

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-31**

### **PROCEDURAL HISTORY**

On May 4, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Bainbridge Island School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 5, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 25, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on May 26, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 7, 2017, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

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

### **OVERVIEW**

During the 2015-2016 school year, the Student was homeschooled and was a resident of the District. In February 2016, the Parent enrolled the Student in the District because she wanted the Student to attend a District alternative learning experience (ALE) middle school for the 2016-2017 school year. In March 2016, the District notified the Parent the Student had been selected from a lottery to be offered an opportunity to attend the ALE program. In June 2016, the District completed a special education evaluation of the Student, and determined he was eligible to receive special education services under the category of specific learning disability. Also in June 2016, the Student's individualized education program (IEP) team met twice to develop the Student's IEP. The IEP provided for specially designed instruction in multiple areas, and paraeducator support as a related service. The District members of the IEP team identified the integrated learning classrooms at the Student's neighborhood middle school as a location where the Student's educational needs could be met. During the 2016-2017 school year, the Student attended the middle school. In January 2017, the Parent contacted the District, stating she did not agree with the Student's placement at the middle school and the Student's exclusion from the ALE program. As a result, the Student's IEP team met to discuss the Parent's concerns and whether the Student's special education services could be provided in the ALE program. In March 2017, the IEP team met to develop the Student's annual IEP, and the Student continued to attend the middle school through the end of the school year. The Parent alleged that the District failed to follow procedures for determining the Student's placement for the 2016-2017 school year, in accordance with WAC 392-172A-02060. The District denied the allegation.

## SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on May 5, 2016. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

## ISSUE

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

## LEGAL STANDARDS

Parent Participation: The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information s/he provides. The district is not required, however, to adopt all recommendations proposed by a parent. The team must work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

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

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

Placements: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: (a) The

student's IEP; (b) The least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; (c) The placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and (d) A consideration of any potential harmful effect on the student or on the quality of services which he or she needs. Unless the IEP of a student requires some other arrangement, the student shall be educated in the school that he or she would attend if nondisabled. In the event the student needs other arrangements, placement shall be as close as possible to the student's home. A student shall not be removed from education in age-appropriate general classrooms solely because of needed modifications in the general education curriculum. 34 CFR §300.116; WAC 392-172A-02060.

Transfer Students: If a student eligible for special education transfers from one Washington State school district to another Washington State school district and has an IEP that was in effect for the current school year from the previous district, the new school district, in consultation with the parents, must provide comparable services to those described in the student's IEP, until the new school district either: adopts the student's IEP from the previous school district; or develops, adopts, and implements a new IEP that meets the applicable requirements in WACs 392-172A-03090 through 392-172A-03110. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. 71 Fed. Reg. 156, 46681 (August 14, 2006) (comments to the final regulations). Districts must take steps to adopt the IEP or develop and implement a new IEP within a reasonable period of time to avoid any undue interruption in the provision of special education services. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2010) (Question A-4).

## **FINDINGS OF FACT**

### **Background Facts**

1. During the 2015-2016 school year, the Student was in fifth grade and was homeschooled. The Student was a resident of the District at that time, but was not enrolled in the District. Prior to being homeschooled, the Student had attended second grade in another Washington school district, and had been eligible to receive special education services.
2. On February 5, 2016, the Parent enrolled the Student in the District because she wanted the Student to attend a District alternative learning experience (ALE) middle school program during the upcoming 2016-2017 school year. The District determines participants in the ALE program through a lottery system. As part of the process for enrolling the Student, the Parent completed the District's student registration form, which included questions regarding the Student's prior participation in special education. The Parent did not indicate on the registration form that the Student had previously been eligible for special education. According to the Parent's reply to the District's response to this complaint, the Student had not "been on an IEP for several years" and was being educated in "private and homeschooling environments being served by several specialized educational professions".

