

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-16**

### **PROCEDURAL HISTORY**

On March 3, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Northshore 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 March 5, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On March 26, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on March 27, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On April 8, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On April 23, 2019, OSPI requested clarifying information from the District and spoke with the District's assistant superintendent via telephone.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on March 4, 2018. 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 period.

In the Parent's reply to the District's response to this complaint, the Parent raised concerns regarding the District's proposed placement for the Student, attempts to transfer the Student to a different elementary school in the District via the District's waiver process, and the Parent's request for a mediation. Some information about these topics is included in the facts below when necessary to provide context; however, these issues are outside the scope of this investigation. Placement was not raised as an issue in the complaint and is not addressed in this investigation. If the Parent disagrees with the District's proposed placement for the Student, the Parent may wish to consider filing a request for a due process hearing. The District's waiver process is not a special education process, as such, this decision makes no comment on whether the District followed its own process or the appropriateness of what transpired. Finally, the Parent indicated her belief that because a mediation did not occur, this meant the District was not acting in good faith and was denying her an IEP meeting. Mediation is a voluntary process for parents and

districts to use in an effort to resolve disputes. Because it is a voluntary process, it is not a violation, nor does it necessarily indicate bad faith if either party declines to participate in a mediation.

## **ISSUE**

1. Did the District follow procedures for responding to the Parent's request for an assistive technology (AT) evaluation in May 2018 and February 2019, including providing prior written notice?

## **LEGAL STANDARDS**

Assistive Technology (AT): The need for assistive technology (AT) must be determined on a case-by-case basis, considering the unique needs of each student. If the IEP team determines that a student with a disability requires AT in order to receive a free appropriate public education (FAPE), and designates such AT as either special education or a related service, the IEP must include a specific statement describing such service, including the nature and amount of such services. Any AT needs stated in an IEP must be provided at public expense, under public supervision and direction, and without charge. *Letter to Anonymous*, 29 IDELR 1089 (OSEP 1994).

Assistive Technology Evaluation: A district must ensure that as part of an educational evaluation, when warranted by a child's suspected disability, it assesses, in accordance with the evaluation requirements, the student's functional capabilities and whether they may be increased, maintained, or improved through the use of AT devices or services. *Letter to Fisher*, 23 IDELR 565 (OSEP 1995).

Annual IEP: 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 served through enrollment in the district and is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the Individuals with Disabilities Education Act (IDEA) and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115.

FAPE & Parentally Placed Private School Students: A parentally placed private school student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school. WAC 392-172A-04035. When a child with a disability re-enrolls in a public school, after being withdrawn and temporarily enrolled in a private school or homeschooled, a district "has an obligation to convene an IEP meeting and develop an appropriate IEP for the child." *Letter to Goldman*, 53 IDELR 97 (OSEP 2009). The district is responsible for developing an IEP, unless the parents make it clear that they intend to keep their child enrolled in a private elementary or secondary school. *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private Schools*, (Question B-5, OSERS April 2011); *See also, Letter to Wayne*, (OSEP 2019) (If a parent makes clear his or her intent to keep the child enrolled in the private school, the district where the student's parent resides, is not required to make FAPE available to the student. If the parent enrolls the

student in public school, the district where the student's parents reside must make FAPE available and be prepared to develop and IEP.)

Evaluations for Parentally Placed Private School Students Eligible for Special Education: The district where the private school is located is responsible for conducting child find (locate, identify, and evaluate) for parentally placed private school students. 34 CFR §300.131; WAC 392-172A-04005; *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private School* (Question B-1, OSERS April 2011). Once the district where the private school is located identifies a privately enrolled student with a disability, the district of residence must be prepared to make FAPE available should that student's parents choose to enroll the student in public school. 71 Fed. Reg. 46,596 (2006).

The district where the private school is located is also responsible for conducting reevaluations for students with disabilities if the district determines that the student's educational or related services needs, in light of the student's academic achievement and functional performance, warrant a reevaluation; or, the student's parent or teacher requests a reevaluation. *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private School* (Question B-8, OSERS April 2011).

