

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-70

PROCEDURAL HISTORY

On July 3, 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 Bellingham 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 July 5, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 27, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on July 30, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On August 9, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On August 13, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on August 13, 2018.

On August 16, 2018, OSPI determined that additional information would be helpful to the investigation and contacted the District concerning the same. On August 17, 2018, OSPI received the requested information from the District. OSPI forwarded the additional information to the Parent on August 20, 2018.

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

OVERVIEW

During the 2017-2018 school year, the Student was enrolled in a special education behavioral program (the BRIDGES program) at a District elementary school (School 1). In the spring of 2018, the District determined that, because of increased enrollment in the BRIDGES program, a new classroom was going to have to be created for the BRIDGES program at a different District elementary school (School 2). The District considered a number of factors (including students' addresses, students' ages, the number of student's currently enrolled at the BRIDGES program in each school, students' transportation needs, classroom balance, and equity), in determining which students from School 1 would need to transfer to School 2. The Student was selected as one of these students.

School 2 is farther from the Student's home than School 1. The Student's IEP was not revised when the decision was made to move him to School 2. According to the District: (a) the BRIDGES

program at School 2 will be identical to the BRIDGES program at School 1; (b) the Student will spend the same amount of time with nondisabled peers in School 2 as he did in School 1; and (c) the Student will have the same nonacademic and extracurricular opportunities at School 2 as he did at School 1.

In May of 2018, the Parent was informed of the decision to move the Student from School 1 to School 2 for the 2018-2019 school year. Subsequently, the Parent filed this special education citizen complaint, alleging that the decision to move the Student represented a change of placement, and that she was denied participation in that decision. The District denies that the decision represented a change of placement. The District also argues that, since it was not a change of placement, Section 3 of WAC 392-172A-02060 ("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"), does not apply.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on July 5, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

ISSUE

1. Did the District follow procedures for determining the Student's placement for the 2018-2019 school year, including considering the requirements in WAC 392-172A-02060(3)?

LEGAL STANDARDS

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. 34 CFR §300.116; WAC 392-172A-02060. However, if the parents and a school district agree, based on a student's individual needs, that he or she should not be educated at a school that is as close as possible to the student's home, that is permissible.

IEP Team Meetings: Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. 34 CFR §300.501; WAC 392-172A-05001; *see also* WAC 392-172A-03115.

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.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student was in the third grade and eligible for special education. During the 2017-2018 school year, the Student was enrolled in a special education Behavior Re-education in Developing Growth and Emotional Strength (BRIDGES) program at a District elementary school (School 1).¹
2. School 1 was not the closest District elementary school to the Student's home, but due to the Student's neighborhood school not offering a BRIDGES program, the Student attended School 1.
3. As explained by the District in its response to this complaint:
The BRIDGES program is designed for students whose behavior and social-emotional needs are the most significant factor impeding their educational progress...Elementary school BRIDGES classrooms generally consist of one special education teacher, approximately two to four paraprofessionals and up to eight students.
4. The District's response to this complaint included a program summary document, entitled "Brief Description of BRIDGES Program." In pertinent part, it read:
Standard elementary BRIDGES classrooms consist of one special education teacher and approximately two to three paraprofessionals at 6.5 hours each per day serving up to 8

¹ The District's elementary school includes grades kindergarten through five.

students. If the caseload exceeds 8 students, the teacher, principal, and special education administrator will have a conversation to identify whether additional support is needed. Factors to consider include individual needs of students, how many students are placed part-time in general education classrooms and the degree of support they need to be successful within those classrooms. If a student requires ongoing individual paraeducator support to be successful in a general education classroom, the team should address whether this is the least-restrictive environment for the student.

If additional support is requested for a classroom enrollment of 8 or fewer students, the behavior specialist should be consulted and work with the teacher to review para schedules, student groupings and programming. This process would be followed by a conversation with the principal and special education administrator.

Enrollments in elementary BRIDGES tend to increase as the school year progresses. The special education administrator, behavior specialist and BRIDGES principals should meet before school begins and at regular intervals through the year to anticipate enrollment and prepare for hiring and training of program staff.

Paraprofessionals in BRIDGES are given up to 90 minutes extra per month (time summaries) for collaboration time and training with their teacher...When a decision is made to place a student in the BRIDGES program, the school the student will attend is determined by the special education director or designee based on the student's address and the balancing of numbers at each site. Each classroom has a special education teacher and a paraprofessional staff of 2-4.

