

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-49

PROCEDURAL HISTORY

On June 12, 2017, 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 June 13, 2017, 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 July 5, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on July 6, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 18, 2017, OSPI received the Parent's reply and forwarded that reply to the District on July 19, 2017.

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

OVERVIEW

During the 2015-2016 school year, the Student attended a District preschool program and was eligible to receive special education and related services under the category of autism. In May 2015, the Student's individualized education program (IEP) team met to review her IEP in preparation for the Student's transition to kindergarten during the 2016-2017 school year. The IEP team decided that the Student would participate in a special education kindergarten program for approximately eighty percent (80%) of her school week. The Parent disagreed with the placement decision and requested that the Student participate in a general education setting at least fifty percent (50%) of her school week and be provided a 1:1 aide trained in applied behavior analysis (ABA). The IEP team then met again to discuss the Parent's request, but rejected the request because kindergarten staff wanted to be able to observe the Student in her new setting before increasing time in a general education setting. The Student's new kindergarten IEP team then met before the 2016-2017 school year began to discuss the Parent's request, but rejected the request to increase the Student's time in general education. However, the team agreed to conduct a reevaluation of the Student and discuss increasing her time in general education when the reevaluation was completed. The Parent continued to disagree with the IEP team's decision and arranged for the Student to attend a private kindergarten program for part of her school day.

The Parent alleged that the District failed to follow procedures for determining the Student's placement for the 2016-2017 school year, including determining the Student's

least restrictive environment, in accordance with WAC 392-172A-02060. The District denied the allegation.

ISSUE

1. Did the District follow procedures for determining the Student's placement for the 2016-2017 school year, including determining the Student's least restrictive environment, in accordance with WAC 392-172A-02060?

LEGAL STANDARDS

Placements: When determining the educational placement of a student eligible for special education, including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: (a) The student's IEP; (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 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. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. RCW 28A.155.090(7) and 42 U.S.C. 1400 et. seq., § 392-172A-02060.

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

Continuum of Alternative Placement Options: Each school district must ensure that a continuum of alternative placements is available to meet the needs of students eligible for special education and related services. That continuum is required to include instruction in general classes, special classes, special schools, home instruction, and instruction in hospitals and institutions. When necessary, the district must also provide for supplementary services such as resource room or itinerant instruction in conjunction with general classroom placement. 34 CFR §300.115; WAC 392-172A-02055.

FINDINGS OF FACT

2015-2016 School Year

1. During the 2015-2016 school year, the Student attended a District preschool program and was eligible to receive special education and related services under the category of developmental delay.
2. On September 29, 2015, the District completed a reevaluation of the Student in the area of "sensory." Based on the results of the reevaluation, the Student's evaluation group changed the Student's eligibility category from developmental delay to autism. The evaluation report recommended that the Student continue to receive specially designed instruction in the areas of vision, communication, adaptive skills, social/emotional, cognitive/pre-academics, and gross motor. The report also recommended the Student continue to receive orientation and mobility as a related service, and recommended the addition of occupational therapy for sensory support as a related service.
3. In November 2015, the Student's individualized education program (IEP) program team developed her annual IEP. The November 2015 IEP included annual goals, including goals in language, vision, social, cognitive/pre-academics, adaptive, physical therapy, and vision/mobility. The IEP provided for specially designed instruction and related services in a special education preschool program.
4. On May 25, 2016, the Student's IEP team, including the Parent, met to discuss the Student's transition to kindergarten during the 2016-2017 school year, and amended the Student's November 2015 IEP. The amended IEP stated that from May 30 – July 31, 2016, the Student would receive 1,230 minutes of services per week and spend .04% of her school day in a general education setting. The IEP also stated that from August 2016 through November 2, 2016, the Student would attend school 1,740 minutes per week, and spend 20.4% of her school week in a general education setting. The IEP stated that the Student would "participate in a small, structured classroom (learning center) that has a high adult-to-student ratio. [The Student] will participate with typical peers for approximately 90 minutes each school day. [The Student] can participate in all extra-curricular activities."
5. On May 30, 2016, the District issued a prior written notice, proposing to initiate changes made in the Student's amended IEP. The notice stated that the Parent would like to see the Student participate in a general education classroom for at least 50% of her day, including academic times, and not only during lunch and recess, and that the Parent would like the Student to have a 1:1 paraeducator, specifically trained in applied behavior analysis (ABA), to support her in a general education classroom. The notice also stated:

