

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-024

PROCEDURAL HISTORY

On March 16, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Kennewick 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.

March 17, 2021, 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 April 2, 2021, the District sent its response to OSPI, but it was not received by OSPI due to technical difficulties with the State of Washington Secure Email Portal.

On April 16, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on April 19, 2021. OSPI invited the Parent to reply. The Parent did not reply.

On May 5, 2021, OSPI called the District special education director for more information.

On May 7, 2021, OSPI called the Parent for additional information.

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

ISSUES

1. Did the District follow procedures for determining the Student's residency status as necessary for receiving special education services and making decisions about placement following the Parent's move into the District in November 2020?
2. Did the District follow transfer procedures and provide comparable services to the out-of-state individualized education program (IEP) in consultation with the Parent following the Parent's move into the District in November 2020?

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.

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 student's individualized education program (IEP). *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education transfers from a school district located in another state to a school district in Washington state and has an IEP in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with FAPE including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46,681 (August 14, 2006) (comment to 34 CFR §300.323).

FINDINGS OF FACT

Background

1. On March 16, 2021, the Parent filed this complaint with OSPI. The complaint alleged the District: 1) failed to timely enroll the Student in the District and that prevented the Student from receiving special education services; and, 2) failed to provide comparable special services to the Student's previous out-of-state individualized education program (IEP).

2019-2020 School Year

2. During the 2019-2020 school year, the Student attended preschool in another state. The Student was eligible for special education services under the category of speech or language impairment. The Student's April 2020 out-of-state IEP (effective from April 22, 2020 through April 21, 2021) provided for annual goals in the areas of academic, social/emotional behavioral, and communication. The IEP provided the following specially designed instruction and related services:
 - Intensive Individual Services: 60 minutes, per day (provided in a regular education classroom)

- Specialized Academic Instruction: 30 minutes, four times weekly (provided in a separate classroom)
- Language and Speech: 180 minutes, per month (in a separate classroom) "Following a flexible service delivery model, direct services are provided for 3 weeks followed by indirect services for one week, indirect services to include but not limited to: parent training, classroom observation, data collection, informal assessment or in-class observation."

The IEP stated the Student would be "outside the regular class and extracurricular and nonacademic activities" 14 percent of his school day while the remaining 86 percent of the day would be in a general education setting.

2020-2021 School Year

3. At the beginning of the 2020-2021 school year, the Student was a first grader in an elementary school in another state. The Student continued to be eligible to receive special education services under the category of speech/language impairment.
4. On September 25, 2020, the previous (out-of-state) IEP team amended the Student's IEP to reflect the following:

Parent and staff have reviewed the information regarding in-person services. Due to lack of progress on IEP goals via the distance learning platform, in-person are being recommended. The team agreed to document the in-person services through a meetingless amendment.

In-person services will be offered on a temporary, interim basis, 60 min. per session, twice weekly. Each 60 min. session will consist of 40 to 45 min. Specialized Academic Instruction (SAI) and 15-20 minutes remote speech and language instruction (SLI) accessed with in-person additional adult support. Days and times to be determined and mutually agreed upon.

5. In mid-November 2020, the Parent moved to Washington.
6. On November 18, 2020, according to the complaint, the District director of special education (director) "was notified that my family had moved to [District]." The complaint stated:
The Director of Special Education for [District], [District special education director] was notified via email by both myself and my friend, [family friend] (who I was residing with at the time) on 11/18/2020 that my family had moved to [town] and that I would be enrolling my sons, one of whom [Student] has an IEP. She put me in touch with [school] which was to be the boy's home school. On 12/02/2021 I was notified via email by [school secretary], that my friend and I needed to sign an affidavit to serve as proof of residency and that the affidavit had to be notarized. As a single working mother during a pandemic, this was difficult to accomplish. I eventually had to take time off work to go to the District Office and sign the affidavit there as they have a notary available at no cost. My sons did not start school until after the Winter Holiday break as a result.

There was no contemporaneous documentation (e.g., the email) submitted with the complaint, showing the special education director was notified on November 18, 2020 that the Parent had moved into the District.

7. On November 20, 2020, the Parent's family friend emailed the director about the Parent's family. On December 1, 2020, the director emailed the Parent, instructing her to "register the Student at his neighborhood school and from there we can begin the referral process for special education." The director stated the Parent could also register the Student for school online and provided the link.
8. On December 2, 2020, the school secretary emailed the Parent a "request for student records" and requested the Parent email or fax the birth certificate and immunization records to her for enrollment. On the same day, the school secretary emailed the Parent an affidavit for proof of residency and suggested setting an appointment at school to get the affidavit notarized. The Parent replied she would complete the affidavit as soon as possible and attached a copy of the Student's birth certificate.
9. Also, on December 2, 2020, the District sent the previous school a "Request for Student Records." According to the District, the Student's cumulative records were received on December 3, 2020, and the special education records were received on December 4, 2020. According to the District, the previous school district did not provide the Student's behavioral intervention plan (BIP) in records.
10. On December 3, 2020, the District received the Student's immunization record from the previous school district. On the same day, the school nurse emailed the Parent: "Please ask your doctor to fax the immunization records from the office. Once you establish a medical home, ask your new doctor to add them to the state record."
11. On December 4, 2020, the school principal emailed the school psychologist, director, and special services coordinator the following about the Student:

We are getting a new 1st grader named [Student]. I talked to the principal at his previous school and she mentioned he received a 1:1 para in gen ed (general education) due to behavior concerns. She mentioned that their IEP team really felt like [Student] was on the Autism spectrum but mom was very against anything having to do with AU (autism). Mom is living with a relative and we are still gathering up documents for registration. I would like to convene a team meeting before this young man starts with us so we can discuss how to move forward then I would like to meet with his mom. Just wanted to share the information and start thinking about dates.
12. On December 14, 2020, the secretary and the Parent exchanged emails regarding the requirement for the District to have the immunization records medically verified. The school secretary informed the Parent that immunization records were received from the previous school, but not from the Student's physician's office. The Parent stated the physician's office had faxed the records to the District the previous week. It was unclear from the documentation when the immunization records were received by the District from the physician's office.
13. Also, on December 14, 2020, the Parent sent the District a copy of the utility bill that was requested by the District and the notarized affidavit of residency.

14. On December 15, 2020, the school principal emailed the Parent about meeting with her on January 4, 2021.

15. From December 21, 2020 through January 1, 2021, the District was on winter break.

16. On January 4, 2021, according to the District, the District held a "transfer meeting" with the Parent that determined the Student would start school on January 7, 2021. According to the "IEP Meeting Notes And/Or Recommendations," the Parent, school psychologist, resource room special education teacher, tier II special education teacher, special education coordinator, general education teacher, and school principal attended the meeting. The notes from the meeting stated:

Meeting to review special education records and verify eligibility. Appropriate placement to receive services will be discussed. Parent – smart but task avoidant, adamant about that he is not on the Autism Spectrum. Parent in process of closing on a house in [area]. Parent would like [Student] and his brother to remain at [school]. The team recommends placement in Tier II Autism inclusion program at [school]. The team recommends re-evaluating cognitive, communication, and social adaptive areas.

According to the District's response, the proposed program provided for additional paraeducator support to address the Student's needs for assistive technology, behavior support for screaming and eloping, quiet space for breaks, and visual scheduling. The proposed program provided the Student the option to attend school in person four days a week rather than two days a week, which was the general hybrid instructional model. While attending school in the District, the Student would be participating in the general education setting for approximately 1.5 hours per day with a paraeducator and would increase the time as the Student becomes more regulated.

17. The District stated in its response to the complaint that the Parent did not disagree with the comparable services offered at the transfer meeting and subsequently provided.

The Parent told the OSPI investigator that she disagreed with the proposed program at the meeting. The Parent felt the program was not the same as the program outlined in the Student's April 2020 IEP. The Parent wanted the District to implement services on the Student's IEP.

18. On January 5, 2021, the school principal emailed the school nurse, asking her to assist the Parent in getting the necessary medical documentation from the Student's physician.

19. On January 6, 2021, the school nurse emailed the Parent the following: "I have received the registration papers for [sibling] and [Student]. I do not need any additional health information at this time. I have received the medically verified immunizations from the [state] pediatrician. They are medically cleared to start."

20. On January 7, 2021, the Student began attending school and receiving special education services.

21. On February 24, 2021, the District held an evaluation meeting to discuss the results of the reevaluation. The evaluation group found the Student eligible for special education services under the category of developmental disability. The evaluation summary stated:
Several attempts were made to obtain standardized cognitive and communication information however [Student] was uncooperative with the standardized procedures required to obtain valid and reliable results. It is the professional judgement of Team members that [Student] demonstrates significant cognitive (academic), social-emotional/behavior and communication deficits/delays that adversely affect his educational progress and is in need of specially designed instruction for the delays/deficits.
22. According to the District, the Student's April 2020 IEP was "accepted" by the District and continued to be implemented as of March 16, 2021, the date of the complaint. There is no documentation that the IEP team updated the Student's IEP based on the reevaluation completed on February 24, 2021.
23. On March 16, 2021, the District received a copy of the Student's behavioral intervention plan, dated November 2019, from the previous school district. The plan addressed hugging, screaming, and safety with materials through tokens, a timer, and picture cards.
24. Also, on March 16, 2021, the Parent filed this complaint with OSPI.

