

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-59

PROCEDURAL HISTORY

On June 9, 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 Olympia School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On June 11, 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 following issue: Did the District follow procedures for determining the Student's placement for the 2018-2019 school year, including considering the Student's least restrictive environment and a continuum of alternative placements.

Also on June 11, 2018, OSPI sent a letter to the Parent, informing her that OSPI had opened her complaint and specifying the issue for investigation. OSPI asked that the Parent notify OSPI as soon as possible if she disagreed with the issue identified for investigation. The Parent did not respond.

On June 18, 2018, OSPI received additional information from the Parent, raising an additional allegation that the District violated the IDEA in its education of the Student.

On June 18, 2018, OSPI forwarded a copy of the Parent's additional information to the District Superintendent and notified the District that an additional issue had been added to SECC 18-59. OSPI asked the District to respond to the following issue: Did the District follow procedures for responding to the Parent's request for records per WAC 392-172A-05190.

On June 29, 2018, OSPI granted the District an extension of time until July 10, 2018, to submit its response to this complaint.

On July 10, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on July 11, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 13, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On July 25, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on July 31, 2018. OSPI forwarded the information to the Parent on the same day.

On July 27, 2018, OSPI became aware that it had misinterpreted the information in the Parent's June 9, 2018 complaint, initially believing that the Parent's allegation was in regard to events which occurred in June 2018, specifically regarding a meeting which occurred on June 8, 2018. However,

in reviewing the Parent's July 13, 2018 reply, OSPI recognized that the Parent's allegation was in regard to events that occurred in June 2017, specifically a meeting on June 8, 2017. On July 30, 2018, OSPI contacted the Parent to inform her that OSPI had misinterpreted her original complaint, and that it could not address the June 8, 2017 meeting, as the meeting occurred prior to one year of the Parent filing her complaint, which was outside of the one-year timeline for a complaint investigation. OSPI also stated that it could still investigate whether the District followed procedures for determining the Student's placement for the 2018-2019 school year and the Parent agreed to this.

On August 1, 2018, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on August 2 and 3, 2018. OSPI forwarded the information to the District on August 3 and 6, 2018.

On August 3, 2018, the Parent notified OSPI that there was an error in her June 9, 2018 complaint in regard to the date of the June 8, 2017 meeting. The Parent clarified that the meeting was not held on June 8, 2017, but was held on June 16, 2017. Due to the meeting occurring on June 16, 2017, which was within the one-year timeline to investigate a complaint, OSPI determined it could investigate issues regarding placement related to this meeting.

On August 6, 2018, OSPI contacted the District to inform them of the error in the Parent's June 9, 2018 complaint and asked the District if it would agree to allow OSPI to expand the issue for investigation to include the Student's placement during the 2017-2018 school year. On August 7, 2018, the District agreed to the expansion of the issue and elected not to submit additional information.

On August 6, 2018, OSPI spoke with the Parent about her allegation regarding access to the Student's records, and informed the Parent about its conversation with the District in regard to expanding the scope of the placement issue. On August 7, 2018, OSPI notified the Parent of the District's agreement to expand the issue.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a District preschool program and was eligible to receive special education services. In May 2017, the Parent and the District began discussing the Student's placement for the 2017-2018 school year, when the Student would attend kindergarten, and the District provided the Parent with a tour of a special education developmental learning (DL) kindergarten classroom. The Parent then requested to visit a kindergarten classroom at the elementary school closest to the family's home, and the District arranged a tour. In June 2017, the Student's individualized education program (IEP) team met to develop the Student's annual IEP and address his transition to kindergarten. The District members of the IEP team determined that the Student should attend the DL kindergarten program during the 2017-2018 school year, but the Parent wanted the Student to attend a general education

kindergarten class at his neighborhood elementary school and receive special education services in a resource room during part of his school day, which she believed was his least restrictive environment. During the 2017-2018 school year, the Student attended the DL kindergarten program. In November 2017, the Student's IEP team developed a new IEP for the Student. The Parent asked that the Student's time in the general education setting be increased, but the District denied the request. In March 2018, the Parent requested copies of all education records related to the Student, and the District responded in April 2018, providing some documentation. Also in March, the IEP team met to discuss, among other things, the Parent's request that the Student attend his neighborhood school during the 2018-2019 school. The IEP team then held another meeting in May 2018, but no agreement was reached. In May 2018, the Parent again requested records, believing she did not receive all of the originally requested records in April 2018, and the District provided additional records on June 6 and 11. In June 2018, the Parent and the District participated in mediation, facilitated by the state third-party contractor, and agreed the District would conduct a functional behavioral assessment (FBA) and that the Student would continue to attend a DL program in the fall of 2018.

The Parent alleged that the District failed to follow procedures for determining the Student's placement, including considering the Student's least restrictive environment and a continuum of alternative placements. The Parent also alleged that the District failed to follow procedures for responding to the Parent's request for records per WAC 392-172A-05190. The District denied the allegations.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on June 10, 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.

ISSUES

1. Did the District follow procedures for determining the Student's placement, including considering the Student's least restrictive environment and a continuum of alternative placements?
2. Did the District follow procedures for responding to the Parent's request for records per WAC 392-172A-05190?

LEGAL STANDARDS

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. Unless the student's IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the student needs other arrangements, placement must be as close as possible to the student's home. A student should not be removed from his or her age-appropriate general education classroom solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060.

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 (1) through (3). 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. School members of the team may come to the table "with pre-formed opinions regarding the best course of action for the child as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions." *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016) citing *Nack v. Orange City Sch. Dist.*, 454 F.3d 604, 610 (6th Cir. 2006).

Least Restrict 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.

Continuum of Alternative Placement Options: Each school district shall ensure that a continuum of alternative placements is available to meet the special education and related services needs of students. The continuum required in this section must: include the alternative placements listed in the definition of special education in WAC 392-172A-01175, such as instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement. 34 CFR §300.115; WAC 392-172A-02055. Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a student eligible for special education, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. WAC 392-172A-01175.

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.

Change in Placement: One of the procedural requirements of the IDEA is that a reevaluation must be completed before a significant change of placement is made. *In re: Kent School District*, OSPI Cause No. 2016-SE-0111 (WA SEA 2016). The performance and skill levels of students with disabilities frequently vary, and students, accordingly, must be allowed to change from assigned classes and programs. However, a school may not make a significant change in a student with disabilities placement without a reevaluation. *Student Placement in Elementary and Secondary Schools and Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act* (Office for Civil Rights, August 2010). In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

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

The term "education records" does not include records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute; records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement; or, in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose. 20 USC §1232 (g)(4)(b).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

As a general rule, parents do not have a right under FERPA to review and inspect documents that are not education records, that is, information that is not personally identifiable to the parents' child. 20 USC §1232g(a)(4); 34 CFR §99.3. "Records that are not directly related to a student and maintained by an agency or institution are not 'education records' under FERPA and parents do not have a right to inspect and review such records. For example, a test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be a part of his or her 'education records.'" However, if a school were to maintain a copy of a student's test answer sheet (an "education record") the parent would have a right under the IDEA and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the response in some other adequate manner that would inform the parent. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007). A school district should, upon request, provide an opportunity for a parent to review education records and provide any explanations and interpretations necessary. This could include the interpretation of standardized test scores, such as reviewing the test questions with the parent. *Letter to Fonda-Fultonville (NY) Central School*, 31 IDELR 149, Family Policy Compliance Office (April 1998).

