

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-80

PROCEDURAL HISTORY

On October 17, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Lake Stevens School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 21, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint by November 8, 2019.

On November 1, 2019, the District requested an extension of time to respond to the complaint. OSPI extended the time to respond by requesting some documents on November 8, 2019, and the remaining documents on November 15, 2019.

On November 8, 2019, OSPI received the District's initial response and documentation and on November 15, 2019, OSPI received the additional documentation. OSPI forwarded all documentation to the Parent on November 18, 2019. OSPI invited the Parent to reply.

On November 27, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 2, 2019.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on October 18, 2018. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures for ensuring Parent participation in the individualized education program (IEP) meetings on June 18 and 28, 2019, including providing proper notification and ensuring a properly construed IEP team?
2. Did the District follow procedures in determining the Student's placement and least restrictive environment in order to provide the Student a free appropriate public education (FAPE)?

LEGAL STANDARDS

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a

disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's individualized education program (IEP). *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188 (1982).

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. An IEP invitation need not be in writing; however, the district must keep adequate documentation to show that all the components were included in the invitation. 34 CFR §300.322; WAC 392-172A-03100.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

A student's IEP team has the responsibility to determine the student's least restrictive environment (LRE), and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9th Cir. 1994).

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the LRE requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides 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 which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

FINDINGS OF FACT

Background

1. During the 2016-2017 school year, the Student was evaluated by the District and found eligible for special education services under the category of autism. An individualized education program (IEP) was developed for the Student that included accommodations, and provided specially designed instruction in the areas of communication, adaptive/self-help skills, and social/emotional behavior. The Parent declined special education services at the time, but the Student received private applied behavioral analysis (ABA) services.
2. During the winter of the 2017-2018 school year, the Student began receiving special education services in the District's Early Learning Center (ELC), which was a special education/developmental preschool program in the District.

2018-2019 School Year

3. On September 19, 2018, the 2018-2019 school year began in the ELC.
4. During the 2018-2019 school year, the Student continued to be eligible for special education. Sometime during the winter of 2018, the Student began to attend the ELC during the afternoons.
5. Beginning January 2019, according to the District, the District began monthly training for ELC staff to gather a "body of evidence" to make IEP decisions, including decisions about whether students should proceed to kindergarten or remain in the ELC program for another year.

6. On January 18, 2019, as part of the District's kindergarten transfer procedures, the ELC special education teacher emailed the school principal her placement recommendations for the next school year for each student in the Student's class, along with a short summary of each student's strengths and weaknesses.¹ The summary and recommendation for the Student stated:

[Student] is making tremendous progress in all five areas of development. He currently requires verbal or visual prompts to follow classroom rules and routines. [Student] has learned the sequence of our day, individual routines within that sequence but requires visual or verbal assistance to comply with these routines. He struggles with fasteners and putting his coat on/off. He needs reminders about class rules (walking in the building, eyes on teacher, etc.) He has increased his sustained attention in a group setting, especially with familiar activities, music or movement, but still needs visual and verbal reminders. He is a "magnet" to just the "right" kid that wants to be silly and not follow the rules, especially during carpet time. He can be redirected but will often need to sit by someone else for that activity so they do not negatively influence each other. He is well liked by his peers and adored by staff. His smile lights up our room.

Initial Recommendation: GE (General Education).

7. On February 26, 2019, the District held an IEP meeting for the Student. The Student's speech/language pathologist, the special education teacher, the Parent, and the private BCBA (board certified behavior analyst) attended the meeting. The general education teacher's report in the IEP stated the Student was not included in general education.

The IEP provided the following "Adverse Impact Summary":

Delays in Communication may adversely impact the ability to communicate clearly and effectively with adults and peers in daily life, his ability to participate in age-appropriate activities such as group activities, learning age appropriate concepts, expressing wants and needs effectively, telling stories, relating events to others, and demonstrating his knowledge. It will affect the ability to participate in school activities and will possibly impact the ability to gain important skills.

Delays in Adaptive may adversely impact the ability to effectively care for self and learn personal responsibility including: hygiene, toileting, dressing, feeding, safety, attention to task, following rules and routines at home, school, or the community.

