May 16, 2018, OSPI granted the District an extension of time until June 1, 2018, to submit its response to this complaint.

On June 1, 2018, OSPI received the District's response to the complaint and forwarded it to the Complainant on June 4, 2018. All student personally identifiable information was removed. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On June 7, 2018, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On June 18, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on June 18, 2018. OSPI forwarded the information to the Complainant on June 19, 2018. All student personally identifiable information was removed.

Also on June 18, 2018, OSPI requested that the Complainant provide additional information, and the Complainant provided the requested information on June 18, 2018. OSPI forwarded the information to the District on June 18, 2018.

On June 19, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on June 19 and 20, 2018. OSPI forwarded the information to the Complainant on June 20, 2018. All student personally identifiable information was removed.

On June 22, 2018, OSPI requested clarifying information from the District and spoke to the District Director of Special Education on June 22 and June 25, 2018.

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

OVERVIEW

During the 2016-2017 school year, approximately eighty students at a District elementary school were eligible to receive special education services. During the school year, the students participated in state-wide and district testing along with their general education peers. During the 2017-2018 school year, approximately eighty-seven students at the elementary school were eligible to receive special education services. Also during the 2017-2018 school year, the students participated in state-wide and district testing along with their general education peers. During both school years, one of the special education classrooms was used by students to complete state and district testing. Due to this, some students who regularly used the classroom were provided special education services by a different staff person, than regularly provided the services, and/or were provided special education services at a different time or in a different location than they regularly received services. At least one student did not receive some of his special education services during the scheduled testing. The Complainant alleged that the District failed to provide the Students' with services consistent with their individualized education programs (IEPs) during state/district testing periods during the time period from May 3, 2017 through May 2, 2018. The District denied the allegation.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on May 3, 2017. 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.

ISSUE

1. Did the District provide the Students with services consistent with their individualized education programs (IEPs) during state/district testing periods from May 3, 2017 through May 2, 2018?

LEGAL STANDARDS

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide

assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

Participation in State and Districtwide Assessments: All children with disabilities must be included in all general State and districtwide assessment programs, including assessments described under section 1111 of the Elementary and Secondary Education Act of 1965 (ESEA), with appropriate accommodations, and alternate assessments where necessary and as indicated in their respective IEPs. 20 U.S.C. 1412(a)(16). All children, including children with disabilities, benefit from participating in State and districtwide assessments, which are an integral part of the educational accountability system under Title I of the ESEA and Part B of the IDEA, and are often used to measure student progress for the purpose of promotion, graduation, and access to educational services. In addition, assessment is an integral aspect of educational accountability systems that provide valuable information which benefits individual students by measuring individual progress against standards or by evaluating programs. *Letter to Kane*, 72 IDELR 75 (OSEP April 2018). An IEP team determines how the child will be assessed, including whether any individual appropriate accommodations are necessary to measure the academic achievement and functional performance of the child and whether the child must take an alternate assessment. 20 U.S.C. 1414(d)(1)(A)(i)(VI). Thus, children with disabilities must participate in all general State and/or districtwide assessments and during the administration of such tests, the school district must implement the child's IEP by providing any required accommodations or an alternate assessment if determined necessary by the child's IEP team. Generally, a special education or related service missed due to participation in required scheduled assessments would not constitute a denial of FAPE and the school district would not be required to make up the missed service. For a child who is absent from school on testing days due to a parent's choice, the school district would not be obligated to make other arrangements to make up the missed services. *Letter to Kane*, 72 IDELR 75 (OSEP April 2018).

