

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-150

PROCEDURAL HISTORY

On October 26, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the mother (Parent) of a student (Student) attending the **[REDACTED]** 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 26, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 27, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 13, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On November 13, 2023, OSPI received notice of a request for a due process hearing (No. 2023-SE-0190) filed by the Parent. OSPI put the complaint investigation in abeyance because the due process hearing addressed the same issues as the complaint.

On December 13, 2023, OSPI received notification that the due process hearing (No. 2023-SE-0190) was dismissed. OSPI set the new 60-day timeline to January 22, 2024.

On December 28, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on October 27, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow confidentiality procedures when the District communicated with the Student's Father according to WAC 392-172A-05225?
2. Did the District provide the Parent with the same information that was provided to the Student's Father so that the Parent could fully participate according to WAC 392-172A-03100?
3. Did the District develop an individualized education program (IEP) that was designed to meet the Student's needs, specifically behavioral needs according to WAC 392-172A-03110?

LEGAL STANDARDS

Definition of Parent: IDEA defines the term "parent" as: a biological or adoptive parent of a child; a foster parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the student; an individual acting in the place of a biological or adoptive parent including a grandparent, stepparent, or other relative with whom the student lives, or an individual who is legally responsible for the student's welfare; or a surrogate parent who has been appointed in accordance with WAC 392-172A-05130.

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. 34 CFR §300.613; WAC 392-172A-05190. A school district may presume that a parent has authority to inspect and review records relating to his or her student unless the school district or other public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce. WAC 392-172A-05190.

Custody and Parental Decision Making: The IDEA does not override a state's authority to make custody determinations. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 124 S.Ct. 2301 (2004); see also, *Navin v. Park Ridge School District No. 64*, 270 F.3d 1147, 1149 (7th Cir. 2001). Chapter 26.09 of the Revised Code of Washington defines the provisions that must be contained in a parenting plan. Parenting plans establish the residential provisions for the child, allocation of decision-making authority of the parents, and provide for how disputes will be resolved. RCW 26.09.184. Absent any restrictions imposed by a parenting plan or other court order, both parents have a right to receive information from a district and participate in the development of their child's special education program and services. 34 CFR §300.322; WAC 392-172A-03100.

FERPA is a Federal law that gives parents, custodial and noncustodial, the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records. The term "education records" is defined as those records that contain information directly related to a student and which are maintained by an educational agency or institution or by a party acting for the agency or institution. Unless a parent's right to access a student's education records has been specifically revoked by a court order or state law, a district can disclose education records to a noncustodial parent without notifying the other parent. *Letter to Anonymous*, Family Policy Compliance Office (May 15, 2015).

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the

school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

FINDINGS OF FACT

Background Information

1. In July 2019, a parenting plan ordered by a county Superior Court stated that the Parent was the sole parent permitted to make "School/Educational/any child care" decisions about the Student. The Father retained visitation rights with the Student. The plan did not address communication with the school district.
2. On September 13, 2019, the school counselor emailed school staff, stating, "[Parent] has the only authority to make decisions for [Student]. [Father] is allowed to pick up [Student] every other Friday only."
3. The parenting plan that called for the Parent to make educational decisions for the Student continued to be in place during the 2021–22 school year.

4. During the 2021–22 school year, the Student missed 50 days of school, according to the District. Throughout the Parent’s complaint, the Parent disputed the number of days and stated that 36 days of school were missed. The Parent alleged the District provided incorrect information to the county Superior Court. OSPI subsequently notified the Parent that since the allegation was before the one-year timeline, OSPI could not investigate the Parent’s issues regarding the Student’s attendance record. The Parent was referred to the process to request an amendment of the Student’s records under WAC 392-172A-05215.

2022–23 School Year

5. At the beginning of the 2022–23 school year, the Student was a six-year-old first grader who attended a District elementary school. The Student was eligible for special education services under the category of developmental delay. The 2019 parenting plan continued to be in place.
6. On September 27, 2022, the District sent the Parent a meeting invitation to a meeting to review a recent evaluation of the Student and develop the Student’s IEP.
7. The District provided documentation of two IEP meetings that occurred on different dates. The October 6, 2022 IEP listed the Parent as a participant/meeting attendee but not the Father. The other IEP, dated October 4, 2022, listed both Parents as participants. According to other documentation, the Father did not attend the IEP meeting.

In the IEP, the “team considerations” relating to behavior stated:

[Student] demonstrates behavior that is immature in comparison to his typically developing peers. His general education teacher reports [Student] will often crawl around the classroom and has difficulty staying on task. He needs frequent reminders to stay on task. These behaviors impede his learning and will be addressed within the services and goals in this IEP.