Delays in Social-Emotional Skills may adversely impact the ability to effectively relate to and engage interactively with others at school as well as impacting the ability to participate in classroom activities.

Despite the adverse impact, the IEP stated the Student was making "tremendous progress in all five areas of development. He had learned the necessary school routines but needs reminders about school rules. His attention has improved, but he still needs reminders. He will engage his peers but struggles with social play."

¹ The District's kindergarten transition procedures are described in Appendix A.

The Student's IEP included annual goals in the areas of communication, adaptive/self-help skills, and social/emotional behavior and specially designed instruction in each area, provided in the special education setting. Accommodations for the Student included a five-point harness for bus safety, augmenting verbal information with visual aids or manipulatives, and getting directions in 1-2 steps with checks for understanding. The Student's placement continued to be in the special education ELC.

The prior written notice, dated February 26, 2019, stated the proposal for the Student to enter Kindergarten in Fall 2019 was considered and rejected. The reason for the decision stated, "Due to his summer birthday, parents have requested an additional year at ELC. IEP team members concur that another year at ELC may provide an opportunity for a less restrictive setting in Fall 2020."

8. In May 2019, a District instructional coach and the District's director of special education (director) independently observed the Student's classroom. According to the observation notes, all the students in the classroom were observed. The director's notes did not contain any significant information about the Student. The instructional coach's notes referencing the Student stated:

Thought it was his birthday? Struggles with participating appropriately during circle time. Retell 6+part story. Waited his turn without objection. Transitioned between play items well. Didn't stay long at each center (30 seconds unless prompted). Follows directions. Plays with others (picnic, driving, flowers) I am unsure if a second year in ELC would change any placement. I would think Gen Ed with Support now and even if he had an extra ELC year placement would feel the same. (Was told by para that he is having an usually good day.) If any were retained for age it would be [Student] of these three.

9. On June 7, 2019, according to the Parent, the Parent received a text message from the Student's special education teacher, requesting an IEP meeting that included the director to "discuss progress and future needs." The meeting was scheduled for June 18, 2019.
10. Also, on June 7, 2019, the special education teacher emailed the director, the school principal, the instructional coach, speech/language pathologist, and the Parent. The subject line read: "Undated invitation; [Student] IEP team meeting @ Tue Jun 18, 2019 11:30am – 12:20pm (PDT) ([director]). The email stated, in part, "...[Parent] confirmed this meeting and should have updated ABA therapy notes/goals to share with us." The email listed the following participants: special education teacher, school principal, director, instructional coach, speech/language therapist, and the Parent.²
11. On June 13, 2019, the 2018-2019 school year ended in the ELC program.
12. According to both the District and the Parent, there was some confusion about the status of the June 18, 2019 meeting. The District provided documentation of an IEP meeting invitation, dated June 7, 2019, that stated the purpose of the meeting was to "Discuss placement options

² According to the District, the instructional coach served as the general education teacher on the IEP team. The coach was a former kindergarten teacher who was familiar with the kindergarten curriculum.

and possible changes to the IEP.” It was unclear whether the Parent received the meeting invitation but she did receive the email regarding the meeting.

13. On June 18, 2019, the District convened the Student’s IEP team and the team developed a new IEP for the Student. The IEP (effective from June 18, 2019 to June 17, 2020) identified the following Student strengths and Parent concerns for enhancing the education of their child:

[Student] has made progress in all areas of development. Parents note that [Student] has received private ABA therapy weekly for the past two years which has helped with behaviors at home. Parents are most concerned with his ability to use functional communication, following directives/directions, and compliance with adult requests. Parent requested the IEP team, including the private BCBA (board certified behavior analyst) therapist, agreed to delay the entrance to Kg. until Fall 2020 and continue placement at the ELC in Fall 2019 for PM Pre-Kg. class while [Student] continues to attend ABA therapy in AM.

