

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-106**

### **PROCEDURAL HISTORY**

On November 6, 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 Sequim School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On November 8, 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 29, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on November 30, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 12, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 13, 2018.

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

### **ISSUE**

1. Did the District implement the Student's Individualized Education Program (IEP), specifically the specially designed instruction in math on October 26, 2018?

### **LEGAL STANDARDS**

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323; WAC 392-172A-03105.

Least Restrictive Environment: School districts shall ensure that the provision of services to each student eligible for special education, including preschool students and students in public or private institutions or other care facilities, shall be provided: 1) To the maximum extent appropriate in the general education environment with students who are nondisabled; and 2) Special classes, separate schooling or other removal of students eligible for special education from the general educational environment occurs only if the nature or severity of the disability is such

that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. 34 CFR §300.114; WAC 392-172A-02050.

Change in Placement: In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

## **FINDINGS OF FACT**

### **2018-2019 School Year**

1. At the beginning of the 2018-2019 school year, the Student was enrolled in a District high school and was eligible to receive special education services under the category of specific learning disability.
2. The District's school year began on September 5, 2018.
3. On October 24, 2018, the Student's individualized education program (IEP) team met to review and amend the Student's previous IEP. The amended IEP provided specially designed instruction in the areas of math and reading in the special education classroom, provided by the special education teacher.
4. In order for the Student to receive specially designed instruction in the special education classroom, the Student's class schedule was changed to the following:
  - First period – Case manager study skills
  - Second period – Welding I
  - Third period – Algebra I
  - Fourth period – Agricultural science
  - Fifth period – World literature/Composition
  - Sixth period – Culinary Arts I

The Student received his specially designed instruction in math and reading during his first period class.

5. On October 26, 2018, according to the District, the Student arrived late to his first period special education class but attended the remainder of the class period and received his special education services. During his third period general education "Algebra I class", the Student was summoned to the school office by the principal.<sup>1</sup> According to the complaint, the Student returned to his Algebra class before the end of the class period.

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<sup>1</sup> The circumstances regarding why the Student went to the office are not necessarily pertinent to this investigation, but they did not relate to the Student's special education program.

## CONCLUSIONS

**IEP Implementation** – The Parent alleged that the Student did not receive his special education services and his placement was unilaterally changed because the Student was called to the office on October 26, 2018.<sup>2</sup>

A district is required to implement a student's special education services in the least restrictive environment in accordance with the student's IEP. Regarding a change of placement, the district must consider whether any change made to a student's program would substantially or materially alter the student's educational program.

Here, the Student's IEP provided for special education services in the areas of math and reading to be provided in the special education classroom. In addition to receiving special education services in math, the Student was taking a general education Algebra I course. The Student was not receiving any specially designed instruction in math in the general education math class. On October 26, 2018, there was no dispute that the Student received his special education services in math in the special education classroom, after arriving late to school. During his general education Algebra I course, the Student was sent to the principal's office. The time the Student spent away from the general education Algebra I class did not conflict with the Student receiving his special education services nor did it materially change the Student's special education program. Based on the documentation, there is insufficient evidence to support a violation. The District substantiated that it implemented the Student's IEP on October 26, 2018, and that the Student's placement was not changed. No violation is found.

## 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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<sup>2</sup> The Parent had numerous concerns about the events that occurred while the Student was in the school office. However, these issues were not within OSPI's authority to investigate as the issues raised were not related to the Student's eligibility for special education or special education services.

**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.)