

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-26**

### **PROCEDURAL HISTORY**

On February 14, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Lake Washington 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 February 14, 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 6, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on March 9, 2020. OSPI invited the Parent to reply.

On March 20, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 23, 2020.

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

### **ISSUES**

1. Did the District implement the Student's accommodations on his individualized education program (IEP) and address the Student's need for any supplementary aids or services necessary to enable the Student to participate in the school's drama program?
2. Did the District follow FERPA procedures if, as alleged in the complaint, an "open meeting to discuss [Student] with approximately 10 [female] students" was held by the assistant principal on or around December 10, 2019 or December 11, 2019?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the 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. 34 CFR §300.323; WAC 392-172A-03105.

Difference Between Accommodations and Modifications: Accommodations: (a) do not fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide equal access to learning and equal opportunity to demonstrate what is learned; and (c) grading and credit is the same as typical students. Modifications: (a) do fundamentally alter or lower expectations or standards in instructional level, content, or performance criteria; (b) provide a student with meaningful and productive learning experiences based on individual needs and abilities; and (c) grading and credit are different. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

Supplementary Aids and Services: Supplementary aids and services means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate in accordance with the student's least restrictive environment. 34 CFR §300.42; WAC 392-172A-01185. A student's IEP must include a statement of the supplementary aids and services to be provided to the student or on behalf of the student. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

Participation with Students without Disabilities: To the maximum extent that is appropriate, a student eligible for special education services will be educated in the general education environment with students without disabilities. 34 CFR §300.114(a)(2); WAC 392-172A-02050. The student's IEP will address how the student will be educated and participate with students without disabilities in the general education classroom and in extracurricular and nonacademic activities. 34 CFR §300.320; WAC 392-172A-03090. The district must take steps, including the provision of supplementary aids and services, to afford a student eligible for special education the equal opportunity to participate in nonacademic and extracurricular services and activities. 34 CFR §300.107; WAC 392-172A-02025.

IEP Must State Amount of Services: An IEP must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and children without disabilities in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35).

FERPA: The Family Educational Rights and Privacy Act of 1974 (FERPA) protects parents' privacy interests in their children's education records. FERPA gives parents the right to inspect and review

their children's education records, the right to request amendment of those records, and the right to have some control over the disclosure of information from those records. FERPA applies to all students, including those receiving special education and related services. Parents have the right to review their children's education records on matters regarding identification, evaluation, educational placement, and the provision of FAPE. 34 CFR §§300.613, 300.618, 300.622; WACs 392-172A-05190, 392-172A-05215, and 392-172A-05225.

Education Records Defined: Education records means the type of records covered under the definition of "education records" under FERPA, 34 CFR Part 99. WAC 392-172A-05180. Under FERPA, "education records" means those records that are: 1) directly related to a student; and 2) maintained by an educational agency or institution or by a party acting for the agency or institution. These records include but are not limited to grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial information (at the postsecondary level), and student discipline files. The information may be recorded in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail. 34 CFR §99.3.

Confidentiality of Education Records: FERPA requires districts to maintain the confidentiality of students' education records. 34 CFR §300.623; WAC 392-172A-05230. FERPA controls the circumstances under which a district may disclose personally identifiable information from educational records, and prohibits non-authorized disclosure of that information. As a general rule, personally identifiable information may not be disclosed without specific, informed parental consent. 34 CFR §300.622; WAC 392-172A-05225.

## **FINDINGS OF FACT**

### **2019-2020 School Year**

1. At the commencement of the 2019-2020 school year, the Student was determined eligible for special education services under the category of Autism, was in the 12th grade, and attended a District high school.
2. September 3, 2020 was the first day of the 2019-2020 school year for the District.
3. At the commencement of the 2019-2020 school year, the Student's March 11, 2019 individualized education program (IEP) was in effect.<sup>1</sup> The Student's IEP provided that he would spend 100% of his time in the general education setting. His IEP did not indicate the Student required any supplementary aides or services to participate in his general education courses, but did provide the Student with two social accommodations, to be provided when in the general education classroom:
  - Provide modeling/coaching/prompting/redirection for appropriate social interaction with peers (general education classroom); and,

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<sup>1</sup> The Student's IEP provided for specially designed instruction in reading and written language.