Regarding the Student’s behavior, the IEP stated the Student’s behavior did not interfere with his learning or learning of others. The IEP updated the communication goals and continued with the same adaptive/self-help skills and social/emotional behavior goals. The IEP provided the following specially designed instruction and related services, which would result in the Student being in the general education setting 94.67% of the school day:

- Communication: 20 minutes, 6 times monthly (provided by a speech/language pathologist)
- Adaptive/Self-help skills: 30 minutes, weekly (provided by a special education teacher/paraeducator)
- Social/Emotional behavior: 30 minutes, weekly (provided by a by a special education teacher/paraeducator)

The IEP provided additional accommodations, in addition to the accommodations originally included in the Student’s February 2019 IEP. These accommodations included:

- Check for understanding by asking, “Show me.”
- Liberal access to movement.
- Multi-modality instruction.
- Positive behavior chart for energy regulation.
- Augment verbally presented information with visual aids and/or manipulatives, whenever possible.
- Directions given in 1-2 steps with check for understanding.

Under placement options, the IEP stated the placement was for “Setting 1: 09/02/2019 – 02/25/2020.” The placement options that were considered were the “regular EC program” for ten or more hours and the special education services provided in the regular early childhood program or the “regular EC program” for ten or more hours and the special education services provided “elsewhere.”³ The latter option was selected for the Student.

The IEP provided regular transportation and general physical education.

14. According to the District’s response to the complaint, the District stated: “The team reviewed the Student’s individual needs based upon the information identified within the Student’s IEP,

³ On the IEP form, “EC” means Early Childhood. Early Childhood includes both preschool and kindergarten.

his annual goal progress reports, and information input from [special education teacher] into the Child Outcomes Summary Form..."⁴

15. The "Child Outcomes Summary Form" (COSF), dated June 14, 2019, was a rating scale regarding the outcomes of the ELC. The form had a seven-point scale that ranged from "Not yet" being a one to "Completely," which was a seven. The results showed the following:
- Positive Social-Emotional Skills (including social relationships): Exit Rating – 4
 - Acquiring and Using Knowledge and Skills: Exit Rating – 5
 - Taking Appropriate Action to Meet Needs: Exit Rating – 4

16. In the prior written notice, dated June 18, 2019, the District proposed the following:

At the IEP meeting dated 6.18.19, [District] recommended full-day 5 days per week general education Kindergarten with support. As [Student] attends private ABA therapy for three hours in the mornings. M-F, [District] proposed two additional placement options to better accommodate for [Student's] ABA schedule. 1 – Partial Day Kg 5 days a week (1:00 pm – 3:10 pm); 2 – Should parents chose to delay entrance to Kindergarten until Fall 2020, they could receive special education via walk-in therapy services at their neighborhood school. (Allowing for private ABA in the mornings and private preschool in the afternoons.)

Other options considered: The Parent requested to continue placement at the ELC for the 19-20 school was rejected by the IEP team. The 6-18-19 IEP team recommendation for full day kindergarten placement at [Student's] home school remains the current recommendation.

The reasons we rejected those options were: [Student] is in need of and eligible to access full day kindergarten program. The ELC is a 10 hour per week program in which [Student] only participates with special education peers. [Student], at this time, is in need of access to general education curriculum and general education peers. A full day kindergarten placement recommendation offers a Free and Appropriate Public Education in the Least Restrictive Environment.

The notice also stated the District requested the Parent contact the District about which option the Parent wanted.

17. Regarding the meeting, the Parent stated in the complaint:

...I was blindsided by this meeting and was definitely not prepared. The invitation was not presented as an IEP amendment meeting. It was presented as an opportunity to meet with administrators and for them to present the option of kindergarten for me to consider AS WELL. I did not know his IEP was changing which is why I did not bring in my husband and his ABA therapist. Delaying kindergarten was not something we took lightly. We delayed his entry into preschool because he was not ready.

⁴ Based on the annual goals in the February 2019 IEP, the Student appeared to have made some progress in his communication goal, but it was unclear whether the Student made sufficient progress towards his adaptive/self-help and social/emotional goals based on the June 2019 progress report. There was little empirical data included in the documentation provided in response to this complaint.