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA

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

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

FINDINGS OF FACT

Background Facts

1. The District operates Des Moines Elementary School, which serves students in grades kindergarten through six.
2. The State of Washington requires students in grades 3-6 to take the state's Smarter Balanced assessment (SBA) in the areas of English language arts (ELA) and math. Students in fifth grade are also required to take the Washington Comprehensive Assessment of Science (WCAS). If a student is eligible to receive special education and has a significant cognitive impairment, the student's individualized education program (IEP) team can determine that based on the student's unique learning characteristics, the student should take the Washington – Access to Instruction and Measurement (WA-AIM) assessment instead of the SBA or WCAS.
3. In addition to state testing, students also complete district level assessments. Based on the documentation provided by the District in response to this complaint, students in grades kindergarten through six at the elementary school are administered the following tests:
 - Math Highline Benchmark Assessment (HBA) (Fall, Winter, and Spring) – Grades 1-6
 - Reading HBA (Fall and Spring) – Grades 1-6
 - Fontas and Pinnell¹ (Fall, Winter, Spring) – Grades K-6
 - Math in Focus Chapter Assessment (Winter and Spring) – Grade K
4. If a student's IEP team determines that a student is in need of accommodations in order to participate in state and district assessments, then accommodations are noted in a student's IEP.² Examples of testing accommodations are: testing in a room without other students or

¹ Test focusing on reading accuracy, fluency, and comprehension.

² Students who have a Section 504 plan may also receive testing accommodations on state and district assessments.

in a small group setting, use of a scribe, use of a human reader or computer application that will read text aloud, additional time to complete an assessment, and the ability to take breaks during testing as needed.

5. According to information provided by the District, the math and ELA SBA typically are administered for 2.5 hours a day on scheduled testing days. The SBA is an untimed assessment, and the time it takes to complete varies by student. The ELA SBA typically takes 3.5 hours to complete and the math SBA typically takes 2.5-3 hours to complete.³ Both sections of the SBA are administered on a computer, unless a student requires a paper test as an accommodation.
6. According to information provided by the District, the WCAS is typically administered for 2 hours. The assessment can be administered over 1-2 days. The WCAS is an untimed assessment, and the time it takes to complete varies by student. The WCAS typically takes 90 minutes to complete.⁴
7. According to information provided by the District, the math and reading HBA typically takes 1-2 hours to complete. The assessments are made up of untimed multiple choice and short answer questions.⁵
8. According to information provided by the District, the length of the Fontas and Pinnell assessment typically takes 30-45 minutes, but varies based on the student. The assessment is administered one-on-one as a student reads and the teacher tracks errors and fluency. A comprehension conversation then follows.⁶
9. According to information provided by the District, the Math in Focus kindergarten assessment is typically completed in 15-30 minutes.

2016-2017 School Year

10. The District's 2016-2017 school year began on September 1, 2016.
11. Based on the District's documentation, during the 2016-2017 school year, there were approximately eighty (80) students who attended the elementary school and were eligible to receive special education services. The number of students eligible for special education

³ Information taken from the SBA Assessment Consortium website.
<https://portal.smarterbalanced.org/library/en/estimated-testing-times.pdf>

⁴ Information taken from *Washington Comprehensive Assessment of Science (WCAS) Frequently Asked Questions*
<http://www.k12.wa.us/Science/pubdocs/FAQ.pdf>

⁵ Information taken from the District's website. <https://www.highlineschools.org/Page/126>

⁶ Information taken from the District's website. <https://www.highlineschools.org/Page/126>

fluctuated slightly over the course of the school year as students enrolled and disenrolled, or were found eligible for or were exited from special education.

12. Also during the 2016-2017 school year, the elementary school had three special education programs: learning resource center (LRC); intensive academic center (IAC); and integrated kindergarten (IK). The LRC was taught by a full-time special education teacher (LRC teacher 1) and a part-time special education teacher (LRC teacher 2). The IAC was taught by one full-time special education teacher (IAC teacher 1). Finally, the integrated kindergarten program was taught by two full-time special education teachers (IK teacher 1) and (IK teacher 2).⁷ Additionally, some students eligible for special education had IEPs that only provided for services in the area of communication, and these services were provided by a speech language pathologist (SLP).