5. During the 2017-2018 school year, two District elementary schools (School 1 and School 2) each had two BRIDGES classrooms. One BRIDGES classroom in each school was for students in grades kindergarten through second grade (BRIDGES Primary), and the other BRIDGES classroom in each school was for students in grades three through five (BRIDGES Intermediate). As the Student was in third grade during the 2017-2018 school year, he was in the BRIDGES Intermediate classroom at School 1 during this time. School 1's BRIDGES Intermediate classroom had eleven students enrolled in September 2017, but only ten students enrolled in June 2018.
6. On October 19, 2017, the District completed a reevaluation of the Student for special education eligibility. In pertinent part, the October 2017 reevaluation report stated:
 - [Student] has a history of anxiety which arises when there are new changes or situations."
 - The Student has difficulty "adjust[ing] to changes" and "functions best in very predictable environments."

The October 2017 reevaluation report stated that the Student was eligible for special education under the category of "Other Health Impaired."

7. On November 3, 2017, the Student's individualized education program (IEP) team created a new IEP for the Student. In pertinent part, the November 2017 IEP stated:
 - "Constant communication between the general education teacher and BRIDGES staff is vital to [Student's] success to create a structured environment with predictability."
 - "[Student] needs a structured environment that is built on routines."

8. In early spring of 2018, District administrators determined that, because of increased enrollment in the BRIDGES program, a fifth BRIDGES elementary classroom would need to be created for the 2018-2019 school year. As explained by the District in its response to this complaint, "If no extra classroom was added, the two BRIDGES classrooms at [School 1] would have between 11 and 15 students each for the upcoming school year." Therefore, the special education director, the behavior specialist, School 1 principal, and School 2 principal (BRIDGES team) began to work together "to figure out how to add the necessary fifth BRIDGES elementary classroom" and at which school the classroom would be located. In its response to this complaint, the District explained the decision-making process:

[School 1] does not have any classroom space available. [School 1] is also in the beginning stages of a rebuild; for that reason, among others, adding a portable classroom was not feasible. [School 2], in contrast, had brand new classrooms available. [School 2] also had a motor room available, which was useful to BRIDGES because many of its students benefit from sensory motor activities. Around April, the decision was made to open the fifth elementary BRIDGES classroom at [School 2].

9. According to the District, the decision was made that School 2 would have three BRIDGES classrooms during the 2018-2019 school year: a BRIDGES Primary classroom consisting of nine students between the grades of kindergarten and second, a BRIDGES Primary/Intermediate classroom consisting of eight students between the grades of second and fourth, and a BRIDGES Intermediate classroom consisting of eight students between the grades of third and fifth.

The District also decided that School 1 would have two BRIDGES classrooms during the 2018-2019 school year: a BRIDGES Primary classroom consisting of eight students between the grades of kindergarten and second, and a BRIDGES Intermediate classroom consisting of nine students between the grades of third and fifth.

10. According to the District, the BRIDGES team then "determined that approximately five to six students would have to be moved from the BRIDGES program at [School 1] to the BRIDGES program at [School 2]" in order to "accomplish the goal of having eight students per classroom."

11. According to the District, the BRIDGES team considered the following factors in determining which students would be moved from School 1 to School 2:

- A student's address.
- Number of students currently enrolled at the BRIDGES program at each school.
- A student's transportation needs.
- Classroom Balance.
- Equity.

- A student's age.²
12. Based on the list of factors, the Student was chosen to be one of the students that would have to move from School 1 to School 2. The District chose to place the Student in School 2's BRIDGES Primary/Intermediate classroom for the 2018-2019 school year.
 13. School 2 is farther from the Student's home than School 1.³
 14. On May 21, 2018, the School 1 principal called the Parent to inform her of the decision to move the Student to School 2 for the 2018-2019 school year. According to the Parent: [The School 1 principal stated] that due to transportation issues and the size of the BRIDGES classrooms at [School 1], [Student] was going to be moved to [School 2]...I asked him why [Student] was being moved, and he said that it was due to his long bus ride. I told him in this conversation that [School 2] was not closer to our house than [School 1] was, and he informed me that this decision was made at the district level, and that neither the building nor [Student's] IEP team was involved in the decision.
 15. On May 21, 2018, the special education director mailed the Parent a letter. In pertinent part, it stated:

This note is to let you know [that the District] will be adding a fifth elementary BRIDGES classroom for the 2018-2019 school year. As you know, BRIDGES is our program to assist students with special needs in behavior and social-emotional skills in a classroom with a low teacher-student ratio, a specially trained special education teacher and a team of paraprofessionals.

This new classroom will be located at [School 2], increasing the number of BRIDGES classrooms at [School 2] from two to three. [School 1] will remain at two BRIDGES classrooms. Adding a fifth classroom will allow us to have smaller class sizes at both [School 1] and [School 2], benefitting all of our students.