3. At some point after the Parent submitted the registration paperwork, the Parent contacted the family's neighborhood District middle school (middle school)<sup>1</sup> to ask about the Student being evaluated to determine if he would still be eligible for special education services.
4. On March 8, 2016, a middle school secretary emailed the middle school psychologist, stating the Parent had provided part of a registration packet to enroll the Student into the District. The secretary also stated the Parent had informed her that the Student had multiple learning disabilities, and either had an IEP or section 504 plan when he was last enrolled in public school in the second grade.
5. On March 24, 2016<sup>2</sup>, the principal of the ALE program (ALE principal) sent a letter to the Parent, notifying her that the Student's name was selected in the lottery and the District was "holding a spot [for the Student]" for the 2016-2017 school year. The letter stated:

If you indicated on the Student Registration Form that your son/daughter received or is receiving Special Education Services in one or more areas, we will review the IEP [individualized education program] and hold a Location of Services Meeting before acceptance can be confirmed. This allows our Special Education Team and teachers to review your child's educational needs and determine if [the ALE program] can serve those needs. Acceptance will be determined after a review of the IEP and this Location of Service Meeting.
6. On March 29, 2016, the middle school psychologist emailed the District's special services executive director and the District special services coordinator regarding a special education evaluation of the Student. The school psychologist stated that the Student would be starting school in the fall of 2016 and the District would need to complete an evaluation to determine if he was still eligible to receive special education because he had been homeschooled since he was in the second grade. The school psychologist further stated the Student had been eligible to receive special education services, including speech language therapy, under the category of specific learning disability when he was in the first grade in another school district.
7. According to the Parent's complaint, on April 14, 2016, she contacted the middle school to inform them "of [the Student's] acceptance to the [ALE]" and inquired whether the ALE or the middle school staff should complete the Student's evaluation. The Parent stated she "agreed to continue the assessments at the [middle school]".
8. On April 21, 2016, the Parent signed consent for the District to evaluate the Student for special education services.

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<sup>1</sup> According to the Parent's complaint, she contacted the middle school to inquire about enrollment in the event the Student was not selected to attend the ALE.

<sup>2</sup> Both the Parent and District agreed the date on this letter, March 24, 2015, is incorrect and instead should reflect March 24, 2016.

9. Also on April 21, 2016, the District issued prior written notice, proposing to initiate an initial evaluation for the Student. The notice identified the areas of evaluation as intellectual/cognitive, speech/language, reading, writing, and math.
10. On April 25, 2016, the middle school secretary and the District's student records coordinator exchanged a series of emails regarding the Student's enrollment status in both the middle school and the District's "Special School" at the same time. The Parent alleged in her complaint that the District predetermined the Student's placement at the middle school instead of the ALE as evidenced by the District enrolling the Student in the middle school without her knowledge. According to the District's response to this complaint, it is the District's standard practice to enroll students in the "[District] Special School" when the student is not yet attending a school, but requires an evaluation. The District also stated that by default, the Student was enrolled in the middle school, which was the Student's neighborhood school, for the 2016-2017 school year, and that "this standard default entry would remain until another school entity requests release from the neighborhood school". The District's documentation provided in response to this complaint stated the Student was enrolled at the "Special School" from April 21, 2016 through June 15, 2016, for "SpEd Evaluation Purposes" and beginning September 1, 2016, the Student was enrolled at the middle school.
11. According to the District's response to this complaint, also on April 25, 2016, the ALE principal received a note from the Student's private tutor recommending the Student for acceptance at the ALE. The District stated the principal reviewed the letter and then talked to the middle school psychologist to discuss his concern that the ALE program may not "have the level of services to meet this Student's needs", and inquired whether the Student was being evaluated for special education.
12. The private tutor's note, dated April 25, 2016, stated the Student is creative, eager, and likes to create stories and pictures. She further stated the Student was at a third-fourth grade level in math, a second grade level in reading, and that the Student needed support in both areas. The private tutor also stated there were times when the Student needed a quiet setting and time to process information, and that she believed the ALE would "be a great environment for him as a middle school student".
13. On April 28, 2016, the Parent emailed the middle school psychologist, stating the ALE program would be the best place for the Student, and that she preferred the resource room setting at the ALE rather than the "functional skills classroom" at the middle school. The Parent stated she was concerned about the large school environment at the middle school, and the transition to different classrooms and teachers. The Parent attached a copy of the private tutor's note.
14. Later on April 28, 2016, the middle school psychologist emailed the Parent, stating she would complete the Student's evaluation and suggested a date to review the results.