Timeline for this Complaint Begins on May 3, 2017

13. In May 2017, the elementary school administered the following tests:

- ELA and math SBA (April 17 – May 12, 2017)
 - Mondays – 6th grade
 - Tuesdays – 5th grade
 - Wednesdays – 4th grade
 - Thursdays – 3rd grade
 - Fridays – Make-up testing
- WCAS (April 17-June 2, 2017) – Grade 5
- Reading HBA (May 15-26, 2017) – Grade 2
- Math HBA (May 15-26, 2017) – Grades K-2
- Fontas and Pinnel (May 8-26, 2017) – Grades K-6

14. According to the District's response to this complaint, during the 2016-2017 school year, one of the LRC teachers was responsible for overseeing the testing of students with IEPs during scheduled *state* testing periods. While the LRC teacher administered testing, students on her caseload were provided services by the other LRC teacher, a paraeducator, or a general education teacher. According to information provided by the District, district testing is typically administered by building teaching specialists (i.e., reading specialists) and/or paraeducators, so classroom teachers are able to provide regular instruction during testing time periods.

15. Also according to the District's response to this complaint, during some scheduled state and district testing, students complete testing in the LRC classroom. This is done to ensure students receive required testing accommodations, and because there is a limited number of classrooms at the school in which testing can be completed. Also according to the District's response, when the LRC classroom is being used for testing, students who regularly receive services in the classroom are scheduled to receive services in another classroom or area of the school (e.g., a table in the hallway).

⁷ The IK program includes both non-disabled students and students eligible for special education, which are all taught by a special education kindergarten teacher.

16. As part of this investigation, OSPI reviewed the IEPs, class schedules, and related educational records of twenty-one students eligible for special education who attended the elementary school during the 2016-2017 and/or 2017-2018 school years. These students (Students 1 – 21) are discussed further below.
17. **Student 1:** During the 2016-2017 school year, Student 1 was in fourth grade. Student 1's educational placement was in the LRC program. Student 1's IEP in place on May 3, 2017, was developed in April 2017.
18. **Student 2:** During the 2016-2017 school year, Student 2 was in kindergarten. Student 2's educational placement was in the IK program. Student 2's IEP in place on May 3, 2017, was developed in January 2017.
19. **Student 3:** During the 2016-2017 school year, Student 3 was in second grade. Student 3's educational placement was in the LRC program. Student 3's initial IEP was developed in May 2017.
20. **Student 4:** During the 2016-2017 school year, Student 4 was in first grade. Student 4's educational placement was in the LRC program. Student 4's IEP in place on May 3, 2017, was developed in March 2017.
21. **Student 5:** Student 5 was not eligible for special education services during the 2016-2017 school year.
22. **Student 6:** During the 2016-2017 school year, Student 6 was in kindergarten. Student 6's educational placement was in the IK program. Student 6's IEP in place on May 3, 2017, was developed in April 2017.
23. **Student 7:** During the 2016-2017 school year, Student 7 was in fourth grade. Student 7's educational placement was in the LRC program. Student 7's IEP in place on May 3, 2017, was developed in January 2017.
24. **Student 8:** During the 2016-2017 school year, Student 8 was in third grade. Student 8's educational placement was in the LRC program. Student 8's IEP in place on May 3, 2017, was developed in May 2016. On May 11, 2017, Student 8's IEP team developed Student 8's annual IEP.
25. **Student 9:** During the 2016-2017 school year, Student 9 was in kindergarten. Student 9's educational placement was in the IK program. Student 9's IEP in place on May 3, 2017, was developed in December 2016.
26. **Student 10:** Student 10 did not attend the elementary school during the 2016-2017 school year.
27. **Student 11:** During the 2016-2017 school year, Student 11 was in third grade. Student 11's educational placement was in a general education third grade class. Student 11's IEP in place on May 3, 2017, was developed in October 2016.

