

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-03**

### **PROCEDURAL HISTORY**

On January 23, 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 Clover Park 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 23, 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 14, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on February 15, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On February 27, 2017, OSPI requested additional information from the District. On March 1, 2017, OSPI received additional information from the District and forwarded it to the Parent on the same day.

On February 27, 2017, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

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 elementary school and was eligible to receive special education services under the category of developmental delay. The Student's individualized education program (IEP) in place at the beginning of the school year provided for specially designed instruction in the areas of cognitive development and fine motor skills. On October 5, 2016, the Parent signed consent for the District to conduct a reevaluation of the Student due to concerns about the Student's behavior. On November 7, 2016, the Parent signed consent for the District to conduct a functional behavior assessment (FBA) of the Student. On November 17, 2016, the Student's evaluation group met, and determined that the Student qualified for additional services in the areas of behavior and social skills. The District then tried to schedule a meeting to complete the Student's FBA, and update the Student's IEP, but the Parent did not want to address the FBA and IEP in the same meeting. The Parent and the District then agreed to hold the FBA meeting on December 6, 2016, and the District provided the Parent with dates to hold the IEP meeting later in December 2016. However, the Parent could not attend an IEP meeting until January 2017. The District then opted to proceed with a December IEP meeting without the Parent present, and agreed to reconvene the IEP team with the Parent on January 10, 2017, to review the December 2016 IEP. On January 10, 2017, the IEP

team, including the Parent, met and revised the Student's IEP. The Parent alleged that by not allowing her to participate in the IEP/BIP meeting in December 2016, the District failed to follow procedures for scheduling IEP meetings for the 2016-2017 school year. The District acknowledged that it held a meeting without the Parent, but disagreed that it did so inappropriately.

## **ISSUE**

1. Did the District follow procedures for scheduling individualized education program (IEP) team meetings during the 2016-2017 school year?

## **LEGAL STANDARDS**

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop the IEP and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. To the extent possible, school districts must encourage the consolidation of reevaluation meetings and other IEP team meetings for the student. WAC 392-172A-03110. A student's parents and school personnel will develop, review, and revise an IEP for the student. Parents must be given the opportunity to participate in IEP and other meetings where a Student's identification, evaluation, educational placement, and the provision of FAPE are discussed. WAC 392-172A-05000; 64 Fed. Reg. 48 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). IEP meetings do not include informal or unscheduled conversations between school district staff or discussions about issues such as teaching methodology, lesson plans, or the coordination of services. A meeting also does not include preparatory activities that school district staff engage in to develop a proposal or respond to a parent's proposal that will be discussed at a meeting in the future. WAC 392-127A-05000.

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: either notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. Additionally, the notification must indicate the purpose, time, and location of the meeting and who will be in attendance. WAC 392-172A-03100; 34 CFR §300.322; 20 U.S.C. 1414. 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. WAC 392-172A-03100; 34 CFR §§300.322. Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include

parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, “the public agency is unable to convince the parents they should attend.” When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, i.e., parental participation and timely annual review of the IEP...the Supreme Court and the 9<sup>th</sup> Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

### FINDINGS OF FACT

1. During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of developmental delay.
2. The District’s 2016-2017 school year began on August 31, 2016.
3. The Student’s initial evaluation was completed on November 12, 2014.
4. The Student’s individualized education program (IEP) in place at the beginning of the 2016-2017 school year was developed on November 30, 2015, when the Student was in a District kindergarten program. The IEP provided for services in the areas of cognitive development and fine motor.
5. On October 5, 2016, the Parent signed consent for the Student to be reevaluated, due to the IEP team’s concerns that the Student potentially required additional services due to behavioral issues. The consent form stated that the reevaluation would include assessments in the areas of social/emotional/behavior, academics, cognitive, and fine motor.
6. On October 14 – November 7, 2016, the District autism and behavior intervention specialist and the District behavior intervention specialist observed the Student, and conducted “trial intervention assessment probes”.
7. On October 27, 2016, the District school psychologist emailed the Student’s IEP team, including the Parent, stating that he had spoken with the Parent and she could not attend an 8 am meeting on November 1, 2016,<sup>1</sup> to review the results of the Student’s reevaluation. The District school psychologist then offered to hold the evaluation meeting on November 1, 3, or 10<sup>th</sup> at various times during the morning and afternoon.
8. On October 31, 2016, the District school psychologist emailed the Student’s IEP team, including the Parent, proposing to hold the evaluation meeting on November 10, 2016. The Parent responded that she would see if she could be excused from

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<sup>1</sup> The October 27, 2016 email does not indicate if this meeting was scheduled or just a suggested time.

work on November 10. The Parent also asked if a copy of the evaluation report would be available for her by November 8. The District school psychologist responded, stating he would send the draft report home with the Student on November 8.

