

Report on the IEP Investigation to Determine the Validity
of the Plaintiffs' Counsel Allegations that IEP Teams Lack
the Authority to Determine Services and Placement
during IEP Meetings

Findings of a three-part study which includes a review of policies and procedures,
a telephone survey of parents, and interviews with District staff

Office of the Independent Monitor
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TABLE OF CONTENTS

EXECUTIVE SUMMARY 1

INTRODUCTION 8

PART 1. REVIEW AND PROCEDURES..... 10

Introduction 10

Findings..... 10

 BUL-5901.3-Determining the Appropriate Educational Placement for Students
 with Disabilities in the Least Restrictive Environment (LRE), March 30, 2015..... 10

 Summary 13

 REF-5907.0-Requesting Information in Preparation of a Discussion Regarding a Free
 Appropriate Public Education (FAPE) during an Individualized Education Program (IEP)
 Team Meeting, November 9, 2012 13

 Summary 14

 REF-5027.0-New Procedures for Completing Individualized Education Programs Using
 the Welligent System, February 8, 2010..... 14

 Summary 14

 BUL-1686-Roles, Responsibilities, and Authority of Individualized Education Program
 (IEP) Teams, April 12, 2005 15

 Summary 16

 REF-4922.0-IEP Team Guidelines for Determining Appropriate Related Services, October
 26, 2009, and
 REF-4949.0-IEP Guidelines for Determining Appropriate LAS (Language and Speech)
 Services, December 7, 2009..... 16

 Summary 17

 BUL-5757.3-Non-Public School (NPS) Placement Policies and Procedures for
 Individualized Education Program (IEP) Teams, June 4, 2013 18

 Summary 18

 REF-5578.0-Guidelines for Individualized Education Program (IEP) Teams Regarding the
 Social Emotional Needs of Students with Disabilities, October 17, 2011 18

| | |
|--|-----------|
| Summary | 19 |
| REF-4133.0-Individualized Education Programs (IEPs) Presented for Parent Signature, March 19, 2008 | 19 |
| Summary | 20 |
| Parents’ Guide to Special Education Services (Including Procedural Rights and Safeguards) | 20 |
| Summary | 20 |
| PART 2. TELEPHONE SURVEY OF PARENTS..... | 22 |
| Introduction | 22 |
| Methods..... | 22 |
| Telephone Interview Design | 22 |
| Sample Selection..... | 23 |
| Fielding the Interview | 24 |
| Findings..... | 25 |
| Summary | 33 |
| Question 1..... | 34 |
| Question 2..... | 34 |
| Question 3..... | 35 |
| Question 4..... | 36 |
| Question 5. | 36 |
| PART 3. FOCUS GROUPS AND INTERVIEWS OF DISTRICT STAFF TO EXAMINE POLICIES, PROCEDURES, AND PRACTICES THAT MIGHT LIMIT AN IEP TEAM’S AUTHORITY TO OFFER APPROPRIATE SERVICES AND PLACEMENTS FOR STUDENTS WITH DISABILITIES | 37 |
| Methods..... | 37 |
| Interview Design | 37 |
| Sample Selection..... | 38 |
| Findings..... | 49 |

| | |
|--|----|
| Allegation 1. | 39 |
| Process for Determining Offer of Services..... | 39 |
| Process for Determining Placement Offer..... | 39 |
| Predetermination of Services and Placement | 40 |
| Disagreements and Dispute Resolution..... | 40 |
| Allegation 2. | 41 |
| IEP Teams’ Authority to Make Service and Placement Offers at IEP Meetings | 41 |
| Non-Public Agency Providers and Non-Public Schools..... | 42 |
| Constraints that Might Impact the IEP Team’s Authority..... | 42 |
| Allegation 3. | 43 |
| Service Providers Are Free to Exercise Their Independent Judgment when Recommending Services | 43 |
| Constraints that Might Impact the Amount and Type of Service Recommended | 43 |
| Allegation 4. | 44 |
| District Policy Requires IEP Teams to Recess Meetings for Administrative Procedures in order to Offer More Restrictive Placements | 45 |
| District Routinely Initiates the Process to Move Students to a Less Restrictive Setting outside of the IEP Process..... | 45 |
| Allegation 5. | 46 |
| District Policy Precludes Students with an Eligibility of ID from Receiving ERMHS and Counseling Services..... | 46 |
| Summary | 47 |
| Allegation 1. | 47 |
| Allegation 2. | 47 |
| Allegation 3. | 48 |
| Allegation 4(a) and 4(b). | 48 |
| Allegation 5. | 49 |

SUMMARY AND RECOMMENDATIONS 50
Recommendations 51

APPENDICES

Appendix A. List and Descriptions of Bulletins and Reference Guides
Appendix B. Telephone Survey Instrument
Appendix C. Dispute Parent—Selection to Participate in the Telephone Survey Letter
Appendix D. Non-Dispute—Selection to Participate in the Telephone Survey Letter
Appendix E. District Staff Interview Guide

TABLES

| | | |
|----------|--|----|
| Table 1 | IEP Teams Have Knowledge of Resources When Discussing Services..... | 26 |
| Table 2 | Service Providers Can Recommend Type and Amount of Services Using Their Independent Judgment..... | 26 |
| Table 3 | Services Are Provided by a Non-District Service Provider | 27 |
| Table 4 | Non-District Service Providers Attend the IEP Meetings..... | 27 |
| Table 5 | Non-District Service Providers Use Independent Judgment to Recommend Type and Amount of Services | 27 |
| Table 6 | IEP Team Has the Authority to Allocate District Resources to Provide Appropriate Services | 28 |
| Table 7 | Parents Are Involved in the Decision-Making Process for Determining Services | 28 |
| Table 8 | IEP Teams Are Knowledgeable about Resources When Discussing Placement | 29 |
| Table 9 | IEP Teams Discussed Different Placement Options during the IEP Meeting..... | 29 |
| Table 10 | IEP Team Did Not Consider an Alternative Placement Option | 29 |
| Table 11 | IEP Team Has the Authority to Allocate District Resources to Provide Appropriate Placement | 30 |
| Table 12 | Parents Are Involved in the Decision-Making Process for Determining Placement | 30 |
| Table 13 | Parents Are Satisfied with Their Involvement in Determining Services and Placement | 31 |
| Table 14 | IEP Teams Used Draft IEPs with Predetermined Offers of Services and Placement | 31 |
| Table 15 | IEP Teams Provided Parents the Opportunity to Ask Questions, Make Suggestions, and Make Recommendations on the Predetermined Offer of Services and Placements..... | 31 |
| Table 16 | Parents' Service and Placement Recommendations Differed from IEP Teams' Proposals..... | 32 |
| Table 17 | IEP Teams Supported Parents' Recommendations that Differed from IEP Teams' Proposals..... | 32 |
| Table 18 | Parents Perceived that Decisions Regarding Services and Placement Were Predetermined by School Officials..... | 32 |
| Table 19 | Parents Had an Opportunity to Provide Input and Change the Content of the Draft IEP for Predetermined Services and Placement | 33 |
| Table 20 | Parents Felt They Were Treated Like an Equal and Important Part of the IEP Process | 33 |

EXECUTIVE SUMMARY

Following the procedures set forth in Section 14 of the Modified Consent Decree (MCD), the Plaintiffs' Counsel provided the District with a written notice of intent to file a complaint, as well as declarations and supporting documentation of the alleged complaint, and met and conferred with the District in an attempt to resolve the complaint through mutual agreement. The basis of the complaint was that Individualized Education Program (IEP) teams lack the authority to determine services and placement during IEP meetings and that these decisions are often predetermined by school officials.

Because a resolution could not be met, on September 8, 2014, the Plaintiffs' Counsel filed a formal written complaint with the Independent Monitor (IM) alleging that the District was in systemic violation of its obligations under the Individuals with Disabilities Education Act (IDEA) in the following ways:

1. Decisions regarding the placement, services, and supports which the District will provide to individual students are, as a matter of policy and regular practice, made outside of the IEP process.
2. District representatives or administrative designees present at individual IEP meetings are neither knowledgeable about the availability of District resources, nor authorized to offer the provision of those resources as part of the regular IEP process.
3. District members of individual IEP meetings who are service providers are systematically prohibited from exercising their independent judgment in recommending the type and amount of service to be provided to individual students. Rather, they are required to defer to decisions about services dictated by supervisors outside of the IEP process.
- 4(a). District policy prohibits individual IEP teams from making decisions about moving a student to a more restrictive placement. Rather, District policy requires that all such decisions be made after the meeting is recessed to satisfy District-imposed requirements for additional assessment and administrative review of the placement decision.
- 4(b). Conversely, the District routinely initiates the process to move students to less restrictive placements prior to and outside of individual IEP meetings.
5. The District's current policy prohibits assessment for and provision of Educationally Related Mental Health Services (ERMHS) to all students whose primary basis of eligibility for special education is intellectual disability (ID).

On October 28, 2014, the IM stated that there was sufficient cause for an investigation to determine whether these allegations resulted in systemic violations of the IDEA. To determine whether these allegations were valid, the Office of the Independent Monitor (OIM) conducted a three-part study: a review of policies and procedures, a telephone survey of parents, and interviews with District staff. The study was guided by the allegations and the following questions:

1. To what extent are the services and placement offers predetermined by school officials without the opportunity for parents to ask questions and make suggestions or recommendations?

2. To what extent are IEP teams knowledgeable about the availability of District resources and authorized to allocate resources to provide appropriate services and placements for students?
3. To what extent are service providers (District and non-District) able to use their independent judgment when recommending the amount and type of services?
4. To what extent are parents offered services or placements and told that, if they did not agree with the services or placements, their only option was to pursue dispute resolution procedures?
5. To what extent are parents involved in IEP decisions about their child's placement and services?

To address these questions and the allegations, the investigation included a review of 22 bulletins and reference guides; interviews with 30 managers, supervisors, and support personnel; and telephone surveys of 94 parents who had and had not participated in dispute resolution procedures.

The study found evidence of inconsistencies in District policies and procedures as well as practices and organizational limitations that confirmed the validity of the allegations in the complaint.

Highlights from the information obtained from the investigation are presented below.

Part 1. Review of Policies and Procedures

- Bulletin 5901.3 on determining the least restrictive environment (LRE) is an exemplary illustration of policy that is consistent with state and federal regulations (emphasizing sound LRE principles), specifies that the parent is an equal member of the IEP team, and denounces predetermination by IEP team members outside of the IEP process.
- Inconsistencies were noted in many of the policies and procedures regarding:
 - site administrators' and IEP teams' responsibility to be knowledgeable about the availability of District resources regarding services and placements,
 - the IEP decision-making process for determining placement in the LRE, and
 - the use of recesses during IEP meetings.
- Although the review did not find direct limitations on IEP teams' authority, it found that administrative procedures outside of the IEP process are encouraged during the meeting if teams did not adequately prepare.
- The prevalence of recessing IEP meetings during the decision-making process suggests that either District representatives are untrained or administrator processes are required to secure services and placements.

Part 2. Telephone Survey of Parents

Question 1.

To what extent are the services and placement offers predetermined by school officials without the opportunity for parents to ask questions and make suggestions or recommendations?

- More than 60 percent of parents reported that school officials brought a draft IEP containing the services and placements to be offered to the IEP meeting.
 - The majority of these parents (89.5 percent) noted that they were given an opportunity to ask questions and make suggestions and recommendations.
- Nearly 64 percent of parents believed that decisions made at the IEP meeting regarding services and placements were predetermined by school officials.
 - Two-thirds (65.6 percent) of these parents reported not being given an opportunity to provide input and change the content of the draft IEP.
 - One-third of parents who had not participated in dispute resolution procedures stated that, although they were afforded such opportunity, they agreed with the predetermined offer of services and placements.
 - More than half (55.0 percent) of respondents stated that school officials did not discuss other placement options or were not aware of an alternative.
 - Similarly, 56.4 percent of respondents reported that school officials gave only one placement option without considering an alternative.

Question 2.

To what extent are IEP teams knowledgeable about the availability of District resources and authorized to allocate resources to provide appropriate services and placements for students?

- Nearly two-thirds (63.8 percent) of respondents agreed or strongly agreed that IEP teams were knowledgeable about District resources for providing the appropriate services to students.
 - Contrasts were noted—half (49.9 percent) of parents who had participated in dispute resolution procedures disagreed or strongly disagreed that IEP teams possess this knowledge, compared to 18 percent of non-dispute parents.
- Six out of 10 parents (61.2 percent) stated that IEP teams were authorized to allocate District resources to provide the appropriate services for their child.
 - One in 10 respondents was uncertain of IEP teams' authority to allocate these resources.
- Nearly 63 percent of parents agreed or strongly agreed that IEP teams were knowledgeable of the District resources to provide the appropriate placement for their child.
- More than 58 percent of parents believe that IEP teams had the authority to allocate District resources for placements for their child.
 - More than 41 percent did not know or were not sure whether IEP teams had this authority.

Question 3.

To what extent are service providers (District and non-District) able to use their independent judgment when recommending the amount and type of services?

- Seventy percent of non-dispute parents believed that service providers were able to use independent judgment when prescribing services, whereas dispute parents reported much lower agreement with this statement (18.2 percent).
 - All non-dispute parents and 63.6 percent of dispute parents stated that the non-District provider was able to recommend the type and amount of services their child needed based on their independent judgment.
- Of parents who reported having made service and placement recommendations that differed from those proposed by school officials, more than half (57.6 percent) believed that IEP team members were reluctant to support their recommendation.

Question 4.

To what extent are parents offered services or placements and told that, if they did not agree with the services or placements, their only option was to pursue dispute resolution procedures?

- Approximately half (47.9 percent) of parents stated that school officials made an offer of services and explained that, if they did not accept the offer, their only option was to pursue dispute resolution.
 - Similarly, 45.7 percent of parents noted that if they did not accept the placement offer proposed, their only option was to pursue dispute resolution.

Question 5.

To what extent are parents involved in IEP decisions about their child's placement and services?

- Less than half (44.7 percent) of parents stated they wanted to be more involved in the decision-making process of their child's services and placements.
- Half (51.4 percent) of dispute parents and one in five (20.0 percent) non-dispute parents believed they were somewhat or not at all treated as an equal and important member of the IEP team.

Part 3. Focus Groups and Interviews of District Staff to Examine Policies, Procedures, and Practices that Might Limit an IEP Team's Authority to Offer Appropriate Services and Placements for Students with Disabilities

Allegation 1.

Decisions regarding the placement, services, and supports which the District will provide to individual students are, as a matter of policy and regular practice, made outside of the IEP process.

- Participants provided inconsistent responses regarding the use of draft IEPs. Respondents believed that draft IEPs are changeable but realize that parents might not know this. In addition, there is no acknowledgement at IEP meetings that the copy of the IEP is a draft and subject to discussion and change.

- Participants gave inconsistent responses when asked whether IEP teams provide an offer and tell parents that, if they do not agree with the offer, their option is to pursue dispute resolution.
 - Although informing parents of their right to pursue dispute resolution sometimes occurs in an appropriate context—that is, when parents disagree with the offer of Free Appropriate Public Education (FAPE)—it appears that threatening due process is a systematic practice.
 - Respondents attributed site administrators’ lack of training and experience to their making such statements. In addition, frustrations that arise from disagreements between school officials and parents might also lead to this statement or understanding.

Allegation 2.

District representatives or administrative designees present at individual IEP meetings are neither knowledgeable about the availability of District resources nor authorized to offer the provision of these resources as part of the regular IEP process.

