

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-52**

### **PROCEDURAL HISTORY**

On April 13, 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 San Juan Island 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 April 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 by May 4, 2020.

On April 23, 2020, the District requested additional time to respond to the complaint. OSPI granted the request and extended the timeline to respond to May 11, 2020.

On May 11, 2020, the District requested a second extension to the timeline to respond to the complaint. OSPI granted the request and extended the timeline to May 15, 2020.

On May 15, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on May 18, 2020. OSPI invited the Parent to reply.

On May 26, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On May 29, 2020, OSPI requested additional information from the Parent. On May 31, 2020, the Parent provided the additional information. On June 3, 2020, OSPI forwarded the information to the District.

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

### **ISSUES**

1. Did the District develop and implement an appropriate individualized education program (IEP) to meet the Student's needs during the first ten weeks of the 2019-2020 school year?
2. Did the District follow procedures in determining the Student's placement in the least restrictive environment during the 2019-2020 school year?
3. Did the District provide the Parent with an opportunity to provide input into the evaluation meeting on March 16, 2020?

### **LEGAL STANDARDS**

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there was

sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Provision of a free appropriate public education (FAPE): An individualized education program (IEP) is required to be “reasonably calculated to enable the child to receive educational benefit.” It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress,” the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom,” and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

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.

Parent Participation in Determining Placement: Each school district must ensure that a parent of each student eligible for special education is a member of any group that makes decisions on the educational placement of the parent's child. The school district must use procedures consistent with the procedures described in WAC 392-172A-03100. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement. 34 CFR §300.501; WAC 392-172A-05001.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: a) a description of the action proposed or refused by the agency; b) an explanation of why the agency proposes or refuses to take the action; c) a description of

each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; f) a description of other options that the IEP team considered and the reasons why those options were rejected; and g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2).

## **FINDINGS OF FACT**

### **2018-2019 School Year**

1. In May 2019, the Student was privately placed in an in-patient, residential treatment facility and the juvenile court conducted a forensic mental health evaluation of the Student by a private psychologist. The report described the Student's behavior and treatment history, which included being placed in juvenile detention and in-patient treatment for aggression, substance abuse, and sexually inappropriate behavior. The report addressed concerns regarding the Student's education and potential sexually inappropriate behavior, and made the following recommendations, in part:
  - [Student] has sufficient mental health and substance use issues to warrant residential treatment. There are likely to be difficulties accessing residential treatment due to the risk of sexual acting out. Nevertheless, residential treatment options should be considered.
  - In regard to [Student's] ongoing education, it would appear that he is motivated to return to school and complete his GED. He is clearly capable of doing so and should be encouraged to return to school. His relative weaknesses in processing speed is deserving of accommodation, specifically more time to complete tests and assignments. Nevertheless, [Student] has demonstrated that he is capable of reasonably good academic performance and, with the assistance of his stimulant medication, appears capable of demonstrating cognitive abilities equal to that of his peers.

## 2019-2020 School Year

2. At the beginning of the 2019-2020 school year, the Student was a sixteen-year-old eleventh grader. The Student was previously determined eligible for special education services under the category of emotional behavioral disability. The Student was privately placed in a residential treatment facility outside the District.
3. On September 4, 2019, the District's 2019-2020 school year began.
4. According to the District, the Student was discharged from the residential treatment facility and returned to the District "around the second week of September" 2019.
5. On September 20, 2019, the District received the Student's probation order, dated December 3, 2018, from the juvenile court, ordering the following restrictions, in relevant part:  
Respondent is ordered not to go upon the following premises or geographic areas: Places known to frequent young children, including and not limited to: Elementary Schools. Must follow rules as stated by treatment provider. Respondent shall not contact the following person(s): [student 1] and [student 2].
6. The "Contact Attempt Report" showed the District contacted the Parent on September 23, 2019, about an individualized education program (IEP) meeting scheduled for September 27, 2019. The District's documentation also included an IEP invitation, dated September 23, 2019, informing the Parent of the IEP meeting and its purpose.
7. On September 27, 2019, an IEP team was held that included the Parent and the Student's probation officer to develop an IEP for the Student. The team considerations portion of the IEP addressed the Student's behavior:  
Appropriate strategies, including positive behavioral interventions, strategies, and supports to address behavior that impedes his learning including the following: maintain structured, consistent, and predictable routines and procedures; teachers and staff members establish check-in practices for [Student]; provide a relationship-based approach and individualized attention by assisting him in developing specific skills and knowledge that will enhance his growth; provide him with brief, regular, doses of positive attention (e.g., greetings, brief conversations, non-verbal signals); and facilitate opportunities for [Student] to interact and work with others constructively.

