

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 14-40

PROCEDURAL HISTORY

On June 16, 2014, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 17, 2014, 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 July 9, 2014, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. The Parent was invited to reply with any information she had that was inconsistent with the District's information.

On July 21, 2014, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On August 1, 2014, the Parent provided OSPI additional information. OSPI forwarded that information to the District on August 4, 2014. Also on August 4, 2014, the District provided OSPI with additional information. OSPI forwarded that information to the Parent on August 5, 2014. Also on August 5, 2014, OSPI received additional information on behalf of the Parent. OSPI forwarded that information to the District on the same day.

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

OVERVIEW

At the beginning of the 2013-2014 school year, the Student attended second grade in a District elementary school and received special education services under the eligibility category of autism. Under his individualized educational program (IEP), the Student received social and behavioral services primarily in a general education setting. Soon after the start of the 2013-2014 school year, the Student began having behavioral incidents and the Parent believed that the Student was not receiving the positive supports as specified in his IEP. On October 2, 2013, the school principal told the Parent that the school would impose a one-day in-school suspension on the Student. In response, the Parent kept the Student home from school, and later stated that she would not return the Student to his school. After three IEP meetings in November 2013, the Student's IEP team determined a new placement for the Student. However, the Parent claims she agreed to that placement only because she understood that it was temporary, evaluative, and that the Student would be assigned to a specific "option elementary school," which was of the Parent's preference. After a different assignment determination was made at the District level, the District told the Parent that the Student

would not be assigned to the Parent's preferred option elementary school. The Parent then refused to send the Student to school under the new placement because she disagreed with the District's assignment of the Student to a different "option" school. The Student remained out-of-school from October 2013 through the end of the school year.

SCOPE OF INVESTIGATION

The Parent's complaint included allegations that occurred more than one year from the date the Parent filed the complaint. OSPI informed the Parent that the special education complaint investigation process was limited to one year. Additionally, the Parent alleged that the District failed to investigate an assault on the Student. OSPI informed the Parent that this allegation was not a violation of the IDEA. Finally, the Parent alleged that the District failed to follow special education disciplinary procedures. Because the Parent did not provide information indicating that the removals exceeded ten school days, OSPI asked the Parent to provide additional information regarding this allegation. The Parent did not provide OSPI with additional information so this complaint did not address the allegation.

ISSUES

1. Did the District follow IEP development procedures, including ensuring that IEP team members attended or were excused?
2. Did the District implement the Student's IEP?
3. Did the District follow procedures for responding to the Parent's request for an IEE?
4. Did the District follow procedures for determining the Student's placement?
5. Did the District follow procedures for responding to the Parent's requests?

LEGAL STANDARDS

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321; WAC 392-172A-03095(5).

Independent Educational Evaluation: Parents of a student eligible for special education have the right to request an independent educational evaluation (IEE) of a student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for

an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria.

If the parent obtains an IEE at public or private expense, the district must consider results of the evaluation, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and may be presented as evidence at a hearing regarding that student. A school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. 34 CFR §300.502; WAC 392-172A-05005.

Placement Procedures: A special education student's educational placement is decided at least annually. This is a team decision, in which the student's parent must be afforded the opportunity to participate. 34 CFR §300.327; WAC 392-172A-03115. When making placement decisions a district must draw upon information from a wide variety of sources and ensure that any decision is made by a group of persons who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. *L'Anse Creuse Public School District*, 35 IDELR 284 (OCR 2001); *Seattle School District*, 34 IDELR 196 (SEA WA 2000).

The selection of an appropriate placement for the student must be based on his or her IEP, least restrictive environment requirements, placement options that provide a reasonably high probability of assisting the student to attain their annual goals, and consideration of any potential harmful effect that the placement decision might have on the student or on the quality of services that the student needs. Unless the team decides otherwise, the student shall be educated in the school that they would attend if they were not disabled. 34 CFR §300.116; WAC 392-172A-02060.