The Student’s IEP provided goals in the areas of adaptive behavior and social/emotional behavior. The IEP provided six accommodations that included alternative seating, such as a rocking chair, modified incentive system, and preferential seating. The IEP provided the following special education services:

- Occupational therapy: 30 minutes/3 times a month (provided by an occupational therapist)
 - Adaptive: 15 minutes/4 times weekly (provided by a special education teacher)
 - Social/Emotional: 15 minutes/4 times weekly (provided by a special education teacher)
8. The prior written notice, dated October 6, 2022, that documented the IEP meeting was addressed to the Parent.
 9. On the October 6, 2022, the Father emailed the Student’s teacher that he was not able to attend the IEP meeting but had concerns about the Student’s absences and making sure the Student arrived at school on time.

10. On October 8, 2022, the Student's teacher replied and emailed the Father the draft IEP. The teacher asked if the Father wanted to add input about attendance concerns and the Student's strengths to the IEP.
11. After the October 2022 IEP meeting, the Father and District staff exchanged emails and phone calls regarding how the Student was progressing in school.
12. On October 11, 2022, the special education teacher emailed the Father, stating the school psychologist would be sending a form to fill out about the Student's behavior.

In the complaint, the Parent stated that filling out the form was making educational decisions for the Student.

13. On October 27, 2022, the one-year investigation timeline began in this complaint.
14. On December 7, 2022, the school counselor emailed the Student's general education and special education teachers. The counselor stated, in part, "I got confirmation through admin (administration) and the courts that [Father] is allowed updates about [Student's] progress and attendance..."
15. On November 1, 2022, the school counselor emailed other District staff and indicated the Father asked to be "part of the missed school robocalls."

In response to this, the Parent stated in the complaint, "...This rendered [Father] as the primary point of contact and hindered me from receiving significant updates regarding my child..."

16. Regarding the Father being the primary point of contact, the District stated, "There was no record of the Father being changed to the primary contact in the educational records until after he was granted custody and a restraining order was issued against the mother prohibiting her from coming on campus..."
17. On January 30, 2023, the District provided Student progress reports towards the annual goals in the area of adaptive behavior and social/emotional behavior. The January 2023 progress indicated that the Student demonstrated an "emerging skill but may not achieve annual goal with duration of IEP."
18. On February 1, 2023, the special education teacher emailed the Father, introducing the District's Indian Education coordinator (coordinator) who was working with the Student. The Father replied that he talked with the coordinator about the Student's difficulty with pronouncing words.
19. In the complaint, the Parent stated she did not know the Student had a new teacher and did not know he was "struggling with his new teacher." However, according to the District, the coordinator was not the Student's teacher or a reading teacher; the coordinator assisted Native American children in enrichment activities.

20. On February 6, 2023, the county Superior Court issued an "Immediate Restraining Order and Hearing Notice," limiting the Parent's contact with the Father and Student and access to the Student's school until a hearing that was to be conducted on February 21, 2023. The Court ordered the Student to live with the Father until the hearing.
21. On February 8, 2023, the Student's general education teacher wrote a "To Whom it May Concern" letter. The letter noted the Student's absences, tiredness, and emotional dysregulation. The Student was behind academically, struggled with interactions with other students, and engaged in "dangerous behaviors." The teacher stated concern about whether the Student would not be ready for second grade.
22. On February 9, 2023, at the request of the Father, the school principal wrote a letter to the Father about a behavior incident on February 3, 2023, after a friend of the Parent dropped the Student off at school at 10 am. The Student was dysregulated, hungry, and had not been bathed.
23. On March 2, 2023, the county Superior Court ordered a "temporary" parenting plan that included joint "School/Educational" decision-making for both Parents. The Court ordered the Father to be the custodian of the Student, the Parent retained visitation rights.
24. Also on March 2, 2023, the county Superior Court issued a "final" restraining order that prohibited the Parent from contacting the Student and being on the Student's school grounds, among other restrictions.
25. On May 1, 2023, the Student's IEP team that included both Parents met to discuss the Student's academic services. The team addressed the Student's numerous absences from school and tardies. The team discussed adding cognitive/academic services, but the team agreed that "environmental factors, not disability, were impacting Student's ability to progress academically." The meeting notes showed the Student was making minimal progress at the beginning of the year, but as of May 2023, was making significant progress towards meeting his goals. The Student's reading, staying on task, running away, and following directions all significantly improved. The Parent stated that the progress reports did not reflect the same kind of progress as talked about in the meeting.
26. A June 9, 2023 prior written notice addressed to both Parents addressed the number of absences reported in the evaluation report.
27. On June 23, 2023, the District issued another special education progress report on the Student's goals. The report stated the Student mastered his adaptive and social/emotional goals.