The reasons [the District] rejected those options were: [special education teacher] explained that she would like to get to know the student and her skills at the beginning of next year to help her find the best fit in the general classrooms. It was discussed that a late October [2016] meeting would be a good time to further discuss the best fit for the Student's inclusion in general education, as her teacher would better

understand her strengths and areas where she needs support in the general classroom at that point. It was proposed that the Student start school in September, participating with typically developing peers during recess and lunch, and that she spend 30 minutes in general education classes for specially designed instruction in cognitive [skills] and 30 minutes in the general education class for specially designed instruction in social [skills].

6. On May 31, 2016, the kindergarten special education teacher, from the elementary school the Student would attend during the 2016-2017 school year, emailed the Parent, copying the Student's preschool special education teacher. The kindergarten teacher stated that she had been able to observe the Student in her morning autism class, recess, motor room, and afternoon circle¹. The kindergarten teacher stated that she would love to have the Student participate in a 30-minute general education academic session where she could work on taking direction in a large whole group environment, and a 30-minute afternoon social group where she could practice socializing and making friends. The kindergarten teacher also stated, "This would be our starting place and we would adjust her time and programming [...] depending on her needs. She will also have lunch and recess with her general education class. [...] Her total time in general education will be two hours [...] this time will grow as she grows." The Parent responded and stated that adding some general education time to the IEP was a "step in the right direction".
7. On June 1, 2016, the preschool special education teacher emailed the Parent and stated that she was finishing up the Student's IEP and wanted to see if what she had written in the prior written notice adequately reflected the Parent's thoughts regarding her points of disagreement. The preschool special education teacher stated in her email (in relevant part):

The Parent would like to see the Student participate in the general education classroom for 180 minutes per day, including academic times, not just lunch and recess. She would like the Student to have a 1:1 paraeducator to support her in a general education classroom. It was discussed that the Student's three-year evaluation, due by December 5, 2016, and the Student's annual IEP review, due by November 2, 2016, should be combined and held at the end of October. The meeting for these two events would be a good time to further discuss the best fit for the Student's inclusion in general education, as the kindergarten special education teacher would better understand the Student's strengths and areas where she needs support in the general education classroom at this point. The Parent preferred that the LRE state that the student would spend at least 180 minutes per day as opposed to approximately 90 minutes per day in a general education classroom and with typically developing peers.

In response, the Parent stated that she was putting together a letter with the recommendations from the Student's private evaluations that she wanted added to the file with the Student's IEP. The Parent also stated she would like to share her letter "All the way up the chain" and wanted to know what the director of special education thinks about these issues. The Parent further stated that she would love it if the Student could attend the District elementary school, and stated that she really

¹ The date of this observation is not clear from the email.

enjoyed speaking with the kindergarten special education teacher on [May 27, 2016], and that the kindergarten teacher had shared some awesome ideas on how to help the Student socialize with girls, as she would be the only girl, and only kindergartener, in a class of boys with autism. The Parent also stated that she needed everything documented in the IEP, and that she was still looking at other places that offered half-day kindergarten, stating, “[P]erhaps we can split the day with [the Student] doing general education off site and special education at the District elementary school.”

