

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-17

PROCEDURAL HISTORY

On March 4, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 5, 2019, 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 March 27, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on March 29, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On March 28, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. On that same day, OSPI received this information from the Parent and forwarded it to the District.

On March 28, 2019, the OSPI investigator conducted a phone interview of the District's attorney.

On March 29, 2019, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. On that same day, OSPI received this information from the Parent and forwarded it to the District.

On April 9, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on April 10, 2019.

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

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on March 5, 2018. 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 responding to the Parent's request for amending the Student's individualized education program (IEP) on August 30, 2018 and February 8, 2019?

LEGAL STANDARDS

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's individualized education program (IEP). This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

The IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. WAC 392-172A-05000(1)(a). 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. WAC 392-172A-05001(2)(a).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island*

Sch. Dist., 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

IEP Definition: An IEP must contain, among other requirements, a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) behavioral intervention plan, if necessary for the student to receive FAPE; (g) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; and (h) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications. 34 CFR §300.320; WAC 392-172A-03090.

Choice of Personnel: As a general rule, districts have discretion in personnel decisions, such as staffing assignments or hiring. *Gellerman v. Calaveras Unified Sch. Dist.*, 37 IDELR 125 (9th Cir. 2002); *see also, In the Matter of the Clover Park School District*, OSPI Cause No. 2004-SE-0072X (WA SEA 2004); *In re Los Altos Elementary School District*, 38 IDELR 111 (CA SEA 2002); *In re Freepoint School District*, 34 IDELR 104 (IL SEA 2000).

IEP Development: In developing each student's IEP, the IEP team must consider: the strengths of the student; the concerns of the parents for enhancing the education of the student; the results of the initial or most recent evaluation of the student; and, the academic, developmental, and functional needs of the student. WAC 392-172A-03110(1)(a)-(d).

A School District Must Offer a FAPE: School districts must make a formal, written offer of a FAPE through prior written notice. Providing parents a choice of programs in a manner outside of the

IEP process does not amount to a formal offer of a FAPE. *Union School District v. Smith*, 15 F.3d 1519, 1524 (9th Cir. 1994).

Free Appropriate Public Education (FAPE): A FAPE consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

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

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student was in third grade and attended a District elementary school (school 1). The Student was eligible for special education services under the category of other health impairment.
2. According to the District:

Due to frequent aggressive and unsafe behaviors, the [individualized education program (IEP)] team met throughout the school year to amend [Student's] IEP, behavior intervention plan [BIP], and emergency response protocol [ERP]...the team discussed a potential change of placement at many of these meetings, and the Parents indicated their strong preference was for [Student] to remain at [school 1].
3. The timeline for this complaint began on March 5, 2018.

4. On March 8, 2018, the District's evaluation team completed a reevaluation of the Student. The March 2018 reevaluation report found that the Student continued to be eligible for special education under the category of other health impairment. The March 2018 reevaluation report read, in part:

A reevaluation was requested by [Parent] and the [Student's] IEP team...due to more significant concerns with his social/behavior skills, as well as the impact his behavior problems are having on his progress in math, engagement in class activities, relationships with peers and adults, and safety of himself and others.

...

Results of this evaluation indicate that [Student's] health impairment (e.g., [attention deficit hyperactivity disorder] ADHD, anxiety, and [post-traumatic stress disorder] PTSD), limits his alertness to classroom instruction and heightens his awareness of environmental stimuli. Specifically, [Student's] disability and subsequent problems with executive function significantly impacts his ability to control his impulses, follow adult directives, follow classroom rules and routines, initiate and complete academic tasks, match his emotional response to the situation, regulate his emotions, and build and maintain appropriate friendships with peers. Also, one of the major concerns at this time is [Student's] ability to have a safe body when he is upset as he can become a danger to himself and others.

The school psychologist [and Student's private] counselor...reported that it is very important to have one person assigned to work with him that he can count on and trust to be a safe person in his life.

[Parent] reported that, in relation to social/emotional concerns, [Student] has an early history of trauma, including neglect and abandonment by his biological family.

5. Also on March 8, 2018, the Student's IEP team developed a new IEP for the Student. In pertinent part, the Student's March 2018 IEP provided that the Student would remain at school 1 and be provided with a 1:1 paraeducator during the school day.

The "Present Level of Education Performance" portion of the March 2018 IEP read, in part:

[Student] needs 1:1 support because of his behavior challenges that are unsafe to himself and/or others. He has been having significant behavior challenges since September 2017...according to the most recent data, he was physically aggressive to himself and/or others [on] 5 out of 9 school days in January 2018 and 3 out of 12 school days in February 2018.