There may be times when parents could request that either the student's resident district or the district where the private school is located conduct the evaluation. Because most states assign the responsibility for making FAPE available to the district in which the student's parents reside—and because that could be different district from the district in which the private school is located—parents could ask two different districts to evaluate their student for different purposes at the same time. The U.S. Department of Education Office of Special Education and Rehabilitative Services (OSERS) does not encourage this practice. *Questions and Answers on Serving Children with Disabilities Placed by Their Parents in Private School* (Question B-4, OSERS April 2011); *See also, Letter to Eig*, 52 IDELR 136 (OSEP 2009) (noting that the IDEA requires districts to ensure that all resident children with disabilities, including children who attend private schools, are identified, located, and evaluated).

## **FINDINGS OF FACT**

### **Background**

1. In April 2017, the Student was evaluated for special education services by the District. The Student's evaluation group determined the Student was not eligible for special education.<sup>1</sup>
2. At the start of the 2017-2018 school year, the Student enrolled in his neighborhood District elementary school (neighborhood school) and was initially not eligible for special education services. The District's first day of school was September 6, 2017.

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<sup>1</sup> This fact is taken from special education citizen complaint (SECC) 18-41, which concerned the same Student and is described further below in footnote 3.

3. In October 2017, the District initiated an evaluation to determine if the Student was eligible for special education services.
4. On December 13, 2017, the District sent the Parent a letter regarding the Student's evaluation. The letter acknowledged that the evaluation group was having a difficult time scheduling a meeting to discuss the evaluation report, but also stated "the team wanted to acknowledge that based upon the convergence of data, [the Student] is eligible for special education services in the areas of written expression and math calculation...under the eligibility category specific learning disability." The letter stated that the evaluation group wanted to schedule a meeting with the Parent to review the evaluation report, but that in the meantime, the IEP team would begin drafting a proposed initial IEP.<sup>2</sup>

#### **Timeline for this Complaint Began on March 4, 2018**

5. On March 30, 2018, the Parent withdrew the Student from the District.
6. On April 17, 2018, the Student's District evaluation group met. The evaluation report stated the Student was eligible for special education services under the category specific learning disability. The evaluation report recommended the Student receive specially designed instruction in written language (written expression) and math (math calculation). The prior written notice regarding the evaluation meeting noted the Parent declined to sign the evaluation summary because she wanted to write a dissenting opinion. The notice stated that the Parent believed "the data is not current, and that dyslexia was not addressed in the report. Parents still have areas of concern in reading and executive function skills."
7. The Parent filed a complaint with OSPI on April 26, 2018, regarding the Student's educational program. OSPI investigated the following issue: "Did the District follow procedures for reevaluating the Student in October 2017, including obtaining informed consent from the Parent?"<sup>3</sup>

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<sup>2</sup> The District also sent the Parent prior written notices, dated December 5 and 7, 2017, regarding the attempts to schedule a meeting. The December 5 notice stated the "parents requested [the District] review previous evaluation reports" and stated the team agreed "based upon the data provided within the multiple evaluation reports, [the Student] is eligible for special education services."

<sup>3</sup> The decision in SECC 18-41 (issued on June 26, 2018), found the District followed evaluation procedures in part and did not follow other aspects of the evaluation procedures. OSPI determined: the evaluation was conducted within an allowable timeframe; the District used a variety of assessment tools and strategies; the evaluation was sufficiently comprehensive; and the evaluation report contained all the required elements. OSPI also determined the District evaluated the Student in all areas of suspected disability; however, OSPI did determine that, once the Parent provided the District with information from the Student's December 2017 audiology report, the District should have considered whether the Student needed to be assessed in that area. OSPI also determined the District failed to follow proper procedures for obtaining the Parent's informed consent because the relevant prior written notice did not adequately describe one particular evaluative measure that it conducted during the reevaluation of the Student. As a corrective action, OSPI,

8. On May 15, 2018, the Student's individualized education program (IEP) team met for a facilitated IEP meeting to develop the Student's initial IEP. The IEP included information about the Student's strengths, challenges, and the Parent's concerns. The team considerations section noted the Student "currently uses speech to text. The team would like to request an [assistive technology] AT consult with the district AT consult group." The IEP included two annual goals in written language and two annual goals in math, and contained an extensive list of accommodations for the Student—including, speech to text for written assignments. The IEP provided the Student with the following specially designed instruction from May 17, 2018 through May 16, 2019, to be provided by special education classroom staff:
- Math: 50 minutes, weekly (general education setting)
  - Written Language: 160 minutes, weekly (special education setting)
  - Math: 90 minutes, weekly (special education setting)

The IEP noted that the Student would spend 250 minutes in the special education setting and 85.38% of his time in the general education setting.

