

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-81**

### **PROCEDURAL HISTORY**

On October 18, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Lake Stevens School District (District). The Parents 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 October 21, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 1, 2019, the District requested an extension of time to respond to the complaint. OSPI granted the extension and requested that the District provide part of the documentation by November 8, 2019, and the remaining documentation by November 15, 2019.

On November 7 and 15, 2019, OSPI received the District's response to the complaint and forwarded it to the Parents on November 18, 2019. OSPI invited the Parents to reply.

On November 27, 2019, the Parents requested an extension of time to reply to the District's response to the complaint. OSPI granted this extension and requested that the Parents provide their reply by December 4, 2019.

On December 4, 2019, OSPI received the Parents' reply. OSPI forwarded that reply to the District on the same day.

On December 9, 2019, the investigator called the Parent for additional information.

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

### **ISSUES**

1. Did the District follow procedures for ensuring Parent participation in the individualized education program (IEP) meetings on June 18 and 26, 2019, including providing proper notification and ensuring a properly construed IEP team?
2. Did the District follow procedures in determining the Student's placement and least restrictive environment in order to provide the Student a free appropriate public education (FAPE)?

### **LEGAL STANDARDS**

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that

instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's individualized education program (IEP). *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982).

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. An IEP invitation need not be in writing; however, the district must keep adequate documentation to show that all the components were included in the invitation. 34 CFR §300.322; WAC 392-172A-03100.

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

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: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) 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.

A student's IEP team has the responsibility to determine the student's least restrictive environment (LRE), and must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom. *Sacramento City Unified School District, Board of Education v. Rachel Holland*, 14 F.3d 1398, 1400 (9<sup>th</sup> Cir. 1994).

Placement: 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: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

## **FINDINGS OF FACT**

### **Background**

1. The Student was initially found eligible for special education services in October 2017, at the age of three. The Student was eligible for special education services under the category developmental delay, and demonstrated delays in the areas of communication, social-emotional, fine motor, adaptive, and cognitive skills.
2. During the 2017-2018 school year, the Student attended the "Early Learning Center" (ELC), a developmental preschool in the District. Per his October 2017 individualized education program (IEP), the Student received specially designed instruction in adaptive/self-help skills, cognitive skills, and social-emotional. The Student received fine motor and communication as related services, and an occupational therapy consultation as a supplementary aid and service. The Student spent 100% of his time in the special education setting.
3. On June 15, 2018, the Student's preschool special education teacher and case manager (special education teacher) emailed one of the Student's private providers, who was in the process of completing an autism evaluation for the Student. The special education teacher stated she was the Student's "DD preschool teacher this year (and the next two years as well)."

The District, in its response to this complaint, acknowledged that, based on the preschool teacher's email, it appears she "had unilaterally determined over a year in advance her intent to retain Student in the ELC past his fifth birthday." (Emphasis in original).

## 2018-2019 School Year

1. During the 2018-2019 school year, the Student continued to attend the District ELC and continued to be eligible for special education services under the category developmental delay. The Student was four years old.
2. The District's 2018-2019 school year for the ELC program began on September 19, 2018.
3. On October 5, 2018, the Student's IEP team—including the Parent—met to develop the Student's annual IEP. The IEP noted the Student's "progress the last 12 months has been absolutely remarkable. He has made tremendous growth in each and every area of development...that being said, the amount of growth needed to perform within the average to below average range of students his age is still significant."

As part of the special factors the IEP team must consider, the IEP addressed whether the Student's behavior impeded his learning or learning of others:

[Student] has delays in social-emotional skills which can cause behavioral concerns, but they are within the scope of a classroom teacher. Current level of support, specially designed instruction in social-emotional skills, positive behavior support and classroom interventions are currently meeting his needs. Should his behaviors increase in intensity or frequency, the team will make a referral to our building ELITE team and/or Specialist Team to discern if more interventions are needed which may result in a Functional Behavioral Assessment.

The IEP stated, "this IEP is written with the plan to return to ELC in the fall. Parents have requested through the initial evaluation team, last year's IEP team and this year's IEP team that [Student] begin kindergarten in the year 2020," as Student "has an August birthday that would have him as the youngest student in class." The IEP further stated:

Parents do not want him to go through school being the youngest in the class making it even more difficult for him to keep up with his class peers. Parents, evaluation team, and IEP teams, are concerned that without this opportunity, [Student's] level of support needed to be successful could require a more structured learning classroom experience for Kg. Additional time in the developmental preschool, where the student/teacher ratio is higher will give him a [sic] the opportunity to remain in a cohort where he is within the average chronological age, while gaining more independence necessary for the greatest opportunity to begin kindergarten in a general education classroom with support within the resource room setting.