- Respondents who work closely with service providers or schools were more likely to report having heard that IEP teams make statements that they are not authorized to allocate District resources and make an appropriate offer of FAPE.
 - Similarly, it was reported that although parents might attribute these statements to a lack of authority by IEP teams, school officials believed they are a result of the site administrators’ lack of experience or training and miscommunication of the offer of FAPE.
 - Respondents believed service providers might make such statements to avoid responsibility for providing the service or explaining to the parent why they disagree.
- Respondents agreed that the process of securing non-public agency (NPA) services or non-public school (NPS) placement does not require administrative approval outside of the IEP team.
 - Administrative procedures exist that are described as “protocol” for securing these services and placements.
 - Respondents acknowledged that parents might perceive these procedures as an approval process outside of the IEP process.
- Respondents cited constraints such as transportation and program availability as impacting the IEP team’s authority.
 - Participants believed IEP team members cannot “speak their conscience” when constraints impact their decisions. They gave examples of students being placed in overcrowded or multi-grade classrooms.

Allegation 3.

District members of IEP meetings who are service providers are systematically prohibited from exercising their independent judgment in recommending the type and amount of service to be provided to individual students. Rather, they are to defer to decisions about services dictated by supervisors outside of the IEP process.

- Participants believed that service providers are free to use their independent judgment when recommending services.
 - Participants noted that parents perceive that the IEP team lacks the authority to recommend services in instances in which IEP members ask for external assistance. Examples included service providers calling supervisors for advice and site administrators requesting support personnel during IEP meetings.
- Although participants denied having knowledge about policies that express or imply limits for offering services, they believed that constraints related to the caseload approach for determining assignments impacted their ability to provide services.
 - A manager and supervisor agreed that service providers are responsible for providing all services during the time allotted at each school, regardless of the number of students and demand on their time.
 - Participants attributed the use of the caseload approach to the high pressure of meeting the demands of the job, which has contributed to high staff turnover.
 - Per diem personnel who carry higher caseloads are perceived as not managing their caseloads appropriately and not being invested in the system.
 - The caseload approach creates an environment in which service providers are afraid to exit students or lower caseloads because they might be assigned additional students or schools.
 - Supervisors reported that the District has discussed moving toward a workload approach for years but has yet to take action.

Allegation 4(a) and 4(b).

District policy prohibits IEP teams from making decisions about moving a student to a more restrictive placement. Rather, District policy requires that all such decisions be made after the meeting is recessed to satisfy District-imposed requirements for additional assessment and administrative review of the placement decision.

Conversely, the District routinely initiates the process to move students to less restrictive placements prior to and outside of individual IEP meetings.

- When NPS placement is recommended, IEP meetings might be recessed to:
 - conduct a psycho-educational evaluation,
 - research the schools available and provide different options to the IEP team,
 - allow the parent to visit the school, and
 - allow the NPS to accept the student.
- Although conducting an evaluation prior to a change in placement is consistent with procedures in special education law, the evaluation cannot be used to dissuade or influence an offer of NPS if the IEP team has already agreed on an NPS.
- Administrative procedures exist for NPS placements but are not considered an approval mechanism.
- The operations unit initiates the search for an NPS after the IEP team has made a decision.
- The case included in the complaint found that school officials initiated a change in placement outside of the IEP process and without prior notice to parents. These actions resulted in a predetermined offer and denial of FAPE.

- Although this case is one example, these actions are consistent with the allegations that IEP teams behave in a manner that limits their authority and results in decisions made outside of the IEP process.
- School officials noted that due to the cumbersome process required to return students from residential treatment centers (RTCs), placement changes are often initiated months prior to the IEP meeting.

Allegation 5.

The District's current policy prohibits assessment for and provision of Educationally Related Mental Health Services (ERMHS) to all students whose primary basis of eligibility for special education is intellectual disability (ID).

- No District policy prohibits students with an eligibility of ID from receiving ERMHS and counseling services.
- Although the school psychologist agreed that no such policy exists, she stated that there is a "general consensus or understanding" that students with an eligibility of ID do not benefit from or "respond" to ERMHS and counseling services.
- The lack of knowledge by the administrative designee presiding over the IEP meeting and the school psychologist's misguided assumptions resulted in a denial of FAPE.
- The case highlights the District's vulnerability in a litigious environment, which could have been resolved in a less contentious manner by the family's attorney.
- Data indicate that students with ID receive ERMHS and counseling services at a very low rate, which might be a result of the misguided beliefs of the service providers and IEP teams who do not consider these services for these students.

INTRODUCTION

Following the procedures set forth in Section 14 of the Modified Consent Decree (MCD), the Plaintiffs' Counsel provided the District with a written notice of intent to file a complaint, as well as declarations and supporting documentation of the alleged complaint, and met and conferred with the District in an attempt to resolve the complaint through mutual agreement. The basis of the complaint was that Individualized Education Program (IEP) teams lack the authority to determine services and placements during IEP meetings and that these decisions are often predetermined by school officials.

Because a resolution could not be met, on September 8, 2014, the Plaintiffs' Counsel filed a formal written complaint with the Independent Monitor (IM) alleging that the District was in systemic violation of its obligations under the Individuals with Disabilities Education Act (IDEA) in the following ways:

1. Decisions regarding the placement, services, and supports which the District will provide to individual students are, as a matter of policy and regular practice, made outside of the IEP process.
2. District representatives or administrative designees present at IEP individual meetings are neither knowledgeable about the availability of District resources nor authorized to offer the provision of those resources as part of the regular IEP process.
3. District members of individual IEP meetings who are service providers are systematically prohibited from exercising their independent judgment in recommending the type and amount of service to be provided to individual students. Rather, they are to defer to decisions about services dictated by supervisors outside of the IEP process.
- 4(a). District policy prohibits individual IEP teams from making decisions about moving a student to a more restrictive placement. Rather, District policy requires that all such decisions be made after the meeting is recessed to satisfy District-imposed requirements for additional assessment and administrative review of the placement decision.
- 4(b). Conversely, the District routinely initiates the process to move students to less restrictive placements prior to and outside of individual IEP meetings.
5. The District's current policy prohibits assessment for and provision of Educationally Related Mental Health Services (ERMHS) to all students whose primary basis of eligibility for special education is intellectual disability (ID).

On October 28, 2014, the IM stated that there was sufficient cause for an investigation to determine whether these allegations resulted in systemic violations of the IDEA. The Office of the Independent Monitor (OIM) conducted a three-part study as part of its investigation.

First, the OIM conducted a review of policies and procedures related to allegations, such as the IEP teams' lack of knowledge and authority as well as decision-making processes for determining services and placements.

Second, the OIM conducted telephone survey of parents, focusing on parents' experience of the allegations during IEP meetings. Telephone surveys were administered to parents who had

participated in dispute resolution procedures, referred to as “dispute parents,” and those who had not, referred to as “non-dispute parents.”

Third, the OIM conducted interviews with District staff regarding allegations to obtain perspectives on policies, procedures, and practices that might limit the IEP teams’ authority and decision making when determining the appropriate services and placements for students.

This report presents the methodology and findings of each study and provides conclusions and recommendations. The findings will be used to corroborate or dispel each allegation and determine remedies as necessary.

PART 1. REVIEW OF POLICIES AND PROCEDURES

Introduction

The OIM conducted a review of policies and procedures to determine whether the District had policies in place to address the issues identified in the allegations which asserts that IEP teams lack the authority to determine placements and services during IEP meetings, and that decisions are predetermined by school officials. Bulletins and reference guides are two primary modes for updating or clarifying District policies and procedures.

On March 24, 2015, the District provided policies and procedures related to the allegations. An additional bulletin regarding the determination of placement in the LRE was found in the family section of the Division of Special Education website. The review included a total of 22 bulletins and reference guides, the *Parent's Guide to Special Education Services* booklet, and the Division of Special Education website.

This section includes discussions from nine bulletins and reference guides that deal with the issues outlined in the allegations. Each bulletin or reference guide's purpose, excerpts, and summaries are included, with key phrases highlighted. Policies and procedures might address more than one allegation or issue. The main issues are summarized as follows:

- Decisions regarding students' placement, services, and supports are made outside of the IEP process.
- Decisions regarding placement, services, and supports are not consistent with IDEA and California Department of Education (CDE) regulations to ensure students are provided these supports and services in the LRE.
- IEP teams are not knowledgeable about the availability of District resources.
- IEP teams lack the authority to allocate District resources.
- Decisions regarding the type and amount of services are deferred to supervisors and made outside of the IEP meeting.
- Parents are not treated as equal members of the IEP team.
- Decisions regarding more restrictive placements are made outside of the IEP process.
- Students with the eligibility of intellectual disability (ID) are precluded from receiving Educationally Related Mental Health Services (ERMHS).

This section concludes with a summary of findings. A list of the remaining policies and procedures and their descriptions is included in Appendix A.

Findings

BUL-5901.3—Determining the Appropriate Educational Placement for Students with Disabilities in the Least Restrictive Environment (LRE), March 30, 2015

This bulletin informs schools of the procedures for determining the educational placement of students in the LRE. It includes a process and guiding questions for IEP teams to go through

during the meeting to determine the LRE. The LRE Analysis Form and IEP Placement Procedures Flowchart are attached to the bulletin. The bulletin begins with a policy statement emphasizing the IEP team's role and authority to make decisions regarding services and placement in the LRE:

- It is policy of the District that students with disabilities receive all supplementary aids and services, **as determined by the IEP team**, in the LRE. The general education classroom with all the appropriate supplementary aids and services is the first educational setting that the IEP team must consider.

State and federal regulations regarding LRE and placements require teams to remove students from the general education setting only when it is determined that the nature or severity of their disability is such that education in the regular classes cannot be achieved with the use of supplementary aids and services. Removal cannot occur solely on the basis of needed modifications in the general education curriculum. In addition, each goal from the previous IEP meeting must be reviewed and discussed before a determination of placement can be made. This means that IEP teams must discuss curricular modifications and exhaust all possible supplementary aids and services prior to determining placement outside of the general education setting. The lack of progress on an annual goal(s) cannot be the sole determinant for a change in educational placement.

The procedures section requires IEP teams to apply four principles when discussing the supplementary aids, services, and educational placement for students with disabilities. The principles are consistent with state and federal regulations and emphasize the District's commitment to promote the integration of students in the general education setting. The four principles are as follows:

1. Special education is a service that students with disabilities receive—not a place where students are sent.
2. IEP team determinations, including placement and supplementary aids and services, must be based on each student's individual needs.
3. To the extent feasible, supplementary aids and services to promote learning must be moved to the student, as opposed to the student moving to the supplementary aids and services.
4. A higher level of integration in educational settings with nondisabled peers positively impacts the educational achievement and social growth of students with disabilities.

Before an initial IEP meeting, IEP teams are required to schedule preparatory activities to discuss assessments, data, and findings to determine if additional areas require investigation. The following section reemphasizes the IEP team's role and authority and denounces the predetermination of an offer of Free Appropriate Public Education (FAPE), stating:

- These preparatory activities may include researching supplementary aids and services and placement options available on the general education campus. **The preparatory activities must not predetermine decisions that are the responsibility of the IEP team. Decisions regarding special education supplementary aids and services and placement are made by the IEP team during an IEP team meeting and are the responsibility of the entire team, which includes parents.**

The process for determining LRE is outlined in the LRE Analysis Form and IEP Placement Procedures Flowchart. Both documents guide IEP teams through the decision-making process. The flowchart includes four steps, the first of which is “preparatory activities and review of the IEP.” It emphasizes parents as equal members of the IEP team as well as the District’s commitment to promoting the LRE as noted below:

- **The IEP team (which includes parents as equal participants)** must always consider moving the student to a more integrated setting if the student’s current placement is outside the general education classroom or not at a general education site.

The next part of the decision-making process, “consider, discuss and analyze,” contains guidance consistent with state and federal regulations regarding LRE. It requires the IEP team to identify the following prior to making placement decisions:

- **Present levels of performance, goals to address areas of need, and recommended supplementary aids and services prior to determining the student’s educational placement.**

The third part of the process, “placement decision considerations,” provides five areas for IEP teams to discuss during the meeting. Again, this guidance is consistent with the regulations regarding LRE and placement which promotes a decision-making process that is student centered rather than program centered. Two examples of these considerations are noted below:

- In selecting the LRE, consideration is given to any potential harmful effect on the student or on the quality of services that he or she needs.
- If the educational placement available at the school of residence initially appears not to meet the needs of the student, what supplementary aids and services would be necessary to make the placement positively impact the student’s educational achievement and social growth?

Summary

This bulletin clearly articulates several principles for ensuring that IEP teams make every effort to keep students in the general education setting by considering supplementary aids and services prior to making a decision on placement. The guidance provided is sound and consistent with state and federal regulations. It clearly emphasizes parents' role as equal members of the IEP team and the purpose of conducting preparatory activities. It also states that IEP teams cannot predetermine placement.

REF-5907.0—Requesting Information in Preparation of a Discussion Regarding a Free Appropriate Public Education (FAPE) during an Individualized Education Program (IEP) Team Meeting, November 9, 2012

This reference guide outlines the procedures for requesting information in preparation for an IEP meeting, particularly related to the determination of placement. The guide requires IEP teams to meet and discuss the following questions, consistent with state and federal regulations regarding LRE and placements, prior to the meeting:

- Can the needs of the student be met in the educational placement available at the school of residence?
- If the needs of the student can be met at the school of residence, are supports, services, accommodations, or modifications needed to ensure the environment is effective for the student?
- If the educational placement available at the school of residence initially appears not to meet the needs of the student, what supplementary aids and services would make the environment effective for the student?

The reference guide states that, after the discussion of these questions is held, IEP team members might determine they need more information and are instructed to contact the Special Education Service Center (SESC)-Operations unit. The reference guide emphasizes the IEP team's role and authority and includes a procedure for administrators to seek assistance in preparation for the meeting:

- **Any decisions regarding an offer of FAPE are the responsibility of the entire IEP team and can be made only after considering all information presented during the IEP team meeting.**
- After discussion and consideration of supplementary aids and services, along with content experts' input, if the IEP chairperson believes additional information regarding an appropriate placement could aid the IEP team in decision making, the IEP chairperson should submit a "FAPE information request."

Summary

This reference guide encourages teams to discuss placement considerations prior to IEP meetings. Its guidance is consistent with state and federal regulations regarding LRE and the IEP team's role and authority. It encourages IEP teams to be prepared and knowledgeable about placement options prior to the IEP meeting. The reference guide would benefit from a statement similar to the BUL-5901.3, stating that these activities should not result in a predetermination of the placement offered.

REF-5027.0—New Procedures for Completing Individualized Education Programs Using the Welligent System, February 8, 2010

This reference guide informs schools of the changes to the Welligent IEP documentation sequence and includes a process flowchart for conducting the IEP meeting. It states that these changes will align the District's IEP process more closely with state and federal mandates. However, this reference guide presents a process that is inconsistent with the state and federal regulations regarding LRE.

REF-5027.0 outlines the sequence of events for conducting the IEP meeting and corresponding documentation in the Welligent system as follows:

- management (e.g., parent and student information);
- assessment, evaluation, and present level of performance;
- eligibility;
- goals;
- testing and graduation;
- **placement and supports;**
- **services;** and
- safeguards, follow-up, and signature.

Summary

The reference guide describes the sequence of the discussions and decision-making processes during the IEP meeting. The policy and flowchart show that placement is determined prior to the discussion and determination of services. This contradicts the intent of the LRE principle that promotes the identification of necessary supplementary supports and services to ensure that students are placed in a general education setting with their nondisabled peers to the maximum extent possible. This sequence also encourages IEP teams to view special education as a "place or program" that fits a student's needs, rather than enhanced supports and services addressing student needs. This is inconsistent with the principles in BUL-5901.3, which clearly states that LRE is a service and not a place.