9. The prior written notice, dated May 17, 2018, stated the District proposed to implement the IEP as written. The notice documented the following Parent requests, which were rejected by the District:
- Placement at a Montessori or private school: School team felt that public school with special education support was the appropriate placement and that the Student "has not had special education services before, so the team felt he needs to receive these services and see how he progresses."
  - Another IEP meeting: "This proposed IEP constitutes the District's offer of [a free appropriate public education] FAPE, and the District sees no need to further deliberate the offer of this IEP." However, the District noted that "if the parent decides to sign consent and dual enroll to access special education services, an IEP amendment meeting can be held to discuss those services."
  - Mediation: "Mediation can be reconsidered if the Parent signs consent for initial services, provides in writing the issues she wishes to mediate, and the [independent educational evaluation] IEE is completed."
  - Extended school year (ESY) services: "The school team has no data to support the need for ESY based on any of the ESY criteria because the student is not in special education and the goals are not being implemented."

The prior written notice also noted the IEP team "added to the assistive technology [(AT)] portion of the IEP that [Student] uses speech to text and that the team would like to request an AT consult through the district AT staff. [The Student] would need to be in special education and attending in district for this to take place." The notice included information that the Parent "requested to dual enroll for the remainder of the school year, and access special education services only at another elementary school in the district." The notice stated the Parent would need to contact the student services office to find out the process for attending a different

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in part, required the District to review the Student's December 2017 audiology report, determine if the Student needed to be further evaluated in this area, and issue a prior written notice regarding its decision. The District completed the corrective actions in SECC 18-41 on October 18, 2018, and the complaint file was closed on October 25, 2018.

school through a District waiver process. The prior written notice indicated special education services could begin after the Parent provided signed consent for the provision of special education and, "if the parent dual enrolls the student, and intends to access special education services, an IEP amendment will need to be created to reflect that information."

10. According to the Parent's complaint, on May 15, 2018 at the Student's IEP meeting, she requested that the District conduct an "Assistive Technology (AT) evaluation" of the Student. According to the Parent, the District's assistant director of elementary special education (elementary assistant director) rejected her request but did not provide a prior written notice documenting the request. Further, in her reply to the District's response to this complaint, the Parent stated she requested an AT evaluation, but the District "tabled" the item and did not provide a prior written notice for "the things they refused to consider other than placement." The Parent further stated that by placing speech to text on the Student's IEP, the District "clearly identified a need for assistive technology."

The Parent stated, in her reply, that she brought up the following concerns at the meeting regarding the need for AT:

- Student was using speech to text because "he struggles with motor coordination issues and both writing and typing are challenges for him. He has a motor coordination disorder."
  - The Student "needed a way to be able to access his curriculum when his teacher used the white board because he could not integrate what the teacher said and watch the white board." The Student's "visual and auditory processing issues created a need of technology at his desk to access content of digital white board at his desk. He has visual and auditory processing issues."
  - Due to the Student's auditory processing challenges, the Parent "mentioned technology that could minimize background noise and amplify speech to make it clearer."
  - The Student "needs access to a computer to do written homework assignments with voice to text."
11. In its response, the District stated the IEP team discussed and agreed to request a consultation from the District's AT staff. During the discussion, the District noted in order to proceed with next steps, the Student would need to be enrolled in the District and receiving special education services. The District stated, "a formal AT Evaluation was not discussed by the team, nor was one requested by the Parent during this meeting...the District does not agree that the discussion was 'tabled' at the meeting as the team agreed to the next step of consulting with the District AT team." The District noted the terms "consult" and "evaluation" seem to have been used interchangeably in emails. The District response stated, "the process to obtain an AT evaluation would require parent permission including a discussion around the scope of the evaluation and a determination made whether the evaluation could be conducted by district staff or if outside professional assistance would be needed."
  12. In its response, the District explained that the District's AT group "offers consultative services to IEP teams to help them make instructional decisions." These services include "helping IEP teams determine what underlying skills students need to be taught in order to effectively utilize AT, what devices and services could be trialed for use with students to support their learning, and they can provide ongoing consultation as the needs of the student can change

over time." The AT group can also recommend evaluations through the special education technology center (SETC), if appropriate.

