

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-04

PROCEDURAL HISTORY

On February 1, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the West Valley School District No. 208 (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 February 1, 2017, 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 February 23, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on February 24, 2017. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information.

On March 8, 2017, OSPI received the Parent's reply and forwarded that reply to the District on March 9, 2017.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a special education preschool at a District elementary school, and received special education services under the category of developmental delay. The District's preschool provided a program consisting of 540 minutes per week. The Student's individualized education program (IEP) provided her with services for social skills and speech. The service matrix in the Student's IEP stated special education staff would provide the Student with 255 minutes per week for social skills, and another 255 minutes per week for speech. Additionally, the service matrix in the Student's IEP stated the speech language pathologist (SLP) or SLP paraeducator was responsible for delivering 255 minutes per week for speech as a related service. According to the District, the provision for related services in the Student's IEP was unintentional and erroneous. At a parent/teacher conference in November 2016, the Parent expressed concerned about the minutes for the Student's speech services, and the Student's special education teacher explained that the Student's service minutes included time when the Student was participating in class activities. On December 15, 2016, the Student's special education teacher sent home a proposal to amend the Student's IEP, without a meeting, to correct the related speech services in the Student's IEP service matrix. The Parent did not respond, or return the proposal to amend the Student's IEP. On January 20, 2017, the Parent emailed the District special services director, stating he was not in agreement with the speech services the Student was receiving, and requesting the District provide the Student with an independent educational evaluation (IEE) for speech. On January 24, 2017, the District special services director informed the Parent that the District had determined the

Student's evaluation was appropriate, thought the Parent's concern involved the Student's IEP service matrix, and invited the Parent to meet and discuss his concerns. After arranging to meet the Parent on February 2, 2017, the District filed a request for a due process hearing, to show that its evaluation of the Student was appropriate and an IEE was not necessary. The Parent emailed the District, noting the District had filed "a complaint" against the Parent, and stating he wanted to postpone their meeting. The Parent alleged that the District did not implement the Student's IEP and did not provide the Parent with progress reporting toward the Student's annual goals. The District denied the allegations.

ISSUES

1. Did the District implement the Student's May 19, 2016 individualized education program (IEP) during the 2016-2017 school year?
2. Did the District provide the Parent with progress reporting, according to the timeframe designated in the Student's May 19, 2016 IEP during the 2016-2017 school year?

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. School districts must ensure the provision of all services in a student's IEP, consistent with the student's needs as described in that IEP. Additionally, districts must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Districts must ensure that each teacher and/or provider is informed of his or her specific responsibilities related to implementing the student's IEP, and the specific accommodations, modifications, and supports contained in the IEP. 34 CFR §300.323; WAC 392-172A-03105.

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

1. During the 2016-2017 school year, the Student attended preschool at a District elementary school and was eligible for special education services under the category of developmental delay.
2. The District completed the Student's initial evaluation on September 4, 2015. This was the current evaluation for the Student at the beginning of the 2016-2017 school year. The evaluation report stated that a private medical provider had recently diagnosed the Student with a moderate fluctuating hearing loss, and the District had requested those records from the provider. The report also stated that the Student's language testing indicated significant delays in both her receptive and expressive language skills. The report further stated that during observation, the Student primarily used gestures, pointing, grunts, and vowel sounds to communicate. Additionally, the report stated the Student had significant delay in social skills, specifically that the Student was unable to follow rules, share property, play cooperatively with peers, interact appropriately during non-play group activities, or separate easily from a parent.
3. On May 19, 2016, the Student's IEP team, including the Parent, developed the individualized education program (IEP) in place for the Student at the beginning of the 2016-2017 school year. The present levels of performance in the Student's IEP stated the Student had improved her ability to play with peers, but still preferred playing with adults, and struggled to follow directions during classroom activities. The present levels also stated the Student's mean length of utterance was three words per utterance, and her speech was approximately 20% intelligible when the listener knew the context. The Student's IEP included three annual goals with progress reported quarterly:
 - Social Skills: The Student will decrease the times she does not follow directions during class activities from eight or more times per day, to two or less times per day.
 - Speech: The Student will increase her mean length of utterance from 3.0 to 5.0 words per sentence.
 - Speech: When the listener knows the context of the Student's speech, the Student will increase her speech intelligibility from 20% to 70%, in 3/3 data collections.

