

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-20

PROCEDURAL HISTORY

On February 11, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant)¹ regarding a student (Student) attending the [REDACTED] School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On February 12, 2020, 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 March 5, 2020, OSPI received the District's response to the complaint and forwarded it to the Complainant on March 6, 2020. OSPI invited the Complainant to reply. The Complainant did not reply.

On March 26, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the Complainant. OSPI received the requested information from the Complainant on March 30, 2020. OSPI forwarded that information to the District the same day.

On March 26, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on March 31, 2020. OSPI forwarded that information to the Complainant on April 1, 2020.

On April 1, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the Complainant. OSPI received the requested information from the Complainant on April, 2020. OSPI forwarded that information to the District the same day.

On April 1, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on April 2, 2020. OSPI forwarded that information to the Complainant the same day.

¹ The Complainant was the Student's foster parent from at least May 2019 through November 19, 2019. According to the District, during this time, the Complainant had "physical custody of the Student and...had full authority to make all and any decisions regarding the [Student's] health and welfare [and Complainant] was able to sign off on [educational] paperwork [such as IDEA documents]." The District further stated that during this time, the Student's biological parent at no time attempted to act as the Student's parent for the purposes of the IDEA. According to the Complainant: "To further inform you of what has happened with Student: he is temporarily living...out of state, but I remain his long term foster parent (with educational signing rights). The intent of...court is to return Student to me once he has learned behavioral management strategies [at the out-of-state location]. My intent in filing this complaint is to have the District change a practice that does not match the law. It will not change things for Student, as the social worker and I have agreed that Student will not be returning to [his District elementary school] once he returns to me."

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

SCOPE

This decision references events that occurred prior to the investigation period, which began on February 12, 2019. 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.

ISSUE

1. Did the District ensure the foster parent's participation in the May 2019 IEP team meeting, including any discussions concerning the appropriate placement for the Student?

LEGAL STANDARDS

Parent Participation in IEP Meetings: The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. WAC 392-172A-05001.

Informal Staff Meetings: An individualized education program (IEP) meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. An IEP meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting. WAC 392-172A-05001(1)(c).

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).

IEP Meetings – Notification and Scheduling: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at

a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2018-2019 School Year

1. At the start of the 2018-2019 school year, the Student qualified for special education under the category of autism, was in the third grade, and attended a District elementary school. At that time, the Student's January 2018 individualized education program (IEP) was in effect.
2. The Student's schedule for the 2018-2019 school year was as follows:
 - **Period 1:** Grade 3 (taught by a general education teacher)
 - **Period 2:** Health-Fitness (taught by the physical education teacher)
 - **Period 3:** Math (taught by a general education teacher)
 - **Period 4(a):** Music (taught by the music teacher)
 - **Period 4(b):** Library (taught by the library teacher)
 - **Period 5:** Reading (taught by a general education teacher)
 - **Period 6:** Science (taught by a general education teacher)
 - **Period 7:** Social Studies (taught by a general education teacher)
 - **Period 8:** Writing (taught by a general education teacher)
3. On December 5, 2018, the District provided the Complainant with a prior written notice that read, in part:

The following updates were made [to the previous IEP]: team considerations, present levels of performance, accommodations/modifications, state/district assessments, special education and related services grid, measurable annual goals. We discussed writing a

behavioral intervention plan (BIP) [but] decided to hold [off on this] for now...Behaviors are mostly managed with classroom interventions.

The December 2018 IEP provided the Student with the following specially designed instruction in a *special education setting* from April 29, 2019 through December 4, 2019:

- **Adaptive:** 300 minutes a week (to be provided by special education staff)

4. On January 28, 2019, the Student's IEP team created a behavioral intervention plan (BIP) for the Student.
5. On April 26, 2019, the District sent the Complainant a prior written notice that read, in part: "The team has determined that changing the special education service time [for Student] meets [Student's] educational needs. Student's special education service minutes will increase by 30 minutes a day."