- Discrete cuing as needed by teacher during peer and teacher interactions (general education classroom).

Under "strengths," the IEP indicated the Student was starting to develop friendships. Under "concerns," the IEP stated noted the Student had great difficulty "considering the perspective of others without being prompted/coached."

The March 2019 IEP contained a transition plan, which stated that upon leaving school, the Student planned to attend a two or four-year college or university and major in theater. The transition services to be provided to the Student included specially designed instruction in reading and writing to help the Student understand the directions or policies provided by a future employer. The transition plan indicated the Student would be employed in the arts, specifically in acting and theater production.

4. During the fall of 2019, the Student was involved with the extracurricular theater production (show 1).
5. A part of show 1, the Student and Parent signed a contract, stating: "harassment of any kind is grounds for immediate dismissal from rehearsal and potentially the show." All students signed the contract. A copy of the signed contract was included with the District's response.
6. December 5, 2019 was opening night for show 1.
7. On December 7, 2019, the high school theater advisor (theater advisor) emailed the associate principal, stating she "was pulled into a private conversation with about 10 female cast members," who "expressed distress because [Student] has been harassing them." She described the following concerns:
  - The girls all said that they individually assumed it was related to his autism, so they didn't talk about it or tell anyone, but someone told, and then they realized this was happening to multiple people;
  - These 'moves' have been happening since [show 2] last year in school and outside theater, but they never reported it until now;
  - [Student] will come up behind girls and put his arms around them, but put his hands on their chests;
  - [Student] will grab their shoulders and pretend to lean in to kiss them, but not pull away, so they have to, then says 'I would have done it' or something to that extent; and,
  - On different occasions during group hugs, he will stand directly behind a girl and push up against their backside.

The theater advisor further wrote that the following were reported as going on during the current production:

- Encouraging other cast members who are dating each other to kiss in front of him;
- Telling other cast members who are dating that they should kiss each other; and,
- Talking to one student that he had to kiss last year for theatrical purposes excessively, bringing up the kiss, not letting it go, making her uncomfortable.

The theater advisor asked for guidance from the assistant principal on how to handle the concerns.

8. According to the Parent, on December 8, 2019, she received a call from the associate principal, saying that some female cast members had come forward to the theater advisor and told the theater advisor they were uncomfortable with the Student's behavior.
9. On December 9, 2019, the associate principal emailed the Parent regarding these concerns. The same day, the Parent responded that she had a conversation with the Student regarding the concerns of the other students and that "[Student] was extremely upset at the thought that he had made anyone uncomfortable." The Parent suggested having a meeting with the Student and the female students involved and involving the high school counselor (counselor) and the Student's case manager. The associate principal responded that she supported the idea of a restorative discussion.
10. On December 9, 2019, a meeting was held at the school with the Parent, associate principal, theater advisor, and counselor to discuss the situation, including that ten female students had come forward to discuss the Student's behavior. The Parent noted that although she had inquired about having the case manager involved, the case manager was not present. In her reply, the Parent addressed the District's assertion that the Student's accommodations related to peer interaction in his IEP were only proscribed for use in the general education setting and not across all education environments. She added:

[A]t the December 9 meeting that I attended with [associate principal], [theater advisor], and [counselor], we clearly discussed that [Student] has difficulties navigating peer interaction because of his autism, his difficulty understanding what was 'appropriate' flirting behavior and with whom it was acceptable, and the need for explicit feedback on his behaviors. Because the theatre environment (and [show 1] in particular) is highly physical, both onstage and off, with multiple students dating and engaging in overt touching and displays of affection, it was a particularly challenging environment for [Student] to understand. At that point in time, it was quite clear to everyone that [Student] needed the accommodations related to peer interactions implemented.
11. Also, on December 9, 2019, the theater program held its first night of auditions for its next production (show 2). Because the Student was sick that day, he emailed the theater advisor, asking if he could switch his audition date to the next day. The theater advisor responded that the spots were full, but she would squeeze him in. On December 10, 2019, the theater advisor was sick and the second day of auditions for show 2 were rescheduled for December 18, 2019.<sup>2</sup>
12. On December 10, 2019, the counselor and associate principal exchanged emails regarding setting up one on one meetings with the Student and individual female students. The counselor suggested having the female students send "theme" emails to the Student,