28. **Student 12:** Student 12 did not attend the elementary school during the 2016-2017 school year.
29. **Student 13:** During the 2016-2017 school year, Student 13 was in second grade. Student 13's educational placement was in the LRC program. Student 13's IEP in place on May 3, 2017, was developed in June 2016. On June 7, 2017, Student 13's IEP team developed Student 13's annual IEP.
30. **Student 14:** During the 2016-2017 school year, Student 14 was in fifth grade. Student 14's educational placement was in the LRC program. Student 14's IEP in place on May 3, 2017, was developed in April 2017.
31. **Student 15:** Student 15 did not attend the elementary school during the 2016-2017 school year.
32. **Student 16:** During the 2016-2017 school year, Student 16 was in third grade. Student 16's educational placement was in the LRC program. Student 16's IEP in place on May 3, 2017, was developed in March 2017.
33. **Student 17:** Student 17 was not eligible for special education services during the 2016-2017 school year.
34. **Student 18:** During the 2016-2017 school year, Student 18 was in second grade. On approximately June 16, 2017, Student 18 transferred to the District from another Washington school district. Student 16's transfer IEP was developed on June 12, 2017.
35. **Student 19:** Student 19 did not attend the elementary school during the 2016-2017 school year.
36. **Student 20:** During the 2016-2017 school year, Student 20 was in first grade. Student 20's IEP in place on May 3, 2017, was developed in January 2016. On May 23, 2017, Student 20's IEP team developed Student 20's annual IEP. The IEP only provided for specially designed instruction in the area of communication, which would be delivered by an SLP. Student 20's educational placement was a general education first grade class.
37. **Student 21:** During the 2016-2017 school year, Student 21 was in fifth grade. Student 21's educational placement was in the LRC program. Student 21's IEP in place on May 3, 2017, was developed in May 2016.
38. The District's 2016-2017 school year ended on June 16, 2017.

2017-2018 School Year

39. The District's 2017-2018 school year began on September 6, 2017.

40. Based on the District's documentation, during the 2017-2018 school year, there were approximately eighty-seven (87) students who attended the elementary school and were eligible for special education. The number of students eligible for special education fluctuated slightly as students were enrolled and disenrolled during the school year, or were found eligible for or were exited from special education.
41. Also during the 2017-2018 school year, LRC teacher 1, IAC teacher 1, and IK teacher 2 continued to work at the elementary school. A new teacher was hired for the LRC program (LRC teacher 3) to replace LRC teacher 2 and for the IK program (IK teacher 3), to replace IK teacher 1. An SLP provided services for students who's IEPs only provided for services in the area of communication.
42. According to information provided by the District in response to this complaint, during the 2017-2018 school year, an LRC teacher administered state and district assessments for some students in the LRC classroom. While the LRC classroom was being used, students who were regularly assigned to the LRC classroom received special education services from the other LRC teacher or a special education paraeducator either in the LRC classroom, which is a shared space, or in another location. In some cases, students received special education services at a time other than their regularly scheduled service time, and staff attempted to provide services as close to the regular time as possible. The District stated that any unavoidable disruption to service delivery was similar to schedule adjustments for students who were not eligible for special education.
43. During the 2017-2018 school year, the majority of Students 1-21 attended the elementary school. These Students are discussed further below. Students 2 and 21 did not attend the elementary school during the 2017-2018 school year.
44. **Student 1:** During the 2017-2018 school year, Student 1 was in fifth grade. Student 1's educational placement was in the LRC program. At the beginning of the school year, Student 1's April 2017 IEP was in place.
45. **Student 3:** During the 2017-2018 school year, Student 3 was in third grade. Student 3's educational placement was in the LRC program. At the beginning of the school year, Student 3's May 2017 IEP was in place.
46. **Student 4:** During the 2017-2018 school year, Student 4 was in second grade. Student 4's educational placement was in the LRC program. At the beginning of the school year, Student 4's March 2017 IEP was in place.
47. **Student 5:** During the 2017-2018 school year, Student 5 was in sixth grade. At the beginning of the school year, Student 5 was not eligible to receive special education services.
48. **Student 6:** During the 2017-2018 school year, Student 6 was in first grade. Student 6's educational placement was in the LRC program. At the beginning of the school year, Student 6's April 2017 IEP was in place.

49. **Student 7:** During the 2017-2018 school year, Student 7 was in fifth grade. Student 7's educational placement was in the LRC program. At the beginning of the school year, Student 7's January 2017 IEP was in place.

In November 2017, Student 7's January 2017 IEP was amended to change the amount of the specially designed instruction Student 7 would receive.

50. **Student 8:** During the 2017-2018 school year, Student 8 was in fourth grade. Student 8's educational placement was in the LRC program. At the beginning of the school year, Student 8's May 2017 IEP was in place.

