

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-55

PROCEDURAL HISTORY

On August 5, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent¹) of a student (Student) attending the Bremerton 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 August 7, 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.

On September 5, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on September 6, 2019. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On September 5, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on September 6, 2019.

On September 8, 2019, OSPI received additional information from the Parent and OSPI forwarded the additional information to the District on September 9, 2019.

On September 9, 2019, OSPI received additional information from the Parent and OSPI forwarded the additional information to the District on September 10, 2019.

On September 12, 2019, OSPI emailed the Parent and requested clarifying information regarding specific incidents of the lack of supervision. The Parent did not respond to the request for additional specific information.

On September 13, 2019, the OSPI complaint investigator conducted a site visit to interview the District special education director, the school principal, the Student's special education teacher, and the Student's general education teacher.

On September 18, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on September 19, 2019.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit and interviews.

¹ The complaint was filed by the Student's father, but much of the communication in the complaint was made by the Student's mother; therefore, throughout the decision, the references to "Parent" are generally in reference to the Student's mother.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on August 6, 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.

Additionally, OSPI received the Parent's initial complaint and notified the Parent that the issues listed below would be investigated. In the Parent's reply to the District's response, additional complaint issues were raised. The Parent was notified that this investigation would address the initial issues and not the additional issues that were raised in the reply, as those issues were outside the scope of the complaint. OSPI informed the Parent that the Parent had the option to address the additional issues in a new complaint.

In addition, the Parent cited the District's special education procedure manual as a basis for the alleged violations. OSPI informed the Parent that the investigation would address the District's procedures, but only to the extent that the procedures were consistent with the special education procedures under the Washington Administrative Code (WAC). OSPI can only find a violation of the WAC, not the District's special education procedures manual, in the event the District failed to follow its own policy but did comply with the applicable WAC.

ISSUES

1. Did the District inform the Student's substitute teachers of their responsibilities under the Student's individualized education program (IEP) during the 2018-2019 school year?
2. Did the District follow least restrictive environment placement procedures when determining whether the Student would attend his home (neighborhood) school, as required by WAC 392-172A-02060(3)?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

IEP Implementation: Each district must ensure it provides all services in a student's individualized education program (IEP), consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Provider Responsibility for Implementation: Each school district must ensure that a student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. In addition, the District must ensure that each teacher and service provider to the student must be informed of their specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided to the student. 34 CFR §300.323(d)(1); WAC 392-172A-03105(3)(a).

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).

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student was initially evaluated for eligibility for special education services. The Student was found eligible under the category of autism.

2017-2018 School Year

2. During the 2017-2018 school year, the Student attended a district preschool and continued to be eligible to receive special education services under the category of autism.
3. On October 23, 2017, the Student's individualized education program (IEP) team met to conduct an annual review of the Student's IEP. The IEP (effective from October 24, 2017 to October 25, 2018) provided for annual goals in the areas of communication, adaptive behavior, social/emotional/behavioral, and motor skills. The IEP provided the special education services in the following areas and locations:
 - Communication: 15 minutes, 2 times per week (provided by the speech/language pathologist in a special education setting)
 - Integrated Services: 200 minutes, 4 times per week (provided by the special education teacher in the general education classroom)
 - Motor: 30 minutes, 1 time per week (provided by the occupational therapist in a special education setting)

The IEP also included the following accommodations:

- "Instructional strategies: Typical preschool adaptations are to provide short term interesting skill lessons, brief visual and verbal instructions, use of manipulatives, and frequent changes in activities."
- "Student method of response: [Student] will be encouraged to respond verbally gestures, signs, and vocalizations will also be accepted."
- "Curriculum: [Student] will participate in the general education preschool curricula, including OWLS (Oral and Written Language Scales), Eureka Math, and HandWriting without Tears."

- "Behavioral cues: Behavioral cues include: The preschool staff will provide [Student] with support to understand and follow through with classroom expectations. Behavior cues will be clear and consistent and will include physical and/or verbal support, as needed."
- "Standard grading: [Student] will not be graded using standard Gen Ed (General Education) criteria."

