

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-47

PROCEDURAL HISTORY

On June 3, 2021, the Special Education Division of the Office of Superintendent of Public Instruction (OSPI) received a special education citizen complaint from the parent (Parent) of two students (Students A and B) attending the Clover Park School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Students' education.

On June 3, 2021, 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 June 9, 2021, the special education citizen complaint (SECC) investigation for Issue 2 for Student B was put into abeyance, pending the results of a due process hearing request filed by the Parent on this same issue.

On June 14, 2021, the SECC investigation for Issue 2 for Student A was put into abeyance, pending the results of a due process hearing request filed by the Parent on this same issue.

On July 1, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on July 2, 2021. OSPI invited the Parent to reply. The Parent did not reply.

On July 12, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. OSPI forwarded the information to the Parent on July 26, 2021.

In mid-July 2021, the Parent withdrew her two due process hearing requests (related to Issue 2 for both Students). On July 23, 2021, the Parent emailed OSPI's investigator, stating, in part: "Yes the due processes were withdrawn because the matter concerning my students [was] resolved...since my students are now granted the opportunity to be challenged and integrated, I withdrew." On July 28, 2021, OSPI notified the Parent, via letter, that it was closing Issue 2 of SECC 21-47 for the two Students.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on June 4, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow procedures to ensure proper individualized education program (IEP) team composition at the Students' respective January 2021 IEP meetings?
2. Did the District follow proper procedures for determining the Students' Least Restrictive Environment during the Students' respective May 2021 IEP meetings?¹

LEGAL STANDARDS

IEP Team: An individualized education program (IEP) team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321; WAC 392-172A-03095.

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

FINDINGS OF FACT

2020–2021 School Year

1. At the start of the 2020–2021 school year, Student A was eligible for special education services under the category of autism, was in the fifth grade, and attended a District elementary school. Student B was eligible for special education services under the category of autism, was in the fifth grade, and attended a District elementary school.
2. The District's response included a meeting invitation, dated December 11, 2020, for an IEP meeting for Student A to take place on January 6, 2021, with topics to be addressed to include: the Student's progress on the Student's goals; and, a review of Student A's current IEP.

¹ As stated above, in the procedural history section, this issue was resolved—for both Students—in recent due process proceedings.

According to the December 11, 2020 invite, the following individuals were invited to attend Student A's January 6, 2021 IEP meeting: District representative; case manager; speech language pathologist (SLP); and, Parent.

3. The District's response included a meeting invite, dated December 11, 2020, for an IEP meeting for Student B to take place on January 7, 2021, with topics to be addressed to include: the Student's progress on the Student's goals; and, a review of Student B's current IEP.

According to the December 11, 2020 invite, the following individuals were invited to attend Student B's January 7, 2021 IEP meeting: District representative; case manager; SLP; and, Parent.

4. On January 4, 2021, the special education teacher emailed the Parent, confirming the Students' upcoming meetings, and checking to see if the Parent had any additional concerns.

Later that day, the Parent responded, stating, in part:

This Wednesday and Thursday are still good for me. At this time, I do not have any further concerns about the boys. But, I did notice that contractions are something they don't get (thanks to the apostrophe homework) so any concerns are all related to language arts. Reading, writing, punctuation, identifying nouns (especially for capitalization on purposes), etc...But I want to thank you for the work! I personally got to see their growth in a year! Jan 2020 they couldn't identify coins, didn't know the value, and so they weren't adding or subtracting money. Now they do all of that...I wanted to know what type of class they will be placed in next year. Then if I have any questions I can ask during the meeting.

Later that day, the special education teacher responded, stating, in part: "They will be in a similar class to what they are in now. It is called FT (functional transition). They will start to work on job training to prepare them for after high school."

5. According to the Parent, Student A had an IEP meeting on January 6, 2021, and the following individuals were present at that meeting: Parent; case manager²; and, SLP.

According to the District, the following individuals were scheduled to attend Student A's January 6, 2021 IEP meeting: Parent; case manager; SLP; and, the principal.

According to the District, though, while the principal "intended to attend the meeting," the principal was "pulled into [an] emergency meeting...to address situations related to the on-going COVID-19 pandemic" and was unable to attend any portion of Student A's January 6, 2021 IEP meeting.

As regards the title page of Student A's January 6, 2021 IEP: the case manager signed the IEP; it stated the Parent and the SLP "participated via Microsoft Teams"; and, it stated the principal "reviewed January 4, 2021."