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<sup>2</sup> During the meeting on December 9, 2019, the Parent discussed with the theater advisor that the Student was ill that day. In the complaint, the Parent added that during that conversation, it was noted that the theater advisor told the Parent that if the Student participated in show 2, he would likely earn his varsity letter in theater.

explaining what they reported. That same day, the theater advisor emailed the counselor, copying the associate principal, explaining that none of the female students felt comfortable talking to the Student one on one, adding that "several of them did say no or ask him to stop and he would not, or asked 'why.'" She wrote that the students wanted support and understanding from the counselor and that she "communicated to all of the girls that we will have a full group meeting about boundaries as it is."

13. On December 12, 2019, one of the cast members emailed the theater advisor, saying she and another cast member were concerned they would not be able to talk to the counselor before rehearsals and performances with the Student. That afternoon, the theater advisor emailed the counselor and associate principal, asking when they could talk with the students, adding the "majority of girls feel uncomfortable and unsafe having rehearsal today without meeting first with [counselor] and trying to get this resolved."
14. On December 12, 2019, the assistant principal and counselor spoke with the Student alone about the female students' reports. According to the District's response, "During that conversation, Student was told to not physically touch his cast mates, beyond high-fives or handshakes." According to the associate principal's summary of the conversation, the Student reported during the interaction that he "wasn't aware that he was bothering other students," and agreed to give high-5's instead of hugging or touching other students. The assistant principal stated that she told the Student that "unwanted touching is unacceptable," and that "if that happens again, he will not be in the play." The District response added that "there was no request that Student needed Parent to be present during this discussion or required any accommodation due to disability."
15. Also, on December 12, 2019, the Parent emailed the associate principal that the Student called her from rehearsal "sobbing," saying that he had spoken to the counselor and associate principal. She asked the associate principal if she could call her when available.
16. On December 14, 2019, during the matinee performance of show 1, the Student reportedly had inappropriate interactions with one or more cast members. That information was reported to the theater advisor, who shared it with the assistant principal the same day. The assistant principal decided the Student would be removed from the final production.
17. The evening of December 14, 2019, the Student did not perform in the final production of show 1.
18. On December 15, 2019, the Parent reported the theater advisor sent a congratulatory email to the cast of show 1, but not to the Student. The Student reported to his Parent that he learned of the email on social media.
19. On December 16, 2019, the Parent contacted the principal and requested a meeting to discuss her concerns with how the issues were handled.

20. On December 18, 2019, the second day of auditions were held for show 2. That night, the Student emailed the theater advisor, asking if he was being considered for show 2. The theater advisor responded: "You didn't audition for [show 2]. The last I heard was that you were going to come in on the second audition day (today). I assumed that since we didn't see you, you had decided not to audition."

The Student responded the Parent had sent her his video audition and that he thought the theater advisor was going to use that.

The theater advisor forwarded the Student's email to the associate principal and principal, with the following note:

[Student's] mom did send me a video, but then said not to watch it because he would be coming in (this was before everything). I am not responding to this until I hear from you. However, I will let you both know that I only accept video auditions from students that physically can't make it there for a legitimate reason.

21. On December 19, 2019, another high school student in the District emailed the principal the following, along with a screen shot of a group text containing statements from several students discussing the Student, which the student submitted as "evidence:"

I am involved in the situation regarding [Student]. [A student] has notified me that he was informed by [theater advisor] that you require evidence on whatever we, as students, can provide. I've asked around who I know were affected to write this email so we don't flood your email inbox. I've attached screenshots of texts [Student] has sent and students' experiences on a problem they have had with him. The list of students includes [student]. I'm including a couple of experiences from my perspective as well.

I'm assuming you already know the details but just in case you don't, a couple of the cast members of [show 1] came out on December 7<sup>th</sup> to say they have been sexually harassed by [Student]. All together, they decided to notify [theater advisor]. But, because of his mental disability, he was given a second chance with a stricter rule: no touching at all besides a high-five. He then proceeded to violate that as well, touching a girl (or girls) in stage in the middle of a performance on December 14<sup>th</sup>. Per the consequence stated which he was well aware of, he was forbidden from performing in the rest of the run.

