

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-15

PROCEDURAL HISTORY

On February 5, 2020, 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 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 6, 2020, 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 28, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on March 2, 2020. OSPI invited the Parent to reply.

On March 12, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 13, 2020.

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

ISSUES

1. Did the District implement the Student's individualized education program (IEP) on January 30, 2020 as necessary to allow the Student to participate in any school-sponsored field trips scheduled for that day?
2. If an IEP meeting was held on January 29, 2020, did the District follow IEP meeting procedures, including providing the Parent with sufficient notice of the meeting and scheduling the meeting at a mutually agreeable time and place?

LEGAL STANDARDS

Nonacademic services: Each school district must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the student's individualized education program (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. WAC 392-172A-02025.

Nonacademic settings: In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, each district must ensure that each student eligible for special education participates with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. The district must ensure that each student eligible for special education has the supplementary aids and services determined by the student's IEP team to be appropriate and necessary for the student to participate in nonacademic settings. WAC 392-172A-02065.

IEP Team Meeting Time: Districts must schedule IEP meetings at a mutually agreeable time for the parent and the district. 34 CFR § 300.322(a)(2); WAC 392-172A-03100(2). In general, districts often schedule meetings before or after school to ensure that all team members can be present. The US Department of Education's Office of Special Education Programs (OSEP) has stated that it is not unreasonable for a district to schedule meetings during their regular hours. However, "there may be circumstances where a parent cannot attend an IEP meeting that is scheduled during the day because their employment situation restricts their availability during school hours...in such a circumstance, [school districts] should be flexible in scheduling IEP meetings to accommodate reasonable requests from parents. Where [school districts] and parents cannot schedule meetings to accommodate their respective scheduling needs, [school districts] must take other steps to ensure parent participation...[including] conference telephone calls or videoconferencing." *Letter to Thomas*, 51 IDELR 224 (OSEP 2008); see also 34 CFR § 300.322(c); 34 CFR § 300.328.

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100.

FINDINGS OF FACT

2019-2020 School Year

1. At the commencement of the 2019-2020 school year,¹ the Student was determined eligible for special education services under the category of other health impairment, was in the 5th grade, and attended a nonpublic agency (NPA) which offered a therapeutic day treatment

¹ On August 12, 2019, prior to the commencement of the 2019-2020 school year, the Student's individualized education program (IEP) team met to consider opportunities for the Student to transition into the general education setting at a Science, Technology, Engineering, Math (STEM) K-8 program in the District. The IEP team was considering the STEM program instead of the Student's neighborhood school due to scheduling logistics with the Student's NPA and because it was believed the environment at the STEM school might be more appropriate for the Student due to his autism diagnosis. The IEP team ultimately decided not to begin transitioning the Student at the commencement of the 2019-2020 school year but decided to revisit the idea in November 2019.

program for the Student through a partnership with his District neighborhood elementary school. The Student's February 8, 2019 IEP, based on a March 2018 reevaluation, was in effect.²

2. According to the District's response, the NPA:

Provides intensive behavior intervention and academic support for students with behavioral challenges and mental health needs who require a more restrictive educational setting. [It] provides wraparound supports, providing students and their families with clinicians and counseling tailored to their unique needs. While students at [NPA] generally start fully in the school, with no access to general education peers, once students have made adequate progress and are ready for a less restrictive environment, [NPA] works 'in tandem' with the student's home school to ensure a successful transition back.

3. On November 26, 2019, the Student's IEP team met and decided to increase the amount of time the Student would spend in the general education setting in response to "reduced intensity and number of incidents of unsafe behavior, i.e. eloping and aggression, during the 2019-2020 school year."³

4. On December 2, 2019, the District issued a prior written notice (PWN) that the IEP team was proposing to amend the Student's IEP to increase the Student's time in the general education setting by one class period. The PWN documented the IEP team's agreement to "investigate a plan to begin a period a day in the general education environment to begin on or after the 6th of January." According to the PWN, the IEP team considered increasing the Student's time in the general education setting by more than one class period per day, but decided not to because "The team agreed that adding a smaller chunk of time in the general education environment [would] support anxiety around transition and change." The PWN stated the team would meet with the general education team later in December to facilitate a plan for transition.

