

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 13-67

PROCEDURAL HISTORY

On October 21, 2013, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) regarding a group of middle school students attending the Grandview 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 education of the students at the District's middle school.

On October 24, 2013, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. The District was asked to respond to the allegations made in the complaint.

On November 15, 2013, OSPI received the District's response to the complaint. On November 18, 2013, OSPI forwarded a copy of the response to the Complainant but did not include any student personally identifiable information. The Complainant was invited to reply with any information she had that was inconsistent with the District's information. The Complainant did not reply.

On November 22, 2013, the OSPI complaint investigator conducted on-site interviews of District staff and reviewed student files.

OSPI considered all of the information provided by the Complainant and the District as part of its investigation. It also considered the information received by the complaint investigator during the on-site interviews.

OVERVIEW

During the 2012-2013 school year, twenty-three students at the District middle school had individualized education programs (IEPs) that provided for special education math and/or language arts (reading and writing) services to be delivered in a general education setting. In November 2012, the District unilaterally decided to provide students whose IEPs provided for math services in a general education setting, with a total of 15 minutes per week of services in a special education setting. Also during the 2012-2013 school year, the District unilaterally decided to change the middle school special education service delivery model, so that in most cases, all of the students receiving special education would attend both general education and special education classes in reading and math during the 2013-2104 school year. In the summer of 2013, the District subsequently amended 34 students' IEPs based on the newly District adopted service delivery model. The District's 2013-2014 school year began in August of 2013, and the majority of all students at the middle school with IEPs were not scheduled to attend any classes in a special education setting. In September 2013, the District unilaterally decided that the majority of students receiving special education services would now be provided 30 minutes of services per day in a special education setting. After receiving the complaint, the District began reportedly providing students

with the math and/or language arts services stated in their IEPs, in addition to two class periods a day of reading and math instruction in the general education setting.

The Complainant alleged that the District failed to implement the IEPs for middle school students eligible for special education whose IEPs only provided for services in the general education setting during the 2012-2103 school year. The Complainant also alleged that the District failed to implement the IEPs for 8 unidentified 6th grade students, 11 unidentified 7th grade students, and 15 unidentified 8th grade students during the 2013-2014 school year. The District denied that it failed to implement the IEPs of middle school students whose IEPs only provided for services in the general education setting during the 2012-2013 school year. The District neither admitted nor denied that it failed to implement the IEPs of 8 unidentified 6th grade students, 11 unidentified 7th grade students, and 15 unidentified 8th grade students during the 2013-2014 school year.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 25, 2012. 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. The class of students encompassed in this decision does not include students at the District middle school whose IEPs provided for special education services in a full-time special education setting. In addition, after this complaint was filed, the parents of a student at the District middle school filed a separate complaint on his behalf. Any potential violations and resulting corrective actions regarding that student will not be addressed in this complaint.

ISSUES

1. From October 25, 2012 to the end of the 2012-2013 school year: Did the District implement the individualized education programs (IEPs) for middle school students (6th, 7th, and 8th grade) eligible for special education whose IEPs provided for services solely in the general education setting?
2. From the beginning of the 2013-2014 school year: Did the District implement IEPs for 8 unidentified 6th grade students, 11 unidentified 7th grade students and 15 unidentified 8th grade students?

LEGAL STANDARDS

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39; WAC 392-172A-01175.

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. 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. 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.

Staff Training and Qualifications: School district personnel who direct or support the provision of special education and related services must be qualified to work in their particular capacities as required by state rule. General education certificated teachers who deliver specially designed instruction must be supported by a certificated special education teacher responsible to monitor and evaluate the student's progress toward the annual IEP goals. CFR §300.156; WAC 392-172A-02090. A paraeducator may also deliver the specially designed instruction under the consulting special education teacher. The special education consultative teacher would continue to be responsible for developing students' IEPs, but this teacher is not required to meet highly qualified in the core academic areas. OSPI, *Highly Qualified Teacher Resource Manual Guidelines and Workbook 2011–12 School Year*, at 21, 24 (2011).

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320; WAC 392-172A-03090.

Requirements for Physical Education: Each student eligible for special education services must be afforded the opportunity to participate in the general physical education program available to students who are not disabled, unless the student is enrolled full time in a separate facility or the student needs specially designed physical education, as described in the student's IEP. If the student requires specially designed physical education, the district will ensure that the school either provides the services directly or makes arrangements with a private program. 34 CFR §300.108; WAC 392-172A-02030.

IEP Amendments: After an annual IEP meeting, the parents of a student eligible for special education and the district may agree to develop a written document to amend or modify the IEP instead of convening a full IEP team meeting for the purpose of revising the IEP. When an amendment to a student's IEP is made, the District must ensure that

all providers responsible for implementing the IEP are informed of the changes. 34 CFR §300.324; WAC 392-172A-03110.

Least Restrictive Environment: School districts are required to establish and implement procedures that meet least restrictive environment (LRE) requirements. Those procedures must ensure that special education and related services are provided in a student's LRE which, to the maximum extent appropriate, should be in the general education environment with students who are nondisabled. A student with a disability is to be placed separately from the general education environment only when, due to the nature or severity of her or his disability, the student cannot be satisfactorily educated in general classes with the use of supplementary aids and services. 34 CFR §300.114; WAC 392-172A-02050.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days of receiving consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data is needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305 and 300.501; WACs 392-172A-03025(3) and 392-172A-05000(2)(b). The school district

must provide a copy of the evaluation report and documentation of determination of to the parent, and at no cost to the parent. 34 CFR §300.306; WAC 392-172A-03040.

