

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-111**

### **PROCEDURAL HISTORY**

On September 14, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an attorney (Complainant) representing the parent of a student (Student) attending the Port Angeles 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 Student's education.

On September 16, 2022, 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 September 16, 2022, OSPI received additional information from the District. On September 19, 2022, OSPI forwarded that information to the Complainant. With the letter of September 19, 2022, OSPI amended the issue for investigation.

On October 3, 2022, OSPI received the District's response to the complaint and forwarded it to the Complainant on October 6, 2022. OSPI invited the Complainant to reply.

On November 3, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on November 7, 2022. OSPI forwarded that information to the Complainant on November 8, 2022.<sup>1</sup>

On November 8, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on November 8 and 9, 2022. OSPI forwarded that information to the Complainant on November 10, 2022.

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

### **ISSUE**

1. Did the District respond to the Parent's requests *starting in* summer 2022 for an individualized education program (IEP) meeting to discuss and plan for the provision of compensatory education per 2021-SE-0108?

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<sup>1</sup> On November 8, 2022, OSPI's investigator emailed the Complainant, stating, in part, "I received the below information from the District...I did want to get your feedback on the portion highlighted in yellow, below. Specifically, I wanted to confirm: did the ASL interpreter take the Student on two community outings in October? But please feel free to respond to any of the content below." OSPI did not receive a response from the Complainant to this email.

## LEGAL STANDARDS

Parent Request for IEP Meeting: The Individuals with Disabilities Education Act (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 a free appropriate public education (FAPE) to their child. 34 CFR §300.501(b); WAC 392-172A-05000(2)(a).

When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

Timeline for Completion of Remedies in Due Process Decisions: In relation to due process hearing decisions, corrective actions must be implemented within the timeframe prescribed by the hearing officer, or if there is no such timeframe, then within a reasonable timeframe. *Letter to Zirkel*, 68 IDELR 142 (OSEP 2016).

## FINDINGS OF FACT

### Background Information

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of deafness, was in the first grade, and attended an elementary school in a separate Washington state school district (contracted district).

The District's response clarified, "Pursuant to the inter-district agreement between the District and [the contracted District], [the contracted District] is responsible for providing Student's educational program, developing Student's IEPs, and convening IEP team meetings for Student."

2. On September 20, 2021, the Parent filed a due process hearing request (due process 2021-SE-0108). According to the Complainant, the due process hearing request related, in part, to allegations the District "failed...to provide appropriate deaf education services and supports."
3. From April 12–15, 2022, a hearing was held in response to the Parent's September 2021 due process hearing request.

According to the Complainant, during the hearing, at least two individuals testified “that the Student would benefit from receiving compensatory services during the summer [of 2022] to better prepare her to meet second grade standards.”

4. On June 14, 2022, the Student’s IEP team developed a new IEP for the Student. The June 2022 IEP provided the Student, in part, with the following specially designed instruction: reading, math, written language, social-emotional-behavioral, and communication.
5. On June 15, 2022, an order was issued by an administrative law judge in the Parent’s due process. The due process order awarded the Student with 493.75 hours of compensatory education.

In relation to the award of compensatory education, the due process order read, in part:

The District did not provide an ASL interpreter for the Student at any point in 2020–2021. This meant that the Student could not access her instruction. The District’s failure to provide an ASL interpreter was a material failure to implement the IEP and therefore a violation of the IDEA.

...

As concluded above, the District violated the IDEA and denied the Student a FAPE for 20 full school days in 2019–2020 and 175 full school days in 2020–2021. It also denied the Student a FAPE for 5 half days in 2020–2021.

The compensatory education shall be provided by a nationally-certified American Sign Language (ASL) interpreter acting as a deaf mentor to the Student. The interpreter selected must be willing to go out into the community with the Student to give the Student different experiences. The person selected as the Student’s deaf mentor must be selected with the input and advice of the Center for the Deaf and Hard of Hearing (CDHY), if CDHY is willing to provide such input and advice. (CDHY is not subject to this tribunal’s jurisdiction, so I cannot order it to do anything.) If CDHY participates, it shall also have the power to veto any proposed deaf mentor for the Student.

This order does not prohibit the Parent from also interacting with the Student and the deaf mentor during the mentoring time. ‘One-on-one’ does not mean the Parent cannot be involved.

The deaf mentor, in consultation with the Parent, may elect to use some of the compensatory hours to transport the Student to and spend time with the Student at events where other DHH children or adults are present. This provision is meant to encourage the deaf mentor to seek out opportunities for the Student to interact with other DHH persons.