8. The Parent then sent a second email, stating that she would like the Student to participate in general education for at least 50% of the time with ABA support². The Parent stated, “I realize ABA support doesn’t exist right now, and since both ABA and inclusion are recommendations made by the [private evaluation report] I’d love to hear [the director of special education’s] ideas on those recommendations and the timeline for implementing them.”
9. On June 2, 2016, the Parent sent a letter to the District director of special education in which she introduced the Student and described the Student’s albinism and autism. The Parent also shared statements provided by private evaluators working with the Student, which stated (in relevant part):
 - Applied behavioral analysis (ABA) services are ordered at this time, given the adverse impact of [the Student’s] behaviors and core impairments. There is no equally effective alternative available for reducing severe interfering or disruptive behaviors and increasing pro-social behaviors, and achieving desired behaviors and improvements in functioning. ABA services are reasonably expected to result in a measurable improvement in [the Student’s] skills and behaviors
 - An important element in the Student’s IEP moving forward will be the need to maximize interaction with typically developing peers
 - The Student may benefit from participating in a social skills group to help her acquire the necessary skills to appropriately interact with typically developing peers. Her school program should proactively provide opportunities to interact with children who do not have social-communication delays, so that [Student] can experience age appropriate social interactions with age appropriate social role models
10. On June 7, 2016, the Parent emailed the District members of the Student’s IEP team and stated (in relevant part):

We had an IEP meeting for [the Student] about two weeks ago, and I have a dissenting opinion about the least restrictive environment (LRE). Her transition to kindergarten shows her with 80% of her time in special education and only 20% in general education...[Physical therapist name omitted], [the Student] was also removed from general physical education (PE), which might have been a good way to get more time in general education.
11. On June 8, 2016, the District physical therapist responded to the Parent, via email, and stated that the Student’s PE may have been marked as special education because the learning center classroom got its own PE time for two classes a week.

² The Parent references “ABA support” throughout the complaint; OSPI understands the Parent’s use of “ABA support” to be synonymous with 1:1 paraeducator support in the kindergarten setting at the District elementary school.

The physical therapist also stated that sometimes the District had students participate in special education PE and general education PE, depending on the student's individual needs. The physical therapist further stated that she knew the Student could handle general education PE, even though she was not sure how she would do with the large group in the loud gym, but that it was definitely worth a try.

12. On June 14, 2016, the Parent wrote a letter to the District members of the Student's IEP team, stating that the Student's time in general education could be increased with proper supports. The letter also stated (in relevant part):

- In [the Student's] current preschool schedule, she typically participates in general education for more than half of her day
- The ratio of her placement is approximately 45% special education and 55% general education with an ABA therapist
- [The Student] has been successful in increasing her social interaction with exposure to typically developing peers
- [Parent] wants to design a similar level of exposure to typically developing peers as she enters kindergarten, then take data over the first few months and reassess the amount of general education from which [the Student] would benefit, and how to maximize that time so she can progress throughout the year
- Start with the presumption that more time in general education is better than less

Regarding the District's refusal to place the Student in general education 50% of the time with a 1:1 paraeducator:

- By rejecting the Parent's request for 50% time in general education because the kindergarten teacher needs to first 'get to know' the Student before making a decision is an administrative convenience and is not an allowable reason for rejection
- Waiting until October 2016 to discuss the Student's "best fit for inclusion in general education," wastes time and ignores the fact that the Student has a right to the maximum inclusion possible as of the first day of school
- General education lunch ignores the Student's sensory needs, since she cannot handle loud noises and chaos, and will not eat under those circumstances, thus she will not receive any educational benefit from general education lunch

[The Parent] requests the following counterproposal be implemented:

- Student be allowed 50% placement in general education, with a 1:1 ABA therapist supervised by [a Board Certified Behavior Analyst] BCBA
- Given Student's strengths in art and the potential for a good outcome with manipulative based academics such as math we request that she be present for those times, as well as the beginning of the day or beginning of the second half of the day, recess, and free play with in the classroom
- The schedule of the general education classroom be modified such that the student has as few transitions as possible, due to her difficulty with transitions.
- The strongly recommended general education schedule should be inserted into the IEP, understanding that it will not be finalized until the next IEP meeting with the new kindergarten team
- That a new IEP meeting be called with the kindergarten team to finalize the schedule and supports as early as possible in August 2016

- That they strongly recommend a general education schedule be communicated to the kindergarten principal, teachers, and specialists as soon as possible, so that they can use it to inform their scheduling decisions

13. On June 15, 2016, the Student's IEP team, including the Parent, met to discuss the Parent's concerns. At the meeting, the Parent provided the District team members with a copy of her June 14, 2016 letter. The IEP team agreed to further amend the Student's November 2016 IEP to add a vision goal, and to increase the amount of specially designed instruction the Student would receive in the area of vision from 30 minutes/2 times weekly, to 30 minutes/3 times weekly in a general education setting. The amended IEP stated that from August 2016 through November 2, 2016, the Student would spend 27.3% of her school week in a general education setting.