Physical Location is Not Placement: Although the term "educational placement" is not specifically defined, the IDEA does require that students receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). *A.W. v. Fairfax County School Board*, 372 F. 3d 674, 681 (4th Cir. 2004). However, the precise physical location of where a student is educated does not need to be included in the statement of the student's placement. The LRE requirement directs that the student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. *A.W. at 681, citing Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 202-203, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982). The IDEA's concern with location focuses on the degree to which any particular assignment segregates a student with a disability from nondisabled students, rather than on the precise location of the assignment itself. *AW at 681*. See also *Letter to Trigg*, (Office of Special Education Programs November 30, 2007), where OSEP encouraged placement in school and classroom a student would attend if not disabled, however, stated that a public agency may have two or more equally appropriate

locations that meet the student's needs, and administrators should have the flexibility to assign the child to a particular school or classroom, provided that determination is consistent with the decision of the group determining placement.

Neighborhood School Placement Not Always Required: A student with a disability will be educated in the school he or she would attend if nondisabled, unless the student's IEP requires another arrangement based on the student's needs. If the student needs other arrangements, placement will be as close as possible to the student's home. 34 CFR §300.116; WAC 392-172A-02060(3).

Temporary, Evaluative, Non-Final Placement: An IEP team must develop an IEP before determining placement, however, this requirement does not preclude temporarily placing a student who is eligible for special education services in a program as part of the evaluation process—before the IEP is finalized—to assist in determining the appropriate placement for the student. However, it is essential that the temporary placement not become the final placement before the IEP is finalized. In order to ensure that this does not happen, any temporary placement as part of the evaluation process should (a) include an *interim* IEP for the Student that sets out the specific conditions and timelines for the trial placement; (b) ensure that the parents agree and are involved in the process; and (c) set specific timelines (e.g., 30 days) for completing the evaluation, finalizing the IEP, and determining the student's appropriate placement. See: Appendix A to Part 300—Notice of Interpretation—Part IV “Other Questions, Question 14.

District Responsibility to Offer an IEP Program and Placement: 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. The IEP must be in effect before special education and related services are provided to an eligible student. 34 CFR §300.323; WAC 392-172A-03105. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §300.324; WAC 392-172A-03110. It must also ensure that it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.320; WAC 392-172A-03090(1)(d).

A school district cannot escape its obligation under IDEA to make a formal offer of an appropriate educational placement by arguing that the student's parents expressed unwillingness to accept that placement. *Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994), cert. denied, 115 S.Ct. 428 (1994).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if

they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

1. During the 2013-2014 school year, the Student attended second grade at a District elementary school and received special education services under the category of autism.
2. The Student's most recent reevaluation was completed on May 15, 2012. The evaluation report noted that the Student did well academically, but recommended that the Student receive specially designed instruction in the areas of social/emotional/behavior/adaptive skills.
3. The Student's annual individual education program (IEP) in effect at the beginning of the school year was developed on September 24, 2012, and amended on March 25, 2013. As amended, the Student's IEP provided for 30 minutes per week of special education services in the special education setting, and 415 minutes per week of special education services in the general education setting. All of the Student's annual IEP goals addressed the areas of social and behavioral skills. Of the 415 minutes services per week in the general education setting, the Student received 175 minutes per week of supervision during recess from an instructional assistant. The Student's IEP also included a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP), which provided accommodations to assist with behavior, such as; preferential seating, clear expectations, and positive reinforcement. The Student's IEP continued his placement in a general education elementary classroom with 30 minutes of weekly services in a resource room to address his social and behavioral goals.
4. The first day of the 2013-2014 school year was September 4, 2013.
5. On September 15, 2013, the Student's special education teacher asked the Parent for her input regarding the Student's upcoming IEP meeting. The Parent stated that both she and the Student felt it was very important for the Student not to be "singled out" in order to receive his specially designed instruction, but rather "to be the same" as his general education classroom peers as much as possible. The Parent told the Student's special education teacher that the Parent believed that the Student's problematic behavior related to the Student's frustration from being pulled out of the general education classroom for special education services.
6. Also in preparation for the Student's upcoming IEP meeting, scheduled for September 20, 2013, the Student's instructional assistant provided data regarding the Student's behavior at lunch and recess. The data describes the instructional assistant's support as providing "line of sight" supervision; giving positive affirmations as frequently as possible; encouraging a variety of games; and stepping in immediately to de-escalate aggressive behavior. The data provided by the assistant indicated that the Student responded successfully in 11 out of 23

opportunities and did not respond successfully 12 out of 23 opportunities. According to that documentation, in the first few weeks of school, the Student stopped his play in order to give another student a turn to play; complied with direction for where to play; and on several occasions, played imaginatively and appropriately with peers. Also according to that same documentation, for the first few weeks of school, the Student hit another student in the back three times; shoved another student; twisted a student's arm; twisted another student's ear; kicked a student in the shin; broke a jump rope; hit a student in the side; and kicked at another student's face.