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The compensatory education hours awarded are not to be used during school hours and are separate from any services being provided pursuant to the Student’s current IEP.

6. In its response, the District noted, “The [due process order] did not require the District to hold an IEP meeting for any purpose, including to discuss and plan for the provision of compensatory education. [It] also did not include a date by which the District was required to begin providing...compensatory education services.”

7. The complaint request read, in part:

Directly after the order was issued, the parent contacted the District and asked for a meeting. The parent's attorney (Complainant) contacted the District's attorney and identified a nationally certified ASL interpreter with whom the district could contract to deliver compensatory services. Complainant reported that the interpreter could be available for the summer of 2022, provided the District confirmed [with the interpreter] it would contract with her...The District's attorney responded that the District was 'weighing its options'...In reality, there was no chance the district would appeal.

...

The District's delay means the student did not receive any compensatory services during the summer of 2022.

The parent asked for an IEP meeting prior to the 2022–2023 school year. First the district agreed, but then later the new special education director insisted that was impossible [to meet prior to the 2022–2023 school year].

The parent asked for an IEP meeting after the school year began and requested that CDHY be involved. The District will not agree to schedule an IEP meeting.

The District indicated it had contracted with a nationally certified interpreter to deliver the compensatory hours. It is the same person the parents attorney suggested. However, there is no plan for delivery of these hours, there has been no attempt to involve the CDHY or the parent in developing a schedule for delivery. When the parent spoke to the contracted provider, the interpreter explained that due to the district's delay in contracting with her, she may not be able to deliver services until the summer of 2023.

...The parent wants a meeting that involves CDHY and parent and discussing how the hours of one-on-one compensatory services should be organized and delivered. The CDHY can assist in identifying community events the student can access as part of the compensatory services.

8. The final day of school for the 2021–2022 school year was June 15, 2022.

9. On August 1, 2022, the District's special education director (director) contacted CDHY regarding compensatory education for Student. The director explained that the District needed to contract with a fully certified/licensed ASL interpreter to provide services to the Student outside of the school day. The director asked CDHY for their input on any qualified individuals in a specific Washington state county.

On August 2, 2022, CDHY informed the director it was not aware of any specific interpreters in that specific county, but recommended the District reach out to two different ASL interpreter services.

10. On August 5, 2022, the director contacted the contracted district's director (director 2). The director explained that the District needed to contract with a fully certified/licensed ASL interpreter to provide compensatory services to the Student outside of the school day. The director asked director 2 if she was aware of any qualified individuals in the area.

On August 8, 2022, director 2 informed the director that the contracted district utilized a certain provider for ASL services (ASL provider), and another individual served as the contracted district's "communication facilitator." Director 2 offered to provide the ASL provider with the director's contact information.

The director accepted the offer and reiterated that the District needed to contract with someone who was fully certified and licensed and could provide services outside of school hours.

11. On August 8, 2022, the Parent asked the director and the superintendent if the District was going to provide the compensatory services ordered in the due process decision. The Parent also requested that an IEP team meeting be scheduled for the week of August 22 to develop an IEP for the 2022–2023 school year. In her email, the Parent stated she had "reached out to [the previous director] begging that services be contracted to begin during the summer of 2022 [but the previous director] never responded [and] I have since learned that [she] no longer works for the District."

The director responded to the Parent the same day. She explained that the due process decision required the District to consult with CDHY regarding locating a licensed ASL interpreter to provide the compensatory services. She explained that the District had also contacted the contracted district to locate a fully certified ASL interpreter. She also informed the Parent that she would work with the contracted district to schedule an IEP team meeting for the week of August 22, 2022.<sup>2</sup>

12. Separately on August 8, 2022, the director informed the contracted district that the Parent requested an IEP team meeting for the week of August 22. The director noted that the contract between the District and contracted district specified that the contracted district would schedule IEP meetings and prepare IEPs.
13. On August 9, 2022, the ASL provider let the director know that she had received her message regarding ASL interpreting services, but was on vacation through August 18, 2022. The ASL provider explained that she was a nationally certified and insured ASL interpreter and asked how she could help provide interpreting services.

The director explained that the District had an opportunity for a nationally certified and insured ASL interpreter to serve as an interpreter/deaf mentor for a student. The director explained that it was a longer-term commitment that would involve attending events out in the community with the Student and providing services outside the regular school day, such as evenings, weekends, or school breaks. The director offered to schedule a telephone call or meeting to discuss the role, if ASL provider was interested.