FINDINGS OF FACT

Background Facts

1. The Student was initially determined eligible for special education services in May 2015, under the category of developmental delay. The May 2015 evaluation report included the following information:
 - Adaptive – The Student’s adaptive skills were significantly delayed and it was recommended that he receive specially designed instruction to address using utensils, using/drinking from a cup, dressing, and a toileting routine.
 - Cognitive – The Student’s assessment showed him in the 11.5 months to 13.5 months range.
 - Communication – The Student’s communication skills were below the typical range, and he had restrictive expressive and receptive vocabulary and poor speech intelligibility due to low oral-facial muscle tone, difficulty with the strength, timing, and coordination of muscle movements for speech and the use of phonological process that impacts his ability to express himself clearly.

The evaluation report recommended that the Student receive services in the areas of social/emotional, cognitive – thinking/awareness, fine motor, adaptive, gross motor, and communication.

2016-2017 School Year

2. During the 2016-2017 school year, the Student continued to be eligible to receive special education and related services. The Student’s educational placement was a part-time special education preschool program that included general education peers.
3. Also during the 2016-2017 school year, the Student lived near a District elementary school (elementary school 1). Due to the proximity to the family’s home, the Parent wanted the Student to attend elementary school 1 during the 2017-2018 school year when he would begin kindergarten.
4. In early May 2017, the Parent visited a District elementary school (elementary school 2), which had a “Developmental Learning Classroom” (DL classroom) that was a potential placement option for the Student during the 2017-2018 school year.
5. On May 12, 2017, the Parent emailed the Student’s preschool IEP case manager, requesting to “see the team” the Student could have at elementary school 1 to further understand all options. The District then arranged for the Parent to visit elementary school 1.
6. Based on the documentation in this complaint, the Student’s annual individualized education program (IEP) meeting was originally scheduled for June 7, 2017 at elementary school 2, but was then rescheduled for June 16, 2017.
7. According to the Parent’s reply to the District’s response to this complaint, on June 1, 2017, the Student’s preschool teacher emailed her a draft June 2017 IEP, which included a prior

written notice. Neither the Parent nor the District provided a copy of the June 1 email as part of the documentation in this complaint.

8. On June 5, 2017, a District early intervention specialist emailed a District physical therapist, stating, "I think I have all your updates done. Please check them for errors!!" On June 6, 2017, the physical therapist responded that "[Student] (on not placed list) will be attending [elementary school 2] DLC (transition meeting is tomorrow)."
9. The District's documentation in this complaint included an invitation for a June 16, 2017 IEP meeting at elementary school 2. The invitation stated that the purpose of the IEP meeting was to: discuss transition services, discuss annual goal progress, develop extended school year services, review current IEP, review instructional needs, and determine placement. The invitation stated that the following people were invited to the meeting:
 - Parent
 - District executive director of student support and special education (executive director)
 - Preschool occupational therapist, physical therapist, and speech language pathologist¹
 - Preschool teacher
 - School counselor at elementary school 2
 - General education kindergarten teacher at elementary school 2²
 - DL classroom kindergarten teacher at elementary school 2
 - Special education teacher at elementary school 2
 - District occupational therapist, physical therapist, and speech language pathologist³
10. On June 9, 2017, a District special education program specialist emailed the DL classroom teacher at elementary school 2. The program specialist stated that a "review plan" meeting was scheduled for June 16, 2017 at elementary school 2, to review and/discuss the following:
 - Student's current individualized education program (IEP)
 - Transition services (to kindergarten)
 - Student's annual goal progress
 - Student's instructional needs
 - Determine placement
 - Develop extended school year (ESY) services plan

The Timeline for this Complaint Begins on June 10, 2017

11. On June 16, 2017, the Student's IEP team met to develop the Student's annual IEP. The June 2017 IEP included the following information about the Student's present levels of performance:
 - Social/emotional – the Student will attend to small group circle activities for 10 minutes with frequent (every 2-3 minutes) adult redirects. He can also sustain 5-6 minutes to a preferred

¹ The Parent agreed to excuse the preschool service providers from the IEP meeting.

² The Student had another general education kindergarten teacher from elementary school 2 during the 2017-2018 school year.

³ The Parent agreed to excuse the occupational therapist and physical therapist from the IEP meeting.

- table activity. The Student has begun to take turns and asks for a turn with peers, when prompted, on 1/4 opportunities.
- Adaptive – the Student follows four out of five steps needed for toileting successfully in the preschool setting, but had not eliminated in the toilet.
 - Cognitive –
 - Math: the Student can count to 2 consistently without prompting on 3/4 days and can match numerals 1 and 2 on 3/4 days.
 - Reading: the Student is able to identify 2 objects from pictures with 100% accuracy.
 - Communication –
 - Receptive Language: the Student continues to need a lot of prompting in the classroom to follow verbal commands, transition to activities, and get different items. Staff report that they try first with a verbal command and then sometimes a model if there is time, but the majority of the time they must use physical prompts to get him to start the direction (ex - turn his body toward the door when it is time to line up). The Student has increased his ability to identify common nouns and can now point when asked, but his accuracy is inconsistent.
 - Expressive Language: With the communication modes of American Sign Language (ASL) or verbal words, the Student continues to need a model/visual to imitate. The Student also uses a GoTalkNow application on an iPad. The Student used the application to request food items, label objects, greet peers, label the weather, and chose an activity which varying degrees of accuracy. The Student enjoys the iPad, but it still must be controlled by an adult, because Student pushes all the buttons and exits out of the speech application to try to access games. The Student can say letters “b, d, w” and an approximation of “m”.

The June IEP included annual goals in the areas of social, cognitive – math, cognitive – thinking, fine motor, adaptive, gross motor, and communication. The IEP provided for specially designed instruction and related services for the remainder of the 2016-2017 school year, and stated that the Student would participate in a general education setting 4.58% of his school week. The IEP also provided for specially designed instruction and related services for the 2017-2018 school year, when the Student would attend a District kindergarten program on a full-day schedule. The IEP provided for the following services in a special education setting for the 2017-2018 school year:

- Communication – 30 minutes 6 times monthly
- Adaptive – 20 minutes 5 times weekly
- Cognitive – Thinking/Awareness – 60 minutes 5 times weekly
- Social/Emotional – 60 minute 5 times weekly
- Fine Motor – 30 minutes 4 times monthly
- Physical Therapy – 20 minutes 1 time weekly
- Supported Classroom – 125 minutes 5 times weekly (provided by a special education teacher)

The IEP also provided for ESY services. The IEP stated that the Student would participate in the DL classroom during the 2017-2018 school year and would be included in appropriate activities in the general education program. The IEP stated that the Student would spend 19.32% of his school week in a general education setting, which averages to sixty-eight (68)

minutes per school day.⁴ The IEP also stated that the Student may receive some of his speech/language and physical therapy services outside the classroom setting. The IEP identified that the closest District elementary school that had a DL classroom was elementary school 2.

