

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-101

PROCEDURAL HISTORY

On October 29, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District No. 114 (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 31, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 21, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on November 26, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On November 28, 2018, OSPI requested clarifying information from the District and on November 30, 2018, spoke with the District's attorney.

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

ISSUE

1. Did the District follow procedures for notifying the Parent of the individuals invited to participate in the October 24, 2018 eligibility meeting, as required by WAC 392-172A-05001?

LEGAL STANDARDS

Evaluation Group: The group of individuals that determines if a student is eligible for special education services following an evaluation consists of the parent(s) of the student and a group of qualified professionals selected by the school district. WAC 392-172A-03040; WAC 392-172A-03020. "Qualified professions" include those professional members of the group who are required to sign the evaluation report certifying that the report represents their conclusions. WAC 392-172A-03035.

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of a free, appropriate public education (FAPE). This includes notifying parents of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or

special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100(3). To fulfill the requirement to notify parents of the meeting attendees, it is sufficient for a district to indicate the positions of the invited individuals; while a district may elect to include the actual names of the invitees in addition to their positions, a district is not required to do so. *Letter to Livingston*, 21 IDELR 1060 (OSEP 1994).

SCOPE

This decision references facts from special education citizen complaint (SECC) 18-95, which was filed by the Parent on October 12, 2018. SECC 18-95 investigated whether the District followed procedures for responding to the Parent's request for a stenographer in order to ensure Parent participation at the Student's eligibility determination meeting? OSPI issued a decision in 18-95 on November 27, 2018.

FINDINGS OF FACT

1. At the beginning of the 2018-2019 school year, the Student was not eligible for special education services.
2. The District's 2018-2019 school year began on September 10, 2018, and according to the documentation, the Student started kindergarten on September 13, 2018.
3. On September 28, 2018, the District emailed the Parent a meeting invitation for the Student's eligibility meeting, which was scheduled for October 24, 2018. The District's response to this complaint stated that the invitation listed all of the participants in the meeting, except for the District's executive director of special services and federal programs (executive director).¹
4. On October 17, 2018, the Parent emailed the District's director of special education (director) regarding her requests for a stenographer and recording the meeting. The Parent also listed the following people, who were invited to the eligibility determination meeting, and to whom the Parent sent emails announcing that she planned to record the meeting: the speech language pathologist (SLP), the District representative/school psychologist, the general education teacher, an administrator, the occupational therapist (OT), the special education teacher, and the physical therapist (PT).

¹ The District did not provide a copy of this version of the meeting invitation in response to the complaint. The District's documentation indicates that the notice of meeting letters were mailed home originally and that when the meeting notice was updated on October 18 and October 23, 2018, each new version replaced the previous version in the District's online IEP system. The District was only able to print the October 23, 2018 version of the letter and meeting notice because it was the last version generated in the system.

Based on the documentation provided in this complaint, it is likely that the September 28, 2018 version of the meeting notice did not list all of the final attendees. The first version of the meeting invitation did not include the executive director, and likely did not include the Student's father (who was invited later at the Parent's request) and may not have included the principal and board certified behavior analyst (BCBA) who were the two individuals the Parent stated in her complaint were left off the invitation.

5. On October 18, 2018, the District sent the Parent a revised version of the meeting invitation that removed the director and replaced her with the District's executive director. According to the District's response to this complaint, the revision caused the invitees to "exceeded the space available on the IEP Online form", which resulted in two of the previously listed invitees being left off the form.
6. Also on October 18, 2018, the SLP emailed the Parent a draft evaluation report, which included draft evaluation summaries from the evaluation group members.
7. On October 18 and 19, 2018, the Parent emailed the director (and copied the SLP, District representative/school psychologist, general education teacher, administrator, principal, OT, special education teacher, PT, and counselor/social worker) regarding inviting the Student's father to the eligibility meeting and regarding her feedback on the draft evaluation report.
8. Also on October 19, 2018, the Parent emailed the members of the Student's evaluation group and provided feedback on the draft evaluation report. According to the District's response in SECC 18-95, the group considered the Parent's feedback and made changes to the draft report.
9. On October 23, 2018, according to the District's response, a copy of the meeting invitation was sent to the Parent and the Student's father, which listed all of the invitees. This meeting notice listed the following individuals²:

<ul style="list-style-type: none"> • [Name], OT • [Name], PT • [Name], Board Certified Behavior Analyst (BCBA) • [Name], Student's Father • [Name], Parent • [Name], General Education Teacher • [Name], Special Education Teacher 	<ul style="list-style-type: none"> • [Name], Administrator • [Name], Executive director • [Name], District Representative/School Psychologist • [Name], SLP • [Name], Principal • [Name], Elementary Counselor/Social Worker
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10. Also on October 23, 2018, the SLP emailed the Parent (and copied the District representative, special education teacher, director, administrator, executive director, principal, PT, and OT) a copy of the second draft of the Student's evaluation. This draft included input and summaries from the general education teacher, the District representative (school psychologist), special education teacher, SLP, OT, PT, and the BCBA.

