

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-89

PROCEDURAL HISTORY

On June 14, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Sequim School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On June 14, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 17, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On June 27, 2024, OSPI requested additional information from the Parent. On July 10, 2024, OSPI received the information and forwarded the information to the District on the same day.

On July 3, 2024, the District requested an extension to respond to the complaint. OSPI approved the extension to July 10, 2024.

On July 10, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On July 29, 2024, the OSPI complaint investigator requested an interview with the Parent. The Parent did not respond.

On July 30, 2024, the OSPI complaint investigator interviewed the District learning support services executive director.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

ISSUE

1. Whether the District placed the Student in his least restrictive environment according to WAC 392-172A-02060 during the 2023–24 school year?

LEGAL STANDARDS

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of

assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

Participation with Nondisabled Peers: To the maximum extent that is appropriate, a student eligible for special education services will be educated in the general education environment with his or her nondisabled peers. 34 CFR §300.114(a)(2); WAC 392-172A-02050. The student's IEP will address how the student will be educated and participate with nondisabled students in the general education classroom and in extracurricular and nonacademic activities. 34 CFR §300.320; WAC 392-172A-03090.

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

FINDINGS OF FACT

2023–24 School Year

1. The District's 2023–24 school year began on September 6, 2023.
2. On September 27, 2023, the Student, a sixth grader, enrolled in the District's alternative learning experience (ALE) online program at the Parent's request, according to the District. The ALE program was a hybrid program that provided both online and in-person instruction to both general education and special education students. In person instruction was provided in a building on campus. Instruction was provided according to a ratio of one teacher to one or two students. The Student was not eligible for special education at the time.
3. In the Parent's reply to the complaint, the Parent stated she was told by District administrators that the Student must be enrolled in the ALE and that no other general education options were discussed. The Parent stated that the Student "has not been allowed access to his education for almost two years."
4. In Fall 2023, the District stated that the Student attended four online classes and two in-person classes at the ALE. The Student's online instruction was either with one teacher to one student or one teacher to two students because of the Student's need for support for online learning.

5. According to the District, the District proposed evaluating the Student for special education eligibility, but the Parent was reluctant to consent. The Parent finally agreed to the evaluation but wanted it limited to the area of behavior.
6. In November 2023, the District evaluated the Student for special education in the area of social, emotional, and behavioral. Based on a 2019 diagnosis provided by the Parent and a comprehensive evaluation conducted by the District, the Student was found eligible for special education services under the category of other health impairment. The evaluation stated, in part, "He struggles to sustain expected student behaviors, such as appropriate language. He avoids work. He can easily be influenced by others' unexpected student behaviors. When he is upset or frustrated, he speaks disrespectfully to others at an increased rate."

The evaluation recommended specially designed instruction in the area of behavior and 1:1 adult support at all times.

7. On November 30, 2023, the Student's individualized education program (IEP) team developed an IEP for the Student. The IEP stated the present level of swearing ranged from 44 times to 1 time in a half day and work refusal ranged from 5 times to 8 times per hour in his 1:1 or 1:2 setting. The IEP included an annual goal in behavior (reducing work refusals and using appropriate language), with progress reporting at the semester. The Student's November 2023 IEP provided the Student with the following specially designed instruction:
 - Behavior: 907 minutes a week (to be provided by special education staff in a special education setting)
 - Behavior: 908 minutes a week (to be provided by a paraeducator in a general education setting)

The IEP included ten accommodations that included, among others, frequent breaks, allowing to return the special education classroom, and regular check-ins. No behavior intervention plan was determined needed.

The IEP indicated the Student would spend 50% of their time in a general education setting.¹

8. According to the complaint, the Parent said she was told that the Student did not qualify for services, but she asked if the Student could receive services in the area of social/emotional and behavior. The Parent stated that there was no discussion about "placement" at the November 2023 IEP team meeting.
9. The Student began attending online general education classes with paraeducator support and received services in the special education classroom, both through the ALE.
10. The Parent had indicated to the District that she wanted the Student to attend the regular middle school to be with his peers. In December 2023 and January 2024, the District had the Student attend the middle school part-time to determine if the Student could be successful with the more student-populated middle school. However, according to the "Running

¹ The District stated that the "online classes were considered a general education setting since they were available to all students, including students with IEPs."

Behavior Record," the Student had considerable challenges most days, some of which resulted in suspensions.

11. On February 5, 2024, the District met with the Parent to discuss the Student attending the middle school on a regular basis for two general education class periods, according to the District. Beginning a functional behavioral assessment (FBA) was also discussed.
12. The next day, the Student began attending 3rd period (social/emotional) and 4th period (physical education), in addition to lunch, at the middle school. Specially designed instruction was provided during the 3rd period.
13. Toward the end of February 2024, the District and Parent agreed to add another class at the middle school, which changed the Student's schedule. Both also agreed to put a hold on the FBA until the Student attended more classes at the middle school.
14. On March 12, 2024, the Student began attending the three classes at the middle school: 3rd period – history; 4th period – physical education; and 5th period – social/emotional.

The Parent stated in her complaint that she was confused with his schedule, which according to the Parent included "three specially designed class periods on the middle school campus and no classes with his peers..."

15. According to the District, despite the interventions and supports provided to the Student, the Student continued to have behavior challenges. On June 3, 2024, the Student was suspended. The District stated that the Parent demanded that one of the Student's teachers be changed and that the Parent stated she would not send the Student to school if the District did not comply. The District complied with the Parent's request.
16. On June 6, 2024, according to the complaint, the Parent met with the District to express her concerns about the paraeducator working with the Student. (The Student told the Parent that the paraeducator "routinely" restrained the Student by grabbing his arm.) On the same day, the District stated the Student stopped participating in his regular school schedule.
17. On June 14, 2024, the Parent filed this complaint with OSPI.

CONCLUSIONS

Issue One: Least Restrictive Environment – The complaint alleged the District's placement of the Student did not provide appropriate access to the Student's peers. A district is required to ensure that to the maximum extent appropriate, a student with an IEP must be educated with their general education peers. The District denied the allegation.

Here, at the beginning of the 2023–24 school year, the Student was not eligible for special education and was enrolled in an ALE that provided a combination of online and in-person learning that was very individualized. At the time of enrollment, the Student did not have an IEP. Both general education and special education students attended the ALE, according to the District.

In November 2023, the District evaluated the Student and found the Student eligible for special education. The IEP team developed an IEP that placed the Student in his least restrictive environment: 50% of the time in general education and 50% in a special education setting. The ALE continued to be the location the Student received instruction. Importantly, the ALE was not necessarily considered the Student’s special education “placement” according to special education rules, as placement is the setting a student receives instruction in—in other words, the access to general and special education peers—and not necessarily the physical location of instruction. Although the Parent argued that the Student did not have access to his general education peers, the ALE was not a special education placement. The ALE was a general education program or “location” that included both general education and special education students, which provided the Student with access to his general education peers. Even as the Student transitioned to the middle school, the District maintained the 50% general education and 50% special education placement.

Given that the difference between location of instruction and special education placement can be confusing, it was unfortunate that the Parent apparently did not understand the difference and did not understand or was not provided clear information on how the Student would have access to his peers while attending the ALE and later at the middle school. OSPI recommends the District provide the Parent with training to better understand the placement process. Overall, OSPI finds no violation as the IEP team appropriately determined placement in the Student’s least restrictive environment.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI recommends the District provide the Parent with training regarding least restrictive environment and the difference between location of services and special education placement.

Dated this 12th day of August, 2024

Dr. Tania May
Assistant Superintendent of Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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