The Student's IEP provided the following weekly minutes of specially designed instruction, all in the special education setting, with special education staff responsible for delivering services:

- 255 minutes per week for social skills, and
- 255 minutes per week for speech

The Student's IEP also provided the following related services in the special education setting, with the speech language pathologist (SLP) or SLP paraeducator responsible for delivering services:

- 255 minutes per week for speech¹

¹ The District describes the related service provision in the Student's IEP as erroneous and unintentional, noting that the Student's school day was 540 minutes per week and the Student's specially designed

4. September 7, 2016 was the first day of preschool in the District for the 2016-2017 school year.² The Student began attending a special education preschool, taught by a special education teacher, at a District elementary school. The Student's preschool classroom served ten students, with a class schedule of 9AM to 11:15AM, Monday through Thursday, consisting of 540 minutes per week.
5. According to the District, the SLP provided group speech services in the Student's classroom, including the Student, from 1:00PM to 2:05PM every Tuesday and Thursday, which is 130 minutes per week. Also according to the District, the SLP additionally provided speech services to the Student's classroom, including the Student, every Tuesday and Thursday morning, for five minutes each day, or 10 minutes per week as students prepared to enter the classroom. The District stated that the SLP used these morning interactions for data collection and re-direction of students' utterances. Also according to the District, the SLP provided the Student with 15 minutes per week of one-on-one speech services. In total, the District stated that the SLP provided the Student with 155 minutes per week of speech services. Further, according to the District, the Student's special education teacher provided 100 minutes per week of group speech services to the Student's classroom, including the Student. The District stated that the delivery of group speech services by the Student's special education teacher occurred throughout each school day, including circle time, snack time, playground time, centers time, and "bathroom & goodbye" time.
6. On November 1, 2016, a contact log kept by the Student's special education teacher stated the Student's special education teacher met with the Parent that day for a parent/teacher conference. The log stated the Parent expressed concern about the Student's speech minutes. The log noted that the Student's service matrix could suggest the Student received more direct service time than provided. The log also stated that the Student's special education teacher explained to the Parent that service minutes included class activity time. The log further stated that the Student's special education teacher offered to have the SLP contact the Parent, but the Parent declined that offer.
7. On or around November 5 2016, the District issued progress reporting for the Student's annual IEP goals.³ According to the District, the Student's special

instruction totaled 510 minutes per week without the related services. The District also stated that the Parent did not contest that the Student's IEP team intended for the Student's IEP to provide her with a total of 255 minutes of speech services, noting that the Parent's complaint referred to speech services for "255 minutes per week." However, it is unclear whether the Parent considered the provision of speech therapy as a related service to be erroneous, as the Parent references the language in the service matrix, specifying that the speech language therapist (SLP) was to provide the Student with speech services.

² Generally, the District's first school day of the 2016-2017 school year was August 30, 2016. However, preschool appears to have begun on September 7, 2016.

³ The District measured the Student's annual goal for social skills on November 1, 2016, and the Student's annual goals for speech on November 5, 2016.

education teacher provided the Parent with a copy of the Student's progress report at the parent/teacher conference. The progress report stated:

- Social Skills: The Student had made sufficient progress on her goal to decrease the times per day she did not follow directions during class activities, from eight times per day to two or less times per day. The notes stated the Student had difficulty in larger group activities, where she would not respond, or do the wrong thing to be silly. However, the notes further stated that in a smaller group setting, the Student did well. The progress reporting also stated the Student had mastered both her benchmark objectives to decrease the times per day she did not follow directions to six and then to four.
- Speech: The Student had made sufficient progress on her goal to increase her mean length of utterance from 3.0 to 5.0 words per sentence. The notes stated the Student had mastered her benchmark objective to increase her mean length of utterance to 3.5, and was demonstrating an average length of utterance of 3.8 words per sentence.
- Speech: The Student had made sufficient progress on her goal to increase her speech intelligibility from 20% to 70%, in 3/3 data collections, when the listener knew the context of the Student's speech. The notes stated that when the listener knew the context, the Student's intelligibility was 68%. The notes further stated the Student was working on imitating basic consonants in CVC patterns with the Kaufman Speech Praxis Kit1, and could imitate CVC words with the same consonant at the beginning and ending position with 100% accuracy, but decreased to 60% accuracy when the consonants at the beginning and ending positions were different.

