

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-73

PROCEDURAL HISTORY

On October 3, 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 Seattle School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 3, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on October 7, 2019.

On October 22, 2019, the District requested an extension of time to submit the documentation requested by OSPI. OSPI extended the District's timeline to provide the documentation to November 5, 2019.

On November 5, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on November 6, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On November 15, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On November 22, 2019, the OSPI complaint investigator conducted an interview with the District support services supervisor.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interview.

ISSUES

1. Did the District follow procedures to develop and implement (per the June 6, 2019 prior written notice) the secondary transition plan in the Student's Individualized Education Program (IEP) regarding testing and course of study?
2. Did the District provide a properly constituted IEP team for the Student at the June 2019 IEP meeting?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a 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.

Definition of a Free Appropriate Public Education (FAPE): A “free appropriate public education” (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State’s educational standards, approximate the grade levels used in the State’s regular education system, and comport with the child’s individualized education program (IEP). *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982).

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student’s IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals. 34 CFR §300.320(b); WAC 392-172A-03090(1)(j).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. 34 CFR 300.503; WAC 392-172A-05010.

Nonacademic Services: Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's IEP team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford students eligible for special education an equal opportunity for participation in those services and activities. Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the school district, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available. 34 CFR 300.107; WAC 392-172A-02025.

IEP Team: 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. 34 CFR §300.321(a); WAC 392-172A-03095(1).

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on October 4, 2018. 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.

FINDINGS OF FACT

Background Facts

1. On July 19, 2018, the Student's individualized education program (IEP) team developed a bifurcated IEP. From June 22, 2018 to June 14, 2019, the Student's IEP provided the following specially designed instruction:

- Social/Behavior: 1410 minutes, weekly (provided by a special education teacher)
- Study/Organization skills: 300 minutes, weekly (provided by a special education teacher)

From July 20, 2018 to June 14, 2019, the Student's IEP provided the following specially designed instruction and related services:

- Social/Behavior: 1410 minutes, weekly (provided by a special education teacher)
- Study/Organization skills: 300 minutes, weekly (provided by a special education teacher)
- Counseling services: 60 minutes, one time a week (provided by a counselor)
- Counseling services: 90 minutes, one time a week (provided by a counselor)¹

The IEP provided 29 accommodations and special transportation based on services not being offered at his neighborhood school.

According to the Student's transition assessments, the Student was interested in becoming a tattoo artist and working with animals. He was also interested in becoming a mental health therapist working with adolescents. His postsecondary transition goals were as follows:

- Education/Training: Upon leaving public school, [Student] will attend a university to obtain a degree in psychology.
- Employment: Upon leaving high school, [Student] will become a therapist who works with adolescents using animal therapy.
- Independent living: Upon leaving public school, [Student] will plan and follow a monthly budget that will allow him to pay his bills and participate in leisure activities.

As part of the Student's transition plan, the course of study listed the courses the Student needed to take to obtain a diploma.

2018-2019 School Year

2. During the 2018-2019 school year, the Student, who was a tenth grader, lived in the District but attended a nonpublic agency (NPA) and was eligible to receive special education services under the category of other health impairment.

¹ Counseling services were provided by an outside agency.

3. On September 5, 2018, the 2018-2019 school year began in the District.
4. In January 2019, according to the District, the District proposed amending the Student's IEP to address Safety Net issues, including the Student's course of study.² Between January 23 and January 31, 2019, the Parent exchanged numerous emails with the NPA director, the District director of special education, and the District special education program specialist about amending the Student's IEP regarding, among other things, the secondary transition plan's course of study.
5. On February 6, 2019, the District support services supervisor emailed the NPA director, requesting the list courses the Student completed last semester and the list of courses he was taking that semester. On February 8, 2019, the NPA director emailed the supervisor the list of courses the Student was taking during the 2018-2019 school year.
6. On February 19, 2019, according to the District, it proposed a draft IEP amendment to the Parent. As part of the IEP, the secondary transition plan stated, "[Student] is currently on track to graduate with his peers. He has earned 5.5 credits this year. He should have earned 6 credits at the end of his freshman year to be on track. He is currently a .5 credit." The transition plan continued to include the following postsecondary goals/outcomes:
 - Education/Training: Upon leaving public school, [Student] will attend a university to obtain a degree in psychology.
 - Employment: Upon leaving high school, [Student] will become a therapist who works with adolescents and using animal therapy.
 - Independent Living: Upon leaving high school, [Student] will plan and follow a monthly budget that will allow him to pay his bills and participate in leisure activities.

