

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-13

PROCEDURAL HISTORY

On February 1, 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 Tacoma 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 February 1, 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 March 8, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on March 9, 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.

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

OVERVIEW

In January 2017, the Student became eligible to receive special education services under the category of other health impairment. At that time, the Student was living with his adoptive Parents. Beginning in the spring of 2017, the Student moved several times, and at some point, entered foster care. From March 2017 through November 2017, the Student attended four different school districts, enrolling in the District in November 2017. While there was no evidence that the adoptive Parents did not retain their parental rights to make education decisions on behalf of the Student, different people assumed the role of the "parent" in some of the school districts. Once enrolled in the District, the District identified the Student's therapeutic foster parent as meeting the definition of "parent" under special education regulations, rather than the adoptive Parents. When the District conducted an individualized education program (IEP) meeting, the District refused to allow the adoptive Parents to attend the meeting. The Parent alleged that the District failed to allow the adoptive Parents to participate in the Student's IEP meeting. The District acknowledged that the adoptive Parents are the "parents" under special education regulations and had the right to participate in the IEP meeting.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on February 1, 2017. 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 time period.

ISSUE

1. Did the District provide the Parent with an opportunity to participate in the individualized education program (IEP) development, review, and revision process?

LEGAL STANDARDS

Definition of Parent: IDEA defines the term “parent” as: a biological or adoptive parent of a child; a foster parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student; an individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or a surrogate parent who has been appointed in accordance with WAC 392-172A-05130. The state is not defined as a “parent,” even if the student is a ward of the state. 34 CFR §300.30(a); WAC 392-172A-01125(1). If the biological or adoptive parent is attempting to act as the parent, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student. 34 CFR §300.30; WAC 392-172A-0125. However, if a judicial order identifies a specific person or persons to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons will be determined to be the “parent” for purposes of the child’s special education program and services. Use of the term “parent” includes adult students whose rights have transferred to them pursuant to WAC 392-172A-05135. 34 CFR §300.30; WAC 392-172A-01125(3).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must 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 with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR § 300.322; WAC 392-172A-31000.

FINDINGS OF FACT

Background Facts

1. The Parents are the Student's adoptive parents, but the state of Washington has legal custody of the Student and the Student resides in a foster home. For purposes of this investigation, the District and the Parents did not provide a copy of any judicial order that revoked any of the Parents' rights to make educational decisions for the Student, despite his status as a child in foster care.

2016-2017 School Year

2. During the 2016-2017 school year, the Student was enrolled in another Washington school district (SD1).¹
3. On December 9, 2016, SD1 proposed an initial evaluation of the Student and the Parent consented to the initial evaluation.
4. In December 2016 and January 2017, SD1 conducted the Student's initial evaluation.
5. On January 4, 2017, the Student's evaluation group, including the Parents, reviewed the evaluation results and determined the Student was eligible for special education services under the category of other health impairment. The evaluation report recommended that the Student receive specially designed instruction in the areas of reading, written expression, mathematics, and social/emotional. On the same day, SD1 provided the Parents with prior written notice.
6. On January 18, 2017, SD1 sent the Parents an individualized education program (IEP) meeting notice for an IEP meeting scheduled on January 31, 2017.
7. On January 31, 2017, SD1 held an IEP meeting, which included the Parents, to develop the Student's initial IEP. The IEP provided for annual goals in the areas of mathematics, reading, written expression, and social/emotional. The IEP provided for the following specially designed instruction and related services:
 - Mathematics – 325 minutes/weekly
 - Reading – 300 minutes/weekly
 - Written expression – 200 minutes/weekly
 - Social/emotional – 765 minutes/weekly
 - Occupational therapy – 30 minutes/weekly

On the same day, the Parent provided consent to initiate special education services and SD1 sent the Parents prior written notice.

¹ The Student was enrolled in multiple school districts before eventually enrolling in the Tacoma School District. The school districts will be consecutively identified as "SD1", "SD2", "SD3", "SD4", and the "District".

8. In approximately early March 2017, the Student began residing with relatives, and no longer lived with the Parents.
9. On March 3, 2017, the Student was disenrolled from SD1.
10. From March 6, 2017 to June 14, 2017, the Student was enrolled in SD2. The IEP documentation from SD2 indicated that the “parents” of the Student were the Parents’ immediate family members with whom the Student was living with at the time.