Also on April 26, 2019, the Student's IEP team amended the Student's December 2018 IEP. The April 2019 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from April 29, 2019 through December 4, 2019:

- **Adaptive:** 450 minutes a week (to be provided by special education staff)

6. According to the Complainant, she was excluded from a meeting in May 2019 related to the Student's placement. The Complainant stated:

Parents are [supposed] to be a part of the meeting to determine placement of a child for their special education services. A meeting was held sometime in May of 2019 that determined my foster son was not eligible for a more restrictive placement or more intensive special education support within the general education classroom. I was taken on a tour of the Compass classroom and was allowed to meet a staff member. However, when it came time to make a decision about placement...I was not allowed to participate in the meeting...though I requested [permission] to attend I was denied any information about the meeting.
7. In its response, the District provided the following description of the Compass program that the Complainant referenced in her complaint:

The Compass Program is a district program. Currently all students in the program are in special education.

The program is designed to address the needs of students who exhibit difficult behavior problems at school, which cannot be addressed in the typical school setting. Currently only .1% of our students access this program throughout the district.

This is a new program currently in its second year. When the actions involved here, and when the complaint was filed, the program was in its first year. Generally, when a principal had concerns about a student's behavior, which was outside of the typical norm, they would ask the Assistant Superintendent of Special Services...to have an opportunity to present information to the leadership group about the student. In order to facilitate this discussion, the principal would fill out paperwork to give an idea of what resources had been offered, what a student's needs were, and how he or she believed the Compass Program would be good for the student. The leadership group would then make recommendations

concerning the student and the program, which would be sent back to the principal. Oftentimes, the recommendations would include, [prior to enrolling the particular student in the Compass program, first] having more special education minutes, a more intensive behavior plan, [and/or] connecting with outside services, etc.

8. According to the District, on May 3, 2019, it had an internal staff meeting. (The parent did not attend this meeting.) According to the District:

The point [of this meeting] was to ask questions about what other suggestions the group might have [to help the Student]. The principal heard information regarding the other students who were demonstrating behavioral difficulties in their regular school setting and the principals were attending the meeting seeking further information and guidance regarding these behaviors, and said that she didn't feel it would be appropriate for the Student to be in the Compass program. [The principal] felt there were plenty of supports for the Student within the [Student's current] school setting.

9. On May 10, 2019, the District sent the Complainant a prior written notice that read, in part: "Student's special education service time will change. Student's time in special education will be 600 minutes per week. We also added an emergency response protocol (ERP)."

Also on May 10, 2019, the Student's IEP team amended the Student's April 2019 amended IEP. The May 2019 amended IEP provided the Student with the following specially designed instruction in a *special education setting* from May 10, 2019 through December 4, 2019:

- **Adaptive:** 600 minutes a week (to be provided by special education staff)

10. On May 13, 2019, the Complainant emailed the principal, stating, in part: "I have been granted permission to pursue the referral for Student to attend the Compass program."²

Later that day, the principal forwarded the Complainant's email to education specialist 1, the psychologist, and general education teacher 1. According to the District's response, the foregoing individuals constituted "the team working [on] Student's education."

According to the Complainant:

I felt the more restrictive placement could potentially benefit Student rather than the school suspending him and/or calling the police and having him removed from school. The brochure [for the Compass program that I was] provided discussed that skills to manage behavior were directly taught in the Compass [program] with an increased staff-to-student ratio...[My] hope was that Student, a child with autism and a brain injury would learn to

² According to the Complainant, "[The use of the words] 'granted permission' was a poor choice of words on my part as I had...the educational signing rights to Student as his long term foster parent. [With this language, I meant to convey that] I [kept] the [Student's] social worker apprised of all major decisions regarding [Student]. I also contacted the director of the...educational department [of the Student's Native American Tribe] to see if [she] felt the [Compass] program would benefit Student." According to the District: "It was our understanding that the Student's tribe had to grant the Complainant permission to make any significant changes to the Student's IEP as the custody remained with the tribe. The District does not require a parent to 'seek permission' to discuss placement in programs that are available."

recognize early signs of his own frustrations and be able to apply mindful, calming tactics prior to exploding into frustrated, fitful rages.

