

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-41

PROCEDURAL HISTORY

On October 12, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Everett 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 October 12, 2023, 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 October 30, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the October 31, 2023. OSPI invited the Parent to reply.

On December 1, 2023, the OSPI complaint investigator interviewed the Parent.

On December 1, 2023, the OSPI complaint investigator interviewed the District's executive director of special education.

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

ISSUES

1. Did the District conduct the Student's individualized education program (IEP) meeting and amend the IEP services and setting with the Parent's participation according to WAC 392-172A-03115?
2. Did the District develop an IEP that addressed the Student's needs regarding transportation according to WAC 392-172A-03110?

LEGAL STANDARDS

Parent Participation: Each school district must ensure that the parents of each student eligible for special education services are members of any group that makes decisions on the educational placement of the student.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the 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. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Amending IEP Without a Meeting: After the annual IEP team meeting for a school year, the parent of a student eligible for special education services and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP, the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. WAC 392-172A-03110.

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

FINDINGS OF FACT

2022–23 School Year

1. In February 2023, the Student began attending an alternative learning program at a District high school. The Student was eligible for special education services under the category of other health impairment.
2. The Student's March 2023 IEP provided for annual goals in the areas of math and behavior/social skills. The IEP provided the following specially designed instruction:

Service	Initiation Date	Frequency	Location	Staff Responsible for Delivering Services
Behavior/Social Skills	9/18/2023 ¹	60 minutes weekly	General Education	Special Education Staff, General Education
Math	9/18/2023	90 minutes weekly	General Education	[Teacher], Special Education Classroom Teacher

The IEP included the following services:

- Physical therapy consultation: 15 minutes upon request (to be provided by a physical therapist in a general education setting)
- Audiology consultation: 15 minutes upon request (to be provided by an audiologist in a general education setting)
- Special transportation: 5 days to school and home per week

¹ It appears that the initiation date in the March 2023 IEP was inadvertently changed when the September 2023 IEP was amended.

- Between the 2022–23 and 2023–24 school years, according to the District, the school principal “modified the structure for the provision of special services” due to the reduction of teachers in the District. This shifted some of the responsibilities of the Student’s teachers.

2023–24 School Year

- At the start of the 2023–24 school year, the Student attended an alternative learning program at a District high school. The Student continued to be eligible for special education services under the category of other health impairment.
- The District’s 2023–24 school year began on September 6, 2023.
- According to the Student’s class schedule, the Student attended classes period 2 through period 4. The regular class schedule for students in the school was periods 1 through 6. According to the Parent, the Student was attending a partial day. The IEP did not include specific information about the partial day schedule for the Student.
- In the complaint, the Parent alleged that the District “cut SPED transportation to single bus serving every student, regardless of class schedule or address.” The Parent provided no facts regarding the other students she alleged this impacted.
- On September 14, 2023, the Parent emailed the special education teacher, asking if the transportation schedule was set for the Student. The special education teacher replied that this year, there would be one bus that transported students with IEPs. The Student would be transported to school at 8:10 am and leave at 2:55 pm. The Parent replied, “That’s not going to work with [Student’s] physical limitations.” In response to the Parent’s concerns, the District changed the Student’s transportation schedule to arriving at 9:10 am and leaving at 12:30 pm.
- On September 18, 2023, the Student’s teacher amended the Student’s IEP without a meeting. The IEP included annual goals in behavior/social skills and math. The IEP provided for the following specially designed instruction:

Service	Initiation Date	Frequency	Location	Staff Responsible for Delivering Services
Behavior/Social Skills	9/18/2023	60 minutes weekly	General Education	General Education
Math	9/18/2023	90 minutes weekly	General Education	Special Education Classroom Teacher

The IEP continued to include the following services:

- Physical therapy consultation: 15 minutes upon request (to be provided by a physical therapist in a general education setting)
- Audiology consultation: 15 minutes upon request (to be provided by an audiologist in a general education setting)
- Special transportation: 5 days a week by bus

10. In her complaint, the Parent stated the District did not have her permission to amend the Student's IEP without her input and without having an IEP meeting. The Parent also alleged that other student's services were changed without IEP meetings, but provided no specific facts about other students regarding the allegation.

The District did not dispute that the Student's IEP was amended without conducting an IEP meeting and without getting input from the Parent. The District did not indicate whether other student's IEPs were changed without a meeting.