2018-2019 School Year

4. During the 2018-2019 school year, the Student was a 5-year-old who attended a District elementary school and continued to be eligible to receive services under the category of autism. The Parent opted to enroll the Student in a District elementary school (school A) rather than his home, or neighborhood, school (school B).
5. On August 29, 2018, the 2018-2019 school year began in the District.
6. On September 25, 2018, the Student's special education classroom had a substitute teacher for a half day. According to the Parent, the substitute teacher left the Student unsupervised for an undetermined period of time, which resulted in the Student being hurt. The Parent was unable to determine what happened because the substitute teacher was not present. The Parent stated the substitute teacher was not given a "sub plan" by the Student's regular teacher.²
7. According to the District, which investigated the incident that occurred on September 25, 2018, the Student and another student, while in the library with a paraeducator, wanted the same book. The disagreement led to a fight and the Student bit the other student. However, the District found the incident was not the Student's fault and did not consider the incident to be serious. But nevertheless, the District informed the Parent of the incident.
8. On October 15, 2018, the Student's IEP team met to conduct the annual review of the Student's IEP. The IEP (effective October 16, 2018 to October 14, 2019) continued to provide annual goals in the areas of communication, adaptive behavior, social/emotional/behavioral, and motor skills. The IEP included specially designed instruction and related services in the following areas, to be provided in a special education setting:
 - Adaptive behavior: 300 minutes, weekly (provided by a special education teacher)
 - Social/emotional/behavioral: 300 minutes, weekly (provided by a special education teacher)
 - Speech/language: 45 minutes, weekly (provided by a speech/language pathologist)
 - Motor: 120 minutes, monthly (provided by an occupational therapist)

The IEP provided the following accommodations:

- Provide consistent structure
- Hands-on activities
- Use visual aids/physical clues
- Break lessons or directions into smaller units
- Allow for extended time (when/how much)

² "Sub plans" are plans for substitute teachers written by the regular teachers and provided to substitute teachers when the regular teachers were absent from school.

- Modify the number of required problems
9. The District provided a prior written notice, dated October 15, 2018, regarding the IEP meeting. The notice stated the Student was making satisfactory progress toward his IEP goals. The Student displayed some initial difficulty in unstructured situations, such as the playground, but was learning how to cope with frustrating events by expressing himself verbally rather than through physical behavior.
 10. On December 3, 2018, the Student's special education class had a substitute teacher for a half day. No specific concerns were documented by the District or the Parent.
 11. On December 10, 2018, the Student's special education class had a substitute teacher for a half day. No specific concerns were documented by the District or the Parent.
 12. From December 22, 2018 through January 4, 2019, the District was out of school on winter break.
 13. From January 2019 to June 2019, the Parent and the District regularly emailed about daily events in the classroom, the Student's program, and the Parent's concern regarding whether the substitute teachers properly supervised the Student.
 14. On January 8, 2019, the Student's general education class had a substitute teacher for a half day. No specific concerns were documented by the District or the Parent.
 15. On January 14, 2019, the Student's special education class had a substitute teacher for a half day. No specific concerns were documented by the District or the Parent.
 16. On January 15, 2019, the Parent emailed the school principal and stated there had been "repeated incidences where [the Student] has been unsupervised and someone has been hurt" and "the lack of communication between the teachers have caused my son to go through unnecessary punishment."³
 17. On January 17, 2019, the principal and special education teacher met with the Parent to discuss the Parent's concerns. The District provided the Parent with prior written notice, dated January 20, 2019, regarding the meeting. The notice stated that the special education teacher proposed keeping a "daily communication journal" to give to the Parent, which was agreed upon. The special education teacher stated she reviewed safety protocols with support staff and notified support staff that they should report any concerns to her, among other things.
 18. On February 6, 2019, the principal and special education teacher met again regarding the Parent's concern about "communication, safety of [Student] and school community when substitutes are present." The prior written notice, dated the same day, stated the following:

³ On September 12, 2019, OSPI emailed the Parent, asking for more information regarding the other alleged incidents when the Student was not supervised or hurt. The Parent did not reply.

Parents requested that the following clarifying information be included in the Prior Written Notice: (1) discussion took place that [Student] was in the library with his general education kindergarten class supervised by a substitute that raised safety concerns with [Student's] parents and (2) that in the future if there are any issues parents be notified as soon as possible.