8. On December 15, 2016, the contact log kept by the Student's special education teacher stated that on that day, the Student's special education teacher sent paperwork home with the Student to give to the Parent. The log stated the paperwork was a proposal to amend the Student's IEP, without a meeting, to correct the Student's service minutes for speech. According to the District, the purpose of this amendment was to correct the erroneous listing of speech services as a related service in the Student's IEP in addition to the provision for speech as specially designed instruction. The documentation does not include a copy of the proposal to amend the Student's IEP or an explanatory prior written notice.

9. The District's winter break was December 19, 2016 through January 2, 2017.

10. On January 20, 2017, the Parent emailed the District special services director, stating he recently reviewed the Student's initial evaluation and IEP, and he was not in agreement with the speech services being provided. The Parent then requested that the District provide the Student with an independent educational evaluation (IEE) for speech. The District special services director responded, asking the Parent for clarification about his objection to the Student's evaluation, and providing a link to the regulation governing IEE requests. The District special services director also stated he would ask the Student's evaluation group to review the Student's current evaluation, and determine whether the District would agree to the Parent's IEE request. The Parent replied, stating he was seriously concerned with the amount of speech minutes that were documented on the Student's IEP.

11. On January 24, 2017, the District special services director emailed the Parent, stating he had met with the Student's "preschool team" that morning, and they thought the Parent's concern likely involved the service matrix in the Student's IEP, rather than a concern with the District's current evaluation of the Student. The District special services director stated that the Student's evaluation qualified the Student to receive services for speech and social skills, whereas the Student's IEP stated how the District would provide those services. The District special services director also asked if the Parent would be willing to meet, and if the Parent intended to proceed with his IEE request. The District special services director stated the Student's special education teacher would contact the Parent soon, and arrange a meeting. Later that day, the Student's special education teacher emailed the Parent, asking for dates/times when the Parent could meet. Also on January 24, 2017, the contact log kept by the Student's special education teacher stated the teacher had met with the SLP and the District special services director, and noted the Parent never returned, or responded to the proposal to amend the Student's IEP without a meeting, which the Student's special education teacher had sent home on December 15, 2016.
12. According to the District, on January 25, 2017, the Parent emailed the District special services director, stating the Parent was available to meet on February 2, 2017.⁴
13. Also according to the District, on January 27, 2017, the District special services director emailed the Parent, explaining that the District was submitting a request for a due process hearing in response to the Parent's IEE request.⁵
14. On or around January 27, 2017, the District issued progress reporting for the Student's annual IEP goals.⁶ According to the District, the Student's special education teacher put a copy of the Student's progress reporting in the Student's backpack immediately before the Student left the classroom for home. The progress report stated:
- Social Skills: The Student had made sufficient progress on her goal to decrease the times per day she did not follow directions during class activities, from eight times per day to two or less times per day. The notes stated the Student was making progress with following directions, but she was not comfortable with all activities.
 - Speech: The Student had mastered her goal to increase her mean length of utterance from 3.0 to 5.0 words per sentence. The notes stated that in the last sample, the Student's mean length of utterance was 6.1 words per sentence.
 - Speech: The Student had also mastered her goal to increase her speech intelligibility from 20% to 70%, in 3/3 data collections, when the listener knew the context of the Student's speech. The notes stated that when the listener knew the context, the

⁴ This email is not in the documentation.

⁵ This email is not in the documentation.

⁶ The District measured the Student's annual goal for social skills on January 25, 2017 and the Student's annual goals for speech on January 27, 2017.

