

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-01

PROCEDURAL HISTORY

On January 19, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Centralia 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 January 20, 2017, 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 February 10, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On February 23, 2017, OSPI received additional information from the District and forwarded it to the Parent on February 24, 2017.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education under the category of specific learning disability. In September 2016, the Student's individualized education program (IEP) team met to develop the Student's annual IEP. The Student's IEP provided for specially designed instruction for reading skills, and several accommodations/modifications, as needed, in all of the Student's classes. During the Student's IEP meeting, the Parent raised concerns that the Student was having difficulties in math, and requested an evaluation to determine eligibility for math services. After the IEP meeting, the special education teacher placed a note in the school psychologist's mailbox regarding the Parent's request for an evaluation. Shortly thereafter, the school psychologist resigned, and the District's executive director of special education filled the position until a new school psychologist began in November 2016. Also in November 2016, the special education teacher, the Student's advisor, the Student's math teacher, the Parent, and the Student met during conference week. At the meeting, the Parent raised concerns that the Student was not receiving her accommodations/modifications in her social studies class. The special education teacher reminded the Student to "advocate for herself when she needs help" and contacted the Student's teachers to also remind them that the Student had an IEP with accommodations/modifications. The Parent alleged that the District failed to provide the Student with her accommodations in her IEP, and that the District failed to respond to her September 2016 request to evaluate the Student. The District stated that it provided the Student with some of her

accommodations/modifications, but admitted that they could not produce documentation to substantiate they provided all her accommodations/modifications. The District further admitted it failed to respond to the Parent's September 2016 evaluation request in a timely fashion. The District proposed corrective actions to address the violations.

ISSUES

1. Did the District provide the Student with accommodations consistent with her individualized education programs (IEPs) in place during the 2016-2017 school year?
2. Did the District follow procedures for evaluating the Student for math services during the 2016-2017 school year?

LEGAL STANDARDS

Definition of Consent: Consent means that: the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005. A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011).* When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

1. During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of specific learning disability.
2. The District's 2016-2017 school year began on September 6, 2016.
3. The Student's most recent reevaluation was completed on January 30, 2015. The evaluation report identified a severe discrepancy between achievement and ability in reading, mathematical calculation, and mathematical reasoning. However, the evaluation report only recommended that the Student receive specially designed instruction for reading skills. The report stated that the Student's math scores might have been depressed due to the Student's irregular attendance, and her reluctance to attempt difficult tasks during testing. The report further stated that the Student had not been eligible for specially designed instruction for math skills since her previous reevaluation in 2012, when the Student was in sixth grade.
4. The Student's IEP in place at the beginning of the 2016-2017 school year was developed on September 16, 2015. The Student's September 2015 IEP provided for 60 minutes per day of specially designed instruction in the area of reading skills, in a special education setting. The Student's IEP also stated that the Student was behind in reading comprehension when compared to her peers, and included the Student's annual goal, which was aimed at improving her reading fluency. The IEP also provided for the following accommodations/modifications "as needed" in "all classes":
 - Presentation: Emphasis on key sounds/words; encourage the student to problem solve, read class materials orally
 - Setting: Preferential seating; testing in a separate location