6. On March 8, 2018, the District issued the Parent a prior written notice that read, in part:
At the IEP meeting, the team agreed that [Student] needs a 1:1 support person who is trained in restraint and de-escalation...the team rejected [another program option] because we have not yet tried having a 1:1 support person who is trained in restraint and de-escalation. [Parent] stated that within 2 or 3 weeks of getting 1:1 support who is trained in restrain and de-escalation, we should reconvene as a team to discuss whether [Student] is making progress behaviorally or not.
7. On June 14, 2018, the Student's IEP team amended the Student's March 2018 IEP. According to a prior written notice, dated June 14, 2018, the only service-related portion of the Student's

IEP that was changed was as follows: "the team...agreed to add one accommodation regarding keeping verbalizations short."

The "Present Level of Educational Performance" section of the June 2018 Amended IEP does include updated data from the Student's 1:1 paraeducator from April through June of 2018. This data shows that, despite the addition of the 1:1 paraeducator in March, the Student continued to demonstrate aggressive and unsafe behaviors that occasionally necessitated suspensions and/or restraints. The June 14, 2018 prior written notice read, in part:

At the last IEP meeting on 3/8/2018, the team talked about meeting after 1:1 behavior support was in place for [Student]. The team needed to talk about his current progress and services with 1:1 behavior support and discuss whether he is making adequate progress in his current setting or not...the team discussed a placement change. The SW region special education supervisor (special education supervisor) suggested In Tandem Services¹ [(program)] at [another school in the District (school 2)], effective September 2018. The parents stated that they want to meet the people in the program first and decide whether they would agree with this suggestion or not. [The special education supervisor] stated that he wants to schedule a meeting so that the parents can meet the staff in the [program]. The team has agreed to meet afterward to discuss further needs and adjustments according to the end of year data.

8. On June 14, 2018, the Parent emailed the school 1 principal, a District special education supervisor, the 2017-2018 special education teacher, and the school psychologist, and stated, in part:

Thanks for meeting this morning to discuss [Student's] IEP...I wanted to share [my] notes from the meeting to ensure we're all on the same page...[program], a new program at [school 2], was suggested as a possible placement for [Student]. This program's goal is to help students learn the skills and strategies they need to be successful in mainstream classes and then help transition them back to their neighborhood school...I agreed with [the] suggestion to meet with the [program] teacher once he/she is hired so we can ask about teaching and classroom management philosophies, their crisis plan and other aspects in order to determine if this would meet [Student's] needs. If, once we have talked with the new teacher, we agree this is the best placement for him, the IEP team would need to reconvene to adjust his IEP as necessary. [The special education supervisor] reminded everyone that this may need to occur during the summer.

August 29, 2018 Meeting

9. According to the District, on August 29, 2018, the Parent met with certain staff members involved with the program at school 2, as well as the special education supervisor. According to the District, "At the meeting, the Parent expressed concern about [Student's] morning supervision if he were to move from [school 1] to [school 2]."

¹ According to the District, In Tandem Services is "the District's therapeutic day treatment program and [is a] partnership between [the District] and [a mental health agency]. Staff at [school 2] is comprised of both [District] teachers and [mental health agency] staff."

According to the Parent:

[I] discovered that [school 2] starts...about an hour later than [school 1]. [We have two younger children that attend school 1]. This means that [I would have to] walk our two younger children to [school 1 and] there [would be] no adult to supervise [Student] at home. [Student] would [therefore] be required to walk along with us. When this happens, [Student] shows through his words and behavior that this is traumatizing for him...this is a trauma trigger due to [Student's] wish to attend [school 1].

According to the District:

Because [a paraeducator] working for Community Care² was available and willing to be at [school 2] prior to the first bell, [at the August 29, 2018 meeting, the special education supervisor] said that the District could arrange for special education transportation to drop off [Student] early at the school, with [Student] being supervised by his assigned 1:1 from 7:45 a.m. to 8:30 a.m.³

August 30, 2018 Meeting

10. On August 30, 2018, the Student's IEP team met and amended the Student's June 2018 Amended IEP. The Student's August 2018 Amended IEP reflected the Student's placement at school 2 for the 2018-2019 school year.

The August 2018 Amended IEP stated that the Student would receive "special transportation." The IEP did not reflect the agreement between the District and the Parent that: a) the District would transport the Student to school 2 before the school day started; and b) a 1:1 paraeducator would supervise the Student before the school day at school 2 began at 8:55 am.

11. In an interview with the District's attorney, the attorney confirmed that the District did not issue the Parent a prior written notice following the August 30, 2018 meeting that included the details of, or discussed, the transportation and supervision agreement.
12. The Parent and the District had different understandings regarding the transportation and supervision agreement.