12. The Parent signed the June 2017 IEP, indicating that she participated in the IEP meeting, but also wrote "IEP Not Complete".
13. The District's documentation in this complaint included a prior written notice, dated June 16, 2017, proposing to initiate an educational placement, IEP, and "transition services". The notice stated that the IEP team was proposing that the Student would continue in the special education preschool program for the remainder of the 2016-2017 school year and that he would move up to kindergarten with the "support of a Developmental Learning Classroom". The notice also stated that the Student would participate in a general education class "to the extent possible." The notice further stated that the IEP team had considered and rejected "community preschool and kindergarten without special education services," because "those programs did not meet his educational needs." Additionally, the notice stated that the IEP team recommended that a reevaluation be initiated in the fall to determine any assistive technology needs for support.

2017-2018 School Year

14. The District's 2017-2018 school year began on September 6, 2017. At that time, the Student began attending the DL classroom at elementary school 2 and his June 2017 IEP was in place.
15. On September 15, 2017, the Parent emailed the principal at elementary school 2, expressing concerns about the Student's access to the restroom. The Parent also stated that at the June 2017 IEP meeting, she had been told that it would not be a problem for the Student to have a support person during time spent in the general education setting. However, she had now been informed that the DL classroom did not have a support person for him. The Parent wanted to know why this was, and what she could do to help get a support person for the Student. In response, the principal forwarded the Parent's email to the executive director and stated that he had inquired about adding an additional bathroom for students to access, but that it did not seem hopeful that a room could be easily converted. The principal also stated that he did not know how to respond to the Parent about her concerns.
16. On September 22, 2017, the Parent signed consent for the District to conduct a reevaluation of the Student. The consent form noted that a reevaluation had been requested by school staff due to changes in the Student's educational need, and the Parent wrote on the form that she was requesting the reevaluation in order to have the Student's IEP be more accurate and complete.

⁴ The Student's June 16, 2017 IEP states that during the 2017-2018 school year, the Student would attend school 1,760 minutes per week. 19.32% of 1,760 minutes per week is 340 minutes per week, or 68 minutes per school day.

17. On October 20, 2017, the Parent emailed the executive director, asking for copies of the meeting notes taken at "the last IEP meeting". The Parent stated that she did not know until recently she could request a copy of meeting notes.
18. On November 1, 2017, the Student's evaluation group, including the Parent, met to review the results of the Student's reevaluation and determined that he continued to be eligible for special education services under the category of developmental delay. The November 2017 evaluation report included the following information:
- General Education – The Student is in kindergarten, eats lunch in the lunchroom with all kindergarten and first grade students, and goes to recess with the whole school. The Student also attends assemblies with all students, and is given opportunities to attend music, PE, and library with his kindergarten peers.
 - General Education – Classroom teacher stated that her primary concern for the Student was his need to learn classroom routines, as well as increase his attention time in order to participate successfully in group activities. Based upon the teacher report, observations, file review, and input from school staff, it appears that the Student is appropriately placed in a supported classroom with opportunities for general education inclusion as his group/social skills increase.
 - Social/behavior – In the classroom, the Student sometimes engages in behaviors that are considered odd and he at times seems disconnected from his surroundings. He has difficulty making friends and is sometimes unwilling to join group activities. The Student has difficulty maintaining necessary levels of attention at school.
 - Adaptive – The Student's ability to make independent choices, exhibit self-control, and take responsibility when appropriate is an observable strength, as is his level of functioning inside the home, including cleaning, food preparation, performing chores, and taking care of personal possessions. The Student has difficulties with basic academic skills, including measurements and telling time. He also has difficulties with self-care activities, such as eating, dressing, and taking care of personal hygiene.
 - Cognitive/Academic – Assessment of the Student's cognitive processing abilities revealed an overall processing ability in the lower extreme in both verbal and non-verbal index areas. The Student's early academic score reflects a severe delay of ability with needs for support in all areas of academics.
 - Communication – Assessment results suggest a severe receptive and expressive language deficit; however, at times, the Student's responses to prompts made it unclear if he understood the directions given for subtests.

The November 2017 evaluation report recommended that the Student receive specially designed instruction in the areas of social/emotional, adaptive, math, reading, writing, communication, and gross motor. The report also recommended that the Student receive related services in the area of occupational therapy.

19. On November 20, 2017, the Student's IEP team, including the Parent, met to develop a new IEP for the Student. The November 2017 IEP included annual goals in the areas of social/emotional, adaptive, math, reading, writing, and communication. Some of the goals addressed the following:

- Reading – the Student will read and identify 10 sight words and phrases improving reading
- Math – the Student will match quantities from 1-20 to numerals
- Writing – the Student will copy lines, curves, and form letters
- Communication – the Student will make two-word requests using a voice out-put device
- Adaptive – the Student will improve independence skills in the area of toileting

The IEP provided for the following specially designed instruction in a special education setting:

- Physical Therapy – 20 minutes 1 time weekly
- Adaptive – 60 minutes 5 times weekly
- Math – 30 minutes 5 times weekly
- Reading – 30 minutes 5 times weekly
- Writing – 30 minutes 5 times weekly
- Social/emotional – 30 minutes 5 times weekly
- Communication – 30 minutes 3 times monthly

The November 2017 IEP also provided for the following related services:

- Occupational Therapy – 30 minutes 1 time weekly
- Supported Classroom – 120 minutes 5 times weekly (provided by a special education teacher)

The IEP stated that the Student would spend 7.17% of his school week in a special education setting, which is an average of 24 minutes per school day⁵, and that a small class size, modified curriculum and more time to process and complete assignments, were most beneficial for the Student's education. The IEP also stated that the Student would participate with his general education peers for PE, music, and library time, and would also attend recess and assemblies with his general education peers. The IEP further stated that "additional general education classroom time will provided as his group behaviors/social skills increase." The IEP noted that the Student would continue to attend elementary school 2 and participate in the DL classroom.

20. The District was on break November 22-24, 2017.

21. On November 27, 2017, the Parent emailed the DL classroom teacher, indicating that she planned to send the teacher her input regarding the Student's November 2017 IEP the next day. The Parent thanked the teacher for being patient, and "agreeing to wait to complete the [IEP]", so the Parent would have a chance to finish her "end" since she did not "have everything."

22. On November 28, 2017, the Parent emailed the DL classroom teacher with a list of changes she wanted made to the Student's November 2017 IEP. In regard to the Student's time in a general education setting, the Parent stated "I would like you to take away time from supported classroom and add specialties (PE, Art, Music, Library), lunch, recess, and choice time." The Parent asked that the service matrix in the Student's IEP be updated to provide the Student with a "support person" for ninety minutes five times weekly in the general education

⁵ The Student's November 20, 2017 IEP states that during the 2017-2018 school year, the Student would attend school 1,694 minutes per week. 7.17% of 1,694 minutes per week is 121.5 minutes per week, or 24.3 minutes per school day. It is unclear from the District's documentation why the length of the school week in the November 2017 IEP is shorter than the length of the school week in the Student's June 2017 IEP.

setting. The Parent stated that she was requesting the ninety minutes a day, at a minimum, because anything the Student did outside of academics should be spent in the least restrictive environment (LRE), so the Student could interact with typically developing peers. The Parent stated that if her request was denied, she wanted to receive, in writing, the reason the LRE was not possible. Additionally, the Parent asked for an outline of what the Student would be expected to do in the general education setting, what he was currently capable of doing, and what the Student struggled with so the IEP team could collaborate on a successful strategy for the Student.

