

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-98

PROCEDURAL HISTORY

On December 20, 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 Edmonds 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.

The same day, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On December 23, 2019, the District requested an extension of time for the submission of its response. OSPI granted the District's request and asked it to submit its response no later than January 17, 2020.

On January 17, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on January 21, 2020. OSPI invited the Parent to reply. The Parent did not provide a reply.

On January 23, 2020, OSPI requested clarifying information from the District and interviewed the director of special education (director) via telephone. On January 27, 2020, OSPI received the requested information and forwarded the information to the Parent the same day.

On February 7, 2020, OSPI requested additional information from the District and it was provided the same day. On February 10, 2020, OSPI forwarded the information to the Parent.

On February 7, 2020, OSPI interviewed the Parent.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information it received via interviews.

ISSUE

1. Did the District implement the following provisions of the June 24, 2019 mediation agreement:
 4. Parents and district agree to have an IEP meeting by October 31, 2019;
 5. Parents will have an opportunity to meet [Student's] new teacher before the first day of school in September 2019. [Principal] will call [Parent] to schedule this meeting...; and,
 6. Communication between parents and District: District will call [Parent] regarding meeting schedules. All other IEP and other documents related to [Student's] special education will be delivered via US mail?

LEGAL STANDARDS

Enforcement of Mediation Agreements: If the parties resolve a dispute through the mediation process, they must execute a legally binding agreement setting forth their resolution and stating that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and is signed by both the parent and a representative of the district who has the authority to bind the district to the agreement. A written, signed mediation agreement is enforceable in a state court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal or state court. 34 CFR §300.506; WAC 392-172A-05070. Disputes regarding whether the district has implemented a mediation agreement may also be raised through the citizen complaint process. 34 CFR §300.537; WAC 392-172A-05025(2)(a)(i)(B).

FINDINGS OF FACT

Background

1. During the 2018-2019 school year, the Student was in first grade and attended an elementary school in the District. The Student was eligible for special education services under the category of developmental delay.
2. On June 24, 2019, the District and Parent participated in special education mediation services provided by the State. The Parents, director of special education (director), general education teacher, special education teacher, principal, speech language pathologist, manager of elementary support, nurse, and mediator were present. At the mediation, the District and Parent reached a resolution, which was memorialized in a written agreement, dated the day of the mediation and signed by the director and Parents. The terms of the mediation agreement included:¹
 - "Parents and district agree to have an [individualized education program] IEP team meeting by October 31, 2019."
 - "Parents will have an opportunity to meet [Student's] new teacher before the first day of school in September 2019. [Principal] will call [Parent] to schedule this meeting. Parents would like to discuss [Student's] support around lunch, bus transportation, and safety around wandering."
 - "Communication between parents and District: District will call [Parent] regarding meeting schedules. All other IEP and other documents related to [Student's] special education will be delivered via US mail."
3. On June 24, 2019, the District sent the Parents prior written notice (PWN) that as a result of the mediation on June 24, 2019, the District was proposing to increase the Student's service

¹ The mediation agreement additionally provided the Student with the following specially designed instruction: speech language pathology (SLP) services for 45 minutes, 3 times monthly; reading for 40 minutes, 4 times weekly; and, writing for 35 minutes, 4 times weekly. These terms of the mediation agreement were not disputed in the complaint filed by the Parent.

minutes in speech, writing, and reading comprehension, and noted that the "IEP team will meet during conference week in October to discuss IEP." The PWN indicated the Parents "prefer phone calls to let them know about meetings," and that "Parents would like to meet [Student's] new second grade teacher prior to the start of the school year. The principal will call in the fall to help facilitate this."

2019-2020 School Year

4. During the 2019-2020 school year, the Student was in second grade and attended an elementary school in the District. The Student continued to be eligible for special education services under the category of developmental delay.
5. On August 29, 2019, the Parents met with the Student's general education teacher, per the terms of the mediation agreement.
6. The first day of the 2019-2020 school year was September 4, 2019.
7. According to the District's response, on September 9, 2019, one of the District's case managers (case manager 1) called the Parents to set up an IEP meeting and spoke with the Parent. According to case manager 1, the Parent told him he would be able to meet on September 17, 2019 at 7:50 am.²
8. On September 10, 2019, case manager 1 confirmed with the general education teacher she could attend the meeting on September 17, 2019.
9. On September 17, 2019, the Parent called the front office of the school and left a message, saying he was unable to attend the meeting and would need to reschedule.³
10. On September 17, 2019, the general education teacher and case manager 1 arrived at the IEP meeting but noted the Parent was not present. No changes were made to the Student's IEP.