Yesterday, we got our email about callbacks for the upcoming musical, [show 2]. [Student] sent a text in a group chat which involves the [show 1] cast (since most of the [show 1] cast auditioned for [show 2]) that he wasn't included in the email which we figured out later is because he didn't even audition. He then proceeds to say he doesn't understand why he is being treated like this even though he didn't do anything wrong and the 'accusations..aren't even true' when he fully understood the no-touch rule that was given to him along the second chance. I've attached a screenshot of the text. This put a lot of the cast members in an uncomfortable situation since everyone who testified were in the group chat and saw that [Student] does not regret the decision he has made. Today during lunch (12/10) [student] possibly [student] and [student] witnessed [Student] bragging about getting callbacks after all. This put them more in an uncomfortable situation, seeing him knowing what is happening yet still trying to ignore the fact of his wrongful doings.

22. The group chat contained the following conversation between ten of the Student's fellow peers, which was submitted to the principal:

[student 1]

Before we sang...acapella in [show 1], he came up close behind me and all I did was step away and said 'don't get that close to me.' He got very angry, whisper shouting at me, 'HOW WOULD I EVEN KNOW WHAT I WAS DOING,' I calmly said 'all I said was no,' you just need to listen to me,' and he tore off his... hat and started making grunting noises, acting like he was about to lash out so I backed off and went to my friend [student] and kind of got behind him.

There were multiple times before the Saturday matinee when we were warming up. He'd be trying to get really close to [student] so I'd move in between the two of them and keep watch on him out of the corner of my eye and then he moved over to [student] and kept getting all in her face. I kept shaking my head at him and was looking at me but it looked really obvious [student] wasn't comfortable because she was leaning away.

[student 2]

During the matinee performance on the 14<sup>th</sup> (after he was given the warning), I was standing near the tables right before intermission ended and he walked right up behind me. He got uncomfortably close then he motioned like he was going to put his hands on my head so I walked away before he could touch me.

During the Saturday night performance on the 7<sup>th</sup>, right before intermission ended, he hugged me super tight from behind and was whispering along to the words of...(from *[Movie]*) right in my ear.

On my birthday, I was crouching on the floor, getting something and he came up behind me and squatted down, hugging me from behind super close and whispered happy birthday in my ear. And it was such an intimate position I thought it was one of my best friends and I was VERY surprised that it was him because I had barely talked to him at the time. It happened so quickly that I didn't have time to ask him to stop but it was very inappropriate.

[student 3]

Before [show 3] had even started, [Student] would mention to me that he had to kiss me. He would mention this at rehearsals, at a show we were doing outside of school. I told him we didn't have to talk about it. During [show 3] rehearsals, [Student] kept mentioning that we had to kiss. I told him to just stop talking about it because it got to a weird point. He wouldn't stop and after the understudy show had happened, he kept bringing it up. I told him to stop talking about it. He still asks me if I have 'PTSD from that kiss' and I tell him to just stop talking about it. It's really uncomfortable. When he said the PTSD thing he was hovering over me as I was lying on the ground and got way too close. I told him I was uncomfortable and left. After I moved from my spot he left and I went back. At the cast party when we went to Google Park, he went in for a hug and I said no. I blocked it with a handshake because I didn't want to be mean and then he said that I must be uncomfortable from [show 3]. I say yep and can we please stop talking about it. He left and [student] told me he said he liked me in the car. I'm so uncomfortable because I have clearly told him to stop talking about [show 3] and he knows that I'm uncomfortable from that understudy run.



During [show 1] there were multiple times during [song] where he would put his arms around me and I told him to stop. I was in an uncomfortable blocking situation where I was squished against him. So, he had the opportunity to put his arm around me and I told him not to the first time he did. I remember him doing it again in a different rehearsal after telling him not to. I feel bad because I completely forgot which show day it was, but there was time I decided to stand up still during the...scene. When I stood up, he grabbed me by my arms and held me back up against him. It started to hurt so I struggled to get him off. I didn't know what to do because we were on stage. After the scene I told him backstage not to grab me like that. I think I decided to stop standing up because I didn't want to risk him grabbing me again.