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<sup>2</sup> Though outside the scope of this investigation, in her August 8, 2022 emailed response to the Parent, the director also told the Parent the District planned to contract with the same Washington state school district again for the 2022–2023 school year, and that the District would provide the Student's transportation to that district.

On August 10, 2022, the ASL provider offered to call the director when she returned from vacation on August 18. In response, the director sent the ASL provider a calendar invitation for a telephone call on August 18 at 10 am.

14. On August 10, 2022, the director informed the Parent that she had scheduled a telephone call with the ASL interpreter for August 18. The director explained that they were not meeting sooner because the interpreter was on vacation until then.
15. On August 11, 2022, the director provided the ASL provider with information about the ASL interpreter contract position the District had posted and advertised.
16. According to the District, on August 18, 2022, the director met with ASL provider over the telephone to discuss the ASL compensatory services.

Separately on August 18, 2022, the director emailed the Parent, stating, in part, “the ASL interpreter is willing to provide the ASL services. The effective date of her contract should be August 25. I told her I would let you know that she would be contacting you.”

17. On August 18, 2022, the director provided the ASL provider with a contract between the District and ASL provider for the compensatory education ordered in the due process decision.
18. On August 22, 2022, the Parent asked the director to provide dates for an IEP meeting by August 24.

The director explained that she would let the contracted district’s team know that the Parent wanted a date for the IEP meeting. She also asked about the Parent’s availability for the meeting.

19. On August 24, 2022, the director informed the Parent that certain members of the Student’s IEP team did not return to work until the following week. The director explained that once staff returned, the team could determine dates for an IEP team meeting.

The Parent responded that she wanted a meeting prior to the start of the school year, “to make sure transportation is in place so [Student] can attend school in [the contracted District].”<sup>3</sup> The Parent stated that she wanted a representative from CDHY to attend the IEP team meeting. The Parent also asked if the District intended to provide the compensatory services ordered in the due process decision. The Parent explained that she understood a previous communication she had received from the director to mean that staff would be working, starting August 22, 2022.

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<sup>3</sup> OSPI notes: several emails relate to the Parent’s desire to set up an IEP meeting to discuss, at least in part, the transportation arrangements for the Student for the 2022–2023 school year. This specific matter—whether the District properly responded to the Parent’s request for an IEP meeting to discuss transportation—is beyond the scope of this investigation.

The director explained to the Parent that the contract for compensatory services would be effective the following day, August 25, 2022. The director noted that she had sent the Parent an email on August 18, 2022, after the ASL provider had agreed to provide the services. The director reiterated that the District was contracting with the contracted district for services again for the 2022–2023 school year, and that transportation would be provided. The director stated they would get dates for an IEP meeting the following week when staff returned to work. The director asked the Parent again for her availability for the IEP meeting.

Separately on August 24, 2022, the director asked CDHY about their availability for an IEP team meeting for the Student. The director also informed the contracted district that the Parent wanted CDHY to attend the IEP team meeting. The director then informed the Parent that she let CDHY and the “IEP team administrator” know that the Parent wanted an IEP team meeting to take place before school began on September 7, 2022. She explained that they would “know more” when school staff returned the following week.

20. On August 25, 2022, the director provided the ASL provider with a copy of the contract for compensatory services that was signed by the District, as well as a timesheet for the ASL provider to record her hours. The director requested that the ASL provider sign and return the contract as soon as possible. She noted that the effective date was August 25, 2022.

On August 25, 2022, the director also sent the Parent a copy of the contract for the compensatory services.

21. The District’s response included an “Interdistrict Agreement for Education Services to a Student with Disabilities,” dated August 26, 2022.

The agreement provided that the contracted district was responsible for providing all of the Student’s educational and IEP services and communications, including IEP team meetings. The agreement also provided that the District was responsible for funding the Student’s special education services and transportation.

22. On August 30, 2022, the ASL provider provided the director with a copy of the signed contract for compensatory services.
23. On August 30, 2022, the director informed the Parent that she spoke with the contracted district that day about the Parent’s request for an IEP team meeting. She explained that the contracted district was checking with staff on the IEP team about possible dates. The director stated that she would contact the Parent after she received dates from the contracted district.
24. On September 6, 2022, the District informed the Parent via text message that transportation would arrive at 7:20 am the following morning to transport the Student to the contracted

district. The Parent responded that she would be transporting the Student. The Parent stated that she was waiting for an IEP team meeting to discuss transportation specifics.<sup>4</sup>

