

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-30

PROCEDURAL HISTORY

On March 23, 2018, 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 March 26, 2018, OSPI contacted the Parent to request additional information about the allegations. The Parent provided additional information later that same day.

On March 27, 2018, 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 April 18, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on April 19, 2018. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information. OSPI did not receive a reply from the Parent.

On May 21, 2018, OSPI requested clarifying information from the District. And on May 23, 2018, OSPI spoke with the District's attorney.

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

OVERVIEW

During the 2017-2018 school year, the Student was eligible for special education services and attended a private school, at which she had been placed by her individualized education program (IEP) team in the spring of 2016. In early February 2018, the Student was expelled from the private school. The Student's IEP team met four school days after the Student was suspended and the private school's director informed the team that the Student could no longer attend the private school. The Student's IEP team discussed alternative placement options and the District offered to provide 1:1 specially designed instruction and academic tutoring¹ while the team considered the placement options for the Student. The Parent declined to access the tutoring. In February and March 2018, the Parent considered five nonpublic agencies (NPAs) and toured four as potential educational placements for the Student. The Parent's first choice NPA was not accepting mid-year enrollments and ultimately the Parent decided that he wanted the Student placed at another one of the five NPAs. The Student's IEP team met in April 2018 and agreed to place the Student at the parent-selected NPA, and the District also offered to provide

¹ The District used "tutoring" throughout its response and documentation to indicate 1:1 academic and specially designed instruction provided by a certificated teacher and supervised by the Student's case manager.

compensatory services to make up for any lost instruction. The Student started at her new school on April 23, 2018.

The Parent alleged that the District failed to follow procedures for determining the Student's placement in the 2017-2018 school year, after she was expelled from the private school. The District denied this allegation.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on March 27, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUE

1. Did the District follow procedures for determining the Student's placement during the 2017-2018 school year, in accordance with WAC 392-172A-02060, after she was expelled from her previous placement at a private school?

LEGAL STANDARDS

Placement Procedures: A student eligible for special education's educational placement is decided at least annually. When making placement decisions a district must draw upon information from a wide variety of sources and ensure that any decision is made by a group of persons, including the parents, who are knowledgeable about the child, the meaning of the evaluation data, and the placement options. 34 CFR §300.116; WACs 392-172A-02060; *L'Anse Creuse Public School District*, 35 IDELR 284 (OCR 2001); *Seattle School District*, 34 IDELR 196 (SEA WA 2000). The selection of an appropriate placement for the student must be based on her IEP, least restrictive environment requirements, placement options that provide a reasonably high probability of assisting the student to attain her annual goals, and consideration of any potential harmful effect that the placement decision might have on the student or on the quality of services that the student needs. The placement team makes an appropriate placement decision for a student by considering: the student's educational program, as established by the IEP team and set out in the IEP; the specific option which the team selects from the district's continuum of alternative placements in which the student's IEP can be implemented; and the location that the team selects to implement the IEP. Unless the team decides otherwise, the student shall be educated in the school that they would attend if they were not disabled. 34 CFR §300.116; WAC 392-172A-02060.

Placement for the Provision of FAPE: Districts are authorized to enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC, or contract with other public agencies for special education and related services for students eligible for special education if the district establishes that it cannot provide an appropriate education for the special education student within the district. WAC 392-172A-04080(2). Any school district

contracting with a public agency for special education and related services must develop a written contract, interdistrict, or interagency agreement, which must include, but not be limited to the following elements: names of the parties involved; the name(s) of the student(s) eligible for special education for whom the contract is written; location and setting of the services to be provided; description of services provided, program administration, and supervision; charges and reimbursements, including billing and payment procedures; total contract cost; and other contractual elements, including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules and laws. WAC 392-172A-04085(1). The district must assure that both the parent(s) and the public agency have notice and are able to participate in any meeting or decision concerning the student's IEP.