The IEP provided for annual goals in the areas of math and written language<sup>1</sup>, and provided specially designed instruction in a special education setting in the following areas:

- Math: 100 minutes, 3 times per week (provided by a special education teacher)
- Written Language: 100 minutes, 3 times per week (provided by a special education teacher)
- Social/Emotional/Adaptive: 100 minutes, 3 times per week (provided by a paraeducator)

Supplementary aids and services included the following:

- Paraeducator Assistance: 100 minutes, 3 times per week (provided by a paraeducator)

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<sup>1</sup> According to the District, the annual goal for social/emotional/adaptive was inadvertently left off the IEP. (See the October 20, 2019 IEP.)

The IEP also provided for 29 accommodations and modifications for the Student's program that included more time to complete assignments, taking breaks, frequent checks for understanding, and minimizing unstructured transition times.

The IEP determined that the Student's placement in the least restrictive environment was a "self-contained, off-campus location...to ensure student safety and allow student to benefit from education."

The IEP also included a behavioral intervention plan (BIP) that described the target behavior as "[Student] rarely admits responsibility for his part in circumstances, incidents, and issues and/or does not seem to care." The BIP included antecedent and teaching strategies that included taking breaks, avoiding power struggles, and when appropriate, ignoring disruptive behavior from the Student. The BIP called for the staff to reinforce the Student with praise, but also moving the Student's seat, having a "cool down" period, and speaking with an administrator when the Student would have difficulties.

8. The District's response stated: "Student was not expected to participate in general education classes due to legal restrictions on attending the same school site as victims and other vulnerable students." In light of the legal restrictions imposed by the juvenile court on the Student, the District considered the following regarding where the Student received his services:

The District does not have any campus locations where young children are not present. In addition to these probation conditions, there was also concern about the potential for interactions between Student and a specific middle school student, since the District had been informed that contact between the two had been the subject of a previous probation violation. Therefore, it was concluded that on-campus instruction would have violated Student's probation and was potentially unsafe to certain other students.

9. The prior written notice, dated September 27, 2019, stated the following, in part:

Description of the proposed or refused action:

To provide [Student] with special education services off-campus for 2 (two) hours per school day (Tuesday, Wednesday, and Thursdays at Juvenile Court Services from 1:30 to 3:30pm) to enable him to be involved in and progress in the general curriculum, progress toward meeting IEP goals and complete activities specified in this modified IEP that support post-secondary learning, working, and living.

The reason we are proposing or refusing to take action is:

[Student's] behaviors of concern may pose a danger to himself, other students or adults. [Student] has recently returned to the district after an [out-of-District] self-contained program placement by outside providers due to his mental health needs and probationary status due to his juvenile sex offense. An evaluation by a [private psychologist] discussed the need for residential services and the district would like to begin school in this manner and re-meet to discuss whether he is benefiting from this placement or whether a residential program would increase his growth.

Description of any other options considered and rejected:

[Student's] mother expressed concern that [Student] is not given more access to general education. The team expressed interest in maintaining the safety of [Student] and other

students, and discussed that at this time the district wished to maintain a separate location for his education to allow him access to academics and credit while still maintaining his safety and the safety of other students.