7. On September 20, 2013, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. The IEP continued to provide 30 minutes per week of social and behavioral skills instruction in the special education setting. However, the team reduced the amount of services for social and behavioral skills in the general education setting to 305 minutes. Of the 305 minutes per week of special education in the general education setting, the Student received 125 minutes per week (reduced from 175 minutes) of supervision during recess. According to the District's response, the IEP team decreased the Student's supervision at recess based on the Parent's concerns that the Student felt singled out by the instructional assistant. According to the Parent, she did not ask for a decrease in supervision at recess. Rather, she expressed concern that the instructional assistant was not providing the Student with the proper type of support. The prior written notice did not address the decrease in service time, or the reasoning for it. The prior written notice stated that the Student would benefit from an intense social skills program, and that he needed support during both class and recess time. The IEP also added an accommodation that the Student could take a break in a quiet space and that the Student would sort shapes to calm down. According to the District's response to this complaint, the school created a calming space for the Student in his general education classroom. According to the Parent's reply, this amounted to sending the Student to the hallway and forcing him to sort shapes, which the Student strongly disliked. The IEP team determined that the Student needed an updated FBA and BIP and agreed to gather data and meet again. According to the Parent's reply, she requested a "full" FBA, meaning that the FBA would not be limited to behavior at recess and other unstructured times. The Student's September 2013 IEP continued his placement in a general education elementary classroom with pullout services for specially designed instruction in the resource room.
8. On September 21, 2013, the Parent told the school principal that she was concerned that the playground staff did not understand autism, and did not know how to work with the Student. According to the Parent's reply, she asked about the qualifications of the instructional assistant many times, but the school did not provide that information. Around this same time, school staff restricted the Student's access to playground equipment, such as the playground balls. The school principal told the Parent that staff had imposed this restriction because using playground equipment seemed to "ramp [the Student] up," leading to the Student's hurting other children with the equipment. The Parent disagreed with this restriction, and told the school principal that the Student needed options and the opportunity to practice safe behaviors.

9. On September 24, 2013, another student pushed, hit, and kicked the Student on the playground. Later, this same student sat by the Student at lunch, but staff would not allow the Student to relocate to another place in the lunchroom. When the Parent learned what happened, she told the school principal that the lack of playground and lunchroom support for the Student was a “crisis situation.” The school principal responded that he was concerned that the Student was getting overstimulated during the day, and that the updated FBA would help determine how best to help the Student. The Parent replied that the Student was coming home with torn clothing and injuries inflicted by other students, and she was concerned for the Student’s safety. She admonished the school for its lack of positive interventions with the Student.
10. On September 26, 2013, the Student was involved in an incident on a school bus. According to the Parent, an older student punched, kicked, and threw the metal seat belt clasp at the Student, giving the Student a black eye, a bruised and scratched cheek, and marks on his ribs and thighs. The Parent informed the school that she considered the incident to be an assault. According to the Parent, this was the third time in a week that the Student had been injured at school.
11. On September 29, 2013, the Student’s special education teacher contacted the Parent, asking if the Parent could meet to discuss the Student’s FBA on October 1, or October 14, 2013. The Parent replied that she could meet on October 14, 2013 during school hours.
12. On September 30, 2013, the Parent sent the Student to school with a “checklist” for keeping track of his behavior during recess and his bus ride, so that he could earn points for each recess and bus ride, during which the Student maintained appropriate behavior. That evening, the Student’s special education teacher told the Parent that the chart and the points had been helpful that day. She also told the Parent that she was working with recess staff to create games for the Student during recess.
13. On October 2, 2013, the Student was involved in another incident at school. According to the District, the Student sharpened his pencil and used it to jab another student in the eye. According to the Parent, no one witnessed the incident and the Student told her that the incident involved an eraser (not a sharpened pencil) and that both the Student and the other student were responsible for the incident. According to the Parent’s reply, although the incident occurred earlier in the day, the school principal confronted the Student on the school bus in front of other students and parents. The Parent’s reply to this complaint states that the Parent arrived at the school (not knowing that there had been an incident) to see the school principal confronting the Student. The Parent and the school principal had a verbal exchange about the incident. The Parent told the school principal that the Student’s problematic behavior was part of his disability, and that the school should use positive supports instead of a suspension. According to the Parent, the Parent felt intimidated by the school principal and asked that communications about the Student’s educational support be limited to an IEP setting or when the Parent had an