9. On November 3, 2016, the Parent emailed the IEP team, stating she was unable to attend the November 10, 2016 meeting or any meetings at 8 am, but was available for a 10 am meeting either November 15 or 16, 2016. The District school psychologist responded, stating he could attend either date, but the occupational therapist and the special and general education teachers may not be able to attend.
10. On November 4, 2016, the District school psychologist emailed the Parent, stating he confirmed the evaluation group's availability for November 17, 2016, and asked if the Parent could attend that day. He also attached a consent form for a functional behavior assessment (FBA). The Parent responded, stating she could attend the November 17, 2016 meeting.
11. On November 7, 2016, the Parent emailed her signed consent for the District to conduct an FBA of the Student to the District school psychologist.
12. On November 17, 2016, the Student's evaluation group, including the Parent, met to review the results of the Student's reevaluation. The evaluation group determined the Student remained eligible for special education under the category of developmentally delayed. The group determined the Student no longer qualified for cognitive services, but did qualify for services in the areas of social skills and behavior. The Student also continued to qualify for services in the area of fine motor.
13. Also on November 17, 2016, the District school psychologist emailed the Parent and attached a prior written notice, proposing to continue the Student's eligibility category, and change his services to reflect the evaluation group's findings.<sup>2</sup> The school psychologist asked that the Parent advise him of her schedule for the week of November 28, 2016. Based on the documentation in this complaint, the District planned to schedule a meeting to review the Student's FBA and develop a new IEP for the Student based on the results of his reevaluation.
14. On November 22, 2016, the Parent emailed her advocate, the District school psychologist, and the District special education supervisor, stating that due to a busy work schedule, she would not be available to meet during the week of November 28, 2016. The Parent suggested meeting on December 6, 2016, and stated she was only planning to discuss the Student's FBA at the upcoming meeting, and that the District would need to find another time for the meeting to develop the Student's IEP. The District school psychologist responded that he would get back to the Parent about a meeting date when the rest of the team got back to him.

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<sup>2</sup> The prior written notice also stated the Parent requested that it be noted that all behavioral data was not present in the draft copy of the [re]evaluation.

15. The District was on break November 24 and 25, 2016.
16. On November 27, 2016, the District school psychologist emailed the Parent to confirm that the IEP team would meet on December 6, 2016 to review the Student's FBA.
17. On November 28, 2016, the Student's special education teacher emailed the Parent, proposing to hold the Student's IEP meeting on December 12, 13, or 15, offering various times on each of those days. The teacher also stated that since the FBA meeting would occur on December 6, 2016, and District staff would need the rest of that week to finish drafting the Student's IEP and BIP, this left the IEP team only the week of December 12, 2016 to meet before the District's winter break. The Parent responded the next day, stating that due to her work schedule, she was not available the week of December 12, 2016. The Parent asked what meeting dates were available in January 2017.
18. On November 29, 2016, the Parent responded to the District school psychologist's November 27 email. The Parent asked if the school psychologist was the person she should ask about the FBA meeting, as the Parent wanted to receive a draft of the FBA prior to the December 6 meeting.
19. On December 1, 2016, the Student's special education teacher emailed the Parent, and copied the District special education supervisor and the elementary school principal. The teacher stated the Student's evaluation group determined on November 17, 2016, that the Student needed to receive additional services, which the District needed to begin providing ASAP, and therefore, the District must hold the Student's IEP meeting before the District's winter break. The teacher then offered several options to allow the Parent to participate in a meeting prior to the District's winter break, including: Skype, phone, or a 4 pm meeting on December 12, 13, or 15. The teacher proposed holding the IEP meeting on December 13, 2016, and stated that if the Parent was unable to attend the meeting, then the District would plan to reconvene the IEP team the first week of January 2017, including the Parent, and amend the IEP if any changes were needed.
20. On December 4, 2016, the Parent emailed the Student's special education teacher again, asking to schedule the IEP meeting in January 2017. The Parent stated it was important she fully participate in the process, and she would not be able to attend a meeting on the dates proposed by the teacher. The Parent also stated she did not give her permission for the IEP team to meet without her, and she was putting January 10, 2017 at 11 am on her calendar for the IEP meeting. The Parent stated that if her availability changed during the week of December 12, she would let the teacher know.