The reasons we rejected those options were:

For safety reasons, [Student] requires a self-contained learning environment due to his emotional disturbances and resulting behavior problems as noted by his juvenile probation counselor and subsequent evaluation completed through [private psychologist] which was provided to the district for review.

Any other factors that are relevant to the action:

[Student] was privately placed at [in-patient treatment facility] in March/April 2019 until his health insurance expired in September 2019. Records of this residential treatment have not been provided as of the date of this IEP.

10. On October 1, 2019, according to the District, the Student was enrolled in the District. The Student began receiving services at the courthouse near the office of his probation officer who monitored his arrivals and departure. At the same time, the District was in the process of looking for a residential treatment facility that would meet the needs of the Student.

In response to the complaint, the District provided documentation of when the Student received services from October 1 through November 8, 2019. The documentation showed that the Student received his services, but often left early because the Student said he had to go to work. The Student declined offers to make up time by staying later than the two hours allotted for his services each day.

11. On October 7, 2019, the Parent emailed the District special education director (director) with the concern that the Student was not receiving the same amount of education as other students.

12. On the same day, the director replied to the Parent, stating:

I am working on reviewing other possible placements and [juvenile probation] was going to get a release of information from you so she could contact [residential treatment facility] and share that assessment that they have. Right now the IEP team determined the appropriate placement as the 1:1 setting with a special education staff member as an instructor. I will be contacting you within the next few days to set up a follow up meeting to discuss what other options may be available and give you an update on how he is progressing in his current placement.

13. On October 18, 20, and 21, 2019, the Parent emailed the director for the "legal reasons why [Student] was not allowed to attend school at the high school."

14. On October 20, 2019, the Parent emailed the director, asking if the District "was going to look at any other schools than [residential treatment facility]. This is going to further isolate [Student]. That's what all of you want but I'm not sure it's what is best."

15. On October 21, 2019, the special education teacher emailed the director the list of the three other agencies that were contacted to address the Student's need for a residential facility. On

the same day, the director replied to the Parent's question about other schools, stating that other schools and programs were contacted and residential treatment center "was one of our top selections." In another email to the Parent on the same day, the director stated:

This is the list I use when seeking alternative placements for students and many of these were contacted and interviewed by me or a member of my special education team...Regarding your question about whether or not he legally can or cannot be on the [high school] campus, my answer is that the IEP team determined his placement is off-campus. Since that is a legal document, that is his legal placement. Should you wish the team to reconsider placements for him, that pathway would be to call an IEP team meeting and we could discuss other placement possibilities. At this time, should the district determine that it wants to offer a full residential school placement (right now we are looking into a [residential treatment facility]) we will need to schedule an IEP team meeting anyway. At that IEP team meeting we will discuss the full scale of what a residential program is and looks like and what part the parent and teachers of the district play in that placement.

16. The District's response acknowledged the difficulty in finding an appropriate residential treatment facility that would accept the Student: "...As [juvenile justice evaluator] predicted, it was challenging to identify an appropriate placement that would accept the Student in light of his background."

17. Also, on October 21, 2019, the Parent emailed the director, stating she wanted to know what other options were available. The director replied to the Parent that "the opportunity for parent input will definitely be a component of the IEP meeting..." The Parent replied she wanted more residential treatment options and would research options on her own.

18. On October 23, 2019, the Parent emailed the director: "I am wondering if you have more options available to me? I'm not going to be railroaded into only one choice. Deciding you aren't going to educate [Student] doesn't mean you get to decide what happens to him..." The director replied:

I am more than happy to consider an alternative school you have found. This is the school the district has chosen but if you have another one you have chosen and it meets the needs just as well, I am happy to discuss that with you. I will work on a date and time to meet and go over the [residential treatment facility] option, but in the meantime, if you have a school that you feel is better suited, please let me know.

The Parent replied, "I will find other options. You haven't been educating my son so don't get to determine the needs."

