

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-96

PROCEDURAL HISTORY

On June 23, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Sumner-Bonney Lake School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 23, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 27, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 13, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on July 17, 2023. OSPI invited the Parent to reply.

On July 28, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 31, 2023.

OSPI considered all 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 June 24, 2022. 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. Whether the District followed placement procedures in May 2023 to provide the Student a placement per WAC 392-172A-02060(3) in the school the Student would attend if the Student did not have a disability?

LEGAL STANDARDS

Least Restrictive Environment & Placement: Unless the student's IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the student needs other arrangements, placement must be as close as possible to the student's home. 34 CFR §300.116; WAC 392-172A-02060(3).

Educational placement decisions must be determined annually, or sooner if appropriate, and be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options that provide 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 the student needs, based on the student's IEP and LRE requirements. 34 CFR §300.116; WAC 392-172A-02060.

FINDINGS OF FACT

Background: 2020–21 and 2021–22 School Years

1. During the 2020–21 school year, the Student was a preschool student who attended school in a different district. During the school year, the Student was evaluated for special education services. The district determined that the Student was eligible for special education services. In February 2021, the district developed an individualized education program (IEP) for the Student.
2. According to the District, the Student moved out of the country during the 2021–22 school year.

2022–23 School Year

3. In February 2023, the District determined, for the current students who were attending the District's developmental learning center (DLC), the school assignments for the 2023–24 school year. School assignments were based on projected enrollment of students needing a DLC placement. The District's DLC program was located at five schools in the District.
4. In mid-March 2023, the Parent enrolled the Student in the District. The District determined that a current evaluation needed to be conducted for the Student.
5. On March 16, 2023, the District conducted a transfer review. The "Transfer Review" form showed that the District would continue the least restrictive environment (LRE) placement in the Student's previous IEP. According to the District, the prior IEP was implemented "as closely as possible" until after the evaluation was completed and a new IEP developed.
6. On March 23, 2023, the Student began attending the preschool and was placed in the District's preschool program at school 1, the Student's neighborhood school. Soon after, the Student was placed in a self-contained DLC classroom at the same school based on observations and with agreement from the Parent, according to the District. The self-contained classroom had higher staff-to-student ratio.
7. On April 25, 2023, the District assistant superintendent wrote a letter to all parents/guardians of students registered at school 1, explaining that the enrollment projected for the following school year showed that school 1 may have significant overcrowding and some students may need to attend another school in the District.
8. On May 1, 2023, the District met with the Parent to review the evaluation and they determined the Student was eligible for special education services under the category of developmental delay.

9. On May 8, 2023, the District and the Parent met to develop the Student's IEP. The Student's IEP identified annual goals in the areas of social/emotional (cooperative play), adaptive behavior (1-step routine and toileting), cognitive (attending), occupational therapy (grasp and tool use), and speech (communicative intent). The IEP provided the following special education and related services:

Services May 12, 2023–June 22, 2023

- Communication skills: 30 minutes, 1 time weekly (provided by a speech language pathologist (SLP) or SLP assistant in a special education setting)
- Social/Emotional: 47 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)
- Adaptive/Self-Help: 45 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)
- Early literacy skills: 30 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)
- Early math skills: 45 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)

Services June 23, 2023–May 11, 2024

- Communication skills: 30 minutes, 1 time weekly (provided by an SLP or SLP assistant in a special education setting)
- Social/Emotional: 100 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)
- Adaptive/Self-Help: 100 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)
- Early literacy skills: 75 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)
- Early math skills: 75 minutes, 4 times weekly (provided by educational staff/paraeducator in a special education setting)

The IEP also provided special transportation as a related service.

10. The prior written notice that documented the IEP meeting stated, "[Student] will participate in the DLC-Kindergarten (developmental learning center) classroom, where he will receive the majority of his services. [Student] may be taken out of the classroom for one-on-one or small group instruction."
11. The District explained its enrollment process during spring and summer 2023:
As students have enrolled in the district, the Special Services Directors review their current evaluation and IEP and determine the appropriate like-like placement, review current class rosters, and then assign a student to the school they will attend, taking into consideration current class composition, current class sizes, and student's residence.
12. According to the complaint, the District informed the Parent at the May 2023 IEP meeting that the Student would attend school 1 the next school year.
13. On May 30, 2023, the complaint stated the District informed the Parent that the Student would attend the DLC program at school 2. The Parent stated her concerns as follows, "Moving him

to a different school would disrupt his academic and social progress and cause him unnecessary stress and anxiety. It would also isolate him from his community and deprive him of the opportunity to participate in extracurricular activities and events at his home assigned school.”