15. On May 4, 2016, the ALE special education scheduler emailed the middle school psychologist, inquiring when the Student's evaluation would be complete. The scheduler stated the Student applied to the ALE program and the District may need to schedule a "location of services" meeting to determine whether the ALE program could serve the Student's needs.

#### **Timeline for this Complaint Begins on May 5, 2016**

16. On May 6, 2016, the ALE principal and the Parent met and discussed the ALE program as a placement for the Student. According to the Parent's complaint, the ALE principal stated the ALE program was "not considered a comprehensive school so they may not be able to serve [the Student] and that the assessment and IEP process would determine if [the ALE] could be [the Student's] school of attendance". According to the District's response to this complaint, the ALE principal stated the Student was currently being evaluated, and there was not enough information to determine whether the ALE would be "an appropriate location of services for the Student."

17. On May 7, 2016, the Parent emailed the middle school psychologist, stating that the ALE principal and the District special services director wanted to attend the meeting to review the Student's evaluation results. The Parent also stated she wanted the Student's private tutor and the Student's former private teacher to attend the meeting. The school psychologist responded that this "was a great idea" and that she would mail a copy of the evaluation report to the participants prior to the meeting on June 6, 2016.

18. On May 7, 2016, the middle school psychologist emailed the Parent, inquiring whether they could meet to review the Student's evaluation report before it was finalized. The Parent stated she was not available until the June 6<sup>th</sup> meeting to review the evaluation. The psychologist replied that she "always made time for parents with new evaluations in a quiet setting prior to the larger meeting", and attached a draft copy of the Student's evaluation report.

19. On May 23, 2016, the middle school speech language pathologist (SLP) emailed the middle school IEP case manager, the middle school psychologist, and the special services director, stating she did not want to hold an IEP meeting at the same time as the evaluation meeting. The SLP stated she did not "know if [the Parent] would be in the right state to process an IEP at his placement level". She further stated that the special services director was confirming whether an IEP would need to be developed if the Parent declined special education services.

20. On May 24, 2016, the special services director replied that the District requested consent to begin initial special education services at the time of evaluation meetings and that if the Parent declined the services, they would not need to develop an IEP. However, if the Parent did consent to services, then the District would be responsible for developing the Student's IEP. The special services director further stated that if the parents were requesting the Student attend the ALE program, then the ALE principal should be invited to the evaluation meeting.

21. Also on May 24, 2016, the middle school psychologist emailed the Parent, stating that she updated the evaluation with additional accommodations in the recommendations section, and additional information in the cognitive section. The school psychologist further stated this was the final version of the evaluation report, and that she would send it to the other people participating in the June 6 meeting. The psychologist attached a copy of the Student's evaluation report.
22. On May 25, 2016, the middle school psychologist emailed the Parent, the Student's father, the private tutor, the middle school case manager, the middle school SLP, and the ALE principal a copy of the Student's evaluation. On this same day, the ALE principal forwarded the email to the ALE psychologist with the attached evaluation.
23. Also on May 25, 2016, the middle school SLP emailed a copy of the Student's evaluation report to the ALE SLP. The middle school SLP stated the ALE principal needed to decide whether to admit the Student to the ALE program, and that she thought that the ALE SLP should be part of the process. She further stated a meeting was scheduled on June 6, 2016 to review the evaluation report.
24. On June 6, 2016, the Parent, the private tutor, the special services director, the middle school case manager, the middle school SLP, the middle school psychologist, and a friend of the Parent (parent support) met to review the results of the Student's evaluation<sup>3</sup>. The evaluation report stated the Student was eligible to receive special education services under the category of specific learning disability, and recommended specially designed instruction in reading, writing, math, behavior, and communication. The evaluation also stated the Student's was most proficient at the second-third grade reading level, and would "require significant teacher and paraeducator support in the area of reading"<sup>4</sup>. The evaluation report further stated the Student's "writing difficulties hinder his expressive language in written form", that his math skills were at a fourth grade level, and that his challenges in reading and writing would also have a significant adverse impact in the area of math. The evaluation report also stated the Student was diagnosed with an auditory processing disorder, and that the Parent had reported the Student has misophonia, which is an aversion to certain sounds. The Parent had also reported the Student was outgoing, positive, creative, easy to get along with, and had close friendships. The meeting notes stated the team discussed that the Student did not like the noises at lunch time, and he was not able to handle the sound of oral chewing. The notes also stated the