19. On October 25, 2019, the Parent emailed the director, stating, "I'm looking into several schools and will let you know. Where he goes will be a mutual decision and not solely the School District that is failing him. I'm also speaking with a lawyer about all of this."

20. On October 28, 2019, the Parent emailed the director, stating:

This is what I'm willing to agree to. [Student] can go to [residential treatment facility] until he has completed all required sex offender treatment that remains with [therapist]. At that time we will select a military school for him to go to. He wants to complete his GED and

either join the military or go to trade school after. He is not going to be in [residential treatment facility] permanently.

21. The District's "Contact Attempt Report (Amendment)" form showed two contacts with the Parent regarding the upcoming IEP meeting scheduled for October 30, 2019. The first contact was made on October 25, 2019 and stated the Parent "can attend." The second contact was made on October 29, 2019 and stated, "Can not [sic] attend – permission to proceed." The meeting invitation form indicated that the invitation was sent to the Parent on October 29, 2019.
22. On October 30, 2019, the Student's IEP team, including the Parent, met to discuss extended school year and "components of the residential placement." The IEP continued to provide annual goals in the areas of math, written language, and social/behavior/adaptive, but the specially designed instruction was changed to the following:
- Math: 60 minutes, 5 times per week (provided by a special education teacher)
  - Social/Emotional/Adaptive: 60 minutes, one time per week (provided by a paraeducator and/or special education teacher)
  - Written Language: 60 minutes, 5 times per week (provided by a special education teacher)

Related services included the following:

- Transportation for parent participation in therapeutic services: 20 hours, 4 times per year
- Supervised transportation to residential school: 20 hours, one time per year

23. The prior written notice, dated November 6, 2019, stated the following, in part:

Description of the proposed or refused action:

[Student's] resident district will contract with [residential treatment facility] to meet his special education needs. This placement is facilitated through the existence of approved Nonpublic Agencies (NPA) located in and outside of the state.

The reason we are proposing or refusing to take action is:

Public schools are required to provide a free appropriate public education (FAPE) to students with disabilities ages 3-21 who are eligible for special education. Based on appropriate data, such as the evaluation received from [juvenile court] regarding [private psychologist] recommendations and information reviewed, the IEP team has determined the need for an out-of-state placement to benefit [Student].

Description of any other options considered and rejected:

Give any agency, school district or NPA that has an appropriate educational program and is located nearer to [Student's] residence than an out-of-state placement first consideration (i.e., explore educational options within the state).

The reasons we rejected those options were:

Discussed at the 10/30/2019 meeting, special education services within the state were determined inappropriate.

Any other factors that are relevant to the action:

The team discussed placement moving to a residential program or staying in the current placement and what constitutes least restrictive setting for [Student] to receive FAPE.



The costs for the educational services provided to [Student] are to be billed back to his resident district. The billing procedures for the costs of providing educational services to [Student] shall be performed or supervised by the NPA responsible for providing the program. District will provide transportation as needed for [Student] to access NPA and necessary transportation for therapeutic services with [Student] and parent to receive FAPE.