So much has happened but I can't remember a lot specifically if I had said no. Whenever he has made me uncomfortable over the years, I had brushed it off because I have been told that's 'just [Student].'

[student 4]

This may not be very solid but I was lying on the couch in the hallway backstage and he kept [??] over my face really closely which made me uncomfortable so I kept covering my face with my hands and said stop but kind of while laughing because that's what I do when I'm uncomfortable. Then he said something along the lines of, 'why it's not like I'm going to Spider-Man kiss you or anything' and eventually I sat up or he went away. I can't clearly remember.

[student 5]

In [show 1] during '[song]' when the headlines goes up, I've always kneeled on the scaffolding to make room and add levels to the scene. During the first runs with the scaffolding, [Student] would pat and shake my hat (it obstructed my vision) or grip me on the should or (I'd lose my balance). I was scared that I would slip through the railings if he continued to mess with me so I asked him not to grab me or mess with my hat. He respected my request during the next run but on the run after, he did it again. I shifted over so that I was kneeling in front of [student] and it felt a lot safer.

I don't know if this counts but there was one point where he was kind of insistent about making me say I'm single? I think [student] and I were chatting about her boyfriend when [Student] butted in saying something like, 'ayy, single people put your hands up,' but no one really responded. Then he started staring me down and I said 'I don't have to answer' and he stomped away. Throughout the rest of rehearsal/club meeting he kind of continued to raise his hand saying 'ayy single' in a general way, but would glance at me if he knew I was within distance.

As [Student's] understudy, I would usually fill in for everything he does: blocking, dancing, singing, etc. But, because this was a dance heavy show, choreography and tricks were handled differently. Before we were told this though, [Student] was insistent to teach me a leg-hop move he does in the show that I can't do. I told him that we should wait to see what the chorographer says because I'll probably do a different trick, but he continued to try and pester me about the trick. He wouldn't back off until I got 'caught up' with something else.

[student 6]

I can confirm [student's] story did happen. He makes me uncomfortable and I try to get away from him at all costs.

[student 7]

After the warning, he was sitting in the hall outside the theater when we were inside the theater and he started staring through the little window. Several people said they felt uncomfortable. I felt weird because I don't know if he was trying to get us to talk to him.

[student 8]

He and a bunch of guys were sitting on the couch and he was staring at me while I was walking over there even after I looked away. He was still staring. After he looked straight at me and said 'we need one more person to go on top,' I said no at least three times and he kept on proceeding. After my third time, he said 'fine' in a kind of sassy way. Afterwards someone said, 'if she said no, she says no.' I don't remember who said that though.

I was in a situation a bit ago where people were arm wrestling and [student] and I were. Then, [Student] wrestled with [student]. Then, he looked at me and put his arm out to arm wrestle me. I had to tell him 'no' more than once before he left.

[student 9]

Same here (responding to [student's] message above.) So much has happened but I can't remember a lot specifically if I had said no. Whenever he has made me uncomfortable over the years, I have been told that that's 'just [Student].'

[student 10]

I don't have that much more to say, just some similar things that other people were talking about with personal space, especially back stage. I think I can speak for at least some of the other people in saying that while we were waiting for entrances, he would get uncomfortably close at times. At one point, I believe it was the second Friday show, he would put his arms kind of on my shoulders from behind me and kind of drape himself over me but from behind.

[student 11]

The Monday after he got kicked from the show, he was saying 'I'm pissed at [theater advisor].' He just walked up to me in the morning and told me something else and then told me he was pissed at [theater advisor]. He then started grumbling about people not responding to him in the group chat like that same day. I told him that people weren't responding because he makes them uncomfortable and that they're scared of him.

[. . .]

I asked him to play '[song]' on his speaker and he told me that he would only play if I took my shirt off. His reasoning was that it's a seductive song so it only makes sense if someone takes their shirt off. It was sort of weird. But that's all I can remember right now.