BUL-1686—Roles, Responsibilities, and Authority of Individualized Education Program (IEP) Teams, April 12, 2005

The purpose of this bulletin is to:

- clarify the roles, responsibilities, and authority of IEP teams regarding the provision of non-public agency (NPA) services and placements;
- clarify the role of NPA providers at IEP meetings;
- clarify the role and authority of school site administrators in the development of IEPs; and
- emphasize the principle that no individual can control IEP decisions.

The bulletin emphasizes the role and authority of IEP teams as well as the role of non-public school (NPS) representatives and NPA providers as IEP team members. It establishes that site administrators are responsible for being prepared and knowledgeable about the availability of District resources. The following excerpts demonstrate these commitments:

- It is not necessary for a parent to file for a due process hearing as a standard procedure for approval of reimbursement for a certified non-public school of certified non-public agency services. **IEP teams have the authority to make decisions about parent reimbursement for placements at certified schools and services provided by certified agencies.**
- IEP teams should be aware that, as collaborative participants in the IEP meetings, **NPS/NPA providers may attend IEP team meetings, provide feedback on student progress, and offer service recommendations** in their area of service and expertise.
- **Site administrators are the District’s representatives at IEP meetings** and, as required by IDEA, are qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, knowledgeable about the general education curriculum, and **knowledgeable about the availability of District resources.**
- It is important that school site administrators anticipate issues that might arise at IEP team meetings and proactively request assistance before the meeting is convened.
- **If an issue beyond the administrator’s knowledge arises unexpectedly during a meeting, the administrator may contact the support unit to obtain information during the meeting.** Such issues include:
 - programs or classes at other District schools,
 - additional adult assistance beyond existing school site personnel (for health or behavioral needs),
 - non-public school placements,
 - non-public agency services,
 - specialized nursing,
 - home/hospital instruction, and

- reimbursement for services obtained by parents.

Summary

The bulletin's heading is misleading; it provides information regarding only NPS and NPA reimbursements when describing the IEP team's authority. The policy is limited in that it only informs site administrators that it is not necessary for a parent to file for a due process hearing for approval of NPS and NPA service reimbursement rather than providing a general statement about supplementary aids, services, and placement. The practice of parents being told to pursue dispute resolution procedures if they do not agree with the District's offer of FAPE is broader than issues of private reimbursements.

The policy clearly delineates that NPA providers are allowed to attend IEP meetings and make recommendations for services.

The bulletin is inconsistent regarding the administrator's/District designee's responsibility for being knowledgeable about the availability of District resources. Although it emphasizes the need for administrators to obtain information prior to a meeting, it also notes seven areas in which administrators can ask for help if they lack such knowledge at the meeting. Although it is reasonable to assume variance in administrators' knowledge in all these areas, it is equally reasonable to assume that information on each of these areas can be made available to administrators and IEP teams. It is unknown if comprehensive training is mandated for administrators in each of these areas to ensure that they are well-informed and to limit the need for recessing a meeting.

REF-4922.0—IEP Team Guidelines for Determining Appropriate Related Services, October 26, 2009, and REF-4949.0—IEP Guidelines for Determining Appropriate LAS (Language and Speech) Services, December 7, 2009

IEP teams have two reference guides that offer procedures for determining appropriate related services. The guidelines are similar, with one focused solely on speech and language services.

The reference guides reiterate the IEP team's role and responsibility in the decision-making process for the development of an IEP. However, they provide an inconsistent message about the IEP team's responsibility to be knowledgeable of the availability of services offered. Although they encourage teams to obtain information regarding the availability of District resources prior to the meeting, they provide a number of situations for teams to recess meetings. The reference guides encourage the recessing of meetings and minimize administrators' responsibility to be knowledgeable about District resources at the IEP meeting. For instance, the guidelines state the following:

- **It is recommended** that the IEP team administrator contact appropriate District personnel before the IEP team meeting to ensure **team members are prepared to discuss and are fully knowledgeable of the array of program options for the student.**
- **Prior to or during the IEP meeting, the team may determine that it needs additional information on available and appropriate related services options. If not done prior to the IEP meeting, the meeting should be recessed and the appropriate District Related Services Program or Special Education Support Unit should be contacted.**
- When school staff believes that a forthcoming IEP team meeting could lead to a recommendation of a related service that is unavailable at the student's current school, the administrator should contact the appropriate related service program in advance to allow the program to identify District staff to provide the related service. **If this is not done prior to the IEP team meeting, the meeting should be recessed and the appropriate District Related Services Program** should be contacted.
- If the appropriate related services providers are not available at the student's current school, school personnel shall contact the appropriate Related Services Program or Special Education Support Unit in advance to allow these programs to identify staff to provide the related service at the school.
- **If the need for related services is identified during the IEP team meeting and the IEP team does not have sufficient information to determine and recommend how the service will be provided, then the meeting must be recessed and the IEP team should contact the appropriate Related Services Program or Special Education Support Unit to identify how the service will be provided.** If the program or support unit cannot provide an immediate response to the IEP team, the meeting may proceed.

The following excerpt also clarifies when NPA providers are to be recommended.

- It is the IEP team's responsibility to determine the student's needs, goals, and appropriate supports and services. It is the District's responsibility to assign the personnel to provide those services. Only in situations in which District personnel are not available to provide these services will NPA services be recommended.

Summary

These reference guides state that the IEP team is responsible for determining the supports and services needed for the student, whereas the District is responsible for assigning a provider. Procedures require recessing IEP team meetings if teams lack the knowledge of a particular program and did not conduct preparatory work or did not anticipate the student needing a service. This provides an inconsistent message to teams and establishes the practice of recessing meetings as part of the IEP process. Recessing meetings to contact support personnel outside of the IEP process can result in parents' perception that teams lack knowledge of and authority to allocate District resources to make an offer of FAPE.

The reference guides do not impose limits on the type or amount of services a provider can recommend or directly establish the need for a supervisor’s approval of services. However, it is unclear whether barriers that deter or delay the provision of related services occur as a result of recessing meetings.

BUL-5757.3—Non-public School (NPS) Placement Policies and Procedures for Individualized Education Program (IEP) Teams, June 4, 2013

This bulletin informs IEP teams of the policies and procedures to follow when deciding on an NPS (including residential treatment centers [RTCs]) as the LRE. The complaint asserted that such placements are made outside of the IEP process and that meetings are recessed for external administrative approval. The excerpts below demonstrate the requirements, tools, and process when making such placements:

- NPS placement may be considered as the LRE when an IEP team has determined that no other placement in a District or charter-operated school meets the student’s unique needs.
- **The recessing of an IEP meeting is part of the process to allow for the consideration of specific NPS referrals issued by SECS-Operations/Psychological Services/ERMHS Department; the meeting later reconvenes to identify an NPS as the District’s offer of FAPE.**
- The “Checklist for Considering Non-public School (NPS) as a Placement Option” attached to the bulletin includes a **sequence of events in which IEP teams determine placement prior to services.**

Summary

The bulletin provides procedures for placing students in more restrictive settings of NPS and RTCs. It establishes a high standard that requires IEP teams to exhaust all possibilities prior to recommending these placements. However, the guidance is inconsistent with the process outlined by state and federal regulations regarding LRE and placements, which require IEP teams to determine supplementary aids and services prior to educational placement.

Although the bulletin’s process does not require administrative approval for such placement, the procedures note that recessing meetings is part of the process of recommending NPS/RTC placements. This is due to the District’s need to find and present available programs and to accommodate the school’s acceptance of the student.

REF-5578.0—Guidelines for Individualized Education Program (IEP) Teams Regarding the Social Emotional Needs of Students with Disabilities, October 17, 2011

This reference guide informs IEP teams of the procedures regarding referral and assessment of social-emotional needs of students identified with disabilities. The complaint alleged that students with ID are precluded from accessing ERMHS services.

The reference guide describes the service delivery models for counseling and ERMHS services as such:

1. Counseling as a related service (Designated Instructional Service [DIS]) is for students whose behavioral and emotional needs affect their ability to benefit from their special education program and are manifested primarily at school.
2. ERMHS as a related service is for students whose behavioral and emotional needs are documented to be more intense in frequency, duration, or intensity; affect their ability to benefit from their special education program; and are manifested at school, at home, and in the community.

The reference guide also includes procedures to refer students to counseling and ERMHS services. These procedures require teams to conduct assessments prior to recommending ERMHS:

- If the data indicate a possible need for ERMHS, develop an assessment plan and conduct the comprehensive psycho-educational assessment.
- For a student with an existing IEP and no current psycho-educational (within the last three years) or social-emotional assessment (within the last six months), present the case to a peer review team, including a District school psychologist, District psychiatric social workers, and other school personnel as necessary.

Summary

The policy does not preclude students from any eligibility category from receiving counseling or ERMHS services. The ERMHS delivery model appears to be more appropriate for students with ID because their social-emotional needs will more likely manifest in multiple settings, such as in school, at home, and in the community. Although the procedures do not directly state that IEP meetings are to be recessed, they imply that a recess allows for assessment and peer review. The IEP meeting members then reconvene to discuss assessment results and make a recommendation. It is unclear whether the use of this recess to satisfy administrative procedures prevents or delays students from accessing these services.

REF-4133.0—Individualized Education Programs (IEPs) Presented for Parent Signature, March 19, 2008

This reference guide provides procedures for having the parent sign an IEP at the conclusion of an IEP meeting, including instructions for pending and locking IEPs on Welligent. The following excerpt is included to show the inconsistent message for recessing IEP meetings:

- In those infrequent situations in which an IEP team meeting is not concluded in one day and will be reconvened on another day when the District will make its offer of FAPE ...

Summary

The reference guide provides an inconsistent message regarding the practice of recessing IEP meetings. It acknowledges that recessing meetings should not be a common practice. However, many bulletins and reference guides encourage teams to use recesses when they lack the knowledge of the availability of services and placement or when preparatory activities such as assessments were not conducted prior to the meeting.

Parent's Guide to Special Education Services (Including Procedural Rights and Safeguards)

This booklet is provided to parents at IEP meetings and is available online on the Division of Special Education website. Although available online, it is difficult to find and buried in the employee section of the site with approximately 60 other documents and brochures. A link to the booklet is also available in the FAQ section. The file includes the content in English and Spanish; however, it's posted in print format and the Spanish version is upside down, making it difficult for parents to read. In addition, owing the file size, the booklet requires legal size papers to print.

The booklet includes information on the IEP process, eligibility categories as defined by IDEA and CDE regulation, a statement that the parent is an important member of the IEP, and descriptions of the continuum of placements in the LRE. It also informs parents of their procedural rights and safeguards. It does not include a list or description of District resources available for supplementary aids and services to support students in the educational program.

The families section of the website does include information on the IEP process, a description of eligibilities under the IDEA, supports and services available, the LRE and continuum of placement options, and the District's commitment to and progress toward meeting the Modified Consent Decree requirements.

Summary

Bulletin 5901.3 on determining the LRE is an exemplary illustration of policy that is consistent with state and federal regulations (emphasizing sound LRE principles), specifies that the parent is an equal member of the IEP team, and denounces predetermination by IEP team members outside of the IEP process.

Inconsistencies were noted in many of the policies and procedures regarding site administrators' and IEP teams' responsibility to be knowledgeable of the availability of District resources regarding services and placement, the IEP decision-making process for determining placement in the LRE, and the use of recesses during IEP meetings. Although the review did not find direct limitations on IEP teams' authority, administrative procedures outside of the IEP process are encouraged during the meeting if teams did not adequately prepare. The prevalence of recessing meetings in the decision-making process during IEP meetings suggests

that either District representatives are untrained or administrator processes are required to secure services and placement.

PART 2. TELEPHONE SURVEY OF PARENTS

Introduction

To better understand whether the allegations raised by the Plaintiffs' Counsel were a result of systemic violations of the Individuals with Disabilities Education Act (IDEA), the OIM conducted a survey of parents whose child receives special education services. The following questions were designed to address the first three allegations:

1. To what extent are the services and placement offers predetermined by school officials without the opportunity for parents to ask questions and make suggestions or recommendations?
2. To what extent are IEP teams knowledgeable about the availability of District resources and authorized to allocate resources to provide appropriate services and placements for students?
3. To what extent are service providers (District and non-District) able to use their independent judgment when recommending the amount and type of services?
4. To what extent are parents offered services or placements and told that, if they did not agree with the services or placements, their only option was to pursue dispute resolution procedures?
5. To what extent are parents involved in IEP decisions about their child's placement and services?

In addition, the survey inquired about experiences related to IEP meetings, such as whether school personnel expressed support for the parents' recommendations if they differed from those the IEP team proposed.

Methods

Telephone Interview Design

The telephone interview guide was developed on the basis of the informational needs required to prove the allegations' validity; issues identified by Parents' Council members; past feedback from parents and community members regarding these issues;¹ and, for comparison purposes, items from previous national surveys (National Longitudinal Transition Study 2) and those conducted by the OIM and SRI on parental involvement and satisfaction at IEP meetings.²

Survey questions were designed to align with the questions above and to gain perspective of parents' experience related to their involvement in the decision-making processes during their child's IEP meeting. The survey (Appendix B) consists of 15 questions, with three requiring follow-up questions, for a total of 20 questions. The instrument was translated into Spanish and field-tested in both languages with five members of the Parents' Council and two native Spanish speakers. After the structured field-test interviews were conducted, respondents were asked for feedback to learn their perceptions of the interviews, including whether questions were easy to respond to, whether questions and multiple-choice responses were clear and

¹ The OIM conducts annual hearings open to the public to discuss noncompliance with special education laws and receives feedback via different modes of communication including telephone calls, emails, and letters.

² In the 2006–2007 and 2007–2008 school years, the OIM and SRI conducted surveys of family involvement in and satisfaction with the District's special education processes.

understandable, whether response categories were unambiguous and mutually exclusive, and whether items were worded appropriately.

The field tests resulted in various revisions of questions and responses. For instance, a response was added because a parent reported that their non-District service provider did not attend the IEP meeting because they were told that they were not allowed to attend. Another response was added because a parent indicated that, even though they thought the District presented predetermined decisions for services and placement at the IEP meeting, the parent did not provide input to or change the content of the IEP because they agreed with the proposed recommendations. Parents' Council members also raised the issue that IEP team members are reluctant to support parents when in agreement with their recommendations during the IEP meeting and often express support only outside of the meeting.

Although the questions were the same for dispute parents (those who had participated in dispute resolution procedures) and non-dispute parents (those who had not), the introductory scripts had minor differences. For example, for dispute parents, the interviewer would introduce the questions by stating, "The following questions are related to your experiences in the IEP meeting in which the dispute began." For non-dispute parents, the introduction was changed to, "The following questions are related to your experiences in the IEP meeting when making decisions regarding the services and program of your child."

Sample Selection

The sample consisted of two primary groups of parents. The first included parents who have participated in dispute resolution procedures, such as informal mediation, mediation, and due process, during the 2013–2014 school year. The study included these parents to determine whether disputes were a result of limitations of IEP teams' authority or their failure to exercise such authority to offer services and placements.