District Responsibility to Offer an IEP Program and Placement: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. The IEP must be in effect before special education and related services are provided to an eligible student. 34 CFR §300.323; WAC 392-172A-03105. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §300.201; WAC 392-172A-06005. It must also ensure that it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.320; WAC 392-172A-03090(1)(d). The IEP must be implemented as soon as possible after it is developed. A school district cannot escape its obligation under IDEA to formally offer an appropriate educational placement by arguing that the student's parents expressed unwillingness to accept that placement. *Union School District v. Smith*, 15 F.3d 1519 (9th Cir. 1994), *cert. denied*, 513 U.S. 965, 115 S.Ct. 428 (1994).

Physical Location is Not Placement: Although the term "educational placement" is not specifically defined, the IDEA does require that students receive a free appropriate public education (FAPE) in the least restrictive environment (LRE). *A.W. v. Fairfax County School Board*, 372 F.3d 674, 681 (4th Cir. 2004). A student's educational placement should reflect the "mainstreaming" ideal of the LRE requirement. However, the precise physical location of where a student is educated does not necessarily need to be included in the statement of the student's placement. The LRE requirement directs that the student be assigned to a setting that resembles as closely as possible the setting to which he would be assigned if not disabled. *A.W. at 681* (citing *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 202-03, 102 S. Ct. 3034, 73 L.Ed.2d 690 (1982)). The IDEA's concern with location focuses on the degree to which any particular assignment segregates a student with a disability from nondisabled students, rather than on the precise location of the assignment itself. *A.W. at 681*.

FINDINGS OF FACT

Background Information

1. During the 2016-2017 school year, the Student was eligible for special education under the category of emotional behavioral disability, and in March 2016, the Student's individualized

education program (IEP) team placed her at a private school in a program with one-on-one instruction, paid for by the District.

2. On August 1, 2016, the Student's reevaluation group, including the Student's mother, met and found that the Student continued to be eligible for special education. The reevaluation report recommended that the Student receive specially designed instruction in the areas of social/emotional, behavior, and organization.
3. On October 5, 2016, the Student's IEP team met and developed the Student's annual IEP. The October 2016 IEP included goals in the areas of social/emotional, behavior, and organization and provided for specially designed instruction to address the goals. The Student's IEP provided her with a 1:1 "agency aide"² and included a behavioral intervention plan (BIP). The IEP also included an emergency response protocol.

2017-2018 School Year

4. At the beginning of the 2017-2018 school year, the Student continued to attend the private school and continued to be eligible for special education services under the category emotional behavioral disability.
5. The District's 2017-2018 school year started on September 5, 2017.
6. On October 5, 2017, the Student's mother and District IEP case manager met via phone and developed the Student's annual IEP. The IEP included annual goals and specially designed instruction in the areas of social/emotional, behavior, and organization. The IEP continued to include a 1:1 agency aide, who provided specially designed instruction in the area of organizational skills, and adopted the same BIP developed in October 2016. The Student also continued to have an emergency response protocol. The IEP stated that the Student would attend school 1,050 minutes per week (17.5 hours per week), and spend 100% of her time in a special education setting.
7. On November 28, 2017, the Student's IEP team met to discuss the Student's progress and graduation plan. The IEP team also discussed the possibility of having the Student attend one or two classes at her District neighborhood high school, but agreed that this was not an option at the time. The IEP team added an independent study physical education class to the Student's schedule and agreed to an extended school year (ESY) schedule of two hours per week. The IEP team amended the Student's IEP to state that the Student would attend school 1,110 minutes per week (18.5 hours per week), and spent 100% of her time in a special education setting. Finally, the team discussed "fading the 1:1 agency aide time and keeping data on the fading of the aide over time."

² According to the documentation provided by the District, the District contracted with an outside agency for an aide (i.e., paraeducator) who provide the Student with one-on-one behavioral support and specially designed instruction in organizational skills.