13. On May 18, 2018, the Parent provided the District a signed release of information for the IEE and submitted a waiver request to transfer the Student from his neighborhood school to a different District elementary school (school 2).
14. Also on May 18, 2018, the Parent provided consent for the initial provision of special education services. In a prior written notice, dated May 23, 2018, the District documented the following email communications with the Parent:
  - 5/18/18: "The parent stated that she was providing consent, but did not agree with the IEP."
  - 5/21/18: "Based on the parent's disagreement, the assistant director for special education replied and suggested convening the IEP team to discuss amending the IEP."
  - 5/21/18: "The Parent replied wanting a facilitated meeting because she did not feel the writing goal could be accomplished without working on spelling. The current IEP has a goal focused on spelling. The team discussed spelling instruction and strategies at length during the IEP meeting on 5/15/18, so SDI in writing and spelling is already included in the current IEP."
  - 5/21/18: "Parent replied again that she would like to wait to amend the IEP until after the pending IEE is completed. She also asked where and when services could begin. (The parent had filled out a waiver request to [school 2].)"
  - 5/22/18: "The assistant director for special education relied that the first step would be to find out if the Parent's waiver request had been accepted."

The prior written notice stated:

The school team has an appropriate IEP, which they are ready to implement at any time. If the parent would still like to waiver to another school in the district, the team at that school will be able to implement the IEP as written. The parent would need to enroll the student in order for the student to receive the services outlined in the IEP. Should the parent wish to dually enroll and access some services, an IEP amendment would need to be written to reflect this. The team is willing to convene the IEP team to discuss amending the IEP. The parent will need to contact the special education teacher to schedule this meeting if and when she would like to do so.

15. According to the documentation in this complaint, school 2 was at capacity and not accepting students through the waiver process, but the District notified the Parent that the Student was welcome to attend his neighborhood school.
16. According to the Parent's reply, the Parent went to the Student's neighborhood school on May 22 and 25, 2018, to reenroll the Student. According to the Parent, the principal stated, "they did not have the availability for those IEP services minutes and that he would have to get back to the parent about it."

According to the District, the principal recalls the Parent coming to the neighborhood school. According to the principal's recollection of the conversation, the Parent came in to discuss enrollment and then changed her mind and said the Student would not be reenrolling in the District. The principal stated there were many conversations during this time period with the

Parent about the fact the District and the neighborhood school could meet the Student's needs, and that the Student was welcome at the neighborhood school.

17. On May 25, 2018, the Parent received a letter from the Student's private counselor, stating, "she did not think it was in the child's best interest to go back to [neighborhood school]" and the Parent forwarded that letter to the principal.
18. The Student was not enrolled in the District for the remainder of the 2017-2018 school year and did not access District special education services. No AT consultation occurred.
19. The District's last day of school for the 2017-2018 school year was June 21, 2018.

### **2018-2019 School Year**

20. The District's first day of the 2018-2019 school year was September 5, 2018. The Student was enrolled in a private school in another district in Washington.
21. The documentation in this complaint indicated that several times, October through December 2018, the District attempted to schedule a meeting for the Student's evaluation team, including the Parent, to discuss the July 2018 IEE and to further discuss the Student's IEP. Several emails from the Parent reiterated that the Parent wanted a mediation or a mediated meeting, not a facilitated meeting. In December 2018, the Parent replied, "My child is not at your school. He is being educated in his least restrictive environment and his needs are being met with solutions that are not causing further harm."<sup>4</sup> The Parent stated she had previously told the District she was "happy to discuss this in mediation to see if the district can come up with a solution to provide FAPE."
22. On February 13, 2019, the Parent emailed the District's superintendent and assistant superintendent a request for a special education citizen complaint.<sup>5</sup> In a subsequent email to the superintendent, that same day, the Parent stated, "I just realized that it is stated in the last IEP version that the team wanted to consider a district AT consult, this was an item tabled at the IEP meeting, so we didn't get to discuss it." And asked, "is this only if we enrolled [the Student] back at [neighborhood school], or is that something [the other (current) school district] can do too?"
23. On February 15, 2019, the assistant superintendent responded to the Parent's email and stated she was "always willing to meet with you and work through your areas of concern" and stated if the Parent was willing to meet, "we could map out the necessary steps we need to go

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<sup>4</sup> In a previous email, dated November 21, 2018, the Parent stated she did not plan on re-enrolling the Student in the District "this year as it would not be in his best interest nor is it an appropriate placement for him at this point."