What is changing: (1) daily communication log from school to home from [special education teacher] and (2) notification in daily communication log if [special education teacher] is out of building, will be provided to parent so that they know why there is not information regarding [Student's] school day in the communication log.

19. On February 7, 2019, the Parent emailed the assistant director of special education (assistant director), indicating that her concerns were not being addressed by the District. The Parent also stated, "I do not want my son going to [School A]."
20. On February 21, 2019, the Parent talked with the general education teacher about the substitute teachers. According to the Parent, the general education teacher told the Parent that substitute teachers were not always "briefed" about the substitute teacher plans. In an interview with the general education teacher, the teacher stated she misspoke when she told the Parent that sometimes substitute teachers were not "briefed" regarding the substitute teacher plans. Substitute teachers were routinely given substitute teacher plans and were briefed on them.
21. Between February 22 and March 5, 2019, the Parent emailed numerous District staff, requesting to review the "sub plans" from the Student's special education and general education teachers. According to the Parent, the Parent wanted to ensure that any substitute teacher who was working with the Student was informed about the Student's needs and the instruction the Student required.
22. On February 22, 2019, the District's special education director (director), assistant director, school principal, special education teacher, and the Parent met to discuss the Parent's concern about the safety and supervision of the Student when there was a substitute teacher. The IEP was amended to reflect an additional accommodation: "[Student] will attend the special education class full day when there is a substitute teacher in his general education classroom." The District provided the Parent with prior written notice, dated February 25, 2019, regarding the meeting. The notice, in relevant part, stated:
 - (1) Communication, safety/supervision of [Student] when substitutes are present: [Special education teacher's] standard practice when there is a substitute general education teacher is to keep him in the Special Education classroom for the day.
 - (2) Communication with substitute teachers: [Special education teacher] personally communicates with each substitute teacher in the general education classrooms regarding special education students and their individual needs. When [special education teacher] needs a substitute she leaves detailed substitute plans regarding the ISP (Integrated Skills Program), special education students, and their individual needs. If possible [special education teacher] personally schedules a substitute that has experience in her classroom and with her students.
 - (3) When parents email asking questions, etc. and [special education teacher] needs more time to research answers to their questions, complete documentation, confer with administration, etc.,

will let parents know that this is the case and that they have been heard and that [special education teacher] or the appropriate administrator is working on the situation.

- (4) Substitute plans: [Principal] addressed substitute plans and that all teachers have substitute plans at [school A].
23. On February 23, 2019, the Parent emailed the director concerning the substitute teacher plans. Among other topics in the email, the Parent alleged the general education teacher told her that "sometimes they don't have enough time to brief substitutes."
24. On February 25 and 26, 2019, the Student's general education class had a substitute teacher for a full day. No specific concerns were documented by the District or the Parent.
25. On February 25, 2019, the Parent came to school and asked the Student's special education teacher for the substitute teacher plans. A prior written notice, dated February 25, 2019, indicated the Parent requested the special education teacher provide the Parent with the substitute plan from the general education teacher, who was out of the building at the time. The teacher stated she did not have authorization to share the general education teacher's substitute plan with the Parent at that moment.⁴ The notice indicated that the special education director would follow up with the Parent about the request.
26. On the same day, the director provided the Parent with a copy of a redacted plan for a substitute teacher in the special education classroom, which included descriptions of the students, schedules, activities, behavior needs, and instructional methods based on the students' IEPs.
27. On February 28, 2019, the District held an IEP meeting, which the Parent attended. The District completed a prior written notice, dated February 28, 2019, that stated the Student's IEP was amended to include an accommodation for the Student to attend the special education classroom for the day when a substitute teacher was present in the general education classroom.
28. Sometime in March 2019, according to the District, the Student was on the playground when there was an altercation with another student. The playground was staffed with paraeducators, but no substitute teachers. The Student bit the other student, but left no marks on the other student. The District considered this to be a minor incident.
29. On March 1, 2019, the Parent emailed the director and stated that she was "not comfortable sending my son to [school A]" until she received the substitute plan from the general education teacher.
30. On or about March 7, 2019, the director, assistant director, the principal, the general education teacher, the special education teacher, and the Parent attended a meeting. The following

