

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-98

PROCEDURAL HISTORY

On November 17, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Port Townsend School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On November 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 December 3, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on December 6, 2021. OSPI invited the Parent to reply.

On December 8, 2021, OSPI requested that the District provide additional information, and the District provided the requested information on December 9, 2021. OSPI forwarded the information to the Parent on December 10, 2021.

On December 10, 2021, OSPI received additional information from the Parent. OSPI forwarded that information to the District on December 13, 2021.

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

ISSUE

1. During the Student's November 9, 2021 individualized education program (IEP) meeting, did the District follow proper IEP team membership and meeting excusal procedures per WAC 392-172A-03095?

LEGAL STANDARDS

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

IEP Team Membership – General Education Teacher and District Representative: An IEP team must include not less than one general education teacher of the student if the student is, or may be, participating in the general education environment. WAC 392-172A-03095(1)(b). An IEP team must also include a representative of the public agency who: is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education services; is knowledgeable about the general education curriculum; and, is knowledgeable about the availability of resources of the school district. WAC 392-172A-03095(1)(d).

FINDINGS OF FACT

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of other health impairment, was in the 9th grade, and the Student’s November 2020 individualized education program (IEP) was in effect.¹

According to the District, during the 2021–2022 school year, “the Student participated in general education classes for 6 of 7 classes, [the seventh class was a] special education support class. [This equated to] 89% of the Student’s school day [being spent in a general education environment].”

2. According to emails, on or about October 11, 2021, the Parent received a draft copy of a new annual IEP for the Student, in preparation for an upcoming IEP meeting.
3. The Student’s IEP team met on November 9, 2021. According to the District, the following individuals attended at least a portion of the IEP meeting: District representative, Parent, Student, general education teacher, and the Student’s special education case manager.
4. In relation to the November 9, 2021 IEP meeting, the Parent’s complaint request stated, in part: (1) the general education teacher was one of the first IEP team members to speak at the meeting, the case manager asked the Parent if the general education teacher could be excused, and the Parent “felt put on the spot and gave...consent” for the general education teacher to leave the meeting early; and, (2) “then, before the modifications [and] accommodations and many of the goals were discussed, the District representative asked to be excused [and left].”²

¹ The Student’s November 2020 IEP included annual goals in the areas of math reasoning, reading comprehension, written expression, and critical thinking/study skills. It also included numerous accommodations, as well as the following modifications: “content area: longer written assignments”; and, “testing accommodation: targeted test review.”

² In a subsequent submission to OSPI, though, the Parent stated: “To my recollection, the District representative did not ask for permission to leave, but rather [just] stated that he also had to leave.”

The Parent's complaint further stated she was not provided with any "Team Member Excusal" forms prior to the November 9, 2021 IEP meeting.³

5. The District's response generally conforms with the Parent's understanding of the November 9, 2021 IEP meeting, stating, in part:

[General Education Teacher]

Interviews with the IEP team indicate that there was a verbal agreement that the general education teacher be excused early, but there was no agreement in writing. The general education teacher indicated that during the [portion of the] IEP meeting [that she attended], the Student's progress in the general education teacher's class was discussed and goals were agreed upon. The general education teacher further [stated she] elaborated upon accommodations that were developed and enacted in her classroom to allow for better access for Student.

...

At the IEP [meeting], she reported that Student was doing well and currently has an A in her class. The team discussed classroom needs, such as how Student is accessing and benefiting from notes. Student finds class notes helpful. The test includes summary notes. The general education teacher agreed that summary notes will be provided and Student will be able to add to them for her own use. The Parent suggested that a practice quiz before the test would be helpful for Student. This would be better than having to do a re-take. The general education teacher agreed to this accommodation. (The general education teacher also shared that during recent parent teacher conferences these accommodations were reviewed and were being positively implemented from her point of view.)

[District Representative]

The meeting proceeded. The District representative believed that the IEP was over and left the meeting.⁴ [After the District representative's] departure, the Parent brought up some additional accommodations that she wanted to add to the IEP. [In response], the case manager suggested bringing the whole team together again to discuss the Parent's suggestions.

...

[General Response]

The District...neglected to follow proper [excusal] procedure by not getting a parental signature [permitting the general education teacher's early departure from the IEP meeting].

...

The IEP was finalized on November 9, 2021. However, when the Parent raised [additional] concerns, the principal and director offered to reconvene the team to consider the parental request for additional accommodations.

³ The Parent's complaint included, as an attachment, a "Meeting Invitation" for the November 9, 2021 IEP. The invitation read, in part: "If any IEP team member will not be attending the IEP meeting, complete and attach the form 'Team Member Excusal' prior to the meeting."

⁴ According to the District's response, "the case manager and the District representative recollect that the District representative asked permission to leave and was granted permission."

6. In relation to whether the IEP was finalized on November 9, 2021, the Parent stated:

The District cites that the IEP was finalized on November 9, 2021, but I never signed a copy of it and I did not approve the IEP as discussed...I made it clear via email that I did not believe the IEP was ready to be approved and put into place. I requested another IEP meeting.
7. In relation to the requests and inquiries the Parent made towards the end of the November 9, 2021 IEP meeting—as well as the purpose of the facilitated IEP meeting scheduled for December 15, 2021—the Parent stated:

The reason I made [those] requests...was that we did not have time in the meeting to talk about accommodations/modifications. We didn't even go over the goals one by one. Rather, the case manager was speaking in tangents and insufficiently answering targeted questions, from my daughter and I's perspective.

