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In March 2017, the District, with the Parent's agreement, changed Student A's placement to a part-time in-school special education setting. Based on the documentation in this complaint, the setting had a 2:1 or 3:1 adult to student ratio. Again, the District did not conduct a reevaluation of Student A prior to changing his placement. The District failed to follow procedures for changing Student A's placement in March 2017.

In August 2017, the District, with the Parent's agreement, increased the amount of time Student A would attend school and receive specially designed instruction. It is unclear from the documentation if the District also changed Student A's placement from a 2:1 or 3:1 setting to a special education classroom with other students. However, it is clear from the August 23, 2017 meeting notes that Student A had regressed academically, and that the IEP team did not discuss conducting a reevaluation to assess whether he was in need of additional services or supports. From September 2017–December 2017, the District continued to amend Student A's IEP to increase his time at school and amount of time he received services, but did not conduct a comprehensive reevaluation at any point. The District will conduct a comprehensive evaluation of Student A to determine all of the appropriate services and supports that he needs.

**Issue 2: Procedures for Developing Student A's IEP, including a BIP** – The one-year timeline for this complaint begins on November 28, 2016; therefore, OSPI will not address any issues regarding the development of Student A's individualized education program (IEP) prior to that date.

An IEP must contain a statement of the student's present levels of academic achievement and functional performance. Present means the current level of a student's functioning. Student A's October 31, 2017, which as discussed in the facts above, was actually developed on November 1, 2017, did not contain accurate statements of Student A's present levels. The October 2017 IEP included the same information from Student A's prior November 2016 IEP, which his general education teacher had provided. Not only was this information no longer current, it was misleading, as Student A had not participated in a general education setting since November 2016. Additionally, the present levels did not include any information about Student A's present levels of academic performance. Further, the information regarding his present levels in the area of emotional/social does not appear to accurately capture Student A's behaviors and does not include any baseline information in which to inform appropriate annual goals.

IEPs must also contain measurable annual academic and functional goals designed to meet the student's needs resulting from his disability. Student A's October 2017 IEP contained the same

two goals as his prior November 2016 IEP. While it may be appropriate in some cases to continue with the same goal after more than one year, the rationale should clearly be documented. Here, the District did not document the IEP team's rationale for continuing with the same goals and there is no documentation to show whether the goals continued to be appropriate for Student A given the numerous changes to his placement and service levels over the course of the prior twelve months. It is also noted that the District's documentation in this complaint did not include any progress reporting regarding Student A's progress toward the November 2016 goals.

Additionally, an IEP must include the special education services, related services, and supplementary aids to be provided to the student and any individual modifications and accommodations a student may require. Student A's October 2017 IEP did not include any related services or supplementary aids and services, despite Student A requiring 1:1 paraeducator support and behavior supports from the WISE providers and his private behavior therapist. Additionally, the October 2017 IEP only included two accommodations: more time on tests and a behavior contract. While all three of Student A's annual IEPs mentioned in this decision reference a behavior contract, none of the IEPs include a behavior contract, and there is no documentation to show a behavior contract is appropriate for Student A. Therefore, this accommodation should be removed from Student A's IEP. Further, given the level of services and support Student A requires on a daily basis, it is highly unlikely that Student A is not in need of additional modifications and/or accommodations, such as those provided for in his November 2015 IEP.

Further, an IEP must address any necessary behavior supports a student needs and include a behavioral intervention plan (BIP) if necessary for the student to receive a free appropriate public education (FAPE). A BIP must meet the requirements of WAC 392-172A-01031. Here, despite Student A's well documented behavior struggles, Student A's October 2017 IEP did not reference that he had BIP. However, the District's documentation in this complaint included a BIP, dated October 20, 2016/October 31, 2017. The October 2017 BIP is exactly the same as Student A's October 2016 BIP, the only difference being the change in date. The October 2017 BIP does not meet the requirements of WAC 392-172A-01031 and does not appropriately address Student A's current behaviors and the behavior strategies being used to support him.

An IEP must also include an emergency response protocol, if necessary, for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040. It is unclear from the District's documentation if the IEP team addressed whether Student A was in need of an emergency response protocol, although based on the District's documentation in this complaint, Student A had been restrained, and possibly isolated, on October 26, 2017, six days before his annual IEP was developed.

The District failed to develop an IEP, including a BIP, for Student A that met procedural requirements and met Student A's needs. After the District completes the comprehensive reevaluation of Student A, it will develop a new IEP for Student A that clearly complies with procedural requirements. It is also noted that the District's documentation in this complaint shows that the District did not follow procedures for amending Student A's November 2016 IEP

and frequently failed to provide the Parent with prior written notice that met the requirements of WAC 392-172A-05010.

### **CORRECTIVE ACTIONS**

By or before **February 16, 2018, March 16, 2018, March 26, 2018, and April 20, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT A SPECIFIC:**

By **March 16, 2018**, the District will conduct a comprehensive reevaluation of Student A that addresses all areas of suspected disability. The reevaluation must include academic and behavior related assessments. In addition to assessments, the reevaluation will include a review of records, including Student A's medical records, prior reevaluation(s), FBAs, IEPs, and information provided by Student A's behavior therapist, WISE providers, teachers, paraeducators, and the Parent. The evaluation report will thoroughly discuss Student A's needs and identify any needed specially designed instruction and related services.

By **March 21, 2018**, the District will hold an IEP meeting to review the results of Student A's reevaluation and develop a new IEP, including a BIP. The IEP and BIP must align with the requirements of WAC 392-172A-03090 and 01301. By **March 26, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the evaluation report; 3) a copy of the new IEP; 4) a copy of the BIP; and, 5) a copy of any related prior written notices.

#### **DISTRICT SPECIFIC:**

By **April 20, 2018**, the District will provide training for all District special education certificated staff, educational staff associates (ESAs), who work at Student A and Student B's elementary school, the elementary school administrators, and District special education administrators regarding: 1) procedures for changing placement; 2) procedures for determining when a reevaluation, including a FBA, is warranted; 3) procedures for developing IEPs, including BIPs; 4) procedures for amending IEPs; and, 5) prior written notice. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The trainer will not be an employee of the District. The training will also include examples.

By **February 16, 2018**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of decision SECC 17-87A and SECC 17-87B for use in preparing the training materials.

By **March 16, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by March 26, 2018 and additional dates for review, if needed.

By **April 20, 2018**, the District will submit documentation that staff participated in the training. This will include a 1) sign-in sheet from the training and 2) a roster of all District special education certificated staff, educational staff associates (ESAs), who work at Student A and Student B's

elementary school, the elementary school administrators, and District special education administrators so OSPI can verify that all required staff participated in the training. *If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.*

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

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

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

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

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