The District due process database, which contains information on parents who participated in dispute resolution procedures and reasons for the filings, was used to select the first group of parents. The sample was stratified by the following variables:

- School level
 - Elementary school
 - Middle and high school
- Dispute over services
 - Speech and language
 - Occupational therapy
 - Physical therapy
 - Counseling
 - Deaf and hard of hearing
 - Vision therapy
 - Social skills
 - Intensive instruction
 - Non-District service providers

- Dispute over placement
 - Non-public school
 - Public school

The second group consisted of parents with a child who received special education services and did not participate in dispute resolution procedures during the same year.³ The Welligent IEP database was used, and parents were selected using the following variables:

- School level
 - Elementary
 - Middle and high school
- Services
 - Speech and language
 - Occupational therapy
 - Physical therapy
 - Counseling
 - Deaf and hard of hearing
 - Vision therapy
 - Non-District provider
- Placement
 - Non-public school
 - Public school

The sample included a total of 138 parents: 69 dispute and 67 non-dispute parents. Of these, 21 parents could not be reached due to inaccurate telephone numbers, and 11 refused to participate. Seven of the 11 parents who refused were dispute parents; three noted that they needed to check with their attorneys before participating. Some cited the confidentiality clause of their settlement agreements. One parent began the interview but did not complete it and expressed wanting to discuss participation with their spouse. The survey yielded a response rate of 68.8 percent. The interviews resulted in 94 completed surveys, with 44 dispute parents and 50 non-dispute parents participating. Participants selected represented the following school level or type:

- Elementary—64
- Middle and high school—64
- Non-public school—8
- Early education center—1
- Primary center—1

Fielding the Interview

Two letters were created, translated, and mailed to parents in the sample to inform them of the upcoming interviews and the importance of their participation. The first letter was directed to dispute parents and informed them that they had been selected to participate in the survey because they had participated in dispute resolution procedures within the past two years

³ Although it is certain that parents did not participate in dispute resolution procedures during the 2013–2014 school year, some parents might have participated previously or during the 2014–2015 school year.

(Appendix C). The second letter varied in that it informed parents of their selection due to their child having received special education services within the past two years (Appendix D). The letters emphasized that their participation was voluntary and anonymous and would help the OIM make recommendations to improve the District's special education programs. A primary telephone number was included, and parents were asked to contact the OIM if their number had changed or if they wanted to schedule an appointment for a call. Letters were sent a week prior to the survey's commencement.

Prior to the survey, the OIM obtained addresses, telephone numbers (primary and secondary), and primary language information from the Welligent IEP database and the My Integrated Student Information System (MiSiS). This information was cross-referenced to ensure the most recent and accurate contact information. In addition, the OIM reviewed IEP documents for the past two years to identify which parents had attended their child's IEP meeting. Parents who had attended the meetings were noted in the data system; interviewers asked directly for these parents.

Parent interviews were conducted from April 2, 2015, through April 17, 2015. Before the start of the interview, the interview guide was tested by all interviewers in English and Spanish, and a database was created and preloaded with demographic and contact information, such as parent name, telephone numbers, student name, and student birth date. The database also included preset dropdown menus of responses for corresponding questions. Interviewers maintained records of call attempts as well as appointment information. Surveys were primarily conducted between 7:00 a.m. to 4:30 p.m., with several days dedicated for making calls until 7:00 p.m. Interviewers called parents with working telephone numbers⁴ a minimum of seven times before coding these parents as nonrespondents. In some instances, interviewers could not determine whether the telephone number(s) belonged to the parent.⁵ Quality control procedures were implemented during the survey period, including call monitoring and interviewer coaching. Prior to calling parents, interviewers practiced conducting surveys and entering information into the database for five days with each other, members of the Parents' Council, and native Spanish speakers.

Findings

The parent survey was designed to examine the extent that school officials present predetermined offers of services and placements as well as parental participation in the decision-making processes. The survey also explored parent perceptions of IEP teams' knowledge about the available resources for offering the appropriate services and placements and their capacity to allocate such resources as required by law. Participants were inquired as to whether IEP team members, including service providers, were limited in their ability to recommend services and placement. The survey findings are presented by item with overall summary points at the conclusion of this section.

The first set of questions focused on the decision-making processes for determining services for a student.

⁴ If the primary number was disconnected or incorrect, the interviewers called secondary or tertiary numbers.

⁵ The telephone numbers did not have a voicemail, and interviewers could not determine whether they belonged to the corresponding parent.

When asked about whether IEP teams were knowledgeable about the availability of District resources when discussing services for their child, 63.8 percent of respondents agreed or strongly agreed with this statement (Table 1). Almost half (49.9 percent) of the parents who had experienced dispute resolution procedures disagreed or strongly disagreed, whereas 18 percent of non-dispute parents disagreed or strongly disagreed.

Table 1. IEP teams have knowledge of resources when discussing services.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|-------------------|---------|-----------|-------------|---------------|-------|---------|
| Strongly agree | 1 | 2.3 | 15 | 30.0 | 16 | 17.0 |
| Agree | 20 | 45.5 | 24 | 48.0 | 44 | 46.8 |
| Disagree | 7 | 15.9 | 8 | 16.0 | 15 | 16.0 |
| Strongly disagree | 15 | 34.0 | 1 | 2.0 | 16 | 17.0 |
| Don't know | 1 | 2.3 | 2 | 4.0 | 3 | 3.2 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

Table 2 demonstrates contrast between dispute and non-dispute parents regarding a service provider's ability to recommend, based on their independent judgment, the type and amount of services needed for the child. Seventy percent of non-dispute parents believed that service providers were able to use independent judgment when prescribing services, whereas dispute parents expressed much lower agreement with this statement (18.2 percent).

Table 2. Service providers can recommend type and amount of services using their independent judgment.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 8 | 18.2 | 35 | 70.0 | 43 | 45.7 |
| No | 36 | 81.8 | 14 | 28.0 | 50 | 53.2 |
| Don't know | 0 | 0.0 | 1 | 2.0 | 1 | 1.1 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

The following question identifies parents whose child receives services from a non-District provider. The two subsequent questions aim to determine whether these service providers are limited in their ability to participate in and recommend services at the IEP meeting.

More than half (59.0 percent) of dispute parents report having their child receive services from a non-District provider compared to 38.0 percent of non-dispute parents (Table 3).

Table 3. Services are provided by a non-District service provider.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 26 | 59.0 | 19 | 38.0 | 45 | 47.9 |
| No | 18 | 41.0 | 30 | 60.0 | 48 | 51.1 |
| Don't know | 0 | 0.0 | 1 | 2.0 | 1 | 2.0 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

This next question examines whether District policy or officials prohibit non-District service providers from attending IEP meetings. Of those with a child who received services from non-District service providers, 37.8 percent attended the IEP meeting (Table 4). Although the majority of parents reported that non-District service providers did not attend (62.2 percent), only two dispute parents (4.4 percent) stated that these service providers were not allowed to attend.

Table 4. Non-District service providers attend the IEP meetings.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|---|---------|-----------|-------------|---------------|-------|---------|
| Yes | 11 | 42.3 | 6 | 31.6 | 17 | 37.8 |
| No—Reason other than below | 13 | 50.0 | 13 | 68.4 | 26 | 57.8 |
| Non-District provider was not allowed to attend | 2 | 7.7 | 0 | 0.0 | 2 | 4.4 |
| Total | 26 | 100.0 | 19 | 100.0 | 45 | 100.0 |

All the non-dispute parents and 63.6 percent of dispute parents stated that the non-District provider was able to recommend, based on their independent judgment, the type and amount of services the child needed (Table 5). This demonstrates a higher level of agreement of independent judgment than what parents perceived District service providers to use when recommending the type and amount of services.

Table 5. Non-District service providers use independent judgment to recommend type and amount of services.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 7 | 63.6 | 6 | 100.0 | 13 | 76.5 |
| No | 3 | 27.3 | 0 | 0.0 | 3 | 17.6 |
| Don't know | 1 | 9.1 | 0 | 0.0 | 1 | 5.9 |
| Total | 11 | 100.0 | 6 | 100.0 | 17 | 100.0 |

More than half (61.2 percent) of all respondents reported that their IEP team was authorized to allocate District resources to provide the appropriate services for their child (Table 6). Non-dispute parents reported higher rates of the IEP teams' authority, with three-quarters (76.0 percent) agreeing with the statement, compared to less than half (45.4 percent) of dispute

parents. Approximately one in 10 parents (11.7 percent) did not know whether the IEP team had such authority, with dispute and non-dispute parents responding similarly. This finding might indicate parents' lack of awareness of the law that authorizes IEP teams to allocate the resources necessary to provide Free Appropriate Public Education (FAPE).

Table 6. IEP team has the authority to allocate District resources to provide appropriate services.

| Responses | Dispute | Dispute % | Non-Dispute | Non-Dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 20 | 45.4 | 38 | 76.0 | 58 | 61.7 |
| No | 19 | 43.2 | 6 | 12.0 | 25 | 26.6 |
| Don't know | 5 | 11.4 | 6 | 12.0 | 11 | 11.7 |
| Total | 44 | 100.0 | 50.0 | 100.0 | 94 | 100.0 |

The IDEA requires that parents have an opportunity to participate in the educational planning and decision making regarding their child's educational program. The following question examines whether IEP teams limit parental participation by presenting an offer of services that is predetermined and closed to discussion at the IEP meeting. The premise that parents must pursue dispute resolution if they disagree with the type and amount of services recommended by school officials violates the intent of the law, which entitles a parent to be an equal member of the IEP team.

Approximately half (47.9 percent) of respondents stated that school officials made an offer of services and explained that, if they did not accept, their only option was to pursue dispute resolution procedures such as mediation or due process (Table 7). Dispute parents reported higher rates of being given this option (54.5 percent) compared to non-dispute parents (42.0 percent).

Table 7. Parents are involved in the decision-making process for determining services.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 24 | 54.5 | 21 | 42.0 | 45 | 47.9 |
| No | 18 | 41.0 | 23 | 46.0 | 41 | 43.6 |
| Don't know | 2 | 4.5 | 6 | 12.0 | 8 | 8.5 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

The next set of questions focused on the decision-making processes for determining student placement.

When discussing placement options for their child, more than half (54.3 percent) of parents agreed that IEP team members were knowledgeable about the availability of District resources (Table 8). More than half (52.3 percent) of the dispute parents reported higher levels of disagreement (15.9 percent disagree; 36.4 percent strongly disagreed) compared to non-dispute parents (20 percent). These findings are similar to the results from questions on IEP teams' knowledge of services.

Table 8. IEP teams are knowledgeable about resources when discussing placement.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|-------------------|---------|-----------|-------------|---------------|-------|---------|
| Strongly agree | 0 | 0.0 | 8 | 16.0 | 8 | 8.5 |
| Agree | 20 | 45.4 | 31 | 62.0 | 51 | 54.3 |
| Disagree | 7 | 15.9 | 6 | 12.0 | 13 | 13.8 |
| Strongly disagree | 16 | 36.4 | 4 | 8.0 | 20 | 21.3 |
| Don't know | 1 | 2.3 | 1 | 2.0 | 2 | 2.1 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

Approximately six out of 10 dispute parents (61.5 percent) reported that IEP teams did not discuss different placement options, (i.e., general education setting, resource specialist program [RSP], or non-public school [NPS]) during the IEP meeting (Table 9). Half of the non-dispute parents reported teams did not discuss different options (42 percent) or were not aware (8.0 percent) that options were discussed at the IEP meeting.

Table 9. IEP teams discussed different placement options during the IEP meeting.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 15 | 38.5 | 25 | 50.0 | 40 | 45.0 |
| No | 24 | 61.5 | 21 | 42.0 | 45 | 50.5 |
| Don't know | 0 | 0.0 | 4 | 8.0 | 4 | 4.5 |
| Total | 39 | 100.0 | 50 | 100.0 | 89 | 100.0 |

More than half (56.4 percent) of all parents reported that the IEP team offered only one placement option without considering an alternative during the meeting (Table 10). Dispute parents reported being given only one option at higher rates (72.7 percent) than non-dispute parents (42 percent).

Table 10. IEP team did not consider an alternative placement option.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 32 | 72.7 | 21 | 42.0 | 53 | 56.4 |
| No | 12 | 27.3 | 25 | 50.0 | 37 | 39.4 |
| Don't know | 0 | 0.0 | 4 | 8.0 | 4 | 4.2 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

Non-dispute parents reported that IEP team members were authorized to allocate District resources to provide the appropriate placement for their child at higher rates (74.0 percent) than dispute parents (40.9 percent) (Table 11). However, more non-dispute parents (16.0 percent) also reported not knowing whether IEP teams had such authority than dispute parents (2.3 percent). This indicates that the dispute resolution process might raise parents' awareness

of the law that requires IEP teams to allocate District resources to ensure appropriate student placement.

Table 11. IEP team has the authority to allocate District resources to provide appropriate placement.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 18 | 40.9 | 37 | 74.0 | 55 | 58.5 |
| No | 25 | 56.8 | 5 | 10.0 | 30 | 31.9 |
| Don't know | 1 | 2.3 | 8 | 16.0 | 9 | 9.6 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

During the discussion of placement at the IEP meetings, 54.5 percent of dispute parents and 38 percent of non-dispute parents reported that school officials made a placement offer and explained that, if they did not accept this offer, their only option was to pursue dispute resolution procedures (Table 12). Half of all parents reported not having been given a statement regarding disagreement and dispute resolution procedures.

Table 12. Parents are involved in the decision-making process for determining placement.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 24 | 54.5 | 19 | 38.0 | 43 | 45.7 |
| No | 19 | 43.2 | 28 | 56.0 | 47 | 50.0 |
| Don't know | 1 | 2.3 | 3 | 6.0 | 4 | 4.3 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

The last set of questions examined the level of parental involvement in determining services and placements.

When asked about their involvement in deciding about the services and placement, non-dispute parents were twice as likely to report being involved the right amount compared to dispute parents (70 percent non-dispute versus 36.3 percent dispute) (Table 13). Conversely, dispute parents were twice as likely to report wanting to be more involved than non-dispute parents (61.4 percent dispute versus 30 percent non-dispute).

Table 13. Parents are satisfied with their involvement in determining services and placement.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|--------------------------------|---------|-----------|-------------|---------------|-------|---------|
| Wanted to be more involved | 27 | 61.4 | 15 | 30.0 | 42 | 44.7 |
| Were involved the right amount | 16 | 36.3 | 35 | 70.0 | 51 | 54.3 |
| Wanted to be less involved | 1 | 2.3 | 0 | 0.0 | 1 | 1.0 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

The following question inquired about the use of draft IEPs with predetermined offers of services and placement. Although this does not constitute a violation, the law affords parents the opportunity to ask questions and make suggestions and recommendations.

Six out of 10 parents (60.6 percent) reported that school officials brought a draft IEP containing the services and placements to the IEP meeting (Table 14). The majority of non-dispute parents (70 percent) stated that a draft IEP containing services and placements to be offered was brought to the meeting, whereas 18 percent reported being unsure of whether the draft IEP contained this information.

Table 14. IEP teams used draft IEPs with predetermined offers of services and placement.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 22 | 50.0 | 35 | 70.0 | 57 | 60.6 |
| No | 18 | 40.9 | 6 | 12.0 | 24 | 25.5 |
| Don't know | 4 | 9.1 | 9 | 18.0 | 13 | 13.8 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 99.9 |

For parents who reported that the draft IEP contained the services and placements offered at the meeting, the majority were given an opportunity to ask questions and make suggestions and recommendations regarding the offer (Table 15). The majority of parents (89.5 percent) stated that they were given such opportunity, with almost all (97.1 percent) of non-dispute and three-quarters (77.3 percent) of dispute parents reporting having a chance to participate in the process of determining services and placements.