14. On June 16, 2016, the Parent emailed the District director of special education and stated that the IEP team held a meeting, as the director had suggested, but the IEP team was not able to make progress and the IEP team did not consider the Parent's input or the results of the Student's private evaluations. The Parent stated that the Student's preschool experience and the private evaluation were disregarded in favor of waiting and taking more data during the first part of the kindergarten year. The Parent requested a meeting with the director of special education to discuss her concerns. In response, the director stated that although neither he, nor the assistant director, could make placement decisions, they would be happy to meet with the Parent.

15. On June 18, 2016, the District issued a prior written notice, proposing to initiate the Student's June 2016 IEP amendment. The notice stated that an IEP meeting was held to review current present levels and to update goals and services for the kindergarten setting based on team recommendations. The notice stated that the following changes were made to the IEP:

- Update present levels of performance
- Added a new vision goal
- Vision service time and location of vision and occupational therapy modified

The notice also stated that the following requests were refused:

- To increase service time in general education to 50%
- To provide a 1:1 ABA therapist, supervised by a BCBA

The notice stated the reason the District refused to take these actions was "[B]ased on team review of Student needs as outlined in current evaluation, and the lack of data in the general education setting." The notice also stated that due to the Parent's stated disagreement with elements of the IEP related to the least restrictive environment, the Parent asked that the team consider the options as outlined in her letter, dated June 14, 2016, which she provided to the IEP team during the June 15, 2016 meeting. The notice stated the reasons the District rejected those options were:

The team at the District elementary school has not had the opportunity to work with the Student to assess her needs in order to develop the best plan to support her in general education. Further, the participation of the Student's general education teacher at the district elementary school is necessary in order to review the schedule

of daily activities to suggest the optimum times for the Student to receive instruction in the general education classroom to support her growth, independence, and progress. 1:1 support was rejected, as it is the most restrictive level of service, and the data needed to address the request would need to be collected by the district elementary school special-education team.

16. The District's 2015-2016 school year ended on June 15, 2016.

Summer 2016

17. On August 24, 2016, the kindergarten special education teacher emailed the Parent to set up a time for the Parent, the kindergarten special education teacher, and the kindergarten general education teacher to meet, prior to the start of school. The Parent and the teacher exchanged possible meeting dates.

18. On August 26, 2016, the Parent emailed the kindergarten special education teacher and stated that the Student's kindergarten schedule may need to be a half day if the District could not provide the general education time the Parent had requested at the District elementary school.

19. August 26-29, 2016, the kindergarten special education teacher and the Parent exchanged emails in attempts to schedule two meetings. The first meeting, which would include the kindergarten special education and general education teachers, and the Parent, would be to discuss the Student's schedule and any Student progress or challenges the Parent observed over the summer. The second meeting would be an IEP meeting.

20. On August 29, 2016, the kindergarten special education teacher emailed the Parent and stated that she would email the Student's kindergarten schedule to the Parent by August 31, 2016, to help the Parent make her decision [regarding half-day attendance]. The Parent responded the same day and stated:

I am a little confused. When we met on June 15, we agreed to discuss expanding [the Student's] involvement with general education at an IEP meeting [with the Student's new kindergarten IEP team] the week before school starts. I talked to [director of special education] and [assistant director of education] again on August 10, and they echoed that, saying they could not change the 80/20 [placement] and it was based on the recommendation of the sending team, but the receiving team could view it differently. It seems premature to make a scheduling decision before the IEP meeting.