The District stated that this agreement did not take place within the context of the IDEA; the District's response read, in part:

Morning supervision was offered as a way to make the transition to [program] easier on the family; not due to [Student's] educational needs...The arrangement was offered to the family by [the special education supervisor] in response to their concerns about balancing the needs of [Student] with their other children; not as a service or support that [Student] needed in order to receive a free and appropriate education (FAPE). While the logistics of

² According to the Parent, Community Care was the organization that the District contracted with during the 2017-2018 school year to provide the Student with a 1:1 paraeducator.

³ Throughout the remainder of this complaint, this agreement will be referred to as the 'transportation and supervision agreement.'

drop off and supervision were discussed at the IEP meeting, the before school supervision was never intended to be part of [Student's] IEP, nor did the IEP team determine that before school supervision was necessary to provide [Student] with FAPE.

The Parent, on the other hand, believed that the arrangement took place within the context of the IDEA; the Parent's complaint read, in part:

In August [2018], at an IEP meeting, the team agreed to the accommodation of one hour of before-school supervision by a trained, skilled one-on-one paraprofessional. This was agreed as necessary for [Student] to access [FAPE]; because without this, the schedule of the change in placement suggested by the District...requires him to walk each day with his Parent and siblings to [school 1, which] he is no longer allowed to attend. This is a trauma trigger...[Parent] assumed [this arrangement] had been included in the IEP...on further investigation, [I] discovered that the accommodation had not been included in the IEP; despite being agreed to in the IEP meeting.

The Parent's reply stated, in part:

It was never communicated to [Parent] that [the transportation and supervision agreement] was intended to be a temporary service...that the District agreed to provide this service in fact demonstrates that it was and is related to [Student's] educational programming, and necessary for him to receive [FAPE]...our understanding [was] predicated on our knowledge that the District does not provide unnecessary benefits unrelated to educational programming just to be nice to families.

2018-2019 School Year

13. The District's first day of school for the 2018-2019 school year was September 5, 2018.

14. On September 5, 2018, the Parent emailed the student support services supervisor, the special education supervisor, and Community Care, stating, in part:

When we agreed to the [program] placement, we agreed with the understanding that, as stated in the meetings (at [program] and [Student's] IEP meeting at [school 1]) last week, transportation and supervision (at a site other than our home) would be provided for [Student] from 7:30 a.m. until 8:45 a.m.

15. From September 6, 2018 through December 21, 2018, the transportation and supervision agreement appears to have been followed, and neither the District nor the Parent appears to have had any substantial issues with the implementation of the same.⁴

16. In separate email communications, the OSPI investigator asked the Parent and the District what occurred during the Student's before school sessions with the 1:1 paraeducator.

⁴ Based on the documentation in this complaint, the Parent did have to provide transportation to school 2 during the first week of school (September 5, 2018 through September 7, 2018) while the District finalized transportation arrangements. The Parent also had to provide transportation to school 2 on the following dates: September 10-12, 2018 and September 18, 2018.

According to the District:

[The 1:1 paraeducator did not help the Student with any work before the school day started. She] would meet [Student] when he arrived at the school and [Student] would essentially do whatever activity he selected (games, legos, art). No [specially designed instruction] was provided during the time, as it was purely supervision. [The 1:1 paraeducator did not work on emotional regulation with the Student, though] she would intervene if there was a behavioral escalation.

According to the Parent:

The original plan was that [Student] and [the 1:1 paraeducator] would practice emotion regulation skills while playing a game or doing a Lego activity. What actually happened was that [Student] appointed himself the employee greeter, and practiced social skills by greeting each staff member at the door and checking their ID badges. He was extremely proud of his role, and felt like a valued member of the community. Staff members would often tell me how friendly and appropriate he was during this time. It was also a great opportunity to practice emotion regulation.

17. On December 21, 2018, the student support services supervisor emailed two of the District's directors of special education (director 1 and 2), and a special education analyst for special education operations-budget, stating, in part: "Today is the last day for the Community Care behavior tech for [Student]. We are in need of a 1:1 for him (per IEP), especially around the before school support."

According to the District's response, "The District's contract with Community Care [was] discontinued [around December 2018], resulting in [the 1:1 paraeducator's] employment with the District ending on December 21, 2018."

18. According to the Parent's reply, when the District informed the Parent in late December 2018 that the contract with Community Care was ending, the Parent was "not at...made aware that this meant the discontinuation of the service of morning supervision."