² As part of the District's investigation, the director interviewed staff regarding their recollection of their efforts to contact the Parents to schedule the required IEP meeting. In its response and during an interview with OSPI on January 23, 2020, the director acknowledged the District did not follow procedures for maintaining formal written documentation of these efforts and did not send written invitations to the Parents either by email or U.S. mail. The director proposed training for the Student's IEP team regarding procedures for documenting contact efforts to schedule meetings with parents.

³ Documentation of the District's calls home on September 17, 2019 and September 19, 2019 are included on the IEP information sheet filled out by the District. The District's response acknowledged that the District did not follow its own procedures for documenting calls home to parents regarding IEP meetings, or for sending IEP meeting invitations home. During a phone interview by OSPI with the director on January 23, 2020, the director said he had scheduled two meetings with staff between February and April 2020 to review District procedures for documenting contact with parents regarding IEP meeting invitations on IEP Online and for sending meeting invitations to document the scheduling of IEP meetings.

11. On September 19, 2019, case manager 1 called the Parent to try and reschedule the IEP meeting. According to the District's response, the Parent provided September 30, 2019 or October 21, 2019 through October 25, 2019 as alternative dates.
12. On September 26, 2019, according to the District's response, case manager 1 called the Parents and left a voicemail to schedule an IEP meeting according to the alternative dates provided by the Parent on September 19, 2019. According to the District's response, the Parents did not return the call.
13. On September 30, 2019, the special education teacher emailed the general education teacher, confirming the "[Student's] parents have not called back to confirm a parent/teacher meeting." She wrote that she would try again in the morning and said they could "meet with them during Conference week."
14. On September 30, 2019, case manager 1 called the Parents and left a voicemail regarding meeting during conference week. According to the District's response, the Parents did not return the case manager's call.
15. On October 2, 2019, the Student's case manager was changed to case manager 2.
16. On October 2, 2019, the general education teacher emailed the Parents instructions on how to sign up for parent-teacher conferences.
17. On October 10 and 15, 2019, the general education teacher emailed the Parents a reminder that they had not signed up for parent-teacher conferences. The email was sent to all parents who had not yet signed up for parent-teacher conferences.
18. On October 15, 2019, the general education teacher sent a written note home with the Student, asking the Parents to contact the general education teacher or to go online and sign up for a conference time.
19. On October 18, 2019, the general education teacher called the Parent to set up a conference time. The Parent did not answer her phone so the general education teacher left a message.
20. No IEP meeting occurred prior to October 31, 2019—as agreed to in the mediation agreement.
21. On December 20, 2019, the Parent filed this citizen complaint with OSPI.
22. On January 6, 2020, the general education teacher emailed the director that she had not been contacted by either Parent since August 29, 2019.
23. On January 23, 2020, the OSPI investigator interviewed the director. The director confirmed that prior to the Parents filing the complaint, no IEP meeting invitations were sent to the Parents via U.S. mail, and no formal documentation of calls or contact with the Parent was created by staff. Instead, each staff member individually kept notes when they spoke with the Parent. The director proposed training to the IEP team on sending IEP invitations and

scheduling IEP meetings, including when to send written notices to parents and how to document communication with parents about scheduling meetings. OSPI accepts the District's proposal for training. The director confirmed that other than IEP notices, no other IEP documents have been created during the 2019-2020 school year because no changes were proposed or made to the Student's IEP.

24. On January 27, 2020, the director sent documentation to the OSPI investigator that an IEP meeting had been scheduled on February 6, 2020, to discuss annual goal progress. According to a contact attempt report maintained by the District, the Parents were contacted by phone on January 10, 2020 regarding the meeting, emailed on January 21, 2020 with the proposed meeting date, sent a letter by U.S. mail on January 22, 2020 to confirm the date, and then sent an IEP meeting invitation by mail on January 24, 2020. The contact report did not document the Parent's response to the District's efforts.
25. On February 5, 2020, the Parent left a message for the special education teacher, stating he would not attend the scheduled IEP meeting on February 6, 2020.
26. On February 6, 2020, the special education teacher called the Parent. According to the director, when the special education teacher spoke to the Parent, the Parent told her the Parents "did not trust the [school] staff and would not attend any meeting at [school]."
27. On February 6, 2020, the IEP team met without the Parents present. The team discussed the Student's progress, family's lack of trust in the school team and noted the Student's absences for the year. In an email from the director to the OSPI investigator, the director stated a PWN would be sent to the family on February 10, 2020, noting the conversation at the IEP meeting, and the Parent's statement that the family would not attend the meeting.
28. On February 7, 2020, the OSPI investigator interviewed the Parent by phone. The Parent confirmed he told the school he would not attend an IEP meeting and explained he did not trust the school. He said that at the beginning of the year, he felt the school did not reach out to him to set up a meeting with the teacher until he contacted the school first. The Parent further stated he had not received special education documents in the mail as agreed to in the mediation agreement. The Parent mentioned additional concerns outside the scope of this complaint and expressed ongoing frustration with the school and a difficulty with participating in IEP meetings. He expressed an interest in pursuing IEP facilitation.