21. On August 31, 2016, the special education teacher emailed the Parent a copy of the District's proposed kindergarten schedule for the Student. The special education teacher also stated:

The schedule is created to align with the recommendations of the sending preschool team. Before working with the Student, the District elementary school, receiving team does not have reason to forgo the recommendations of the sending team. What we can do is adjust the service minutes to reflect the nuances in scheduling what simply could not be accounted for before the full District elementary school schedule had been put together. For example, the Student will spend 20 minutes in her general education class for morning calendar as well as 20 minutes there for writing. This

means there will be 40 minutes rather than 30 minutes of academic specially designed instruction in her general education classroom and can be reflected in her IEP service minutes.

22. On September 1, 2016, the Student's preschool special education teacher emailed the assistant director of special education and the District preschool coordinator regarding a phone call she had received from the Parent. The preschool teacher stated that she was unsure how to address the Parent's statements, which included that "[T]he director of special education has told her that I have complete control over [Student's] placement, and if [Student] is on the cusp of Ready Start in January, why is she being placed in 80/20 [learning center/general education placement] for kindergarten." The preschool teacher stated that the Parent had wanted to discuss the teacher's data regarding the Student over the phone, and that she had told the Parent any information she wanted to discuss could be discussed at the IEP meeting tomorrow. The teacher asked that the assistant director contact her.
23. Also on September 1, 2016, the Parent emailed the preschool teacher and stated, "At least think about recommending [Student] for more general education time. She really needs it now and everyone is looking to you for recommendations." The preschool special education teacher forwarded the Parent's email to the assistant director of special education and the preschool coordinator and asked for direction, stating that she was concerned about the Parent's understanding of how the process works.
24. Also on September 1, 2016, the Parent emailed the preschool special education teacher a second time and stated that on August 10, she met with the director of special education and the assistant director of special education. The Parent stated that the director assured her that there were a variety of placements for kids in the learning center and that not everyone lands at 80% learning center and 20% general education. The Parent further stated that the Student's placement was based on preschool recommendations and that the Parent would need the whole IEP team to change it. The Parent stated that the kindergarten special education teacher had also said that she was keeping the Student's least restrictive environment the same, based on "preschool recommendations." The Parent stated, "[E]ither you have a tremendous amount of power, or everyone is throwing you under the bus – I'm not sure which. Maybe a bit of both." The Parent then asked the preschool special-education teacher to consider revising her prior recommendation at the upcoming September 2 IEP meeting.
25. On September 2, 2016, the preschool special education teacher emailed the District members of the Student's kindergarten IEP team, the special education director, the assistant special education director, and the preschool coordinator and stated that she had received another email from the Parent. The preschool special education teacher stated:

I want to make a clarification with [email recipients], it is my team's understanding that the sending team makes a recommendation for placement in special education or general education. Then my team works with the receiving team to determine the minutes that we will put into the IEP. We rely on the receiving team's professional judgment to determine the minutes. We are okay with whatever minutes the receiving

team, after observing student in preschool and speaking with us, wants to determine. Is this correct?

In response, the kindergarten special education stated:

I agree that the percentage of general education time has been a source of confusion to many people in this process. The percentage under the services grid lists time in the day she is not receiving any services. When a service lists general education as the location, it is not reflected in the percentage below because it is still a time when special education services are delivered. I think it will be very important for that to be clarified with the parent at the meeting. I updated the Student's service minutes and LRE statement to hopefully make her daily schedule more clear. A printed copy of her daily schedule will be very helpful at this meeting. At this time, the [District elementary school] team feels that the schedule and service minutes for the Student align with the IEP, the preschool data, and the wonderfully thorough observational data the preschool has provided. Once we get to know the Student and take data on her growth here at the [District elementary school] we may change her IEP and her programming.

26. Also on September 2, 2016, the Student's new kindergarten IEP team met to review the Student's June 2016 IEP amendment and then discuss the Parent's concerns. The IEP team then again amended the Student's November 2015 IEP to reflect that the kindergarten school day was 1,760 minutes per week and that the Student would spend 23.01% of her school week in a general education setting.