19. From December 24, 2018 through January 4, 2019, the District was on winter break.

20. On January 4, 2019, the student support services supervisor emailed the Parent and the school 2 program manager, stating, in part:

I wanted to follow-up with you regarding...before school coverage for [Student]. On Monday, January 7, 2019, the [school 2 program manager] and [school 2 special education teacher] will be at [school 2] to receive [Student] at his regular drop-off time...We'd like to set up some time to talk with you...to discuss [Student's] needs and short/long-term planning for the morning period before school.

21. On January 7, 2019, the Parent responded to the student support services supervisor's email. In her email, the Parent expressed: a) frustration that the contract through Community Care for the 1:1 paraeducator had been ended; b) her belief that an incident that happened at school that day was the result of the Community Care 1:1 paraeducator not being present; c) her belief that the District was incapable of providing a 1:1 paraeducator with the same knowledge and experience as the individual who had been contracted through Community

Care; d) her belief that the Student's IEP was no longer being followed; and, e) her belief that the District should contact Community Care to negotiate another contract.

22. On January 9, 2019, the school 2 program manager responded, stating, in part: "[The student support services supervisor] and I would like to meet with you this week or early next week to discuss morning support for [Student]."
23. According to the District, from January 7, 2019 through January 14, 2019, a District staff member was present at school 2 to supervise the Student before the start of school. According to the Parent, this change in personnel "caused great emotional difficulty for [Student]."
24. On January 11, 2019, the Parent met with the school 2 program manager and the school 2 individual and family clinician. According to the District:

[The school 2 representatives] explained that [school 2] was unable to provide before school supervision and that the District does not have resources to arrange for supervision unrelated to educational programming. They provided the family information on additional resources for childcare and funding sources. The Parent continued to raise concerns about balancing her children's morning schedules and minimizing fighting between [Student] and his siblings. [Student's] transportation was changed so that [Student] would arrive at the start of school.
25. On January 12, 2019, the school 2 program manager emailed the student support services supervisor and the Parent, stating: "Thank you again for taking the time to meet with us today. As discussed, I have arranged for transportation to pick [Student up] at your residence beginning 1/15/19 at 8:35 a.m."
26. On January 14, 2019, the Parent emailed a third District director of special education (director 3). In this email, the Parent: a) updated the director on the new arrangement established at the January 12, 2019 meeting—that the Student would be transported to school 2 at the start of the school day; b) expressed her frustration with the new arrangement; c) articulated her belief that, now that the Student would have to walk by school 1 each day, he would become emotionally escalated; d) proposed that the District contract with Community Care to provide the Student with 1:1 supervision at the Student's home before the start of school; and, e) stated that the Parent would not have agreed to the school 2 placement at the beginning of the 2018-2019 school year had before school 1:1 supervision not been provided.
27. According to the District, no prior written notice was issued to the Parent on or about January 15, 2019, relating to the termination of before school transportation and supervision.
28. According to the District, from January 15, 2019 until February 8, 2019, "the Student adhered to [school 2's] schedule. He would start breakfast at 8:55 a.m., then transition to morning

circle⁵ at 9:10 a.m. with his classmates, then start language arts at 9:25 a.m. He had the support of his assigned 1:1 during this time.”

29. On January 15, 2019, the Parent emailed several District staff members and school 2 staff members the following “update...on [Student’s first] day without early morning supervision:”

[Student] was very sad last night to learn that he would not get to spend the early morning hour at [school 2] in his self-appointed job as staff greeter and security badge checker...[both Parents] accompanied [Student and his siblings] on the walk to [school 1] this morning, hoping to ease the transition for [Student]. [Student] was cooperative and happy to greet friends and staff members, but he is unable to stay with a Parent and continually wandered off to greet people. Again, we cannot guarantee the safety of [school 1] students and staff during this time period if another misunderstanding were to occur as it did last June with a [school 1] student and [Student]...This evening, [Student] was very volatile emotionally, and had a meltdown involving a lot of screaming and slamming of doors and kicking objects. He was able to express that he feels very sad about losing [the 1:1 paraeducator through Community Care] and about the schedule change. He also talked about how much he misses his friends at [school 1], which was brought home to him this morning by having to walk to [school 1] and see his friends and not be allowed to stay at his neighborhood school with them...We continue to be concerned that due to his [disability] he will be unable to be safe during the period of time he spends at [school 1] every morning.

30. In late January of 2019, the District and the Parent scheduled an IEP meeting in early February 2019 to develop a new IEP for the Student.

31. On January 29, 2019, the Parent emailed the director and the director of special education school-based services, stating, in part, that she would like to address the following topic at the upcoming IEP meeting: “the agreement that the District would provide this early morning supervision in order for [Student] to attend [school 2].”

