

# IEP Complaint Investigation

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Office of the Independent Monitor

**August 5, 2015**



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## I. 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 (Attachment A) 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 placements, 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 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 and California

Department of Education (CDE) regulations (Attachment B). Section 14 notes that the IM's resolution decision is "final and binding on the parties."

The Office of the Independent Monitor (OIM) conducted a three-part study for its investigation. First, the OIM conducted a telephone survey of parents, focusing on parents' experience of the allegations at IEP meetings. Second, the OIM conducted interviews with staff regarding the allegations to obtain perspective regarding policies, procedures, and practices that might limit the IEP teams' authority and decision making when determining the appropriate services and placements for students. The third included a review of related District policies and procedures contained in bulletins and reference guides. The complete report with findings can be viewed in Attachment C.

This report contains the findings and conclusions the IM reached after a five-month investigation into the allegations. The report also contains a description of the methodology, including an explanation of the procedures, instruments, and sample selection.

## **II. FINDINGS, DISCUSSION, AND CONCLUSIONS**

The OIM recognizes that the District has made great strides in improving the IEP process and outcomes for students in the past 10 years. Furthermore, the District has made substantial improvements in enhancing schools' capacity to integrate students with disabilities (SWD). This has resulted in more students being educated with their nondisabled peers and on general education campuses. The District is commended for such efforts, which have created a change in the landscape and culture for educating SWD.

The District has guidance and materials to facilitate the IEP teams' decision-making process, and many of these resources are available to schools and parents. Notwithstanding this progress, sufficient documentation and information has been gathered to demonstrate the need for improvement. This report is a response to the complaint filed by the Plaintiffs and demonstrates the appropriate methods of administration when conducting investigations. The complaint filed by the Plaintiffs provided more than sufficient information for the District to conduct its own investigation. Clearly, any attempts made to do so fell far short of an appropriately thorough complaint investigation.

The investigation has yielded information that requires changes in the procedures and practices that the Los Angeles Unified School District (LAUSD) engages in. This information further supports the OIM's more than 10 years of research and findings as well as parent and community input received at Parents' Council meetings and annual hearings.

This report presents the findings by allegation and includes the applicable requirements, discussion, findings and conclusions, and a determination regarding its validity. The text for each applicable requirement can be viewed in Attachment D.

## **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.

### *1.1 Applicable Requirements*

- §300.116 Placements.
- §300.320 Definition of an individualized education program.
- §300.327 Educational Placements
- §300.501 Opportunity to examine records; parent participation in meetings
- §300.503 Prior notice by the public agency; content of notice.

### *1.2 Discussion*

The first allegation asserts that the decision-making process for determining services, supports, and placement for a student are made outside of the IEP process. The complaint emphasizes that IEP teams predetermine offers of Free Appropriate Public Education (FAPE) and that parents are told that, if they disagree with the offer, they must pursue dispute resolution procedures. These practices result in a decision-making process inconsistent with state and federal regulations.

The findings of the parent survey provide sufficient evidence that IEP teams approach meetings with predetermined service and placement offers. Although parents can provide input, ask questions, and make recommendations regarding the predetermined offer, IEP teams do not consistently discuss or consider alternative options or parents' recommendations. Consequently, almost half (47.9 percent) of the surveyed parents stated that offers are presented in a manner that does not encourage a collaborative partnership with the IEP team, resulting in a dynamic that promotes dispute resolution. Approximately four in 10 parents reported not being treated as an equal member of the IEP team and wanting to be more involved in the decision-making process at the IEP meeting.

Focus group participants provided inconsistent responses regarding the use of draft IEPs containing predetermined offers of FAPE. Although schools use draft IEPs, they are considered changeable. Participants noted that this practice is intended to save time at the IEP meeting, and some stated that the offer of services and placements should be filled out at the meeting. Interviewees acknowledged that parents might not realize this and understood how this practice could be perceived as predetermination of the offer. In addition, one participant pointed out that there is no practice or procedure that informs parents at IEP meetings that the IEP draft is subject to discussion and change.

Interviewees gave inconsistent responses when asked whether IEP teams provide an offer of FAPE and tell parents that, if they do not agree with the offer, they must pursue dispute

resolution. Although informing parents of their right to pursue dispute resolution sometimes occurs in an appropriate context, 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.

Interviewees attributed this practice to site administrators' lack of training and experience. In addition, frustrations that arise from disagreements between school officials and parents might lead to these statements or this implied understanding.