² According to the District, the case manager was one of Student A's special education teachers in functional academics.

6. The District's response included a January 6, 2021 prior written notice for Student A. It read, in part:

Description of the proposed or refused action:

The team met to review goal progress and update Student A's goals in reading, written expression, math, and communication. The team also added social/emotional goals and removed the behavior goal.

The reason we are proposing or refusing to take action is:

Student A has recently been re-evaluated and no longer qualifies for behavior so that goal was removed. Student A now qualifies for social/emotional so goals were created for this area. Student A has also made significant growth in math so the math goal was updated to meet his current needs.

Description of any other options considered and rejected:

It was proposed to have Student A join general education class during math.

The reasons we rejected those options were:

This was rejected because of the COVID-19 pandemic. Students are not allowed to mingle with other classrooms/students outside of their classroom. This will remain for the rest of the school year.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Most recent re-evaluation, classroom data, parent input, classroom assessments, and MAP Growth Assessment scores.

Any other factors that are relevant to the action:

Parent would like Student A to take the general education bus once he is in middle school. Student A will be on a combination bus (general education and special education) for middle school. He is not on a combination bus this year because [a particular elementary school] is not his home school.

7. According to the Parent, Student B had an IEP meeting on January 7, 2021, and the following individuals were present at that meeting: Parent; the case manager³; and, a SLP.

According to the District, the following individuals were scheduled to attend Student B's January 7, 2021 IEP meeting: Parent; case manager; SLP; and, the principal.

According to the District, though, the principal was unable to attend the entirety of Student B's January 7, 2021 IEP meeting because the principal was "pulled into [an] emergency meeting...to address situations related to the on-going COVID-19 pandemic."

As regards the title page of Student B's January 7, 2021 IEP: the case manager signed the IEP; it stated the Parent and the SLP "participated via Microsoft Teams"; and, it stated the principal "reviewed January 5, 2021."

³ According to the District, the case manager was one of Student B's special education teachers in functional academics.

Furthermore, the District stated:

[At the January 7, 2021 IEP meeting for Student B], the principal answered the Parent's questions and addressed her concerns. Many of the questions that the Parent asked related to both boys as they related to the application of the IEPs while the District was implementing COVID-19 safety precautions and protocols.

8. The District's response included a January 7, 2021 prior written notice for Student B that reads, in part:

Description of the proposed or refused action:

The team met to review goal progress and update Student B's goals in reading, written expression, math, and communication. The team also added social/emotional goals and removed the behavior goal.

The reason we are proposing or refusing to take action is:

Student B has recently been re-evaluated and no longer qualifies for behavior so that goal was removed. Student B now qualifies for social/emotional so goals were created for this area. Student B also is struggling with word problems and problem solving in math so his math goal was updated.

...

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Classroom based data, classroom made assessments, MAP Assessment, most recent evaluation, and parent input.

9. Both of the Students' January 2021 IEPs read, in part: "Placement Option: 0 – 39% in regular class"; and, "[Student will participate in] general PE."

The January 2021 IEPs state both Students would receive their specially designed instruction in a self-contained classroom.

10. In its response, the District further stated:

Two days before each meeting, the principal reviewed the IEPs per [school] Policy. The principal has significant experience in special education and reviewed each IEP prior to the meetings to provide feedback about the contents of the IEP, including the present levels, goals, and data collection. The principal did not have any concerns or questions to communicate to the case manager; however, had she had any questions, concerns, or comments, she would have communicated them to the case manager upon review.

The case manager notified the Parent before each meeting that the principal was not available for the entirety of the meeting but would join when available. Given the choice to reschedule or continue the meeting, The Parent chose to proceed.

...

And although the principal did not participate [for any portion of Student A's January 6, 2021 IEP meeting and only a portion of Student B's January 7, 2021 IEP] meeting...the principal had an open line of communication with the Parents. The Parents often contacted her with their questions or concerns, and the principal responded. Therefore, had the Parents had additional concerns about the IEPs, the District's services, or any other aspect

of the special education services their sons were receiving, they had access to the principal to address those concerns.

There has been no denial of [a free appropriate public education] FAPE because the District followed proper procedures and provided the benefit of the entirety of the IEP team. The Parents were notified of an IEP team member's unavailability, given the option of proceeding with or rescheduling the meeting, chose to proceed with the meeting, had the benefit of the missing member's participation, and had the opportunity to follow up with the missing team member.

