

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-45

PROCEDURAL HISTORY

On March 13, 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 Richland 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 March 18, 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 by April 9, 2020.

On April 9, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on April 10, 2020. OSPI invited the Parent to reply.

On April 13, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUE

1. Did the District follow procedures for ensuring parent participation in the individualized education program (IEP) meeting held with the Student in January 2020, including providing the Parent with the meeting notice and prior written notice?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that 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 was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

IEP Team: An individualized education program (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).

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. 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(3).

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 a free appropriate public education (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. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

2019-2020 School Year

1. During the 2019-2020 school year, the Student was a ninth grader who attended a District high school and was eligible to receive special education services under the category of autism.

2. On August 27, 2019, the 2019-2020 school year began in the District.
3. On January 6, 2020, the Student's individualized education program (IEP) team—including the Parent—conducted an annual review of the Student's IEP.¹ The Student did not attend the IEP meeting. The IEP provided for annual goals in the areas of social/emotional, math, and executive functioning. The Student's IEP provided the following specially designed instruction and related services:
 - Executive functioning: 24 minutes, 4 times per week (provided by special education staff in a special education setting)
 - Social/emotional: 24 minutes, 4 times per week (provided by special education staff in a special education setting)
 - Math: 53 minutes, 5 times per week (provided by a general education teacher in a general education setting)
 - Counseling: 53 minutes, once per week (provided by "other" in the general education setting)
 - Counseling: 20 minutes, once per week (provided by a general education teacher in a general education setting)
 - One-to-one paraeducator: 53 minutes, 5 times per week (provided by general education staff in a general education setting)

The IEP also provided the Student with several accommodations and modifications.

4. Later, on January 6, 2020, the same day as the IEP meeting, the documentation showed that the Student's case manager met with the Student to review her IEP. According to the District, the case manager had the Student sign the IEP in order to document that the IEP was reviewed with the Student.
5. The Parent's complaint stated that because the Student signed the IEP, the January 6, 2020 meeting between the Student and case manager was an IEP meeting. Since it was an IEP meeting, the Parent stated she should have been invited.
6. The prior written notice, dated January 9, 2020, stated the Student was eligible for special education services under the category of autism and needed specially designed instruction in the areas of social/emotional, executive functioning, and math. The Student would also continue counseling.
7. On January 14, 2020, the Parent emailed the District special education director about the January IEP that was sent to her. The Parent stated, in relevant part, "...[Student's] signature is on the 'revised IEP.' First of all, she was NOT present at the meeting!! Second of all, I am extremely concerned why my minor child is being coerced into signing a document she has no idea what she is signing..."

¹ Based on the documentation provided in this complaint, it was unclear whether the January 6, 2020 IEP document was meant to be a "draft IEP." The hand-written notes on the IEP indicated that the Student's IEP was further revised on January 8 and 10, 2020. No prior written notices were provided for the revisions and no explanations of any changes to the IEP were provided by the District.

8. On January 16, 2020, the Student's case manager wrote a hand-written note on the IEP. The note stated, "Student did not attend IEP mtg. Revised 1/16."

9. On the same day the case manager wrote the note on the IEP, January 16, 2020, the District special education director emailed the Parent the following, in part:

A note will be included by [Student's] signature indicating that she did not attend the meeting, but the IEP was reviewed with her after the meeting. [Student's case manager] did review the IEP in entirety with [Student] after the meeting and obtained her signature after that she understood the information. Prior to this year, this has been a common practice. Our new forms indicated signatures for those attending the meeting. [Student's case manager] did not use coercion or deception to get [Student's] signature he was following a practice of the district. It has been noted what took place on the signature page so it is clear.

10. The Parent stated the following in her complaint:

More importantly, when I reached out to the school, I was informed that the caseworker met with [Student] and reviewed the IEP in its 'entirety,' that this was 'common practice,' and the caseworker was following 'a practice of the district.' The changes requested were not made as of yet, so it was unclear why an incomplete IEP was reviewed with minor child in a meeting. Minor child has been on an IEP since 2013 and not once has the child been asked to have a meeting to go over the IEP. I did not receive prior notice, nor was I asked to participate in this meeting. The IEP is 20 pages and was reviewed in its 'entirety' with a special needs minor child and then explained to parent that caseworker only obtained signature of minor child after 'checking that she understood the information.' The IEP meeting held on January 6, 2020 was over 3 hours. I am quite certain that my daughter did not know what she was signing (as evidenced by the attached statement). Additionally, I was not informed that child would be taken out of class to review IEP which undoubtedly would have taken a considerable amount of time. I believe the district's actions violated the IDEA and its implementing regulations regarding parental input in the IEP process and is being done in retaliation for the due process hearing request I filed.²