32. On February 5, 2019, the Parent emailed the school 2 program manager, wherein she communicated: a) her frustration “that the District has not stepped up to replace the service they agreed [to] at the beginning of the school year;” b) her belief that the transportation and supervision agreement had been included in the Student’s August 2018 IEP and her subsequent shock at discovering that it was not included in that document; c) her desire that “the early morning supervision be reinstated by the District and included as an accommodation in the new IEP;” and, d) the following sentiment: “data indicate the last month (without the [1:1 paraeducator from Community Care] and without early morning supervision) has included significantly more aggression and unsafe behavior by [Student] that did the previous month of school (between Thanksgiving and Christmas).”

33. On February 8, 2019, the Student’s IEP team developed a new IEP for the Student. The “Present Level of Education Performance” section of the February 2019 IEP read, in part:

⁵ According to the District, “the morning circle is an opportunity for students to discuss and process feelings.”

At the end of December [Student's] existing 1:1 left their position and was replaced by a new assigned 1:1 staff person...[Student's] previous 1:1 had been able to provide before school supervision to [Student], but his new 1:1 was not able to provide this support, due to contractual differences between the agencies providing this support.

Prior to this shift, [Student] was experiencing an average of 6.75 significant incidents requiring isolation or restraint per month, with 5 in December. In January, he experienced 7 significant incidents requiring isolation or restraint. This shows a 40% increase from December, but not a large shift from his previous average.

The data tracking system for other behaviors used by the school...does show a small overall decline in behavior following the transition to a new [paraeducator], and following the loss of before school care. It should be kept in mind when interpreting this data that staff also set new more strict benchmarks for keeping data starting in January, as well as at the start of December.

The District's response provided further clarity on the February 8, 2019 meeting:

The [Student's] IEP team met on February 8, 2019, but did not finish the IEP meeting. The team agreed to reconvene at a later date, and ultimately scheduled the meeting for March 1, 2019. The team reconvened on March 1, 2019 and finished the Student's annual IEP. The prior written notice was provided to the Parent following the completion of the IEP, on March 1, 2019. Information for both IEP meetings (February 8, 2019 and March 1, 2019) was included in the March 1, 2019 prior written notice.

[At the February 8, 2019 IEP meeting], the IEP team agreed that the Student would benefit from a morning routine to assist him with transitioning into the school day. While the team agreed the routine was needed and discussed the general idea, it was not developed at the IEP meeting or incorporated into the IEP. This is because the morning routine is not a formalized plan, but part of his scheduled day in which the Student receives SDI/support in social/behavior and other services outlined in his IEP in order to help him adjust to the school day. The District would not characterize it as a morning de-escalation plan, as it is not intended to be a crisis response or part of his BIP, but rather a way to ease the Student into the school day.

34. According to the District:

[Starting] after the February 8, 2019 meeting and continu[ing] to [the present], [the Student's morning routine was as follows:] to help the Student transition into school, following breakfast at 8:55 a.m., the Student practices the morning circle with his 1:1 (not with his peers) and has an opportunity to talk one-on-one with his 1:1 and relax. [During this time, Student is] receiving targeted social skills instruction. He rejoins his peers at 9:25 for language arts. Starting with 1:1 support, rather than participating in the morning circle, also allows the Student and the [school 2] team to adjust the routine as needed each day to meet the Student's needs.

35. On February 11, 2019, the Parent emailed director 1 and director 2, stating, in part:

[I] want to update you on the partial IEP meeting held last Friday, February 8, 2019...The data clearly show that without the before-school supervision, [Student] arrives at school re-traumatized...In December 2018, when a designated 1:1 from Community Care had been assigned to [Student] and before-school supervision was provided, there were very few

significant negative behavioral issues at school. In January 2019, [when Student] had not school-provided morning supervision...he had a significant increase in aggression and other unsafe behaviors at school. [I] was also shocked to hear that the new position for [Student's] 1:1 does not cover a work day from 7:45 – 3:45, which would have included the necessary before-school supervision and solved this problem. Given that the data clearly shows that [Student] cannot access educational benefit when he arrives at school re-traumatized every day, it is unconscionable that this job positing wouldn't cover the necessary time period.

36. On February 26, 2019, school 2's individual and family clinician emailed the Parent and stated: We've been thinking a bit more about [Student's] morning plan in order to help him get his body calm and ready for the day and to help him transition from his busy morning. I talked with him about it today and he agrees that this is something he is willing to try. He wants to call it the 'G-Money Chill-Out Plan.'