The course of study listed fifteen classes that the Student had completed, seven courses he was currently taking, and fourteen classes he would need to take to graduate, along with passing the Smarter Balanced English language arts, math, and science state tests. The plan also stated the Student would be taking the Smarter Balanced Assessment (SBA) in math and English language arts with accommodations.

7. Beginning February 20 through March 25, 2019, the Parent, the District support services supervisor, and the director of the NPA exchanged numerous emails regarding questions about whether the Student would graduate with a diploma from the NPA or the District, and whether the Student was required to take the SBA. On February 21, 2019, the support services supervisor clarified to the Parent that the Student was required to take the SBA to receive a diploma from the District.
8. Also, on February 20, 2019, the Parent emailed the District support services supervisor about the academic credits the Student had received and what courses the Student needed to graduate. The Parent alleged a number of errors in the course of study according to the Student's IEP. According to the complaint, the Parent stated:

² Safety Net is an OSPI program that provides districts with additional special education funds for students with high needs.

Despite my multiple requests, the district has not updated my child's transcript in over a year. My child does not have a high school and beyond plan on file. To prepare for his June 2018 meeting, I requested that his transcripts be updated and was told I would have to wait until the end of the year. Then during his IEP meeting in June, the team was unable to determine his progress towards his graduation because his [District] credits were unknown. His course of study is therefore best guess and based on speculation. The PWN stated that the district would be updating his transcripts and doing a credit review to resolve this issue, but this was never completed despite my following up and requesting it multiple times. All of last year and now 1st semester this year, I remain unsure whether my child is taking the appropriate classes – specifically, whether his credits are going to be “do-overs” of classes he already has credit for...

9. On February 26, 2019, the district support service supervisor emailed the Parent, the NPA director, the director of special education, and NPA special education teacher and stated, “Any student at an NPA that is placed there by the district remains [a District] student and must meet the district’s graduation requirements. It is the NPA’s responsibilities to be working toward those graduation requirements...”
10. On March 28, 2019, the Parent emailed the support services supervisor questions about the Student taking the SBA. The email, in part, stated:

[Student] is a 10th grader and we want [Student] to graduate on time. He also needs to access Running Start, same as his typically developing peers. I’m concerned that he still has not been given access to a guidance counselor to sign the Running Start form. How can we access his high school and beyond plan? How can we review credits to determine what is remaining for graduation, as well as documentation of service learning, or other grad requirements we might need to aware of? I would like all of these grad/counselor/running start issues, including [District’s] commitment and timeline for resolution, to be noted in the PWN.
11. Regarding the guidance counselor, the complaint stated:

...My child was not given access to a guidance counselor for the during of the 2018-2019 school year despite my repeated requests...My child now has access to a guidance counselor, but only because he is cross-enrolled for Running Start. If that cross-enrollment ends (e.g., not running start classes next quarter), my understanding is that there will be no more access to a guidance counselor.
12. On March 29, 2019, the Parent signed the proposed February 11, 2019 IEP amendment without a meeting.
13. On April 26, 2019, the Parent emailed the District superintendent to state that, among other things, the Student’s “transcript has not been updated since he began in NPA. His credits towards graduation are not being tracked...My child does not have a guidance counselor, something every other [District] secondary student has...”
14. On May 8, 2019, the District support services supervisor emailed the Parent, in part, stating, “This is [Student’s] first year at [NPA]. His transcript will be updated at the end of the year. Credits towards graduation, attendance, and his High School and Beyond Plan are the

responsibility of [NPA].” Regarding the request for a guidance counselor, the supervisor stated, “Your family agreed to the settlement decision for [Student] to attend an NPA. [NPA] is responsible for any guidance [Student] will need concerning his educational needs.”