I was [not] seeking Compass for help with home behaviors. I was seeking help from Compass with SCHOOL BEHAVIORS! I wanted to improve Student's school behaviors and prevent police and suspension as an intervention.

(Emphasis in original).

11. In a separate email on May 13, 2019, the principal emailed the Complainant, the psychologist, special education teacher 1, general education teacher 2, education specialist 1, the assistant principal, the District social worker, the paraeducator, and general education teacher 3, stating, in part:

Good evening Team [Student]...I'll write up the Compass referral between now and next Tuesday May 21 and will present it at 10:45 a.m. [Special education teacher 1], please plan to come to that meeting as well to help the team get a sense of who [Student] is and how Compass might support him.

Later that day, the Complainant responded, stating, in part:

I am in support of anything that helps Student relearn his confidence as a learner and a student. Also if there is any need for a list of all the outside resources Student has participated in or been denied and reason for denial to support his Compass application please let me know.

12. The next day, May 14, 2019, special education teacher 1 responded, stating: "I will definitely [be] at the Compass meeting on the 21st. Complainant, perhaps a list of the outside resources would be helpful in giving a more well-rounded picture of how Student's challenges affect his life."

The emails produced to OSPI during the course of this investigation do not detail whether the Complainant ever provided special education teacher 1 with a 'list of the outside resources' the Student either benefited from and/or were explored. According to the District, "Complainant did not provide this information in written format. She may have mentioned the Wraparound with Intensive Services (WISE) [counseling]³ team to the principal or teacher but having all the resources shared at once did not happen." According to the Complainant, though:

Yes, I provided the teacher with an extensive log of the outside resources Student was participating in and the frequency with which he was attending the resources. Student was in WISE counseling 4-5 times per week, had an ancillary counselor visit bi-weekly, occupational therapy, HomeBuilders⁴ and 2 brief mental health hospitalizations last Spring.

³ WISE is a "voluntary service [provided by a division of the Washington State Department of Health] that takes a team approach to meeting the needs of children and youth. It provides intensive mental health services" to students. <https://www.hca.wa.gov/health-care-services-supports/behavioral-health-recovery/wraparound-intensive-services-wise>.

⁴ According to the Complainant, "HomeBuilders is a 40 hour 4 week intensive home counseling program that Student and I completed in May of 2019."

I also explained to them repeatedly that the BEST outpatient program⁵...was not an option for health insurance reasons [though] Student was deemed an appropriate student for this program based on mental health records.

13. As concerns scheduling the May 21, 2019 meeting, in its response, the District stated: Complainant did not request to attend. Complainant did not object to the plan to have the internal staffing meeting. Complainant did not object to the plan outlined by the principal for the contents and topics to be addressed in the problem solving session. Complainant did have the opportunity to reiterate her preference that Student be placed in the Compass program. This was in addition to her earlier email of May 13...concerning her being granted permission to pursue referral to the Compass program.

The Complainant stated:

I was aware of the date of the meeting to discuss Student's potential placement in the Compass program but a time and location were never shared with me. I would [have] liked to have been present to advocate for Student's best interest—[for example], if not to have a Compass placement, what else could [have been] offered? A one-on-one [paraeducator] in the classroom? A cool down location?...I was not allowed [the] opportunity [to discuss these potential alternatives].

14. According to the District, on May 17, 2019, it had another internal staff meeting. According to the District, they met with the staff from the WISE program. The District stated:

The WISE team is an outside team that is often set up through the county or outside mental health providers to support the students at home. Often, they will meet with the district team so they can plan on how to overlap and support the child. This meeting was to do that, from WISE's perspective, to see what things worked and how we could all come together in the fall of the next school year to help support the Student in coming back to school.

15. According to the District, on May 21, 2019, it had another internal staff meeting. According to the District's response, this was a:

meeting to problem solve, collaborate, and coordinate services to best support the Student. This type of internal staff work occurs throughout the year [and they] are used to collaborate, offer professional support, and problem solve. This is not typically something we invite parents to. We utilize this internal staff work to create an opportunity to plan for services we may propose to [a] parent. We do not make decisions changing a student's placement [at these internal meetings] without calling an IEP meeting, with the full team being invited. The internal staff meeting [that occurred on May 21, 2019] *did not [result in a] change [in] the Student's placement.*

(Emphasis in original).