The practice of recessing IEP meetings also contributes to parents' perception that they must pursue dispute resolution. Although interviewees noted that the purpose of recessing a meeting was to obtain additional information on the availability of programs or specialized services, they acknowledged that it could be interpreted as an approval mechanism, particularly when parents are told that there is no available space at the desired program.

The review of bulletins and reference guides found District policies and procedures that direct IEP teams to recess meetings for several reasons including when service providers are not aware of available service options or when teams are unable to commit District resources. These formal procedures further reinforce the finding that District personnel and IEP teams lack the authority to allocate resources at meetings as required by law.

### *1.3 Findings and Conclusion*

The use of draft IEPs is not prohibited by law. However, all members of the IEP team, including parents, must be given an opportunity to provide input, ask questions, and make recommendations. The IDEA and CDE regulations promote a collaborative IEP process in which parents are regarded as equal members.

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

Taken together, the parental responses, results of the focus groups, and review of District procedures result in a finding that the District's procedures and practices are not compliant with federal and state regulations. These practices and behaviors are systemic and undermine the parents' role as well as the IEP process's integrity.

### *1.4 Determination: Allegation 1 is valid.*



## **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.

### *2.1 Applicable Requirements*

§300.116 Placements.

§300.321 IEP team.

### *2.2 Discussion*

The IDEA and CDE regulations require that IEP team meetings include District representatives who are knowledgeable about the availability of District resources and have the authority to allocate such resources. Allegation 2 contends that IEP team members lack this capacity and that decisions are made outside of the IEP meeting.

The parent 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. One-third of survey respondents reported this lack of knowledge and authority. Furthermore, the behaviors highlighted in allegation 1, 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.

Focus group participants noted that the knowledge of IEP team members—particularly administrators who lead meetings—varies. Policies regarding the guidelines for determining the appropriate services and placements encourage IEP team members to recess IEP meetings when they lack knowledge about a service or availability of a placement. Focus group participants confirmed this practice. An example of IEP team members lacking knowledge of the availability of District resources is highlighted in the section addressing allegation 5.

Focus group participants who work closely with service providers or schools were more likely to report having heard IEP team members assert that they are not authorized to allocate District resources and make an appropriate offer of FAPE. School officials noted that parents might attribute these statements to IEP teams' lack of authority but believed they are a result of the site administrators' lack of experience or training and miscommunication of the offer of FAPE. In addition, service providers might make such statements to avoid responsibility for providing the service or explaining to parents why they disagree.

Although focus group participants agreed that the process for securing non-public agency (NPA) services or non-public school (NPS) placement does not require administrative approval outside the IEP team, they noted that administrative procedures described as "protocol" exist for

securing these services and placements. Respondents acknowledged that parents might perceive these procedures as an approval mechanism outside of the IEP process.

Interviewees also noted that constraints such as transportation and program availability impact IEP teams' decisions to offer FAPE. Interviewees believed that IEP team members could not "speak their conscience" when these constraints impacted their decisions. Examples included students being placed in overcrowded or multi-grade classrooms.

Notwithstanding the rationales, the information and documentation collected support the finding that there is a widespread deficiency concerning IEP team members' knowledge of District resources.

### *2.3 Findings and Conclusion*

The parent survey and focus group findings offer sufficient evidence validating the assertion that IEP teams lack the knowledge of availability of District resources and require assistance outside of the IEP process. Although recessing a meeting is not a violation per se, the administrative procedures associated with securing services and placement, as well as the manner in which the offer of FAPE is presented to parents, create a dynamic that undermines the IEP team's authority.

Because the District has a wide array of programs and services, IEP teams should be equipped with such information to minimize the need for external assistance and ensure that IEPs are completed and implemented in a timely manner. Ensuring all IEP team members, including parents, have information regarding the District resources on hand at IEP meetings will promote transparency and trust with families.

### *2.4 Determination: Allegation 2 is valid.*

### **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.

#### *3.1 Applicable Requirements*

- §300.114 LRE requirements.
- §300.320 Definition of individualized education program.
- §300.321 IEP Team.

#### *3.2 Discussion*

The IDEA and CDE regulations require that an IEP, including the offer for the provision of services, be developed in an IEP meeting. This precludes practices and procedures that constrain related service personnel from making service recommendations based on a student's individual needs. Allegation 3 contends that individuals qualified to provide related instructional services are limited in or prohibited from recommending and allocating services during the IEP meeting. The assertion is that there is a mechanism outside of the IEP process that limits a service provider's professional and independent judgment when making an offer of FAPE.