15. On June 5, 2019, an IEP meeting was conducted that included the Parent, staff from the NPA, and the District support services supervisor. According to the postsecondary transition plan, which was relevant to the present complaint, the IEP provided postsecondary goals in the following areas:
- Education/Training: After high school, [Student] will attend North Seattle College and then transfer to University of Washington to obtain a nursing degree alongside a holistic medicine/naturopathy degree.
 - Employment: After high school, [Student] will work as a psychiatric ARNP (advanced registered nurse practitioner) specializing in adolescents/young adults incorporating holistics into his practice.

The transition plan included transition services and courses of study. The course of study listed the courses and credits earned prior to 9th grade, 9th grade, and 10th grade courses. The IEP stated the credits “have not been granted by [District].” The IEP provided for 29 accommodations, some of which were for state testing. The IEP stated the Student would be participating in the SBA for English language arts and math during the 2019-2020 school year.

The documentation from the Student’s IEP team meeting included a copy of the Student’s transcript, dated May 28, 2019.

16. Regarding the participants in the IEP, the Parent, in her complaint, stated:
- My child receives counseling as a related service and his providers were not invited to his IEP, nor were communicated with ahead of the meeting for input solicited. The PWN (prior written notice) stated that the district would be providing a release of information to follow up with related service providers, but this was never completed.

17. Regarding testing, the Parent, in her complaint, stated:
- My child was not being given access to the same services afforded to other students in the district who attend neighborhood schools. Specifically, as a parent I did not receive communication about the P-SAT, that was to be free for all SPS and is taking place mid-October. When I found out about by chance from another parent, I inquired with the guidance counselor in my child’s neighborhood school (high school). After repeated requests to multiple staff, I was told that my child can take the P-SAT. However, the district failed to follow their own documented process for P-SAT accommodations, telling me that I need to go to the College Board on my own...

18. The prior written notice, dated June 6, 2019, provided the following description of the proposed or refused action:
- [Student] will do running start for the 2019-2020 school year; services to be provided online with support from [NPA] through Lake Washington Tech online.
 - No transportation needed.
 - Will participate at [NPA] in Kirkland.
 - Class plan to enroll in: English 101.

- [District] [supervisor] and [program specialist] have agreed to do the following:
 - Bridge communication gap with counselors from [District school] and NPA staff: points of discussion to include graduation checklist, credits, and an informed educational plan;
 - Cross enrollment for Running Start at [District school] for [Student];
 - Confirm High School & Beyond Plan – team agrees to start fresh;
 - Naviance request follow up;³
 - Orca card request for [Student];⁴
 - Transportation request to [district] for counseling starting as soon as possible;
 - Confirm SC test given to all 11th graders; if so, [Student] will take at [NPA] next year; OR if can give for ½ credit;⁵
 - Counseling contract; does [NPA] need an ROI (release of information)?;
 - Verify [Student's] current credits;
 - Service hours documentation and how confirmed; and,
 - Counseling services added to ESY (extended school year) IEP; team agrees SDI (specially designed instruction) for social/emotional and organization through math instruction will terminate on 8/1/19 and counseling (both individual and group) will continue through 8/30/19.

The reasons for decisions listed in the PWN were as follows:

- [Student] met the requirements to enroll in running start.
- Ensure [Student] is on track to graduate 06/2021, meeting all necessary graduation requirements.
- Transportation to counseling to ensure [Student] is receiving his related services currently provided after school hours in [city].
- Team agrees that counseling services are most vital to [Student's] engagement, participation, self-regulation, and struggles with mental health.

19. On June 20, 2019, the 2018-2019 school year ended in the District.

2019-2020 School Year

20. At the start of the 2019-2020 school year, the Student continued to be resident of the District but continued to attend the NPA. The Student continued to be eligible for special education.