18. On June 19, 2019, the Student's BCBA wrote a "To Whom It May Concern" letter. According to the Parent, the letter was not provided to the District until the complaint was submitted. The letter, in part, stated:

If [Student] were to start Kindergarten, or even half-day, [Student] would be put at a disadvantage due to his deficit with social communication. [Student] would be best served to stay at the Developmental Preschool to help [Student] continue to grow and increase his social communication with his peers. While working at the [Clinic], [Student] still has difficulty communicating with his peers. For instance, [Student] will not initiate greetings with his peers. [Student] will also not initiate conversations with his peers. By continuing Applied Behavioral Analysis therapy in the morning and developmental preschool in the afternoon, [Student's] deficits with social communication can be addressed for another year before he will start full time kindergarten. If [Student] was to be put in half-time kindergarten now, he would not be able to have a chance to be around his typically developing peers, due to the new IEP pulling him for multiple times a day. The developmental preschool will be able to help focus on social communication programs with peers for one more year. [Student] is about 6 months to a year behind his typically developing peers in regards to social communication and cognitive domains. This is seen through his VB-MAPP scores and when he masters the levels. These scores are seen in [Student's] treatment plan. It is my professional opinion that [Student] continue to have Applied Behavioral Analysis in the morning and Developmental Preschool in the afternoon, to help [Student] increase his social communication skills to that of his typically developing peers.

19. On June 20, 2019, the Parent emailed the special education teacher and stated, "we would like to go ahead with the IEP as discussed in February with the placement in the ELC for the 2019-2020 school year." The Parent stated:

...We feel strongly with his developmental delay and Autism diagnosis, he is not ready for kindergarten. The idea of the kindergarten placement was discussed and rejected according to the IEP, with the team in agreement [in February 2019].

The best choice for him as a whole is not to deny the importance of continuing his ABA program in the morning (830-1130...) or the chance at a full day of kindergarten his peers would be receiving. [Student] is already behind his peers both developmentally and socially on top of being one of the younger kids entering kindergarten...[Student] currently struggles to communicate with the peers in his community and we feel another year with them as well as another year of intensive ABA, would put him on the best path to success. We feel the Pre-K curriculum and services the ELC can provide surpasses the limited curriculum he would get with a partial day kindergarten program, or a private preschool.

20. According to the District, because of the possible confusion regarding whether the June 18, 2019 meeting was an IEP meeting and the fact the Parent expressed not being prepared, the District convened the Student's IEP team again on June 28, 2019. According to the District, the District again offered a "full-day kindergarten program with access to general education curriculum and peers" as its offer of FAPE for the Student.

21. Regarding the June 18 and June 28, 2019 IEP meetings, the Parent stated in the complaint: "...This was a unilateral decision based on the needs of the district, not the needs of our child. Absolutely nothing we said as parents mattered..."
22. The prior written notice, date July 10, 2019, stated the IEP discussed the District's proposal for the full-time kindergarten placement and the option for part-time kindergarten. The Parent requested the Student remain in the ELC. The District rejected the request and stated:
[Student] is in need of and eligible to access a full day kindergarten program. The ELC program is a 10 hour per week program in which [Student] only participates with special education peers. [Student], at this time, in need of access to general education curriculum and general education peers. A full day kindergarten placement recommendation offers [Student] a Free Public Education in the Least Restrictive Environment.

2019-2020 School Year

23. On October 17, 2019, the Parent filed this complaint.
24. According to the Parent, the Student is currently attending a private preschool two and half hours a day, three days a week, and continues to receive private ABA services.

CONCLUSIONS

Issue 1: IEP Meeting & Parent Participation – The complaint alleged the District failed to inform the Parent about the purpose of the June 18, 2019 individualized education program (IEP) meeting. In addition, the Parent alleged the District failed to consider the Parent's input into the placement decisions made at the June 18 and June 28, 2019 IEP meetings. A district is required to notify a parent of the purpose, time, and location of an IEP meeting and give parents an opportunity to provide input into decisions regarding student's special education services and placement. A district is also required to provide a parent with an opportunity to provide input into any decision regarding a student's identification, evaluation, placement, or provision of a free appropriate public education (FAPE).