The telephone survey found that forty-six percent of the parents interviewed do not believe providers can use their independent and professional judgment when recommending services. Fifty-three percent of parents reported that service providers use their independent judgment. The parents' perception that IEP team members are reluctant to support them when their recommendations differ from those proposed by school officials provides corroborating evidence that service providers and IEP team members are constrained, which impacts the decision to provide appropriate individualized services. One school official expressed this reluctance to support parents' recommendations, stating that teachers are afraid to "speak their conscience" when they disagree with the offer presented, yet believed this lack of advocacy was due to "professionalism."

The focus groups revealed that all District personnel believed that service providers can use their independent judgment when recommending services. Interviewees noted that parents perceive that IEP teams lack the authority to recommend services when IEP members ask for external assistance. Participants also noted that, at times, service providers disagree with a parent's recommendation regarding the type or amount of service, and parents might perceive such disagreement as a lack of authority to allocate such resources. This is exacerbated by service providers' reluctance to explain the reasons for their recommendation or disagreement.

Interviewees noted that, to minimize parents' perception that recommendations and decisions occur outside of the IEP process, trust between service providers and parents must be established. Management noted that a lack of trust also results in parents requesting non-District providers.

Although District personnel denied having knowledge about policies that express or imply limits for offering services, some believed that constraints related to the caseload approach for determining assignments impacted their ability to provide services. These discussions offered insight into practical limitations that influence a service provider's independent judgment when recommending a type or amount of service.

The caseload approach contributes to the high pressure of the job, which has resulted in high staff turnover. The caseload approach impacts all providers; however, per diem personnel, who carry higher caseloads have higher attrition rates, are mostly likely to be perceived as managing their caseloads inappropriately and not being invested in the system. Supervisors reported that the District has discussed moving toward a workload approach for years but has yet to take action.

The manager of speech and language services stated that service providers are responsible for providing all services during the time allotted at each school, regardless of the changing needs of students and increased demands on their time or workload. According to managers, it is District practice that caseload assignments are rarely changed. When given a scenario of a parent requesting more time for their child to receive services at a school where the service provider is at capacity, management and supervisors responded that service providers are responsible for delivering all services by adjusting their schedule. One interviewee expressed that these constraints are part of a service provider's job. One manager did not feel these constraints occurred but stated that, if this situation did arise, the corresponding related services department would send another service provider to assist with the caseload.

The managers' and supervisors' attitude directly affects service providers' independent judgment when recommending services while they are at capacity. Service providers were reluctant to offer a service or increase time with a student if they were at capacity and held accountable by management for delivering services. In addition, the caseload approach influences service providers' behavior and creates an environment in which they are afraid to remove students or lower caseloads because they might be assigned additional students or schools. In both cases, the caseload approach limits the District from utilizing its resources more effectively and increases the likelihood of violating students' rights and perpetuating distrust among management, providers, and parents.

Previous research<sup>1</sup> by the OIM noted that constraints exist in the provision of services by related service personnel. These findings establish a clear relationship between constraints for the provision of services and behaviors of service providers when recommending services based on students' individual needs.

### 3.3 *Findings and Conclusion*

With the information obtained from the review of policies and procedures, the OIM cannot conclude that the District directly limits the types and amounts of services a service provider might recommend. However, the District directs service providers and IEP teams to recess meetings for various reasons that might imply limitations for recommending supplementary aids and services, particularly those that are specialized. Furthermore, systemic constraints concerning resources, particularly those attributed to the caseload approach, directly impact service providers' authority and independent judgment when allocating services.

The findings also indicate that, when using their independent judgment to offer services at IEP meetings, service providers are constrained by the demands of the job and an ineffective organizational structure for determining assignments. Although it is understandable that a large school system with limited resources faces the daunting challenge of providing services to more than 80,000 students, it is reasonable to expect the organization to continuously work toward maximizing its resources.

For several years, the OIM has asserted that the caseload approach impacts the District's ability to deliver services and comply with Outcome 13 of the MCD and the IDEA. It is clear that this approach also impacts service providers' professional judgment in IEP meetings. Therefore, it is reasonable to conclude that using the caseload approach without regard for the service providers' workload has negative consequences on the judgment exercised in IEP meetings for offering services. These impacts are systemic and limit an IEP team's ability to provide an appropriate offer of FAPE.