23. Later on November 28, 2017, the school counselor emailed the executive director and the DL classroom teacher, stating that she was concerned about a parent essentially writing an IEP, and stated that the IEP team had written present levels of performance to reflect what the Student was currently able to do. The counselor also stated that the Student's IEP goals were designed to demonstrate growth, which they felt were rigorous, but achievable, and that each team member had spoken with the Parent and adjusted the goals already. Additionally, the counselor said that while some of the Parent's requests were "no issue", such as the monthly reporting, other were a "bigger deal". The counselor stated that the team – the DL classroom teacher, occupational therapist, physical therapist, speech language pathologist, and the general education teacher, and herself, did not recommend the Student spend ninety minutes per day in a general education setting. The counselor stated that staff had explained to the Parent at the November 20, 2017 IEP meeting, that the Student was already participating in activities (PE, music, library) the Parent was requesting and that choice time in the general education kindergarten class was academic time, not playtime choices. The general education teacher had explained this and showed the Parent examples of worksheets the students completed during choice time. The counselor also stated that the DL classroom teacher had reported that the Student was often not able to be successful for the full class time in PE and music, and the DL classroom teacher often had to bring the Student back to class. The counselor asked if the executive director and the teacher could meet to discuss strategies to help bridge the gap between the Parent's idea of an IEP and the school staff's.

24. On November 30, 2017, the District issued a prior written notice in response to the Parent's proposed changes to the Student's November 20, 2017 IEP. The prior written notice stated that the District was refusing to change the November 2017 IEP, but also stated that the IEP team agreed to "change a number of requests". The notice stated that on November 28, 2017, the Parent] proposed a number of changes to the IEP. The notice also stated that the IEP team had agreed to changing the following:

1. To tighten glasses to reduce throwing
2. Change reporting to monthly (already agreed)
3. Social goal related to peer awareness and personal space (already agreed and written)
4. Accommodation to provide visual and verbal directions
5. Accommodation to encourage use of glasses when he removes them
6. To allow Student to participate in grade level testing opportunities
7. District to purchase "Handwriting Without Tears" program and materials
8. An outline of general education expectations
9. Information regarding the Student's capabilities

The prior written notice also stated that the IEP team had considered and rejected the following changes to the IEP and listed the reasons the team was rejected the changes.

1. To identify a device and program the speech teacher proposes to use – because the device and program may change with the Student’s needs.
2. To identify the writing program to be used – because school staff are allowed to use a variety of evidence based curricula which will allow more opportunities for practice.
3. To provide written progress reports with teacher charts – because growth towards goals is already identified on goal sheet.
4. Specifying the amount of time for breaks – because this was not an accommodation, but an instructional strategy.
5. Specifying the amount of time and teacher response for extra time to respond - because this was not an accommodation, but an instructional strategy.
6. Specifics listed under reinforcement – because listing specifics limits staff to make educational decisions and changes over time.
7. Increasing Student’s general education time to 90 minutes per day – because the IEP team believed the current amount of time in general education is appropriate at this time. Team already agreed to seek opportunities to increase time as Student’s classroom behaviors increase.
8. Make all requested changes for at least eight weeks – because IEPs are written for a year in order to allow and demonstrate growth on goals.

25. On December 7, 2017, the Parent emailed the executive director regarding general education specialty classes and “everything else outside of academics” for the Student. The Parent stated that she had “requested in IEP for this”, but the request was denied. The Parent also stated that much research had shown the benefits for children with special needs participating in general education, the least restrictive environment, and that she understood that modifications can and should be used to support this. The Parent stated that she had asked for the following general education opportunities: recess, lunch, field trips, free choice, art, music, PE, library. The Parent said that her request had been rejected and that staff noted that they would send the Student to general education “basically on their judgement”. The Parent stated that she wanted the Student to be in the LRE as much as possible and was only requesting this for everything outside of academics, so the Student would have the opportunity to be involved with and learn from his typically developing peers. The Parent asked that her request be looked into further, and if it could not be, she was requesting a detailed written reason as to why, and for the District to participate in mediation. In response, the executive director stated that he would meet with staff at the Student’s elementary school, and asked if the Parent was able to meet with him the following week. The Parent later agreed to meet with the executive director on December 11, 2017.⁶

26. The District was on break December 18, 2017 through January 1, 2018.

27. On February 2, 2018, the DL classroom teacher emailed the Parent and attached a copy of the progress reporting regarding the Student’s annual goals. The progress reporting indicated that the Student was on track to meet all his annual goals “due to sufficient progress being

⁶ Based on the documentation in this complaint, it is assumed that this meeting occurred.

made”, with the exception of one of his math goals. The progress reporting for the math goal indicated that the Student demonstrated emerging skills in this area, but may not achieve the goal within the duration of the IEP.

28. On February 12, 2018, the Parent emailed the executive director, stating that she had questions for the executive director and asked to schedule a meeting to discuss “something as well”. The executive director and the Parent then exchanged additional emails and agreed to meet on February 16, 2018.
29. On February 16, 2018, the Parent emailed the Student’s general education teacher and the DL classroom teacher and attached a letter. In the letter, the Parent stated that she was requesting that the Student attend an “all-inclusive school” within the District starting in first grade during the 2018-2019 school year. The letter also included references to special education regulations and information regarding a student’s least restrictive environment. The letter also included information about the benefits of inclusion in a general education setting. The Parent stated in the letter that she hoped this was “enough” and that she was willing to help the District with resources for training, ideas for curriculum, peer-reviewed research, and anything else she could. The Parent relayed that her goal was for the District to become more inclusive for all students.
30. On February 20, 2018, the Parent exchanged several emails with District staff. These emails are summarized below.
 - The Parent emailed the school counselor, stating that an evaluation was not needed for placement, so she was not requesting a new evaluation. The Parent indicated that she was only requesting for the Student to transition to his home school, elementary school 1, for the 2018-2019 school year. The Parent said that placement was based on an IEP and the Student’s placement was determined before his kindergarten IEP (June 2017 IEP) was developed, and that this process should have been reversed, IEP development then placement determination. The Parent stated that she understood that school was out when the IEP team met to develop the Student’s June 2017 IEP, but that the team agreed to conduct a new evaluation for kindergarten. The Parent stated that she was requesting the Student’s placement be in his least restrictive environment, which was elementary school 1, his home school, with his general education peers. The Parent said that she was requesting the placement with needed supports based on the Student’s IEP. The Parent stated they would not know if the Student would succeed unless they tried. The Parent further stated that she was willing to have a meeting about this, and was also requesting that the “transition meeting” take place well before the school year ended, so that if there needed to be adjustments to the first grade IEP, the IEP team at elementary school 1 would have time.
 - The school counselor forwarded the Parent’s email to the executive director.
 - The executive director emailed the Parent, stating that as he had explained when they met⁷, the District could not make a substantial change in services without a reevaluation. The executive director included information about the legal requirement to conduct a reevaluation before making a substantial change in placement. Additionally, the executive director stated

⁷ It is assumed the executive director is referencing his meeting with the Parent on February 16, 2018.

that an IEP and placement were not separate processes, and that the Student's placement for kindergarten was not made before his kindergarten IEP was developed, but was determined at the IEP meeting. The director said that the June 2017 IEP provided for placement in special education for 1,420 minutes per week, and that this level of service required placement in the DL classroom at elementary school 2. The Student's IEP was then reviewed on November 20, 2017, and at that time, the Student's special education services were increased minimally to 1,573 minutes per week. The executive director further stated that each student's LRE was determined individually for that student via the IEP process, and at this time, the Student's LRE, as determined by the IEP process, was described in the "special education and related services" portion of the IEP. In addition, the executive director stated that the first step would be to convene the IEP team, and then if the team determined that a change of placement should be considered, a reevaluation would need to be conducted to address any substantial change being considered.