² It should be noted that in the response to the Parent's previous special education citizen complaint, a version of the October 23, 2018 meeting notice was provided that did omit the principal and BCBA from the listed invitees. The District stated there are two explanations for this discrepancy. The first explanation is that it is possible that the Parent and the Student's father were mistakenly sent different versions of the October 23 meeting invitation, i.e., either the Parent or the Student's father received the version before it was updated. Alternately, the meeting notice, evaluation, and prior written notice are linked in the District's online IEP program. Therefore, when the prior written notice was updated with the list of actual attendees to the meeting, the program automatically retrospectively updated the meeting notice to reflect this.

11. On October 24, 2018, the Parent emailed the executive director and acknowledged that she received the "updated" meeting notice sent on October 23, 2018. On this email, the Parent copied all of the members of the evaluation group, except the BCBA, who were invited to the eligibility determination meeting.
12. On October 24, 2018, the Parent met with the general education teacher, special education teacher, administrator, executive director, District representative/school psychologist, SLP, OT, PT, school counselor/social worker, principal, and BCBA. The Student's father participated via phone and video conference.
13. On October 31, 2018, OSPI received and opened the Parent's request for a special education citizen complaint. The Parent alleged that the principal and BCBA attended the eligibility meeting, but that the Parent had not been notified that these individuals were invited to the meeting. The Parent alleged that the District "failed to notify parents of all Team Members who were central to the Eligibility Determination."

CONCLUSIONS

Issue 1: Meeting Notice – The Parent alleged that the District failed to notify the Parent of all of the team members who ultimately were present at the eligibility determination meeting. A district must ensure that parents are given an opportunity to attend or otherwise participate in meetings regarding their student and the identification, evaluation, educational placement, and provision of a free appropriate public education (FAPE). The meeting invitation should include the purpose, time, and location of the meeting, and indicate who will be in attendance.

Here, the District scheduled the Student's initial evaluation meeting for October 24, 2018. The District sent the Parent three versions of the meeting notice/invitation, each notice listed the names and titles of the invited attendees. The first and second version of the notice (September 28 and October 18) did not list all of the individuals that ultimately attended the meeting. On October 23, 2018, the District emailed the Parent an updated version of the meeting notice. The version of the notice that the District provided in response to this complaint listed the following invitees, all of whom ultimately attended the meeting:

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|---|---|
| • [Name], OT | • [Name], Administrator |
| • [Name], PT | • [Name], Executive director |
| • [Name], Board Certified Behavior Analyst (BCBA) | • [Name], District Representative/School Psychologist |
| • [Name], Student's Father | • [Name], SLP |
| • [Name], Parent | • [Name], Principal |
| • [Name], General Education Teacher | • [Name], Elementary Counselor/Social Worker |
| • [Name], Special Education Teacher | |

The Parent, in an email, acknowledged receipt of the updated October 23, 2018 meeting notice. However, the Parent alleged in her complaint that the meeting notices left off the BCBA and the principal, and that the District failed to notify her of all the members of the eligibility group that were central to the determination.

The documentation provided in this complaint and the Parent's previous complaint (SECC 18-95) do indicate a discrepancy in the versions of the October 23 meeting notice. The District acknowledged that there is a chance that the version of the notice the Parent received on October 23 was missing the BCBA and the principal, and that the meeting notice was auto-updated in the IEP online program after the prior written notice was created (which listed all of the meeting attendees). If true, regardless of this minor procedural error, the documentation in this complaint indicates that the Parent was well aware of the individuals involved in the eligibility determination and who were going to attend the meeting. Throughout October 2018, the Parent emailed with all of the individuals who attended the meeting (except the BCBA) about the evaluation meeting and eligibility determination. The Parent was also provided with two draft copies of the evaluation, which included summaries from various evaluation group members, including the BCBA. Overall, the documentation in this complaint indicates that the Parent was aware of all the individuals who were invited and who attended the meeting, and the error did not impact her ability to actively participate in the meeting.

OSPI reminds the District that it does have an obligation to notify parents of meeting invitees and reminds the District to double check invitations and notices prior to sending them. In this case, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of December, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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