FINDINGS OF FACT

2012-2013 School Year

1. The District's 2012-2013 school year began on August 23, 2012. The District middle school operated on an eight period bell schedule. Students attended two blocked periods of math and two blocked periods of language arts (reading and writing). These blocked classes are referred to by the District as core classes. Three of the other periods were designated for science, social studies, and electives such as PE or band. The eighth period was designated as either an intervention period for students who needed additional help with course work or a flex period.
2. During the 2012-2013 school year, the middle school had three special education teachers. One teacher taught students who received special education services in a full-time special education setting. Another teacher taught special education math and worked full time at the middle school. His teaching schedule was as follows:
 - Period 1 – 7th and 8th Grade Math
 - Period 2 – 7th and 8th Grade Math
 - Period 3 – Monitoring of Students in General Education Math
 - Period 4 – Monitoring of Students in General Education Math
 - Period 5 – Planning
 - Period 6 – 6th Grade Math
 - Period 7 – 6th Grade Math
 - Period 8 – Math Intervention

The third teacher taught special education language arts, but only worked part time at the middle school. Her teaching schedule was as follows:

- Period 1 – 6th Grade Language Arts
 - Period 2 – 6th Grade Language Arts
 - Period 3 – 7th and 8th Grade Language Arts
 - Period 4 – 7th and 8th Grade Language Arts
3. Also during the 2012-2013 school year, eleven (11) middle school students (6th, 7th, and 8th graders) who qualified to receive special education and related services had individualized education programs (IEPs), which provided for all of their special education services to be delivered by a special education teacher in a general education setting. In addition, eleven (11) middle school students (6th and 7th graders) had IEPs, which provided for part of their special education math and/or language arts services to be delivered by a special education teacher in a general education setting. Further, two (2) students (one of which is included in the group of 11 students above) had IEPs, which provided for reading services to be delivered by a "reading coach/paraeducator" in either the special education or general education setting. These reading services were to be monitored by a general education teacher. However, the District did not indicate that either the reading coach or the paraeducator were certified in special education. Because of the similarity of issues

for the students, a representative sample of eight of these twenty-three (23) students are discussed below:

- **Student A:** During the 2012-2013 school year, Student A was in 7th grade. Her IEP in place at the beginning of the 2012-2013 school year was developed in October 2011. The IEP provided for 90 minutes per week of math services to be delivered by a special education teacher in a general education setting. The IEP also provided for 592 minutes per week of reading services to be delivered in a special education setting. In October 2012, Student A's annual IEP was revised to provide for only 10 minutes per week of math services and 10 minutes per week of reading services to be delivered by a special education teacher in a general education setting.
- **Student B:** During the 2012-2013 school year, Student B was in 7th grade. His IEP in place at the beginning of the 2012-2013 school year was developed in June 2012. The IEP provided for 90 minutes per week of reading services and 90 minutes per week of math services to be delivered by a special education teacher in a general education setting. In April 2013, Student B's annual IEP was revised and provided for the same services as his prior IEP.
- **Student C:** During the 2012-2013 school year, Student C was in 7th grade. His IEP in place at the beginning of the 2012-2013 school year was developed in February 2012. The IEP provided for 202 minutes per week of reading services and 202 minutes of writing services to be delivered in a special education setting. The IEP also provided for 90 minutes per week of math services to be delivered by a special education teacher in a general education setting. In February 2013, Student C's annual IEP was revised and again provided for 202 minutes per week of reading services, and 202 minutes of writing services to be delivered in a special education setting, but only provided for 30 minutes per week of math services to be delivered by a special education teacher in a general education setting.
- **Student D:** During the 2012-2013 school year, Student D was in 6th grade. His IEP in place at the beginning of the 2012-2013 school year was developed in August 2012. The IEP provided for 390 minutes per week of reading services to be delivered by a "reading coach/reading paraeducator" in a general education setting and monitored by a general education teacher. The IEP also provided for 430 minutes per week of math services, 40 minutes per week of writing services, and 15 minutes per week of behavior services to be delivered in a special education setting. In May 2013, Student D's annual IEP was revised and provided for 405 minutes per week of reading services to be delivered concurrently with 405 minutes per week of writing services in a special education setting. The IEP also provided for 405 minutes per week of math services and 15 minutes per week of behavior services to also be delivered in a special education setting.