11. On October 12, 2023, the Parent filed this complaint with OSPI.

12. After the Parent filed the complaint, on October 20, 2023, the District conducted a meeting with the Parent and amended the Student's IEP. The District stated, "The resulting IEP is in process of approval and implementation." The Parent also stated that there was an IEP meeting on December 1, 2023.

13. In an interview with the Parent, the Parent acknowledged that transportation for the Student had been worked out before the complaint was filed with OSPI. The District provided transportation that met the Student's need for a partial day.

CONCLUSIONS

Issue One: Parent Participation – The complaint alleged the District failed to conduct a meeting to amend the Student's IEP and to give the Parent an opportunity to provide input into the decision making. Each district must ensure that the parents of each student eligible for special education services are members of any group that makes decisions on the educational placement of the student. The District admitted the violation.

Here, the Student's March 2023 IEP provided, in part, specially designed instruction in the areas of behavior/social skills and math. The providers for behavior/social skills instruction were the special education and general education staff. The provider listed for math instruction was the Student's special education teacher by name. In September 2023, after the District changed the "structure for the provision of special services", the special education teacher amended the Student's IEP without a meeting and without input from the Parent by changing the service providers to "general education staff" and "special education teacher," respectively. The change, that the District acknowledged, no doubt had an impact on other students with IEPs as the District stated the services delivery model was modified. This likely required that each student in the alternative learning program have an IEP team meeting to discuss any changes to their IEPs. The District should have either conducted an IEP meeting with the participation of the Parent or waive the IEP meeting with consent from the Parent. It should also be noted that there is no requirement that the IEP identify the service provider(s), unless it is required for the Student to receive a free appropriate public education (FAPE). But if the District does identify the service provider(s), the IEP must be implemented as written and amended following proper IEP amendment procedures. Since the District amended the IEP without conducting an IEP meeting or waiving the meeting with the Parent's agreement, a violation is found.

Although the District subsequently held an IEP meeting, the District stated the IEP was still being finalized. To ensure an IEP is completed, the District is required to hold an IEP meeting for the Student, unless the IEP has now been completed with the Parent's participation. Because of the systemic violation related to changes made based on a change in service delivery model, the District is required to develop a corrective action plan to determine what other students' IEPs were changed without meetings and ensure that meetings, if necessary, are promptly held. In addition, the plan must address any training needed for staff.

Issue Two: Transportation – The complaint alleged the District failed to provide the Student with transportation that met the Student's needs. A district is required to consider the student's unique needs when determining special transportation. The District denied the allegation.

Here, the District initially informed the Parent that the Student's transportation would be provided by the one special education bus that was scheduled for a full day of school. After the Parent expressed concern about the transportation, given that the Student attended a partial day, the District changed the Student's transportation schedule to accommodate the partial school day. The Parent also indicated that the transportation for other students with IEPs were changed, also. Since the District addressed the Student's need for transportation while attending a partial day, no violation is found regarding the Student.

CORRECTIVE ACTIONS

By or before **December 22, 2023, January 5, 2024, and January 31, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By **December 22, 2023**, the District is required to conduct an IEP meeting to address the amendments to the March 2023 IEP, unless this meeting has subsequently taken place.

By **January 5, 2024**, the District must provide OSPI with a copy of the meeting notice, amended IEP, and the prior written notice.

DISTRICT SPECIFIC:

Corrective Action Plan

By **December 22, 2023**, the special education director and designees are required to develop a corrective action plan to address changing IEP services without holding IEP meetings or waiving the meeting with parent consent.

The plan must include timelines for the actions to be completed, what documentation is required to verify compliance, and procedures to be put in place to ensure compliance is established and maintained over time.

By **December 22, 2023**, the District will submit a draft of the corrective action plan to OSPI for review. OSPI must approve the plan and will provide feedback as necessary.

By **January 31, 2024**, the District will submit documentation that the corrective action plan has been completed.

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.

RECOMMENDATION

While it seems as though the Student's partial day is at least in part due to the Parent's request and not the IEP team, the partial day is not clearly documented in the Student's IEP. OSPI recommends the District ensure the partial day schedule is related to the Student's disability and document the rationale for the schedule in the Student's IEP.

Dated this 11th day of December, 2023

Dr. Tania May
Assistant Superintendent of 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.)