advocate present. According to the District, the Parent asked that the Student's school team limit modes of communication to email and IEP meetings. Later that evening, the school principal phoned the Parent's cell phone and left a voice mail message, informing the Parent that the school would impose a one-day, in-school suspension on the Student to take place the following day. According to the District, the school principal told the Parent that the school principal would continue to phone the Parent if the Student had a behavioral incident, because a phone call was more collaborative than an email. Also according to the District, the school principal told the Parent that because a safe environment at the school was imperative, the school could suspend a student with an IEP if the number of suspensions did not exceed ten days.

14. On October 3, 2013, the Parent did not send the Student to school because she did not feel that the Student was safe at school, and because she disagreed with the one-day in-school suspension. The Parent kept the Student home and did not allow him to return to school for the remainder of the 2013-2014 school year.
15. According to the Parent's reply, she purposefully limited her communication with the school because of her perception that the school principal had been hostile. The Parent canceled the meeting to discuss the Student's FBA scheduled for October 14, 2013. On October 21, 2013 and October 28, 2013, the Student's special education teacher emailed the Parent again, seeking to arrange a meeting to discuss the Student's FBA but without success. Eventually, the Parent asked for an IEP team meeting on November 6, 2013 or November 7, 2013.
16. On November 6, 2013, the Student's IEP team, including the Parent, met to discuss updating the Student's FBA/BIP and to discuss the Parent's other concerns. A special education teacher who taught in a District self-contained classroom in an "option elementary school" also attended the meeting.¹ According to additional information provided by the Parent in this complaint, both the Parent and the District special education supervisor considered the data presented at the meeting to be insufficient to support a meaningful update to the Student's FBA/BIP. The IEP team decided that updating the Student's FBA and BIP should wait until the team resolved issues regarding the Student's current support and placement. According to the District, the IEP team agreed that the Student should be reevaluated. According to the Parent's reply, the Parent requested that the District provide the Student with an independent educational evaluation (IEE) and the District special education supervisor recommended that a specific specialist who had previously worked with the District conduct the evaluation.
17. Also at the November 6, 2013 IEP meeting, the Parent expressed dissatisfaction with the Student's current, neighborhood elementary school and the type of support that the Student received. According to the District's reply, the Parent requested a

¹ The District uses the term "option schools" to refer to schools that offer a variety of different curriculums and educational programs and which do not have resident attendance boundaries.

smaller classroom with more one-on-one instruction; requested that the District transfer the Student to a specific option elementary school within the District's boundaries; and stated that she would not return the Student to school until the team changed the Student's placement. The District special education supervisor suggested a temporary, evaluative placement for the Student in a District SM-4 classroom at the option elementary school, which the Parent indicated she preferred. In a form titled "Continuum of Special Education Services,"² the District describes a variety of service models. According to that document, a service model 4 (SM-4) is intended for students who need specially designed instruction (SDI) throughout the day, including substantial support in organizational, social and/or adaptive areas to access information across settings. The documentation describes the SM-4 model as providing a staffing ratio of eight students to one teacher to two paraeducators (8:1:2). According to the District, the ratio is descriptive of a teacher's caseload rather than the assignment of students to a particular classroom; therefore, the service models are not classrooms. The District's documentation describes that within the SM-4 category are service model 4 inclusion (SM-4i) and service model 4 self-contained (SM-4-self-contained) subcategories. The SM-4 is not available at every elementary school.