5. On December 18, 2019, the IEP team reconvened to plan a start date for when the Student would begin transitioning to the general education setting, to plan a date for the Student to visit the general education classroom, and to determine the duration of time the Student would spend in the general education classroom.

² The Student's March 2018 reevaluation determined the Student qualified for specially designed instruction in the areas of reading, written language, and social/behavior, and related services in occupational therapy. It noted that his diagnoses of post-traumatic stress disorder (PTSD), attention deficit hyperactivity disorder (ADHD), and anxiety and subsequent problem with executive functioning significantly impaired his ability to control impulses, follow adult directives and classroom rules and routines, initiate and complete academic tasks, match his emotional response to the situation, regulate his emotions, and build and maintain appropriate friendships with peers. A major concern in the March 2018 reevaluation was the Student's difficulty having a "safe body" when upset, and his tendency to become a danger to himself and others once escalated.

³ The District issued a prior written notice (PWN) on January 10, 2020, that described the November 26, 2019 meeting. The PWN further explained that when the IEP team met on November 26, 2019, the team discussed the Student's "least restrictive environment" and "if current behavior trends indicate a readiness for time in a general education setting."

While noting the increase in general education time, the December IEP also stated:

[Student] attends the [NPA]. He will not participate with non-disabled students in the general education setting when receiving [specially designed instruction] in the special education setting in social/behavior, reading, written language, and related services in occupational therapy. [Student] will participate with nondisabled students for 505 minutes⁴ a week at his neighborhood school⁵ with one-to-one staff support. He will participate in nonacademic activities and have access to extracurricular activities at [NPA], not with general education peers. He will also have access to extracurricular activities at his neighborhood school.

Due to his disruptive behaviors, poor impulse control, inappropriate social skills, and aggressive behaviors, his IEP team has determined that general education classrooms in a community school for the entire school day is not appropriate at this time. [Student] is working to address these behaviors and receiving modified academic instruction while at [NPA]. Due to his behavioral improvements [Student] has made at [NPA] he will spend part of his day with general education peers at his neighborhood school with one-to-one staff support.

6. The District was on winter break December 23, 2019 through January 3, 2020.
7. On January 10, 2020, the District issued a PWN, summarizing the meetings that occurred on November 26, 2019 and December 18, 2019. It also documented the increase of 505 minutes per week in the general education setting (math class) with one-to-one staff, beginning on January 13, 2020.
8. January 16, 2020 was the Student's first day at his STEM program.⁶ While at his STEM program, the Student attended 1st period math class with his general education peers and was supported by a designated 1:1 instructional assistant (IA). A STEM special education teacher supported the Student in his transition, providing check-ins and support to the IA in the event the Student were to become escalated or elope. The Student spent the remainder of his day at his NPA where he received individual therapy/counseling, social skills group, and had a 1:1 throughout the day.

⁴ 505 minutes weekly is 1.68 hours per day.

⁵ Documentation included with the District's response and Parent's reply show that by "neighborhood school," this statement in the IEP was referring to the STEM school, which the IEP team decided the Student would transition to instead of his neighborhood school.

⁶ The Student's first day attending a class period at the STEM program was delayed due to inclement weather.