The IEP included goals and specially designed instruction in cognitive skills, adaptive/self-help skills, social-emotional; related services in occupational therapy (fine motor) and communication; and an occupational therapy consultation as a supplemental aid and service. The IEP indicated the Student would spend 620 minutes a week in school and spend 100% of his time in the special education setting. The "placement options for LRE [least restrictive environment]" table indicated the Student would receive services in a "separate class," as the Student attended the "separate development preschool class during attendance to Early Learning Center." The reason why less restrictive environments were not appropriate for the Student was noted as "non-academic benefit cannot be achieved satisfactorily."

4. The prior written notice, dated October 5, 2018, noted the team "considered and rejected" a "[kindergarten] placement for 2019," and repeated the reasoning included in the IEP related to the Student's age and Parent's request. The prior written notice indicated the team reviewed "Clinical/Classroom notes and data since his initial evaluation IEP October 2017."
5. Also, on October 5, 2018, the special education teacher emailed the speech/language pathologist. The email, in part, stated:

...I saw him at 2 ½ and have worked him directly for a year. His growth is astounding, but to think of where he needs to go to be able to attend a gen ed (general education) Kg (kindergarten) is a bit daunting. Thankfully his parents have insisted for years that they do not want him to start Kg. until Fall 2020. Our eval and IEP teams the past 2 years agree. If we had to send in 2019, I fear he would need at least a partial SLC (Structured Learning Classroom) placement. One more year (especially if he gets outside OT [occupational therapy] and ABA [applied behavioral analysis] therapy) could make the difference in the opportunity to start Kg. in gen ed/RR (resource room.) This the path I think will comply with the least restrictive and provide a level of support he will need to be a success, productive member of society as an adult...

The speech/language therapist replied on the same day and said she agreed, but suggested they wait to see how much progress he makes during the rest of the year.

6. The District's response to this complaint noted the preschool teacher "had determined almost a full year in advance that Student would return to preschool despite being age appropriate to advance to kindergarten in the 2019-20 school year." The District's response further noted, the "position taken in the October 2018 IEP regarding Student's programming in the following school year appeared based on Parent request as opposed to an actual assessment of Student's capabilities or needs."
7. The timeline for this complaint investigation began on October 19, 2018.
8. According to the District's response, during the 2018-2019 school year, the ELC principal worked with staff to "review the process through which ELC students moved from the ELC to kindergarten after their fifth birthday." The ELC staff were directed to "use a body of evidence to recommend whether each ELC student who would be eligible for kindergarten the following school year (based upon turning five before August 31<sup>st</sup>), were developmentally ready for kindergarten and if so, recommend which special education program(s) may be appropriate for each student." The District stated, "generally, absent some data supporting a need to stay at the ELC, the staff would review how the students identified needs aligned with the special education kindergarten programs available within the District." For example, the District stated, "students eligible for services under the Autism disability category would be reviewed to determine if their needs would be met within a District SLC classroom, which provides a structured and sensory-appropriate special education setting for students, while supporting their access to less restrictive settings throughout the day."
9. According to the District's response, the ELC principal held monthly staff meetings beginning in January 2019, to review the kindergarten eligible ELC students in order to:

- "Make collective recommendations back to each IEP team as to whether a student was ready to move on from the ELC and if so, into which potential programs;" or,
- "If there was insufficient data to make such a recommendation, to determine next steps for such students, including gathering additional data, conducting observations, and having additional conversations with parents."

10. On January 18, 2019, as part of the District kindergarten transition process, the special education teacher emailed the school principal a recommendation that the Student attend the ELC for the 2019-2020 school year.

11. In January 2019, the District reevaluated the Student in the area of social pragmatic skills. This reevaluation was prompted because the Student had been diagnosed with autism spectrum disorder (ASD) by a private health care provider.