⁴ According to the District's documentation, the substitute plans contained personally identifiable information regarding other students in the classroom.

issues were discussed and the following decisions were made according to the prior written notice, dated March 7, 2019:

- (1) Whether substitute plans of general education teacher and substitute plans of special education teacher are provided for substitutes each time teachers were out of the building: Both teachers provide substitute plans each time they were out of the building.
- (2) Substitute information shared between special education teacher and general education teacher for general education teacher's substitute plans pertaining to [Student]: The special education teacher provided the general education teacher with a detailed description of [Student's] learning style, possible frustrations, reinforcers that assist [Student] in having a successful school day when a substitute is present in the classroom the day of the meeting to be included in the general education teacher's substitute plans per parent request.
- (3) Parent notification if [special education teacher] is out of the building for the day and how parents will be notified: The parents will be notified by the Principal if both the general education teacher and special education teacher are out of the building on the same day.
- (4) Parent request to shorten [Student's] school day to 9:05-1:00: Per parent request, [Student] will attend school from 9:05-1:00 daily. Student will continue to participate with his peers in general education lunch and recess. [Student's] specialized instruction will reflect the shortened day in the service matrix of [Student's] IEP. Parents will be notified of academic needs. Home resource of Khan Academy will be set up with the family for home use. Parents request a shortened day because their belief that he is not ready socially for a full day. The educational team however has been providing and is ready to provide a full day of school at any time the family would like to access a full day of education.

31. According to the Parent's reply to the District's response, the Parent stated that she did not request a shortened school day.
32. On March 27, 2019, the Student's special education class had a substitute teacher for a full day. No specific concerns were documented by the District or the Parent.
33. On May 15, 2019, the Student's general education class had a substitute teacher for a full day. No specific concerns were documented by the District or the Parent, and there was no indication from the documentation that the Student's IEP was not followed.
34. Also, on May 15, 2019, the Student stopped attending school for the remainder of the 2018-2019 school year.
35. On May 18, 2019, the Parent signed the District registration form to enroll the Student in school B (the Student's neighborhood or home school), and the form showed that it was received by the District on May 30, 2019.
36. On May 19, 2019, the Parent emailed the superintendent and stated:
I do not want my son in [school A] especially with [special education teacher] as his teacher...There have been documented times where [general education teacher] wasn't complying with her job description set by [principal] and my son has paid the price for it. She herself even admitted that teachers don't always brief their substitutes in front of [principal] and [special education teacher] to which neither of them brought up these so called 'subplans'...

37. On May 23, 2019, the director emailed the Parent, stating:
...Also, I wanted to make sure that you knew about your options for the next school year in time to put in a request. You are at [school A] on open enrollment and we will continue to sign your open enrollment request if it is working out for your child and family. If not, you will want to enroll at your child's home school, [school B], or apply for open enrollment at any one of our other elementary schools. If this is what you would like to do, you would want to start that process now as many of the schools run out of space to accept open enrollment by Fall. I would be happy to meet with you and help you with this process or with anything else that you need.
38. On June 14, 2019, the 2018-2019 school year ended in the District.
39. On August 2, 2019, the Parent emailed the director, inquiring why the Student could not be enrolled back at school B, his home school. The director replied that the Student was first on the waiting list for school B because of the number of students enrolled at school B before the Student was enrolled. Meanwhile, the Student's records were sent to another elementary school in the District (school C), which received the overflow enrollment from school B. According to the District, enrollment at school B filled up quickly and had filled up before the Parent submitted the transfer request in May 2019. The District's normal procedure was for school C to receive the overflow enrollment from school B. According to the District, each of the three schools (schools A, B, or C) were able to meet the Student's special education needs.
40. According to the District's policy, any parent may enroll a student in any District school, unless the grade has reached enrollment capacity. If the grade is at enrollment capacity, the student will then be placed on a waiting list in the event an enrollment spot opens up.
41. On August 5, 2019, the Parent filed this complaint.
42. During the 2018-2019 school year, the Student's attendance record showed that the Student attended 76.5 days of school, was absent 93.5 days, and tardy 51 days. Some of the days the Student was absent or tardy were because the Student was receiving private speech therapy.
43. During the 2018-2019 school year, the Student's special education teacher required a substitute teacher four half days and one full day when the Student attended school and the Student's general education teacher required a substitute teacher two half days and two full days when the Student was present at school.
44. According to the District, the Student was eventually enrolled by the Parent and began attending school C at the beginning of the 2019-2020 school year.