- **Student E:** During the 2012-2013 school year, Student E was in 7th grade. Her IEP in place at the beginning of the 2012-2013 school year was developed in January 2012. The IEP provided for 202 minutes per week of reading services and 202 minutes per week of writing services to be delivered in a special education setting. The IEP also provided for 90 minutes per week of math services to be delivered by a special education teacher in a general education setting. In January 2013, Student E's annual IEP was revised and provided for 198 minutes per week of reading services and 198 minutes per week of writing services to be delivered in a special education setting. The revised IEP also provided for 10 minutes per week of math services to be delivered by a special education teacher in a general education setting.
- **Student F:** During the 2012-2013 school year, Student F was in 6th grade. Her IEP in place at the beginning of the 2012-2013 school year was developed in April 2012. The IEP provided for 385 minutes per week of math reasoning services to be delivered concurrently with 385 minutes per week of math calculation services by a special education teacher in a general education setting. The IEP also provided for 120 minutes per week of math reasoning services to be delivered concurrently with 120 minutes per week of math calculation services in a special education setting. Additionally, the IEP provided for 480 minutes per week of reading comprehension services and 15 minute per week of reading fluency services to be delivered by a "reading coach/reading paraeducator" in a general education setting and monitored by a special education teacher. The IEP also provided for 395 minutes per week of reading comprehension services to be delivered in a special education setting. In March 2013, Student F's annual IEP was revised and provided for 203 minutes per week in reading comprehension services, 203 minutes per week in reading fluency services, 203 minutes per week in math reasoning services, and 203 minutes per week in math calculation services. These services were to be delivered in a special education setting.
- **Student G:** During the 2012-2013 school year, Student G was in 7th grade. Her IEP in place at the beginning of the 2012-2013 school year was developed in January 2012. The IEP provided for 386 minutes per week of reading services to be delivered in a special education setting. The IEP also provided for 90 minutes per week of math services to be delivered by a special education teacher in a general education setting. In January 2013, Student G's annual IEP was revised and provided for 406 minutes per week of reading services to be delivered in a special education setting. The IEP also provided for 30 minutes per week of math services to be delivered by a special education teacher in a general education setting.
- **Student H:** During the 2012-2013 school year, Student H was in 7th grade. Her IEP in place at the beginning of the 2012-2013 was developed in June 2012. The IEP provided for 10 minutes per week of reading services to be delivered by a "reading coach/reading paraeducator" in a special education setting and monitored by a general education teacher. In January 2013, Student H was

reevaluated and a new IEP was developed in February 2013. The new IEP provided for 405 minutes per week of math services to be delivered in a special education setting. The IEP also provided for 15 minutes per week of reading services and 15 minutes per week of writing services to be delivered by a special education teacher in a general education setting.

4. On October 24, 2012, the middle school psychologist emailed the middle school counselors and copied the middle school principal, vice principal, special education math teacher, and special education language arts teacher. The psychologist stated that the special education math teacher was having a difficult time providing services for twelve students whose IEPs provided for specially designed instruction in math in the general education setting. The psychologist stated that only one of the twelve students participated in a general education math class during third or fourth period. Third and fourth periods were the class periods the special education math teacher was scheduled to “monitor” students in their general education math classes. The psychologist further stated that the special education paraprofessional who assisted the math teacher was unavailable to provide services to students in general education math classes during fifth period. Additionally, during first and second period, the math teacher had to teach both 7th and 8th grade students in a special education setting, and the paraprofessional and the teacher were splitting the class, by each teaching one grade.
5. On November 6, 2012, the middle school psychologist emailed the special education math teacher asking if a plan had been finalized to ensure that “push in” students were receiving their IEP math services in the general education setting. “Push in” is a term that apparently means including students eligible for special education services in general education classes.
6. On November 7, 2012, the middle school psychologist again emailed the middle school counselors and copied the middle school principal, vice principal, special education math teacher, and the special education language arts teacher. The psychologist stated that he and the math teacher had decided that:
 - The math teacher would see 3 different [groups of] students for 15 minutes once a week.
 - Each group of students will be pulled from the last 15 minutes of their 4th period class.
 - The math teacher would work with the general education teachers on determining which students to provide support.
 - A weekly monitoring sheet would be given to teachers to track how the students were performing in their general education math classes. The extra 5-10 minutes the special education math teacher would need to review the monitoring sheets “will thus match the required 20 minutes/week as noted on IEP[s].”

The psychologist also stated that the plan was chosen in hopes that the general education teachers would be okay with the students missing part of their fourth period classes one time per week.

7. According to information provided by District staff during interviews conducted by OSPI in the complaint investigation, the part time middle school special education

language arts teacher was responsible for monitoring the progress of students whose IEPs provided for language arts services in the general education setting.

8. On January 15, 2013, the part time middle school special education language arts teacher emailed the school psychologist asking when staff would meet to discuss the District's "push in" service delivery model for the 2013-2014 school year. The psychologist responded that he was discussing the service model with the District curriculum coordinator, and that a meeting would take place in several weeks. The special education language arts teacher later responded proposing a different service delivery model in which students received one period of special education math and/or language arts in addition to one period of general education math and/or language arts.
9. The District's fall semester ended on January 16, 2013 and the District sent parents report cards later that month. The report cards for students receiving special education services only stated that students were either "progressing" or "not progressing" toward their annual IEP goals, but did include some comments about their participation in their general education classes.
10. On January 24, 2013, the middle school psychologist emailed the District curriculum coordinator stating that the middle school "push in" model had not been successful. As a result of the problems with the "push in" service delivery model, approximately 11-12 students did not receive math services for the first 3-4 months of school and approximately 8-9 students had not received any reading services during the year.
11. On March 25, 2013, the middle school psychologist emailed several District elementary special education teachers and copied the District special education director, curriculum coordinator, and the middle school counselors. The psychologist asked that the teachers recommend current fifth grade students that should receive "push in" services at the middle school for sixth grade during the 2013-2014 school year. Later that same day, the psychologist sent additional emails and included the middle school special education language arts teacher, special education math teacher, principal, and District superintendent on the emails in addition to the other staff members. The psychologist stated that under the middle school's "push in" model, students receive services in general education classes with support from special education teachers through "monitoring" of the students, and working directly with general education teachers. Students who were not on the "push in" model received their IEP services in a special education setting for 405 minutes per week (90 minutes Monday-Thursday and 45 minutes on Friday) or 810 minutes per week if the students received both math and language arts services. In response, the District curriculum coordinator stated that the staff had previously discussed that some students may not "need" 90 minutes of services per day; some students may only "need" 45 minutes of services per day.
12. Later that same day, the District superintendent responded to the curriculum coordinator's email stating that the District may need to review the students 5th grade IEPs, and provide them with the same amount of services they received in

elementary school. The superintendent then indicated that students should be scheduled to receive only services “they needed” and not receive services based on the middle’s school bell schedule, which included 90 minute block periods.