24. In November 2019, the Student began attending the residential treatment facility in another state, according to the District. Meanwhile, the Parent and District exchanged numerous emails about reimbursement of Parent visits to the residential treatment facility for therapy.
25. On December 13, 2019, the special education teacher emailed the Parent a copy of the progress report and asked the Parent "to review your son's individual goals." On December 14, 2019, the Parent replied, "Please do not contact me. The school district has violated [Student's] civil rights. Paying attention is free."
26. In January 2020, the District exchanged emails with the Parent about scheduling flights to the residential treatment facility.
27. On February 5, 2020, the "Contact Attempt Record" form showed that the District attempted to contact the Parent by phone to discuss initiating a reevaluation, but the Parent did not respond to the phone call. The Parent and the District continued to exchange emails about other matters.
28. The documentation provided by the District included a "Notice of Meeting" form, dated March 12, 2020, and addressed to the Student's father. The notice stated an "eligibility meeting" was scheduled on March 16, 2020. The purpose of the meeting was to "review evaluation reports" and "eligibility determination."<sup>2</sup> The "reevaluation consideration" box was not checked. There was no verification that the notice was sent to the Student's father. No similar meeting notice addressed to the Parent was provided in the documentation. The documentation also included a "Reevaluation Notification/Consent" form that stated the Student required a reevaluation. The form was addressed to "Parent(s)/Guardian(s)," but did not include the Parent's name or the Student's father's name. There was no indication that the reevaluation notification was sent to either the Parent or the Student's father.
29. The "Contact Attempt Record" form showed that the District attempted to contact each Parent once by phone on March 12, 2020, but there was no response.
30. According to the complaint, the Parent acknowledged she received notification of the evaluation meeting on March 13, 2020 by phone, but the date did not give her sufficient notice of the meeting to attend. The complaint provided no explanation why the March 12, 2020 notice did not provide the Parent with sufficient time to attend.

There was also no indication in the documentation provided in this complaint that the Parent responded back to the District regarding whether she would attend or that she requested the meeting be rescheduled.

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<sup>2</sup> The Student's parents were divorced.

31. On March 16, 2020, the school psychologist, general education teacher, special education case manager, and administrator met and reviewed existing evaluation reports to determine eligibility. Neither the Parent nor the Student's father attended the meeting. The District stated, "Because the Student's triennial evaluation was due, the District proceeded with a file review..." According to the District, since the Parent did not provide consent for a reevaluation, the evaluation team reviewed the Student's existing evaluation, classroom data, and treatment information from the residential treatment facility.<sup>3</sup> The evaluation team determined there was sufficient data to substantiate continued eligibility for special education services under the category of emotional behavioral disability.

32. The prior written notice, dated March 16, 2020, stated the following:

Description of the proposed or refused action:

The multidisciplinary team proposed that [Student] continues to be eligible for special education services under the category of Emotional Behavioral Disability.

The reason we are proposing or refusing to take action is:

The team reviewed the results of this file review and agreed that [Student] continues to demonstrate an Emotional Behavioral Disability, adversely impacting his educational performance to the extent that specially designed instruction warranted in order for him to make adequate academic progress toward general education and developmental expectations.

Description of any other options considered and rejected:

The team considered not continuing to qualify [Student] for special education services.

The reasons we rejected those options were:

A file review was considered sufficient to review Student's educational performance and eligibility. Student has been attending [residential treatment facility], a residential program out of state, since January 2020.<sup>4</sup> Progress notes and Treatment Plan Review from [residential program facility] demonstrate Student's continued need for special education eligibility and services.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Review of records, IEP team input.

Any other factors that are relevant to the action:

Parent participation was offered via phone conference and in-person. Parents did not respond to meeting invites. Paperwork, with a copy of the procedural safeguards, will be mailed to parents.

A meeting will be reconvened by the end of the 2019-2020 academic school year to discuss whether or not to change placement based on the growth seen in [residential program].

The IEP team will be considering the appropriateness of the IEP placement.

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<sup>3</sup> There was no indication from the documentation that the District sent a consent to reevaluate form to the Parent.

<sup>4</sup> According to other documentation provided by the District, the Student began attending the out-of-state placement in November 2019, not January 2020.