In the complaint, the Parent questioned the Student's progress because he was suspended for "attacking a child and teacher."

28. At the end of the 2022–23 school year, the Parent withdrew the Student from the District.

29. At the beginning of the 2023–24 school year, the Student was enrolled in a different Washington school district and the new school district developed an IEP that provided goals in the areas of social/emotional, adaptive behavior, and fine motor/occupational therapy.

CONCLUSIONS

Issue One: Confidentiality – The complaint alleged that the District violated Student confidentiality by sharing information with the Student’s Father without the Parent’s consent. Schools may deny a noncustodial parent access to his child’s records if there is a court order that specifically prohibits access to the parent. Unless prohibited by a court order, districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. FERPA gives parents, custodial and noncustodial, the right to have access to their children's education records, the right to seek to have the records amended, and the right to have some control over the disclosure of information from the records.

Here, the 2019 parenting plan stated the Parent was the sole education decision-maker for the Student. The Parent alleged the District provided the Father with confidential information about the Student’s progress at school without the Parent’s consent. Although the Parent was the education decision-maker for the Student, the 2019 parenting plan did not expressly prohibit the District from sharing this kind of information about the Student. In addition, the information that the District shared with the Father did not necessarily constitute educational records as defined in the special education regulations, such as information about picking up the Student at the bus stop or informing the Father about the assistance the Student was receiving from the coordinator. The District asked the Father for input into the October 2022 IEP, but the Father did not participate in making the final decision about the Student’s IEP. Further, requesting input from the Parent does not represent sharing of educational records as defined by special education regulation either.

In March 2023, the court ordered a temporary parenting plan that included joint education decision-making between the Parent and the Father. The Father became the Student’s custodian. The court also issued a final restraining order against the Parent that prohibited the Parent from entering school grounds, among other restrictions, which all made it clear that the Father had access to the Student’s information and records. Based on the documentation that the District did not violate the Student’s confidentiality, no violation is found.

Issue Two: Parent Participation – The complaint alleged the District limited the Parent’s participation in decision-making by not sharing all the information that it provided to the Father. A district is required to provide a parent with an opportunity to parent to participate in making educational decisions for the student, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place.

Here, the Parent was sole education decision-maker for the Student from October 2022 to March 2023. The documentation showed the District notified the Parent of the October 2022

and May 2023 meetings and explained their purpose. The Parent participated in the IEP meetings, received prior written notices, and received special education progress reports. However, the Parent claimed that the District changed the Student's primary contact from the Parent to the Father, which she alleged minimized her participation. In response, the District stated that the Student's primary contact was not changed until the Father was granted custody of the Student in March 2023.

The Parent also stated that she was not made aware of the behavior difficulties of the Student despite the Student's IEP addressing behavior through social/emotional goals and the progress reports addressing behavior. However, the Student's behavior was discussed in IEP meetings and information also provided via progress reports. In addition, the Parent stated the Father was informed by the District of the Student's new "reading teacher." However, the District clarified that the coordinator assisted the Student, among other students, and was not the reading teacher. While there is no obligation for the District to share all incidental information provided to the Father, there was no evidence that the Parent not being informed about the coordinator's assistance had a negative impact on the Parent's participation. Based on the documentation that the Parent was given the opportunity and participated in the decision-making for the Student, no violation is found.

Issue Three: Behavior Support – The Parent alleged the District failed to provide the Student with appropriate behavior supports. A district is required to consider the use of positive behavior supports where the student's behavior impedes his or her learning or the learning of others.

Here, the October 2022 IEP (which was developed before the one-year complaint timeline) recognized the need for behavior support and provided goals and accommodations that addressed the Student's behavior. In May 2023, the IEP team met to discuss the Student's progress and the possible need for additional services. The documentation, including the progress reports and meeting minutes, indicated that although progress was initially slow, the Student had made significant progress towards his social/emotional behavior goals as the school year went on. The Parent disputed the progress based on a suspension and the IEP from the new school. Despite the suspension, the District provided services to the Student that resulted in considerable progress. Regarding the new district's IEP, there were no significant changes in the services that the District provided. Based on the documentation, the District appropriately addressed the Student's behavior. Therefore, no violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 19th day of January, 2024

Dr. Tania May
Assistant Superintendent of 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.)