⁵ "Behavioral Emotional Skills Training (BEST) is a hospital-based day treatment program that provides intensive therapeutic treatment for boys and girls attending grade school, kindergarten through sixth grade. The five-week program is designed for children who have behavioral and emotional problems affecting relationships with family and friends and with school performance." <https://washington.providence.org/services-directory/services/p/pediatric-psychiatry>.

The District further explained that:

Meetings like the one held on May 21, 2019 are held to troubleshoot a student's needs. Decisions are not made at this type of meeting. On the other hand, the actual Special Education meetings are where we typically discuss evaluations, updates, etc. Notes of those meetings are kept so everyone knows who is doing what.

We didn't have notes for the May 21, 2019 meeting because that is not the protocol for that group and that type of meeting. The building principal knows participants are responsible for sharing the information with their staff...The school principal, after the meeting on May 21, 2019, continued to feel she could best support the Student at [the Student's current elementary school], and it would be detrimental to remove Student from a setting where Student had already developed relationships.

Attendance [at meetings such as that which took place on May 21, 2019] is not typically taken as building principals can get called away at any time. The people who were scheduled to be [at the May 21, 2019 meeting] were: assistant superintendent of special services; special education teacher; principal; associate executive director of special services; the Compass program principals; the assistant superintendent of student services for the Compass program; and two support staff from the Compass program.

According to the District, the Complainant was not issued a prior written notice after the May 21, 2019 internal staff meeting.

16. On May 22, 2019, the principal emailed general education teacher 2, Complainant, assistant principal, special education teacher 1, the District social worker, the psychologist, education specialist 1, the paraeducator, and the mental health therapist, stating, in part:

Yesterday the Compass team met to review our request for considering Student for Compass. At this time, the team recommends that we continue to offer Student interventions here at [his elementary school] and revisit this recommendation in the fall if Student demonstrates a need. The reason for this is partially that Compass does not necessarily offer Student the best environment for what he needs, which is largely to learn coping skills,⁶ and we don't want for him to learn the wrong ones.⁷ We think Student's elementary school can continue to serve Student in this way. In the meantime, Complainant has questions before school lets out for summer. I'm waiting to hear [back on] this.

Next Tuesday we have a BIP review meeting at 3:30 and it will be important for everyone who knows Student to be present if they can. At this time we'll set a date for an August

⁶ In its response, the District explained that the coping skills the Student required were as follows: "comply with requests, improve self-regulation skills when becoming upset by taking a break or verbalizing he was upset. He would often decline work. When he became upset he would elope and sit in the hallway."

⁷ In its response, the District explained why it believed the Compass program would not have provided the Student with the coping skills the Student required: "Students in Compass often have very extreme behaviors, exhibited more frequently and with greater intensity than any the student in question demonstrated to us. The concern was that the Student would learn these behaviors instead of the skills needed to overcome work anxiety. As noted by the Complainant, in her supplemental response, she also recognized the potential danger of the Student acquiring new and inappropriate behaviors if attending the Compass program."

meeting to make sure we are ready to roll in September. We want a plan in place that makes Student and his teacher feel safe and supported but also offers Student an opportunity to start fresh with a clean slate. That is a fine line but we can do it if we put our heads together.

At the Tuesday meeting we can also make some recommendations for summer work that Student can do (for example, [the] Freckle [program] would be perfect if the screen time is acceptable to you, Complainant). If Student will do some things at home to get caught up it will put him that much farther ahead in 4th grade...so he doesn't come in feeling so behind.⁸

17. According to the District, under the Student's May 2019 amended IEP, the District attempted to provide the Student with the following coping skills:

Interventions we tried included helping the Student manage or cope with the anxiety related to schoolwork. That included breaking assignments into smaller parts, presenting him with small portions of work, and offering him alternative methods of completing assignments (watching math lessons online at his own pace, for example). In addition, he was taught breathing strategies to cope with stress and anxiety.