13. On May 21, 2013, the middle school principal emailed the middle school psychologist and copied the District superintendent, curriculum coordinator, special education director, and the middle school counselors. The principal asked if a decision had been made about the service delivery model for special education students during the 2013-2014 school year, because the District’s decision would affect how students would be “placed in classes”. The principal said the counselors needed this information as soon as possible in order to create class schedules for the students. The principal then asked that a meeting be scheduled to finalize the District’s decision. In response, the school psychologist sent out an email inviting staff members to a meeting on May 29, 2013. The email stated that based on past discussions with staff members, the following service delivery model was being proposed:

- “Pull out” students would receive 30 minutes per day of math and/or language arts special education services in a special education setting.
- “Push in” students would spend the entire day in a general education setting with support from special education teachers.
- It would be the responsibility of the special education teachers to schedule time for the “pull out” students, and to ensure that the “push in” students were receiving special education support in their general education classes.

14. The meeting scheduled for May 29, 2013 was later changed to June 3, 2013, and the middle school special education teachers were invited to participate in the first half of the meeting.

15. On June 3, 2013, one of the middle school counselors emailed the other middle school counselor and the middle school vice-principal, and copied the middle school psychologist and the principal. The counselor stated that at the meeting, staff decided that all middle school students who received special education services, with the exception of those students who received services in a full time special education setting, would be scheduled into general education math and language arts classes. It would then be the responsibility of the special education teachers to go through the students’ class schedules and plan a “pull out” schedule to provide the students with their special education services.

16. Also on June 3, 2013, the middle school psychologist emailed several school psychologists from other school districts. The psychologist stated that the District was changing the service model at the middle school in order to expose the students who received special education services to the general education curriculum. Instead of receiving special education services for 90 minutes per day, the students would only receive services for 30 minutes per day. The psychologist stated that he had been “instructed” to reevaluate each student to justify the change in minutes of services per week. The psychologist asked his peers if reevaluations were necessary to implement the District’s decision.

17. On June 6, 2013, the middle school psychologist emailed the middle school principal stating that the District superintendent had approved extra work hours so that the psychologist and the part time middle school special education language arts teacher could complete “the paperwork” needed to reduce the amount of time students spent in special education from 90 minutes per day to 45 minutes per day for each area of service for which students previously qualified.
18. The 2012-2013 school year ended on June 6, 2013 and the District sent middle school parents report cards later that month. The report cards for students receiving special education services only stated that students were either “progressing” or “not progressing” toward their annual IEP goals, but did include some comments about their participation in their general education classes.

Summer 2013

19. On June 18, 2013, the middle school psychologist emailed the District special education coordinator and attached a list of students for which he planned to complete assessment revisions because the proposed changes to the students’ service minutes would result in a change of placement. The psychologist stated that five students on the list would receive less service minutes than currently provided for in their IEPs, and four students would receive more service minutes than currently provided for in their IEPs, although the assessments had not yet been completed.
20. Later in June 2013, thirty-four (34) students’ IEPs were amended, including Students A-H. Of those 34 students, seven (7) students were reevaluated, including Students A, E, and H. Students A-H are discussed below:
 - **Student A:** At the end of the 2012-2013 school year, Student A’s IEP provided for 10 minutes per week of math services and 10 minutes per week of reading services to be delivered by a special education teacher in a general education setting. On approximately June 19, 2013, the District amended Student A’s April 2011 evaluation report with an assessment revision which consisted of a review of existing data. The District sent Student A’s parent notification that the assessment revision would include a review of existing data, but the notice did not state that the parent could request additional assessments (document not dated). On June 20, 2013, the District prepared a prior written notice proposing to increase the number of service minutes in Student A’s IEP. On June 24, 2013, the school psychologist, special education language arts teacher, and Student A’s parent met to review Student A’s amended evaluation report. The group determined Student A continued to qualify for special education services in math and reading and that Student A needed more instructional minutes than she received during the 2012-2013 school year. The group then amended Student A’s IEP to increase her instructional time to 202 minutes per week in math and 202 minutes per week in reading, and changed the service location to a special education setting. The District also sent the parent prior written notice on June

24, 2013, proposing to reduce the amount of time Student A spent in the general education setting.