CONCLUSION

June 24, 2019 Mediation Agreement: The Parent alleged the District did not implement all of the terms of the mediation agreement signed on June 24, 2019. Specifically, the Parent alleged the District did not (1) have an individualized education program (IEP) meeting by October 31, 2019; (2) provide the Parents an opportunity to meet the Student's new teacher before the first day of school in September 2019; and, (3) that the District did not call the Parents regarding meeting schedules and send all other IEP and documents related to the Student's special education by U.S. mail. Parties who resolve a dispute through the mediation process must execute

a legally binding agreement setting forth their resolution. OSPI may enforce mediated agreements regarding special education.

Meeting with Teacher

The mediation agreement provided the Parents would have an opportunity to meet with the Student's new teacher before the first day of school in September 2019. The Student met with his new teacher on August 29, 2019 at 10:00 am. OSPI finds no violation.

October 31, 2019 IEP Meeting

In their mediation agreement, the Parents and District agreed to have an IEP meeting by October 31, 2019. An IEP meeting did not occur by October 31, 2019. Although the District appears to have made a good faith effort to contact the Parent by phone to schedule a meeting, as agreed to in the mediation agreement, the District acknowledged it did not also send home IEP meeting invitations by U.S. mail to confirm a meeting, in violation of the mediation agreement. This may have complicated scheduling and contributed to mistrust. However, in mediation, the Parent, along with the District, is an active participant. The Parents here also agreed to have an IEP meeting by October 31, 2019. The Parents did not reach out to the District to schedule a meeting or respond to communications about scheduling meetings. Nevertheless, OSPI finds the District in violation because it did not hold an IEP meeting by October 31, 2019. However, OSPI also acknowledges the District attempted to remedy its violation by scheduling an IEP meeting on February 6, 2020. The District called the Parent to schedule the meeting and sent notification of the meeting home by U.S. mail, as agreed to in the mediation agreement. The day before the IEP meeting, the Parents called the District and indicated they refused to attend. OSPI accordingly finds the District to have made a good faith effort to remedy its initial violation and fulfil the terms of the mediation agreement, but was prevented in doing so by the Parent's refusal to attend the meeting. No further corrective actions are ordered in response to the violation of not holding an IEP meeting by October 31, 2019. It is strongly recommended, however, that the District and Parent discuss scheduling another IEP meeting and consider using a facilitator.

IEP Documents

The mediation agreement provided that the District would call the Parents regarding meeting schedules, and all other IEP and documents related to the Student's special education would be delivered via U.S. mail. As previously stated, the District acknowledged it did not send out IEP meeting notices via U.S. mail and accordingly, did not implement this provision of the mediation agreement. OSPI finds the District in violation and has accepted the District's proposal for training. Additionally, OSPI will require the District to send documentation to OSPI that it mailed IEP documents to the Parents for the remainder of the 2019-2020 school year.

CORRECTIVE ACTIONS

By or before **February 28, 2020, March 2, 2020, March 27, 2020, April 24, 2020, and May 29, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **March 20, 2020**, the District will conduct training for the Student's IEP team at the school involved in this complaint on sending IEP invitations and scheduling IEP meetings, including when to send written notices to parents and how to document communication with parents about scheduling meetings.

- By **March 2, 2020**, the District will submit a draft of the training materials to OSPI for review. The training materials will include examples. OSPI will approve the materials or provide comments by March 6, 2020 and additional dates for review, if needed.
- By **March 27, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet, and 2) an official roster provided by human resources of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate in person the day of the training, the District will notify OSPI to determine alternative arrangements for training and documentation that training was provided.

On the last Friday of every month for the remainder of the school year (**February 28, 2020, March 27, 2020, April 24, 2020, and May 29, 2020**), the director will provide documentation to OSPI that any special education documents related to the Student's education were mailed to the Parents via U.S. mail, per the terms of the mediation agreement.

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 February, 2020

Glenna Gallo, M.S., M.B.A.
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.)