11. The District's response included a signed statement from the principal. It read, in part: The case manager scheduled an IEP team meeting for Student A on January 6, 2021 and Student B on January 7, 2021. The meetings were initially scheduled for a time that I was able to participate without interruption.

However, the Parents needed to change the times, and the new times conflicted with an emergency meeting scheduled for District administrators to discuss the impact of the COVID-19 pandemic on educational services.

Per [school] policy, I reviewed the draft IEPs two days prior to the IEP meetings. I had no concerns regarding the drafts, and did not communicate any concerns to the case manager. If I had any concerns or questions, I would have advised the case manager to either address or discuss them with the team. I understood the scope of the District's services being offered and had no objections.

On January 6, 2021, I was pulled into an emergency administrative meeting. However, I intended to participate in the IEP meeting as soon as I was available. By the time I was available, the meeting was wrapping up.

On January 7, 2021, I was called into another meeting and missed a portion of the IEP meeting, but was able to join the rest of the team for approximately 15 minutes until the end of the meeting.⁴ When I joined the meeting, the team was finishing a discussion of the goals. I was able to participate during the discussion of the service matrix, a discussion of how the IEP would be implemented in the school setting during heightened safety procedures due to COVID-19, and answer questions from the Parents.

12. The District's response included a signed statement from the case manager. It read, in part: Pursuant to...School policy, my principal...reviewed both IEPs prior to the meeting date. The principal was formerly a special education teacher and provided feedback on draft IEPs. She makes sure the IEP is in compliance and well written. We make sure that the IEP can clearly communicate to a new teacher so that person can apply the IEP should the students transfer.

On January 6, 2021, at the beginning of the meeting for Student A, I advised the Parent that the principal was unable to participate in the entirety of the meeting. I advised that the principal would join if she was able, and asked whether it was okay to proceed without

⁴ During the course of this investigation, the District asserted these 15 minutes represented approximately 25% of the meeting.

her. The Parent granted verbal consent and the meeting proceeded. The principal was unable to join the January 6, 2021 IEP until the meeting was almost finished.

On January 7, 2021, I again advised the Parent that the Principal was unable to participate in the entirety of the IEP meeting for Student B. I again asked whether the Parent wanted to proceed, obtained verbal consent, and the meeting proceeded. The principal was able to join the meeting shortly after the discussion of goals. The principal participated in the discussion regarding placement and what services would look like in the remote and hybrid settings.

13. The District's response included a March 8, 2021 progress report for Student A. According to that progress report, Student A had made the following progress on his annual IEP goals:

- **Speech language therapy 1:** this goal has not been addressed this reporting period.
- **Speech language therapy 2:** emerging skill demonstrated but may not achieve annual goal within duration of IEP.
- **Communication:** emerging skill demonstrated.
- **Reading 1 & 2:** sufficient progress.
- **Math:** sufficient progress.
- **Written expression:** emerging skill demonstrated.
- **Social emotional 1:** sufficient progress.
- **Social emotional 2:** emerging skill demonstrated.

14. The District's response included a March 8, 2021 progress report for Student B. According to that progress report, Student B had made the following progress on his annual IEP goals:

- **Speech language therapy:** emerging skill demonstrated but may not achieve annual goal within duration of IEP.
- **Communication:** sufficient progress.
- **Social emotional:** minimal progress demonstrated to meet this annual goal and may not achieve annual goal within duration of IEP.
- **Reading 1 & 2:** sufficient progress.
- **Written expression:** emerging skill demonstrated.
- **Math:** minimal progress demonstrated.

CONCLUSIONS

The Parent alleged the District did not ensure proper individualized education program (IEP) team composition at the Students' respective January 2021 IEP meetings.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any

individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child.

Parents and districts can agree **in writing** that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services, and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting.

Here, both Students had an IEP meeting in early January 2021: Student A on January 6, 2021 and Student B on January 7, 2021. According to two December 11, 2020 meeting invites, as well as the District's response to this complaint, the principal was intended to be the District representative at the Students' respective IEP meetings – the district representative being the individual who is qualified to supervise the provision of specially designed instruction, knowledgeable about the general education curriculum, and aware of the availability of district resources.

At Student A's January 6, 2021 IEP meeting, though, the principal was not in attendance. At Student B's January 7, 2021 IEP meeting, the principal was only able to participate in roughly 25% of the meeting. According to the principal, on both dates, she was pulled into emergency meetings related to addressing the impact of COVID-19 disruptions on educational services in the District.