- The Parent responded that the types of services were not changing.
- The executive director replied that elementary school 1 was not able to provide the amount of services currently described in the Student's IEP. The executive director stated that because the Parent was requesting a review of those services, the IEP team should convene to consider the Parent's request, and that if the team determined that the current level of service was in need of substantial change, either in amount or type, a reevaluation would be required.
- The Parent responded that a child with a disability could be removed from education in age-appropriate regular classrooms just because he or she needs modifications to the general curriculum.
- The executive director replied that again, the IEP team made these determinations, and stated that if the Parent wanted to discuss changes to, or modifications of, the Student's current IEP, to please contact the DL classroom teacher to arrange for a meeting.
- The Parent forwarded her November 28, 2017 email, regarding changes she wanted to the Student's IEP, to the DL classroom teacher.

31. On March 6, 2018, the Parent emailed the elementary school principal and attached a letter, requesting all education records pertaining to the Student. The Parent also requested a list of the types and location of education records that were collected, maintained, or used by the District. The letter stated that the request included "any and all items that contained personally identifiable information" about the Student, Parent, or Student's father. Additionally, the letter stated that the request included, but was not limited to multiple types of records, which included progress reporting, report cards, emails, letters, notes, requests and notices for IEP meetings, medical and school health records, notes from service providers, class schedules, evaluation reports, meeting notes, and IEPs.

32. On March 8, 2018, the Parent emailed the DL classroom teacher, the school counselor, and the executive director, asking that an IEP meeting to discuss and review the Student's November 2017 and to discuss possible revisions. The Parent also requested that the Student's "transition to 1st grade" IEP meeting occur in May 2018, and that the meeting be scheduled by the first of May. The Parent expressed that she wanted to ensure she had

enough time to adequately review and request additional supports, services, and goals, so that changes could be completed before the end of the 2017-2018 school year. In response, the elementary school counselor stated that it was her understanding that there was an IEP meeting scheduled after the parent/teacher conference on March 28, 2018, to discuss the Parent's concerns, and asked if this was correct. The counselor also stated that IEP teams normally did not hold transition meetings between grade levels, but usually held transition meetings between preschool and elementary school and elementary and middle school, etc. The counselor stated that IEPs were written for a year's duration, and that the Student's IEP would "expire" on November 20, 2018. However, when an IEP team felt that changes were needed to an IEP, they could amend the IEP or develop a new one. The counselor stated that the IEP team could discuss this at the March 28 IEP meeting.

33. On March 12, 2018, the District administrative staff person contacted the Parent about her March 6 records request, as the Parent had indicated she wanted both educational records and public records. The Parent clarify that she was requesting the Student's education record for the 2016-2017 school year and 2017-2018 school year through March 6, 2018. The Parent also clarified that she was requesting public records relating to the Student from May 2017 through March 6, 2018.
34. On March 14, 2018, the Parent emailed the school counselor, asking for a copy of the Student's November 2017 IEP, and in response, the counselor provided a copy of the IEP.
35. On March 16, 2018, the Parent emailed the DL classroom teacher, school counselor, and other staff at the elementary school and attached a copy of an IEP the Parent had written for the Student. The Parent stated she hoped this made things easier and asked that the proposed IEP be forwarded to the physical therapist because she did not have the therapist's email address. Among other things, the proposed IEP stated that for the 2018-2019 school year, the Student would:
 - Participate, while staff supported, with his general education peers for PE, Music, Art, Lunch, all gen-ed school offered (Field trips, tutoring, sports, etc), additional 10 min/daily within General Education in a variety of activities (circle time, calendar time, free-choice) Gen-Ed teacher to decide daily which activity [the Student] can inclusively attend for 10 minutes, and communicate her decision to with Sped teacher at least a day prior on the time of activity and the expectations of the activity, so the Sped teacher can offer [the Student] verbal and visual information of expectations before his participation.
36. Also on March 16, 2018, the District's public disclosure officer emailed the Parent and attached a letter in response to the Parent's March 6 records request. The letter noted the March 12 conversation with the Parent to clarify her request. The letter stated that the Student's cumulative record was ready to be picked up at the District office, and that as previously communicated to the Parent, the District estimating having "responsive, non-exempt public records" available for the Parent to review by April 24.
37. On March 28, 2018, the Student's IEP team met to discuss the Student's educational program. The following people attended the meeting:

- Parent
- Parent's advocate
- Special education teacher
- Speech language pathologist
- Occupational therapist (September 2017 – mid-March 2018)
- Occupational therapist (Late March 2018 – present)
- Counselor (acting as District representative)

Based on the meeting notes, the team discussed that the Parent wanted the Student to attend his home school for the 2018-2019 school year. The notes stated:

Parent is requesting student to be in his home school for next year, however, a new evaluation is needed via email with [executive director] per parent. Evaluation was just completed last year. Parent asked for clarification on how the evaluation and team decided placement. Team does not recommend home school due to lack of appropriate programming required to support student in educational environment.

Parent would like student to be in home school in a [general education] setting in the least restrictive environment. Counselor describes current setting with opportunities to be with [general education] population when appropriate. Counselor expounded that the student is not ready for resource or [general education] and teacher agreed. Parent is wanting the opportunity for [general education] regardless. Teacher stated that student may be more restrictive within [general education] with a one on one support. Parent would like more opportunities to be around typical peers.

[Parent's advocate] asked about current [general education] settings: PE, recess, library lunch, music, and events as well as 40 minutes on Fridays with plan to increase on Thursdays and Fridays – with a paraeducator. Student demonstrates throwing, hitting, spitting behaviors when in [general education] this year. [The Parent's advocate] asked about minutes of inclusion decreased from last year. Teacher reported that preschool minutes and kindergarten day ha[s] difference different minutes which is why there is a discrepancy....[Parent's advocate] stated that an IEP is adaptations and accommodations, goals but does not determine placement. Counselor states that place[ment] determination is determined by the team including parent, receiving, and current setting. Parent stated that half the students were general education students and half were IEP within the preschool setting last year. Teacher states that he needs less one on one support in the [special education] classroom than the general education setting. Parent would like full inclusion with resource groups. The counselor stated that resource students are learning at a faster pace and would need to be one on one in the [general education]/resource setting.

[Parent's advocate] clarified the current [DL] classroom is [specially designed instruction] note a behavior program. Counselor stated that all services are not provided in all buildings. Counselor stated the student would not receive Edmark instruction as a [general education] curriculum – they are using Wonders, as an example however, parent states the [general education] teacher can modify.