Table 15. IEP teams provided parents the opportunity to ask questions, make suggestions, and make recommendations on the predetermined offer of services and placements.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|-----------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 17 | 77.3 | 34 | 97.1 | 51 | 89.5 |
| No | 5 | 22.7 | 1 | 2.9 | 6 | 10.5 |
| Total | 22 | 100.0 | 35 | 100.0 | 57 | 100.0 |

Dispute parents were almost twice as likely as non-dispute parents to report having made service and placement recommendations that differed from those school officials proposed (79.5 percent dispute versus 42.0 percent non-dispute) (Table 16). It is highly probable that these differences in recommendations led to parents participating in dispute resolution procedures. However, non-dispute parents also engaged school officials in discussions regarding services and placements that differed from those the school officials proposed.

Table 16. Parents’ service and placement recommendations differed from IEP teams’ proposals.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 35 | 79.5 | 21 | 42.0 | 56 | 59.6 |
| No | 9 | 20.5 | 28 | 56.0 | 37 | 39.4 |
| Don’t know | 0 | 0.0 | 1 | 2.0 | 1 | 1.0 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

Four out of ten parents believed that IEP team members were reluctant to express support for their service and placement recommendations that differed from those made by the IEP teams (Table 17). Non-dispute parents (57.1 percent) reported such reluctance with higher frequency than dispute parents (45.7 percent).

Table 17. IEP teams supported parents’ recommendations that differed from IEP teams’ proposals.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|-----------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 16 | 45.7 | 12 | 57.1 | 28 | 42.4 |
| No | 19 | 54.3 | 9 | 42.9 | 38 | 57.6 |
| Total | 35 | 100.0 | 21 | 100.0 | 66 | 100.0 |

More than half (63.8 percent) of respondents believed that the decisions made at the IEP meeting regarding services and placements were predetermined by school officials (Table 18). Dispute parents reported experiencing predetermined IEPs with higher frequency (70.5 percent) than non-dispute parents (58.0 percent).

Table 18. Parents perceived that decisions regarding services and placement were predetermined by school officials.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 31 | 70.5 | 29 | 58.0 | 60 | 63.8 |
| No | 12 | 27.3 | 16 | 32.0 | 28 | 29.8 |
| Don’t know | 1 | 2.2 | 4 | 8.0 | 5 | 5.3 |
| Refused | 0 | 0.0 | 1 | 2.0 | 1 | 1.1 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

For parents who believed that the placements and services offered were predetermined by school officials, one-third (32.8 percent) reported being given an opportunity to provide input

and change the content of the draft IEP (Table 19). The majority (75 percent) of dispute parents reported not being given a chance to provide input or change the draft IEP. One-third (34.5 percent) of non-dispute parents stated that, although they had not been offered an opportunity to participate in these decisions, they agreed with the school officials' proposed services and placements.

Table 19. Parents had an opportunity to provide input and change the content of the draft IEP for predetermined services and placement.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|------------------------|---------|-----------|-------------|---------------|-------|---------|
| Yes | 8 | 25.0 | 12 | 41.4 | 20 | 32.8 |
| No | 24 | 75.0 | 6 | 20.7 | 30 | 49.2 |
| No—Agreed with the IEP | 0 | 0.0 | 10 | 34.5 | 10 | 16.4 |
| Don't know | 0 | 0.0 | 1 | 3.4 | 1 | 1.6 |
| Total | 32 | 100.0 | 29 | 100.0 | 61 | 100.0 |

Non-dispute parents reported more favorably than dispute parents when asked whether they felt they were treated like an equal and important part of the team in the decision-making process for determining services and placements (Table 20). Eight of 10 non-dispute parents (80 percent) responded that they felt fully or mostly treated as an equal and important member, whereas 61.3 percent of dispute parents stated they were somewhat or not at all treated like an important member.

Table 20. Parents felt they were treated like an equal and important part of the IEP process.

| Responses | Dispute | Dispute % | Non-dispute | Non-dispute % | Total | Total % |
|--|---------|-----------|-------------|---------------|-------|---------|
| Fully treated as an equal and important part of the IEP team | 5 | 11.4 | 30 | 60.0 | 35 | 37.2 |
| Mostly was | 12 | 27.3 | 10 | 20.0 | 22 | 23.4 |
| Somewhat was | 16 | 36.3 | 7 | 14.0 | 23 | 24.5 |
| Not at all treated as an equal and important as part of the IEP team | 11 | 25.0 | 3 | 6.0 | 14 | 14.9 |
| Total | 44 | 100.0 | 50 | 100.0 | 94 | 100.0 |

Summary

The findings of the parent survey provide evidence to support the allegations raised by the Plaintiffs' Counsel in its complaint filed with the IM. The findings are summarized by corresponding to each question. Findings on parental involvement in the IEP process also are summarized.

Question 1.

To what extent are the services and placement offers predetermined by school officials without the opportunity for parents to ask questions and make suggestions or recommendations?

- More than 60 percent of parents reported that school officials brought a draft IEP containing the services and placements to be offered to the IEP meeting.
 - The majority (89.5 percent) of these parents noted that they were given an opportunity to ask questions and make suggestions or recommendations.
- Nearly 64 percent of parents believed that decisions made at the IEP meeting regarding services and placements were predetermined by school officials.
 - Two-thirds (65.6 percent) of these parents reported not being given an opportunity to provide input and change the content of the draft IEP.
 - One-third of non-dispute parents stated that, although they were afforded such opportunity, they agreed with the predetermined offer of services and placement.
 - More than half (55.0 percent) of respondents stated that school officials did not discuss other placement options or were not aware of an alternative.
 - Similarly, 56.4 percent of respondents reported that school officials gave only one placement option without considering an alternative.

These findings provide sufficient evidence that IEP teams approach IEP meetings with predetermined placement and service offers. Although it appears that parents are given an option to provide input, ask questions, and make recommendations regarding the predetermined offer, IEP teams do not appear to discuss or consider alternative options or parents' recommendations.

The inconsistencies noted in the review of policies and procedures are evidence that parents can interpret practices such as the use of draft IEPs as predetermination of the offer of FAPE by school officials. Although the bulletin regarding determination of placement in the LRE addresses issues of predetermination and the role of the parent as an equal member of the IEP team, parents do not believe school officials adhere to these guidelines.

Question 2.

To what extent are IEP teams knowledgeable about the availability of District resources and authorized to allocate resources to provide appropriate services and placements for students?

- Nearly two-thirds (63.8 percent) of respondents agreed or strongly agreed that IEP teams were knowledgeable of District resources for providing the appropriate services to students.
 - Contrasts were noted—half (49.9 percent) of the dispute parents disagreed or strongly disagreed that IEP teams possess this knowledge, compared to 18 percent of non-dispute parents.
- Six out of 10 parents (61.2 percent) stated that IEP teams were authorized to allocate District resources to provide the appropriate services for their child.

- One in 10 respondents was uncertain of IEP teams' authority to allocate these resources.
- Nearly 63 percent of parents agreed or strongly agreed that IEP teams were knowledgeable of the District resources to provide the appropriate placement for their child.
- More than 58 percent of parents believed that IEP teams had the authority to allocate District resources for placements for their child.
 - More than 41 percent did not know or were not sure whether IEP teams had this authority.

The survey findings support the allegation that IEP teams lack the knowledge and authority to allocate District resources when making an offer of services and placement. Approximately 40 percent of respondents reported this lack of knowledge and authority. Furthermore, the behaviors highlighted in the previous allegation, which support the notion that IEP teams approach meetings with predetermined offers of FAPE, can reasonably be perceived by parents that IEP teams lack the authority to provide the appropriate services and placements for their child.

The review of policies and procedures found evidence that the site administrators lack the knowledge of the availability of District resources. Many contain directions for IEP teams to recess meetings to consult and obtain more information from central office personnel. Although site administrators are directed to conduct preparatory activities in anticipation of IEP meetings, the prevalence of procedures for recessing IEP meetings highlights the lack of training and knowledge by District representatives.

Question 3.

To what extent are service providers (District and non-District) able to use their independent judgment when recommending the amount and type of services?

- Seventy percent of non-dispute parents believed that service providers were able to use independent judgment when prescribing services, whereas dispute parents reported much lower agreement with this statement (18.2 percent).
 - All non-dispute parents and 63.6 percent of dispute parents stated that the non-District provider was able to recommend, based on their independent judgment, the type and amount of services the child needed.
- Of parents who reported having made service and placement recommendations that differed from those proposed by school officials, more than half (57.6 percent) believed that IEP team members were reluctant to support their recommendation.

The majority of dispute parents reported that service providers do not use their independent judgment when prescribing services, whereas approximately one-third of non-dispute parents believed the same. Perceptions that IEP team members are reluctant to support them when their recommendations differed from those proposed by school officials provide corroborating evidence that service providers and IEP members exercise constraints that might impact the decision to provide appropriate individualized services and placements.

Although policies and procedures do not directly limit a provider's authority to use professional judgment when recommending the type and amount of services, administrative procedures exist in which providers or IEP teams can recess meetings and contact supervisors. It is unknown how recessing a meeting deters or delays a student from receiving services.

Question 4.

To what extent are parents offered services or placements and told that, if they did not agree with the services or placements, their only option was to pursue dispute resolution procedures?

- Approximately half (47.9 percent) of parents stated that school officials made an offer of services and explained that, if they did not accept the offer, their only option was to pursue dispute resolution.
 - Similarly, 45.7 percent of parents noted that if they did not accept the placement offer proposed, their only option was to pursue dispute resolution.

Approximately half of all parents state that offers are presented in a manner that does not encourage a collaborative partnership with the IEP team, resulting in an antagonistic dynamic that promotes dispute resolution.

The bulletin regarding IEP teams' roles, responsibilities, and authority only informs school officials that it is not necessary for parents to file for due process for private reimbursements. The high prevalence of parents' reporting school officials made such statements is evidence that this practice is broader than instances of private reimbursements.

Question 5.

To what extent are parents involved in IEP decisions about their child's placement and services?

- Less than half (44.7 percent) of parents stated they wanted to be more involved in the decision-making process of their child's services and placement.
- Half (51.4 percent) of dispute parents and one in five (20.0 percent) non-dispute parents believed they were somewhat or not at all treated as an equal and important member of the IEP team.

These findings support the notion that IEP teams do not approach the decision making for determining services and placements as a process that views parents as equal partners. These perceptions validate the findings that show a prevalence of IEP teams behaving in ways that undermine the IEP process, including presenting predetermined services and placement with minimal opportunity for meaningful parental participation and encouraging resolutions outside of the IEP meeting.

Some of the policies and procedures clearly state that parents are equal and important members of the IEP team. However, the lack of guidance for explaining to parents that draft IEPs are changeable, and the number of procedures that encourage recessing IEP meetings to obtain external support, create barriers in the decision-making process and minimize the role and responsibility of the IEP team, including parents.

**PART 3. FOCUS GROUPS AND INTERVIEWS OF DISTRICT STAFF TO EXAMINE POLICIES,
PROCEDURES, AND PRACTICES THAT MIGHT LIMIT AN IEP TEAM’S AUTHORITY TO OFFER
APPROPRIATE SERVICES AND PLACEMENTS FOR STUDENTS WITH DISABILITIES**

IEP teams comprise a multidisciplinary panel of District staff and parents. To examine if the individual and collective behavior of IEP teams contributed to violations of parents’ right to participate in the IEP process, the OIM conducted focus groups and semi-structured interviews with various staff. The perspectives obtained will corroborate or dispel the allegations brought forth by the Plaintiffs’ Counsel. To summarize, the complaint alleged the following:

1. Decisions regarding placement, services, and support are made outside of the IEP process.
2. IEP teams are neither knowledgeable about the availability of District resources nor authorized to offer these resources as part of the IEP process.
3. Service providers do not exercise independent judgment when recommending the type and amount of services to be provided and defer these decisions to supervisors outside of the IEP process.
- 4(a). IEP teams are not authorized to make decisions about moving a student to a more restrictive placement. Decisions are made after the meeting is recessed to satisfy District-imposed requirements.
- 4(b). The District routinely initiates the process to move students to less restrictive placements prior to and outside of IEP meetings.
5. District policy prohibits assessment for and provision of Educationally Related Mental Health Services (ERMHS) to students whose primary eligibility is intellectual disability (ID).

The focus groups and interviews also yielded information regarding issues related to the training offered to IEP team members in determining service and placement offers, issues during the IEP meeting that might contribute to disagreement, and constraints for delivering related services.

Methods

Interview Design

Similar to the telephone survey, the focus group interviews were designed to determine the validity of the allegations above. The OIM designed interview guides for staff who oversee service providers or support IEP teams (Appendix E). Questions also aligned with the study’s questions and items in the parent telephone survey. The interview guides contained general questions and, in some instances, additional probes. The guides were intended to facilitate semi-structured interviews during focus groups; not all items were used in each group.

Focus groups were held based on staff role and function, which resulted in areas of focus for specific groups. For instance, discussions with specialists who support and supervise service providers (i.e., speech and language pathologists, occupational therapists, etc.) focused on service offers and delivery, with minimal discussion of placement. Focus groups were scheduled for 90-minute sessions.

The OIM conducted two interviews specifically to gather information regarding allegations 4 and 5. The interviews contained direct questions regarding the incidents described in the complaint and supporting documents and were also part of the interview guides. One of these interviews also provided input regarding the IEP teams' alleged violations; select questions from the guides were used. OIM staff reviewed the interview guides and made revisions to streamline questions.

Sample Selection

Focus group participants were selected based on their roles as managers, supervisors, and support personnel. To ensure representative feedback from various geographic locations, some participants were selected based on the regions they support.

A total of 30 individuals were interviewed. Seven focus groups were conducted over a three-day period (April 7, 2015, to April 9, 2015) and included 28 participants. Managers, supervisors, and support personnel were grouped based on position type and responsibilities. For reporting purposes, senior-level personnel (i.e., coordinators) are referred to as "managers," related service specialists are referred to as "supervisors," and administrative staff who support IEP teams (i.e., program specialists and LRE specialists) are referred to as "support personnel." One interview was conducted with two school officials regarding allegation 5. These individuals were the school psychologist and resource specialist teacher (RST) who served as the administrative designee and were selected based on their involvement in the case.

Position types included:

- Special education managers (4)
- Special education support personnel (12)
- Special education supervisors (10)
- School psychologists (2)
- Psychiatric social worker (1)
- Resource specialist teacher/administrative designee (1)

The following departments and services were represented:

- Low incidence programs (i.e., blind/partially sighted, deaf and hard of hearing)
- LRE
- Psychological services/ERMHS
- Speech and language
- Occupational therapy and physical therapy
- Special Education Service Center (SESC)-Operations
- Educational service centers (ESC):
 - North
 - West
 - East
 - South
 - Intensive support innovation center (ISIC)

Findings

This section highlights the findings of the focus groups and is presented in five sections to correspond with the allegations. Findings were combined to include manager, supervisor, and support personnel responses. Some questions were role specific and might not have been included in other roles' interviews. The survey findings are summarized at the conclusion of this section.

Allegation 1.

Decisions regarding the placement, services, and supports which the District will provide to individual students are, as a matter of policy and regular practice, made outside of the IEP process.

The first set of findings focuses on the decision-making processes for determining services and placements for a student.

Process for Determining Offer of Services

The majority of groups provided answers that reflected best practices for determining how services are offered, such as the use of assessment data and how the student's disability impacts their instructional program. Some participants reported that discussions on the type and amount of services to be prescribed for a student occur after the placement discussion and decision. Supervisors noted how the frequency and duration of services are sometimes determined based on the program or restrictiveness of placement.