21. On December 5, 2016, the District supervisor of special education notified the District members of the Student's IEP team that the Student's IEP was currently out of compliance because the annual review date had passed on November 29, 2016.<sup>3</sup>
22. Also on December 5, 2016, the Student's special education teacher emailed the Parent, stating that while she understood the Parent was not available to meet, the addition of services from the Student's reevaluation made it imperative that the IEP team draft a new IEP as soon as possible. Therefore, the District would need to proceed with the IEP meeting on December 13. The teacher stated she had tried to schedule the meeting to accommodate the Parent's requests for date/time, had offered alternative meeting methods, and that she would email the Parent a draft copy of the IEP by the end of the day on December 9. The teacher also stated the IEP team, including the Parent, would meet on January 10, 2017, as the Parent requested, where the team could either write a new IEP, or amend the current one. The Parent responded to the special education teacher and copied the District superintendent and the District autism and behavioral intervention specialist, stating if the team held the meeting without her, she would check into her legal rights, as she had found out that her participation in development of the IEP was a "key component of the IDEA."
23. On December 6, 2016, the Student's IEP team, including the Parent, met to review the Student's FBA and determined that he needed a behavioral intervention plan (BIP).<sup>4</sup> The District then sent the Parent a prior written notice, proposing to initiate an FBA.
24. Also on December 6, 2016, the District sent the Parent a second prior written notice, stating that the IEP team met to review the FBA on December 6, and after reviewing the FBA data, the IEP team proposed to hold a meeting to develop the Student's IEP and BIP. The notice stated that, "due to the need for additional services, the IEP team was cognizant of the urgency for holding the IEP and BIP." The notice also stated:
- The IEP team offered to hold the FBA, IEP, and BIP meeting together at the reevaluation meeting on 11/17/2016. The parents declined that offer. The team decided to meet for the FBA only on 12/06/2016. At that meeting, the urgency of the need for a new IEP and BIP was discussed. The IEP team offered multiple dates, times, and methods of participation (including phone conference, Skype, after-hours meeting, written communication about draft), before winter break.
25. On December 8, 2016, the District sent the Parent a meeting invitation for a December 13, 2016 meeting to discuss the Student's BIP.
26. On December 13, 2016, the Student's IEP team met to develop the Student's IEP and BIP. The Parent did not attend the meeting. The Student's December 13, 2016

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<sup>3</sup> The annual review deadline for the student's 2015-2016 IEP was November 30, 2016.

<sup>4</sup> The Parent wrote, "attendance only," next to her signature on the FBA participants sign-in.

IEP included services in the areas of social skills, behavior, and fine motor, and stated the IEP and BIP would be implemented on January 3, 2017.

27. Also on December 13, 2016, the Parent emailed the District special education teacher, asking for a copy of the IEP that had been developed for the Student that day.
28. On December 14, 2016, the District sent the Parent prior written notice, proposing to change the Student's IEP and initiate a BIP. The notice stated, "the IEP team met to propose a draft based on the re-evaluation dated 11/17/2016, and the FBA dated 12/06/2016. Due to the need for additional services, a draft IEP that includes the additional services of social/emotional and behavior was proposed by the IEP team." The notice also stated that the IEP team proposed to meet again with the Parent on January 10, 2017 to review the "draft IEP".
29. On December 16, 2016, the special education teacher emailed the Parent, stating that she had attached a "draft IEP" and a "draft BIP". The teacher stated the start date for the IEP was January 3, 2017. The teacher also stated that the District was scheduled to meet with the Parent on January 10, as the Parent had requested, and that the IEP team would review the "drafts" in more detail at that time.
30. Also on December 16, 2016, the District sent the Parent a meeting invitation for a January 23, 2017 meeting to "review/revise proposed BIP" from the December 13, 2016 meeting.
31. The District was on break December 19, 2016 through January 2, 2017.
32. On January 10, 2017, the IEP team, including the Parent, met to review the Student's December 13, 2016 IEP. The IEP team agreed to amend the December 2016 IEP.
33. On January 23, 2017, the IEP team, including the Parent, met to review the Student's BIP. The IEP team agreed to amend the December 2016 BIP to reflect updated behavior data from November 2016 to January 2017.