Once he comes to school, he will eat breakfast with his class and then transition to morning circle. Immediately after morning circle, he will hear from [the school 2 special education teacher about] what the class is doing for [English language arts (ELA)] (this was important to [Student] as he said he didn't want to miss anything that he was excited about), and then [Student] will leave the classroom with his [paraeducator] to complete ELA work in a designated space that feels comfortable and cozy to him. We are going to find a room that [Student] already feels comfortable in, bring a bean bag, and have him spend 15 minutes calmly reading and 'chilling out.' He wanted to make sure that he would not have to owe study hall for this (which he won't, since he'll be completing the work) and if there was a really fun activity that he would miss, he could stay in class, to which I agreed sounded like a good plan.

We talked about how the goal of this plan is for him to help get his body ready for school and make sure he could start the school day off feeling calm and with good energy. [Student] told me that he would let me know how he feels about this plan after a few days and if he doesn't like any aspect of it or if it doesn't make his body feel ready for the day, we'll alter it.

We are going to start implementing this plan tomorrow, but please let me know if you have any thoughts or feedback.

37. On February 26, 2019, the Parent emailed certain members of the Student's IEP team, stating, in part: "Just checking in to see when we are planning to finish [Student's] IEP. As you will recall, we were only partway through the discussion when we ran out of time at the last meeting, and there were other items the group felt were important to continue with later in order to complete the IEP, FBA, and BIP adequately."
38. On February 27, 2019, the student services supervisor-behavior responded to the Parent, stating: "I am available Friday, [March 1, 2019] from 9-10 am."
39. Also on February 27, 2019, the Parent emailed director 1 and director 2, stating, in part: "[T]he second meeting to finalize [Student's] IEP has been confirmed for this Friday."

40. On March 1, 2019, the Student's IEP team met and the District issued the Parent a prior written notice that read, in part:

[Student's] IEP team met on 2/8/19 and 3/1/19 to review his progress...[school 2] staff will implement a morning routine for [Student] to help him process his emotions and integrate into the school experience...[Student] often experiences emotionally difficult mornings [and] a morning routine will help him process these experiences and be successful in school...[Parent] requested that [Student] receive before school supervision by his 1:1 or other staff, as had previously been provided through Community Care. [Parent] believed this would best support his social and emotional growth...[Parent] also expressed that [she] believed [she] had been informed in the past that this was a service [the District] could and would provide. The reasons we rejected [this] option: [The District] is contractually not able to provide before school care for [Student].

According to the District's response, during the March 1, 2019 meeting, "the team discussed starting the school day with a staff check-in with [Student], social/behavior skills, and relaxation. The team rejected the Parent's request for before school care."

The Parent's reply stated:

The 'team' did not reject this request; only one member of the team ([the student support services supervisor-behavior]) expressed disagreement with the Parent's assertion that this accommodation continued to be necessary and rejected our request. The four other team members (all school employees) did not voice any opinion on this topic.

41. According to the District, the Student's February 2019 IEP was not amended following the March 2019 IEP meeting to reflect the more formalized morning de-escalation routine "because the [February 2019] IEP provides for SDI in social/emotional, which is [the] instruction he is receiving [during] that time of this school day."

CONCLUSIONS

Issue 1: Response to Parent's Request Concerning Before School Transportation and Supervision – The Parent alleged that the District did not follow proper procedures for responding to her requests that the District provide the Student with before school transportation and supervision.

The IDEA provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

An IEP must include, in part, all of the special education services, related services, supplementary aids, modifications, and accommodations that will be provided to a student eligible for special education.

Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement, or the provision of a free appropriate public education. The notice must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate.

Transportation & Supervision Agreement

On August 29 and 30, 2018, the Parent articulated concerns about the Student's morning routine if he were to attend school 2 during the 2018-2019 school year. Specifically, the Parent requested that the District provide the Student with before school transportation and supervision. The District verbally agreed to this arrangement. The "transportation and supervision agreement" appears to have been: the District would transport the Student from his home to school 2 at around 7:30 a.m., and then the 1:1 paraeducator that worked with the Student during his regular school day would supervise him until school began, at 8:55 a.m. Based on this agreement, the District provided the Student with transportation and before school supervision between September 6, 2018 and December 21, 2018.

The District stated that this arrangement took place outside the context of the IDEA, and it was not included within the IEP. The District stated that granting the Parent's request did not relate to the Student's needs resulting from his disability; the District believed the Parent's request related solely to the logistics of the family's before school schedule, despite the Parent's recollection of discussing potential trauma triggers. The District also stated that no special education services were being provided by the 1:1 paraeducator before school began—in other words, the 1:1 paraeducator was not working with the Student on his goals, emotional regulation strategies, or specially designed instruction. The District stated that, before school, the Student was allowed to choose whatever activity he desired, and the 1:1 paraeducator "purely supervis[ed]" the Student. Because the District believed that this arrangement took place outside of the IDEA, it did not issue a prior written notice to the Parent reflecting the arrangement nor did it include the arrangement in the Student's August 2018 Amended IEP.