Managers stated that their role is to support service providers by providing them information and training on best practices and, in some cases, using actual cases for training. Supervisors noted that they do not provide guidelines on how services are prescribed and tell service providers that there is no "cookie-cutter" approach. When asked about the increase in use of ranges to describe how many times per week or month a student would be seen, supervisors noted that the use of ranges evolved from the service providers' desire to have more flexibility to meet other duties and denied that service providers were told or trained to use ranges. Supervisors believe that reporting and documentation of service provision has driven this practice.

Process for Determining Placement Offer

Participants reported that the placements are determined by consensus during the IEP meeting. As noted in the previous discussion on service determination, respondents reported that IEP teams discuss and determine placement prior to service.

Support personnel reported that their role was to facilitate IEP teams by exploring and finding placement options for students. Prior to the meeting, support personnel consult with administrators, observe students to see what is missing in the environment, review data, and find available program options. Although some administrators contact program representatives prior to the meeting, others call them during the meeting or recess the meeting to ask about

programs and their support. Support personnel stated that they support the IEP teams' decision by finding the programs and coordinating transportation for students.

Predetermination of Services and Placement

Participants gave inconsistent responses when asked about the practice of school officials bringing draft IEPs with predetermined offers of services and placements. Some participants acknowledged that draft IEPs contained predetermined service and placement offers but noted that these were only recommendations and were changeable. Others initially responded that they were unaware of draft IEPs being brought to meetings, but later eased their responses, acknowledging it might happen. One supervisor who initially denied this practice stated that, if it does happen, it is in the interest of saving time but that the areas of program/placement and services are left blank.

One respondent noted that there is no practice or procedure that informs parents that the IEP and its recommendations are a "draft only." Support personnel believe that when schools look for a more restrictive placement, they are often provided with least restrictive options. It is unknown whether and how these options are communicated to parents.

Disagreements and Dispute Resolution

Participants were asked which procedures are followed when parents disagree with the IEP teams' recommendations for services and placement. Respondents noted that, typically, teams attempt to resolve disagreements at the school level by trying to clarify the concern and discuss the parents' recommendation, such as an increase in service time. The IEP team attempts to find a middle ground but, if this is not achieved, informs parents of their due process rights.

Respondents shared some insights as to why these disagreements occur. One participant noted that parents believe "more is better" and that a higher number or increased length of sessions is preferable. This perception results in difficulty communicating the pros and cons of removing students from an instructional program in which skills and learning are reinforced.

When providers disagree with a parent's request, they might have difficulty conveying their disagreement as a professional opinion and not as an organizational limitation. Another participant stated that having the discussion of "trust us" with the parent is a difficult one and that the problem and solution are multifaceted. Having parents' trust is important, and if trust is not established early in their educational experience, this becomes a long-term problem.

Participants also believed that the preschool and early intervention programs might contribute to unrealistic expectations. Students who receive early intervention programs have two hours of home visits per week; this might result in setting a precedent that does not occur in school. Furthermore, these programs are "family centered," whereas school-based programs often convey a message of "this is how we do things."

Similarly, participants gave inconsistent responses when asked whether they were aware of school officials telling parents that, if they did not agree with the offer of Free Appropriate Public Education (FAPE), their only choice was to pursue dispute resolution. Managers responded adamantly that this practice does not occur, but as the discussion continued, they

eased their stance and admitted it might happen. Some support personnel reported hearing very few instances of these statements.

Supervisors and other support personnel were more likely to acknowledge this practice and gave explanations for this behavior. One common explanation was that parents sometimes requested a service or placement that the team disagreed with, and that these disagreements led to frustration. Therefore, the statement might have been made in a tone that sounded confrontational. In other instances, some parents disagreed with the IEP team's recommendation and stated that they would pursue due process—to which school officials responded “go ahead.” Participants noted that school administrators who led meetings were most likely to make these statements. They believed this was often due to a lack of administrator training and experience, which led to frustration or miscommunication when presenting the offer of FAPE.

Allegation 2.

District representatives/administrative designees present at individual IEP meetings are neither knowledgeable about the availability of District resources nor authorized to offer the provision of those resources as part of the regular IEP process.

This section examines the IEP teams' role, knowledge, and authority in making offers of services and placement at IEP meetings.

IEP Teams' Authority to Make Service and Placement Offers at IEP Meetings

Participants reported instances in which a parent reports having been told at an IEP meeting that the school is only authorized to make one placement offer without authorization from a supervisor or central office administrator. One manager had never heard of this, whereas others had heard of this behavior but only on few occasions. It appeared that those who work closely with supporting schools and service providers were more likely to acknowledge that these statements are made.

When support personnel became aware of these comments, their initial reaction was to determine the source, and they often believed it to be the administrator leading the team. When support personnel confronted schools, schools tended to deny making such statements and were reminded to be mindful of how they state things. One respondent believed that there are instances in which only so many service and placement options are appropriate, and if parents prefer an option that is not available and are told no, they might believe the IEP team's offer is the only option.

Managers and supervisors reported that when they hear of providers making statements that the provider lacks authority to provide a type or amount of service, they are spoken to. They believed that service providers might tell parents this to “pass the buck” to the District. Miscommunication was cited as a primary source of this perception, mainly from site administrators.

Participants noted that administrators' capacity varied by school and noted lack of experience and high turnover rate as contributing factors. Support personnel expressed mixed perceptions of administrators' knowledge of District resources and their ability to lead IEP meetings. Support personnel believed administrators were generally knowledgeable, but when

administrators were faced with issues related to specialized programs, they required more support.

Non-Public Agency Providers and Non-Public Schools

According to participants, obtaining non-public agency (NPA) services first requires an agreement by the IEP team. Once services are agreed on, the school administrator sends a form to the operations unit. This appears to be for “approval” but is noted to be “protocol” because to allow securing an NPA if agreed on in the IEP meeting. Supervisors stated that sometimes providers call to ask them for permission, which gives the perception that they are the ones who decide whether the NPA is approved. Supervisors note that their role is primarily to fill out forms, but parents get the impression they have the authority to approve or deny a service or placement. Managers stated that some parents request NPA providers because they believe these individuals are better trained. Participants noted that they would prefer service providers build better relationships and communication with parents. Distrust due to miscommunication was noted as a contributing factor for parents who preferred NPA providers to District service providers.

The process for non-public school (NPS) placement was described slightly differently because IEP meetings are usually recessed for several reasons. These include conducting a psycho-educational evaluation, the operations unit researching and providing two or three placement options to provide to the IEP meeting, and the NPS process of accepting the student. Despite this process, there is no guarantee for placement because the NPS is not obligated to accept the student. This process is examined further in the section below regarding allegation 4(a) and 4(b). However, respondents’ general consensus was that this process was about protocols to facilitate the placement and not an administrative approval of the IEP team’s decision.

Constraints that Might Impact the IEP Team’s Authority

Although some respondents were not aware of administrative procedures that limit an IEP team’s authority to make placement offers, others cited constraints, such as transportation and program availability. Support personnel were more likely to discuss the constraints limiting a team’s placement decision. Transportation is one key issue, as factors such as existing routes and the time a student will spend on the bus are taken into consideration. One respondent noted that the routes are not always the issue, but rather students’ safety on the bus, for instance, when their size and/or weight might limit the ability to transport them. Other considerations include determining whether there is space available and program accessibility at the campus.

Program availability was another constraint. One participant noted that principals might send students into classrooms that are above the norm⁶ set by the District or in a class comprising three grade levels, which was reported to be against District policy. In these cases, schools or teachers might request assistance. One participant noted that when a parent complained about their child being placed in an overly impacted program during an IEP meeting, they believed the teacher “would not speak their conscience” and support the parent due to professionalism. Another participant added that forums other than IEP meetings are more appropriate for

⁶ Norms are set by the District to establish student-to-teacher ratios specific to programs.

discussing this issue. Another participant noted that sometimes a parent requests a specific program or school but is told there is no space available. Parents might perceive this as a limitation of the IEP teams' options and authority to make such placements.

Allegation 3.

District members of individual IEP meetings who are service providers are systematically prohibited from exercising their independent judgment in recommending the type and amount of service to be provided to individual students. Rather, they are to defer to decisions about services dictated by supervisors outside of the IEP process.

The following section examines whether service providers are free to exercise their independent, professional judgment when recommending services at IEP meetings as well as the role of administrators in making such decisions.

Service Providers Are Free to Exercise Their Independent Judgment when Recommending Services

All participants reported that service providers are free to exercise their independent judgment when recommending the type and amount of services. Supervisors noted that sometimes they receive calls from service providers asking for advice and are told they cannot provide recommendations when not part of the IEP team. One support personnel member reported having heard a principal state that an LRE specialist would be invited to the IEP meeting to "be the District," and on another occasion, a principal stated that they "needed to check with the District" during a meeting. The participant believed these types of comments give parents the perception that the IEP team lacks authority and that an external person provides approval rather than serves as a resource to the IEP team.

Respondents denied knowledge of any District policies that express or imply limits for offering the type or amount of services. Managers noted that they tell service providers they are free to recommend any type or amount of service.

Constraints that Might Impact the Amount and Type of Service Recommended

Inconsistent responses were noted regarding constraints that might impact the amount or type of services recommended by providers. Those with the least interaction with service providers, such as managers and support personnel, were more likely to say that caseloads or other work-related duties do not hinder a service provider's ability to recommend or provide a service. One participant noted that talk of workload and time constraints was often heard in the lunchroom but rarely during IEP meetings. This individual believed that these work conditions are what service providers signed up for and are part of their jobs. This stance appeared to be influenced by the group dynamic, with four of the seven groups denying that work constraints impacted service recommendations. Caseloads for speech and language providers were reported to be at the state mandated 55; however, the managers noted service providers are more likely at 57. Per diem personnel were reported to have caseloads of 68 students.

Some participants were given an IEP meeting scenario in which a parent requests an increase in the amount of time that the student receives services per week, but the provider reached their

capacity. One manager stated that service providers should never be “maxed out” and that providers are assigned to a school for a specific amount of time and must adjust their schedule to meet the school’s needs. A supervisor echoed this sentiment despite earlier support for the District to base service provider assignment on workload rather than caseload. Another supervisor gave a mixed response, stating that service providers are not constrained by workload, but if this does occur, the department assigns someone to help and deliver services to students at that school.

Respondents who supervise service providers were more open to discussing these constraints and the reality of having to meet demands that, at times, exceed the available resources. Respondents noted that determining assignments based on caseloads presents too many challenges for meeting the demands and impacts service recommendations. Participants believed that the MCD had changed management’s behaviors, developing a strategic plan and moving toward using workload to determine assignments. However, they noted that, despite hearing for years about moving toward a workload approach, the District had not come up with or executed a specific plan.

Participants attributed service providers’ (particularly per diem personnel’s) high turnover rate to the caseload approach, due to the pressure of meeting the demands of the job. One participant believed that because per diem personnel have more students, they do not manage their caseloads and are not as invested in the system. Conversely, service providers are fearful of reducing their caseloads because the District would increase the number of students to serve and/or add a school to their assignment. This was said to de-incentivize service providers from exiting students they believe are inappropriately identified and receiving services.

Organizational constraints also impact how service providers are supported. The relationship among management, supervisors, service providers, and parents was described as one of distrust. Supervisors report having too many service providers to support and, at times, are told by managers to cover a school that same day when the service provider assigned is out. Supervisors try to work with service providers on reconfiguring their schedules to meet all the demands and, at times, suggest increasing the number of students receiving services during one session to meet the service requirements. Participants believed that management doesn’t always know what schools need to deliver services and don’t always provide them with tools to improve.

Allegation 4.

- 4(a). District policy prohibits individual IEP teams from making decisions about moving a student to a more restrictive placement. Rather, District policy requires that all such decisions be made after the meeting is recessed to satisfy District-imposed requirements for additional assessment and administrative review of the placement decision.
- 4(b). Conversely, the District routinely initiates the process to move students to less-restrictive placements prior to and outside of individual IEP meetings.

This section addresses the two allegations that the District engages in practices that limit the IEP teams’ authority when making placement decisions. This includes findings related to a specific case submitted by the Plaintiffs’ Counsel as evidence of these practices.

District Policy Requires IEP Teams to Recess Meetings for Administrative Procedures in order to Offer More Restrictive Placements

Participants noted that different procedures exist when IEP teams recommend an NPS placement, including recessing a meeting to conduct a psycho-educational evaluation, and initiate a search of two to three schools to present to the team. Parents are then required to visit the schools. Once a school accepts the child, the IEP team reconvenes and the placement is offered. NPSs are not required to accept a student; therefore, when an NPS does not accept a student, the IEP meeting must be recessed for the family to have an opportunity to find another school.

Participants provided inconsistent responses when describing the operations unit's role in finding schools to present to the IEP team. Support personnel from operations reported that the search for an NPS initiates when the IEP team has made a decision. They noted that they do not question the decision and are not an approval mechanism but rather assist with paperwork and logistics for the placement.

District Routinely Initiates the Process to Move Students to a Less Restrictive Setting outside of the IEP Process

When asked about a case included in the formal complaint regarding this allegation, school officials noted that they initiated a search for NPSs in anticipation of an IEP meeting in which they were considering moving a student from a residential treatment center to a less restrictive setting at an NPS. In this situation, a search initiated when school officials considered a placement change. School officials did not give notice to the parent and initiated the search outside of the IEP process. Although school officials denied making a predetermined placement decision by engaging operations to begin an NPS search, they admitted that they did not inform the parent due to a contentious relationship. School officials also acknowledged having a discussion with school personnel at the residential treatment center (RTC) about a timeline for returning the student to an NPS. They did not see these actions as violations or the predetermination of a change in placement, but rather attributed their actions to their ongoing intent to consider moving students to a less restrictive environment. They noted that often it takes months of logistical processes to return students from RTCs, and they were being proactive. This statement validates the allegation that this practice occurs routinely.

Although this case is only one example of these violations, these actions by school officials indicate that IEP teams predetermine offers of services and program placement. There appear to be procedures for finding NPS options when considering IEPs, but it is unclear what effect the results of the psycho-educational evaluation have on the IEP teams' decision for offering such placements. If IEP teams discuss and consider an NPS for a student and recess the meeting for the completion of an evaluation, this might appear to occur for an administrative review of the placement decision rather than to gather information on the needs of the student and determine that no District services or program can meet their needs. Although conducting an evaluation prior to a placement change is consistent with procedures established by special education law, the evaluation cannot be used to dissuade or influence an offer of an NPS placement if already agreed on by the IEP team.

Allegation 5.

The District's current policy prohibits assessment for and provision of ERMHS to all students whose primary basis of eligibility for special education is intellectual disability (ID).

This section includes findings from two interviews with school officials involved in the case in which a complaint alleged that students with an ID are not eligible for counseling services under ERMHS. Data are also included to examine the prevalence of students with ID receiving ERMHS and counseling services.

District Policy Precludes Students with an Eligibility of ID from Receiving ERMHS and Counseling Services

The administrative designee (RST) described the events during and after the IEP meeting that led to this complaint. He reported that during the IEP meeting held to discuss participation in the community-based instruction program, a behavioral concern was raised. When the family's attorney asked if the student could receive ERMHS, the administrative designee stated that he did not know and called the school psychologist. Unable to receive a response, he visited the school psychologist after the meeting, where he was told that students with an eligibility of ID do not qualify for ERMHS. This information was relayed to the attorney via email, which was then elevated by the attorney by filing a complaint.