To this [student] who was also at this scene, says there were multiple people present and multiple people told him to stop and that was inappropriate. [Student] then proceeded to say something along the lines of, 'I can't help...

At the end of the statements, the student wrote, "These are everything that I was able to gather up. I hope these can prove useful to something. Thank you for making effort to fix this situation from everyone in the [District] community."

23. On December 18, 2019, the principal emailed the Parent that she met with the associate principal and theater advisor regarding the Student. She told the Parent the District did not do its standard school investigation to avoid the school discipline process and that the Student was dismissed from the final show because the Thursday prior to the final show, the Student had been directed by the associate principal and school counselor to "only do high 5 or handshakes in order to protect himself from further accusations," and that the Student did not follow this order. The principal stated that should the Student be selected for a future performance, the District could incorporate a behavioral intervention plan and they could have an instructional assistant with the Student who could "coach [Student] in this unstructured setting to behave in a way that does not cause any discomfort."
24. On December 19, 2019, the Parent responded to the principal's emails that she did not believe the matter had been handled appropriately and that the public nature of the issue continued to create negative consequences for the Student—which she felt the District had not acknowledged. She wrote:

It is my understanding that the group meetings with the girls seemed to create a mob mentality of 'us versus him,' with the girls being encouraged to catch [Student] doing something wrong without any support or safeguards for [Student] or consideration of how his disability plays into this. In the meeting where he was dismissed from the show, **he was not even asked what happened.**<sup>3</sup> He was severely punished without any due process and he vehemently disputes doing anything inappropriate or even participating with other students in the cast who were mocking the touching and hugging instructions that were reportedly given to the cast. Furthermore, [Student] did NOT have an understanding that he could only do handshakes and high fives, but rather thought that as a suggestion of how to interact to avoid accusations. His takeaway was that he should not engage in inappropriate touching, and he is adamant that he did not.

In response to the Parent's email the same day, the principal wrote that according to the theater advisor and associate principal:

there was no group meeting with the girls to get their collective thoughts. These were all brought up individually to [theater advisor]. Two students were talked to directly but individually by their counselors. I am happy to set up a meeting moving forward with [case manager], [counselor] and anyone else to develop next steps.

25. On December 20, 2019, the Parent responded that she had received other information from the parent of one of the female students involved that the female students were addressed collectively. She expressed concerns that there were approximately ten female students brought together to discuss the Student with the associate principal, and that she felt the meeting was "inappropriate and prejudicial to [Student's] relationship with his peers, and the precursor for the debacle that happened." She explained that she felt it violated the Student's

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<sup>3</sup> Emphasis in original.

privacy rights because it discussed the Student's disability, and also that it resulted in a negative fallout, including his removal from the performance.

26. Also, on December 20, 2019, the principal responded to the theater advisor and students that provided statements in the group text submitted on December 19, 2019, that she would need each student to individually come in and sign and date an individual statement. The principal then emailed her administrative staff and asked to have the statements separated and put into separate word documents.
27. On December 26, 2019, the theater advisor emailed out the casting for show 2. The Student was not cast in a role.
28. On December 27, 2019, the Parent emailed the theater advisor, requesting a rationale for why the Student was not cast. The theater advisor responded the same day that almost 20 students did not make the cut and that there was significant competition for the positions available.
29. On December 29, 2019, the Parent responded to the theater advisor, expressing her opinion that she felt the response was "disingenuous." She noted that when she met with the theater advisor on December 9, 2019, the theater advisor informed her that by performing in the subsequent production, the Student would earn 5 of the final 6 "thespian points" required to earn a varsity letter in theater. She added that the Student was the only male in the high school theater program who participated in the International Thespian Society competition for the last two years, receiving "Excellent to Superior scores for both his vocal and acting entries" that year and highlighted his dedication to theater. She concluded:

Dismissing [Student] from closing night of [show 1] following the very inappropriate way the whole situation was handled by [associate] principal was devastating enough. To exclude him from the cast of the final play of his senior year – a kid who struggled with a disability his whole life trying to connect with other kids, and whose entire friend group is comprised of other theatre students in this show – is just cruel.
30. On January 6, 2020, the Parent emailed a District special education administrator (District administrator 1), raising concerns about the Student's treatment at the high school during the theater production, including her understanding that the students were brought in as a group to discuss their concerns regarding the Student, and how those concerns were handled. The same day, District administrator 1 referred the Parent to a different District special education administrator (District administrator 2) or the administrator overseeing general education matters at the high school (general education administrator).
31. On January 10, 2020, the Parent met with the general education administrator. According to the Parent's reply, the general education administrator informed the Parent he had done a preliminary investigation and would continue his investigation after the meeting. According to information provided by the Parent in her complaint, during the meeting, the general education administrator apologized for how the situation had been handled, but told the Parent it would not be appropriate to cast the Student in show 2 because students who had

been cast would be upset for having lost their spot. The Parent reported that they discussed setting up an IEP meeting.

32. On January 11, 2020, according to information provided in the complaint, the Parent reported the Student attended a theater performance at the high school to support the other performers and then attended an after-show gathering at a local café. The Parent further reported that she had "received a phone call from a parent concerned about how the other students [were] treating [Student]. [Student] came home very upset and [said] he had a panic attack when leaving [café] and driving home was so upset that he ran a red light by mistake."
33. On January 17, 2020, the Parent reported the Student attended a theater club meeting but came home and reported the other students were "shunning him now and turning their backs to him when he approaches."
34. On February 2, 2020, the principal emailed District administrator 2 regarding the Parent's allegations that the Student had been harassed by peers during the theater production. He indicated he found no peer harassment.
35. On February 6, 2020, the Student's IEP team met to review the Parent's concerns regarding how to better support the Student's social needs at school, including during extracurricular activities. According to a prior written notice (PWN) issued by the District the same day, no changes were made to the Student's IEP. However, the PWN also noted it was agreed a data collection system would be implemented to document the Student's peer interactions on a weekly basis, as well as how often the Student was accessing his two social accommodations to determine whether the Student required additional social supports and in what settings. The PWN stated the team agreed to revisit the issue at the Student's annual IEP meeting in March 2020.<sup>4</sup>
36. On February 10, 2020, the principal emailed District administrator 2 that she had concluded her investigation into allegations of harassment of other students by the Student, and found that there was no ongoing harassment by the Student. She added that an IEP meeting had been held to review the accommodations and that the IEP provider was going to be reaching out to the Student's teachers to review the accommodation around modeling/coaching with social situations.
37. On March 20, 2020, the Parent replied to the District's complaint. In her reply, the Parent wrote, in part:

Because of this group meeting, a mob mentality was created that exacerbated and inflamed the situation...it is clear that students were given information about [Student] and then made incorrect assumptions about what he knew and understood. This set the stage for

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<sup>4</sup> The complaint raised concerns that at this meeting, IEP team members tried to add the accommodation of "social coaching/prompting" without realizing it was already on the Student's IEP. It was stated that the case manager had to pull up the Student's IEP and show others at the meeting that this language was already included in the IEP.

confirmation bias, as incidental physical contact on stage during a performance was then viewed through the lens of harassment...

I was told by [associate principal] that any actions taken would be approached through the lens of "restorative justice." I was hopeful that this would be a valuable learning experience for [Student] but instead, [Student] was denied the opportunity to understand, much less try to make amends for any actions on his part that may have caused discomfort for other students. When [associate principal] & [counselor] met briefly with [Student] on Dec 12, they talked of 'unwanted touching' and suggested high-fives for congratulating other cast members but did not give him any specific information about the complaints that was useful to his understanding of the situation. It was not until I received the district's response to my complaint that we learned exactly what the complaints were, 3 months after the fact.

## CONCLUSIONS

**Issue 1: Accommodations & Supplementary Aids and Services** – The Parent alleged the District failed to implement the Student's accommodations and address the Student's need for supplementary aids and services as necessary for the Student to participate in the school's drama program.

Districts must take steps, including the provision of accommodations and supplementary aids and services, to afford a student eligible for special education the equal opportunity to participate in nonacademic and extracurricular services and activities. A student's individualized education program (IEP) must include a statement of the accommodations and supplementary aids and services to be provided to the student, and that IEP must be in effect at the commencement of the school year and available to every teacher and provider who will be responsible for its implementation.