9. The Student was also supported by a behavioral intervention plan (BIP).⁷ The BIP required the Student have a "safe person" and "safe spot" he could go if he was feeling overwhelmed or needed to escape a situation. It further provided for the following:
- access to a low sensory area;
 - talk in a calm voice;
 - remind [Student] that staff care about him and are there to help;
 - have [Student] do a three to five minute sit with a calm body in a designated spot;
 - after sit give [Student] a focus activity to help regulate his body;
 - provide access to heavy work/deep pressure sensory tools;
 - give [Student] an opportunity to use the restroom as soon as possible;
 - offer water and a piece of fruit;
 - process the escalation with [Student], giving him a chance to express how he felt;
 - help [Student] engage in making amends for possible damaged relationships; and,
 - return to class work when he states he is ready.
10. According to the Parent's reply, on January 17, 2020, the Parent verbally informed the Student's 1:1 IA of a field trip at the STEM school scheduled for January 30, 2020.
11. On January 24, 2020, the case manager emailed the program manager and milieu specialist that 5th graders at STEM were going on an all-day field trip to Olympia, Washington on January 30, 2020, and that the Parent wanted the Student to attend. In her email, she stated the Student could only go if his 1:1 could attend, but that she was not sure how confident the 1:1 would be with the field trip. She noted that she was reluctant "because [Student] is still getting used to the transition, and it's far if something goes wrong."
12. On January 26, 2020, the Parent emailed the case manager, program manager, director of special education, and others involved with the Student to express her understanding that the Student was going on the field trip on January 30, 2020 with STEM, and to request additional support from the NPA and District.
13. On January 27, 2020, the District and Parent exchanged several emails. In the email exchange, the case manager expressed concern regarding the Student attending a full-day field trip outside of Seattle due to it being early in the Student's transition to STEM. She explained:
- I think part of our team considerations here have to do with the amount of time [Student] is currently at STEM and how the field trip connects to the class he attends. I understand that it is important for him to be part of his STEM community, but also acknowledge he hasn't spent an entire day with his new peers, and I believe the team was thinking about the demands of the field trip. Thank you for letting us know where you are coming from.

⁷ The BIP was developed for the Student in May 2018. In the District's response, the District noted the Student also had an emergency response protocol (ERP) for use in emergencies that posed an imminent likelihood of serious harm. The District noted the ERP described scenarios where the Student might elope, or when an escalation or restraint would persist longer than 30 minutes and 911 would need to be called to initiate a process of evaluation by medics for consideration of transporting the Student to a hospital for psychiatric crisis evaluation.

The case manager asked the Parent if she was considering going on the field trip with the Student and if not, suggested keeping the Student's schedule the same for the day and have the Student attend another class at STEM. The Parent responded that she felt the Student would have adequate support with his 1:1 and a special education teacher from STEM and maintained her expectation that the Student attend the full-day field trip:

Since [Student] was invited by STEM, and he has parental permission, I'm confused about what any continuing issue would be. I am unaware that he needs permission from [NPA] to attend a field trip with STEM. So, he is planning to attend a field trip Thursday.

14. On January 28, 2020, the program manager emailed members of the Student's IEP team, including the Parent, and reminded them that the decision regarding whether the team could support the Student on the full-day trip needed to be made by the IEP team.
15. On January 28, 2020, in response to the program manager's email, the case manager proposed convening an IEP meeting on January 29, at 8:00 am. She added that she would "do [her] best to try and figure out phones/conference calls if everyone is not able to be here." The case manager invited the STEM principal to participate in the meeting and requested that in preparation for the meeting, he provide the team "STEM's plan for including [Student] in activities students have been preparing for when [Student] isn't there (the mock trial, etc.) and STEM's plan for handling individual student crisis on a field trip..."
16. Also, on January 28, 2020, the Parent responded to the case manager's email, with an email that read, in part:

requiring an IEP meeting at this late date (when the field trip is less than 48 hours and no objections were raised to it last week) seems like an unnecessary barrier to [Student] being educated in the Least Restrictive Environment when he has an opportunity to participate with general education students in a field trip for which he has adequate support and parental permission.

The Parent further asked, "why do barriers continue to be placed in the way of [Student] accessing education in the Least Restrictive Environment" and asserted the Student was entitled to "nonacademic and extracurricular activities." In another email the same day, the Parent noted she was planning to send the Student on the field trip and stated the family was not available for an IEP meeting at the times offered.