51. **Student 9:** During the 2017-2018 school year, Student 9 was in first grade. Student 9's educational placement was in the LRC program. At the beginning of the school year, Student 9's December 2016 IEP was in place.

On September 26, 2017, Student 9's December 2016 IEP was amended to change the amount of specially designed instruction Student 9 would receive. On December 11, 2017, Student 9's IEP team developed Student 9's annual IEP.

52. **Student 10:** During the 2017-2018 school year, Student 10 was in kindergarten. Student 10's educational placement was in the IK program. Student 10's IEP in place at the beginning of the school year was developed in June 2017.

53. **Student 11:** During the 2017-2018 school year, Student 11 was in fourth grade. Student 11's educational placement was in a fourth grade general education class. At the beginning of the school year, Student 11's October 2016 IEP was in place.

On October 11, 2017, Student 11's IEP team developed Student 11's annual IEP. On November 8, 2017, Student 11's IEP team amended the October 2017 IEP to change Student 11's education placement to a part-time special education setting in the LRC program.

54. **Student 12:** During the 2017-2018 school year, Student 12 was in kindergarten. Student 12's educational placement was in the IK program. Student 12's IEP in place at the beginning of the school year was developed in May 2017.

55. **Student 13:** During the 2017-2018 school year, Student 13 was in third grade. Student 13's educational placement was in the LRC program. At the beginning of the school year, Student 13's June 2017 IEP was in place.

56. **Student 14:** During the 2017-2018 school year, Student 14 was in sixth grade. Student 14's educational placement was in the LRC program. At the beginning of the school year, Student 14's April 2017 IEP was in place.

57. **Student 15** – Student 15 did not attend the elementary school at the beginning of the 2017-2018 school year.

58. **Student 16:** During the 2017-2018 school year, Student 16 was in fourth grade. Student 16's educational placement was in the LRC program. At the beginning of the school year, Student 16's March 2017 IEP was in place.
59. **Student 17:** During the 2017-2018 school year, Student 17 was in second grade. At the beginning of the school year, Student 17 was not eligible to receive special education services.
60. **Student 18:** During the 2017-2018 school year, Student 18 was in third grade. Student 18's educational placement was in the LRC program. At the beginning of the school year, Student 18's June 2017 IEP was in place.
61. **Student 19:** During the 2017-2018 school year, Student 19 was in kindergarten. Student 19's educational placement was in the IK program. Student 19's IEP in place at the beginning of the school year was developed in June 2017. On September 27, 2017, Student 19's IEP team amended the June 2017 IEP to change the amount of specially designed instruction Student 19 would receive.
62. **Student 20:** During the 2017-2018 school year, Student 20 was in second grade. Student 20's educational placement was a general education second grade class. At the beginning of the school year, Student 20's May 2017 IEP was in place.
63. In the fall of 2017, the elementary school administered the following tests:
- Fontas and Pinnel (September 13 – October 6, 2017) – Grades 1-6
 - Math HBA (October 30 – November 17, 2017) – Grades 1-6
 - Reading HBA (November 27 – December 15, 2017) – Grades 2-6
64. The District was on break December 18, 2017 through January 1, 2018.
65. In the winter of 2018, the elementary school administered the following tests:
- Fontas and Pinnel (January 2 – January 26, 2018) – Grades K-6
 - Math in Focus (January 12, 2018) – Grade K
 - Math HBA (January 22-February 9, 2018) – Grades 1-6
 - Reading HBA (February 26 – March 16, 2018) – Grades 3-6
66. **Student 7** – On January 22, 2018, Student 7's IEP team developed Student 7's annual IEP.
67. **Student 6** – On February 22, 2018, Student 6's IEP team developed Student 6's annual IEP.
68. **Student 16** – On February 27, 2018, Student 16's IEP team developed Student 16's annual IEP.
69. **Student 17** – On February 28, 2018, Student 17's IEP team developed an initial IEP for Student 17. Student 17's educational placement was in the LRC program. The February 2018 IEP provided for the following specially designed instruction in a special education setting:
- Communication – 30 minutes 4 times weekly
 - Math – 30 minutes 4 times weekly