### 3.4 *Determination: Allegation 3 is valid.*

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<sup>1</sup> Report of the Findings of Focus Groups to Identify Factors that may be Limiting the Ability to Deliver Services in Accordance with the Individualized Education Programs of Students with Disabilities  
Office of the Independent Monitor, April 10, 2012

## **Allegation 4(a) and 4(b):**

- 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 individual IEP meetings.

### *4.1 Applicable Requirements*

§300.114	LRE requirements.
§300.116	Placements.
§300.321	IEP Team.
§300.327	Educational Placements.
§300.501	Opportunity to examine records; parent participation in meetings.
§300.503	Prior notice by the public agency; content of notice.

### *4.2 Discussion*

This allegation addresses administrative procedures and policies that might limit an IEP team's authority to determine placement in both more and less restrictive settings. The first part questions the policy and practice of recessing IEP meetings to determine more restrictive placements. The second part is based on a case included in the complaint that alleges school officials initiated a change in placement to a less restrictive setting outside of the IEP process.

To investigate the first part of this allegation, the OIM asked focus group participants to describe IEP teams' procedures for making placement determinations, including those for NPSs. Participants stated that IEP teams determine more restrictive placements. However, many acknowledged that meetings are recessed to ensure that programs are available and that transportation will be feasible.

Inconsistencies were found among District policies and procedures regarding the development of the IEP and determining the least restrictive environment (LRE), and these procedures are not consistent with state and federal regulations. The majority of bulletins and reference guides describe a sequence of events for the development of the IEP in which placement is decided before discussing services. This practice was corroborated by school officials during the interviews and by the sequence established in the Welligent IEP system for conducting IEPs. This guidance and practice is inconsistent with state and federal regulations. Although one bulletin's described process was consistent with the principles for determining LRE, the practices reported represent a process in which IEP teams determine placement prior to services.

The sequence of the IEP development process provides for the determination of a program prior to the description of special education goals and related services necessary to implement the IEP. This results in placement that is determined by the service delivery system's availability or configuration and not based on the individual student's needs.

Participants believed that procedures associated with securing more restrictive placements were not an approval mechanism but acknowledged that these constraints might be perceived by parents as a limitation of the IEP teams' authority. They also noted that teams recess meetings when they need more information regarding specialized programs. In these cases, IEP team members, such as administrative designees or service providers, contact external staff, such as program specialists, which some parents might perceive as the IEP teams obtaining approval. Participants also gave examples in which parents request a specific program that is not available, and parents interpret this as a denial from central office staff.

Participants noted that different procedures exist when IEP teams recommend an NPS placement. This includes recessing the meeting to gather additional information and begin the process of finding and securing a placement. Participants reported that recessing allows time for the IEP team to gather more information, such as conducting a psycho-educational evaluation, and to instruct the operations unit to begin researching different schools to present to the team. Parents are then notified of the potential schools and are required to visit the schools. Because NPSs are not required to accept a student, the family is given an opportunity to find a school. Once a school accepts the child, the IEP team reconvenes and offers the placement, and the IEP is finalized.

Interview participants provided inconsistent responses when describing the operations unit's role in finding more restrictive placement options, including NPS schools. Operations unit staff reported that the search for NPS initiates when an IEP team has made a decision. They noted that they do not question the decision and are not an approval mechanism, but rather facilitate the paperwork and logistics for the placement. However, availability of space and transportation, as well as information collection for assessment, are barriers to securing a placement. Additional assessments cannot be used to delay or deter implementation of the placement of a student. The more appropriate time to recess a meeting would be after the IEP team determines placement.

To examine the merits of allegation 4(b), the OIM conducted a review of relevant documents and interviewed personnel involved in the case. The case, which involved a student attending a private residential treatment center (RTC) out of state, alleges that school officials initiated a change in placement to a less restrictive setting outside of the IEP process and without prior parental notification. Below is a summary of the sequence of events derived from the parents' declaration, staff interviews, and documents reviewed.

- November 17, 2012—Student was admitted to the RTC.
- March 2014—School officials conducted a site visit at the RTC.