- **Student B:** At the end of the 2012-2013 school year, Student B's IEP provided for 90 minutes per week of reading services and 90 minutes per week of math services to be delivered by a special education teacher in a general education setting. On June 20, 2013, the District prepared prior written notice proposing to increase the number of service minutes in Student B's IEP. On June 24, 2013, Student B's IEP was amended to increase his instructional time to 202 minutes per week in math and 202 minutes per week in reading, and changed the service location to a special education setting. The IEP amendment shows that Student B's parent participated in the IEP meeting by phone along with the middle school psychologist and special education language arts teacher. However, the record does not show that an interpreter was provided even though the parent's primary language was Spanish.
- **Student C:** At the end of the 2012-2013 school year, Student C's IEP provided for 202 minutes per week of reading services and 202 minutes of writing services to be delivered in a special education setting. The IEP also provided for 30 minutes per week of math services to be delivered by a special education teacher in a general education setting. Student C's IEP was amended on June 25, 2013 and decreased his amount of instructional time in reading and writing to 202.5 minutes per week concurrently. The amended IEP also increased the amount of instructional time in math to 202.5 minutes per week and changed the service location to a special education setting. The contact report shows that the District contacted Student C's parents on June 25, 2013 to invite them to the IEP meeting and also sent a meeting invitation on June 25, 2013. The IEP amendment was signed by the middle school psychologist, special education language arts teacher, and a District interpreter as participants in the IEP meeting. Also on June 25, 2013, the District sent the parents prior written notice proposing to change the amount of service minutes in Student C's IEP.
- **Student D:** At the end of the 2012-2013 school year, Student D's IEP provided for 225 minutes per week of reading services to be delivered concurrently with 225 minutes per week of writing services in a special education setting. The IEP also provided for 225 minutes per week of math services and 15 minutes per week of behavior services to be delivered in a special education setting. On June 25, 2013, the District contacted Student D's parents by phone to invite them to an IEP meeting on June 25, 2013 to amend Student D's IEP. The contact report shows the parents could not be reached. The District also sent the parents an invitation to attend the IEP meeting that same day. The IEP amendment was signed by the middle school psychologist, special education language arts teacher, and a District interpreter as participants in the IEP meeting. It should be noted that the parents' primary language is English. Student D's amended IEP decreased the amount of instructional time to 202.5 minutes per week of reading and writing services concurrently and 202.5 minutes per week of math services. The amended IEP continued to provide for 15

minutes per week of behavior services. Also on June 25, 2013, the District sent the parents prior written notice proposing to change the amount of service minutes in Student D's IEP.

- **Student E:** At the end of the 2012-2013 school year, Student E's IEP provided for 198 minutes per week of reading services and 198 minutes per week of writing services to be delivered in a special education setting. The IEP also provided for 10 minutes per week of math services to be delivered by a special education teacher in a general education setting. On June 24, 2013, the District amended Student E's January 2012 evaluation report with an assessment revision which consisted of a review of existing data. The record shows the District sent Student E's parent notification that the assessment revision would include a review of existing data, but the notice did not state that the parent could request additional assessments (document not dated). Also on June 24, 2013, the District prepared a prior written notice proposing to change the Student's placement so that she could receive math services in a special education setting. On June 24, 2013, the District contacted Student E's parent to invite her to an evaluation meeting on June 25, 2013 and also sent the parent a written invitation. The parent did not attend the meeting. On June 25, 2013, Student E's IEP was amended and decreased the amount of instructional time to 198 minutes per week of reading and writing services concurrently. The IEP continued to provide for 10 minutes per week of math services to be delivered by a special education teacher in a general education setting. The IEP amendment was signed by the middle school psychologist, and later signed by the middle school special education language arts teacher on August 29, 2013.
- **Student F:** At the end of the 2012-2013 school year, Student F's IEP provided for 203 minutes per week in reading comprehension services, 203 minutes per week in reading fluency services, 203 minutes per week in math reasoning services, and 203 minutes per week in math calculation services, which were to be delivered in a special education setting. On June 25, 2013, the District contacted Student F's parents to invite them to an IEP meeting to amend Student F's IEP and also sent them an invitation to attend the IEP meeting which was to occur that same day. Student F's amended IEP decreased the amount of instructional time in reading to 202.5 minutes per week of reading comprehension and reading fluency services concurrently, and decreased the amount of instructional time in math to 202.5 minutes per week of math reasoning and math calculation services concurrently. Also on June 25, 2013, the District sent the parents prior written notice proposing to reduce the amount of service minutes in Student F's IEP. The IEP amendment was signed by the middle school psychologist, special education language arts teacher, and a District interpreter as participants in the IEP meeting.
- **Student G:** At the end of the 2012-2013 school year, Student G's IEP provided for 90 minutes per week of reading comprehension services to be delivered concurrently with 90 minutes per week of reading fluency services in a special education setting. On June 25, 2013, the District contacted Student G's parents

to invite them to an IEP meeting to amend Student G's IEP. The contact report shows the parents could not be reached. The District also sent the parents an invitation to attend the IEP meeting which was to occur that same day. The IEP amendment was signed by the middle school psychologist, special education language arts teacher, and a District interpreter as participants in the IEP meeting. Student G's amended IEP increased the amount of instructional time to 202.5 minutes per week of reading comprehension and reading fluency services concurrently. Also on June 25, 2013, the District sent the parents prior written notice proposing to change the amount of services minutes in Student G's IEP.

- **Student H:** At the end of the 2012-2013 school year, Student H's IEP provided for 405 minutes per week of math services to be delivered in a special education setting. The IEP also provided for 15 minutes per week of reading services and 15 minutes per week of writing services to be delivered by a special education teacher in a general education setting. On June 19, 2013, the District amended Student H's January 2013 evaluation report with an assessment revision which consisted of a review of existing data. The record shows the District sent Student H's parent notification that the assessment revision would include a review of existing data, but the notice did not state that the parent could request additional assessments (document not dated). On June 19, 2013, the school psychologist, special education language arts teacher, and Student H's parent met to review the amended evaluation report. The parent participated by phone call. The record does not show that an interpreter was provided even though the parent's primary language was Spanish. The group determined Student H continued to qualify for special education services in math, reading, and writing, and amended Student H's IEP to decrease the amount of instructional time in math to 202 minutes per week. The amended IEP continued to provide for 15 minutes per week of reading services and 15 minutes per week of writing services to be delivered by a special education teacher in a general education setting. On June 20, 2013, the District prepared a prior written notice proposing to reduce the amount of instructional time in math in Student H's IEP.