## **CONCLUSIONS**

The Parent alleged that by holding the December 13, 2016 IEP meeting without her, the District violated her right to participate in developing the Student's IEP. IEP meetings must be held periodically, but not less than annually to develop a student's IEP. Here, the Student's IEP in place at the beginning of the school year was developed on November 30, 2015. Therefore, the annual review was due November 30, 2016. However, the District did not hold the annual review by that date, but instead completed an IEP without the Parent's participation on December 13, 2016, and did not initiate services consistent with that IEP until January 3, 2017.

Based on the documentation in this complaint, it appears the District's failure to develop the Student's IEP by the annual review date was caused, at least in part, by its failure to

include a functional behavior assessment (FBA) as part of the Student's October/November 2016 reevaluation. A reevaluation must be comprehensive and address all areas of suspected disability. Given that the purpose of the Student's reevaluation was to address his potential need for behavior services, the District should have included a *functional behavior assessment* (emphasis added) as part of the reevaluation, instead of waiting another four weeks to obtain the Parent's consent for the FBA. Had the District completed the FBA as part of the Student's reevaluation, this would have allowed the District enough time to develop the Student's IEP and BIP by November 30, 2016. But the District did not do so. Instead, the District completed the Student's reevaluation on November 17, determining the Student needed additional areas of service, but apparently could not move forward with the development of the Student's annual IEP until the FBA was completed at a later meeting with the Parent. While the District then attempted to hold one combined meeting to complete the FBA and develop an IEP for the Student, the Parent was not in agreement with holding one multi-purpose meeting.

The District then held an IEP meeting on December 13, 2016, without the Parent's participation, to develop the Student's annual IEP. The IDEA provides that a district must ensure parents an opportunity to participate in meetings to develop a student's IEP. A meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." Here, the Parent did not affirmatively refuse to attend a meeting to develop the Student's annual IEP, nor can it be said the District was unable to convince the Parent to attend. On the contrary, the Parent strongly objected to the District holding the December 13 IEP meeting without her, asking instead for the District to reschedule the meeting in January 2017, when she was available to attend. In response, the District did not provide any possible meeting dates in January 2017, but insisted that the Student's IEP be developed prior to the District's break, which began on December 19, 2016. The District stated that the push to hold the IEP meeting prior to winter break was due to the urgency of the Student's need for additional services as determined by his November 17 reevaluation. However, given the delay in implementing the services until January 3, 2017, the District's argument that it could not wait until the first week of January 2017 to hold an IEP meeting with the Parent is moot. Therefore, OSPI finds the District failed to follow procedures for scheduling IEP team meetings during the 2016-17 school year.

### **CORRECTIVE ACTIONS**

On **April 14, 2017** and **May 25, 2017**, the District will provide documentation to OSPI that the following corrective action has been completed.

#### **STUDENT SPECIFIC:**

None

#### **DISTRICT SPECIFIC:**

The District will develop written guidance to be provided to all certificated special education staff, including educational staff associates (whether they are contracted to provide services or are employees of the District), and administrators that addresses:



- When IEPs must be reviewed
- Procedures for ensuring parent participation during IEP meetings

The guidance will include examples that assist in illustrating the requirements contained in the guidance. It will also include information on who to contact if there are questions about the guidance. The District will provide OSPI a draft of the written guidance by **April 14, 2017**. OSPI will provide comments and will provide additional dates for revision, if needed. By **May 25, 2017**, the District will provide OSPI with documentation that the required staff received the written guidance. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

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.)