- March 25, 2014—Parents received a voicemail from RTC staff informing them that the District had decided to discharge the student.
- March 25, 2014—A form recommending the return/discharge from the RTC to an NPS with an anticipated discharge date of August 2014 was signed by school officials and provided to the operations unit.
- Early April 2014—Parents received a letter from school officials asking them to select one of three dates for convening an IEP meeting.
- April 12, 2014—Parents emailed a school official indicating they believed the current placement was appropriate and would not consider a change.
- April 21, 2014—School officials responded that the purpose of the IEP meeting was to “place into the IEP information about his progress since the last IEP which was over six months ago.”
- May 15, 2014—Parents received a letter with options for four NPSs requesting them to schedule interviews for selection.
- May 16, 2014—The IEP meeting was held, determining that placement was to remain at the RTC.
- May 20, 2014—Parents received calls from an NPS that wanted to discuss enrollment.
- May 21, 2014—Parents received a call from another NPS stating the District had approved placement and school was holding a seat for the student.

The parents’ declaration alleges that:

- they were not informed of the intent to discharge the student;
- a discharge date had been determined for “the end of summer”;
- school officials repeatedly misled them about the nature of the meeting;
- the RTC staff was pressured to discharge the student; and
- school officials made a unilateral decision to discharge the student despite conflicting comments about the IEP meeting’s intended purpose and how the placement would be determined based on the IEP team’s consensus.

Four school officials participated in an interview, including two individuals from the psychological services unit stating that they had visited the student at the RTC. The interview began with the participant who was described as having initiated the change in placement. She described the events similarly to those outlined above but adamantly stated that the IEP meeting’s purpose was to discuss the student’s progress and not to move the student to a less restrictive placement. She claimed that the District did not initiate a change in placement outside of the IEP process.

The second participant who visited the site joined approximately 30 minutes into the interview. She claimed that, during her visit to the RTC, she met with staff and discussed discharging the student. During this meeting, she posed potential dates for the discharge, and the RTC selected the latest—August 2014. This interview contradicts the first participant’s description of the RTC visit’s intent and the IEP meeting’s purpose. Furthermore, this interview supports the parents’



and Plaintiff attorneys' claim that school officials unilaterally initiated a change in placement without prior parental notice.

As the interview continued, participants gave explanations for the sequence of events, maintaining that the IEP meeting's intended purpose was solely to update the student's progress. Regardless, they revealed that a school official did in fact submit the return/discharge form to the operations unit, which recommended moving the student to a less restrictive environment. School officials also acknowledged the email communication with parents regarding the nature of the IEP meeting and the parents' desire for the child to remain at the RTC. School officials cited a history of contentious interactions with the parents as the reason for not informing them of the District's consideration for a less restrictive setting. They also reported that reinstating students in less restrictive settings is always a consideration but is bogged down by a cumbersome process that requires time, planning, and coordination. For this reason, these administrative procedures are initiated months prior to IEP meetings so everything is in place to enroll students in time for the upcoming school year.

The direct statements, documents reviewed, and parents' declarations support the assertion that the District initiated a unilateral change in placement without prior parental notice. The timelines above were corroborated by all sources and, despite school officials' denial of the IEP meeting's intent, there is no doubt the District intended to discharge the student from the RTC. The search for a new placement continued after the parents were informed by the RTC of the pending discharge and expressed their intention to not support such change. NPSs were also engaged in finding an alternative placement with two contacting the parents after the IEP meeting, despite the IEP team's decision to maintain the current placement. It is clear that the District not only considered a change in placement but also continued acting on that determination after the meeting was convened.

Furthermore, the parents were not provided notice of a potential change in placement, and the District did not act with transparency or make attempts to hold a meeting to discuss changing educational placement. School officials deliberately withheld such intentions due to a desire to avoid engagement with the parents out of fear of a contentious interaction.

#### *4.3 Findings and Conclusion*

The findings of the focus groups indicate that IEP teams recess meetings when determining both more and less restrictive placements. Recessing a meeting when the team considers an NPS appears to be procedural and done to perform additional assessment, initiate a search for available programs and schools, and allow for the acceptance of the student. IEP teams also recess meetings when students move to programs that are outside of their school of attendance due to logistical considerations and constraints. Recessing of IEP meetings also occurs when teams or providers do not have knowledge of availability of District resources. This practice undermines the intent of the IEP team, which is to include a representative with the knowledge and authority to allocate District resources. This is further supported by the policies and procedures guidelines that encourage the practice of recessing IEP meetings.

The sequence for IEP development is inconsistent with District, state, and federal regulation for determining LRE, which determines placement prior to services. Training on and implementation of the District's Bulletin 5901.3 is critical for clarifying the IEP teams' responsibility for exhausting supplementary aids and services to ensure that students remain in general education campuses and instructional settings.