27. On September 3, 2016, the Parent drafted a letter to the District members of the Student's kindergarten IEP team. The Parent stated that key action items from the September 2, 2016 meeting included:

- The team decided to reevaluate right away using the private evaluations and private testing and incorporating the results into one report
- The team agreed to meet at the beginning of November for an IEP meeting to discuss the report and consider how to meet the Student's needs
- The Parent understands that the team will discuss expanding the Student's time in general education in a meaningful way at that meeting
- The assistant director of special education stated that she would reach out to the private BCBA so that she could work with the team on how to use ABA techniques with the Student
- The Parent's request to revise a goal and update present levels of this meeting was refused and put off until the November meeting
- The Parent's request to increase time in general education was refused and the discussion was put off until the November meeting
- The Parent's request for an ABA trained aide was refused

The Parent then stated that she had continued concerns that the Student's needs could not be met through the District elementary school's approach. The Parent said that the Student was an ABA learner and required 1:1 prompts and incentives to practice new academic skills. The Parent stated the Student would require 1:1 assistance regardless of whether she was in a special education or general education environment. Additionally, the Parent stated that due to language processing issues, the Student was a visual learner, and due to her visual impairment, the Student required an aide to help with vision tools and to reteach at a close proximity in order

for the Student to access the curriculum. The Parent also stated she was continuing to request an ABA aide for the Student. The Parent then stated:

The message I heard at the meeting was that we cannot use an ABA therapist at school because it might upset the paraeducator union, and we can't use a paraeducator in kindergarten, because then she may leave at age 21 with no independent skills. Therefore, since the [District] is eliminating 1:1 aides in the general education environment as an available option, we feel that the team is not considering the full range of supports and services. Student requires a 1:1 aide and to be learning with typical peers in order to benefit from special-education. The plan in place does not meet this need. We will temporarily implement a half-day schedule at the [elementary school] so that Student can have meaningful and consistent ABA in a general education setting offsite.

2016-2017 School Year

28. The District's 2016-2017 school year began on September 6, 2016, and the Student began attending the District kindergarten special education program.

29. The Student's a.m. schedule for Monday – Friday stated³:

- 9:00 – 9:25 Morning calendar in general education classroom
- 9:30 – 10:00 Morning circle in special education classroom
- 10:00 – 10:10 Snack in special education classroom
- 10:15 – 10:45 Reading groups/motor room rotations in special education classroom
- 10:45 – 11:05 Writing in general education
- 11:05 – 11:25 Workbox in special education classroom
- 11:30 – 12:00 Lunch with general education classroom

The Student's p.m. schedule for Monday – Friday stated:

- 12:00 – 12:30 Recess
- 12:30 – 1:00 K/1st learning group in special education classroom
- 1:00 – 1:30 Functional academics/music with 5th grade buddies
- 1:35 – 2:05 PE/social group on general education
- 2:10 – 2:40 Social general education SDI/Math
- 2:40 – 3:10 Snack/art/recess/sensory with general education peers in special education classroom/ social general education SDI
- 3:10 – 3:30 Good-bye circle

30. On September 16, 2016, the District issued a prior written notice, addressing the September 2, 2016 IEP meeting. The notice stated that the IEP team decided to update the Student's service minutes by adding 10 minutes of cognitive services in the general education setting. The notice stated the IEP team considered increasing the Student's minutes in the general education environment to 50%, per the Parent's request, but rejected the request because the IEP team felt that the Student continued to need the support of a learning center classroom to focus on improving her pre-academic and independent skills. The notice further stated that the Parent decided to

³ The Parent arranged to have the Student attend a private school for afternoon kindergarten starting in September. The Student only attended the District kindergarten from 9–11:30 a.m.

have the Student attend kindergarten for a half day, so she could receive private ABA services in the afternoon. The notice further stated, "The Parents will pick the Student up at 11:30 a.m. each day. Parent indicated awareness that the Student would be missing services that were offered to her in the afternoon. The Student started attending the District elementary school on September 9, 2016, but only for half day, per Parent request." Additionally, the notice stated that the IEP team agreed to have the reevaluation process completed prior to the Student's annual IEP review date (November 3, 2016). The IEP team agreed that collecting information through the reevaluation process and by observing the Student's performance in the learning center and general education classrooms would provide additional, helpful information toward creating the most appropriate IEP for the Student.