<sup>5</sup> OSPI received this request on February 27, 2019, and determined that it could not open an investigation. OSPI sent the Parent and District a letter, documenting the decision and reasons why it was not opening a complaint on February 28, 2019.



through to get the evaluation and IEP plan in place, who would all need to be involved, what information we need to include, and when we could meet with the required team members.” The assistant superintendent further stated, “because [the Student] is not currently enrolled in the district at this time [District] would not be conducting an AT evaluation.”

24. On February 17, 2019, the Parent emailed the assistant superintendent, asking about the Student’s IEP, whether he had an IEP, and asking whether the “assistive technology part [of] this IEP were to transfer.” The assistant superintendent responded and attached the Student’s May 2018 IEP.
25. On March 2, 2019, the Parent emailed the superintendent and assistant superintendent and attached a request for a special education citizen complaint.<sup>6</sup> In her email, the Parent stated, “I would like a [prior written notice] stating the reason that AT evaluation was tabled at the IEP meeting on 5/15/2018.”
26. On March 16, 2019, the assistant superintendent responded to the Parent’s email, stating the District would be responding to the Parent’s complaint. The assistant superintendent stated:

My review of the documents from the IEP meeting indicate an assistive tech consult was discussed. This could not be conducted as [the Student] was removed from school and the consult could not be done if he wasn’t in attendance. If you are requesting an assistive tech evaluation and you are willing to bring [the Student] to the district for a few hours, we could accomplish this task. If, however, you were able to obtain such evaluation through [the other school district] given he now attends a private school in their attendance area, then one may no longer be needed.

The Parent replied, stating, “this was an item put into the parking lot by [elementary assistant director] at the meeting. She further indicated the district did not wish to further discuss the IEP and that it was sufficient to meet our sons needs.” The Parent stated because “an AT consult was not discussed. I didn’t realize the AT consult made it on district paperwork so thank you for the clarification.” The Parent stated the Student’s current school “ended up purchasing something to work around an issue we are seeing.”

27. According to the District’s response, “to date, Student has not accessed any special education services in the District.” The Student continues to attend a private school located in a different district in Washington.
28. The District stated it has made,

Numerous attempts to address Parent concerns and schedule meetings with the Parent to discuss her concerns, consider outside evaluations, and to amend the current IEP. The current IEP represents the District’s initial offer of a FAPE for the Student and given that the Parent is in disagreement with this, the District stands ready to meet with the Parent and attempt to come to resolution with her for the benefit of the Student. The District has a FAPE available for the student should he choose to re-enroll in the District, via the initial

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<sup>6</sup> This is the special education citizen complaint request that resulted in this current investigation.

IEP, which the District continues to be willing to meet to discuss amending, in order come to resolution with the Parent, if the Parent would participate.

In an interview, the assistant superintendent stated the District is always open and willing to meet with the Parent. The assistant superintendent stated the Student would be going to middle school next year and that this would be a good opportunity to meet because if he were to reenroll in the District, he would be at a new school, working with a new team.

29. The Parent, in her reply, disagreed and stated the District's documentation is a "very one sided attempt to make it look like [the District] have made a good faith effort to meet with the parent regarding [the IEE] and IEP revision when that is not the case." The Parent stated the District has "refused to give the student access to a school and special education services. They have repeatedly failed to offer the child FAPE."

## **CONCLUSIONS**

The Parent alleged that the District failed to follow procedures for responding to her requests that the Student be evaluated for assistive technology (AT) needs in May 2018 and February 2019. Specifically, the Parent alleged that the District failed to provide her with prior written notice documenting its refusal.

### May 2018 AT Request

In her complaint, the Parent stated she requested an AT "evaluation" at the Student's May 15, 2018 individualized education program (IEP) meeting because the Student struggles with motor coordination; writing and typing are a challenge; has visual and auditory processing issues; has an auditory processing challenge; and needs a computer. The Parent stated the District rejected her request and "tabled" the discussion, but did not provide a prior written notice documenting the rejection.