18. On May 24, 2019, the principal emailed the paraeducator, stating, in part:

I have a big favor to ask of you...You may remember Student. He's currently a third grader and we half-heartedly took him to Compass team the other day. I am really reluctant to send him to Compass because I feel that we may have enough supports at [his elementary school] for him. However, we decided to just take him and see what the board⁹ said. They agree that it might not be time now, but the time could come in the fall. For this reason, Complainant would like to learn more about Compass sooner rather than later and possibly visit the classroom after hours.

Would you be willing to work an extra hour one day and meet with Student's mom and talk about the program and show her the space?

Later that same day, the paraeducator responded, stating, in part: "Of course!...Thank you for trying supports at [Student's elementary school] before referring [him] to Compass."

19. On May 28, 2019, the Student's IEP team modified the Student's January 2019 BIP.
20. On or about May 31, 2019, the Complainant toured a Compass program classroom. The Complainant described her tour of the Compass program as follows:

⁸ In its response, the District conceded that a decision was made at the May 21, 2019 meeting: "[On May 22, 2019], the principal reported on the results of the Compass internal staffing session of May 21, 2019 for [Student.] **It was decided** [Student] be retained at [his elementary school] and to revisit the recommendation for placement in the Compass program in the upcoming fall if [Student] demonstrated a need...[**Complainant**] was fully informed of what occurred, **was told of the plans** of the District **regarding [Student] as a result of that staffing session**, and did not object to anything that arose as a result of that staffing session" (emphasis added).

⁹ According to the District, the language 'the board' refers to "the Compass leadership team."

The room was simply decorated with visual strategies posted on the walls. My questions regarding curriculum were answered with a 'do the best we can with what we can gather' attitude. The reinforcement schedule was explained. And the daily schedule was explained. We also talked about how behavior was handled and what happened with students that were following the directions while a student was having a behavioral outburst. My impression was that the increased staff ratio, consistent, predictable schedule and the reinforcement practices would benefit Student. I was disappointed that the curriculum was not better supported at a district level. I did have concerns that there were behaviors in [the Compass program] environment that Student did not have and may learn, but [I] felt that attempting [this] more restrictive environment was better than suspension and police intervention.

21. The District's final day of school in the 2018-2019 school year was June 13, 2019.

Summer 2019

22. According to the District's response:

Over the summer of 2019, there were many difficulties with the Student's behavior based on Complainant's concerns. However, the Student did not demonstrate those reported behaviors at the beginning of the 2019-2020 school year. Therefore, potential placement in the Compass program was not revisited during the 2019-2020 school year.

2019-2020 School Year

23. The District's first day of school was September 3, 2019.

24. At the start of the 2019-2020 school year, the Student continued to qualify for special education, was in the fourth grade, and attended a District elementary school. At that time, the Student's May 2019 amended IEP and May 2019 BIP was in effect.

25. According to the District, as of November 20, 2019, the Student was no longer enrolled in the District.

CONCLUSIONS

The Complainant alleged she was improperly excluded from an individualized education program (IEP) meeting on May 21, 2019. The parents of a student eligible for special education must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student. Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child.

Here, on May 13, 2019, the Complainant requested that the Student's IEP team consider placing the Student in the Compass program—so as to better address the Student's behavior needs. That same day, the Complainant was informed via email that certain District staff would meet on at 10:45 am on May 21, 2019 to discuss, in part, the Complainant's request that the Student be placed

in the Compass program. The Complainant was not explicitly invited to attend the May 21, 2019 meeting; at the same time, the Complainant was not told she could not attend the May 21, 2019 meeting. Additionally, the Complainant was not told of the exact location of the May 21, 2019 meeting.

On May 22, 2019, the principal emailed the Complainant, stating, in part:

Yesterday the Compass team met to review our request for considering Student for Compass. At this time, the team recommends that we continue to offer Student interventions here at [his elementary school] and revisit this recommendation in the fall if Student demonstrates a need. The reason for this is partially that Compass does not necessarily offer Student the best environment for what he needs, which is largely to learn coping skills, and we don't want for him to learn the wrong ones. We think Student's elementary school can continue to serve Student in this way.