2017-2018 School Year

11. From August 30, 2017 to October 26, 2017, the Student was enrolled in SD3. No documentation from SD3 was included in the Parent’s complaint or response from the District.
12. At some point in October 2017, the Student moved to a new foster home.
13. From October 27, 2017 to November 17, 2017, the Student was enrolled in SD4. All IEP documentation from SD4 named the new foster parents with whom the Student was placed as “parents.”
14. An undated IEP meeting notice was sent to the foster parents, scheduling an IEP meeting on November 1, 2017. On the same day, SD4 conducted an IEP transfer review. The foster parents did not attend. The foster parents were provided prior written notice, indicating that the Student was eligible to receive special education services under the category of other health impairment.
15. On or before November 16, 2017, the Student was placed in a therapeutic foster home within the District’s boundaries.
16. On November 16, 2017, the therapeutic foster parent completed and signed the Verification of Student History form for the District. The form indicated that the Student was placed in a special education program and received special accommodations for a 504 plan.
17. On November 27, 2017, the Student was enrolled in the District.
18. On December 15, 2017, the District sent an IEP meeting notice to the Student’s Department of Social and Health Services’ (DSHS) case manager and the therapeutic foster parent. The purpose of the meeting was to conduct a transfer review.
19. Also on December 15, 2017, the District held the transfer review meeting. The signature on the form indicated that only a school psychologist attended the meeting. After the transfer review meeting, the District provided prior written notice to the therapeutic foster parent. The notice stated that the Student was eligible under the category of other health impairment and would receive specially designed instruction in the areas of reading, writing, mathematics, and social/emotional.

20. From December 18, 2017 through January 1, 2018, the District was on break.
21. On January 19, 2018, the District sent a meeting invitation to the therapeutic foster parent to review the Student's IEP on January 31, 2018. According to the notice, the following people were invited: district representative; general education teacher; occupational therapist; parent/guardian; and special education teacher.
22. In the complaint, the Parents stated they were notified by the DSHS social worker of the meeting and informed her that they wanted to attend the January 31 IEP meeting by telephone. According to the complaint, the DSHS social worker relayed the Parents' request to the District. The District denied the request and the DSHS social worker informed the Parents. The District's response to this complaint did not indicate the reason why the District denied the Parents' request.
23. In the District's response to this complaint, the District acknowledged the Parents' attempt to participate in the January 31 IEP meeting in its response to the complaint. The District stated that it was not clear who made the decision that the Parents could not participate in the meeting and what was the basis for their decision.²
24. On January 31, 2018, the District held an IEP meeting and developed the Student's annual IEP. The January 31 IEP stated that the therapeutic foster parent attended the meeting and was identified on the IEP as the "parent." The IEP provided for specially designed instruction in the areas of reading, mathematics, written expression, and social/emotional.³
25. Also on January 31, 2018, the District provided the therapeutic foster parent with prior written notice, indicating the proposed special education and related services. Regarding the participants in the meeting, the notice stated:

[Student's] foster mother was in attendance and [Student's] social worker participated via conference call at the foster mother's request. It should be noted that the IEP team thought they heard a female voice in the background of the conference call, but were assured that there was no one else privy to the conversation.
26. On February 1, 2018, the complaint was received by OSPI.

CONCLUSIONS

IDEA defines "parent" as: a biological or adoptive parent of a child; a foster parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student; an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or a surrogate parent. If the biological or adoptive

² The special education teacher who arranged the meeting was a long-term substitute and is no longer employed in the District.

³ Occupational therapy would also be provided.

parent is attempting to act as the parent, and when more than one party meets the qualifications to act as a parent, the biological or adoptive parent must be presumed to be the parent unless he or she does not have legal authority to make educational decisions for the student. Having established who the parent is, a district must ensure that the parents are present at each IEP team meeting or are afforded the opportunity to participate. Here, the District was convening an IEP meeting and invited the therapeutic foster parent as the “parent” of the Student rather than the Parents. While the therapeutic foster parent may meet the definition of a parent under the IDEA, there was no evidence that the Parents did not retain the right to make educational decisions on behalf of the Student. Thus, the Parents had the right to receive all the proper notices, participate in the IEP meeting, and make decisions on behalf of the Student. In its response to this complaint, the District acknowledged that the Parents should have been assumed to be the “parent” and afforded all of their rights and have proposed corrective actions to address the oversight. The fact that people other than the Parents were recognized as the “parent” by other districts led to some of the confusion, along with information provided to the District by other agencies.

CORRECTIVE ACTIONS

By or before **April 20, 2018, April 27, 2018, May 18, 2018, and June 22, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **April 13, 2018**, the District will provide the Parents with all the documentation from the January 31, 2018 IEP meeting, including prior written notice. By **April 20, 2018**, the District will provide OSPI with a copy of the documentation provided to the Parents regarding the January 31, 2018 IEP meeting.

By **April 20, 2018**, the District will hold an IEP meeting to review and revise, as appropriate, the Student’s January 2018 IEP with the participation of the Parents. By **April 27, 2018**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the amended IEP, if applicable; and, 3) a copy of any related prior written notices.⁴

DISTRICT SPECIFIC:

By **June 15, 2018**, the District will ensure all District special education certificated staff at the Student’s elementary school, including educational staff associates and principals, receive training regarding biological/adoptive parent participation in IEP meetings and notices for students in foster care.⁵

- By **May 18, 2018**, the District will submit a draft of the training materials to OSPI for review. It is recommended that the District coordinate the training with the District’s Foster Care

⁴ This corrective action was proposed by the District.

⁵ This corrective action was proposed by the District.

Liaison and OSPI's Foster Care Education Program. OSPI will approve the materials or provide comments by May 28, 2018 and additional dates for review, if needed.

- **By June 22, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will provide a follow-up session(s) within the required timeframe.

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 March, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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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.)