8. On February 6, 2018, the Student was suspended from the private school.
9. On February 7, 2018, the Parent and the Student's mother emailed the District support specialist for special services (support specialist) regarding the Student's behavior at the private school and stated that the Student "needs to be in school and not isolated due to manifestations of her disabilities." The support specialist responded that the Student's IEP team needed to meet and requested dates that worked for the Parent to meet. The support specialist also stated that the District could provide tutoring from a certificated teacher to ensure continued access to education. In an email from the support specialist to the District's associate director of special services, the support specialist stated that the Student's former private school would provide the instructional materials and the instruction would be monitored by the Student's case manager and provided by a certificated teacher. The Student would continue to receive behavior support from the contracted "agency aide."
10. According to the documentation provided by the District, on February 7, 2018, the private school sent the Parent a letter, which stated that the Student was suspended for violating the private school's conduct policy and that the suspension would continue until the Student's IEP team was able to meet.
11. On February 8, 2018, the support specialist contacted the Parent to schedule an IEP meeting to discuss the Student's placement and the Parent agreed to meet on February 12, 2018.
12. On February 12, 2018, the Student's IEP team met and discussed the Student's progress and the behavioral incident at the private school. The director of the private school stated that the Student could no longer attend the private school. The Student's IEP team then discussed alternative school options that could serve the Student's social, emotional, and behavioral needs. The team agreed that the Parent would tour some nonpublic agencies (NPAs) before making a decision. The District offered the Student tutoring by a certificated special education teacher with support from the 1:1 agency aide, until the team agreed on a new school, and the Parent suggested that tutoring occur at a local library. The team amended the Student's IEP to provide her with 240 minutes (four hours) a week of specially designed instruction from the certificated teacher.³ The District also offered and developed a plan for ESY services.
13. On February 13, 2018, the District sent the Parent a prior written notice that stated that the IEP team considered "possible schooling options." The prior written notice reiterated that the team agreed to tour NPAs and stated that online school was rejected by the Parent because it was too isolating. The prior written notice also recorded that the District offered "tutoring until a new placement is agreed upon," and that the Parent and District agreed that sessions would occur at a local library.

³ Amending the Student's IEP to provide her with four hours a week of instruction was a reduction from her previous private school placement, which provided her with 18.5 hours of instruction per week, 100% of which was in a special education setting. Therefore, the Student's least restrictive environment (LRE) did not change.

14. After the meeting on February 12, 2018, the support specialist emailed the Parent a list of NPAs in the State to consider.
15. The District was on break February 15-19, 2018.
16. On February 15 and 16, 2018, the support specialist, the Parent, and the Student's mother toured two NPAs (NPA 1 and 2). After the second tour, the Parent asked to tour additional NPAs.
17. On February 20, 2018, the Parent emailed the support specialist and stated that he was "putting together a list of schools we would be interested in" and included a list of four additional NPAs.
18. On February 21, 2018, the support specialist forwarded the Parent's list of schools to the associate director. The support specialist stated that three of the schools the Parent suggested would not be "doable" because they were similar to the Student's private school and had struggled to work with other District students with similar behaviors. The support specialist also stated that she thought the visit at NPA 2 went well, but that she needed to see what the Parent thought. The associate director responded that they could tour one of the Parent's other suggested schools (NPA 3) and also suggested an additional NPA (NPA 4) to consider.
19. On February 23, 2018, the support specialist emailed the Parent and requested written authorization from the Parent to allow the District to share the Student's records with NPA 3 and 4. The support specialist stated that the District needed to share the Student's IEP with the NPAs to "see if they can provide services" and stated that the NPAs would determine if there were openings for enrollment.
20. On February 26, 2018, the support specialist emailed the Student's mother and stated that a tutor⁴ had been arranged, and provided the days and times the tutor was available. The Parent responded and stated that the Student had "the right to a full education" and that four hours of tutoring per week "comes nowhere close to satisfying this right." The Parent wrote that the District needed to "move quickly" to place the Student back into a classroom, "otherwise we will escalate this matter quickly with our family legal team." The Parent also stated that he was planning to meet with a contact from the local news and that he would "await word that [the Student] can resume her education immediately and without further suspension."
21. Also on February 26, 2018, the support specialist forwarded the Parent's email to the District's director of special services (director) and the associate director, and asked about next steps. The support specialist stated that NPA 2 was willing to provide the Student

⁴ The District used "tutor" to refer to the certificated teacher who was scheduled to provide the Student with 1:1 academic and specially designed instruction. The certificated teacher was supervised by the Student's case manager and supported by the Student's 1:1 agency aide.

services, but that she had not yet shared that information with the Parent because the Parent had asked to tour additional schools.