2013-2014 School Year

21. The District's 2013-2014 school year began on August 28, 2013 and the middle school began operating on a seven period bell schedule. Students attended two blocked periods of general education math and two blocked periods of general education language arts (reading and writing). The other three periods were designated for science, social studies, and electives such as PE or band.
22. At the beginning of the school year, all students who qualified to receive special education services, with the exception of those students who received services in a special education setting on a full time basis, were not scheduled to attend any special education classes.
23. On September 3, 2013, the District superintendent emailed the middle school psychologist and the part time special education language arts teacher asking about

the class schedules for the students who were to receive special education math and language arts services in the special education setting. In response, the special education language arts teacher stated that the scheduling had been completed and those students would begin attending their special education classes on September 9, 2013.

24. On September 9, 2013, the middle school assistant principal emailed the middle school teachers stating that by the end of the day on September 11, 2013, schedules would be finalized for the students who were to receive special education math and language arts services in the special education setting. Later that same day, the District superintendent responded to the assistant principal's email and copied the District special education director, District curriculum coordinator, middle school psychologist, and the middle school special education teachers. The superintendent asked if the students would be scheduled to attend two block periods of math and/or language arts in the special education setting instead of receiving services for 30 minutes three times a week as proposed during the prior school year. In response, the assistant principal stated that some of the students would be scheduled to receive one period of math and/or one period of language arts services in a special education setting for 47 minutes each period.

25. Also that same day, the special education language arts teacher responded to the superintendent's email, stating that some students would receive 47 minutes a day of math and/or language arts special education services. However, other students whose IEPs provided for math and/or language arts services would remain in their general education classes with the special education teachers providing support as needed. The special education language arts teacher also stated that this would be a "trial and error" approach and that adjustments to some students' schedules could be made as needed. In response, the superintendent stated that the approach might lead to the same overload problem that occurred the prior school year, and asked why the students were not being provided the services as stated in their IEPs. The District special education director then responded that the District was committed to providing the services stated in the students' IEPs; and that many students' IEPs had been amended during the summer to reflect the middle school adopted service delivery model of pulling students out of their general education classes to receive special education services.

26. On September 10, 2013, the District curriculum coordinator responded to the special education director's email asking if the middle school students eligible for special education were attending core classes (2 periods of general education math and 2 periods of general education language arts). In response, the special education director stated that students' IEPs were amended to align with a "pull out" service model for language arts and math. The "pull out" service model meant that students would be pulled out of part of their core general education math and/or language arts block courses to receive the special education services provided for in their IEPs. The special education language arts teacher also responded to the curriculum coordinator's email, stating that all middle school students were currently attending core classes, but this might change if the students who qualified for special

education services were not succeeding in the general education classes. The teacher suggested that a meeting should be scheduled to discuss the issues associated with the District adopted service delivery model.

27. On September 11, 2013, the District curriculum coordinator emailed the middle school psychologist asking how many students' IEPs were amended over the summer. The psychologist responded that 34 students in 7th and 8th grade had their IEPs amended over the summer. The psychologist stated that the IEPs were amended to provide for 45 minutes of services per day instead of the 90 minutes of services per day that many students had been previously receiving. The psychologist clarified that it had been proposed during the 2012-2013 school year that the students' IEPs should be amended to reflect 30 minutes of services per day, but it was later decided by the District that the students should receive 45 minutes per day.
28. On September 12, 2013, District and middle school staff members met to discuss the issues with the special education service model. The District unilaterally decided that all students with IEPs that provided for special education math and/or language arts services in a special education setting would be provided a total of 30 minutes of services per day.
29. On September 13, 2013, the middle school counselor emailed the special education math teacher stating that schedules would be finalized on September 16, 2013, and that eligible middle school students would begin attending special education math classes.
30. On September 18, 2013, the middle school principal emailed all of the middle school teachers stating that the school counselors were still working on finalizing the class schedules for students who were to receive special education services.
31. On September 20, 2013, the middle school counselor emailed the special education math teacher and special education language arts teacher stating that five 8th grade students that were to receive special education services needed to be split between the teachers' caseloads. The counselor asked if the 8th grade students could be put in a special education class with 6th grade students or if they should be kept in a separate class.
32. On September 24, 2013, the middle school special education math teacher emailed the school counselor stating that almost all 8th grade students who received special education math services attended class during the teacher's sixth and seventh period. The teacher also stated that she agreed to teach 8th grade students who received special education language arts services during that same time period, because the part time special education language arts teacher did not work at the middle school in the afternoon.
33. On October 3, 2013, the middle school principal emailed the middle school psychologist asking to meet to discuss the students who had IEPs.

34. On October 8, 2013, the middle school psychologist emailed the District superintendent and copied the District curriculum coordinator and special education director, and the middle school special education language arts teacher, special education math teacher, and principal. The psychologist expressed concern that the District needed additional special education staff to support the number of students at the middle school with IEPs, and that the middle school service model was not working. The psychologist stated that the District's plan to provide services during the 2013-2014 school year was for each student whose IEP provided for math and/or language arts to attend one period (45 minutes) of math and/or language arts in the general education setting, and also attend one period (45 minutes each) of math and/or language arts in the special education setting. Then, at the end of the middle school's first quarter, students would begin receiving more or less services based on what "would be most beneficial to [the] students." The psychologist stated most students were currently receiving 20 minutes of services per day, which was a change in placement for many students and as such, a reevaluation may be required. Additionally, general education teachers and some parents were upset about how the services were being provided. In response, the special education director asked for weekly class schedules of the middle school students who were to receive special education services in order to verify the services students were receiving. The director asked that a meeting be scheduled to discuss the continuing problems with the middle school service delivery model.
35. On October 21, 2013, the District superintendent sent the middle school counselors, special education language arts teacher, special education math teacher, school psychologist, principal, and the District special education director an email inviting them to a meeting to discuss "compliance issues". According to the District, the group decided that all students' schedules would be changed again to reflect the services provided in the students' IEPs. Most students would now receive special education math and/or language arts services in addition to two periods of general education math and two periods of general education language arts.
36. On October 24, 2013, the special education math teacher contacted the parents of the students whose IEPs provided for math and/or language arts services to inform them that the schedules would be changed yet again to reflect the service minutes stated in their IEPs.