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<sup>3</sup> The signature page of the Student's evaluation stated, "the following signatures certify that each participant has had the opportunity to consider and review all relevant factors of this evaluation. If participants do not agree with the results of this evaluation, they must submit separate written statement presenting their rationale." All participants signed and dated the signature page without any comments or notes. Neither party in this complaint provided documentation that there was disagreement with the results of the Student's June 6, 2016, evaluation.

<sup>4</sup> The Parent's reply to the District's response alleges the District "characterized [the Student's] level of disability to manipulate his IEP placement and location of services". The Parent stated the Student does need special education services but he did not need supplementary aids and services or related services, he participates in general education, and that his paraeducator services were shared not 1:1 unlike "a student requiring a high level of support".

evaluation group discussed that the IEP would be developed based on the evaluation and mentioned that the integrated learning classrooms (ILC) had fewer students, and highly designed instruction.

According to the District's response to this complaint, at the meeting, the special services director stated the "Resource Rooms" and "Learning Strategies classes" programs at both the ALE and middle school "served up to 29 students per special education teacher within a narrow range of need for [SDI] as well as limited availability of paraeducator support. The District further stated the ILC program at the middle school "served up to 8 students per special education teacher needing a higher level of [SDI], higher level of paraeducator support, and accommodations."

According to the District, the Parent stated the Student needed more peer interactions at his age level, and so the evaluation group considered the learning strategies class with paraeducator support and basic math and basic language arts that would include more developmentally appropriate peers. The District also stated the evaluation group "acknowledged the mother's need to process the evaluation results and the recommended high level of services for the Student," and agreed to hold a meeting on June 10, 2106 to develop the Student's initial IEP.

25. On June 6, 2016, the District issued prior written notice, stating the Student was eligible to receive special education and related services under the category of specific learning disability.
26. Also on June 6, 2016, the middle school psychologist emailed the private tutor, asking her to describe her observations of the Student's social/emotional challenges and strengths. On June 24, 2016, the private tutor replied to the email and attached a document titled "social-emotional observations [Student's initials]".
27. On June 7, 2016, the ALE special education scheduler emailed the middle school psychologist, asking for an update regarding the Student. The scheduler stated ALE staff learned the evaluation team recommended the ILC program at the middle school for the location of the Student's services. On the same day, the school psychologist responded to the email, confirming that the special services director was drafting the IEP with a recommendation for the ILC program at the middle school. The school psychologist also stated that the Parent still wanted the Student to attend the ALE.
28. On June 8, 2016, the ALE administrative assistant emailed the District special services director, inquiring whether the ALE principal could attend the Student's IEP meeting. The administrative assistant stated the Student applied to the ALE program and his name had been selected through the lottery process. She further stated there were some concerns about the Student's academics, and whether the ALE would be an appropriate location for services. The administrative assistant also stated she was in contact with the school psychologist who explained the draft IEP recommended the ILC program at the middle school. The executive director responded to the email, stating the principal was welcome to come to the meeting scheduled for June 10, 2016, and also copied the school psychologist on the email.

29. On June 10, 2016, the Parent, the parent support, the special services director, the school psychologist, the middle school case manager, and a District general education teacher met to develop the Student's IEP. The IEP meeting notes stated the agenda would be to review the IEP, discuss class options and the schedule, and discuss the location of special education services. The notes also stated the IEP team discussed the Student's academic struggles, social development, learning strategies structure, the integrated learning classroom, and the possibility of modifying the Student's schedule. According to the District's response to this complaint, the IEP team suggested continuing the IEP meeting on June 13, 2016, to allow [the Parent] to further review the draft IEP, and to process the recommended goals and level of services for the Student.