33. On March 17, 2020, the Parent emailed the special education secretary to inform the District that she had relocated to a different school district in Washington. The Parent requested "to know what was discussed and receive any paperwork involved" regarding the evaluation.
34. On March 20, 2020, the director emailed the Parent, stating:  
I would like to let you know that the meeting was held in which the evaluation was reviewed (file review) to determine whether or not [Student] continued to be eligible for services. He remains eligible for special education. No changes were made to his placement or services. It is recommended that an IEP be held later this school year to review progress in his program at [residential treatment facility] and discuss placement options and should those placement options be that he exit the residential program due to his success there, an exit plan and reunification plan should be created for a successful transition back to school. A date has not yet been proposed for an IEP, but a May or June meeting was discussed.
- A copy of the file review report will be mailed to the address you requested we send the report to.
35. On April 1, 2020, the Parent emailed the director and school psychologist about the evaluation report that she received and other unrelated matters. The Parent expressed concern about the reevaluation report's reference to schizophrenia.
36. On April 6, 2020, the Parent emailed the director and school psychologist, asking, "Who at [District] diagnosed my child as a schizophrenic...?" On the same day, the director replied to the Parent. The director explained that the term schizophrenia was referenced in the emotional/behavioral disability definition, but was not applicable to the Student.
37. On April 13, 2020, the Parent filed this complaint.

## CONCLUSIONS

**Issue 1: Appropriate Program** – The Parent's complaint stated, "Over a ten week period in the Fall of 2019, [District] provided an average of 2.5 hours of (off-campus) education per week to [Student], who is on an IEP [individualized education program], knowing he was in need of services." The Parent stated the Student was not receiving the same amount of schooling as other students in the District and disagreed with the Student not being able to attend regular school. The District denied the allegation. A district is required to develop an IEP that meets the unique needs of a student with a disability in the least restrictive environment.

Here, the Student's September 2019 IEP provided for special education services in the areas of math and written language based on the Student's educational needs. The social/emotional/adaptive goal was inadvertently left off the Student's September 2019 IEP, but the District provided services in the social/emotional/adaptive area. And, the error was corrected in the October 2019 IEP. The services were provided three times weekly for approximately two hours individually by a paraeducator under the supervision of a special education teacher. Individualized instruction, which was required by the Student, generally provides better access to general curriculum than group instruction, which in turn, reduces the need for more instructional time. Regarding the Student's self-contained, off-campus placement, the IEP team determined

the overarching need was safety for both the Student and other students in the school setting until a residential treatment facility could be found that would accept the Student. In addition, the location of the services was consistent with the Student's probation order. The IEP decision regarding the Student's services and placement was based on the Student's needs and abilities. No violation is found.

**Issue 2: Residential Placement** – The Parent's complaint stated, "Upon their refusal to educate my child where he would be at home after a traumatizing child [assault] experience, they only offered one school option that they would be willing to pay for." The District denied the allegation. A district must ensure that the parent has an opportunity to participate and provide input into educational placement decisions.

Here, the Student's October 2019 IEP provided for a placement in a residential facility. However, before the IEP meeting, the District and Parent discussed what residential facility the Student would attend. The District contacted programs both in and outside Washington to determine which facility could meet the Student's needs. Because of the Student's complex needs, the District acknowledged the difficulty the juvenile court report spoke to in finding an appropriate residential placement. The District eventually recommended a residential treatment facility in another state to the Parent. Although the Parent did not state any reason why she might disagree with the residential treatment facility, the Parent wanted to consider different options and told the District she would look into other facilities. The District encouraged the Parent to look at other facilities as potential options and was willing to discuss any residential placement options the Parent proposed. According to the documentation, the Parent did not present to the District any other facilities as options for the Student's placement and ultimately agreed to place the Student in the residential treatment facility proposed by the District at the October 2019 IEP meeting. There appeared to be no dispute regarding the placement at the time of the IEP meeting in October 2019.

The Parent had the right to provide input into the residential placement decision, including which residential treatment facility would be appropriate for the Student, but the Parent did not necessarily have the right to alone choose the residential placement, even if there were other residential placement options.<sup>5</sup> Placement decisions are an IEP team decision, and while the Parent is part of the Student's IEP team, ultimately the District has the responsibility to offer a free appropriate public education (FAPE), even in the absence of Parent agreement. Based on the documentation, the District provided the Parent with opportunity to provide input into the residential placement decision. No violation is found.