Here, the District proposed holding an IEP meeting on June 18, 2019. The District contacted the Parent, but acknowledged there was confusion over whether this was an IEP meeting and the purpose of the meeting. The Parent stated she was unaware that the Student's placement for the 2019-2020 school year was going to be discussed at the meeting. She received a meeting invitation by text and email, but the purpose of the meeting was not clear to her. Had she known its purpose, she stated she would have had her husband and the BCBA attend. At the meeting, the District proposed placing the Student in kindergarten next school year. As a result of the confusion and to give the Parent another opportunity to provide input into the decision, the Student's IEP team met again on June 28, 2019. Given the earlier meeting and communication to schedule a second meeting, the Parent had clear notice of the June 28 meeting's purpose.

The District and the Parent discussed the placement options at both meetings. The Parent wanted the Student to stay in the ELC program. Based on the documentation in this complaint, the District considered the Parent's input, despite the Parent's claim that "absolutely nothing we said as

parents mattered.” Since the IEP team was unable to reach consensus, the District made the kindergarten placement decision and provided the Parent with prior written notice as required. While an IEP should work toward consensus, there are times that individual members of the IEP team—including parents—may disagree with the team’s decision. A district has the responsibility to ensure the IEP includes the services a student needs in order to receive FAPE. Here, while the Parent disagreed with the decision, the District made its offer of a FAPE and properly provided prior written notice.

Initially, the District failed to give the Parent sufficient notice of the June 18, 2019 meeting’s purpose, which limited the Parent’s ability to participate in that meeting. However, the District corrected the violation by having a timely IEP meeting on June 28, 2019, wherein the Parent was informed before the meeting that the proposed kindergarten placement was going to be discussed and the Parent had the opportunity to provide input into the decision. Therefore, while OSPI finds a violation regarding the first meeting, no further corrective action is needed given the District’s subsequent meeting.

The Parent’s complaint also expressed concern regarding the members of the Student’s IEP team during the June 2019 IEP meetings. The Parent stated, “This new team does not know or work with my son.” The required members of an IEP team are the parent, general education teacher (if the student is, or may be, participating in the general education environment), special education teacher, district representative, someone to interpret the instructional implications of evaluation results, and the student, if appropriate. Others who have knowledge or special expertise about the student may participate.

The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student’s preferences and interests are considered. The district representative must be qualified to provide, or supervise the provision of, specially designed instruction, knowledgeable about the general education curriculum, and knowledgeable about the availability of resources of the district. Whether someone who has knowledge or special expertise is decided by the person must be made by the party who invited the individual to be a member of the IEP team.

According to the documentation in the complaint, the IEP meeting was attended by the District’s director of special education (director), the general education teacher/instructional coach, the special education teacher, the speech/language pathologist, and the principal. In this case, the director and the general education teacher/instructional coach were required members and had observed the Student while making a classroom observation. The special education teacher and speech/language therapist directly worked with the Student. The principal knew the Student through the monthly staff meetings. Based on the documentation, the required members attended the Student’s June 2019 IEP meetings.

Issue 2: Least Restrictive Environment – The Parent alleged the District failed to place the Student in his least restrictive environment (LRE). The Parent stated the Student’s placement

should have remained in the ELC. A district must ensure that a student with a disability is educated to the maximum extent appropriate with general education peers. Removal from general education occurs only if the severity of the disability is such that satisfactory progress in the general education classroom cannot be achieved. An IEP team must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom.

Here, there were two simultaneous and connected processes occurring during the 2018-2019 school year: the Student's IEP development (including placement determinations) and the District's preschool to kindergarten transition process. The transition process called for the District to have an "Initial/Final Recommendation Meeting," to make recommendations for kindergarten placement, for all preschool students in January of each school year, based on the information they had at the time.

In January 2019, the District recommended the Student attend Kindergarten next school year. However, any recommendation made in the kindergarten transition process is subject to the decision by the Student's IEP team, because moving from preschool to kindergarten represents a potential change in placement and a student's IEP team determines placement. In February 2019, approximately seven months before the start of the 2019-2020 school year, the Student's IEP team determined the Student would continue to be placed in the ELC for the 2019-2020 school year. The decision was made without regard to the possible benefit of future services in those seven months between the February 2019 IEP meeting and September 2019, the start of the 2019-2020 school year. Although the progress monitoring of the Student, provided in this complaint, was sparse, there was some documentation that the Student had made progress even at the time of the February IEP meeting. There was no documentation that indicated the IEP team had reason—at the time—to suspect the Student would fail to continue making progress. Based on the documentation in the complaint, the trepidation of the February 2019 IEP team (including the Parent) about a kindergarten placement was based on the Student's birthday/age and that the Student "was behind his peers," which was consistent with the documentation. Despite progress, the Student was still behind his peers.