30. The June 10 IEP stated the least restrictive environment for the Student was a "special education class with integration into general class and/or community." The Student's IEP included annual goals in the area of reading, math, writing, communication, and social/emotional/behavioral, and provided for the following specially designed instruction:

- Communication: 40 minutes a week – special education
- Math: 225 minutes a week – special education
- Reading: 225 minutes a week – special education
- Writing: 225 minutes a week – special education
- Social/Emotional/Behavioral: 200 minutes a week – special education
- Social/Emotional/Behavioral: 300 minutes a week – general education

The Student's IEP also provided for shared paraeducator support for 500 minutes a week in the special education setting as a related service, and as a supplementary aid and service. The IEP stated the Student would participate in the general education setting forty-five percent of the time, including lunch, breaks, fieldtrips, school assemblies, and electives. The Student's IEP provided for the following accommodations/modifications:

- Environment: clean uncluttered work pages due to visual perceptual problems, provide highlighted textbooks or work pages, preferential seating, provide architecturally accessible testing/learning environment, and provide extra time to transition between classes.
- Instructional Strategies: shortened reading assignments, provided taped materials, have texts read orally, provide concrete learning with manipulatives, repeat and clarify verbal and written instructions, provide small group instruction, provide verbal direction at each step, provide frequent changes of activity/task, make notes/study guides available, and use a reader to read math assessment or other verbatim in English.
- Student Method of Responses: limit copying from the chalkboard, answer orally, point or sign an answer, allow longer time for verbal response due to slower processing time, provide shorter writing assignments, encourage participation in group activities, allow to write in manuscript rather than cursive, allow use of calculator, permit student to choose answer from a list, use a computer or word processor for recording response (no spell check on assessment) when a computer is indicated for written communication under assistive technology, additional time to complete tests/projects.
- Curriculum: repeat/review/drill, conduct short, frequent, and repeated practice sessions, and introduce one new concept at a time.

- Assignments: guided instruction with frequent breaks with non-verbal signals between teacher and student to stay on task
- Grading Criteria: assignments and tests will be modified and the Student's grades should reflect the modification.
- Pass or Fail: grades will be graded pass/fail.

31. On June 13, 2016, the Parent, the middle school case manager, the middle school SLP, the middle school psychologist, the middle school science teacher, and the parent support met to complete the Student's IEP via conference call.<sup>5</sup> According to the District's documentation, the team answered the Parent's questions and discussed the Student's class schedule for the fall semester with the option to revise the schedule as the team became more familiar with the Student's needs.

32. The District's documentation in this complaint also includes a prior written notice, addressing a June 13, 2016 phone conference discussing the Student's IEP. The notice is dated June 10, 2016, and it is assumed the date is incorrect and should reflect a date of June 13, 2016 or later. The notice stated the District was proposing to initiate the Student's IEP.

33. On June 27, 2016, the ALE administrative assistant sent an email to the parent welcoming committee, stating that the Student would not be enrolling in the ALE.

### **2016-2017 School Year**

34. The District's 2016-2017 school year began on September 1, 2016. At that time, the Student began attending the District middle school and his June 2016 IEP was in place.

35. On September 1, 2016, the middle school case manager sent the middle school special education language arts teacher (special education teacher 1) and the middle school special education math teacher (special education teacher 2) an email about the Student. The case manager stated the Student was re-entering the public school setting since he last attended in second grade, and found his first day to be confusing, with lots of information to process, and was feeling self-aware of his limitations. The case manager also stated the Student needed to take his backpack with him to classes and that they would accommodate that request. In response, the case manager stated they should make the Student "feel as comfortable as possible". She further stated the Student has auditory sensitivities and processed information very slowly, so information should be presented to the Student and then reiterated. She further stated the Student has paraeducator support in all his classes, but she did not have anyone scheduled to attend his language arts class yet. The case manager stated that the paraeducator was there to support the Student, but she did not want him or her sitting with the Student because he already "feels estranged being back in school knowing he isn't at the same level as his peers."

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<sup>5</sup> The participants of the June 10, 2016, IEP meeting signed and dated the signature page of the Student's IEP and the participants of the June 13, 2016, conference call are identified with the date and note "per conference call" handwritten next to their names.