18. According to the Parent's reply, at the November 6, 2013 IEP meeting, the District special education supervisor told the team that the temporary placement would help rebuild trust with the Student, and the Student would quickly transition back into the general education setting with the proper supports. Further, the Parent's reply states that the Parent and the special education teacher who taught in an SM-4 classroom at the option elementary school voiced concern about the temporary placement plan because the SM-4 classroom would not be the least restrictive environment for the Student and may not serve the Student's academic needs. The prior written notice states that the District and the Parent then agreed to delay updating the Student's FBA until the team made appropriate support and placement determinations for the Student, and that the team did not make a placement decision at that time, but scheduled a follow-up meeting. The prior written notice does not state that the team was considering a temporary, evaluative placement for the Student.

19. On November 13, 2013, the Student's IEP team, including the Parent, met again to discuss the Student's placement. According to the District's documentation in this complaint, none of the Student's general education teachers attended the meeting. The Parent expressed a strong preference for assignment to a specific District option elementary school. After the meeting, the Parent and the District special education supervisor exchanged emails, where the District special education supervisor told the Parent that there was a space available for the Student in the SM-4 classroom at the Parent's preferred option elementary school. The Parent asked for reassurance that placing the Student in the SM-4 classroom was solely for the purpose of a better assessment of the Student's needs from the option school's

² Updated March 11, 2014.

psychologist. The Parent further voiced her concern that when the Student's team wanted to move the Student out of the SM-4 classroom, a general education classroom at the District's option elementary school might not be available. The District special education supervisor told the Parent that he could not make promises, but that the team would craft the Student's IEP to reflect that concern, and going forward, the Student would need increasing amounts of time and accompanying supports in the general education environment.

20. On November 18, 2013, the Student's IEP team, including the Parent and the Student's general education teacher from his neighborhood school, held a final meeting to revise the Student's IEP and determine the Student's placement. In addition to the Student's special education teacher from his neighborhood school, the special education teacher from the District's option elementary school was also present. The Student's IEP team considered that the Student needed explicit instruction in following classroom rules and learning social skills in order to do well in the general education environment. The team noted that the Parent was concerned about the Student's support at recess time and concerned about the Student's ability to complete school tasks independently. The Student's November 18, 2013 IEP provided 1060 minutes per week of special education services in the special education setting and 45 minutes per week of special education services in the general education setting. With the exception of 60 minutes for adaptive PE, the Student's specially designed instruction was exclusively for social and behavioral skills. The team described the Student's placement as a SM-4 model, which provided a ratio of eight students to one teacher to two instructional assistants (8:1:2). The Student's IEP stated that the Student would participate in all aspects of the general education curriculum with his general education peers except for when he was "pulled out" for special education. The IEP described the Student's placement as 0-30% in "regular" class and listed the start and end dates as November 18, 2013 (the same date as the meeting) to September 19, 2014. The District provided the Parent with prior written notice that stated that the team was changing the Student's placement because the Student needed more support than available in a resource room, the Parent had been keeping the Student from attending in the prior placement, and the Student needed explicit instruction and close monitoring to transition back to school successfully. The prior written notice stated that the team would meet within three weeks to consider whether the Student required additional supports, and to reevaluate the Student's placement.

21. Also on November 18, 2013, the Parent and the special education teacher from the District's option elementary school exchanged emails. Based on the emails, both the Parent and the special education teacher understood that the Student would be assigned to a specific option elementary school's SM-4 classroom. On the same day, the District special education supervisor emailed a District special education regional supervisor, stating that the Student would be joining the SM-4 program at a specific optional elementary school and requesting that the Student receive additional support in that program. The email explained the rationale for the placement, stating that although the Student was highly capable in academic areas, he lacked some of the skills to be successful in the general education setting, and

the Student's IEP team had determined that placement in a SM-4 classroom would permit the Student to learn the routines and expectations in the general education setting, given the explicit instruction and close monitoring. The email asked for additional support for the Student in the SM-4 classroom, and further stated that the Student's team would reassess the situation in 90 days.