At the February 2019 IEP meeting, the District also failed to consider and document the reasons why the Student could not benefit from a less restrictive placement in kindergarten. The LRE section of the IEP had three options for rejecting a proposed placement: "academic benefits cannot be achieved satisfactorily"; "non-academic benefit cannot be satisfactorily achieved"; and "effect student will have on teacher and other students." All the lesser restrictive environments had the "non-academic benefit cannot be satisfactorily achieved" box checked, but provided no cogent explanation from the IEP team regarding their decisions. Being behind his peers and indicating the Student would benefit from another year in ELC are not reasons enough to conclude that the Student would not benefit from kindergarten, especially given documentation the Student was making some progress and had time left in the school year to potentially make more progress. Even though the District did not know about the BCBA's letter, the BCBA's August 2019

letter indicated that the Student did make sufficient progress during the remaining school year to recommend contact with general education peers, which he would receive in kindergarten, but not in the ELC program. Based on the failure to sufficiently consider all the LRE options and the lack of sufficient data, which the District acknowledged, the February 2019 IEP team made an untimely placement decision without sufficient data to support the decision. Thus, OSPI finds the District in violation regarding the placement decision made at the February 2019 IEP meeting.

Because of the premature decision, the Parent unwittingly came away from the February 2019 IEP meeting believing the placement for the 2019-2020 school year had been made and that the Student would remain in the ELC program another year.

However, the District recognized that the decision made at the February 2019 IEP meeting was unsupported by data. Thus, in light of the premature February 2019 IEP decision and the new data that accumulated during the remainder of the school year, the District proposed the June 2019 IEP meetings to revisit the placement decision. At the June 2019 IEP meetings, the District proposed the kindergarten placement along with a total of 90 minutes a week of special education services because the Student was "in need of and eligible to access a full day of kindergarten program." The placement decision did acknowledge the Parent's concerns but did not identify any other potential harmful effects of kindergarten or of the other placement options proposed, including: half-day kindergarten or walk-in services if the Parent chose not to enroll the Student in kindergarten next year. The District also cited progress according to the special education progress reports and information from the child outcomes summary form from June 2019 as supporting the decision. It is also important to note that in addition to increasing the number of accommodations for the Student, the District proposed to reduce the amount of special education services to approximately 90 minutes a week, which appears to contradict any premise that the Student's needs were too great to benefit from the kindergarten placement and that the Student's needs necessitated he stay in the developmental preschool. The Parent disagreed with the option to place the Student in kindergarten or any of the other options presented. Since there was no consensus among the IEP team, the District representative was required to make the decision and offer a FAPE, which was placement in a general education kindergarten.

At the June 28, 2019 IEP meeting, the documentation showed the District made a decision that was child-specific and reasonably supported by data, which did not result in a denial of FAPE. Thus, the District corrected the violation that occurred in February 2019; so, while no further Student specific corrective actions are warranted, the District will be required to develop and distribute transition guidance.

CORRECTIVE ACTION

By or before **January 10, 2020** and **February 14, 2020**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **January 24, 2020**, the District is required to develop written guidance regarding the transition of students in the ELC program. The guidance should include information on making decisions regarding the least restrictive environment, considering student specific needs, and the use of data to inform decision making. The guidance should include examples. The guidance will be provided to all special education staff and administrators in the special education ELC program.

By **January 10, 2020**, the District will submit a draft of the written guidance to OSPI. OSPI must approve the written guidance.

By **February 14, 2020**, the District will provide OSPI with documentation that the written guidance was provided to all required staff.

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 December, 2019

Glenna Gallo, M.S., M.B.A.
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Special Education
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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.)