Importantly, the District's response did not include a written statement showing the Parent and the District agreed that the principal's presence was not needed for the entirety of Student A's January 6, 2021 IEP meeting, and for a portion of Student B's January 7, 2021 IEP meeting. This is a violation of the IDEA, as the District did not follow excusal procedures.

Additionally, both of the Students' January 2021 IEPs read, in part: "Placement Option: 0 – 39% in regular class" and "[Student will participate in] general PE." WAC 392-172A-03095(1)(b) states a general education teacher must participate in IEP meetings "if the student is, or may be, participating in the general education **environment**" (emphasis added). Physical education with general education peers, then, would constitute participation in the general education environment.⁵ Further, at Student A's January 2021 meeting, the IEP team considered an explicit request from the Parent that Student A join a general education math class.⁶ It was in error, then,

⁵ Furthermore, OSPI's 2020–2021 Enrollment Reporting Handbook states: "enrolled hours include reasonable class change passing time but does not include lunch time." <https://www.k12.wa.us/sites/default/files/public/safs/ins/enr/2021/2020-21EnrollmentHandbook.pdf>

⁶ As stated in Student A's January 2021 prior written notice, "[The Parent's proposal for participation in general education math] was rejected because of the COVID-19 pandemic. Students are not allowed to mingle with other classrooms/students outside of their classroom. This will remain for the rest of the school year."

that a general education teacher was not invited and did not attend either of the Students' January 2021 IEP meetings.

The Students' respective January 2021 IEP meetings appear to have been otherwise properly constituted. For example, the following, additional individuals participated: a special education teacher; a speech language pathologist; and, the Parent. And, under WAC 392-172A-03095(1)(e), a special education teacher—in addition to being the special education teacher under WAC 392-172A-03095(1)(c)—can represent the "individual who can interpret the instructional implications of evaluation results." Furthermore, in the Parent's complaint request, she specifically identified the principal's attendance at the Students' January 2021 IEP meetings as that which represented a violation of the IDEA.

Importantly, though, OSPI notes: the District's failure to follow proper IEP attendance procedures at the Students' January 2021 IEP meetings does not appear to have affected the provision of a free appropriate public education (FAPE) for either Student. For example:

- According to signed statements by both the principal and the case manager, the principal reviewed both Students' IEPs prior to the respective meetings.
- The principal was able to participate in a portion of Student B's January 7, 2021 IEP meeting. During this portion of the meeting, the principal was able to weigh in on the following issues: a proper service matrix for Student B's IEP; a discussion of how Student B's IEP would be implemented given certain COVID-19 safety precautions; and, proper measurable annual goals for Student B's IEP.
- There is documentation (prior written notices and emails) the District ensured the Parent's participation in the Students' January 2021 IEP meetings, and in addition, gathered the Parent's input prior to the meetings.
- Both Students were able to make some progress following the January 2021 updates to their IEPs. For example: as of March 8, 2021, Student A had made progress on seven of his measurable annual goals (Student A made sufficient progress on three goals and showed emerging skills on four goals); and, as of March 8, 2021, Student B had made progress on five of his measurable annual goals (Student B made sufficient progress on three goals and showed emerging skills on two goals).
- The January 2021 IEPs state both Students would receive their specially designed instruction in a self-contained classroom. In other words, despite the fact that it was in error for the District to not ensure a general education teacher was present at the January 2021 IEP meetings, it appears the full extent of the Students' participation in general education was participation in a general education PE class.

For the foregoing reasons, despite the District's failure to follow proper IEP team composition procedures for the Students' respective January 2021 IEP meetings, the District's ability to provide FAPE to both Students does not appear to have been affected. Therefore, the only corrective action necessary is dissemination of written guidance on proper IEP team composition and excusal procedures to certain District staff.

CORRECTIVE ACTIONS

By or before **August 4, 2021** and **August 11, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **August 11, 2021**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs)⁷, at the school that the Students were enrolled in during the 2020–2021 school year. The guidance will include examples.

Topic 1: proper IEP team composition (WAC 392-172A-03095(1)-(4), -(6))

Topic 2: IEP team meeting excusal procedures (WAC 392-172A-03095(5))

By **August 4, 2021**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 6, 2021.

By **August 11, 2021**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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.

REMINDER

While certain COVID safety precautions were in effect during the 2020–2021 school year—and will continue to be in place during the 2021–2022 school year—placement of students with disabilities, under the IDEA, must be determined based on the IEP team’s decisions of student need.

Dated this ____ day of July, 2021

Glenna Gallo, M.S., M.B.A.
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⁷ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

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.)