12. The Student's special education progress monitoring report, dated February 4, 2019, indicated the Student had made the following progress:

- Cognitive skills: Student liked to please but was easily distracted. Needed verbal reminders.
- Adaptive/Self-Help skills: Independent in toileting and dressing but required modeling/verbal/visual prompts to pay attention and comply with rules.
- Social/Emotional: Made "great progress" with greeting and introducing himself to peers. Still needed assistance to asking peers to play.
- Occupational Therapy: Had made "great growth" in fine motor. Can draw circles, horizontal, and vertical lines.<sup>1</sup>

13. On February 20, 2019, the ELC staff held a staff meeting at which the Student was discussed. The special education teacher recommended the Student remain at the ELC for an additional year.

The District's response stated the special education teacher failed to consider a full "body of evidence" prior to making her "final recommendations for two of her students [including the Student] to stay at the ELC." The District stated the principal was concerned by this recommendation and the staff ultimately recommended the District's behavior specialist observe the Student to "provide more data before making a final recommendation." The District response further stated, "notwithstanding this recommendation for additional data to be gathered before reaching a final determination, [preschool teacher] proceeded to meet with Student's IEP team and determined Student would stay at the ELC for the 2019-20 school year."

It was unclear whether the behavior specialist completed the observation.

14. On March 12, 2019, the Student's evaluation group met and determined the Student continued to be eligible for special education, now under the category of autism.

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<sup>1</sup> The information on the Student's progress reports was anecdotal. There was a noticeable lack of empirical data to substantiate progress towards the annual goals.

15. On March 27, 2019, the Student's IEP was amended (without a meeting) to update the Student's communication goal. According to the District, the Student's IEP otherwise remained unchanged (i.e., the language regarding the Student's birthday and Parent's request that he remain in the ELC program another year continued to be included in the IEP), including the determination that the Student's behavior did not impact his learning. Based on the documentation in this complaint, the Parent gave her permission to proceed without a meeting.
16. In May 2019, a District instructional coach and former kindergarten teacher and the District director of special services (director) observed the Student's classroom.
17. On June 5, 2019, ELC staff held a staff meeting and discussed programming recommendations for ELC students. According to the District's response, the "Student's overall body of evidence was reviewed as part of those discussions" and the "group reached consensus on a recommendation that Student's IEP team consider moving Student up to kindergarten with access to his typical peers." The District noted the preschool teacher "acknowledged the group consensus but noted her own personal disagreement with the consensus recommendation."
18. On June 7, 2019, according to the IEP meeting invitation contact attempt report, the District emailed and called the Parent to invited her to an IEP meeting scheduled for June 18, 2019. The IEP invitation stated the purpose of the meeting was to "discuss placement options and possible changes to IEP," and that the following were invited: director, occupational therapist, Parent, special education teacher, and speech language pathologist. According to the contact attempt report, the Parent responded she could attend the meeting.
19. Regarding notification of the IEP meeting, the Parent told the OSPI investigator that she received an invitation via Google email, but not the IEP invitation form contained in the District documentation provided in response to this complaint. Neither the District nor the Parent provided a copy of the Google email to this investigation to verify the information provided in the email about the meeting. The Parent stated in the complaint, "On June 7, 2019, I received a message from [Student's] teacher requesting that I meet with IEP team members and some administrators to discuss [Student's] future needs and the option of Kindergarten with support." The Parent later stated in the complaint she was not informed that the meeting was an "IEP amendment meeting."
20. The Student's special education progress report, dated June 14, 2019, stated the Student had made the following progress:
  - Cognitive Skills: Had made "tremendous progress" in pre-academics but struggled with generalization and "great difficulty" attending to instruction.
  - Adaptive/Self-Help Skills: The Student made progress participating and following class rules and routines but struggled daily.
  - Social/Emotional: Student made "great progress." He was beginning to ask questions of his peers but did not understand "fair play."
  - Occupational Therapy: Student made "great gains" in fine motor activities.

- Communication: Student had success with “snack talks” with peers but required support orienting body language, using eye contact, and maintaining personal space.<sup>2</sup>

21. On June 18, 2019, the Student’s IEP team—including the Parent, director, general education teacher/instructional coach, preschool special education teacher, speech language pathologist, and principal—met.<sup>3</sup> The occupational therapist was excused from the meeting. The team considerations section of the IEP continued to include the Parent’s concerns regarding the Student’s August birthday and him being the youngest in his class, and that they wanted him to start kindergarten in the fall of 2020. The IEP continued to document that the Student had delays in social-emotional skills, which resulted in inappropriate behavior but “they are within the scope of a classroom teacher.” The IEP stated, “His current IEP is written with the plan to remain at the ELC in the fall of 2019 which allows him to attend morning ABA therapy...as he finally made it to the top of the waiting list.”