I [therefore] requested the facilitated IEP meeting. The purpose of this meeting from my perspective is to allow us more time (3 hours) to go over the goals of the student, possibly introduce new goals, go over potential accommodations, provide a thorough overview of the Student's complicated needs and learning profile, to request a potential speech/language evaluation, and to discuss future goals. The purpose is also to conduct a meeting wherein all team members are present for the duration of the meeting.
8. The copy of the Student's draft November 2021 IEP provided to OSPI during this investigation:
 - Included goals in the following areas: math problem solving; written expression; reading comprehension; and, vocational/transition;
 - Had the Student in a general education setting for 89% of the school day; and,
 - Included several accommodations and a couple support for school personnel.
9. On November 12, 2021, the special education director sent the following email to numerous District staff:

As a friendly reminder, be sure to get parent permission for excusal of IEP team members before the IEP team meeting. Team members must be excused before the meeting begins and in writing. If the meeting involves modification or discussion of the excused team member's area of service, written input must be provided to the IEP team members (including the parent).

Excusals must be documented on the 'Request to Excuse an IEP Team Member Form'. This must be signed by both the parent and the LEA Representative.
10. To remedy its failure to follow proper IEP team member excusal procedures, the District proposed: "participation in a facilitated IEP meeting, scheduled for [late in] December 2021" and, providing "train[ing] [to] all staff in procedures pertaining to proper excusal of any IEP team member from all or part of an IEP meeting."
11. According to the District:

The purpose of the December 15, 2021 facilitated IEP meeting is to clarify the request for the accommodation of "provided class notes" and to discuss the requested accommodations that were emailed to the case manager after the conclusion of the [November 9] meeting. After the other team members left, Parent stated that she wanted

to ensure that another person in the classroom was available to take notes for Student. The case manager wanted to have a larger discussion about this with the team. After the [earlier IEP] meeting the Parent emailed...a list of further accommodations that she would like to include in the IEP. These include: give writing templates to model correct writing forms, offer a framework for essay organization, break writing assignments into small steps, list steps/procedures into multi step problems and algorithms, list clearly numbered steps and give the student a desk-copy model of the steps needed to solve problems, access to human-narrated audio books when available, provide student with guided notes or full classroom notes, provide detailed written instructions, provide study guides several days before a test, allow the student to correct mistakes on tests for extra credit, allow use of math formulas or student notes for testing, allow use of calculator or multiplication table, and restorative break during school day without academic consequence in private setting with access to a cot or couch.

CONCLUSIONS

Issue: IEP Team Member Excusal Procedures: The Parent alleged the District did not follow proper individualized education program (IEP) team membership and meeting excusal procedures for the November 9, 2021 IEP meeting.

Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting.

Here, at the November 9, 2021 IEP meeting, the general education teacher and the District representative left the meeting early.⁵ The Parent and District did not agree, in writing, to these excusals. This therefore represents a violation of the IDEA.

Based on the documentation provided to OSPI during this investigation, the Student's IEP has not yet been finalized—at the least, the Student's IEP team needs to discuss several accommodations and/or modifications that the Parent requested towards the latter portion of the November 9, 2021 IEP meeting. In its response, the District acknowledged its failure to follow proper excusal procedures on November 9, 2021. To remedy this failure—and to finalize the Student's IEP—the District agreed to a facilitated IEP meeting on December 15, 2021. The District also proposed providing staff with a training on proper IEP team member excusal procedures. OSPI finds these proposed remedies to be appropriate responses to the above-stated IDEA violation.

⁵ An IEP team must include a general education teacher if a student is, or may be, participating in the general education environment. Here, the Student spent 89% of the school day in the general education setting; six of the Student's seven classes were general education setting classes. So it was necessary for a general education teacher to be in attendance at the IEP meeting.

CORRECTIVE ACTIONS

By or before **December 20, 2021, January 7, 2022, January 14, 2022, and January 28, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Team Meeting

By or before **December 15, 2021**, the Student's IEP team will meet in a facilitated setting, per the District's proposed corrective action, to finalize the Student's IEP.

By **December 20, 2021**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's amended IEP; iii) any relevant meeting invitations and prior written notices; iv) a list of people, including their roles, who attended the meeting; and, v) any other documentation necessary to show proper IEP team membership and excusal procedures were followed for the December 15, 2021 IEP meeting, if any members were excused from the meeting.

DISTRICT SPECIFIC:

Training

The following District staff will receive training: special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs), at the school that the Student was enrolled in during the 2021–2022 school year. The training will cover the following topics: proper IEP team member excusal procedures (WAC 392-172A-03095). The training will include examples.

The training will not be presented by someone who is (or was) an employee of the District during the timeline of this complaint. The individual that presents the training will be required to consult with ESD 114 staff in the creation of the training materials. The District will provide the trainer with a copy of this decision, SECC 21-98.

By or before **January 7, 2022**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **January 14, 2022**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by January 19, 2022.

By **January 26, 2022**, the District will conduct the training regarding the topics raised in this complaint decision.

By **January 28, 2022**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human

resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 December, 2021

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.)