22. Later on February 26, 2018, the support specialist emailed the director and the associate director and stated that she had not received authorization from the Parent to release the Student's records. The support specialist also requested guidance on whether she should set up tours at NPA 3 and 4.
23. On February 28, 2018, the support specialist responded to the Parent's February 26, 2018 email and explained that tutoring was a temporary measure to ensure the Student received educational services while the Parent was considering NPA options. The support specialist also wrote:

The district has moved quickly to find a new placement for [the Student], we toured [NPA 1] and [NPA 2] to which you responded by saying you wanted to look at more NPAs. We decided to honor your request to look at other NPAs, which I was in the process of organizing. I sent a follow up email on 2/23/18 with two [release of information (ROI)] to tour two additional NPA schools; [NPA 3] & [NPA 4]. I have not received the ROIs. [NPA 2] does have a high school placement available and can meet with both of you on March 8th or 9th at 1:30 to discuss steps moving forward. Please let me know if either of these days work for you.
24. According to the documentation provided by the District, on March 1, 2018, the District had not yet finalized who would provide the tutoring. The District stated that they owed the Student twelve hours of tutoring.
25. On March 1, 2018, the Parent emailed the support specialist and provided written authorization to share the Student's records with NPA 3. The Parent stated that NPA 4 was located too far away and that NPA 1 and 2 were not "good fits" for the Student.
26. On March 2, 2018, the support specialist emailed the Parent that NPA 3 could do a tour on March 19 or 20, 2018, but that the school rarely took mid-year enrollments. The Parent responded that he wanted to tour NPA 3 on March 19, 2018.
27. On March 19, 2018, the support specialist, the Parent, and the Student's mother toured NPA 3, and the Parent and the Student's mother decided that they wanted the Student placed there. The support specialist contacted NPA 3 after the tour and requested that the Student be placed at NPA 3 as soon as possible.
28. On March 22, 2018, the Parent emailed the support specialist regarding the status of NPA 3. The support specialist responded that she had contacted NPA 3 on March 19, 2018, immediately after the tour, but had not yet received a response. The support specialist reiterated that the District had offered to provide tutoring and that the sessions would be in the later afternoon at a local library.
29. On March 23, 2018, the support specialist emailed the Parent and the associate director and stated that NPA 3 did not have an immediate opening, but that the Student could enroll the

following school year (2018-2019). The support specialist stated that NPA 2 was still willing to meet with the Parent and discuss a possible placement. The Parent responded that “Disappointed does not begin to sum our feelings. [The Student] continues to miss school and her right to an education. We will not be meeting with you again, [support specialist].”

30. On March 26, 2018, the associate director emailed the Parent to schedule an IEP meeting to discuss the identified options. The Parent agreed to meet on March 29, 2018.
31. On March 29, 2018, the Student’s IEP team, including the Parent and Student, met. The team discussed the NPAs that the Parent had already toured and the Parent rejected all of the options. The team also discussed placement at another District high school. After the meeting, the associate director emailed the Parent and suggested a fifth NPA (NPA 5). The Parent responded and stated that he would like to tour NPA 5.
32. The District was on break April 2-6, 2018.
33. On April 9, 2018, the Parent emailed the associate director and stated that he was trying to schedule a tour of NPA 5.
34. On April 10, 2018, the Parent toured NPA 5. The Parent then emailed the support specialist and associate director that NPA 5 was a “great option” and that the Student would be able to start right away.
35. On April 12, 2018, Student’s IEP team, including the Student’s mother, met and discussed the Student’s enrollment at NPA 5 and amended the Student’s IEP. The IEP team agreed that the Student would be enrolled four hours per day to receive academic instruction and specially designed instruction in social/emotional, behavior, and organizational skills. The Student’s IEP also provided the Student with a weekly social skills group run by the District, and continued to provide the Student with a 1:1 agency aide. Finally, to make up for the loss of instructional time caused by the suspension, the District offered to provide four hours per day of academic instruction and a social skills group during the summer as compensatory services.
36. According to the District, the Student started at NPA 5 on April 23, 2018.