31. On October 16, 2016, the Parent emailed the District director of school support and the District superintendent and stated that the Student's IEP team had met four times since May 25 with no change in the Student's placement. The Parent stated that the Student's reevaluation and IEP meetings would be occurring in two weeks, and that she did not want to be forced out of the Student's local school and community, because the team will not implement a plan that adequately met the Student's needs.
32. On October 24, 2016, the director of school support responded to the Parent, via email, copying the District director of special education and assistant director of special education, and stated (in relevant part), "Placement of students is an IEP decision. It is only in the context of an IEP team that placement can be considered so I will have to direct you back to the Student's school team to have this discussion." The Parent replied, that same day, and stated (in relevant part), "My IEP team needs leadership support to understand inclusion practices before November 2, 2016 [...] Please explain to me and the IEP team what is meant by the [phrase] 'implementation of inclusion practices' and how this will be supported."
33. On October 24, 2016, the Parent emailed the kindergarten special education and general education teachers, the vision and mobility specialist, the principal, and the Student's BCBA. The Parent stated that in preparation for the Student's IEP meeting, she wanted to share her vision for the Student's future and also share a policy letter from the U.S. Department of Education from September 2015 regarding inclusion practices in special education.
34. On October 27, 2016, the District completed the Student's three-year reevaluation. The evaluation group reviewed the results of the reevaluation and determined that the Student continued to qualify for specially designed instruction under the category of autism. The evaluation report recommended the Student continue to receive specially designed instruction in the areas of speech/language, social/emotional, adaptive, vision, reading, writing, and math. The evaluation report also recommended that the Student continue to receive speech/language and orientation and mobility as related services. The evaluation report stated that the Student no longer qualified for physical therapy or occupational therapy. The evaluation report included an observation data summary prepared by the District BCBA, which stated:

The Student showed a number of strengths during all observations. She was very interested in learning. She wanted to be correct and was upset by making mistakes, and [...]sometimes initiated correcting them independently. When she was attending to the activity and on task, she appeared to understand the content. She engaged in some very positive interactions with peers and adults, and also used her words to advocate for herself on several occasions. She seems to enjoy school much of the time and peers and teachers in all settings seem to enjoy being with her as well.

The evaluation report also included information provided by the Student's general education kindergarten teacher, which stated in relevant part:

The student does not demonstrate age-appropriate communication skills. She does not maintain conversations, ask questions or respond to others' comments commensurate with her peers. On occasion, she shows small interactions by responding "hi friend," or making a comment about a friend's clothing. The Student does not show an awareness as to how her peer received her statement or seek a response. The Student can express wants, needs, and make comments, but does not do so at the appropriate time. For example, she does not raise her hand, or gain my attention, before speaking. She is limited in her vocabulary and [her] ability to put together a clear and cohesive verbal statement. This seems to impact her success and communicating with peers.

35. On November 2, 2016, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. The team discussed increasing the Student's service minutes to reflect more time in a general education setting. The IEP stated that, from November 7, 2016 – January 6, 2017, the Student would attend school 1,710 minutes per week, and spend 46.49% of her school week in a general education setting. The IEP included twenty-one annual goals, including three speech and language skills, five vision skills, four reading skills, three math skills, one writing skill, three adaptive skills, and three social/emotional skills.

36. On November 7, 2016, the District issued a prior written notice, proposing to change the Student's IEP. The notice stated that the Student's annual IEP meeting had been held on November 2, 2016, and that the Student's IEP service minutes were increased to reflect more time in general education. The notice stated that the IEP team reviewed current present levels and updated goals, accommodations, services, and least restrictive environment. The notice also stated the reason the District proposed to take action was:

As required by law, students who qualify for special education services are required to undergo an IEP review at least once per calendar year. Parent requested for the Student's general education minutes to be increased. Results of the reevaluation report suggests that some accommodations be added. The IEP team chose to increase general education minutes based on recommendations from the BCBA and the private evaluation report.