- Testing: Read aloud tools including human readers or cd's; text to speech tools; small group instruction; and SBA accommodations that included speech to text tools, text to speech tools, reading the material aloud, and testing in a separate setting
 - Timing: Taking more than one day for a test session and giving extra time to complete assignments
 - Other: Modified grading
5. According to the District's documentation in this complaint, on September 8, 2016, the Student's special education teacher contacted the Student, and invited her to attend her annual IEP meeting that was scheduled for September 15, 2016. Also on September 8, 2016, the District sent the Parent an invitation to attend the Student's annual IEP meeting.
 6. On September 9, 2016, the District sent the Student a letter confirming her attendance at the IEP meeting.
 7. On September 15, 2016, the IEP team, including the Parent, met to develop the Student's IEP. The Student's September 2016 IEP provided for 60 minutes per day of specially designed instruction in the area of reading skills, in a special education setting. The Student's IEP further stated that the Student's diagnosis of dyslexia affected her skills in basic reading and reading comprehension, and that the Student was behind in these areas compared to her peers. The Student's IEP also stated that the Student's reading skills affected her ability to learn in her general education classes, and that it was helpful to remind her teachers that she had dyslexia. The Student's IEP provided for the following accommodations/modifications "as needed" in "all classes":
 - Presentation: Emphasis on key sounds/words; encourage the student to problem solve, read class materials orally
 - Setting: Preferential seating; testing in a separate location
 - Testing: Read aloud tools including human readers or cd's; text to speech tools; small group instruction; and SBA accommodations that included speech to text tools, text to speech tools, reading the material aloud, and testing in a separate setting
 - Timing: Taking more than one day for a test session and giving extra time to complete assignments
 - Other: Modified grading; utilizing headphone/music to prevent distractions
 8. In her complaint, the Parent stated that during the September 15, 2016 IEP meeting, she raised concerns that the Student was "having trouble with high school level math", and requested an evaluation of the Student to determine eligibility for specially designed math services. In response, the Student's special education teacher reportedly stated that the District currently did not have a school psychologist available to initiate the evaluation, and that the District was working on a remedy.
 9. Based on the District's documentation in this complaint, the special education teacher created a handwritten note at the IEP meeting that stated "See if [Student's] eval (sic) can get moved up". The special education teacher then placed the note in

the school psychologist's mailbox sometime after the IEP meeting.¹ The District's response to this complaint stated that the special education teacher "never heard about it [the Parent's request for evaluation] after that."

10. On September 15, 2016, the District sent the Parent prior written notice, proposing to implement the Student's IEP beginning on September 16, 2016. The prior written notice did not address the Parent's request for an evaluation in the area of math skills.
11. On September 26, 2016, the District's executive director of special education sent an email to school staff, notifying them that on September 23, 2016, the school psychologist had resigned from her position due to a family emergency. The executive director further stated that she would fill the role of school psychologist until the District could find a replacement. The executive director then requested that staff notify her of any meetings in addition to initial referrals, reevaluations, transfers, and other projects assigned to the school psychologist position, so that she could address them.
12. On September 28, 2016, the special education teacher responded to the executive director's email. The special education teacher stated that he was aware of one previously scheduled meeting and two evaluations for new students. The special education teacher did not disclose the Parent's request for an evaluation of the Student in his response.
13. According to the District's documentation in this complaint, the special education teacher placed the Student's list of IEP accommodations/modifications in each of the Student's teachers' mailboxes sometime in September 2016.
14. On November 16, 2016, the Student's special education teacher, the Student's advisor, the Student's general education math teacher, the Parent, and the Student met during the high school's conference week. In her complaint, the Parent stated that she raised concerns at the meeting that the Student was not receiving her accommodations/modifications for reading skills in her social studies class. The District's response stated that the special education teacher then reminded the Student to "advocate for herself when she needed help," and contacted the Student's teachers to remind them that the Student had an IEP that included accommodations.
15. The District was on break from December 19, 2016 through January 2, 2017.
16. On January 19, 2017, the Parent filed this citizen complaint.
17. On January 30, 2017, the District executive director of special education emailed the Student's special education teacher, the current school psychologist, and copied the

¹ In the District's response to this complaint, the District provided two conflicting dates for when the special services teacher placed the note into the school psychologist's mailbox, September 15, 2016 and September 16, 2016.

high school principal. The executive director stated that the Parent had requested an evaluation of the Student on September 15, 2016, at an IEP meeting. The executive director stated that there had been three school psychologists since the beginning of the 2016-2017 school year; the school psychologist from September 7 – 23; the executive director who was filling in as the school psychologist from September 24 – October 31; and the current school psychologist who began on November 1. The executive director further stated that during the time she served as school psychologist, she did not discover any documentation, or receive any notification of the Parent's request for an evaluation. The executive director also stated that regardless of when the Parent requested the evaluation, the District needed "to initiate a reevaluation as soon as possible to determine whether [Student] requires additional services". The executive director then requested that the current school psychologist contact the Parent and set up a meeting within the week to begin the evaluation process.