The IEP included goals in cognitive skills, adaptive/self-help skills, social/emotional, occupational therapy, and communication. The service matrix was written to indicate the Student would be in kindergarten and receive the following related services and specially designed instruction in the special education setting from September 9, 2019 through October 4, 2019:

- Fine Motor (Related Service): 15 minutes, 3 times per month (provided by an occupational therapist)
- Adaptive/Self-Help Skills: 30 minutes, 1 time per week (provided by special education teacher/paraeducator)
- Cognitive Skills: 30 minutes, 1 time per week (provided by special education teacher/paraeducator)
- Social Emotional: 30 minutes, 1 time per week (provided by special education teacher/paraeducator)
- Communication: 20 minutes, 30 times per month (provide by a speech language pathologist (SLP)/SLP-assistant (SLP-A))

The Student also received an occupational therapy consultation once a month for 15 minutes as a supplementary aid and service. The IEP indicated the Student would attend school for 1,690 minutes per week and would spend 93.12% of his time in the general education setting. The “placement options for LRE [least restrictive environment]” table indicated the Student would receive services in a “Reg[ular] [Early Childhood] program of ≥ 10 hrs & [specially designed instruction] elsewhere.”<sup>4</sup>

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<sup>2</sup> Although anecdotal information was helpful, the lack of empirical data made it difficult to determine the specific amount of progress the Student made toward his annual goals.

<sup>3</sup> According to the District, the instructional coach served as the general education teacher in the IEP team. The coach was a former kindergarten teacher who was familiar with the kindergarten curriculum.

<sup>4</sup> According to the District, the term “early childhood” can mean either preschool or kindergarten.



22. The prior written notice created following this meeting, dated June 18, 2019, stated that at the IEP meeting the District members of the team recommended a "Full-day 5 days per week general education Kindergarten with support. As [Student] will be attending private [applied behavioral analysis] ABA therapy for three hours in the mornings M-F, [District] proposed two additional placement options to better accommodate for [Student]'s ABA schedule." The two other placement options were listed as:
- 1-Partial Day Kg 5 days/week (1:00pm-3:40pm);
  - 2-Should parents choose to delay entrance to Kindergarten until Fall 2020, they could receive special education via walk-in therapy services at their neighborhood school. (Allowing for private ABA in the mornings and private preschool in afternoons.)"

The notice stated the District proposed this option as it wanted to provide the Student with "options that offer access to a Free Appropriate Public Education (FAPE) in the least restrictive environment with access to typically developing peers." The notice stated the other option considered was what the Parents requested—"return to ELC as is currently written in their IEP amended 3.27.19" based on the Student's "August birthday and morning ABA schedule." The notice stated this option was rejected because, "based on the data described below, [District] rejected this option in favor of options that provide access to a Free Appropriate Public Education (FAPE) in the least restrictive environment with access to typically developing peers," and noted the team considered: "Recent [District] evaluation 3.12.19 (which included Autism Evaluation by [provider]); Classroom data; Clinical data; Child Outcomes Summary Form...data; progress reports."

23. Regarding the meeting, the Parent stated she disagreed with the placement decision. In the complaint, the Parent stated, "...As the meeting went on, I felt completely blindsided and it became obvious that my words were not going to make a difference." The Parent expressed concern about the Student not being properly prepared to attend kindergarten and "may always struggle."
24. On June 26, 2019, the Parents met with the director, the District's executive director of instructional leadership (executive director), and ELC principal. The documentation provided by the District indicated this was not intended to be an IEP meeting.

According to the prior written notice, dated July 10, 2019, this meeting was an opportunity for the Parents to "ask and receive clarification on their remaining questions about the process that led to the IEP team placement recommendation for [Student] in the Fall of 19-20," based on the recommendation from the June 18, 2019 meeting that the Student attend a "full day kindergarten placement for [Student] at his home school in the Fall of 2019."

The prior written notice indicated the "team presented to the family the process that the IEP team underwent in order to come to this IEP team recommendation," including providing "an explanation of Least Restrictive Environment and Free and Appropriate Public Education was explained by [director]." And, the Parents "were invited to ask questions throughout this discussion to gain a full understanding of the data that was gathered by the team to make an informed placement recommendation."