11. In addressing the meeting with the Student, the District stated the following, in part, in its response to the complaint:

The 'meeting' that parent is objecting to was not an IEP team meeting. Rather it was an informal interaction between the Student's case manager and the Student. The only reason why the case manager met with the Student was to share with the Student her learning goals as detailed in the IEP so that she understood the goals that were listed and detailed on her IEP and to review the accommodations listed in the IEP. This meeting took place during her 6th period class and only lasted a couple of minutes. The Student's signature was to commemorate that the Student had read and understood her goals and accommodations. The [case manager's] intention was not to imply that the Student had been at the IEP team meeting but rather to document that she had reviewed her IEP.

12. Also, in the District's response to the complaint, the District stated it was "common" to meet with students with disabilities about their IEPs. Although it was not clear whether it was also

² The statement signed by the Student on February 21, 2020 that was referred to by the Parent stated the Student did not remember what was discussed with her case manager or how long the meeting was.

common practice that the District had students sign their IEP without attending their IEP meeting, the District reported that it directed all staff to discontinue this practice.

13. On March 13, 2020, the Parent filed this complaint.

CONCLUSIONS

Issue 1: Parent Participation – The complaint alleged that the District failed to provide the Parent with an opportunity to participate in the individualized education program (IEP) meeting that was held with the Student. A district must ensure that a parent, as a member of the IEP team, has an opportunity to participate in meetings to develop, review, and revise the student's IEP. The IEP team, which is responsible for making IEP decisions, consists of, at a minimum, the parent, a general education teacher of the student, the student's special education teacher, the school district representative, and the student, if appropriate. In conducting an IEP meeting, a district is required to provide the parent with notice of the meeting and prior written notice of any proposed or refused change to the student's program.

Here, the Student's IEP team—including District staff and the Parent—met to review the Student's IEP on January 6, 2020. The Student did not attend the IEP meeting. The documentation showed that the Student's case manager and Student met on the same day, after the IEP meeting. The District stated the meeting was not an IEP meeting, but instead the meeting was only to review the IEP goals and accommodations with the Student. After meeting with the Student, the case manager had the Student sign the IEP. The District explained that the signature was not meant to indicate the Student attended the IEP meeting, but only to document that the IEP was reviewed with the Student. Later, on January 16, 2020, the case manager wrote on the Student's IEP, "Student did not attend IEP mtg. Rev. 1/16. [case manager's initials]."

IEP Meeting

The Parent alleged the January meeting between the Student and case manager was an IEP meeting and therefore, she should have been invited. The documentation did not show that the meeting was an IEP meeting. No meeting notice was provided and none of the required IEP team members attended the meeting. In addition, there were no decisions made or prior written notice provided. Instead, the meeting was to review the Student's IEP goals and accommodations with the Student so that she was familiar with what was in her IEP. As a result, the District was not required to have the Parent participate in the meeting between the case manager and the Student. There is no violation.

It should be noted that meeting with students with disabilities about their IEPs is a practice that should be encouraged to promote students' independence and self-advocacy. Additionally, having students attend the IEP meeting, in some cases required, is also a way to involve students, promoting independence and self-advocacy. OSPI encourages the District and Parent to consider ways to involve the Student in the development of her IEP in future.

IEP Signature

The Student signed the cover page of the January IEP, indicating the Student attended the January 2020 IEP meeting. On its face, the Student's signature on the IEP misrepresented the fact that the Student did not attend the IEP meeting. After the Parent inquired about the Student's signature, the District addressed the error by informing the Parent that the signature did not indicate attendance, only that the IEP was reviewed with the Student. Later, the case manager added the note of clarification to the IEP that the Student did not attend the IEP meeting. Implicit in the special education regulations is the requirement that the District provide accurate information to ensure compliance, including IEP attendance. The District self-corrected the error when it informed the Parent and added the clarifying statement to the IEP on January 16, 2020. Also, the District reported that staff no longer use the IEP to document when staff review an IEP with a student. Thus, while initially confusing, the District corrected the error and no violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ___ day of May, 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.)