18. On February 1, 2017, the District telephoned the Parent to request consent to evaluate the Student. In response, the Parent gave the District verbal permission to complete the evaluation. The District drafted a "notice of meeting" to memorialize the telephone conversation with the Parent regarding her consent to conduct an evaluation of the Student. The District's documentation in this complaint included a "reevaluation notification and consent form" that is not dated or signed.

19. According to the District's response to this complaint, the special education teacher placed the list of the Student's IEP accommodations/modifications in her teachers' mailboxes sometime in February 2017.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged that the District failed to provide the Student with testing accommodations/modifications during state testing and classroom accommodations/modifications during classroom instruction, specifically in her social studies class. The District admitted that it failed to provide the Student with accommodations consistent with her IEPs in place during the 2016-2017 school year. While the District acknowledged that it provided some of the testing and classroom accommodations/modifications as stated in the Student's IEP, it could not provide evidence to support that it provided all of the Student's accommodations/modifications. The District failed to substantiate that it provided the Student with accommodations/modifications.

Issue 2: Evaluation Procedures – The Parent alleged that the District failed to respond to her request for an evaluation of the Student. The District admitted that it failed to follow procedures for evaluating the Student for math services during the 2016-2017 school year, acknowledging that the Parent requested an evaluation of the Student on September 15, 2016, and the District did not respond to the request until February 1, 2017, after the Parent filed this complaint. However, even after the District agreed to evaluate the Student in February 2017, the District did not document the Parent's request for an evaluation in a prior written notice. Additionally, while it appears

that the District provided the Parent prior written notice, stating its intent to conduct the evaluation, the District did not obtain the Parent's written consent. The District will immediately take steps to obtain the Parent's written consent.

CORRECTIVE ACTIONS

By or before **April 5, 2017**, **May 3, 2017**, and **June 9, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. OSPI accepts the District's proposed corrective action to meet with the Student's IEP team, including the District assessment coordinator, the Student's general education teachers, the Parent, and the Student, to review the Student's accommodations/modifications as provided in her IEP. If needed, the IEP team will amend the Student's IEP to address any additional accommodations/modifications the Student requires. By **April 5, 2017**, the District will submit: 1) a copy of any meeting invitations; 2) sign-in sheet from the meeting; 3) a copy of an amended IEP, if applicable; 4) a copy of any related prior written notices; and, 5) a copy of any other related documentation.
2. OSPI accepts the District's proposed corrective action to evaluate the Student to determine eligibility for math services. By **April 5, 2017**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of the Parent's signed consent form; 3) a copy of the evaluation report; 4) a copy of the Student's new IEP, if applicable; 5) a copy of any related prior written notices; and, 6) a copy of any other related documentation.

DISTRICT SPECIFIC:

OSPI accepts the District's proposed corrective action to provide staff training with the following modifications:

The District will ensure that all high school certificated staff, including educational staff associates (ESAs), and high school administrators receive training regarding procedures for responding to parent requests, including referral requests, evaluation/reevaluation procedures, and IEP implementation with a focus on providing accommodations and modifications. The trainer will not be an employee of the District. The training will also include examples.

- By **April 5, 2017**, the District will notify OSPI of the name of the outside 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 **May 3, 2017**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by May 12, 2017 and additional dates for review, if needed.
- By **June 9, 2017**, the District will submit documentation that staff participated in the training. This will include a 1) sign-in sheet from the training and 2) roster of

all high school certificated staff and high school administrators 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 March, 2017

Douglas H. Gill, Ed. D.
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.)