The Student's IEP provided the Student with two social accommodations, which were highlighted by the Parent in the complaint and addressed by the District in its response. These included (a), "provide modeling/coaching/prompting/redirection for appropriate social interaction with peers," and (b) "discrete cuing as needed by teacher during peer and teacher interactions." As noted in the District's response, the Student's IEP indicated these accommodations were only required in the general education setting and thus indicated as needed for classroom participation. There were no accommodations that addressed extracurricular activities. Further, the IEP did not include any supplementary aids and services. Thus, the Student's IEP was implemented as written. OSPI finds no violation.

While OSPI finds no violation, the District's handling of the situation resulted in a highly unfortunate situation for the Student. It is OSPI's hope that if a similar situation were to arise in the future, the District would approach the situation differently.

On December 7, 2019, the District was provided new information that the Student had been exhibiting inappropriate sexual behaviors during theater activities—an unstructured social time, which was documented in the Student's IEP as something the Student had difficulty navigating because of his disability. The District also learned that multiple students had reported feeling

uncomfortable due to the Student's behaviors. The Student's evaluations and IEP—including the Student's transition plan—documented the importance of the Student's involvement in the school's theater program for his social emotional development and in helping to develop the Student's future career plans after high school. As soon as the District became aware of the Student's behaviors and the negative impact they were having on all parties involved, best practice would have been to immediately schedule an IEP meeting or involve the Student's case manager, to discuss whether there was a need to add accommodations and/or supplementary aids and services to the Student's IEP to ensure the Student continued to have access and was able to equally participate in theater.<sup>5</sup> Without additional social support, the inappropriate behavior continued and consequently, the Student was removed from theater in a way that furthered misunderstanding and isolation of the Student from his peers and created an unfortunate environment for all involved.

The District noted that it refrained from formally disciplining the Student for his behavior because it was acknowledged that the Student had a disability. OSPI notes, however, that in addition to not disciplining a student for behaviors related to a student's disability, a district also has an obligation to provide students with an IEP that includes accommodations and supplementary aids and services necessary for that student to access and equally participate in nonacademic and extracurricular activities with students without disabilities.

**Issue 2: FERPA** – The Parent alleged the District violated the Family Educational Rights and Privacy Act of 1974 (FERPA) with regard to the Student. FERPA protects parents' privacy interests in their children's education records and prohibits the disclosure of personally identifiable information—including information about a student's disability—contained in educational records without specific, informed consent.

Here, the Parent alleged a District staff member met with a group of students and discussed the Student's disability. The District, however, maintained that individual students brought concerns to the District staff member and that the District staff member never mentioned the Student's disability to other students. While the documentation suggests it is likely a District staff member met with more than one student at a time to discuss their concerns as a group, there is insufficient evidence to support a finding that the Student's disability, or any other information contained in the Student's educational records, was brought up for discussion by the District staff member. Although documents containing statements from other students note the student's disability, it is not clear how the students became aware of the Student's disability and it is not a FERPA violation for other students to discuss their understanding of the Student's disability. Thus, there is insufficient evidence to support an allegation that the District violated FERPA and OSPI finds no violation.

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<sup>5</sup> The District noted in its response that the IEP team met in February 2020 to address the addition of supplementary aids and services to the Student's IEP and that no changes were made. It is noted that the February 2020 IEP meeting occurred after the Student was removed from theater and the Student was not involved in the theater program or extracurriculars at that time.

## CORRECTIVE ACTIONS

### STUDENT SPECIFIC:

None.

### DISTRICT SPECIFIC:

None.

## RECOMMENDATIONS

The District is reminded that when developing IEPs for students with disabilities, it should be considering what accommodations and/or supplementary aids and services a student requires to access or equally participate in nonacademic and extracurricular activities. Moving forward, the District may also want to consider developing strategies for supporting students with disabilities that impact their ability to navigate social situations in nonacademic and extracurricular activities as part of its efforts for building an inclusive environment for all students, and to support students with disabilities in developing the skills necessary to be successful in the workplace and integrated into their communities after graduation. OSPI is available as a resource and to provide technical support, if needed.

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, 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.)