The meeting notes also stated that the Parent requested that another IEP meeting be held to address the modified IEP she submitted to the team on March 16, 2018. The IEP team agreed to a "future time" to discuss the Student's IEP goals, as the Parent had indicated that the

Student had not made progress in the goal areas. However, the District members of the IEP team indicated that the Student was steadily progressing.

38. Based on the documentation in this complaint, the District and the Parent agreed to hold another IEP meeting on May 16, 2018.

39. The District was on break April 2-6, 2018.

40. On April 9, 2018, the District's public disclosure officer sent the Parent another letter in response to the Parent's March 6 records request. The letter stated that the District had completed its search for public records in response to the Parent's request and that the records were ready for the Parent to review at the District office.

41. On May 13, 2018, the DL classroom teacher emailed the Parent a draft copy of the Student's IEP. The teacher stated that she had not yet completed a prior written notice, because the IEP team would do this together, when the team met. The May 2018 draft IEP proposed that the Student would spend 13.3%⁸ of his school week in a special education setting and stated:

[The Student] is most successful in [a] small class size environment with modified curriculum, increased time to process and complete assignments and staff assist. He attends lunch, recess, assemblies, PE, library and music with his general education class. At this time, [the Student] joins his general education classroom during choice time activities that are appropriate for [the Student].

42. Later on May 13, 2018, the Parent emailed the District members of the IEP team and attached an agenda for the May 16, 2018 IEP meeting. The agenda included: 1) request for a functional behavior assessment (FBA) and behavior intervention plan (BIP) with referrals; 2) placement for next school year; 3) goal revisions; 4) accommodations & modifications page; and, 5) data.

43. On May 16, 2018, the Student's IEP team, including the Parent, met to discuss the Parent's concerns and requests. Based on the District's May 16, 2018 prior written notice, at the meeting, the Parent requested the following: 1) the meeting be led by the Parent; 2) an FBA be conducted; 3) a BIP be created for the Student; 4) the date of the IEP meeting be backed dated to November 20, 2017; and, 5) that the District participate in mediation. The notice stated:

The team reported they did not feel an FBA was required to understand [the Student's] behaviors in a school setting. The majority of any misbehaviors were categorized by probable "Escape" from frustrating/activities which were above his developmental level or "Escape" from a non-preferred task. A full discussion regarding the FBA and BIP was delayed to the social/emotional performance (meeting ended before we reached that point).

The notice also stated that the District had considered and rejected:

- The Parent leading the meeting, because the case manager elected to lead the meeting and follow the IEP process in order;

⁸ The proposed May 2018 IEP stated that the length of the school week was 1,710 minutes per week.

- Conducting an FBA, because the school team determined they already had information needed to determine the function of behaviors seen in the school setting; and
- Backdating the new proposed IEP to November 2017, because meeting dates must reflect the actual date of meetings held.

Additionally, the notice indicated that the District agreed to set up a mediation session facilitated by the state's third-party mediation contractor. The mediation session was later scheduled for June 8, 2018.

44. On May 22, 2018, the Parent made a public records request, including requesting all notes regarding the Student, the Parent, and the Student's father that were taken during any meetings, phone calls, multi-disciplinary meetings, and observations from September 1, 2016-March 6, 2018. In response to the Parent's request, District staff exchanged several emails, which are summarized below:

- May 23, 2018 – The District's public disclosure officer emailed the executive director and the elementary school principal, asking them to check their notes, and check with staff who were involved with the Student, and forward any copies of notes to the public disclosure officer.
- May 23, 2018 – The principal forwarded the public disclosure officer's email to the school staff.
- May 23, 2018 – The DL classroom teacher replied, asking if the request included emails, data sheets, goals, charts, etc.
- May 23, 2018 – The principal clarified, that emails were not need, but the other records were needed.
- May 31, 2018 – The public disclosure officer emailed a District staff member regarding records for the Student during the time he was in preschool during the 2016-2017 school year.
 - May 31, 2018 – The staff member responded that he did not have any records.
- May 31, 2018 – The public disclosure officer sent a follow-up email to the executive director and the principal.
 - May 31, 2018 – The executive director replied that he did not have any notes.
- May 31, 2018 – The principal sent a follow-up email to the school counselor.
 - May 31, 2018 – The school counselor responded, stating that she did not have any notes, only emails, which the District's administrative offices had access to.
- June 1, 2018 – the principal emailed the executive director, stating that the DL classroom teacher was wondering if the Parent's records request included data that the teacher had collected related to the Student's progress toward his goals.
 - The executive director responded that the teacher's data was already reported in the IEP progress reporting, so he thought that would suffice.

45. On June 6, 2018, the District public disclosure officer emailed the Parent, stating that the District has searched for additional notes as requested by the Parent, and the officer was attaching the additional records she was able to find. The records included:

- March 28, 2018 IEP meeting notes
- March – May 2018 Data Sheet: regarding the Student's participation in lunch time routine (getting lunch card, taking/carrying tray, choosing items, sitting at table, eating lunch, using utensils)
- December 2017 – May 2018 Data Sheets: regarding matching quantity to numerals
- October 2017 – April 2018 Data Sheets: regarding quantities of more or less
- December 2017 – May 2018 Data Sheets: regarding identifying ten sight words/phrases

- March – May 2018 Data Sheets: regarding social/emotional goals of refraining from throwing toys, inappropriate play with peers, remaining seated and focused
- April – June 2018 Data Sheets: regarding toileting routine
- October 2017-May 2018 Data Sheets: regarding copying lines, curves, and letters

The disclosure officer stated that the March 28 meeting notes had also been sent home with the Student on April 12, 2018. Additionally, the officer stated that this concluded the District's response to the Parent's public records request. In response, the Parent asked that if the officer received the remaining documents the Parent had requested, that the officer email them to the Parent.

46. On June 7, 2018, the public disclosure officer emailed the school principal, asking if he was able to find any other notes, records, etc. for the Student. The principal responded that when he spoke with the necessary people, they indicated that everything had been made available and there were no additional notes.
47. On June 8, 2018, the Parent and the District participated in a mediation session facilitated by the state's third-party mediation contractor and reached a partial agreement. In relevant part, the agreement included:
 - The District agreed to conduct an FBA under supervision of a District behavioral specialist by the end of October 2018, and that an FBA planning meeting would occur by September 21, 2018.
 - The District and Parent agreed to keep the Student's current IEP in effect through November 20, 2018.
48. On June 9, 2018, OSPI received the Parent's request for this citizen complaint, alleging that the District failed to follow procedures for determining the Student's placement.
49. On June 11, 2018, the District's public disclosure officer sent the Parent a letter in response to the Parent's March 6, 2018 records requests. In the letter, the officer stated that:

On May 22, 2018, you indicated in an email that you believe that there were additional responsive records not previously provided to you. I contacted staff that work with your son as well as [the executive director]. [The executive director] was able to locate the attached work that [the Student] had recently completed. I was also able to locate two notes that were in the [the Student's] IEP online file which are also attached. Nothing has been redacted or withheld as exempt from public disclosure. This concludes the District's response to your public records request. Please contact me if you should have any questions.
50. On June 13, 2018, the Parent emailed the District's public disclosure officer, stating, "I know I agreed with you over the phone to wait before filing a complaint for a day or two. Today, makes 2 days, so I was curious if [the executive director] felt able to get the remaining records?" The Parent stated that she needed the records in order to make decisions to advocate for the Student. The Parent also stated that she understood that the officer had said everyone had replied back, saying they did not have anything, but the Parent was hoping in waiting the last two days that she would receive better responses, so that the records could

be delivered to her. The Parent stated that she appreciated the officer's time in this matter, and asked that the officer respond by the 3:00 p.m. that day. In response, the officer stated that she had found several notes and would email them to the Parent by 1:00 p.m.