The school psychologist acknowledged informing the administrative designee that students with an eligibility of ID do not qualify for the ERMHS program. Although she noted that this is not a District policy or a personal viewpoint, the comment was described as originating from a "general consensus or understanding" in the field that students with ID do not "respond" to these services. She indicated that behavioral services might be more appropriate for these students. The interaction between the administrative designee and the school psychologist was described as informal and did not include in-depth discussion regarding the student or the ERMHS program. She also reported not providing counseling services to any students with ID. When asked whether her opinion as a school psychologist carried weight as a person in authority, she agreed.

The events in this case highlight school officials' lack of knowledge about District resources available for students. Although the interviews did not find malicious intent to deny services to a student, the failure to have trained individuals who serve as the administrative designee, as well as the school psychologist's misguided interpretation of the benefits a student with ID can or cannot receive from counseling services, resulted in the IEP team providing inaccurate information to the family and denying the student an appropriate offer of FAPE. This case also highlights the behaviors of attorneys who could have resolved this more productively. This case shows the District's vulnerability when school officials are not well-informed in a potentially litigious environment.

This case alone cannot be used to determine whether the District has practices in place that systemically deny students with ID counseling services, particularly through the ERMHS program. A review of the data indicates that students with ID receive ERMHS and counseling services at very low rates (ID ERMHS 0.65 percent versus all others eligibilities 4.02 percent; ID

counseling 3.0 percent versus all others eligibilities 10.3 percent). As of October 15, 2014, 28 students with ID received ERMHS services and 128 received counseling services. Although this study only examined data to identify possible insights into the practices of offering ERMHS programs and counseling services to students with ID, the District should examine this issue further. The low frequency of these services and the general assumptions noted by the school psychologist indicate that IEP teams might not consider counseling services for students with ID.

Summary

The findings of the focus groups and interviews provide evidence that the allegations raised by the Plaintiffs' Counsel are valid. In some instances, it is clear that organizational constraints might limit the IEP teams' ability to provide an appropriate offer. In others, school officials' lack of training and miscommunication might promote a perception that IEP teams lack authority to determine services and placement. This is also supported by the review of policies and procedures which includes steps for recessing meetings when IEP teams lack the knowledge of the availability of District resources. The review of policies also shows the variance in the interpretation or knowledge of the procedures by school officials. Summary points are included for each allegation below:

Allegation 1.

- Participants provided inconsistent responses regarding the use of draft IEPs. Respondents believed that draft IEPs are changeable but realize that parents might not know this. In addition, there is no acknowledgement at IEP meetings that the copy of the IEP is a draft and subject to discussion and change.
- Participants gave inconsistent responses when asked whether IEP teams provide an offer and tell parents that, if they do not agree with the offer, their option is to pursue dispute resolution.
 - Although informing parents of their right to pursue dispute resolution sometimes occurs in an appropriate context—that is, if parents disagree with the offer of FAPE, —it appears that threatening due process is a systematic practice. Based on these findings and those from the parent telephone survey, it appears school officials make these statements even when disagreements have not occurred.
 - Respondents attributed site administrators' lack of training and experience to their making such statements. In addition, frustrations that arise from disagreements between school officials and parents might also lead to this statements or understanding.

Allegation 2.

- Respondents who work closely with service providers or schools were more likely to report having heard that IEP teams make statements that they are not authorized to allocate District resources and make an appropriate offer of FAPE.
 - Similarly, it was reported that although parents might attribute these statements to a lack of authority by IEP teams, school officials believed they are a result of the site administrators' lack of experience or training and miscommunication of the offer of FAPE.

- Respondents believed service providers might make such statements to avoid responsibility for providing the service or explaining to the parent why they disagree.
- Respondents agreed that the process for securing NPA services or NPS placement does not require administrative approval outside of the IEP team.
 - Administrative procedures exist that are described as “protocol” for securing these services and placements.
 - Respondents acknowledged that parents might perceive these procedures as an approval process outside of the IEP process.
- Respondents cited constraints such as transportation and program availability as impacting the IEP team’s authority.
 - Participants believed IEP team members cannot “speak their conscience” when decisions were impacted by constraints. They gave examples of students being placed in overcrowded or multi-grade classrooms.

Allegation 3.

- Participants believed that service providers are free to use their independent judgment when recommending services.
 - Participants noted that parents perceive that the IEP team lacks the authority to recommend services in instances in which IEP members ask for external assistance. Examples included service providers calling supervisors for advice or site administrators requesting support personnel at IEP meetings.
- Although participants denied having knowledge about policies that express or imply limits for offering services, they believed that constraints related to the caseload approach for determining assignments impacted their ability to provide services.
 - A manager and supervisor agreed that service providers are responsible for providing all services during the time allotted at each school, regardless of the number of students and demand on their time.
 - Participants attributed the use of the caseload approach to the high pressure of meeting the demands of the job, which has contributed to high staff turnover.
 - Per diem personnel who carry higher caseloads are perceived as not managing their caseloads appropriately and not being invested in the system.
 - The caseload approach creates an environment in which service providers are afraid to exit students or lower caseloads because they might be assigned additional students or schools.
 - Supervisors reported that the District has discussed moving toward a workload approach for years but has yet to take action.

Allegation 4(a) and 4(b).

- When NPS placement is recommended, IEP meetings might be recessed to:
 - conduct a psycho-educational evaluation,
 - research the schools available and provide two to three options to the IEP team,
 - allow the parent to visit the school, and
 - allow the NPS to accept the student.
- Although conducting an evaluation prior to a change in placement is consistent with procedures in special education law, the evaluation cannot be used to dissuade or influence an offer of NPS if the IEP team has already agreed on an NPS.

- Administrative procedures exist for NPS placements but are not considered an approval mechanism.
- The operations unit initiates the search for an NPS after the IEP team has made a decision.
- The case included in the complaint found that school officials initiated a change in placement outside of the IEP process and without prior notice to parents. These actions resulted in a predetermined offer and denial of FAPE.
 - Although this case is one example, these actions are consistent with the allegations that IEP teams behave in a manner that limits their authority and results in decisions made outside of the IEP process.
 - School officials noted that due to the cumbersome process required to return students from RTCs, placement changes are often initiated months prior to the IEP meeting.

Allegation 5.

- No District policy prohibits students with an eligibility of ID from receiving ERMHS services.
- Although the school psychologist agreed that no such policy exists, she stated that there is a “general consensus or understanding” that these students do not benefit from or “respond” to these services.
- The lack of knowledge by the administrative designee presiding over the IEP meeting and the school psychologist’s misguided interpretation resulted in a denial of FAPE.
- The case highlights the District’s vulnerability in a litigious environment, which could have been resolved in a less contentious manner by the family’s attorney.
- Data indicate that students with ID receive ERMHS and counseling services at a very low rate, which might be a result of the misguided beliefs of the service providers and IEP teams who do not consider this service for these students.

SUMMARY AND RECOMMENDATIONS

On September 8, 2014, the Plaintiffs' Counsel filed a formal written complaint with the Independent Monitor (IM) alleging that the District was in systemic violation of its obligations under the Individuals with Disabilities Education Act (IDEA). The basis of the complaint was that IEP teams lack the knowledge or authority to determine services and placement during IEP meetings and that school officials make service and placement decisions prior to IEP meetings. The complaint further asserted that the District has policies and procedures that limit IEP teams' authority and shift the decision making outside of the IEP process.

On October 28, 2014, the IM stated that there was sufficient cause for an investigation to determine whether these allegations resulted in systemic violations of the IDEA. To determine whether these allegations were valid, the OIM conducted a three-part study: a review of policies and procedures, a telephone survey of parents, and staff interviews.

The study found evidence of District practices that confirm the validity of the allegations in the complaint.

Inconsistencies were noted in the District's policies and procedures regarding the IEP teams' authority. Although bulletin and reference guides noted that the IEP team made service and placement decisions, many accommodated administrators and teams who lacked knowledge of available services and placement options by encouraging the recessing of IEP meetings. District staff cited examples in which teams contacted external support staff or related service provider supervisors during or after recessing meetings, which parents construed as a limitation of the IEP teams' authority. Staff noted some administrators lacked knowledge or experience, which led to miscommunication and perceptions that the IEP team lacks authority. Approximately 40 percent of parents reported that IEP teams do not have or were uncertain whether IEP teams have the authority to offer services and placement. Furthermore, one-third stated that teams lacked or were uncertain whether IEP teams had sufficient knowledge about the availability of District resources to make service and placement decisions.

The review of policies and procedures did not clearly address the allegations that IEP teams predetermine offers of services and placements and that these decisions are made outside of the IEP process. One bulletin stated that preparatory activities cannot predetermine decisions, but no policy prohibited this general practice. Staff acknowledged that the use of draft IEPs, as well as administrators' statements that if parents do not agree with the offer of Free Appropriate Public Education (FAPE), their only option is to pursue dispute resolution, might lead parents to perceive that services and placements are predetermined. Another bulletin was limited in addressing an IEP teams' authority and only stated that parents do not have to file for due process to obtain reimbursements for non-public school (NPS) or non-public agency (NPA) services. However, the practice of telling parents to pursue dispute resolutions is broader and systemic. Approximately two-thirds of parents believed that decisions made at the IEP meeting were predetermined by school officials. Approximately half reported that school officials stated that if they did not accept the offer of FAPE presented, their only option was to pursue dispute resolution procedures.

The review of policies and procedures and staff interviews found that related service providers are not prohibited from using their independent judgment when recommending the type and amount of services. However, the practice of recessing IEP meetings is encouraged when providers need external assistance or additional information about a program or service. Parents might perceive this as IEP team members obtaining a supervisor's approval to offer a service. In addition, work constraints impact a provider's judgment when recommending and providing services. Supervisors noted that the caseload approach and management's instructions to fulfill all service obligations within the time provided—regardless of a provider's workload—creates limitations on the offer of services. In addition, providers are fearful of exiting students and reducing their caseload because management will increase their caseloads or add a school.

The study investigated two specific cases addressed in the complaint. The first is that the District routinely initiated the process of moving students to a less restrictive placement outside of the IEP process. Staff interviews revealed inconsistencies in the practice of moving students from private placements to less restrictive settings. School officials from the operations unit noted that these changes occur only after the IEP team has agreed on a new placement and that their role is to support—not approve—IEP team decisions. However, the interviews revealed evidence that IEP team members initiated a change in placement outside of the IEP process for a student attending a residential treatment center (RTC). Although the school officials involved denied wrongdoing, a change in placement to a less restrictive setting was initiated without staff notifying or discussing the change with the parent. This included school officials consulting with staff from the RTC and submitting forms to the operations unit with a date for the student's anticipated discharge, months before the scheduled IEP meeting. Although this is one case, staff noted that the process of moving students from private placements to less restrictive settings is cumbersome and thus is often initiated months prior to the IEP meeting.

The second case claims that District policy prohibits students with an eligibility of ID from receiving ERMHS services. The study did not find policies that supported this allegation; however, a review of data found a very low prevalence of students with ID receiving ERMHS and counseling services. This, coupled with the interviews with staff associated with this case, corroborated the allegation that IEP teams are not considering these students for ERMHS. The school psychologist noted that although District policy does not preclude these students from receiving ERMHS services, there was a general consensus in the field that students with ID do not respond to or benefit from them. This case highlighted the administrative designee's limited knowledge of District's resources and the school psychologist's misguided and unprofessional assumptions regarding students with ID and ERMHS services.

Recommendations

- Review policies and procedures to ensure alignment with state and federal regulations and consistency between bulletins and reference guides.
- Clarify and emphasize the IEP teams' authority in all policies related to the decision-making processes during IEP meetings.

- Clarify and limit the practice of recessing meetings. For instance, an IEP team can recess meetings to find a school once it has determined a placement. Recessing meetings cannot deter or delay a decision or the provision of FAPE.
- Align the sequence of decision-making processes at the IEP meeting with the Welligent IEP system so that determination of supplementary aids and services are made prior to the discussion of educational placement. Policies and procedures should reflect this sequence and be consistent with state and federal regulations for determining LRE.
- Inform parents at the IEP meeting that draft IEPs are changeable. Update the Welligent IEP system to prevent school officials from entering information regarding placement or services prior to the IEP meeting.
- Provide training on issues identified by Bulletin 1686 that might be beyond administrators' knowledge. This includes:
 - programs or classes at other District schools,
 - additional adult assistance beyond existing school site personnel (for health or behavioral needs),
 - non-public school placements,
 - non-public agency services,
 - specialized nursing,
 - home/hospital instruction, and
 - parents' reimbursement for services.
- Establish and make available to IEP team members, including parents, user-friendly print materials on the seven issues above.
- Provide IEP teams a list of all District placement options and services, including descriptions, that can be shared with parents and facilitate IEP meeting discussions.
- Examine the process for initiating a change in placement from RTC or NPS to a less restrictive placement to ensure that parents are notified and are part of the process. This might require holding IEP meetings months before an upcoming school year to ensure sufficient time to find a new school.
- Examine data and practices to determine why students with ID receive ERMHS and counseling services at low rates compared to students with all other eligibilities.
- Provide training to administrators and school psychologists on the procedures for securing ERMHS services.
- Review the Division of Special Education website to ensure that all bulletins, reference guides and materials are available in a user-friendly format.

Appendices

Appendix A. List and Descriptions of Bulletins and Reference Guides

Appendix B. Telephone Survey Instrument

Appendix C. Dispute Parent—Selection to Participate in the Telephone Survey Letter

Appendix D. Non-Dispute—Selection to Participate in the Telephone Survey Letter

Appendix E. District Staff Interview Guide

BUL-1309—Comprehensive Evaluation for Students Suspected of Emotional Disturbance (ED), September 29, 2004

Purpose: Informs schools of the requirements set forth by Modified Consent Decree (MCD) Outcome 18 regarding the assessments when considering ED eligibility.

BUL-2075.0—Establishment and Documentation of Intervention Procedures for Students Suspected of Emotional Disturbance, October 24, 2005

Purpose: Informs schools of the nine required pre-referral interventions when considering a student suspected of having an eligibility of emotional disturbance. The policy addresses the requirements set forth by MCD Outcome 18.

BUL-3958.0—Determining the Need for Behavior Intervention Therapy as a Related Service for Students with Disabilities, October 1, 2007

Purpose: Establishes District policy on the required assessments and procedures for determining the need for behavior intervention therapy (BIT) as a related service.

BUL-4191.0 – Speech and Language Impairment (SLI) and Language and Speech (LAS) Eligibility Certification, April 14, 2008

Purpose: Provides procedures for the required documentation of pre-referral strategies, interventions, and assessment requirements as specified in the MCD Target Strategy Plan—Outcome 13, Services.

BUL-H 66—New Eligibility Code for Speech and Language Impairment (SLI) and Clarification of Eligibility Guidelines, January 27, 2003

Purpose: Establishes the SLI eligibility code from the previous codes used for aphasia “APH” and language and speech “LAS.”

BUL-5553.0—Enrollment of Students Returning from Juvenile Justice Facilities and Other Placements, September 6, 2011

Purpose: Provides guidelines and procedures for the return and enrollment of students from juvenile justice/court placements.

REF-4603.0—Development of the Final Individualized Education Program (IEP) for Students with Disabilities Expected to Meet Requirements for a Diploma, January 12, 2009

Purpose: Provides guidelines on the procedures for developing a final IEP for students in the general education curriculum.

REF-6449.0—Preschool for All Learners (PAL) Special Day Program, January 26, 2015

Purpose: Provides an overview of the new preschool program based on universal design principles that replaced the previous Preschool Intensive programs.

REF-6033.0—School Placement for Students with Individualized Education Programs Who Are in Foster Care, April 8, 2013

Purpose: Informs schools of changes to the *California Education Code* regarding school placement of foster youths with IEPs.