Student's intelligibility was 77%. The notes also stated this was an average taken across 4 conversation samples in the past 2 months. The notes further stated that when the Student was working with the Kaufman Speech Praxis program, she was able to imitate vowels and the initial consonants /m, b, n, d, h/ successfully. The notes also stated the Student was exhibiting prevocalic voicing on /t, p/, but her manner and placement of product was correct. The notes further stated the Student was imitating C1V1C2V2 words with visual and tactile cues with 63% accuracy.

15. On January 30, 2017, the Student's special education teacher emailed the Parent, confirming that February 2, 2017 was the best time for the Parent to meet, and stating she would arrange the meeting with the SLP. The Parent responded to the Student's special education teacher, stating he had received a letter from an attorney for the District, stating the District had requested a due process hearing. The Parent stated he had not heard from the District special services director since receiving the attorney's letter, and he was unsure how they would be proceeding. Later that day, the District special services director emailed the Parent, stating that he and the Student's providers would still like to meet with the Parent on February 2, 2017, as they understood that date worked well for the Parent. The District special services director also stated that the District filed a due process hearing request because the District was required to respond to the Parent's IEE request formally by February 3, 2017. The District special services director further stated that both the Parent and the District could drop their respective requests if they came to a resolution at their February 2, 2017 meeting.
16. On January 31, 2017, the Student's special education teacher emailed the Parent, asking if the Parent was still available to meet on February 2, 2017. Later that morning, the Parent emailed the District special services director, stating he received a letter, notifying him that the District had filed "a complaint" against the Parent, in response to the Parent's IEE request. The Parent stated he did not have the resources to hire an attorney, and therefore, would withdraw his IEE request that day. The Parent further stated he wanted to postpone meeting with the Student's service providers and the District special services director. The District special services director responded, stating that he and the Student's providers still wanted to work collaboratively with the Parent. The District special services director stated that the District had filed a due process hearing request because the District had only 15 days, from the time of the Parent's IEE request, to request a due process hearing, or agree to provide the Student with an IEE. The District special services director further stated that the District believed its evaluation of the Student was appropriate, and therefore, had proceeded with filing the due process hearing request. The District special services director also stated that a due process hearing request was not a complaint against the Parent; it was a request for review of whether an IEE at public expense was warranted. The District special services director stated that the Student's IEP team needed to meet and discuss the Parent's concerns, and amend the Student's IEP. The District special services director also stated that the District would be happy to meet when the Parent was ready.

17. On February 1, 2017, the Parent filed this complaint.

CONCLUSIONS

1. IEP Implementation: The documentation substantiates that the District implemented the Student's IEP. The Parent's complaint focuses on the lack of 1:1 services provided to the Student. However, nothing about the Student's IEP indicated the Student would receive her services 1:1. Given the service areas of social skills and speech, and the nature of the Student's specific annual goals, a group setting, limited to 10 total students in the classroom, was an appropriate approach for services. Additionally, the Parent's concerns included that the Student's special education teacher, rather than the SLP, provided some of the Student's speech services. A special education teacher is qualified to provide specially designed instruction, including specially designed instruction for speech, if a fully certified SLP designs and monitors the services. Here, the facts support that the SLP designed and monitored the Student's speech services. Given the Student's mastery of her annual goals for speech, this arrangement was not deficient. However, OSPI recommends that the District develop IEPs with greater clarity and specificity about service delivery, including whether staff will integrate services throughout the school day, and who will provide services. OSPI also recommends that the District review with its staff that when staff discover an unintentional or erroneous provision in a student's IEP, staff should not only promptly correct the error, but also provide a prior written notice, explaining that the correction is not a change of services.

2. Progress Reporting: The documentation also substantiates that the District provided the Parent with progress reporting. In his complaint, the Parent stated he had not received "any formal progress reports" regarding the Student's speech goals. However, the Parent did not reply to the District's assertion that it provided the Parent with progress reporting according to the agreed upon timeframe, but would be happy to provide another copy of that reporting if necessary.

CORRECTIVE ACTION

STUDENT SPECIFIC: None.

DISTRICT SPECIFIC: None.

Dated this ____ day of March, 2017

Douglas H. Gill, Ed. D.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

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.)