- Reading – 30 minutes 4 times weekly
- Writing – 30 minutes 4 times weekly
- Motor – 30 minutes 3 times monthly

70. In the spring of 2018, the elementary school administered the following tests:

- Reading HBA
 - May 1 – 31, 2018 – Grade 2
- Math HBA
 - March 19 – April 6 2018 – Grades 3-6
 - May 1 – 31, 2018 – Grades K-2
- ELA and Math SBA (April 23 – May 25, 2018)
 - Mondays – 6th grade
 - Tuesdays – 5th grade
 - Wednesdays – 4th grade
 - Thursdays – 3rd grade
 - Fridays – Make-up testing
- WCAS (April 16 – June 8, 2018) – Grade 5
- Fontas and Pinnel (April 30 – May 25, 2018) – Grades K-6
- Math in Focus (May 11, 2018) – Grade K

71. **Student 4** – On March 14, 2018, Student 4’s IEP team developed Student 4’s annual IEP.

72. **Student 5** – On March 26, 2018, Student 5’s IEP team developed an initial IEP for Student 5. Student 5’s educational placement was in the LRC program.

73. **Student 18** – On March 24, 2018, Student 18 moved out of the District.

74. **Student 1** – On April 4, 2018, Student 1’s IEP team developed Student 1’s annual IEP.

75. The District was on break April 9-13, 2018.

76. On April 27, 2018, the Complainant⁸ emailed the assistant director of special education, stating that Student 17’s IEP specified how many times per week he was supposed to receive services, but that it sounded like for a week or two, he had not received services because the room (LRC classroom) he usually received services in, was being used. The Complainant asked whether Student 17’s services were supposed to stop when something like this occurred. In response, the assistant director stated that in the past, when a student’s schedule needed to be changed, during state testing time for example, the special education teacher would work to make up those minutes at other times. The assistant director then offered to speak to LRC teacher 1 about her plans to make up Student 17’s minutes. The Complainant replied, thanking the assistant director for the offer, but stated that she could follow up with LRC teacher 1. The Complainant indicated that she had just needed to know if Student 17 was supposed to receive the services stated on his IEP, or if there were times when other things

⁸ The Complainant is the parent of Student 17.

took precedence. The Complainant stated that she would send LRC teacher 1 a note, now that she knew the procedure.

77. Later on April 17, 2018, the Complainant emailed LRC teacher 1, stating that she wanted to check in regarding Student 17 not receiving IEP services during recent testing, which took place in the LRC classroom. The Complainant stated that she had checked in with the District and was informed that Student 17 should get all of the time specified in the IEP, and that in cases like this, minutes were made up. The Complainant stated that she could not quite get a clear picture from Student 17 about what occurred, other than that he was not being pulled out (of his general education class to receive special education services) “for a bit”. The Complainant asked if this was correct, and if so, if make-up time was scheduled. In response, LRC teacher 1 stated “that is correct”, and that the school was not currently testing. LRC teacher 1 stated that Student 17 was making good progress in his special education groups, and asked that the Complainant call her, so LRC teacher 1 could answer her questions. The Complainant replied that she was not clear about “what is correct” and asked if LRC teacher 1 meant yes, there was testing in the room recently and there was make up time, or that there had not been any time missed due to testing in the LRC room in March and April 2018.

78. On April 18, 2018, the Complainant and LRC teacher exchanged several emails. The emails are summarized below:

- The Complainant emailed LRC teacher 1, stating that they had previously spoken about the teacher keeping a log of showing each time Student 17 received “IEP services”, which the Complainant would have access to. The Complainant stated that she thought this would be helpful, and asked if this was something that could be done. The Complainant stated that she wanted to have a record of when Student 17 was getting services. The Complainant stated that she heard from Student 17 that he was not getting services some weeks, but he was unable to tell her who he was seeing to receive services, and that a log would be helpful.
- LRC teacher 1 responded, asking if there is a time, during school hours, that she could call the Complainant every Friday to give the Complainant an update on Student 17’s progress and the special education services he was receiving. LRC teacher 1 stated that Student 17 was making good progress, and that he was a very hard and focused worker.
- The Complainant replied that she was not really looking for an update on Student 17’s progress, but was looking for information regarding the time Student 17 was reporting he missed due to the LRC room being in use, and what was planned to make up for any missed time. The Complainant stated that she had previously mentioned that she preferred email to assist with documentation, indicating she preferred written records due to previous issues. The Complainant asked if LRC teacher 1 was able to share what services Student 17 had missed in March and April 2018, and if time was missed, when make-ups would be scheduled.
- LRC teacher 1 responded that she needed to look at her planner to calculate the time and would get back to the Complainant with the information soon.