51. Later on June 13, 2018, the District's public disclosure officer emailed the Parent and attached a letter in response to the Parent's March 6, 2018 records request and service logs from the 2017-2018 school year, completed by the Student's physical therapist and occupational therapist.
52. The District's documentation in this complaint included an undated email from the school counselor to the Parent regarding consent for an FBA. The counselor stated that she was putting a copy of the consent form and procedural safeguards in the Student's backpack, and was also leaving a copy of the consent form in the school office if the Parent planned to come to the school that day. The counselor also attached a copy of the consent form to the email.
53. On June 18, 2018, OSPI received a second citizen complaint from the Parent, alleging that the District had not fully responded to her requests for records.
54. The District's 2017-2018 school year ended on June 19, 2018.
55. On August 6, 2018, OSPI spoke with the Parent about the records request issue and the Parent clarified that she had not been provided a copy of data taken by staff in assessing the Student as part of his fall 2017 evaluation, or in assessing his progress toward his annual goals. The Parent also stated that she was not provided with a copy of the Student's home/school communication notebook, in which the Parent and school staff wrote information about the Student.

CONCLUSIONS

Issue 1: Placement – The Parent alleged in her complaint that the District predetermined the Student's kindergarten placement for the 2017-2018 school year, when it placed the Student in a DL kindergarten classroom at elementary school 2, instead of a kindergarten program at elementary school 1, which was the Student's neighborhood elementary school.

A district must ensure that a parent is a member of any group that makes decisions on the educational placement of the student. When determining the educational placement of a student, the placement decision shall be determined by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. School members of the team may come to the table with pre-formed opinions regarding the best course of action for the student, as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions.

Tour at Elementary School 2 (DL Classroom) – The Parent alleged that the District only arranged for her to visit the DL kindergarten classroom at elementary school 2, which the Parent offered as evidence that the District predetermined the Student's kindergarten placement. There is no requirement that a district arrange for a parent to visit a placement option prior to an IEP team

determining a placement. Therefore, the District was not required to allow the Parent to visit elementary school 2 prior to the June 16 IEP meeting when the Student's kindergarten placement was to be determined, and the fact that the District initially only arranged for the Parent to visit elementary school 2, is not a sufficient basis to substantiate that the District predetermined the Student's placement. It is also noted that once the Parent requested to visit elementary school 1, the District arranged a visit, which supports that the District was willing to discuss more than one placement option for the Student.

Staff Statements Regarding Placement – The Parent alleged that District staff told her that elementary school 1 was not an option for the Student. Specifically, the Parent states that when visiting elementary school 1, staff told her that elementary school 1 did not have the supports needed for the Student. The District disputes that staff members told the Parent that elementary school 1 was not an option for the Student. Staff members are allowed to provide information about the type of supports available at a school and how the available resources may or may not address a student's needs, and school members of an IEP team may come to the table with pre-formed opinions regarding the best course of action for a student as long as they are willing to listen to the parents and parents have the opportunity to make objections and suggestions. Here, the opinions of the staff members at elementary school 1, which were given prior to the June 16 IEP meeting, do not in and of themselves substantiate that the District predetermined the Student's placement. Additionally, it is noted that these staff members were not part of the Student's IEP team that determined his kindergarten placement.

Staff Email – The Parent alleged that the June 5 and 6, 2017 emails exchanged by staff members shows that the District predetermined the Student's placement. The June 5 and 6 emails indicate that on June 5, 2017, the Student was on a "not placed list", which is evidence that his placement was not determined at that time. While the physical therapist may have believed that the Student's placement had already been determined on June 6, this alone does not substantiate that the District predetermined the Student's placement. Additionally, the physical therapist did not attend the June 16 meeting, but was instead excused, and therefore, was not part of the team that determined the Student's placement.

Continuum of Placement Options – The Parent alleged that the District failed to consider a continuum of placement options for the Student, including a placement at elementary school 1, the school closest to his house, which the Parent believed was the Student's LRE.

When determining placement, the IEP team must consider the placement option(s) that provides a reasonably high probability of assisting the student to attain his annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he needs. Unless the student's IEP requires some other arrangement, the student must be educated in the school that the student would attend if not disabled. If the student needs other arrangements, placement must be as close as possible to the student's home. A continuum of alternative placement options include instruction in general education classes, special education classes, special schools, home instruction, and instruction in hospitals and institutions; and make provision for supplementary services such as resource room or itinerant instruction to be provided in conjunction with general education classroom placement.

Here, the Student's IEP team met on June 16, 2017. Based on the meeting invitation and emails exchanged by staff, one of the purposes of the IEP meeting was to determine the Student's kindergarten placement. According to the Parent's complaint, at the IEP meeting, the IEP team did not discuss a continuum of placement options for the Student, including what supports he would need to attend a kindergarten program at elementary school 1. The District denies the Parent's allegation. The documentation does not include meeting notes from the June 16, 2017 IEP meeting; therefore, it is difficult to determine what the IEP team's discussion at the IEP meeting entailed. While the documentation in this complaint does include a June 16, 2017 prior written notice, which addressed the June 16 meeting, this too does not provide a full picture of what was discussed at the IEP meeting. In regard to the Student's placement, the notice states only that the team considered and rejected "kindergarten without special education services" because the program would "not meet his educational needs". The District is required to provide parents with prior written notice, which includes a description of the action proposed or refused by the District, and an explanation of why the District proposes or refuses to take the action. Here, the District's June 16 notice does not address whether the District considered whether the Student could receive special education services in a resource room setting at elementary school 1, which was what the Parent was requesting. There is no indication in any of the documentation in this complaint that the Parent ever requested that the Student attend kindergarten without receiving special education services. The District failed to provide the Parent with prior written notice that meets the requirements of WAC 392-172A-05010. However, the failure to provide sufficient prior written notice does not substantiate that the District failed to discuss placement options at the June 2017 IEP meeting.

Reevaluation – The Parent alleged that the District failed to conduct a reevaluation prior to changing the Student's placement from a general education preschool setting during the 2016-2017 school year, to a special education kindergarten setting for the 2017-2018 school year.

A school district may not make a significant change in a student's placement without a reevaluation. In determining whether a change in placement has occurred, the district must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements.

Here, the Student's placement during the 2016-2017 school year was a half-day special education preschool program, which included general education peers. The Student's June 16, 2017 IEP stated that the Student attended preschool 600 minutes per week and spent 572.5 minutes per week in a special education setting, which was approximately 95% of his school week in a special education setting. While the Student's preschool program may have included general education peers, the preschool program was not a general education placement. The preschool program was a nearly full-time special education program. Therefore, the District was not required to

conduct a reevaluation prior to moving the Student to a special education kindergarten program during the 2017-2018 school year.