Based on a review of this information and the statements made by personnel directly involved, the evidence is clear that the District initiated a change in placement outside of the IEP process and without prior parental notice. Furthermore, it appears that District officials initiate placement changes prior to convening an IEP meeting when students are moved from RTCs or NPSs due to the cumbersome transition process. This assertion has been determined to be valid, and evidence demonstrates that it occurs systemically.

4.4 *Determination:* Allegation 4(a) and 4(b) is valid.

## **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 ID.

### *5.1 Applicable Requirements*

§300.114 LRE requirements.

§300.116 Placements.

§300.321 IEP Team.

### *5.2 Discussion*

This allegation asserts that the District prohibits students with ID from receiving ERMHS. Although the allegation is specific regarding the service and eligibility category, it also encompasses previous allegations that District representatives lack the knowledge of the availability of resources as well as the authority to allocate these resources as part of the regular IEP process.

The review of District policies and procedures found no evidence that students from any eligibility category are precluded from receiving counseling or ERMHS services. The bulletins and reference guide include definitions of both counseling and ERMHS services and specify that ERMHS is for behaviors that are more intense and manifested in multiple settings rather than just school. Given these definitions, 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.

To determine this allegation's validity, the OIM conducted a review of service data, email communication, and interviews with the school officials involved in the case. The formal complaint included three emails as the basis for this allegation. The emails were between the parents' attorney and the school official who served as the administrative designee at the IEP meeting.

The first email was a response to a request made by the parents or attorney at the IEP meeting for additional information regarding ERMHS counseling services. The administrative designee's email states that the school psychologist informed him that the student's eligibility of ID precluded the student from receiving ERMHS counseling. The email states the administrative designee was "told that ERMHS services have been determined inapplicable to students with intellectual disabilities due to the fact that they are not cognitively able to participate, benefit from and/or access counseling activities." The email then explains that ERMHS is part of a larger system of intervention and typically considered after long-term counseling has been deemed unsuccessful.

The second email included a response from the attorney who requested that the school official guide him to “the District bulletin or other legal basis for precluding ERMHS services based on a student’s primary eligibility.”

In the third email, the administrative designee admitted not knowing whether such policy or legal basis exists. The following statement further supports his lack of knowledge: “What I’ve reported are simply the common practices surrounding circumstances of this nature as interpreted by the specialist in this area that I have access to.” He then offers to investigate the matter further and refers the attorney to the Psychological Services Department for a more immediate response.

To examine and corroborate the facts of this case, the OIM conducted separate interviews with the school officials involved, the administrative designee, and the school psychologist.

The administrative designee was a resource specialist teacher (RST) who presided over this IEP because the administrator responsible was unable to. He described the events during and after the IEP meeting that led to this complaint, reporting that, during the IEP meeting held to discuss participation in the community-based instruction (CBI) program, a behavioral concern was raised. When the family’s attorney asked if the student could receive ERMHS, the administrative designee stated 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 given the information described above. This information was relayed to the attorney via email, which resulted in the above email exchange. The administrative designee was forthright in acknowledging his lack of expertise and the misinformation communicated regarding this matter.

The school psychologist also acknowledged informing the administrative designee that students with an eligibility of ID do not qualify for these services. The school psychologist noted that this is not a District policy or a personal viewpoint, but rather described the comment as originating from a “general consensus or understanding” in the field that students with ID do not “respond” to these services. The interaction between the school psychologist and the administrative designee was described as informal and did not include in-depth discussion regarding the student or the ERMHS program. The school psychologist agreed that her professional opinion carried weight as a person in a position of authority.

The events in this case highlight the school officials’ lack of knowledge of District resources available for supporting students. Although the investigation did not reveal malicious intent to deny services to a student, the failure to have trained individuals who serve as administrative designee, as well as the school psychologist’s misguided and ill-conceived interpretation of the counseling services a student with ID can or cannot receive, 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 behavior of the attorney who could have resolved this in a more productive way. Although the administrative designee failed to provide an adequate response

to the attorney's request for policies or law that supported the District's assertion, he offered to continue looking into the matter and referred the attorney to the appropriate department. The attorney chose to elevate this situation by filing a complaint despite acknowledgment from the administrative designee that he lacked the knowledge to provide a response. This case shows the District's vulnerability when school officials are not well-informed in a potentially litigious environment.