The Parent, however, believed this was an IEP team agreement and that the arrangement would be incorporated into the Student's IEP. In a September 5, 2018 email, the Parent articulated her belief that the agreement was a part of the discussion surrounding the Student's "placement" for the 2018-2019 school year. The Parent's understanding was reasonable, as her concern was discussed both at a meeting with school 2 staff members on August 29, 2018, the objective of

which was to evaluate whether school 2 would be an appropriate placement for the Student for the 2018-2019 school year; and again, during an IEP development meeting on August 30, 2018.

There is evidence in this complaint that the 1:1 paraeducator was providing the Student with services that were arguably related to his disability. Importantly, the District acknowledged that, the Student's 1:1 paraeducator "would intervene if there was a behavioral escalation" before school started. It is also significant that the individual that "supervised" the Student during the before school sessions was the 1:1 paraeducator that worked with the Student throughout the regular school day; given this fact, it is unlikely that the 1:1 paraeducator acted solely as a supervisor. Finally, there are a several communications that suggest that the arrangement was related, at least in part, to the Student's needs:

- In a December 21, 2018 email, the student support services supervisor referred to the arrangement as "the before school support" for the Student.
- On January 4, 2019, the student support services supervisor emailed the Parent, stating, in part: "We'd like to set up some time to talk with you...to discuss [Student's] needs and short/long-term planning for the morning period before school."
- On January 9, 2019, the school 2 program manager emailed the Parent, stating, in part: "[The Student support services supervisor] and I would like to meet with you this week or early next week to discuss morning support for [Student]."

In light of the foregoing, the arrangement related, at least in part, to the Student's disability related needs. Therefore, the IEP team should have determined if the transportation and morning supervision arrangement was a related service or a supplementary aid and service that the Student required based on his unique, disability related needs. And if so, the District should have included the details of the arrangement in the Student's August 2018 Amended IEP. If the IEP team determined that this arrangement was not related to the Student's needs, the District still should have included a discussion of this in a prior written notice to document that the arrangement was not related to the Student's needs. This is a violation of the IDEA.

January 7, 2019 through January 14, 2019

The last day of employment for the Student's 1:1 paraeducator through Community Care was December 21, 2018. The District was on winter break from December 22, 2018 through January 4, 2019. Beginning on January 7, 2019, and continuing through January 14, 2019, a District staff member filled in as the before school supervisor. According to the Parent, this change in personnel "caused great emotional difficulty for [the Student]." On January 15, 2019, the Parent emailed several District staff members, stating, in part: "[Student] was able to express that he feels very sad about losing [the 1:1 paraeducator]."

OSPI notes that two sections of the Student's March 2018 reevaluation suggest that changes in interpersonal relationships may be a trigger for emotional challenges for the Student:

- "The school psychologist [and Student's private] counselor...reported that it is very important to have one person assigned to work with him that he can count on and trust to be a safe person in his life."
- "[Parent] reported that, in relation to social/emotional concerns, [Student] has an early history of trauma, including neglect and abandonment by his biological family."

OSPI notes that, in this specific circumstance, it would have been advisable for the Student's IEP team to discuss the impact the change in personnel might have on the Student, as well as whether additional supports were needed to make the transition smoother, prior to January 7, 2019. As a general rule, districts have discretion in personnel decisions, such as staffing assignments or hiring. Therefore, this change in personnel does not represent a violation of the IDEA.

January 15, 2019 through March 1, 2019

Starting January 15, 2019, the Student was transported to school 2 at the start of the regular school day; starting on this date, the Student was not provided with before school transportation and supervision from the District 1:1. On February 8, 2019, the Student's IEP team met to discuss the Parent's request that the Student be provided before school transportation and supervision. From the Student's February 2019 IEP, it appears that at least some District members of the Student's IEP team did not believe that before school transportation and supervision were necessary to address the Student's needs resulting from his disability. For example, the February 2019 IEP notes that recent data on the Student's "significant [behavioral] incidents" did "not [show] a large shift from his previous average...following the loss of before school care;" and any behavioral regression evinced by the data might result, in part, from "new, more strict benchmarks for keeping data starting in January, as well as at the start of December." Based on the documentation, the IEP team did not complete its discussion about the Parent's request for before school transportation and supervision on February 8, 2019, and planned to schedule a second IEP meeting to discuss.