The notice further stated that other factors relevant to this action were:

Parent expressed desire to have the Student in general education classrooms for science and social studies. The team informed the Parents that most often the subjects are offered in the afternoon when the Student is not attending the elementary school. The specially designed instruction areas the Student will be missing due to the 11:30

AM pick up include math specially designed instruction, some reading comprehension specially designed instruction, some adaptive specially designed instruction, most social skills specially designed instruction, and 20 minutes of speech language pathology and related services. Goal progress will be limited for the specially designed instruction services taking place in the afternoon when the Student does not attend the District elementary school. The Student's plan also includes 10 hours of support services from the BCBA. The BCBA will help with data collection program planning and step training.

37. On June 12, 2017, the Parent filed this complaint.

CONCLUSIONS

The Parent alleged that the District failed to follow procedures for determining the appropriate placement and least restrictive environment for the Student for the 2016-2017 school year. When determining the educational placement of a student eligible for special education, the placement decision must be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon the student's IEP, the least restrictive environment, placement option(s) that provides a reasonably high probability of assisting the student to attain her annual goals, and with consideration of any potential harmful effect on the student or on the quality of services she needs.

Here, the District appropriately held an IEP meeting in May 2016, which included the Parent, to address the Student's transition to kindergarten during the 2016-2017 school year. The IEP team determined that the Student's kindergarten placement would include spending approximately 80% of her school week in a special education program for students with autism and 20% of her school week in a general education setting. However, the Parent disagreed with the placement decision because the Student's private evaluations stated that the Student needed to be learning with typical peers in order to benefit from special education and because the Student would be the only female and the only kindergartener in the autism program. The Parent then requested that the Student participate in a general education setting 50% of her school week and receive support from a 1:1 aide with ABA training.

In response to the Parent's concerns, the District held another IEP meeting in June 2016. At the June meeting, the IEP team reviewed information from the Student's private evaluations and additional information. The IEP team then rejected the Parent's request to increase the Student's time in a general education setting to 50% with the provision of a 1:1 aide, because a 1:1 aide "is the most restrictive level of service, and the data needed to address the request would need to be collected by the district elementary school special-education team." The District is incorrect in its belief that 1:1 paraeducator support is the most restrictive environment for all students. Paraeducator support is a supplementary aid and service, not a placement option on the continuum of alternative placements. When determining a student's least restrictive environment the District must ensure that the provision of services be provided to the maximum extent appropriate in the general education environment unless the nature or severity of the student's disability

is such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. Based on the documentation in this complaint, the District did not base its decision to deny the Parent's request for 1:1 aide support on the Student's individualized needs. The District erred in failing to properly consider if the Student could participate in a general education setting with the provision of 1:1 aide support. However, in October 2016, the District completed a reevaluation of the Student and then developed a new IEP for the Student in November 2016, which increased her participation in general education to nearly 50%.

CORRECTIVE ACTIONS

By or before **September 13, 2017**, **September 15, 2017**, and **October 16, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **September 8, 2017**, the District will hold an IEP meeting to review all information relevant to the Student's placement, including whether the Student could participate more often in a general education setting with supplementary aids and services, including a paraeducator. If the IEP team determines that the Student will receive additional support, the District will amend the Student's November 2016 IEP, or develop a new IEP for the Student to reflect that support. By **September 15, 2017**, the District will provide OSPI with a copy of: 1) the meeting invitation; 2) the Student's amended or new IEP; 3) a prior written notice documenting the IEP team's decisions; and, 4) any other related documentation.

DISTRICT SPECIFIC:

By **September 29, 2017**, the District will develop final written guidance addressing the determination of the educational placement for a student eligible for special education and the factors that must be considered under WAC 392-172A-02060. The guidance will include examples and regulatory references. The guidance will be provided to certificated District special education certificated staff, including educational staff associates (ESAs). By **September 13, 2017**, the District will submit a draft copy to OSPI for review. OSPI will approve the written guidance or provide comments by September 22, 2017 and provide additional dates for review, if needed. By **October 16, 2017**, the District will submit documentation that it provided the guidance to all District special education certificated staff, including educational staff associates (ESAs). This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

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 August, 2017

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.)