36. The District was on break December 19, 2016 through January 2, 2017.
37. On January 19, 2017, the Parent and the Student's father sent a letter to the District special services director. The letter stated the Student's current IEP program at the middle school was serving him well but the parents did not agree with the location of his services and his exclusion from the ALE program, and they felt that there was lack of meaningful IEP participation. The letter further stated there was no discussion about how the Student's needs could be addressed in the ALE program, only that his "unique learning needs could not be serviced with current programs" offered at the ALE program. The letter further stated the parent's "opportunity to enroll the Student in a choice school was marginalized by the District's predetermination to have the Student attend a non-choice campus where it was easier for them to provide services."
38. According to the District's response to this complaint, on February 3, 2017, the Parent, the District assistant superintendent of administrative services, and the special services director participated in a conference call and agreed to convene an IEP team meeting to discuss "a full range of services and locations, including the ALE, where the Student's needs could be met". According to the Parent's reply to the District's response, during the conference call, the Parent "made it clear that moving [the Student] to another campus in the middle of the school year would not be in his best interest. The Parent stated the Student was making progress and making friends at [the middle school]". An IEP team meeting was scheduled for February 8, 2017.
39. On February 8, 2017, the Parent, the Student's father, the parent support, the middle school case manager, special education teacher 1, special education teacher 2, the general education science teacher, the middle school SLP, ALE special education teacher 1, the District special services director, and the District assistant superintendent attended an IEP meeting. The special services director's meeting notes stated the purpose of the meeting was to review the Student's current needs and his services, and that the Parent and Student's father had expressed concern about not having the opportunity to discuss whether the Student's special education services could be provided at the ALE program. The notes stated the ALE special education teacher described the special education services offered at the ALE program, which were provided by one special education teacher, as well as a part-time SLP and school counselor. The ALE special education teacher provided pull-out services in math for 2<sup>nd</sup>-8<sup>th</sup> grade students and small group instruction for language arts, but there were no designated special education classes for math and language arts. The notes also stated students participating in the ALE program "need to be able to self-manage and spend a lot of time collaborating with peers in small groups" but this was not a requirement for admission to the program. Additionally, the meeting notes stated that the IEP team agreed to meet in March 2017 to conduct an early annual review of the Student's IEP, and that the parents felt that the Student was doing well in his program at the middle school, and they were not seeking a change of location. The notes further stated that the assistant superintendent stated it is the responsibility of the IEP team to review locations for services so parents are aware of the options available to serve their students.

40. On February 8, 2017, the District issued prior written notice, stating that in a letter dated January 24, 2017, the “parents expressed significant concerns that they were not afforded the opportunity to explore [the ALE] last spring after they applied and were accepted” and was “told that the District could not provide the necessary special education services for [the Student at] the ALE”. The notice also stated the IEP team met to review the Student’s current needs for special education and the Student’s current program at the middle school, and provided information regarding the special education services available at the ALE. The notice further stated the parents “expressed that they do not intend to consider a change [of] location” or services.
41. On February 10, 2017, the special services director emailed the Parent, the Student’s father, and copied the IEP team, stating that the special education teacher would continue to communicate with the parents regarding the Students “successes, challenges, and any necessary changes to his program.” The director further stated she has happy that the Student was well-supported at the middle school and making progress.
42. On March 12, 2017, the middle school case manager emailed the Parent and the Student’s father a draft of the Student’s IEP.
43. On March 13, 2017, the Parent, the middle school case manager, the general education science teacher, the middle school counselor, the SLP<sup>6</sup>, special education teacher 1, and a paraeducator met to develop the Student’s IEP. The IEP meeting notes stated the IEP team discussed the Student’s learning structure, his auditory supports, and the expectation that the Student would begin to advocate for himself regarding his accommodations.
44. The Student’s March 2017 IEP stated the least restrictive environment for the Student was a “special education class with integration into general class and/or community.” The IEP included annual goals in the area of reading, math, writing, communication, and social/emotional/behavioral, and provided for the following specially designed instruction:
- Communication: 30 minutes a week – special education
  - Math: 250 minutes a week – special education
  - Reading: 225 minutes a week – special education
  - Writing: 225 minutes a week – special education
  - Social/Emotional/Behavioral: 200 minutes a week – special education
  - Social/Emotional/Behavioral: 300 minutes a week – general education