21. On September 4, 2019, the 2019-2020 school year began.

22. From September 5 to September 19, 2019, the Parent and the District school counselor specialist/college and career readiness, the NPA director, the support services supervisor, and the director of special education exchanged numerous emails regarding the Student's transcript. On September 9, 2019, the school counselor informed the email recipients that the

³ The District's website states: "Naviance is the district's tool to explore colleges and career paths, analyze skills and talents with career and personality assessments and help stay on track to reach academic goals."

⁴ The District's website states ORCA cards are provided to students who meet eligibility criteria in the Transportation Service Standards.

⁵ It was unclear in the documentation what "SC" meant.

NPA needed to send the District an official transcript. Once received, "the school counselor can transcribe the document and the registrar can enter the courses and credits into the historical record."

23. On September 19, 2019, the Parent emailed the school counselor and the NPA directors and, in part, and stated, "...I also saw [District] students have access to take a P-SAT (Pre-Scholastic Aptitude Test) and test soon. How can [Student] get that access?" The District high school counselor replied they would check with the testing coordinator "to see if [Student] is automatically slated to take the PSAT with us..."
24. On September 26, 2019, the school counselor replied to the Parent and suggested she contact the test coordinator at the high school.
25. On October 3, 2019, the Parent filed this complaint.
26. On or about October 25, 2019, the Parent enrolled the Student in another school district in Washington. After enrollment, the new district performed a credit audit and identified some discrepancies between the previous District transcript and the new school's transcript, which the Parent provided in her reply to the District's response.

District Staff Interview

Support Services Supervisor – The supervisor was asked about the District's role in the Student's June 2019 IEP meeting. The supervisor stated that the NPA was directing the meeting and completing the IEP, but the supervisor stated he was aware of the District's overall responsibility regarding the Student's special education program. When asked about the secondary transition plan's course of study, the supervisor stated the District does not generally list all courses, only those that are related specifically to the postsecondary goals. In addition, the supervisor stated the Parent had a number of concerns that involved the Student's general education program and classes, which were not related to the Student's special education program. When asked about the June 2019 prior written notice, the supervisor stated it was more like a "to-do" list regarding both special education and general education. The supervisor identified transportation and counseling as the only tasks on the prior written notice related to the Student's special education program and IEP. The remaining tasks were related only to general education. Regarding the Parent's concern about the Student's transcript, the supervisor acknowledged the difficulty of determining credits and attributed it to the NPA's lack of response. The supervisor was asked about the issue regarding the Student taking the P-SAT. The supervisor stated that the P-SAT was not part of state testing and was an option for the Student to take. The Parent/Student was responsible for petitioning the college board for making any requests for accommodations.

The supervisor also addressed the Parent's issue regarding the Student's counselor being a member of the IEP team. The supervisor stated the Parent never requested that the counselor attend the June 2019 meeting and the Student refused to give consent to the District and counselor to share information.

CONCLUSIONS

Issue One: Secondary Transition Plan – The Parent alleged the District failed to develop and implement the Student’s postsecondary transition plan in the Student’s individualized education program (IEP). The Parent alleged the District failed to update the Student’s transcript and the Student was not given access to the P-SAT. A district must ensure that beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and, if appropriate, independent living skills; and the transition services (including courses of study) needed to assist the child in reaching those goals. A district must also ensure that participation in state assessments is also addressed in a student’s IEP, including whether any needed accommodations are necessary.