According to the prior written notice, the Parents continued to request placement at the ELC program for the 2019-2020 school year and the District stated the "6.18.19 IEP team recommendation for full day kindergarten placement at [Student's] home school remains the current recommendation." The notice further stated the District believed the Student was "in need of and eligible to access a full day kindergarten program. The ELC program is a 10 hour per week program in which [Student] only participates with special education peers. [Student], at this time, is in need of access to general education curriculum and general education peers. A full day kindergarten placement recommendation offers [Student] a [FAPE] in the [LRE]."

25. On October 18, 2019, OSPI received this complaint.

26. According to the Parent, the Parent withdrew the Student from the District and participated in an ABA program from September to December 2019, and then enrolled the Student in a private preschool in December 2019.

## CONCLUSIONS

**Issue 1: Parent Participation** – The complaint alleged the District failed to inform the Parents about the purpose of the June 18, 2019 individualized education program (IEP) meeting. In addition, the Parents alleged the District failed to consider Parent input into the placement decisions made at the June 18, 2019 IEP meetings. A district is required to notify a parent of the purpose of the IEP meeting and give parents an opportunity to provide input into decisions regarding the student's special education services and placement.

Here, the District proposed an IEP meeting for June 18, 2019. The documentation provided by the District included a written invitation form, dated June 7, 2019, for the meeting that stated, "Other: Discuss placement options and possible changes to IEP." The Parent stated she did not receive the invitation form but did receive the Google email invitation, although it was unclear what information about the meeting was provided. The Parent also reported in the complaint that the teacher contacted her to have an IEP meeting to "to discuss [Student's] future needs and the option of Kindergarten with support," but that she did not think the meeting was to amend the Student's IEP since the placement decision had already been made. The Parent acknowledged she was informed this meeting was an IEP meeting, was notified of the purpose of the meeting, and notified that District administrators would be attending, despite the Parent's assumption that the IEP team could not amend the Student's IEP.

The IEP team met on June 18, 2019 to discuss the placement options for the 2019-2020 school year. The District proposed the following options: full-time kindergarten; half-day kindergarten (to accommodate potential private ABA services); or kindergarten enrollment in the 2020-2021 school year with walk-in services during the 2019-2020 school year. Despite the Parent's claim she was not informed that the meeting was an "IEP amendment meeting" and that she was blindsided by the proposal, the documentation showed the District informed her of the purpose of the meeting and received her input. While an IEP team should work toward consensus, there are times that individual members of the IEP team—including parents—may disagree with the team's decision. A district has the responsibility to ensure the IEP includes the services a student needs

in order to receive a free appropriate public education (FAPE). Based on the documentation, the Parent was informed of the meeting's purpose and had an opportunity to provide input. No violation is found.

The Parent's complaint also raised concerns about the members of the Student's IEP team present at the June 2019 IEP meeting. The Parent stated she had never met the director and the general education teacher/instructional coach. The required members of an IEP team are the parent, not less than one general education teacher of the student if the student is, or may be, participating in the general education environment, not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student, district representative, someone to interpret the instructional implications of evaluation results, and the student, if appropriate. Others who have knowledge or special expertise about the student may participate in the IEP meeting.

The student must be invited to the IEP team meeting when the purpose of the meeting will be the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals. If the student does not attend the IEP team meeting, the school district must take other steps to ensure that the student's preferences and interests are considered. The district representative must be qualified to provide, or supervise the provision of, specially designed instruction, knowledgeable about the general education curriculum, and knowledgeable about the availability of resources of the district. Regarding other participants, whether someone has knowledge or special expertise is decided by the person who invited the individual—either the district or the parent—to be a member of the IEP team.

In this case, the director and the general education teacher/instructional coach were required members and had observed the Student while making a classroom observation. The special education teacher and speech/language therapist directly worked with the Student. The principal knew the Student through the monthly staff meeting. Based on the documentation, the required members attended the Student's June 2019 IEP meetings and it was not inappropriate to include the director or general education teacher/instruction coach. No violation is found.

**Issue 2: Least Restrictive Environment** – The Parents alleged the District failed to place the Student in his least restrictive environment (LRE). The Parent stated the Student's placement should have remained in the ELC. A district must ensure that a student with a disability is educated to the maximum extent appropriate with general education peers. Removal from general education occurs only if the severity of the disability is such that satisfactory progress in the general education classroom cannot be achieved. An IEP team must consider the following factors when making the determination: the educational benefits to the student of a placement in a general education classroom; the nonacademic benefits of interaction with students who are not disabled; the effect of the student's presence on the teacher and other students in the classroom; and, the cost of mainstreaming the student in a general education classroom.