CONCLUSIONS

Issue 1: IEP Implementation during the 2012-2013 School Year

Reading and Writing Services: The District failed to provide specially designed instruction during the 2012-2013 school year for students whose IEPs stated that reading and/or writing services would be provided by a special education teacher in the general education setting. The record shows that the middle school special education language arts teacher only worked at the middle school for four periods a day and during that time was teaching students in a special education setting. Based on the teacher's schedule, it would not have been possible for the language arts teacher to

provide students specially designed instruction in the general education setting at any point during the school day. While the District has stated that the students' progress in their general education language arts classes was being "monitored" by the special education language arts teacher, **monitoring progress is not analogous to providing specially designed instruction.** Additionally, the record shows that Student D's IEP provided for reading services to be delivered by a "reading coach/paraeducator" in a general education setting and monitored by a general education teacher, and Student H's IEP provided for reading services to be delivered by a "reading coach/paraeducator" in a special education setting and **"monitored" by a general education teacher.** While specially designed instruction can be delivered by a paraeducator, **the delivery of services by the paraeducator must be monitored by a certificated special education teacher, not a general education teacher.**

Math Services: **The District failed to provide specially designed instruction during the 2012-2013 school year for students whose IEPs stated that math services would be delivered by a special education teacher in a general education setting.** The record shows that the middle school special education math teacher could have only provided specially designed instruction to students during third and fourth period and that during the middle school's first semester, only one student was scheduled to attend a general education math class during that time period. **The record further shows that in November 2012, the District developed a plan to only provide these students with 15 minutes per week of math services in a special education setting, instead of providing services in a general education setting as specified in the students' IEPs.** Additionally, **the District's decision to provide only 15 minutes of math services, is in most cases, a significantly lessor amount of services than stated in the students' IEPs.** For example, Student A, Student B, Student C, and Student E should have received 90 minutes per week of math services in the general education setting. Student F should have received 385 minutes per week of math services in the general education setting. The District's decision to pull students out of their fourth period classes meant that the 7th and 8th grade students who received special education language arts services (scheduled during the middle school's fourth period) were being taken out of their special education language arts class to receive math services and therefore, were not being provided all of the reading and/or writing services stated in their IEPs at that time. Further, the record does not show that at any point during the school year, the special education math teacher provided specially designed instruction to students in the general education setting. **As discussed above, monitoring students' progress is not providing specially designed instruction.**

Progress Reporting: The District failed to provide progress reporting for all students receiving special education services at the District middle school during the 2012-2013 school year. **According to the District, it is the policy of the middle school to only provide progress reporting toward annual goals at a student's annual IEP meeting.** Progress towards annual goals must be reported as often as stated in a student's IEP. **Additionally, the record shows that the progress reporting given to parents at the annual IEP meeting did not contain sufficient information to enable parents to be informed of their child's progress towards annual IEP goals.** The District contends that progress reporting toward IEP goals is included in its regular report cards provided at the end of

each school semester. However, the record shows that the report cards state only that students are “progressing” or “not progressing”; do not state what the goals are; and, do not include sufficient information to enable parents to be informed of their child’s progress toward their annual IEP goals.

Issue 2: IEP Implementation during the 2013-2014 School Year

During the 2013-2014 school year, the District failed to implement the IEPs of all students receiving special education services in the general education or part time special education setting at the middle school. The record shows that for at least the first three weeks of the 2013-2014 school year, students were not scheduled to attend special education classes to enable them to receive services. On September 12, 2013, the District then made a unilateral decision to provide all students with a total of 30 minutes of services per day, regardless of what was stated in the students’ IEP. The record further shows that not until after this complaint was filed, did the District reportedly begin providing students with the services stated in their IEPs. In addition, by unilaterally determining that special education services would be provided in addition to block general education math and language arts classes, most students are unable to participate in science, social studies, or any other elective courses.

Issue 3: Reevaluation Procedures – While conducting its investigation, OSPI identified an additional issue.

The District failed to follow reevaluation procedures. A district must conduct a reevaluation when the district determines that the educational or related service needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. The record shows that the District conducted reevaluations in the form of assessments revisions, not based on student need, but instead to justify the District’s plan to amend student IEPs to support the service model the District decided to adopt. Additionally, the District merely notified parents that the reevaluation would only include a review of existing data, but did not notify them of their right to request any additional assessments.

Issue 4: IEP Amendments – While conducting its investigation, OSPI identified an additional issue.