Transcript

Here, the Student’s June 2019 secondary transition plan provided postsecondary goals to attend college and get a degree in nursing. The IEP included transition services and a course of study that included all the courses the Student had taken and the courses the Student needed to take to graduate. The Parent wanted the Student’s course transcript updated to verify which courses the Student needed to graduate. At the Parent’s request, the IEP team agreed in the June 2019 prior written notice to update the Student’s transcript. However, the IEP, which includes the courses of study, is not a transcript. The purpose of the courses of study as part of the transition plan is to identify which courses are specific and individualized to the Student’s preferences and interests, and linked to postsecondary goals. Listing all courses a student has taken and will take is not required, and in fact, listing all courses could divert from the individualization of the transition plan as there are classes all students are required to take regardless of their unique needs or postsecondary goals. The Parent was not without legitimate concern about the status of the Student’s credits, but ultimately updating the Student’s transcript was not a special education issue, even though it was in the prior written notice. There is no documentation that indicates having a transcript that was not yet updated limited the IEP team’s discussion of the secondary transition plan. The District and the NPA should however be mindful of the possible confusion generated by documenting “to-do” tasks in a prior written notice that are not related to the identification, evaluation, placement, or provision of FAPE and the impact on parent participation. Overall, OSPI finds that the District properly developed the Student’s IEP transition plan, and no violation is found.

State Testing

Here, the Student’s June 2019 IEP provided that the Student would be taking the statewide assessment in English language arts and math and would receive accommodations. The IEP did not indicate the P-SAT was required for the Student. Although districts facilitate the administration of the P-SAT, the P-SAT is the responsibility of the College Board testing service. The test is optional for all students. Although the Parent argued the Student should have access to the P-SAT like any other student in the District, the P-SAT is not generally included in an IEP, unless the

IEP team were to decide that taking the P-SAT was a necessary part of the Student's special education program. There was no documentation that the Student's participation in the P-SAT was required based on the Student's unique needs. So, while the Student may still elect to take the P-SAT, this decision is not a special education matter. No violation is found.

Guidance Counselor

Although the guidance counselor was not initially identified as an issue in this complaint, it will be addressed now as the Parent raised concerns about the guidance counselor in her complaint. A district is required to provide nonacademic and extracurricular services and activities in the manner necessary to afford students with disabilities an equal opportunity for participation in those services and activities. Here, the Parent stated the District failed to provide nonacademic services to the Student, specifically, a guidance counselor. The Parent alleged the District should have initially provided a guidance counselor to the Student since all students in the District had a guidance counselor and the Student was still enrolled in the District while attending the NPA. (The District eventually provided a guidance counselor.) Access to nonacademic services is based on the Student's unique needs and whether the service is required for the Student to receive a free appropriate public education (FAPE). The IEP team did not indicate that guidance counseling was a nonacademic service the Student required to receive a FAPE and there was no documentation that the Student's unique needs required guidance counseling. Thus, no violation is found.

Issue Two: IEP Participants – The complaint alleged the District failed to include the required participants in the Student's June 2019 IEP meeting. The complaint stated the District failed to include the Student's mental health counselor in the June 2019 IEP meeting. Each IEP team must include the parent, the student-when appropriate, the student's general education and special education teachers or providers, someone qualified to interpret evaluation results, and a district representative. A district must ensure that all individuals who are necessary to develop an IEP that will meet the student's unique needs and ensure the provision of a FAPE to the student, participate in the student's IEP team meeting. Other IEP team members include, at the discretion of the parent or district, other individuals who have knowledge or special expertise of the student, including related services staff as appropriate.

Here, the Student's June 2019 IEP meeting was attended by the Parent, the Student, the Student's special education teacher, the Student's general education teacher, the NPA agency representative, and a representative from the District. The Student received both individual and group counseling services according to the IEP. In the complaint, the Parent stated the District violated its own policy when the counselor was not invited to the IEP meeting. The Parent acknowledged she did not request the counselor attend the IEP meeting. While it may have been appropriate for the counselor to provide input into the Student's IEP by either attending the meeting or providing written input, according to the District, the Student refused consent for the District and the counselor to share information. Because the counseling was provided by an outside agency, the District was unable to receive input from the counselor. Thus, as the Parent did not herself invite the counselor, the IEP team had the required participants at the June 2019 IEP meeting. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

The District and the NPA are strongly encouraged to work together to better resolve questions and issues that arise in a more timely manner. Although the Student's placement in the NPA introduced novel questions regarding the Student's special education and general education program, both the District and NPA could have better addressed the Parent's concerns, facilitated communication, and eliminated the Parent's need to file a complaint in the first place.

Dated this ____ day of December, 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.)