**Issue 3: Evaluation Meeting** – The Parent's complaint stated, "[District] notified me an evaluation of [Student] late in the day on 3/13/20 (Friday) that was scheduled for 3/16/20 (Monday). This (less than 1 business day) notice did not allow me proper time for parental participation." The District denied the allegation.

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<sup>5</sup> The residential treatment facility did require the Parent's consent to admit and provide treatment to the Student, which the Parent provided.

### Opportunity to Participate in the March 2020 Meeting

The school district must ensure that one or both parents are afforded the opportunity to attend meetings with respect to the identification, evaluation, educational placement, and provision of a FAPE to the student.

Here, the documentation showed the District contacted both the Parent and the Student's father on March 12, 2020 by phone about the evaluation meeting, but there was no response. Although it was unclear whether the Student's father received the meeting notice that was addressed to him, there was no documentation of a similar meeting notice addressed to or provided to the Parent. Yet, in the Parent's complaint, the Parent acknowledged she received notice of the evaluation meeting on March 13, 2020. The District met on March 16, 2020, and the Parent did not attend. In her complaint, the Parent stated she was not given sufficient notice to be able to participate in the meeting. However, the Parent did not inform the District she was unable to attend or that she wanted to reschedule the meeting. The documentation showed that the District provided the Parent with an opportunity to participate in the meeting, which the Parent tacitly declined by not responding to the District. No violation is found.

### Opportunity to give Input into the Reevaluation

A district must ensure that a parent is provided prior written notice a reasonable time before an evaluation occurs. Prior written notice ensures that the parent is aware of the decisions a district has made regarding proposing a reevaluation. It documents that full consideration has been given to input provided regarding the need for a reevaluation, and it clarifies that a decision has been made.

As part of any reevaluation, the IEP team, which includes the parent and other qualified professionals as appropriate, must, among other things, review existing data, including prior evaluations and information provided by the parent. The group, on the basis of that review and input from the parent, should identify what additional data are needed to determine eligibility, the educational needs of the student, and whether any additions or modifications to services are required to meet the student's annual goals. The review of existing data may be conducted without a meeting.

Here, the District informed the Parent of the March 16, 2020 evaluation meeting, but the Parent did not attend. The documentation provided was confusing regarding the purpose of the meeting. The meeting notice to the Student's father indicated that evaluation results would be reviewed, and eligibility determined but no "reevaluation considered." However, confusingly, no reevaluation had occurred yet, so it was unclear what evaluation results the group would be considering. Yet because the three-year reevaluation was due, the District completed a reevaluation at the meeting by a review of existing data and determined the Student continued to be eligible for special education, all without Parent input.

To begin, the District failed to provide the Parent with the required prior written notice before initiating the reevaluation. Prior written notice in this situation was required and the notice may have helped clarify the confusing documentation about the purpose of the meeting. Best practice

would have been to either reschedule when the meeting to involve the Parent when she did not arrive or provide the Parent with proper notification and an opportunity to provide further input before finalizing the eligibility decision. In proceeding with reevaluation and the review of existing data without the Parent, the District failed to make other attempts other than the March 16, 2020 meeting to obtain input from the Parent in the review of existing data before developing the evaluation report and finalizing the eligibility determination. A violation is found. The District is required to provide the Student's evaluation team written guidance regarding prior written notice for reevaluations and parent participation in the evaluation process. Because the Student is no longer a resident of the District, no Student specific corrective action is required.

### **CORRECTIVE ACTION**

By or before **September 15, 2020** and **October 9, 2020**, the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

By **October 2, 2020**, the District will provide written guidance to the Student's former evaluation team and District compliance coordinator. The written guidance will address meeting notices, prior written notices, and parent input into reevaluations. The written guidance must be approved by OSPI.

By **September 15, 2020**, the District will provide OSPI with a draft of the written guidance.

By **October 9, 2020**, the District will provide OSPI with documentation that the written guidance was provided to the Student's former evaluation team. The District will inform OSPI if any other actions are necessary to correct the violations and maintain compliance.

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 June, 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.)