CONCLUSIONS

The Parent alleged that the District failed to follow procedures for determining the Student’s placement during the 2017-2018 school year, after the Student was expelled from her previous placement at a private school. A student’s placement is decided at least annually and placement is decided by a group of persons, including the parents, who are knowledgeable about the student, evaluation, and placement options. The selection of an appropriate placement must be based on the student’s IEP, least restrictive environment, and placement options. While a student’s IEP does need to specify the educational programming and services a student will receive, a student’s IEP does not need to include the precise physical location of where a student

is educated in the statement of the student's placement. Districts are authorized to contract with other public agencies, such as NPAs, for special education and related services if the district establishes that it cannot provide an appropriate education for the student within the district.

At the beginning of the 2017-2018 school year, the Student's educational placement was a private school chosen by her IEP team, which she attended approximately four hours per day with a 1:1 paraeducator. In February 2018, the Student was suspended and then expelled from the private school. The day after the Student was suspended, the District emailed the Parent to schedule an IEP meeting and three school days later, the Student's IEP team met. The Student's IEP team discussed alternative placement options that could serve the Student's social, emotional, and behavioral needs, and the District and Parent identified several NPAs to consider. Additionally, the District offered the Student four hours a week of tutoring, from a certificated teacher, supervised by the Student's case manager, and the 1:1 agency aide until the Student could be enrolled in a new school, and changed her IEP to reflect this. The same week as the IEP meeting, the Parent toured two NPAs (NPA 1 and NPA 2), but did not indicate agreement with either of the NPAs, despite NPA 2 having an available place for the Student. Two weeks after the IEP meeting, the Parent rejected the offer of tutoring as inadequate and declined to access any of the tutoring sessions. In late March, the Parent toured NPA 3, and then asked that the Student attend the school. However, because NPA 3 was not accepting mid-year enrollments, this was not an available option, and the Student's IEP team met again in March to discuss further options. The Parent rejected NPA 4 because of its distance from the Parent's home. The Parent then toured NPA 5 in April and ultimately, the team agreed to enroll the Student at NPA 5 and agreed that the Student would attend the school four hours per day with a 1:1 "agency aide." The Student started at her new school on April 23, 2018, and the District offered to provide services over the summer of 2018 to compensate the Student for the lost instructional time caused by the expulsion.

After the Student was expelled from her previous placement, there was a delay in returning her to her placement while the Student's IEP team worked to identify a new location for her special education services. After discussing placement options, the IEP team, including the Parent, agreed to amend the Student's IEP to provide her with four hours of tutoring services until the Student could be enrolled in an appropriate NPA. Later, the Parent expressed dissatisfaction with the offer of tutoring services and declined to access any of the sessions that the District offered. While the offer of four hours a week was a change (from 18.5 hours a week of instruction), it was not a substantial change in placement that necessitated a reevaluation because the Student's least restrictive environment did not change, based on the shortened day program with 1:1 instruction called for in her IEP. Further, the District's documentation substantiates that the interim placement was a temporary measure meant to ensure that the Student continued to access instruction while the District worked to find a new location for the Student to access special education services. Under the circumstances, the District acted reasonably to find the Student a new school. The Student's IEP team met multiple times, and the tours and opportunities to consider multiple NPAs demonstrates the District's commitment to identifying an appropriate school for the Student as expeditiously as possible while at the same time, providing opportunities for the Parent to participate in the decision. The Student is now enrolled

at a new school and the District offered to compensate the Student for any lost instructional time due to the expulsion. Ultimately, given that the Student's program of instruction and least restrictive environment in NPA 5 was substantially similar to her private school placement, OSPI believes that the Student's new school was not a change in placement, but a change in the physical location of her services. While ideally the Student would have been enrolled in a new school sooner, the District properly changed the Student's location when it agreed to enroll her at NPA 5.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of May, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)