79. According to the District’s documentation, Student 17 is scheduled to receive services at the following times in the LRC classroom during the 2017-2018 school year:

- 2nd Grade Reading: 10:15 – 10:45 am (Monday – Thursday) (provided by LRC teacher 1)
- 2nd Grade Writing: 12:15 – 12:45 pm (Tuesday – Thursday) (provided by LRC teacher 3)
- 2nd/3rd Grade Math: 1:30 – 2:00 pm (Math – Thursday) (provided by LRC teacher 1)

80. **Student 15** – On April 20, 2018, Student 15 transferred to the elementary school from another Washington school district and was in the fifth grade. Student 15’s transfer IEP was developed in October 2017. Student 15’s educational placement was in the LRC program.
81. Also on April 20, 2018, LRC teacher 1 emailed the Complainant, stating that she and LRC teacher 2 had a chance to look over their logs and wanted to share the information with the Complainant after school on April 25, 2018. LRC teacher 1 asked if this time would work for the Complainant. LRC teacher 1 also stated that she would write a prior written notice regarding the log and the meeting, which could be added to Student’s 17’s special education file.
82. On April 23, 2018, the Complainant emailed LRC teacher 1 in response to her April 20 email. The Complainant stated that she could not attend the meeting on April 25. The Complainant asked if there was a reason LRC teacher 1 could not share, via email, what service times Student 17 had missed and a plan to make it up. The Complainant stated that was all she was looking for, along with logs from that point forward showing the sessions Student 17 received, so she could be sure his IEP was being followed. The Complainant expressed concern that a response to her request was being drawn out, and stated that she simply wanted to get an answer about make-up services.
83. **Student 14** – On April 25, 2018, Student 14’s IEP team developed Student 14’s annual IEP.
84. On April 27, 2018, LRC teacher 1 emailed the Complainant and attached a log that showed the services Student 17 had received since his IEP was implemented in March 2018, and a plan to make up missed services. LRC teacher then sent a second log on April 30, 2018, stating that she had realized there was an error in the first log.
85. LRC teacher 1’s log included the following information:

Date	Math (Minutes)	Reading (Minutes)	Writing (Minutes)
March 1	30	30	30
March 5	30	30	NA
March 6	30	30	30
March 7	30	30	30
March 8	30	30	30
March 12	30	30	NA
March 13	30	0 - Testing	30
March 14	30	30	30
March 15	30	30	30
March 19	30	30	NA
March 20	30	0 - Meeting	30
March 21	30	30	30
March 22	30	30	30
March 26	30	30	NA
March 27	30	30	30
March 28	0 – Testing	30	0 – Testing

March 29	30	0 – Testing	30
April 2	30	0 – Testing	NA
April 3	30	30	30
April 4	30	0 – Testing	0 – Testing
April 5	30	30	30
April 16	30	30	NA
April 17	30	30	30
April 18	30	30	30
April 19	30	30	30
April 23	30	30	NA
April 24	30	30	30
April 25	30	30	30
April 26	30	30	30
Total Services Missed	30 minutes	150 minutes	60 minutes

The log also proposed providing Student 17 make up services on Fridays (April 27-June 15) for 30 minutes each day.

86. Based on the District’s 2017-2018 assessment schedule, Student 17 did not receive services on days staff were administering the reading HBA (February 26 – March 16, 2018) and math HBA (March 19-April 6, 2018) for students in grades 3-6. Student 17, who is in second grade, did not participate in the testing.

CONCLUSIONS

The Complainant alleged that the District failed to provide the students at the elementary school with services consistent with their individualized education programs (IEPs) during state/district testing periods from May 3, 2017 through May 2, 2018.