The need for AT must be determined on a case-by-case basis, considering the unique needs of each student. If the IEP team determines a student requires AT in order to receive a free appropriate public education (FAPE), this should be designated on the IEP. When warranted by a student's suspected disability, a district must ensure that as part of an educational evaluation it assesses, in accordance with the evaluation requirements, the student's functional capabilities and whether they may be increased, maintained, or improved through the use of AT devices or services.

On May 15, 2018, the Student's IEP team met to develop his initial IEP. Based on the documentation in this complaint, the IEP team discussed the Student's current use of speech-to-text technology and included speech-to-text as an accommodation on the IEP. According to the District, the team agreed that the team would like to request an AT consultation with the District's AT group. The District further explained that the District's AT group "offers consultative services to IEP teams to help them make instructional decisions" and help "IEP teams determine what underlying skills students need to be taught in order to effectively utilize AT, what devices and

services could be trialed for use with students to support their learning, and they can provide ongoing consultation as the needs of the student can change over time.”

At this point, the Student was not enrolled in the District and the District communicated to the Parent—through the May 17, 2018 prior written notice—that the Student would need to be enrolled in the District and receiving special education services for the District to proceed with the AT consult. Interestingly, in March 2019, the Parent acknowledged the District’s paperwork did document the request for an AT consult, although the Parent maintained no discussion took place at the May 2018 IEP meeting. An AT consultation did not occur during the 2017-2018 school year because the Student never reenrolled or accessed special education services through the District.

The fact that the Student’s IEP included speech-to-text as an accommodation indicates the Student’s IEP team considered the Student’s need for AT to some degree. Further, the IEP and prior written notice—in direct contradiction to the Parent’s allegation that prior written notice was not provided—document the request and next steps: a consult with the District’s AT group. The District’s next steps are appropriate because the AT group works with and provides consultation directly to the teachers and providers working with a student. Further, the requirement that the Student be enrolled and receiving services in the District is reasonable. While the Parent may disagree with the distinction between a consult and an evaluation, there is no documentation that confirms the Parent requested an AT evaluation in May 2018. Further, given the Parent and District’s communication during that period regarding enrollment and other concerns, the Parent had ample opportunity to request an AT evaluation at that time if the Parent believed the District’s discussion at the May 2018 IEP meeting was insufficient.

OSPI finds that the District properly responded to the Parent’s request for AT by offering a consult with the District’s AT group. The District did not deny the Parent’s request, nor did the District fail to document the request and next steps in a prior written notice. OSPI finds no violation.

#### February 2019 AT Request

During the 2018-2019 school year, the Student attended school in a different district in Washington. In her complaint, the Parent alleged that the District improperly responded to her February 2019 request for an AT evaluation.

On February 13, 2019, the Parent emailed the District, stating, “I just realized that it is stated in the last IEP version that the team wanted to consider a district AT consult...” and asked, “is this only if we enrolled [the Student] back at [neighborhood school], or is that something [the other (current) school district] can do too?” On February 15, 2019, the assistant superintendent responded and stated, in part, that the District would not be conducting an AT evaluation because the Student was not currently enrolled in the District. On March 2, 2019, the Parent emailed the District and requested a prior written notice, “stating the reason that AT evaluation was tabled at the IEP meeting on 5/15/2018.” The assistant superintendent responded that the documentation from the May 2018 IEP meeting indicated an AT consult was discussed, but could not be conducted because the Student was not enrolled in the District. The assistant superintendent then stated if the Parent was requesting an AT evaluation and was “willing to bring [the Student] to the district

for a few hours, we could accomplish this task. If, however, you were able to obtain such evaluation through [the other school district] given he now attends a private school in their attendance area, then one may no longer be needed.” In response, the Parent stated the Student’s current school “ended up purchasing something to work around an issue we are seeing.”

Here, the District offered in early March 2019, to conduct an AT evaluation for the Student if the Parent was willing to bring the Student to the District for assessment. There is no indication that the Parent took the District up on this offer and the Parent responded to the District that the Student’s current school “ended up purchasing something to work around an issue we are seeing.” It is therefore unclear why the Parent filed this complaint—the Parent requested an AT evaluation, the District agreed to conduct an AT evaluation, and then the Parent declined to access the District’s offered evaluation. Based on this, OSPI finds no violation.

