

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-32

PROCEDURAL HISTORY

On April 24, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Arlington 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 April 26, 2019, 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 May 20, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. OSPI did not receive a reply from the Parent.

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 March 2019 mediation agreement to "give more detail around the word 'refusal' in the communication notebook?"

LEGAL STANDARDS

Procedures for filing a complaint: An organization or individual, including an organization or individual from another state, may file with the OSPI, special education section, a written, signed complaint that the OSPI, or a subgrantee of the OSPI including, but not limited to, an ESD, school district, or other subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act or regulations implementing the act. A written complaint filed with OSPI will include: (1) A statement that the agency has violated or is violating one or more requirements of Part B of IDEA including the state and federal regulations implementing the act; or (2) A statement that the school district is not implementing a mediation agreement or a resolution agreement. WAC 392-172A-05025.

FINDINGS OF FACT

1. During the 2018-2019 school year, the Student attended a District high school and was eligible to receive special education services under the eligibility category multiple disabilities.¹

¹ The Student attends a transition program located off-campus. On April 25, 2019, an IEP meeting was held to discuss the outcomes of a functional behavioral assessment (FBA) that had resulted from a previous

2. On March 7, 2019, the District and the Parent participated in a mediation session. The director of special education and the program teacher participated on behalf of the District.
3. According to the District's response, prior to the parties' mediation on March 7, 2019, the "[program] teacher and Parent were communicating on a daily basis using a notebook containing information regarding the Student's daily performance. There were instances when the Student would refuse to participate, and the Teacher would indicate this [in the notebook] as a way of keeping the Parent informed of any task avoidance."
4. At the March 7, 2019 mediation session, the parties agreed to the following language, which was documented in writing, in a mediation settlement agreement and then signed by the Parent and District: "[Program teacher] agrees to give more detail around the word 'refusal' in the communication notebook between the school program and [Parent]."
5. In the complaint, the Parent wrote that the District was "[n]ot following the signed mediation agreement dated March 7, 2019. Mediation Agreement stated: teacher will explain 'refusals' in the daily communication notebook. This has not been done."
6. According to the District's response, the District "provided more detail around the word 'refuse' by creating and completing daily Task/Activity sheets² that include the word 'refuse' or 'refusal' and that track information regarding the number and types of refusals on a daily basis." The District added that, "On days when refusals occurred, these sheets were included in that day's notebook entry and provided to the [P]arent."
7. In the complaint, the Parent provided task/activity sheets and entries from the communication notebook from dates she felt the District failed to comply with the mediation agreement and requested OSPI review them. These dates included the following:
 - March 12, 2019
 - March 13, 2019
 - March 18, 2019
 - March 20, 2019
 - March 21, 2019
 - March 28, 2019
8. On March 12, 2019, the Student's task/activity sheet documented twenty-eight (28) total refusals in the following activities: activity one (18 refusals); activity two (6 refusals); activity

mediation agreement between the District and the Parent. The FBA addressed the Student's refusal behaviors. Also on April 25, 2019, the District provided the Parent with prior written notice (PWN) that as a result of the FBA, the IEP team had agreed to add a 1:1 behavior technician (BT) to work directly with the Student in his transitions program to address the Student's refusals.

² According to the District's response, "[t]he Task/Activity sheet was created by the program teacher from a sketch that the Parent's advocate drew up for the teacher during the mediation process, as a way to track behaviors. The teacher included 'Other Notes' in the bottom section of the sheet to add detail to when the student exhibited refusal behaviors [. . .]. Parent sent an email to the program teacher on April 6, 2019 thanking her for sending the Task/Activity (parent calls them behavior) sheets home with her student. Based on this, the District understood that the Parent believed the Task/Activity sheets were sufficient with respect to providing the requested information regarding the Student's refusals."

three (5 refusals); and activity four (0 refusals). The task/activity sheet provided information on the consequences and incentives offered to the Student, strategies used (including how often each strategy was used), information on what worked and what did not work, as well as other notes—including that the Student “did not stop to cross the street,” and that the Student “took several minutes looking for [a] blue phone.”

9. On March 12, 2019, the program teacher did not mention refusals in her entry in the communication notebook.
10. On March 13, 2019, the Student’s task/activity sheet documented thirty-nine (39) total refusals in the following areas: activity one (1 refusal); activity two (25 refusals); activity three; (8 refusals); and activity four (4 refusals). The task/activity sheet provided information on the consequences and incentives offered to the Student, strategies used (including how many times each strategy was used), information on what worked and what did not work, as well as other notes—including that the Student “ran from the site slamming door on staff, slapping when trying to open door,” that “staff trying to go out around him was punched,” that “[t]imer x 2 [was] set,” that the Student “went and ran away [at] back of [activity one], [c]ontinued to refuse,” and also that the Student said “[l]ots of ‘No work, Jesus!’”).
11. On March 13, 2019, the program teacher wrote in the communication notebook that the Student “refused to wait when crossing street, unsafe. Wouldn’t let others in vehicle by moving/shifting seats. [. . .].”
12. On March 18, 2019, the Student’s task/activity sheet documented twelve (12) refusals in the following areas: activity one (8 refusals); activity two (1 refusal); activity three (3 refusals); activity four (0 refusals). The task/activity sheet provided information on the consequences and incentives offered to the Student, strategies used—including that the number of times each strategy was used), what worked and what did not work, and other notes (including that the Student, “[d]id not leave with others”).
13. On March 18, 2019, the program teacher wrote in the communication notebook that the Student “[r]efused to go to [activity one] for 20 min.”
14. On March 20, 2019, the Student’s task/activity sheet documented 40 refusals in the following areas: activity one (4 refusals); activity two (10 refusals); activity three (20 refusals); activity four (6 refusals). The task/activity sheet provided information on the consequences and incentives offered to the Student, strategies used (including the number of times each strategy was used), what worked and what did not work, and other notes—including that the Student “[t]ook [notebook], refused to allow writing in it.”
15. On March 20, 2019, the communication notebook did not contain an entry from the program teacher.
16. On March 21, 2019, the task/activity sheet documented 7 refusals in the following areas: activity one (0 refusals – arrived late, left early); activity two (0 refusals – arrived late); activity