The Student’s IEP also provided for shared paraeducator support for 500 minutes a week in the special education setting as a related service. Additionally, the IEP provided for shared paraeducator support for 500 minutes a week in the special education setting, and 250 minutes a week in the general education setting as supplementary aid and service. The IEP stated the Student would participate in the general education setting forty-six percent of the time, including lunch, breaks,

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<sup>6</sup> The meeting notes for the IEP meeting held on March 13, 2017 indicated the SLP was excused and did not attend the meeting, but her signature appears on the “IEP participants” page.

fieldtrips, school assemblies, and electives. The IEP also provided for the following accommodations/modifications:

- Environment: preferential seating, alternative setting for assessments or tests that are read aloud to the Student, extra time to transition in between classes.
- Instructional Strategies: shortened reading assignments, provide taped materials, have tests read orally, provide concrete learning with manipulatives, repeat and clarify verbal and written instructions, provide verbal direction at each step, make notes/study guides available and use a reader to read math assessment or other verbatim in English, have a speech-to-text device available in all classes, word prediction programs on word processing programs.
- Student Method of Responses: limit copying from the chalkboard, answer orally, allow longer time for verbal response due to slower processing time, provide shorter writing assignments, encourage participation in group activities, allow to write in manuscript rather than cursive, allow use of calculator, permit student to choose answer from a list, use a computer or word processor for recording response when a computer is indicated for written communication under assistive technology, additional time to complete tests/projects, allow the Student to use his iPod due to an auditory processing disorder.
- Curriculum: repeat/review/drill, conduct short, frequent, and repeated practice sessions, and introduce one new concept at a time.
- Assignments: guided instruction with frequent breaks with non-verbal signals between teacher and student to stay on task.
- Grading Criteria: assignments, tests, and grades will be modified as needed.
- Pass or Fail: pass/fail grading system.

45. Later on March 13, 2017, the District issued prior written notice, proposing to initiate a change in the Student's IEP. The notice stated the IEP team met to discuss possible changes to the Student's goals since his transition to the middle school was "going well".

46. On April 17, 2017, the District issued prior written notice, stating the Student's IEP team met to review the Student's needs for special education, his current program, and his progress at the middle school.

## **CONCLUSIONS**

When determining the educational placement of a student, the placement decision must be made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the continuum of placement options available within the district. The selection of the appropriate placement must be based upon: the student's IEP; the least restrictive environment requirements; the placement options that provided 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. Here, it is unclear from the District's documentation if the IEP team, including the Parent, discussed the Student's placement, once his IEP was developed. While the District's documentation indicated that placement was discussed at the June 6 evaluation meeting, the Student's IEP, including his IEP goals, were not complete at that time. The District should have ensured that a clear discussion of

placement occurred after the Student's IEP was completed. However, it is noted that while the District is required to offer a continuum of placement options to meet students' educational needs, it is not required to offer each placement option at each school in the District. Here, if the Student's educational needs could not be met in the placement options offered at the ALE program, the District was correct in determining that another District location appropriate to implement the Student's IEP was warranted. It is also noted that when the Student enrolled in the District, the Student continued to be eligible for special education services under special education transfer regulations, and the District was not required to seek the Parent's consent for the initial provision of services.

### **CORRECTIVE ACTION**

By or before **July 28, 2017** and **October 6, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

The District will develop written guidance to be provided to all District certificated staff, including educational staff associates (ESAs), principals, and assistant principals, which will address placement procedures. The guidance will include examples.

By **July 28, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by August 18, 2017, and provide additional dates for review, if needed. By **September 29, 2017**, the District will provide all District certificated staff, including ESAs, principals, and assistant principals with the written guidance. By **October 6, 2017**, the District will provide OSPI with documentation showing all required staff received the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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

Dated this \_\_\_\_ day of June, 2017

Douglas H. Gill, Ed. D.  
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.)