Least Restrictive Environment (LRE) – A student’s LRE is determined by an IEP team, and an IEP must include an explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom. In determining a student’s LRE, a district must ensure that the provision of services to each student shall be provided to the maximum extent appropriate in the general education environment with students who are nondisabled and special classes, 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.

June 2017 IEP: Here, the Student’s June 2017 IEP did not include an explanation of the extent to which the Student would not participate with nondisabled students in the general education classroom during the 2017-2018 school year. Instead, the IEP merely stated that the Student would be included in “appropriate activities in the general education program.” This is not enough information to explain what aspects of the Student’s school day would or would not be spent in a general education setting. However, despite this error, based on the Student’s class schedule and other information in this complaint, the Student participated in general education recess and general education specialty classes, such as PE, music, and library on a regular basis, and also spent some time in a general education kindergarten class.

November 2017 IEP: The Student’s November 2017 stated that the Student would participate with his general education peers during PE, music, and library time, and would also attend general education recess and assemblies. The IEP specified that the Student would spend 7.17% of his school week, which is approximately 24.3 minutes per school day, in a general education setting. Based on the Student’s class schedule and other information in this complaint, the November 2017 IEP is incorrect, and should have reflected a greater amount of time in the general education setting, as the Student’s class schedule shows the Student spent approximately thirty-five (35) minutes per day at recess with his general education peers, in addition to attending general education specialty classes on most days. Therefore, the Student’s IEP should have reflected a higher percentage of time in a general education setting. It is also noted that there were discrepancies in the length of the school week listed in the June 2017 IEP and the November 2017, which may account for the errors in the calculation of the Student’s time spent in a general education setting.

Additionally, the November 2017 IEP noted that the Student would spend additional time in a general education kindergarten classroom “as his group behaviors/social skills” increased, but did not specify how this would be determined. The District must ensure the Student has access to the general education environment to the maximum extent appropriate based on his needs. Therefore, the District should have specified what behavior/social skills the Student needed to increase in order to further participate in general education classes and determined a data collection and review process to make periodic informed decisions regarding the Student’s participation in general education. The District will hold an IEP meeting by the second week of

the 2018-2019 school year to review and correct the errors in the Student's November 2017 IEP, including clarifying the length of the Student's school week.

The Student's November 2017 IEP also states that the Student will receive 120 minutes 5 times weekly of "supported classroom" as a related service provided by the special education teacher. As previously discussed with the District in another citizen complaint, "supported classroom" is not a related service as defined by WAC 392-172A-01155, and therefore, it is not appropriate to include this on a student's IEP. When a student is in a special education setting, the District must either provide specially designed instruction or a related service. If the District is not providing either of these, then a student should be in a general education setting, which is a student's least restrictive environment. The Student's IEP team will review his November 2017 IEP and determine if the Student is in need of additional minutes in an area of specially designed instruction or related services during the time period originally designated as "supported classroom" and/or if the Student's time in a general education setting should be increased.

Issue 2: Records Request – Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than forty-five (45) calendar days after the request has been made.

March 6, 2018 Records Request – On March 6, 2018, the Parent requested all education records pertaining to the Student, and specified that her request included "any and all items that contained personally identifiable information" about the Student, Parent, or Student's father. Additionally, the letter stated that the request included, but was not limited to, multiple types of records which included progress reporting, report cards, emails, letters, notes, requests and notices for IEP meetings, medical and school health records, notes from service providers, class schedules, evaluation reports, meeting notes, and IEPs. In regard to the Student's educational records, the Parent clarified on March 12, that she wanted the Student's educational records for the 2016-2017 school year and the 2017-2018 school year through March 2018.

On April 9, 2018, thirty-four days later, the District responded to the Parent's records request and made the Student's educational records available for the Parent to pick up. However, in reviewing the documentation, the Parent believed that she did not receive all of the information, including data, notes, and assessment results, regarding the Student. Due to this, the Parent again requested the Student's educational records on May 22, 2018. The District later responded on June 6, 11, and 13, 2018, and provided several documents that were within the scope of the Parent's March 6, 2018 records request, and should have been provided to the Parent in April 2018. The District failed to follow procedures for responding to the Parent's March 6 request for the Student's educational records within forty-five calendar days. It is also noted that the Parent still has not received complete progress data or notes regarding some of the Student's IEP goals and also did not receive a copy of the Student's daily communication notebook. The District will

meet with the Parent to determine any records she still has not received and either promptly (within three weeks) provide the additional records or provide the Parent a written explanation of why the documentation cannot be provided.

CORRECTIVE ACTIONS

By or before **September 18, 2018, September 28, 2018, and November 5, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **August 28, 2018**, the District will meet with the Parent to determine any records she still has not received and either promptly (within three weeks of the meeting date) provide the additional records or provide the Parent a written explanation of why the documentation cannot be provided.

By **September 28, 2018**, the District will provide OSPI with documentation that it has either provided the Parent with copies of additional records, by the required three week due date, and/or has provided the Parent a written explanation of why the documentation cannot be provided.

2. By the second week of the 2018-2019 school year, the Student's IEP team will meet to: 1) review and correct the error in the Student's November 2017 IEP service matrix regarding the amount of time he spends in a general education setting, including clarifying the actual length of the Student's school week; 2) address what social/behaviors skills should be addressed in order for the Student to increase his participation in general education classes; and, 3) determine if the Student is in need of additional minutes in an area of specially designed instruction or related services during the time period originally designated as "supported classroom" and/or if the Student's time in a general education setting should be increased.

By **September 18, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a sign-in sheet from the IEP meeting; 3) a copy of the amended IEP; 4) a copy of any related prior written notices; and, 4) a copy of any other relevant documentation.

DISTRICT SPECIFIC:

1. By **September 18, 2018**, the District will send out guidance to all certificated special education teachers, stating that IEPs may not include "supported classroom" as a related service, and that time spent in a special education setting should address a student's specially designed instruction or related services, as recommended in a student's evaluation report. By **September 28, 2018**, the District will provide OSPI with documentation showing that the guidance has been provided to all certificated special education teachers. This will include a roster of all certificated special education teachers, so OSPI can cross-reference the list with the actual recipients.
2. The District will develop written procedures addressing records requests to ensure that all requested records are provided to parents and/or adult students. The procedures will address

coordination between school building staff responsible for records, school nurses, the District special education office, and other District offices that maintain records, in order to ensure parents' request for records are responded to in its entirety. By **September 28, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by October 12, 2018 and provide additional dates for review, if needed. By **November 5, 2018**, the District will provide OSPI with documentation showing that the records procedures have been provided to all staff responsible for responding to records requests. This will include a roster of all staff members who are responsible for records requests, so OSPI can cross-reference the list with the actual recipients.

3. By **October 29, 2018**, the District will ensure all special education certificated staff, including educational staff associates (ESAs), and school principals at elementary school 2 and the District's special education preschool program, which the Student attended, receive training regarding the purpose and requirements for prior written notice. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The trainer will not be an employee of the District. The training will include examples.
 - By **September 18, 2018**, the District will provide documentation that the trainer has been provided a copy of this decision for use in preparing training materials.
 - By **September 28, 2018**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by October 12, 2018 and additional dates for review, if needed.
 - By **November 5, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will contract with the trainer for a follow-up session(s) within the required timeframe.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of August, 2018

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.)