

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-85

PROCEDURAL HISTORY

On September 26, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the complainant (Complainant) on behalf of the parent (Parent) of a student (Student) attending the Seattle 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 the same day, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On October 16, 2018, OSPI received the District's response to the complaint and forwarded it to the Complainant on October 18, 2018. OSPI invited the Complainant to reply with any information she had that was inconsistent with the District's information.

On October 30, 2018, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUES

1. Did the District follow procedures for ensuring Parent participation at the Individualized Education Program (IEP) meeting on June 14, 2018?
2. Did the District follow procedures for providing the Parent with prior written notice?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met the legal standard. OSPI reviews the documentation received from the complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Communications in Native Language: "Native language", when used with respect to an individual of limited English proficiency, is the language that the individual normally uses, or in the case of a student, the language normally used by the parents of the student. In all direct contact with a student, including evaluations, native language means the language normally used by the child in the home or the learning environment. 34 CFR §300.29(a); WAC 392-172A-01120(1). Prior written notice and procedural safeguards should be provided in the native language of the parents, unless it is clearly not feasible to do so. 34 CFR §300.503(c); WAC 392-172A-05010(3)(a). A district must take whatever action is necessary to ensure that the parents understand the proceedings at an

IEP meeting and other meetings, including arranging for an interpreter in a parent's native language. 34 CFR §300.322(e); WAC 392-172A-03100(7).

Interpreter and Translation Services: School districts should take whatever action is necessary to ensure that the student eligible for special education's parents understand the proceedings of an IEP meeting. This may require arranging for an interpreter for parents who are deaf or whose native language is not English. 34 CFR §300.322(e); WAC 392-172A-03100(7). In addition to providing an interpreter, a school district is also required to provide prior written notice when it proposes or refuses to initiate or change the identification, evaluation, placement, or provision of FAPE to the student in the parents' native language, unless it is clearly not feasible to do so. 34 CFR §300.503(c); WAC 392-172A-05010(3)(a).

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. 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. An IEP invitation need not be in writing; however, the district must keep adequate documentation to show that all the components were included in the invitation. 34 CFR §300.322; WAC 392-172A-03100.

FINDINGS OF FACT

2017-2018 School Year

1. In April 2017, the Student was enrolled in the District. The Student was previously eligible for special education in another state under the category of multiple disabilities. The Parent, who is also the guardian of the Student, speaks Tigrigna and Amharic, and speaks limited English. The Parent's native language is Tigrigna. According to the District's policy, Tigrigna is one of the nine languages in which the District routinely provides interpretation and translation.
2. On May 8, 2018, the District held an individualized education program (IEP) team meeting with the Parent in attendance, to develop the Student's annual IEP. The District special education bilingual facilitator (interpreter) acted as an interpreter for the Parent. The IEP team determined the Student would attend the [program], which is designed to address the needs of students with medical needs.
3. Also on May 8, 2018, the District provided the Parent with prior written notice in English. The District also had the interpreter from the meeting call the Parent and "let mom know about the program change." The District acknowledged in its response to this complaint that the prior written notice provided to the Parent was required to be in the Parent's native language.
4. According to the "Contact Attempt Record", the District made the following contacts with the Parent regarding scheduling an IEP meeting on June 14, 2018:

- May 30, 2018 – letter (translated) to Parent
- May 30, 2018 – email (translated) to Parent
- June 1, 2018 – email (translated) to Parent
- June 8, 2018 – email (translated) to Parent¹

The record stated: "If we still cannot find a Tigrigna interpreter in the school district or an outside agency to help [Parent] before the end of the school year, we will create an IEP amendment in September at the start of the new school year."

5. According to the documentation, the Student's special education teacher would email the interpreter, and the interpreter communicated directly with the Parent. On May 30, 2018, the special education teacher emailed the interpreter with proposed IEP meeting dates and requested that the interpreter contact the Parent regarding which date she was available.
6. On June 7, 2018, the interpreter emailed the special education teacher, stating the Parent could attend a meeting on June 14, 2018, but he was not available to interpret at the meeting. The District scheduled the Student's IEP meeting on June 14, 2018.
7. From June 7, 2018 to June 14, 2018, the special education teacher contacted numerous District staff and administrators to secure an interpreter for the Student's IEP meeting without success.
8. On June 13, 2018, according to the complaint, the Parent received a call from the District interpreter who told the Parent she did not need to come to the Student's IEP meeting due to the lack of available interpreters.
9. On June 14, 2018, the District held an IEP meeting for the Student, and the Parent came to the school for the IEP meeting. As there was no interpreter at the meeting, the Parent was not able to participate in and did not stay for the meeting. The District acknowledged that it was required to provide an interpreter for the Parent at the IEP meeting.