22. On November 19, 2013, the District special education supervisor emailed the Parent, informing her that the District's optional elementary school did not have space available in the general education program at that time. The Parent responded that this was "not good." The special education supervisor then explained that the IEP team determines the level of support, but that school assignment is made by the central office team based on availability. He continued, stating that the Parent's preferred option school was currently at maximum capacity, and that the IEP team needed to expand their search to other elementary schools that offered SM-4 programs in order to provide the 8:1:2 (eight students to one teacher to two instructional assistants) ratio service model as described in the Student's November 18, 2013 IEP.
23. On December 2, 2013, the District special education supervisor sent the Parent a detailed email outlining the programs and levels of support at several elementary schools, including information regarding if those schools had availability for additional students. According to this email, one of the schools that the Parent preferred only offered a resource room level of support similar to the Student's neighborhood school that the Parent was not allowing the Student to attend. The District special education supervisor told the Parent that the District needed to make a school assignment for the Student within the next few days.
24. On December 4, 2013, the Parent requested an IEP meeting with the Student's neighborhood school team. The principal at the Student's neighborhood school emailed the Parent in reply, telling her that it would be more appropriate for her to meet with the new IEP team once the Student's new assignment was finalized, but that the Student's special education teacher (from the neighborhood school) could attend the meeting with the new team. The neighborhood school principal copied the District special education supervisor on his email response and encouraged the Parent to contact the District. The District arranged for an IEP meeting on December 10, 2013.
25. On December 9, 2013, the District assigned the Student to an option elementary school with a SM-4 program and an 8:1:2 ratio as described in the Student's November 18, 2013 IEP. The assignment was to be effective the next day, December 10, 2013. The District communicated this assignment via an email addressed to the option school principal and the option school special education teacher. Several other people, including the Parent, were copied on the email. The Parent disagreed with the Student's assignment to this option school, in part because of an unfavorable discussion regarding this option school at the November 18, 2013 IEP meeting. The Parent asked to reschedule the December 10, 2013 IEP

meeting until January so that she could obtain legal help to prevent the new placement.

26. On January 15, 2014, the Parent, the Parent's friend, and the District special education regional supervisor met to try to resolve the issues surrounding the Student's placement. According to the Parent, the District special education regional supervisor asked the Parent to use a friend's or family member's address to place the Student into the option elementary school instead of the District placing the Student at that school. After the Parent's friend pointed out how inappropriate this suggestion was, the District special education regional supervisor agreed and retracted his suggestion.
27. The email documentation shows that various phone conferences between the Parent and the District's special education regional supervisor were scheduled and rescheduled in January 2014. According to the email documentation, both the Parent and the District needed to reschedule phone calls and meetings.
28. On January 31, 2014, the Parent requested mediation services. The District and the Parent arranged to hold a mediation session on March 19, 2014. However, the mediation session was canceled after the mediators could not confirm the final participants or the location for the mediation session. Based on the email documentation, the parties never mediated.
29. On April 3, 2014, the Parent emailed several District contacts, including the special education executive director, again asking to schedule mediation and asking for a response to her request for an IEE. The documentation does not include a response from the District.
30. According to the Parent, on April 10, 2014, a school bus came to the home of the Parent and Student to take the Student to the option elementary school to which the District had assigned the Student in December 2013. This surprised and upset the Parent.
31. Also according to the Parent, on April 13, 2014, the Parent received a letter from the District, assigning the Student to the SM-4 program at the option elementary school to which the District had assigned the Student in December 2013.
32. The Student did not attend school for the remainder of the 2013-2014 school year, and there is no indication that the District and Parent met after January.

CONCLUSIONS

1. IEP Development: The District's documentation substantiates that at the beginning of the 2013-2014 school year, the District had an IEP in place for the Student based on the Student's evaluation. When the District developed the Student's annual IEP on September 20, 2013, all team members were present. Additionally, the District took steps to amend the Student's IEP in response to the Parent's dissatisfaction and data, indicating that the Student was struggling with behavioral issues. The

District concedes that it failed to ensure that one of the Student's general education teachers attended the November 13, 2013 IEP. However, this meeting was not concluded until November 18, 2013, when all the necessary team members, including the Student's general education teacher, attended. The Student's November 18, 2013 IEP included services that were a significant change to the Student's least restrictive environment. However, based on the emails, and documentation from both the District and the Parent, it appeared that the District intended to use the placement as an evaluation process for the Student's needs, which is discussed further in Conclusion 4, "Placement Procedures." OSPI notes that the Student's November 18, 2013 IEP is the current IEP in effect for the Student. After the Parent requested an IEP meeting on December 4, 2013, the Student's neighborhood school principal told the Parent that it would be more appropriate for her to meet with the IEP team members as comprised from the newly assigned school. Although it is understandable that this alarmed the Parent when she did not agree with that assignment, the District responded to her request for an IEP meeting and arranged an IEP meeting for the Student on December 10, 2013, which the Parent later canceled.