District Staff Interviews

45. On September 13, 2019, the OSPI investigator conducted a site visit and interviewed the following District and school A staff:

Special Education Director – The director was asked about the District’s procedures for ensuring that all staff working with a student had access to the IEP and were informed of their responsibilities under each IEP. The director stated that prior to the school year, the speech/language pathologist, the school psychologist, and special education teacher meet to review the IEPs of students who are entering kindergarten. The special education teacher reviews the IEPs with each teacher, and staff have online access to the IEPs. In addition, staff are provided an “IEP Summary” for a student that each staff person keeps for the academic year. The classroom teacher is responsible for ensuring the paraeducators know their responsibilities under the IEP.

Substitute teachers are provided substitute plans that detail each student’s needs and activities.

Regarding the Student, the director stated the regular procedures were followed and there was no concern about any substitute teacher’s implementation of the Student’s IEP. The assistant director also visited the classrooms to observe the Student and others, and talked with the teachers and principal at least once a week about any concerns.

School Principal – The principal stated that both general education and special education teachers are required to be regularly observed and evaluated. According to the principal, the school has a list of substitute teachers they use consistently because they are more familiar with the students. The regular teachers provide substitute teachers with substitute plans that provide specific activities and schedules for each student. The principal stated he visits each substitute teacher’s classroom. The principal reported no concern about the implementation of the Student’s IEP by the substitute teachers. Regarding the Student, the principal expressed no concern about the Student’s behavior or need for enhanced supervision.

Special Education Teacher – The special education teacher stated that all staff who had contact with the Student had access to the Student’s IEP and she talked with every teacher about the IEP. Each teacher was given the “IEP Summary” document.

When a substitute teacher was needed, the District had a list of preferred substitute teachers who had previously substituted in the school and were familiar with the students, including the Student. Substitutes were provided lessons plans and substitute plans that explained minute-to-minute what to do. The plans also provided information about each student’s reinforcers, medical issues, behavior triggers, and other pertinent information.

The teacher also provided training to the paraeducators and met with them to talk about each student. The classroom paraeducators were provided access to the IEP and data sheets to track progress. Regarding the Student, the special education teacher reported no concerns about the implementation of the IEP or the Student’s safety. The teacher stated the Student was impulsive, especially waiting in line and had some trouble with unstructured time, which was not atypical for kindergarteners. The teacher stated that the Student’s behavior did not rise to a level that required formal behavioral supports or constant supervision.

General Education Teacher – The general education teacher stated she had access to the Student’s IEP. She received information that identified the Student’s strengths, weaknesses, and accommodations, and also participated in meetings about the Student, including a meeting before the 2018-2019 school year started and the Student’s IEP meeting.

The teacher stated she had a detailed plan, which she provided to the substitute teacher. In reference to the biting behavior, the teacher stated that it was not unusual to have at least two students in a class with biting behavior.

CONCLUSIONS

Issue One: IEP Responsibilities – The Parent alleged the District failed to inform substitute teachers of their responsibilities under the Student’s individualized education program (IEP). Specifically, the Parent alleged the District failed to provide substitutes with plans—substitute or “sub” plans—to implement the Student’s IEP. A district is required to ensure that each general education teacher, special education teacher, related service provider, and any other service provider has access to a student’s IEP and is informed of their specific responsibilities related to implementing the IEP, including the accommodations, modifications, and supports required by the student.

In particular, the Parent seemed concern about the Student’s safety and the supervision of the Student. Here, the Student’s IEP indicated no behavior concerns or the need for enhanced supervision beyond that of any other kindergartener, although the Student had goals in the areas of social/emotional/behavior. The Student’s IEP stated the Student’s behavior did not interfere with his learning or the learning of others. The special education teacher stated the Student did have problems with impulsivity at times, especially during unstructured activities, but that this behavior was not significantly different from other kindergarteners. The Student did bite other students on two occasions, but again, the biting was not necessarily unusual for a kindergartener. Despite the Parent’s concern for the Student’s safety, there was no documentation that the District believed the Student’s safety was an issue that warranted additional supports or services at this point in time. The two incidents wherein the Student bit other students did not rise to the level that required more formal behavior interventions, supports, or a behavior intervention plan.