The District failed to follow procedures for amending the students’ IEPs. While the District and parent can agree to amend an IEP without convening the IEP team, the record shows that for the majority of amendments, parents were not notified of the District’s request to amend the IEP until the day of the meeting. In addition, the District amended some students’ IEPs even when a parent could not be reached. The documentation for at least one student’s IEP indicated an interpreter was part of the amendment meeting when an interpreter was not required. The documentation for another student, whose parent’s native language is not English, indicated that the parent was not provided an interpreter. The record further shows that the decision to amend all 34 students IEPs was not driven by the students’ educational needs, but instead by the District’s unilateral decision that all middle school student who receive special education, would benefit from attending general education math and language

arts block courses. The District reportedly based this decision on the notion that general education courses are by definition, each students' least restrictive environment (LRE). A student's LRE is determined by an IEP team, which includes parents, and the team must take into account placement options that provide a reasonably high probability of assisting the student to attain his or her annual goals, and a consideration of any potential harmful effect on the student or on the quality of services the student needs.

CORRECTIVE ACTIONS

On **February 7, 2014, March 7, 2014, March 17, 2014, April 11, 2014, April 30, 2014, May 9, 2014, July 14, 2014, August 18, 2014, and August 29, 2014** the District will provide documentation to OSPI that the following corrective actions have been completed.

STUDENT SPECIFIC:

The District will contract with certificated special education teachers to provide math and/or language arts compensatory education services at the District middle school for 100 hours (2.5 hours per school day for eight weeks) during the summer of 2014. The teachers will provide services at a ratio of 10 students per 1 teacher. The compensatory services will be offered to any student at the middle school who is currently eligible to receive special education math and/or language arts services in a general education or part time special education setting; and will be designed to address student's annual IEP goals. Progress reporting toward annual goals will be provided to parents at the end of the summer program session.

- By **February 28, 2014**, the District will send a letter to all parents of students at the District middle school who are currently eligible to receive math and/or language arts special education services in a general education or part time special education setting informing them of this complaint decision and that compensatory services will be offered at the middle school during the summer of 2014. The letter will include the dates and times the compensatory services will be offered. The letter will specify that parents must inform the District that their student(s) will participate in the summer program by April 7, 2014.
- By **March 7, 2014**, the District will submit copies of all letters and a list of all students eligible to receive the compensatory services.
- By **April 11, 2014**, the District will submit a roster of all students who will participate in the summer program.
- By **May 9, 2014**, the District will submit documentation that it has entered into contracts with certificated special education teachers to provide services at a 10:1 student teacher ratio for a total of 100 hours over eight weeks in the summer of 2014.
- By **July 14, 2014** and **August 18, 2014**, the District will submit copies of sign-in sheets documenting that students have attended the summer program sessions.
- By **August 29, 2014**, the District will provide documentation that parents have been provided progress reporting toward the students' annual goals.

DISTRICT SPECIFIC:

The District will contract with an independent consultant or team of independent consultants, not employed by the District or the regional educational service district (ESD), with knowledge of state and federal requirements under the IDEA. The consultant(s) will

- 1) Review this complaint decision and discuss the findings and conclusions with OSPI;
 - 2) Review the evaluation reports, IEPs, class schedules, progress reporting, and prior written notices from all students at the District middle school who are currently eligible for special education to determine the level of compliance of the middle school with state special education regulations;
 - 3) After completing the activities in (1) and (2) above, prepare a report containing the results of the review and provide recommendations to OSPI and the District about the need for: any additional file reviews, student specific reevaluations and/or IEP revisions, staff training, District internal procedural changes, and any other technical assistance requirements. The recommendations will address the District violations noted in this complaint and any other recommendations resulting from an independent review of the District's special education files and internal systems.
- By **February 7, 2014**, the District will submit the names of three proposed private consultants or private consultant teams for approval by OSPI. By February 21, 2014, OSPI will approve a consultant or consultant team.
 - By **March 7, 2014**, the District will submit documentation that it entered into a contract with the private consultant(s), which specifies the consultant's requirements. Also by **March 7, 2014**, the District will submit documentation that it has provided the consultant(s) with a copy of this complaint decision.
 - By **March 17, 2014**, the consultant will discuss the findings and conclusions of the complaint decision with OSPI.
 - By **April 30, 2014**, the District will submit documentation that the consultant(s) have reviewed the evaluation reports, IEPs, class schedules, progress reporting, and prior written notices from all students at the District middle school who are currently eligible for special education to determine the level of compliance with state special education regulations.
 - By **May 9, 2014**, the District will submit a copy of the consultant's report containing the results of the review and recommendations regarding any needed additional file reviews, student specific needs for reevaluations and/or IEP revisions, staff training needs, District internal procedural changes, and any other technical assistance requirements. OSPI will review the consultant's recommendations by May 30, 2014 and will establish further corrective actions and due dates required. The District will then arrange with the consultant to implement the consultant's recommendations as approved by OSPI, which will include any staff training, internal systems changes, and ongoing technical assistance.

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.

NOTE: The district may request an electronic version of the matrix by e-mailing [Thinh Le](mailto:Thinh.Le@k12.wa.us) at Thinh.Le@k12.wa.us.

RECOMMENDATIONS

While the District may determine that a service model including “push-in” services is appropriate for many students, the District must make those determinations based on students’ individual needs. Further, the District must have the staff resources to support a “push-in” service model so special education teachers can either provide specially designed instruction in the general education setting or follow the procedures set out in WAC 392-172-02090(1)(g) when specially designed instruction will be delivered by a general education teacher or paraprofessional. Additionally, the District needs to ensure that a system is in place for special education teachers to monitor students’ progress in the general education classroom and progress towards their IEP goals.

Dated this ____ day of December, 2013

Douglas H. Gill, Ed. D.
Director, 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.)