14. On June 23, 2023, the Parent filed this complaint with OSPI.

15. The District calculated the distance and approximate traveling time to each of the other DLC programs at the different schools in the District. The information is as follows:

School Assignment for 2023–24:

School 2

- Distance from Home to school 2: 4.4 miles
- Time from Home to school 2: 10 minutes
- Approximate time on the bus from Home to school 2: 25-50 minutes

Other elementary buildings with DLC classrooms:

School 3

- Distance from Home to school 3: 11.4 miles
- Time from Home to school 3: 25 minutes
- Approximate time on the bus from Home to school 3: 50-60 minutes

School 4

- Distance from Home to school 4: 10.3 miles
- Time from Home to school 4: 22 minutes
- Approximate time on bus from Home to school 4 50-60 minutes

School 5

- Distance from Home to school 5: 9.5 miles
- Time from Home to school 5: 20 minutes
- Approximate time on bus from Home to school 5 50-60 minutes

CONCLUSIONS

Issue 1: School Placement – The complaint alleged the District failed to place the Student in a program that is located in the Student’s neighborhood school. 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. The IEP team, including the parent, must give consideration to the proximity of the placement options to the student’s home and any potential harmful effect of a particular placement on a student.¹

Here, the Parent enrolled the Student in school 1, the Student’s neighborhood school, in March 2023. In May 2023, the District conducted an evaluation and developed an IEP for the Student. The Student’s placement was at a DLC, which was a self-contained special education classroom. The Parent understood that the Student would continue to attend school 1, the neighborhood

¹ See, *Letter to Breeskin*, [75 IDELR 256](#) (OSEP 2019), stating that a parent must be included in the placement team’s discussion concerning how far a potential school is from the child’s residence when the team identifies potential placements for the child.

school, for the 2023–24 school year. Because of overcrowding, however, the District assigned the Student to attend the DLC program at school 2 for the next school year. School 2 is the next closest school to the Parent’s home. The Parent contended that this school assignment violated the Student’s right to attend his neighborhood school and a placement at school 2 would be detrimental to his well-being.

There is no absolute right to attend the neighborhood school. The requirement is that the placement be as close to the Student’s home *as possible* and *unless some other arrangement is required*, the Student is educated in the school the Student would attend if nondisabled. Here, school 2 was the closest school possible among the schools that the Student could attend other than school 1. However, the Student could not attend school 1 due to overcrowding.

However, at the time of the May 2023 IEP meeting, the District was aware that the Student would not be attending school 1. Rather than unilaterally determining that the Student would attend school 2, even if it was a reasonable decision, the Student’s IEP team—that included the Parent—should have considered the potential school options and any potential harmful effect, including, for example, the length of the bus ride would have on the Student, especially since the bus ride could take up to 50 minutes. Since the IEP team did not discuss how far from home the Student would be educated and address any potential harmful effect on the Student, including transportation, a violation is found. The District is required to hold an IEP meeting to discuss how far school 2 is from the Student’s home and whether there are any harmful effects on the Student.

CORRECTIVE ACTIONS

By or before **August 24, 2023, September 8, 2023, and October 13, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **September 1, 2023**, the Student’s IEP team will meet. At the meeting, the IEP team must address the following topics:

- School options for the Student.
- Any potential harmful effects on the Student due to the distance to the Student’s home.

By **September 8, 2023**, the District will provide OSPI with: i) a prior written notice, summarizing the group’s discussion and decisions concerning the above matters; ii) a copy of the Student’s IEP; iii) any relevant meeting invitations and prior written notices; and iv) any other relevant documentation.

DISTRICT SPECIFIC:

Written Guidance

By **September 29, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education certificated staff (teachers), and school psychologists, etc., at the

school that the Student was enrolled in during the 2022–23 school year. The guidance will include examples and discussion of best practices.

- Addressing the school of attendance, considering *Letter to Breeskin*.
- IEP team addressing potential harmful effects when assigning schools.

By **August 24, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by **August 31, 2023**.

By **October 13, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 18th day of August, 2023

Dr. Tania May
Assistant Superintendent of Special Education
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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.)