REF-6047.0—Matriculation of Students with Disabilities into the Catchment Area of a Zone of Choice, April 22, 2013

Purpose: Provides guidelines for implementing IEPs when students apply and enroll at a school of choice. Information also is included on the receiving schools' responsibilities to hold IEP meetings within 30 days of enrollment to address placement and services (unless the meeting has already been completed) as well as request assistance from the Division of Special Education to ensure supports and services are in place at the beginning of the year.

REF-5276.1—Guidelines for the Individualized Education Program (IEP) Team When Students with Disabilities Are Being Considered for Extended School Year (ESY) Programs and Services, November 1, 2010

Purpose: Assists IEP teams with procedures for determining when ESY services are necessary. This includes guidance on preparatory activities to collect data prior to the IEP meeting and to assist parents filling out the necessary forms.

BUL-4182.1—Parent Participation at Individualized Education Program (IEP) Meetings for Students Suspected of Emotional Disturbance (ED), August 9, 2010

Purpose: Clarifies the MCD Outcome 18 requirement for parental participation at IEP meetings for students identified with ED, including a form letter explaining this requirement to parents.

BUL-5577.1—Counseling and Educationally Related Intensive Counseling Services (ERICS) for Students with Disabilities, July 21, 2014

Purpose: Informs IEP teams of the change in name of the special education related service from ERMHS to ERICS.

Telephone Survey Instrument

Interviewer Instructions

- SPEAK SLOWLY AND CLEARLY.
- IF THE RESPONDENT HESITATES BEFORE ANSWERING A QUESTION, CONSIDER THE POSSIBILITY THAT HE/SHE HAD DIFFICULTY UNDERSTANDING THE QUESTION OR SOME PART OF THE QUESTION. VOLUNTEER TO REPEAT THE QUESTION, SAYING: “I’d be happy to repeat the question if you like. Would you like me to repeat it?”
- IF THE RESPONDENT STILL SEEMS HESITANT, SAY: “Can I help make something a little more clear?”

Introduction

A1. Hello, my name is _____. I’m calling on behalf of the Office of the Independent Monitor regarding an important study about your child’s education. May I please speak with [Parent’s Name] or parent or guardian of [Child’s Name]. [IF ASKED: The Office of the Independent Monitor was appointed by the courts to see if the Los Angeles Unified School District is following the special education laws that protect your rights.]

- If Parent is available and Person Speaking gets Parent, repeat A1.
- If Person Speaking is Parent, go to A2.
- If Parent is not available now but would like to set up an appointment, set appointment in the database.
- If wrong number, enter this information in the database and try secondary or tertiary telephone number.
- If Child is deceased, go to condolence script.*

*CONDOLENCE SCRIPT: I’m terribly sorry. Please accept our condolences. I’ll make sure you are not contacted by the study again. Thank you. *Terminate call and enter completed survey.*

A2. You may have received a letter explaining that we would be calling. [IF RESPONDENT SAYS THEY DIDN’T GET THE LETTER, SAY: Maybe it hasn’t gotten to you yet. AND CONTINUE]: Who would be the best person/adult to talk with about [Child’s] IEP meetings? [If asked, IEP is also sometimes called an “Individualized Education Program” or “receiving special education services.”]

- Person Speaking, go to A3
- Someone else, enter name of person
- Don’t know
- Refused

A3. I have some questions about your child’s IEP meetings that will take less than 15 minutes. Can I ask you those questions now?

- Yes
- No
- Don’t know
- Refused

This interview is an important opportunity for parents to share opinions and experiences. What we learn from these interviews will help improve school programs for children in the Los Angeles Unified School District. This interview is voluntary. Everything you say will be kept completely private, and you may choose to not answer any question I ask you. Nothing you say will ever be reported about you, [Child], or your family, and nothing you say will be shared with [Child’s] school. Your opinions are very valuable, and we want you to feel comfortable saying what you really feel and think.

If this is a good time to talk, we can start the interview now. [IF RESPONDENT HESITATES, SAY: Why don’t we start, and then I can always call back if you need to stop before we finish.

Begin questions.

Questions—Parents

During this or last school year, did you or another adult in your household go to an IEP meeting about [Child’s] special education program or services? [IF NEEDED: An IEP is also sometimes called an “individualized education program.” The IEP meeting is usually held once a year. It is a plan for the education of a child who is in a special education program or receiving special education services.]

- Yes
- No [Ask for the names of the parent or adult who attended and establish contact information.]
- Don’t know
- Refused

The following questions are related to your experiences in the IEP meeting(s) in making decisions regarding the services and program for [Child]. The first set of questions is related to the decision-making processes during the last IEP meeting you attended.

1. The IEP team was knowledgeable about the availability of District resources when discussing services for your child [IF NEEDED: These are services that may help a student benefit from his or her education]. Would you say you:
 - Strongly agree
 - Agree

- Disagree
 - Strongly disagree
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
2. Do you feel that service providers (e.g., speech therapists, occupational therapists [OTs], physical therapists [PTs]) recommended the type and amount of services your child needed based on their independent judgment?
- Yes
 - No
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
3. Does your child receive services from a non-District provider or non-public agency (NPA) (i.e., speech therapist, OT, PT)?
- Yes
 - No [Go to #4, select NA for 3a and 3b]
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
- 3a. Did the non-District provider or NPA provider attend the IEP meeting? Choose one of the following:
- Yes
 - No—Reasons other than below [Go to #4]
 - Non-District provider was not allowed to attend the IEP meeting
 - Not applicable [If no for 3]
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
- 3b. Do you feel the non-District provider or NPA provider was able to recommend the type and amount of services your child needed based on their independent judgment?
- Yes
 - No
 - Not applicable [If no for 3 and 3a]
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
4. Were members of the IEP team authorized to allocate District resources to provide the appropriate services for your child?

- Yes
 - No
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
5. Did school officials make an offer of services and explain that if you did not accept it, your option was to pursue dispute resolution procedures such as mediation or due process?
- Yes
 - No
 - Don't know [Do Not Read]
 - Refused [Do Not Read]

The next set of questions is related to the decision-making processes for determining the type of classroom and/or school for [Child].

6. The members of the IEP team were knowledgeable about the availability of District resources when discussing placement options for your child. Would you say you:
- Strongly agree
 - Agree
 - Disagree
 - Strongly disagree
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
7. Did the IEP team discuss different placement options [such as general education, resource specialist programs (RSP), and non-public schools] during the IEP meeting?
- Yes
 - No
 - Don't know [Do Not Read]
 - Refused [Do Not Read]
8. Do you feel the IEP team offered only one placement option without consideration of an alternative?
- Yes
 - No
 - Don't know [Do Not Read]
 - Refused [Do Not Read]

9. Were members of the IEP team authorized to allocate District resources to provide the appropriate placement for [Child]?

- Yes
- No
- Don't know [Do Not Read]
- Refused [Do Not Read]

10. Did school officials make a placement offer and explain that, if you did not accept it, your option was to pursue dispute resolution procedures such as mediation or due process?

- Yes
- No
- Don't know [Do Not Read]
- Refused [Do Not Read]

The last set of questions will help us understand your level of involvement in determining services and placement for [Child].

11. How do you feel about your family's involvement when deciding about the services and placement for [Child]? Would you say you:

- Wanted to be more involved
- Were involved the right amount
- Wanted to be less involved
- No opinion [Do Not Read]
- Don't know [Do Not Read]
- Refused [Do Not Read]

12. Did District officials bring a draft IEP to the meeting containing the services and placements that were offered?

- Yes
- No [Go to #13, select NA for 12a]
- Don't know [Do Not Read]
- Refused [Do Not Read]

12a. If so, were you given an opportunity to ask questions and make suggestions and/or recommendations?

- Yes
- No
- Not applicable [If 12 was NO, select NA]

- Don't know [Do Not Read]
- Refused [Do Not Read]

13. Did you make recommendations for services and/or placement that differed from those proposed by school officials?

- Yes
- No [Select NA for 13a and go to 14]
- Don't know [Do Not Read]
- Refused [Do Not Read]

13a. If so, did IEP team members express support for your recommendations for services and/or placement outside of the meeting?

- Yes
- No
- Not applicable [If 13 was no, select NA]
- Don't know [Do Not Read]
- Refused [Do Not Read]

14. Do you feel that decisions made at the IEP meeting regarding services and/or placements were predetermined by school officials prior to the meeting?

- Yes
- No [Go to #15, select NA for 14a]
- Don't know [Do Not Read]
- Refused [Do Not Read]

14a. If predetermined, were you allowed to provide input and change the content of the IEP?

- Yes
- No
- Not applicable [If 14 was NO, select NA]
- Don't know [Do Not Read]
- Refused [Do Not Read]

15. During this IEP meeting, to what extent do you feel your family was treated as an equal and important member of the IEP team in the decision-making process for determining services and placement?

- Fully treated as an equal and important part of the team
- Mostly was

- Somewhat was
- Not at all treated as an equal and important member of the IEP team
- Don't know [Do Not Read]
- Refused [Do Not Read]

Those are all my questions. Thank you so much for taking time to help us with this important study.

Office of the Independent Monitor

Modified Consent Decree
333 So. Beaudry Avenue, 18th Floor
Los Angeles, California 90017
Tel: (213) 241-1797
Fax: (213) 241-7551

DAVID ROSTETTER, ED.D.
Independent Monitor

JAY R. ALLEMAN
Chief Analyst

JAIME E. HERNANDEZ, ED.D
Research Director

March 27, 2015

ADDRESS

Telephone Number

To the Parents of _____:

We would like to invite you to take part in an important interview regarding special education services in the Los Angeles Unified School District (LAUSD). You have been selected to participate in this interview due to an experience you might have had in the past two years in which there was a disagreement regarding your child's special education program and/or services. These interviews are being conducted by the Office of the Independent Monitor, the court-appointed agency that monitors the LAUSD special education programs.

The information you share with us will not be shared with the school or District in any way that would identify you or your child. Your participation is voluntary, and we strongly encourage you to participate because your opinions and feedback are valuable and important. The information obtained from these interviews will help improve policies, procedures, and programs related to special education.

We will soon be calling you to participate in these interviews. For your convenience, you may contact us and schedule a time for an interview. Our interview hours are 7:00 a.m. to 4:30 p.m. If you require a time outside of these hours or if you would rather we use a different telephone number than the one listed above, please call (213) 241-1797 or email us at jaime.e.hernandez@lausd.net.

We appreciate your participation and look forward to talking to you soon.

Sincerely,

Jaime Hernandez, Ed.D.
Research Director
Office of the Independent Monitor

Office of the Independent Monitor

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Sincerely,

Jaime Hernandez, Ed.D.
Research Director

District Staff Interview Guide

Thank you for meeting with us today. We are interested in learning more about the policies, procedures, and practices that guide IEP teams when making determinations for offering services and placements to students. We also hope to better understand whether there are policies, procedures, and/or practices that might limit IEP team members' authority in making an offer of services and/or placement. The findings of these focus groups will help us make recommendations to improve such policies, procedures, and practices.

Today, we would also like to discuss the case that was part of a complaint made by Plaintiffs in October 2014. We will begin by discussing this case. Although we are interested in the specifics of this case, we would like to better understand the general processes and procedures that might have contributed to the complaint.

1. Are you aware of the _____ case?
2. Are you aware that the Plaintiffs' case—filed with our office—alleges that IEP teams are limited in their authority to allocate services and placements for students?
3. Would you give an overview of this case and your understanding of the events or issues that might have been alleged as limitations of the IEP team's authority to allocate District resources?
 - Can you describe the process that took place when determining this placement?
 - Who was involved in these decisions?
 - Please describe the administrative processes involved.
4. What was the final resolution of this case?
5. Do you feel that the issues that led to this case going to due process occur frequently, or do you feel this was an isolated incident?

Now, I am going to ask you about general processes related to how IEP team members determine service and placement offers during IEP meetings.

6. Would you describe your role in helping providers or other IEP team members determine service and placement offers for students during IEP meetings?
7. What kind of training does the District offer providers or other IEP team members on IEP team members' roles and IEP teams' authority?
 - When are these training sessions provided?
 - Are materials available for staff to refer to, if necessary?
 - Where are these materials?
8. Please describe the guidance given to providers who make offers of the type and amount of services during IEP meetings.
 - Are assessment data used to determine the type and amount of services prescribed?

9. Can you describe the private provider's role at an IEP meeting?
 - Who is responsible for inviting the private provider to the meeting?
 - Are there any restrictions on private provider attendance or participation?
10. What procedures are providers instructed to follow when a parent disagrees with the type or amount of service being offered?
 - What if a parent requests a non-public agency (NPA) provider?
 - What if the parent requests more services than offered?
11. Are you aware of any limits—expressed or implied in policies, procedures, or practices—on the amount of services a provider may offer a particular student?
12. Do you feel that you are free to recommend the type and amount of service based on your independent, professional judgment?
 - If not, what constraints prevent you from making such recommendations?
 - Are these constraints administrative or based on workload restrictions?
13. Has a supervisor or other person in a position of authority ever told you that there are limits to the amount of services that can be offered?
14. Are you aware of instances in which providers or other IEP team members commented during or outside of an IEP meeting that they are authorized to offer only a specific type or amount of service without requiring a parent to go to mediation or due process?
15. Are you aware of instances in which providers or other IEP team members commented during or outside of an IEP meeting that they are authorized to offer a only specific type or amount of service without requiring approval from a supervisor?

Let's discuss placement.

16. Please describe the placement process for students who require a program outside their school of attendance.
 - What is your role in this process?
 - Are there processes that differ for students attending independent charter schools, particularly for those being recommended a non-public school (NPS)?
17. What procedures are IEP team members instructed to follow if a parent disagrees with the placement offered?
 - What if the parent requests an NPS placement?
 - What if the parent requests a different program within the same school (special day program [SDP] vs. general education)?
 - What if the parent requests a different school?

18. Are you aware of instances in which IEP team members have commented during or outside of an IEP meeting that they are authorized to offer only a specific placement without requiring a parent to go to mediation or due process?
19. Are you aware of instances in which IEP team members have commented during or outside of an IEP meeting that they are authorized to offer only a specific placement without requiring authorization from a supervisor?
20. Are you aware of any administrative procedures that limit an IEP team's authority in making placement offers during an IEP meeting?
21. Are you aware of parents having the perception that IEP teams require administrative approval for any placement that differs from the one the school has offered?

Think about the IEP meetings you have attended and/or assisted with. We would like a better sense of IEP team behavior that might contribute to the limiting of an IEP team's authority, or a perception thereof, to offer services and placements.

22. Are you aware of any instances in which a school presented a parent a draft IEP that contained an offer of services or placement, and told the parent that if they disagreed, their only option was to pursue mediation or due process?
 - If so, were parents allowed to ask questions and make suggestions and/or recommendations?
23. Do you feel that some IEP teams or schools make predeterminations regarding service and/or placement offers?
 - If so, were IEP teams open to making changes to these predetermined decisions?
24. Do you feel that IEP teams have the authority to allocate District resources to offer the types and amount of services they deem appropriate?

Finally, at times, parents are misinformed by school officials who cite "policies" that can be best described as unofficial policies/practices or misconceptions or misunderstandings of policies or law. For instance, parents have heard that a provider is not authorized to provide more sessions of a service without administrative approval, and that students with a particular eligibility do not qualify for a specific service.

25. Are you aware of any policies—official or unofficial—that could limit the IEP team's authority to determining services and placements at school meetings?
26. Are you aware of any policies—official or unofficial—that could limit the IEP team's authority to determine services and placements at independent charter schools?