### **2022–2023 School Year**

25. The District's first day of school was September 7, 2022.
26. At the start of the 2022–2023 school year, the Student continued to be eligible for special education services, was in the second grade, and attended an elementary school in a contracted district. At that time, the Student's June 2022 IEP was in effect.
27. In emails dated September 7 and 8, 2022, the Parent's attorney and the District's attorney discussed prior communications between the parties, as well as the Parent's desire to hold an IEP meeting to discuss, at least in significant part, transportation logistics.
28. In an email thread, dated September 9, 2022, the contracted district's director and the director determined September 14, 2022 might be a good date for an IEP meeting, and that the contracted district's director could be present for the same.
29. In an email thread, dated September 13 and 14, 2022, the Parent and the director discussed, in part, the following: the Parent would provide transportation to the contracted district; and the District would reimburse the Parent for the cost of the same.
30. The Parent filed her community complaint request on September 14, 2022.
31. On September 20, 2022, the director informed the Parent that CDHY was available to meet on September 21 at 2:30 or 3:30 pm. The director asked if either of those times worked for the Parent.

In response, the Parent asked if the meeting was the IEP team meeting she had requested.

The director explained that it was a meeting with CDHY to discuss the contract for the compensatory services. The director stated that the contract provider would be speaking with the Parent about deaf meetups in October, a deaf expo in November, as well as outings in the community. The director explained that CDHY might have other ideas for deaf mentor activities. The director stated that the contracted district would be providing IEP dates soon.

32. According to the District, on September 21, 2022:  
[The director and CDHY participated in a meeting] discuss the contract for compensatory services and deaf meetups, the deaf expo, and potential outings in the community...The Parent did not attend [and] CDHY did not have any additional information about...community outings other than [had been] previously discussed.

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<sup>4</sup> A similar conversation took place via email the next day, September 7, 2022. In said email, the Parent stated, in part, "I had been hoping that we would have an IEP meeting before the school year started to discuss transportation but for the foreseeable future, I'll be providing the transportation!"



33. On September 21, 2022, the contracted district informed the director that the Student's new IEP team was ready to meet. The contracted district explained that the Student would have a different teacher as case manager and that they would send out "a doodle poll" that day to determine the date that worked best for the respective IEP team members.
34. According to the director, in October 2022, the ASL interpreter took the Student to two different community events, as part of the compensatory education hours required by the due process decision.
35. According to the District, on October 20, 2022:  
The student's IEP team [met] to discuss the student's IEP and services, including transportation. The team also reviewed the IEP to ensure that it complied with the ALJ's Order. The parent participated in the meeting and had a legal representative attend on her behalf. During the IEP meeting, neither the parent nor her representative asked to discuss compensatory services.

During this investigation, the District did provide OSPI with an IEP meeting invitation for the October 20, 2022 IEP meeting. This meeting invitation was sent, in part, to the Parent.<sup>5</sup>

36. During this investigation, the District provided OSPI with a copy of a prior written notice, dated October 24, 2022. It read, in part:

**Description of the Proposed or Refused Action:**

Some clerical errors were amended following the team meeting on October 20, 2022. The Communication – ASL services are delivered in a general education setting (not a special education setting). This correction also adjusted the total minutes and the percentage in general education. The list of services in the Educational Services Placement were corrected. And the reading goal was corrected to the proper target reading level.

**The Reason We Are Proposing or Refusing to Take Action is:**

Some clerical errors were noted in the October 20, 2022 team meeting, and they are being addressed through an amendment.

**Any Other Factors that are Relevant to the Action:**

Additional amendments to the individual education program (IEP) in the near future are planned, because it was requested that we evaluate adaptive skills. That process has been started by contacting the parent. We don't have consent to evaluate yet, but anticipate we will receive that soon.

...

A team meeting took place on October 20, 2022. The following participated: parent, general education teacher, special education teacher, speech therapist, occupational therapist assistant, physical therapist, paraeducator/communication facilitator/deaf mentor, interpreters, Teacher of the Deaf, CDHY representative, executive director of learning

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<sup>5</sup> During this investigation, the District provided OSPI with five pages of an IEP, dated October 24, 2022. These pages, however, appeared to include goals and services that were to be effective from June 14, 2022 through June 13, 2023. In other words, it was not clear to OSPI the extent to which these five pages related to the creation of a new IEP for the Student on or about October 20, 2022.

support services in Sequim, director of special services in Port Angeles, law firm representatives, and school psychologist.

37. According to the District, the plan moving forward is for “the director [to] check-in with the ASL interpreter on a monthly basis about what compensatory hours have been provided.”