17. On January 29, 2020, the parties exchanged several emails:
 - At 6:18 am, the STEM principal emailed the Parent and NPA team, stating he was "ok with [Student] attending the field trip," but stated, "we usually set up a contract laying out the expectations in advance." He told the Parent they would need both the NPA staff and STEM teachers to "agree that they are confident that [the] trip [would] work for [Student]."
 - At 7:03 am, the Parent responded to the STEM principal's email that she had gone over the field trip expectations with the Student and that she and the Student would be "happy to sign a contract." The Parent also mentioned the Student had been on a field trip the previous week with his NPA and was successful.
 - At 10:22 am, the case manager responded to the Parent, STEM principal, and other members of the Student's team, declaring that: "Because [Student] is spending time between the two

programs with his special education services falling within the [NPA] program, the expectation is for [NPA team] to make an IEP decision when there is a change to his schedule. I know this can seem frustrating, but the idea is to review past progress, what supports are needed, and then to make any additional shifts to supports that are needed as a team. It also helps to avoid triangulation or confusion because we are straddling two schools and an additional agency.”

- At 11:17 am, the Parent responded, stating, “It doesn’t make sense to change that decision because some adults in his life want to schedule a meeting and make a committee decision and some other adults in his life literally do not have time in their day to attend a meeting.”

18. On January 29, 2020, the Student’s IEP team met during lunch without the Parent present. Present at the meeting was the program director, case manager, 1:1 IA, and milieu specialist. According to the District’s response, the team convened without the Parent because the issue was “time-sensitive” in nature. The team discussed “whether [Student] could safely attend the January 30 field trip.”

19. Also, on January 29, 2020, following the IEP meeting, the case manager emailed the Parent and team members at both the NPA and STEM regarding the determination of the team. The email noted that the team members concluded there were not adequate crisis supports in place to support a full-day field trip outside of Seattle, even with a 1:1 for the following reasons:

- “[Student] attended a recent [NPA] field trip, which was three hours long in total, had a high staff-to-student ratio, 1:1, and students were given an opportunity to play for about 40 minutes (running, climbing, spinning) on playground equipment after the museum tour. [Student] did have a positive field trip; however, he was asking to go home toward the end of the three hours. This request/behavior has been an antecedent in the past to elopement. He was ultimately successful, but had a full team of adult support and familiar peers to help him manage (i.e. [NPA] field trip).”
- “The distance of the field trip, making crisis response a challenge.”⁸
- “The STEM K-8 team is getting to know [Student] and has not experienced an escalation, making it difficult to support in a crisis.”

Following the IEP meeting, the District issued a PWN, stating the IEP team was refusing to change the Student’s IEP to enable the Student to participate in the STEM field trip for the above reasons. The PWN further noted the Parents were unable to attend the meeting and did not agree with the IEP team’s decision. It also noted the Parent may choose to chaperone the field trip and the Student may miss his class at STEM on January 30, 2020.

20. In the evening on January 29, 2020, the Parent responded to the case manger’s email, noting that she felt the District did not provide enough notice for the Parents to have enough opportunity to attend the IEP meeting.

⁸ In its response, the District stated that “even if [Student] attended the field trip with his 1:1, if a crisis did occur, the crisis team would be unable to respond because the field trip was in Olympia,” and the NPA, where the crisis response team staff were located, was in Seattle.

21. In the District's response, the District acknowledged that "communication surrounding the field trip could have been improved," specifically noting that the case manager "apologized for not having a smoother transition plan around field trips."

CONCLUSIONS

Issue 1: Supplementary Aids & Services – The Parent alleged the District failed to provide the supplementary aides and services necessary for the Student to have an equal opportunity to participate in a field trip on January 30, 2020. In providing or arranging for the provision of nonacademic and extracurricular services and activities, each district must ensure that each student eligible for special education participates with nondisabled students in the extracurricular services and activities to the maximum extent possible and has all the supplementary aides and services determined appropriate and necessary by the student's individualized education program (IEP) team to be afforded an equal opportunity to participate in those activities.