three (7 refusals); and activity four (0 refusals – left early). The task/activity sheet provided information on the consequences and incentives offered to the Student, strategies used (including the number of times each strategy was used), and what worked and what did not work.

17. On March 21, 2019, the program teacher did not write a separate entry in the communication notebook.
18. On March 26, 2019, the program teacher emailed the Parent with the following information:

You indicated that [Student] left his notebook at home this morning so all he had was the data sheet for you. [He] hadn't arrived to [activity one]. He refused to go to [activity two]. He initially refused to go to [activity two] . He join[ed] us after first car left and everyone was loaded in the second. He wouldn't cooperate with ourselves or [activity two] employees for check out of chicken patties. When we said we would have to put the patties back, he went through the back finished his transaction and then came from behind, slamming his device next to my hand. He repeated 'dad's car, go home, tired/sick' most of the day. He did curtail it when I told him that if he was sick, I would let dad know that he needed to go home and go to bed for the afternoon so he could get better. He refused to put his seatbelt on when we were trying to return so we sat in the parking lot for a time. He changed his mind eventually.
19. On March 28, 2019, the task/activity sheet documented 38 refusals in the following areas: activity one (15 refusals); activity two (18 refusals); activity three (5 refusals). The task/activity sheet provided information on the consequences and incentives offered to the Student, strategies used (including the number of times each strategy was used), what worked and what did not work, and other information—including that the Student "repeated, 'I'm tired, go home to Dad,'" that the Student "refused to leave backpack [at activity one]," that the Student "refused to put on seatbelt," "would not give card to register," "would not stand in line," "tried to cut in front of others in food court," "said he was sick until he was told to [go] home to bed."
20. On March 28, 2019, the program teacher did not provide a separate entry in the communication notebook.
21. According to the District's response, the task/activity sheet was sent home with the notebook.
22. In its response, the District stated that:

to the extent the Parent disagrees that these sheets contain the requested additional detail, this issue would benefit from more constructive dialogue with the IEP team, including Parent, because the mediation agreement lacks any specificity with respect to the amount of detail that is appropriate. The District also believes that many of these concerns will be addressed given that the District has hired a Behavior Technician to work with the student as a 1:1 support while in the program. The Behavior Technician will be collecting data on a daily basis for the express purpose of addressing the student's avoidance behaviors that the team has agreed are a manifestation of his disability.

CONCLUSIONS

Mediation agreement: The issue is whether the District implemented the March 2019 mediation agreement. OSPI has the authority to ensure districts are implementing mediation agreements entered into with parents. According to the March 2019 written, signed mediation agreement, the District and Parent agreed that the program teacher would give more detail around the word "refusal" in the communication notebook between the school program and the Parent.

Here, the mediation agreement did not further define what the parties intended when they included the language "more detail" in their mediation agreement. Prior to the March 2019 mediation, the Parent and program teacher communicated about the Student's refusal behaviors using a communication notebook. According to the District's response, after the mediation, the District developed task/activity behavior data sheets with input from the Parent, which tracked the specific number of refusals the Student had and provided additional information about the refusals. In its response, the District stated that the task/activity sheets were sent home with the communication notebook. It appears the task/activity sheets were intended to provide additional information about the Student's refusals.

The Parent submitted documentation from March 12, 2019, March 13, 2019, March 18, 2019, March 20, 2019, March 21, 2019, and March 28, 2019, to support her allegation that the District was not implementing the terms of the mediation agreement.

While the program teacher did not write about the Student's refusals on a daily basis in the communication notebook, the task/activity sheets were used to collect additional data on the Student's refusals and provided more detail to the Parent about the Student's refusal behaviors than was provided to the Parent prior to the mediation agreement. It accordingly appears the terms of the mediation agreement, as written, were implemented. No violation is found.

While OSPI finds no violation, it agrees with the District that the issue would benefit from an IEP meeting to further discuss and define what was intended by "give more detail around the word 'refusal'" and recommends that an IEP meeting be scheduled to continue discussing the issues outlined at the mediation.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI recommends the parties schedule an IEP meeting to determine the amount of detail that is appropriate regarding communication between the Parent and program teacher about the

Student's refusal behaviors, and to ensure that everyone's understanding and expectations for this communication are the same.

Dated this ___ day of June, 2019

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.)