2. IEP Implementation: Although the Parent believed that the Student's supports and services did not take a "positive approach" and were therefore unsatisfactory, the District's documentation substantiated that the District provided specially designed instruction the areas of social/behavioral skills and implemented the accommodations contained in the Student's IEP. For example, the District's documentation included the instructional assistant's data sheets, which included a record of the Student's successful responses as well as his unsuccessful responses and describes the instructional assistant's support as giving the Student positive affirmations as frequently as possible. Additionally, although the Parent states that the Student strongly disliked the sorting shape activity and suggested that it should not have been part of the approach taken with the Student, the Student's BIP did include the sorting shape activity.
3. Independent Educational Evaluation: The District admitted that as of April 2014, the District was on notice that the Parent believed she had requested an IEE in November 2013. OSPI accepts the District's proposed corrective action to provide an IEE. The District and the Parent have informed OSPI that the IEE process has begun and that the Student has an appointment with the private provider of the Parent's choice in October 2014.
4. Placement Procedures: The District did not follow procedures for determining the Student's placement. The District concedes that it failed to conduct an evaluation prior to changing the Student's placement. Based on the documentation, however, both the Parent and the Student's IEP team agreed that the Student required additional supports. There was also clear indication that the purpose of the change of placement was to collect data as part of an evaluation to determine the appropriate services and settings for the Student. Additionally, while the Parent expressed some concern about the length of a proposed placement, the Parent primarily objected because the Parent's preferred location was no longer available.

The documentation shows that the Parent did not disagree with the proposed service model addressing the Student's needs, provided that: (1) the District assigned the Student to the option elementary school that the Parent preferred, and (2) the service model was temporary and for evaluative purposes.

With regard to the location of the Student's services, districts have the discretion to develop and adopt school assignment processes, provided the assignment process is reasonably calculated to ensure that a student's needs as described in a properly formulated IEP are being met, and the process allows assignment to the neighborhood school to the maximum extent possible. Although it is understandable that the Parent felt frustrated when the District copied her on an email announcing that the Student's location was not one that she preferred, or had been led to believe the Student would receive, the District's documentation does not support that the District tried to "trick" the Parent. Rather, the documentation supports that the District tried to accommodate the Parent's preferences but eventually needed to make a school assignment, which it had the discretion to do, given the Parent's refusal to return the Student to his neighborhood school.

With regard to the use of an alternative placement for evaluation purposes, the US Department of Education's Office of Special Education Programs (OSEP) states that an IEP team must develop an IEP before determining placement. However, OSEP also states that this requirement does not preclude temporarily placing an eligible child with a disability in a program as part of the evaluation process—before the IEP is finalized—to assist a student's team in determining the appropriate placement for the student. It is essential that the temporary placement not become the ultimate placement before the team finalizes the IEP. In addressing this issue, OSEP suggested that a district must develop an interim IEP for a student that sets out the specific conditions and timelines for the trial placement. Additionally, a district must ensure that the parent agrees to the interim placement before carrying it out, and that the parent is involved throughout the process of developing, reviewing, and revising the student's IEP. A district must set a specific timeline (e.g., 30 days) for completing the evaluation. At the end of the timeline for the trial period, a district must conduct an IEP meeting, determine placement, and finalize a student's IEP. In this case, the District followed many, but not all of the procedures to use a temporary placement for evaluative purposes. Specifically, although the District provided the Parent with prior written notice stating that the team would meet in three weeks to reevaluate the Student's placement, the District special education supervisor told a District special education regional supervisor that the team would review the Student's IEP in 90 days. Further, neither the IEP nor the prior written notice included what specific conditions would end the trial placement. In contrast, the prior written notice stated that after three weeks, the team would consider whether the Student required additional supports.