This case cannot be used to overgeneralize whether the District has policies or practices in place that deny students with ID counseling services, particularly through the ERMHS program. A review of data for the 2012–2013 and 2013–2014 school years indicates that students with ID receive ERMHS and counseling services at very low rates.

- As of October 2014
  - 0.65 percent of students with ID received ERMHS, versus 4.0 percent for all other eligibilities.
  - 3.0 percent of students with ID received counseling services, versus 10.3 percent for all other eligibilities.
- As of October 2013
  - 0.50 percent of students with ID received ERMHS, versus 3.0 percent for all other eligibilities.
  - 2.8 percent of students with ID received counseling services, versus 10.2 percent for all other eligibilities.

### 5.3 Findings and Conclusion

There is no evidence that the District's policies explicitly exclude students with ID from receiving ERMHS. Despite the low number of students receiving ERMHS, IEP teams are recommending and agreeing that students with ID would benefit from such services. However, the low frequency at which students with ID receive ERMHS and counseling services compared to students with all other eligibilities demonstrates systemic practices by IEP teams who share the general assumptions identified in this investigation that these students do not benefit from these services. The low prevalence of students with ID receiving these services should be examined more in-depth.

This example corroborates the findings noted in allegation 2 that IEP team members lack the knowledge of District resource availability. Both the administrative designee and school psychologist lacked the basic knowledge of ERMHS and requirements for eligibility. These individuals serve in IEP team roles in which misinformation and assumptions can result in denial of FAPE and violations of student rights. In addition, despite the sincerity of the school psychologist involved in this matter, her assumptions were ill conceived and not rooted in sound educational practice. Her advice excludes a student from eligibility of services based on a category of disability and not on assessed needs. This is neither acceptable practice nor compliant with regulations.

5.4 Determination: Allegation 5 is valid.

### III. REQUIRED CORRECTIVE ACTIONS

Based on the evidence presented and the determination that the District engages in behaviors that contribute to systemic violations of the IDEA, the District is ordered to implement remedies and immediately cease such behaviors.

The IM is mindful that these corrective actions will require a great deal of work during a time when the District is disengaging from the MCD. To avoid delaying disengagement, the IM is imposing strict timelines for the District to allocate necessary resources to resolve these issues. For each remedy, the District must apply the following standards:

- Immediately cease the behavior(s) that results in a violation.
- Establish procedures to stop the recurrence of violations.
- Provide documentation that the behaviors and violations have stopped.
- Provide timelines for the correction of behaviors and violations.
- If the violation(s) resulted in harmful effects, remediate the past effects.

The District must respond to the following 12 corrective actions within 45 days. In no event will the timelines for implementation extend beyond August 31, 2016.

1. Establish a complaint investigation mechanism that is objective, neutral, and has the authority to cease the non-compliant behavior and ensure remedies.
2. 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.
3. The District must develop an IEP process that ensures placement is based on IEP team consensus. This includes establishing a standard for how meetings are conducted that aligns with the Welligent IEP system, which promotes a decision-making process that establishes goals, objectives, supports, and services prior to program placement.
4. The District must issue a bulletin/directive on the use of draft IEPs which includes a prohibition against inputting program placement information prior to convening an IEP meeting. District administration cannot review IEPs during the development process as a means of limiting the IEP teams' decision-making authority. District staff and parents may seek expertise to inform the IEP development process; however, such consultation shall not limit the IEP team's authority to make decisions. The Welligent system must be revised to include a pop-up message indicating that program placement information cannot be input prior to the IEP meeting.
5. The District must prepare a statement to be read and made available at every IEP meeting. This statement must be read at all meetings regardless of parent attendance. Agreement that the statement has been read must be documented via a checkbox in the Welligent system before the IEP meeting can proceed. The statement must also be

posted online and included in the *Parent's Guide to Special Education Services (Including Procedural Rights and Safeguards)* booklet. This statement must inform the participants that:

- an IEP meeting is a collaborative process, and all participants will be provided the opportunity to ask questions and provide recommendations and suggestions;
  - the IEP team has the authority and responsibility to design a program in which the child can derive meaningful benefit;
  - the draft IEP, behavior intervention plan, or assessment plan might change as a result of the IEP team's deliberations;
  - the IEP will continue until the IEP is complete, unless all members agree to an extension;
  - the decision on related services and placement will occur during the IEP meeting, unless the team agrees that there is not sufficient information to make a placement determination;
  - the District considers the family equal partners in the educational decision-making process; and
  - any team member may propose an objective or goal in the IEP, even if it is not included in the Welligent goal bank.
6. The District must develop a comprehensive list and description of program options including delivery models for the provision of related services. This must become part of the Welligent system and the Division of Special Education website, and made available at the beginning of IEP meetings.
  7. The District must address the caseload procedures to reflect workload throughout the school year. In the allocation of personnel, the District shall consider the following factors for determining assignments of all providers (including resource specialist programs and related service providers, such as per diem personnel): caseload, workload, program types (preschool, elementary, and secondary), and service models. This includes consideration of alternative delivery models that are more efficient and equally effective.
  8. The District must eliminate barriers and obstacles for the IEP team's placement determination. When considering NPS placement, the District must first conduct any necessary evaluations prior to the IEP meeting. The IEP team must determine that the child's identified needs can be met by a District service or whether another placement is required. If NPS placement is supported by such evaluation, then the placement must be implemented, and no further evaluation shall be required.
  9. The District must clarify procedures for recessing IEP meetings. A recess may not be used to deter or delay a placement determination or the provision of related services.

10. The District must ensure that whenever it initiates or refuses an evaluation, change in placement, or provision of FAPE, it must provide notice to the parent. Whenever the operations unit receives notice to look for a change in placement, parents must be notified.<sup>2</sup>
11. The District must conduct an analysis to examine how the social-emotional needs of students with ID are being supported. This must include a review of data, policies, procedures, and practices for the provision of behavior supports, counseling, and other related supports.
12. The District must establish professional development to address these corrective actions and improve the IEP team's collaborative process. Within 30 days of receipt of this report, the District must submit a plan for providing professional development.
  - Within 90 days of receipt of this report, the District must notify school administrators and potential IEP team members (including parents of students with disabilities) of all existing online professional development materials.
  - The District must disseminate information on how participation of professional development is mandated and monitored.
  - Online training must include case studies on collaborative decision making.
  - Training materials on the collaborative decision-making process must be made available to all personnel throughout the year.
  - Provide training on the following:
    - working collaboratively in the IEP process;
    - best practices for communicating present levels of performance;
    - best practices for communicating offers of FAPE;
    - relationship - and trust-building strategies that promote ongoing relationships between District personnel (e.g., administrators, teachers, and providers) and parents;
    - the availability of all District resources and clarification of corresponding administrative processes' role in securing such resources; and
    - an IEP team's roles, responsibilities, and authority.

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<sup>2</sup>The use of the form SE25 is considered as initiating a change in placement and requires parental notification.



#### IV. RECOMMENDATIONS

The District is highly encouraged to complete the following recommendations. To ensure substantial compliance, the District must demonstrate it has policies and procedures in place that are consistent with state and federal regulations. It must have systems in place that identify non-compliance, including a complaint investigation mechanism that addresses such non-compliance by ceasing behaviors that cause harmful effects and providing remedies.

- Review the Division of Special Education website to ensure that all bulletins, reference guides and materials are available in a user-friendly format.
- 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.
- 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.

## V. METHODOLOGY

The IEP investigation included a three-part study. Prior to the design of the study, the OIM requested all relevant documentation from the parties. The formal complaint and accompanying declarations were used to develop a framework for the study. In addition to the allegations, the study was guided by the following questions:

1. To what extent are the services and placements offered 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/or placement 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?

A brief description of the methods and sample selection used to gather information are included below. For a full description of the methods, see Attachment C.

### **Part 1. Review of Policies and Procedures**

The OIM requested from the District all policies and procedures related to the IEP team's authority, development of the IEP, and determination for offering services and educational placement.

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.

### **Part 2. Telephone Survey of Parents**

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 consists of a total of 20 questions. The instrument was translated into Spanish and field-tested in both languages. 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 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.

### *Sample Selection*

The sample consisted of two primary groups of parents. The first included “dispute parents” who had 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 the IEP team’s authority or their failure to exercise such authority to offer services and placements. The second group consisted of “non-dispute parents” with a child who received special education services and did not participate in dispute resolution procedures during the same year.<sup>3</sup>

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. 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 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.

Parent interviews were conducted from April 2, 2015, through April 17, 2015.

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<sup>3</sup> 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.

### **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 Placement for Students with Disabilities**

The OIM designed interview guides for staff who oversee service providers or support IEP teams. 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 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 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. One interview was conducted with two school officials regarding allegation 5. These individuals were the school psychologist and RST who served as the administrative designee and were selected based on their involvement in the case.