A school district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. If a student eligible for special education services is participating in state or district level testing, and as a result of the testing does not receive his/her regularly scheduled special education services, a school district is not required to make up for services the student misses during his/her testing session.

2016-2017 School Year – The documentation in this complaint does not substantiate that the District failed to provide students with services consistent with their IEPs during state/district testing periods from May 3, 2017, when the timeline for this complaint began, through June 16, 2017, when the District’s 2016-2017 school year ended.

2017-2018 School Year – The documentation in this complaint shows that Student 17 was not provided some of the services consistent with his IEP during March and April 2018. Specifically, Student 17 did not receive services on March 13, 28, and 29 and April 2 and 4, 2018, due to testing. Based on the District’s assessment schedule, during March and the first week of April 2018, the District was administering the HBA in the areas of reading and math for students in grades 3-6. Student 17 is in second grade and did not participate in this testing. Therefore, the

District was required to make up services Student 17 missed due to the testing, which the District has done.

The documentation in this complaint shows that seven (7) other students, who were in the second grade during the 2017-2018 school year, also receive services in the LRC classroom. Of the seven students, four students, including Student 4, were assigned to receive reading services at the same time as Student 17. Therefore, it is more than likely these four students also did not receive 150 minutes of reading services in March and April 2018. Additionally, four of the seven students were assigned to receive writing services at the same time as Student 17. Therefore, it is more than likely these four students also did not receive 60 minutes of writing services in March and April 2018. Further, two of the seven students were assigned to receive math services at the same time as Student 17. Therefore, it is more than likely these two students also did not receive 30 minutes of math services in March 2018. The District will provide the seven second grade students with compensatory services during the fall of 2018 consistent with the services in their IEPs. The compensatory services must be provided outside of the District's regular school day and must be provided by a special education teacher. The services can be provided in a small group (per academic area) or 1:1 setting, per the District's decision.

Additionally, the documentation in this complaint shows that two third grade students (including Student 13) were assigned to receive math services during this same time period as Student 17. However, it is unclear from the documentation in this complaint, if these third grade students were participating in math HBA testing on March 28, 2018. If the two students were not participating in the math HBA on March 28, 2018, the District will provide these students with 30 minutes of math services.

The documentation in this complaint does not substantiate that the District failed to provide others students in the LRC program with services during state and district testing times during the 2017-2018 school year. Additionally, the documentation does not substantiate that the District failed to provide students in the IK program or the IAC program with services during testing times during the 2017-2018 school year.

CORRECTIVE ACTIONS

By or before **August 17, 2018, September 14, 2018, October 19, 2018, and December 21, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **December 14, 2018**, the District will provide compensatory services to the seven (7) second grade students who received services in the LRC classroom during the 2017-2018 school year. The District will provide the seven second grade students with compensatory services consistent with the services in their IEPs. The compensatory services must be provided outside of the District's regular school day and must be provided by a special education teacher. The services can be provided in a small group (per academic area) or 1:1 setting, per the District's decision.

The District will provide transportation for the students consistent with the transportation they regularly receive.

Additionally, if the two third grade students who received math services in the LRC classroom during the 2017-2018, missed math services on March 28, 2018, due to testing of other students, the District will provide these students with 30 minutes of math services.

By **August 17, 2018**, the District will notify the parents of the seven second grade students, and two third grade students if applicable, (in the parent's primary mode of communication as necessary), informing them of this complaint decision and that compensatory services will be offered during the Fall of 2018. The letter will include the amount and areas of service to be offered to the student, as well as the dates and times the District will offer the services. The letter will specify that parents must inform the District if their student will participate in the services by September 7, 2018.

By **August 17, 2018**, the District will submit a copy of the letters sent to the parents.

By **September 14, 2018**, the District will submit a roster of all students who will receive the compensatory services and documentation that it has entered into contracts with a certificated special education teacher(s) to provide the compensatory services.

By **October 19, 2018** and **December 21, 2018**, the District will provide attendance records documenting the students' participation in the compensatory services.

DISTRICT SPECIFIC:

NONE

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

Dated this ____ day of June, 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.)