On January 16, 2020, the Student began transitioning from full time at his nonpublic agency (NPA) placement to spending one period a day in a general education math class at a STEM school in his District with a full time 1:1 aide. The Student's IEP specified that more time in the general education setting, even with the provision of a 1:1 aide, was not appropriate at that time. On January 24, 2020, the Student's case manager notified the Student's NPA team that all 5th graders at the STEM school would be taking a full-day field trip to the State capital on January 30, 2020, and that the Parent requested the Student attend. On January 29, 2020, the Student's IEP team met to consider the Student's attendance on the field trip and determined that even with the provision of a 1:1 aide, the District could not reasonably and safely provide the additional supports the Student would require given the distance from the NPA, unfamiliar setting, duration of the field trip, and the lack of experience the STEM staff had with the Student during an escalation to ensure the Student's safety. While a district is required to provide an equal opportunity for students with disabilities to participate in extracurricular and nonacademic activities, and to provide the supplementary aides and services necessary for the student to do so, a district is not required to provide services that would otherwise be unreasonable, inappropriate, or pose an unacceptable risk to the student or others as determined on an individual basis by a student's IEP team. Here, the Student's IEP team made a reasonable and individualized inquiry into what was appropriate and safe for the Student for the trip on January 30, 2020 based on the Student's unique needs as documented in his IEP. No violation is found.

Issue 2: IEP Meeting – The Parent alleged the District violated IEP meeting procedures by holding an IEP meeting on January 29, 2020, without providing the Parent sufficient notice and by not holding the meeting at a mutually agreeable time and place. Districts must schedule IEP meetings at a mutually agreeable time and place and provide sufficient notice to enable parents an opportunity to attend and/or that parents otherwise are afforded an opportunity to participate. Where school districts and parents cannot schedule meetings to accommodate their respective scheduling needs, school districts must take other steps to ensure parent participation, including conference telephone calls or videoconferencing.

On Friday, January 24, 2020, the case manager informed members of the Student's NPA team of the field trip at the STEM school. Members of the Student's NPA team expressed concerns. On Tuesday, January 28, 2020, the District program manager emailed the parties involved, including the Parent, and explained that an IEP meeting should be held to address concerns and whether it was appropriate for the Student to attend the field trip. The case manager proposed a meeting be held at 8:00 am the next day, January 29, 2020. The case manager offered to set up phone/conference calls if the Parent or any other member were unable to attend in person. In the Parent's next three emails to the District that day, the Parent referred to the IEP meeting an "unnecessary burden," in light of the field trip being the next day (January 30th), said that she would not be available for an IEP meeting at the times offered, and added that "it doesn't make sense to change that decision [to permit the Student to attend the field trip] because some adults in his life want to schedule a meeting and make a committee decision and some other adults in his life literally do not have time in their day to attend a meeting." Without sending a confirmation email to the Parent prior to the meeting, the IEP team met without the Parent at noon on January 29, 2020, to discuss whether the District could safely support the Student on the field trip the following day. Immediately following the meeting, the District emailed the Parent regarding its decision and followed with prior written notice.

In the Parent's reply, the Parent indicated that she was expressing only that she did not understand why an IEP meeting was necessary, not that she was refusing a scheduled IEP time. In its response, the District acknowledged its communication surrounding the January 29, 2020 IEP meeting could have been improved. OSPI agrees and notes best practice would have been for the District to have sent the Parent a formal meeting invite (email would have sufficed given the time constraints) once it confirmed a noon meeting time on January 29, 2020. However, on January 28, 2020, the District was in regular communication with the Parent and was clear regarding its intent to schedule an IEP meeting on January 29, 2020, as the field trip was the following day. It also gave the Parent multiple formats in which to participate. It was reasonable for the District to have interpreted the Parent's emails in response to theirs as a refusal to attend or participate. While the miscommunication is unfortunate and OSPI encourages the District to confirm with parents moving forward to prevent similar miscommunications, OSPI finds the District provided the Parent with sufficient notice of and opportunity to participate in the January 29, 2020 meeting. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI reminds the District that it cannot require the parent of a student with a disability to attend with a student on a field trip when a similar obligation is not posed on parents of students without

disabilities. If a student requires supplementary aides and services or other accommodations or supports in order to be able to attend a field trip, the District needs to provide those services.

Dated this ____ day of March, 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.)