Regarding the substitute teacher plans, the Parent’s insistence on viewing the plans seemed to be based on her belief that the Student’s IEP was not being implemented, which in turn she believed compromised the Student’s safety. The Parent believed that the lack of plans for substitute teachers was a violation of special education regulations.

First, there is no special education regulation that specifically states a school must have substitute plans, despite the Parent’s insistence. However, the District is responsible for ensuring that staff—including substitute teachers—are informed of their responsibilities under the Student’s IEP. To meet that obligation, the District used the substitute plans as one way to inform the substitute teachers about the Student’s special education needs. Other ways that informed the substitute teachers included the special education teacher or general education teacher briefing the substitute teachers about the Student, having the special education teacher visit the Student’s

classroom with the substitute teacher, and having the principal conduct walk-throughs in the substitute's classroom. The District also generally attempted to select substitute teachers who had previous experience substituting in the school, although it was not clear that substitute teachers previously had experience teaching the Student specifically. Based on the documentation in this complaint, the District did provide substitute teachers with information about the Student and had processes in place to ensure substitute teachers were informed of student needs, IEPs, supports, and services.

Second, regarding the implementation of the Student's IEP, the two biting incidents alone do not necessarily indicate that the Student's IEP was not being followed. The District can implement the Student's IEP and incidents may still inadvertently occur. Further, there is no documentation that the District failed to implement the Student's IEP or that a failure to implement the IEP was what led to the biting incidents. Based on the documentation, all appropriate staff, including the substitutes, were informed of their responsibilities under the Student's IEP. No violation is found.

The District attempted to address the Parent's concern for the Student's safety by: continually responding to the Parent's emails; meeting the Parents on numerous occasions to address their concerns; providing the Parent with a communication journal; providing prior written notices, responding to the Parent's various requests; sharing the redacted substitute teachers plans with the Parents; proposing and finally amending the Student's IEP to include an accommodation, allowing the Student to attend the special education class when there was a substitute teacher in the general education classroom; and finally, allowing the Student to attend school part time despite stating that it was ready and prepared to serve the Student for a full day should the Parent choose to access a full day. Despite the Parent's claim that the District was not addressing the Parent's concerns, the documentation shows that the District took reasonable steps to address the Parent's concerns.

Issue Two: Least Restrictive Environment and Home School – The complaint alleged the District failed to educate the Student in the Student's home school. WAC 392-172A-02060 states: Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home.

Here, school B was the Student's home or neighborhood school—in other words, the school the Student would otherwise attend if the Student did not have a disability. During the 2018-2019 school year, the Parent enrolled the Student in another school in the District (school A) rather than his home school, school B, through the District's open enrollment process. After expressing dissatisfaction with school A, the Parent attempted to enroll the Student back in school B, his home school, at the end of the 2018-2019 school year. The District informed the Parents that they should enroll the Student as soon as possible, since there was a possibility that school B would be full. In May 2019, the Parent attempted to enroll the Student in school B. However, the District informed the Parent that enrollment was full at school B and the Student was placed on a waiting list to attend school B.⁵

⁵ Subsequent to the complaint, the Parent enrolled the Student in another school in the District (school C).

The District was required to ensure the Student was educated in the school the Student would attend if the Student did not have a disability. In this case, although the Parent enrolled the Student in school B, this school was full by the time the Parent enrolled the Student. The District then followed its regular process for all students, which was to place the Student on a waiting list and informed the Parent of other enrollment options. It should be noted that there was no question that the Student's IEP could be implemented at any of the school the Student attended or considered attending—school A, B, or C. Since the Student would not have been educated at school B (the school he attended during the 2018-2019 school year) if the Student did not have a disability, the District was not required to enroll the Student in school B. Therefore, the District followed its enrollment procedures and was prepared to implement the Student's IEP in the least restrictive environment. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of October, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)