On the same day, the District provided the Parent with prior written notice, written in English, regarding the IEP meeting's proposals and refusals. The notice indicated that the District was proposing to provide special education services to the Student. The notice also stated: "Mother left school before the IEP meeting, and refused to sign any paperwork." Again, the District acknowledged that the notice should have been provided in the Parent's native language.

10. According to the District, following the Student's IEP meeting, the interpreter attempted to contact the Parent to review the IEP with her, which the Parent declined.
11. On September 26, 2018, this complaint was filed by the Complainant.
12. On October 17, 2018, the District held an IEP meeting in which an interpreter was present and the Parent participated in the meeting through the interpreter. According to the Complainant,

¹ The District was unable to produce these documents in its response to this complaint.

the District provided the Parent with the prior written notice from the October 17, 2018 IEP meeting in English.

CONCLUSIONS

Parent Participation – The complaint alleged that the District failed to give the Parent an opportunity to participate in an IEP meeting, including that the District failed to provide an interpreter to the Parent so she could participate in the meeting.

A district is required to take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents whose native language is other than English.

Here, the Parent of the Student speaks Tigrigna and Amharic. The District scheduled an IEP meeting for June 14, 2018, but despite multiple attempts, was unable to provide an interpreter so the Parent could participate in the Student's IEP meeting. Despite the lack of interpreter and the Parent leaving as a result, the District continued to hold the IEP meeting without the Parent present. The District was required to either provide the interpreter at the meeting, or cancel and reschedule the meeting when an interpreter was available. The District acknowledged that the District was required to provide an interpreter for the Parent to participate in the IEP meeting and that it should not have proceeded with the IEP meeting. A violation is found based on the District failing to providing an interpreter and continuing the IEP meeting without the Parent's participation. The District proposed training to the [program] staff as corrective action to address the violation, which was accepted by OSPI.

Because the District reconvened the Student's IEP team, which included the Parent and an interpreter for the Parent, on October 17, 2018, the District is not required to hold another IEP meeting as part of the corrective action.

Prior Written Notice – The complaint alleged that the District failed to provide prior written notice to the Parent in her native language.

A district is required to provide the parent with prior written notice in the parent's native language or other mode of communication used by the parent unless it is clearly not feasible to do so.

Here, the Parent's native language is Tigrigna. Tigrigna is one of the nine languages in which the District routinely provides interpretation and translation. In May and June 2018, the District provided prior written notices to the Parent in English. The District was required to provide the prior written notices in the Parent's native language. The District acknowledged that the prior written notices were required to be translated into Tigrigna. A violation is found based on the District failing to translate the prior written notice into the Parent's native language. The October 2018 prior written notice that was written in English will also be addressed in the corrective action. The District proposed providing written guidance to District special education teachers, education service associates, and instructional aides as corrective action to address the violation, which was accepted by OSPI.

CORRECTIVE ACTIONS

By or before **December 7, 2018, January 4, 2019, and January 25, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions:

STUDENT SPECIFIC:

1. Prior Written Notice

By **November 30, 2018**, the District is required to provide the May, June, and October 17, 2018 prior written notices to the Parent in her native language.

- By **December 7, 2018**, the District must provide OSPI with a copy of the translated prior written notices and documentation that they were provided to the Parent.

DISTRICT SPECIFIC:

1. Written Guidance

By **December 21, 2018**, the District will provide the [program] and District special education service providers, including special education teachers, education service associates, and instructional assistants, written guidance approved by OSPI regarding interpretation and translation requirements in special education.

- By **December 7, 2018**, the District will provide a draft of the guidance to OSPI. OSPI will approve the materials or provide comments by December 14, 2018 and additional dates for review, if needed.
- By **January 4, 2019**, the District will provide a written declaration that the written guidance was sent to all required staff.

2. Staff Training

By **January 18, 2019**, the District will provide training to the [program] staff regarding parent participation, including interpreters for parents who need them.

- By **December 7, 2018**, the District will submit a draft of the training materials to OSPI for review along with the name of the trainer(s). OSPI will approve the materials or provide comments by December 14, 2018 and additional dates for review, if needed.
- By **January 25, 2019**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all special education certificated staff at the [program], so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of November, 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.)