As part of this change to keep our BRIDGES class sizes small, we need to move some students from [School 1] to [School 2] for the 2018-19 school year. Your son...is one of the students who will attend [School 2] next year as part of this move.
 16. On May 25, 2018, in response to the Parent's question concerning the District's decision-making process for deciding which students would transfer to School 2, the special education director stated:

Once we decided to add the BRIDGES classroom at [School 2] to help keep overall class sizes in all our elementary BRIDGES classrooms small, we considered the need to balance class sizes and the most efficient and feasible means for student transportation. This helps

² According to the District's response to this complaint, this is a non-exhaustive list; the District may have considered other factors not listed here in determining which students would move from School 1 to School 2.

³ According to Google Maps, School 2 is approximately 1.8 miles farther from the Student's house than School 1.

keep the length of the bus rides more reasonable. We also did not want to ask students to transfer who had only one more year of elementary school.

17. The Parent's complaint included the following letter from the Student's private doctor to the Parent, dated June 20, 2018⁴:

I have been [Student's] primary mental health clinician since September of 2016. As you know, [Student] has made significant progress in terms of his managing his anxiety and anger. This has not been easy for him to achieve. Like you, I believe that the consistency and connection that [Student] has experienced at [School 1] has been an essential component of his progress.

I share your concerns with regards to the possibility of changing [Student's] school placement for his fifth grade year. [Student] has often expressed his attachment to [School 1]. He has friends at school and trusts his teachers. While [Student] has made lots of progress, he still experiences significant anxiety around transitions. Moving schools may likely be perceived as overwhelming. [Student] also struggles with feelings of rejection. Therefore, [Student] may perceive switching schools as "getting kicked out" and is likely to interpret this as another rejection.

In summary, moving [Student] to a new school is likely to present significant challenges to sustaining the progress he has made in terms of behavioral and mental health.

18. In its response to this complaint, the District argued:

[The] Student's change in location is not a change in placement because it did not substantially or materially alter his educational program...Student's IEP is not being revised...Student will be educated with nondisabled peers at [School 2] to the same extent as he was at [School 1]. Student's IEP calls for him to spend between 40% and 79% of his time in a general education class. He will spend the same amount of time in a general education class at [School 2] as he would have at [School 1]. Student will have the same nonacademic and extracurricular opportunities at [School 2]. The BRIDGES program at [School 2] is the same option on the continuum of alternative placements at the BRIDGES program at [School 1]. Therefore, moving Student from [School 1] to [School 2] was not a change in "educational placement" and was not subject to an IEP team discussion.

CONCLUSIONS

The IDEA requires that a student be educated in the school that he would attend if nondisabled. However, in the event the student needs other arrangements, placement shall be as close as possible to the student's home. The exception to this would be when a district and a parent agree that a different school location is warranted based on a student's individualized needs.

Here, the Student's neighborhood elementary school does not offer a BRIDGES classroom, which his IEP team has determined is the Student's appropriate placement. Therefore, the Student's placement must then be the next nearest elementary school which is as close as possible to the Student's home, and which operates a BRIDGES classroom. The next nearest elementary school

⁴ According to the Parent, subsequent to June 20, 2018, she provided this letter to the deputy superintendent of the District and the principal of School 2.

to the Student's home which operates a program that meets his needs is School 1. Therefore, the District is required to continue to designate School 1 as the Student's assigned school, unless the District and Parent agree that School 1 is not an appropriate school location to meet the Student's individualized needs. The documentation in this complaint does not show that the Parent has agreed to the change of the Student's assigned school location, and while the District may have valid reasons for wanting to move the Student to School 2, the District's reasons are not based on the Student's individualized needs. Additionally, it is noted that the District did not include the Parent in making the determination that the Student would be moved to School 2 and did not send the Parent a prior written notice, documenting the proposed change and the reasons for the change, even after the Parent indicated and provided documentation that the Student's anxiety would be impacted as a result of changing locations of services. As the services are available in multiple locations, the District will designate School 1 as the Student's placement for the 2018-2019 school year.

CORRECTIVE ACTIONS

By or before **the beginning of the 2018-2019 school year** and **September 7, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By or before **the beginning of the 2018-2019 school year**, the District will issue a prior written notice to the Parent, stating that the Student will be educated at School 1 during the 2018-2019 school year.

By or before **September 7, 2018**, the District will submit this prior written notice and any related correspondence or documentation to OSPI.

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.

DISTRICT SPECIFIC:

None.

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.)