In its response, the District argued: the May 21, 2019 meeting was not an IEP meeting; rather, it "was an internal staff meeting to problem solve, collaborate, and coordinate services...[the District does] not make decisions changing a student's placement [at these internal meetings and, in fact, the May 21, 2019 meeting] did not [result in a] change [in] the Student's placement."

It is true that: an IEP meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. It is also true that: an IEP meeting does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

So, in this instance, if the District: a) had merely gathered information relevant to the question of whether a Compass placement was appropriate for the Student; and then subsequently b) had a properly-constituted IEP team¹⁰ met to fully discuss the gathered information, as well as the Complainant's concerns about the appropriate educational placement for the Student, and then made a decision, then there would not have been a violation of the IDEA. However, that is not what occurred. While the District staff did not change the Student's placement at the May 21, 2019 meeting, the District acknowledges a decision was made at the May 21, 2019 meeting:

...**It was decided** [Student] be retained at [his elementary school] and to revisit the recommendation for placement in the Compass program in the upcoming fall if [Student] demonstrated a need...[**Complainant**] was fully informed of what occurred, **was told of**

¹⁰ 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.

the plans of the District ***regarding [Student] as a result of that staffing session***, and did not object to anything that arose as a result of that staffing session.

(emphasis added). Subsequent to the May 21, 2019 meeting, the District did not meet with the Complainant to further discuss her desire that the Student be placed in the Compass program.

A decision was made at the May 21, 2019 meeting concerning the Student's placement—the District decided to reject the Complainant's request, and not change the Student's placement. Therefore, it was, effectively, an IEP meeting.¹¹ As such, the District should have taken, at a minimum, the following actions: a) notified the Complainant of the date, time, and location of the meeting "early enough to ensure that [the Complainant would] have an opportunity to attend"; b) scheduled the meeting for a mutually agreeable time and place; c) informed the Complainant—prior to the actual meeting, of what was to be discussed at the meeting; d) convened a properly-constituted IEP team for the meeting; e) fully considered the Complainant's concerns about the appropriate educational placement for the Student; and, f) issued the Complainant—after the meeting, a prior written notice detailing the decisions made at the meeting, as well as the reasons those decisions were made. Again, because this did not occur, the District violated the IDEA, and certain District staff will be required to attend a training. Because the Student is no longer enrolled in the District, no Student-specific corrective action is required.

CORRECTIVE ACTIONS

By or before **April 21, 2020, May 8, 2020, and September 25, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2018-2019 school year. The training will cover the following topics:

- Parent Participation in IEP Meetings (WAC 392-172A-05001(1)(a); WAC 392-172A-05001(2)(a));
- Properly Constituted IEP teams (WAC 392-172A-03095(1));
- IEP Meetings – Notification and Scheduling (WAC 392-172A-03100); and,
- Prior Written Notice (WAC 392-172A-05010).

¹¹ Because no decisions were made at the internal staff meetings on May 3, 2019 (District staff discussed, among themselves, the Compass program and the type of students in the Compass program) and May 17, 2019 (District staff spoke with WISE counseling staff about potential supports for the Student), these meetings do not necessarily represent violations of the IDEA. However, OSPI notes that, best practice would have been to invite the Complainant to attend these meetings. Furthermore, any information gathered as a result of the May 3, 2019 and May 17, 2019 ***should have been*** discussed at a subsequent IEP meeting with the Complainant before the decision was reached on May 21, 2019 to reject a Compass placement.

The training will include examples.

The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 101 staff in the creation of the training materials. The District will provide the trainer with a copy of this decision, SECC 20-20.

By or before **April 21, 2020**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **May 8, 2020**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by May 15, 2020.

By **September 18, 2020**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 25, 2020**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

If needed, due to COVID-19 related school closures, the District may choose to conduct this training via either zoom or skype.

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 April, 2020.

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, Complainant s (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. Complainant s (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.)