The District asserted that, despite the fact that the Student's IEP team had not "developed" a morning routine for the Student during the February 8, 2019 meeting, the Student was provided with a morning routine starting February 11, 2019. Specifically, the District asserted: after arriving at school, the Student would "practice the morning circle with his 1:1 (not with his peers)...starting with 1:1 support, rather than participating in the morning circle [with his peers], [which] allows the Student and the [school 2] team to adjust the routine as needed each day to meet the Student's needs."

On February 26, 2019, the Student and the school 2 individual and family clinician developed a new morning transition plan for the Student once he arrived at school for the start of the regular school day. This plan was implemented starting February 27, 2019. Under this plan, the Student: participated in morning circle; was briefed on what his English language arts class was working on; and then left to work with his 1:1 paraeducator on English language arts assignments in a designated space, with the option for the Student to remain in the English language arts class if he desired to.

On March 1, 2019, the Student's IEP team met again. On this date, for the first time, the Parent was provided with a prior written notice that the IEP team was rejecting the Parent's request for before school transportation and supervision. The Student's IEP team also determined that the Student would benefit from a transition plan once he arrived at school for the start of the regular school day. According to the District's response, this transition plan would include: "a staff check-in with [Student]; social/behavior skills; and relaxation."

There were two meetings that took place before the early morning transportation and supervision arrangement was terminated. On January 11 and 12, 2019, the Parent met with the school 2 program manager and the school 2 individual and family clinician, and then the school 2 program manager and the student support services supervisor. There is no indication that the District or the Parent considered these to be IEP meetings. The record does not include an IEP meeting invitation for either of these conferences. Furthermore, at least as it concerns the January 11, 2019 meeting, the Student's individual needs resulting from his disability do not appear to have been discussed; according to the District, during the meeting, the school 2 representatives "explained that [school 2] was unable to provide before school supervision and that the District does not have resources to arrange for supervision unrelated to educational programming."

If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. Here, the Student's IEP team first discussed the Parent's concern that the Student required before school transportation and supervision on February 8, 2019 and March 1, 2019. However, the Parent had articulated this concern numerous times before these dates, including on: January 7, 11, 14, 15, and 29, 2019, and February 5, 2019. Therefore, the Student's IEP team should have considered this issue earlier than it did.

March 1, 2019 – On March 1, 2019, the District followed proper procedures for responding to the Parent's request. The Student's IEP team looked at relevant data concerning the Student's needs resulting from his disability—the February 2018 IEP looked at data on the Student's "significant [behavioral] incidents" in December 2018 and January 2019, finding that there had "not been a large shift from his previous average" following the termination of before school transportation and supervision, and that any increase was potentially the result of a more detailed data recording process that began during that time period. At the same time, the Student's IEP team determined that the Student's needs resulting from his disability did require that he be provided with some form of transition assistance in the mornings, but that this need could be met with a transition plan implemented once he arrived at school for the start of the regular school day. This meeting rectified the District's delay in convening the IEP team to review and respond to the Parent's request.

The Parent disagreed that this was the best way to address the Student's needs. However, while an IEP team must work towards consensus, a district can disagree with a parent's position on what constitutes a free appropriate public education (FAPE) for a particular student. In the event a parent and a district disagree about what constitutes FAPE for a particular student, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Here, that is exactly what happened. The District provided the Parent with a prior written notice, showing that the IEP team had: a) considered the Student's needs resulting from the Student's disability; b) determined that a transition plan at the start of the regular school day would sufficiently address these needs; and,

c) documented the disagreement with the Parent. This represents an adherence to proper IDEA procedures.

CORRECTIVE ACTIONS

By or before **May 3, 2019** and **May 24, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None. The IEP team has met, determined that the before school services are not necessary for FAPE, and provided the Parent with prior written notice.

DISTRICT SPECIFIC:

By or before **April 26, 2019**, the District will develop written guidance on prior written notice (WAC 392-172A-05010), the factors to consider during the IEP development process (WAC 392-172A-03110(1)(a)-(d)), and proper procedures for when a parent requests an IEP meeting and a district disagrees that such a meeting is necessary (IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20)). The guidance will include examples. Given the uniqueness of this situation, and the fact that the District rectified the issue, the following individuals will need to receive the written guidance: the current members of the Student's IEP team.

By **May 3, 2019**, the District will submit a draft of the written guidance to OSPI. OSPI will approve the guidance or provide comments by May 10, 2019 and provide additional dates for review, if needed.

By or before **May 17, 2019**, the District will provide the written guidance to the above listed individuals and ensure that the staff have an opportunity to review the guidance and ask questions. By **May 24, 2019**, the District will provide OSPI with documentation that the staff has reviewed the written guidance. The documentation will include a current roster of the Student's IEP team, 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 April, 2019

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.)