## CONCLUSIONS

**Issue 1: Parent Participation in IEP Meetings** – The Parent alleged the District did not follow proper procedures for responding to the Parent’s requests starting *in* summer 2022 for an IEP meeting to discuss and plan for the provision of compensatory education required by due process decision 2021-SE-0108.

The 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 FAPE to their child. When a parent or district believes that a required component of a student’s IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting.

As a preliminary matter, OSPI notes: in its response, the District suggests an IEP meeting to discuss the compensatory education award in the due process decision is not needed, in part, because the due process decision does not explicitly require an IEP meeting be convened to discuss the compensatory education. On this point, OSPI agrees that the due process decision does not mandate an IEP meeting be held to discuss the provision of the compensatory education.

But OSPI disagrees that this means an IEP meeting does not need to take place. For example, the due process decision awarded the Student with 493.75 hours of compensatory education because, in part, “the District did not provide an ASL interpreter for the Student at any point in 2020–2021 [and] this meant that the Student could not access her instruction.” And the Student’s most recent IEP from June 2022 provided the Student, in part, with the following specially designed instruction: reading, math, written language, social-emotional-behavioral, and communication. Therefore, the IEP team will need to meet to discuss which IEP service areas will be taught during the provision of the compensatory education. (Though OSPI does acknowledge the due process decision itself requires that at least some portion of these hours be devoted to social-emotional-behavioral instruction. For example, the due process decision requires the deaf interpreter work with the Student, in part, in various community outings.)

For five reasons, though, OSPI does not find an IDEA violation in relation to the scheduling of an IEP meeting to discuss the compensatory education.

First, the decision did not include a date by which the compensatory education needed to be completed. Therefore, despite the fact an IEP meeting to discuss the compensatory education

does not appear to have taken place in August or September of 2022, this does not mean the Student will be unable to access or will not be provided the compensatory education.<sup>6</sup>

Second, the District did undertake several actions, relatively soon after the due process decision was entered on June 15, 2022, to begin implementation of the compensatory education. For example, as the above Statement of Facts demonstrate: in early August 2022, the District communicated with CDHY regarding the compensatory education award it was required to implement, an action required by the due process decision; in mid-to-late August 2022, the District identified an ASL-certified deaf interpreter, and entered into a contract with that individual for the provision of the compensatory education to the Student<sup>7</sup>; and between early August and mid-September 2022, the District facilitated several communications between itself, the contracted district, and the Parent regarding scheduling an IEP meeting, to discuss, in part, the provision of the compensatory education award. In other words, the District did not ignore the requirement to provide the Student with certain compensatory education; rather, the District undertook efforts to find a qualified interpreter and schedule a meeting between relevant individuals.

Third, on September 20, 2022, the director invited the Parent to participate in a meeting with CDHY on September 21, 2022, to discuss, at least in part, the provision the compensatory education to the Student. On September 21, 2022, the director and CDHY participated in said meeting, but the Parent did not. According to the District, at the September 21, 2022 IEP meeting, the director and CDHY representative discussed community outings the ASL interpreter could go on with the Student.

Fourth, the Student's IEP team met on October 20, 2022. The Parent and the Parent's attorney were present at this meeting. According to the District, a discussion regarding the provision of the compensatory education did not take place. OSPI notes, though: during the October 20, 2022 IEP meeting, there was likely an opportunity for the Parent to at least start the conversation regarding the provision of compensatory education to the Student.

Fifth, according to the District, in October 2022, the ASL interpreter took the Student to two different community events. In other words, the District has begun to implement the compensatory education required by the due process order.

Based on the foregoing, OSPI does not find a violation of the IDEA.

Regardless, the documentation suggests an IEP meeting to discuss the provision of the compensatory education has not yet taken place. OSPI strongly encourages the District that this

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<sup>6</sup> In relation to due process hearing decisions, the corrective action must be implemented within the timeframe prescribed by the hearing officer, or if there is no such timeframe, then within a reasonable timeframe.

<sup>7</sup> And, OSPI notes: the contract may have been entered into earlier but for the fact that the interpreter was on vacation in mid-August 2022.

meeting take place within the next two weeks, and that the parties consider whether a facilitated IEP through Sound Options would help make that IEP meeting be more productive.

### **CORRECTIVE ACTIONS**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI strongly encourages the District that an IEP meeting to specifically discuss the provision of the compensatory education take place within the next two weeks, and that the parties consider whether a facilitated IEP through Sound Options would help make that IEP meeting more productive.

Dated this 10th day of November, 2022

Dr. Tania May  
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#### **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.)