#### District’s Obligation to the Student while he Attends a Private School

Given that the Student is not currently enrolled in the District, it would have been more appropriate for the Parent to request that the district where the private school is located conduct the evaluation. When a student is enrolled private school, the district where the private school is located is responsible for child find and for conducting reevaluations for students if the district determines that a student’s educational or related service needs warrant a reevaluation; or, a student’s parent or teacher requests a reevaluation.

There may be times when parents could request that either the student’s resident district or the district where the private school is located conduct the evaluation, because the responsibility for making FAPE available to the student lies with the district in which the student resides. A student’s district of residence must be prepared to make FAPE available, should the student’s parents choose to enroll the student in public school. Thus, at the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction who is served through *enrollment* in the district and is eligible to receive special education services. A district has an obligation to convene an IEP meeting and develop an appropriate IEP for a student *when* that student re-enrolls in a public school, after being withdrawn and temporarily enrolled in a private school or homeschooled, unless the parents make it clear they intend to keep their child enrolled in a private school.

Here, the District—despite its offer to conduct an AT evaluation—did not have an obligation to conduct that evaluation. A student’s resident district must be prepared to make FAPE available, should a student’s parents choose to enroll the student in public school. The District has offered and made a FAPE available for the Student through the May 2018 IEP, which included AT as an accommodation and a recommendation for an AT consult with the District’s AT group.<sup>7</sup> At this

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<sup>7</sup> Based on the Parent’s reply, it is clear that she disagrees with the District’s offer of FAPE—the Parent disagreed with the IEP and the District’s proposed placement. As discussed in the scope section, the Parent did not make allegations regarding this issue in this complaint. For purposes of this decision, based on the documentation provided, OSPI finds that the District has made an appropriate offer of a FAPE. If the Parent

point, there is no indication that an AT evaluation would alter the District's offer of FAPE for the Student or that the District's current offer of FAPE is insufficient without an AT evaluation. The District acknowledged, multiple times, that if the Student were to re-enroll or part-time enroll in the District, the Student's IEP would need to be updated/amended; and, the District stated it was willing to meet as needed. Thus, if the Student were to re-enroll, it would be appropriate to consider whether the Student's AT needs should be evaluated in order to provide a FAPE.

Further, there is no indication that the Parent plans to re-enroll the Student in the District, and in fact, statements to the contrary indicate the Parent plans to have the Student continue attending private school. In spring of 2018, the Parent did seek to enroll the Student in a different elementary school in the District through the District's waiver process; however, the other elementary school was at capacity. The Parent declined to re-enroll the Student in his neighborhood school and stated as such in late May 2018. In November and December 2018, the Parent again stated that she would not be enrolling the Student in the District and his needs were being met in his other school.

As the District has made a FAPE available to the Student, has acknowledged its obligation to convene the IEP team and consider amending the IEP should the Student re-enroll in the District, and having offered an AT evaluation, OSPI finds the District has appropriately responded to the Parent's February 2019 AT request. OSPI does not believe the District has an obligation to provide an AT evaluation for this Student as he is not currently enrolled in the District, there is no indication he plans to re-enroll in the District, and because there is no indication that the District's current offer of a FAPE is insufficient without the AT evaluation. However, OSPI does not want to discourage a district from going above and beyond in an effort to serve students. Here, the District has met its obligations under the IDEA and OSPI finds no violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

In its response, the District stated it has worked to address the Parent's concerns. The Parent argued that the District's documentation is one sided—largely, it appears, because the District declined to participate in a mediation. However, the documentation includes numerous offers by the District and attempts to schedule meetings with the Parent to address her concerns. OSPI believes that the District has been diligent in its efforts to work cooperatively with the Parent and address her concerns. OSPI recommends that the District continue to be open and responsive in

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disagrees with the District's FAPE proposal or proposed placement for the Student, the Parent may wish to consider filing a request for a due process hearing.

its communication with the Parent, should the Parent reach out to the District with questions. However, at this point, the obligation lies with the Parent to re-enroll the Student in the District if she wishes to access special education services through the District.

Dated this \_\_\_\_ day of April, 2019

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.)