CONCLUSIONS

Issue One: Enrollment – The complaint alleged the District failed to timely enroll the Student, which delayed the Student's receipt of special education services. A district is required to provide a free appropriate public education (FAPE) to students with disabilities who transfer from out of state. Student enrollment is a process that applies to all students and special education regulations do not address enrollment procedures.

Here, a family friend of the Parent emailed the District special education director (director) on November 20, 2020 about the Student. On December 1, 2020, the District contacted the Parent and informed the Parent about the enrollment procedures. Once the Parent was notified about the enrollment process, the District promptly requested the Student's records, including the special education records, from the previous school district on December 2, 2020. The District received the Student's special education records from his previous district on December 4, 2020.

Meanwhile, the District and Parent exchanged emails on December 2, 2020 about the residency affidavit and immunization records that were needed for the Student to enroll. The Parent complied with the request for the residency affidavit on December 14, 2020, although the medical verification of the immunization had not been completed, which delayed the Student's ability to enroll in the District. On December 15, 2020, the principal emailed the Parent, requesting a meeting to review the Student's individualized education program (IEP) and proposed January 4, 2021 for the meeting. On January 4, 2021, the District held a transfer IEP meeting. Then on January 6, 2021, the school nurse received verification of the Student's immunization record, which completed the enrollment process. On January 7, 2021, the Student began attending school and receiving special education services.

The Student's enrollment process was delayed from when the Parent first notified the District that she wanted to enroll the Student because the documentation that was needed was not immediately available to the District. But, once all the necessary documentation was received by the District, the District promptly had an IEP meeting, the Student enrolled, and the District began providing services. Further, any delays were not directly linked to the special education processes, they were delays associated with the District's general enrollment process. While OSPI acknowledges that some delay occurred, OSPI finds there was no violation of the IDEA or state special education regulations.

Issue Two: Interstate Transfer Process – The complaint alleged the District failed to provide the Student with services comparable to the Student's April 2020 out-of-state IEP, including a 1:1 paraeducator and behavioral intervention plan. When an eligible student transfers to a new district, the district must ensure student continues to receive a FAPE, including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state; and, develops, adopts, and implements a new IEP. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. The obligation to provide comparable services begins when the student is enrolled.

Here, the Student's April 2020 out-of-state IEP provided for services in the areas of speech and language and specialized academic instruction (specially designed instruction) in a special education setting. Intensive individual services provided by a paraeducator were provided one hour a day in a general education setting. The IEP stated the Student would be in a general education setting 86 percent of the school day and a special education setting 14 percent of the school day.

The District and Parent met on January 4, 2021 for a "transfer IEP meeting." The documentation from the January 4, 2021 transfer meeting showed the District determined an evaluation was necessary to address the Student's needs. The "comparable services" were offered and provided primarily in the District's "Tier II Autism Inclusion classroom," which was a self-contained special education classroom, and some services provided in the general education classroom for 1.5 hours a day. Although the exact percentage of time in general education is not known, the 1.5 hours in general education presents a significant change in placement from the April 2020 IEP that called for the Student to be in the general education setting 86 percent of the school day. The documentation showed the District provided considerably less time in the general education setting than the Student previously accessed, which amounts to a violation as the services provided were not comparable. Here, the District did not believe the Student's transfer IEP was appropriately serving his needs, and thus they offered and provided services in the autism inclusion classroom. However, the District is reminded that there is no exception to provide comparable services when a district does not believe that those services remain appropriate for the student. In such circumstances, a district's obligation is to conduct an evaluation and develop, adopt, and implement a new IEP based on the recent evaluation. Here, because an evaluation has now been completed to the extent possible and the previous April 2020 IEP was about to expire, the District is required to develop a new IEP for the Student based on the reevaluation.

The April 2020 IEP also called for the Student to receive intensive intervention services, which were paraeducator services in the general education setting one hour a day. According to the District, the Student was participating in the general education classroom 1.5 hours a day and had paraeducator services during the general education time. The documentation indicated the District provided services comparable to intensive intervention services in the general education setting. No violation is found for this element of comparable services.

Regarding the behavioral intervention plan, the documentation showed the District did not receive a copy of the plan when it received the records from the previous school district. There is also no documentation that indicates the Parent notified the District, at that time, that the Student had a behavior plan. The District finally received a copy of the plan on March 16, 2021. The District could not have been expected to implement a part of the IEP that it had no knowledge of. No violation is found for this element of comparable services.

CORRECTIVE ACTION

By or before **June 4, 2021**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **May 28, 2021**, the District is required to develop a new IEP for the Student to ensure the Student receives a free appropriate public education (FAPE) including the Student's placement in the least restrictive environment. The new IEP should be informed by the Student's recently completed District reevaluation.

By **June 4, 2021**, the District will provide OSPI with a copy of the meeting notice, individualized education program (IEP), and prior written notice.

DISTRICT SPECIFIC:

None.

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 May, 2021

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.)