5. Responding To Parental Requests: As discussed above, the District did not follow procedures for responding to the Parent's IEE request. However, the District's documentation substantiates that regarding many of the Parent's requests, the District properly responded to the Parent. For example, in October 2013, the District

tried to contact the Parent numerous times to gather data for an FBA and BIP, but the Parent did not respond. The District's documentation further substantiates that the District attempted to work with the Parent to identify an elementary school that offered a service model program as specified by the Student's November 18, 2013 IEP. Although an IEP team should work toward consensus, the Parent chose to keep the Student from attending school at his neighborhood school placement and later chose to keep the Student from attending school at his option school placement for the remainder of the school year.

CORRECTIVE ACTIONS

On or before **September 10, 2014** and **December 30, 2014**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. The Student's IEP team will meet no later than **August 29, 2014**, to develop a temporary, evaluative placement for the Student, which will be in place prior to the beginning of the 2014-2015 school year. In order to ensure that the IEP team has information about the Student from a provider, the District will either include the Student's neighborhood school special education teacher in the IEP meeting, or ensure that the special education teacher provides written input to the Student's IEP team, which includes the Parent, prior to the IEP team meeting. In addition, the IEP team will invite the Student's IEE provider to participate in the meeting if the provider is available and agrees to participate. The District will pay for the provider's time associated with the meeting. The District will specifically describe any data to be obtained during this time period and ensure that arrangements are made for the Student's IEE provider to observe the Student in a classroom setting, if needed as part of the provider's IEE. This temporary, evaluative placement will be in effect until the Student's IEE is completed and the Student's IEP team meets to review the Student's annual IEP after completion of the IEE, and to determine the Student's placement. In selecting the location for the Student's actual placement, the team will consider that the placement should be as close to the Student's neighborhood school as possible. Additionally, the team will consider that, based on the District's description of service models, the location will include sufficient options within the school setting to allow the Student to participate in the general education setting (with significant support), and in the special education setting (to receive the behavioral and social skills instruction that the Student needs). The District has indicated previously that it provides a variety of service models within one school to address the potential for a student to move from one setting to another, without moving the student to another school. Also in determining the location of the Student's program placement, the District will determine whether the option school that was the Parent's preferred location has the capacity to provide the general education services that were previously unavailable during the 2013-2014 school year. If the Parent does not wish to provide consent for a temporary placement as part of the District's evaluation or chooses not to reenroll the Student for the 2014-2015 school year, OSPI strongly recommends that the Parent inform the District prior to the scheduling of an IEP

meeting. By **September 10, 2014**, the District will provide OSPI with a copy of the meeting notes, any prior written notices, a copy of the temporary, evaluative IEP, documentation that the District invited the Student's IEE provider to participate in the meeting to develop the evaluative IEP, and documentation that the District paid for the provider's time associated with the meeting.

2. OSPI accepts the District's proposed corrective action to provide the Student with an IEE. OSPI understands that the District has begun the IEE process with the Parent and that the Student has an appointment with the private provider of the Parent's choice for October 2014. Within **two weeks after** the completion of the IEE or no later than **December 19, 2014**, whichever occurs first, the District will arrange an IEP team meeting to review the results of the IEE, revise the Student's IEP, and address the Student's placement. The District will invite the IEE provider to the IEP meeting and reimburse the IEE provider for the time associated with participating in the meeting. By **December 30, 2014**, the District will provide OSPI with a copy of the IEE, a copy of the revised IEP, a copy of meeting notes, documentation that the District invited the Student's IEE provider to participate in the IEP meeting, and documentation that the District paid for the provider's time associated with the meeting.

DISTRICT SPECIFIC:

The District is currently engaged in a comprehensive corrective action planning process that requires the development of internal procedures to address the District's special education operations. No further District specific required actions are required as part of this complaint.

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.

RECCOMENDATIONS

Because mediation can help parents and districts successfully resolve issues, OSPI recommends that the District examine its internal procedures for responding to parental mediation requests in a timely and effective manner.

Dated this ____ day of August, 2014

Douglas H. Gill, Ed. D.
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.)