Here, there were two simultaneous and connected processes occurring during the 2018-2019 school year: the Student's IEP development (including placement determinations) and the District's preschool to kindergarten transition process. The transition process called for the District

to have an "Initial/Final Recommendation Meeting," to make recommendations for kindergarten placement, for all preschool students in January of each school year, based on the information they had at the time.

In January and February 2019, the District recommended the Student attend the ELC next school year. However, any recommendation made in the kindergarten transition process is subject to the decision of the Student's IEP team, because moving from preschool to kindergarten represents a potential change in placement and a student's IEP team determines placement. In February 2019, the principal became concerned about the special education teacher's recommendations and the District's response indicated the principal believed more data were needed before making a final recommendation. The District's response stated the special education teacher failed to consider a full "body of evidence" prior to making her "final recommendations for two of her students [including the Student] to stay at the ELC." The District stated the principal was concerned by this recommendation and the staff ultimately recommended the District's behavior specialist observe the Student to "provide more data before making a final recommendation." The District response further stated, "notwithstanding this recommendation for additional data to be gathered before reaching a final determination, [preschool teacher] proceeded to meet with Student's IEP team and determined Student would stay at the ELC for the 2019-20 school year."

However, in March 2019, approximately six months before the start of the 2019-2020 school year, the Student's IEP team determined the Student would continue to be placed in the ELC for the 2019-2020 school year, the implication being that the Student could not receive benefit in the kindergarten classroom with general education peers. This decision was made without regard to the possible benefit of future services in those six months between the March 2019 IEP meeting and September 2019, the start of the 2019-2020 school year. The IEP team discounted the possibility that the Student would continue to make progress that would enable him to benefit from the kindergarten classroom. In addition, the IEP failed to explain why the Student could not receive academic or non-academic benefit in kindergarten, which was the less restrictive setting. According to the documentation, academics were not identified as a concern and any behavior impediment to learning could be addressed by the classroom teacher. Based on the failure to sufficiently consider all the LRE options and the lack of sufficient data, which the District acknowledged, the March 2019 IEP team made an untimely placement decision without sufficient data to support the decision. Thus, OSPI finds the District in violation regarding the placement decision made at the March 2019 IEP meeting, which was corrected at the June 2019 IEP meeting.

Because of the premature decision, the Parent came away from the March 2019 IEP meeting understanding the 2019-2020 school year placement had been made and that the Student would remain in the ELC program another year.

The District recognized the decision made at the March 2019 IEP meeting was not supported by data. Thus, in light of the premature March 2019 IEP decision and the new data accumulated during the remainder of the school year, the District proposed the June 2019 IEP meeting to revisit the placement decision. In the IEP meeting, the District proposed three placements options: full-time kindergarten next school year; half-day kindergarten; and delaying kindergarten with the 2020-2021 school year but providing walk-in services during the 2019-2020 school year. The

kindergarten placement would significantly increase the amount of time with general education peers. Despite the Parent's (and the special education teacher's) concern about the Student being ready for kindergarten, the documentation showed the Student could benefit from being in a less restrictive environment, and selected the kindergarten classroom. Since there was no consensus among the IEP team, the District representative was required to make the decision and offer a FAPE, which was placement in a general education kindergarten. At the June 18, 2019 IEP meeting, the documentation showed the District made a decision that was child-specific and reasonably supported by data, which did not result in a denial of FAPE. There is no violation.

### **CORRECTIVE ACTION**

By or before **January 10, 2020** and **February 14, 2020**, the District will provide documentation to OSPI that it has completed the following corrective action.<sup>5</sup>

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

By **January 24, 2020**, the District is required to develop written guidance regarding the transition of students in the ELC program. The guidance should include information on making decisions regarding the least restrictive environment, considering student specific needs, and the use of data to inform decision making. The guidance should include examples. The guidance will be provided to all special education staff and administrators in the special education ELC program.

By **January 10, 2020**, the District will submit a draft of the written guidance to OSPI. OSPI must approve the written guidance.

By **February 14, 2020**, the District will provide OSPI with documentation that the written guidance was provided to all required staff.

Dated this \_\_\_\_ day of December, 2019

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

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<sup>5</sup> The same corrective action is referenced in SECC 19-80. The District is not required to write two sets of written guidance.

**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.)