

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-38

PROCEDURAL HISTORY

On May 17, 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 [REDACTED] 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 May 17, 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 June 8, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on June 9, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 19, 2017, OSPI received the Parent's reply and forwarded that reply to the District on June 20, 2017.

Also on July 12, 2017, OSPI requested clarifying information from the District and spoke to the District special services assistant.

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 services under the category of autism. In April 2017, a substitute teacher took over the Student's general education math class, but was not provided a copy of the Student's individualized education program (IEP) for several weeks. While the substitute teacher was present, she taught two lessons on cultural diversity during the math class. As a result, the Parent expressed concern about the lessons. Also in the spring of 2017, the Student did not have access to the computer he regularly used to access his online foreign language class. The Parent alleged that the District failed to implement the Student's IEP in place during the 2016-2017 school year. The District admitted that the Student's IEP was not provided to the substitute teacher for several weeks, and proposed developing guidance for staff to address the violation. The District denied that the Student did not have access to a computer for his online class.

ISSUE

1. Did the District implement the Student's individualized education program (IEP) in place during the 2016-2017 school year?

LEGAL STANDARDS

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. 34 CFR § 300.323; WAC 392-172A-03105. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. 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.

FINDINGS OF FACT

1. During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education services under the category of autism.
2. The Student's individualized education program (IEP) in place for the 2016-2017 school year was developed in June 2016. The IEP team then met on September 6, 2016, to review the IEP, and according to the District's September 6, 2016 prior written notice made "minor adjustments to the IEP wording." The June 2016 IEP included annual goals in the areas of communication, social skills, and post-secondary transition. The IEP provided for the following specially designed instruction:
 - Social skills – 15 minutes per week (general education)
 - Communication – 30 minutes 2 times monthly (special education)

The Student's IEP also provided for the following accommodations/modifications:

- Written work may be completed on a computer and emailed to teacher or printed and turned in
- Use of note taking template on the computer; note taking on the computer, as needed
- Designated cool/down safe area
- No P.E. or music. Weight lifting may be used for these credits
- Prior notice for fire drill, etc.
- Alternative, but comparable assignment
- Extra time if continued effort shown
- Verbal prompt to turn homework into the teacher
- Turn in assignments electronically
- Provide a copy of the notes/study guides
- Physical education credit maybe earned by the Student's participation in a sport. Student may also earn physical education credit through weight training.
- Teachers will keep a data log regarding the Student's progress in three areas including: communication-pragmatic language, manage anger and frustration, and abide by classroom expectations.

- Own seating space
 - Student will be eligible to participate in athletics and other extracurricular activities if he is making progress toward meeting IEP goals.
 - Core teachers email assignments for the week and those not yet turned into the resource teacher, who will email twice per week to parents. Monday and Thursday will be the email day or parents will be notified of change in the email date.
 - If student is unable to participate in an activity scheduled during regular school hours, an alternative activity will be provided to the student.
 - Testing – extended time, word processor/scribe, alternative site
3. The District's 2016-2017 school year began on September 7, 2016.
 4. The Student's class schedule for the first semester of the school year was as follows:
 - Period 1 – English
 - Period 2 – American Sign Language (ASL) (online course)¹
 - Period 3 – Biology
 - Period 4 – Geography
 - Period 5 – Weight Lifting
 - Period 6 – Geometry
 - Period 7 – Desktop Publishing (includes yearbook)
 5. During the second week of the school year, September 12-16, 2016, there were communication issues regarding how information about the Student's upcoming assignments and his progress would be provided to the Parent. To address the issue, the Student's special education teacher (IEP case manager) developed a "weekly assignment sheet" for the Student's teachers to fill out regarding the Student's upcoming assignments.
 6. On September 16, 2016, the case manager emailed the Student's teachers, explaining that a paraeducator would bring around the assignment sheet on Monday mornings for the teachers to complete. The case manager also asked that staff inform him whether the Student was completing all of his assigned work. The case manager planned to email the teachers on Wednesday afternoons to collect the progress information and then share it with the Parent on Thursdays.
 7. According to the District's response to this complaint, the District has adopted an online gradebook system, which allows staff, parents, and students to access a teacher's grade book to check a student's grades and review completed or missing assignments. The Parent and Student have access to the online gradebook system. The District's documentation also shows that on some Saturdays, the Parent received an auto-generated email from the District, stating the Student's grades.

¹ According to the District's response to this complaint, the Student's online ASL class is supervised by a general education social studies teacher and the school counselor. The school counselor is responsible for monitoring the Student's progress in the course.

8. On September 17, 2016, the Parent received an auto-generated email showing the Student was receiving an “F” grade in his desktop publishing class. In response, the Parent emailed the Student’s case manager, the District special education director, the high school principal, and the assistant principal, asking why the Student had an “F” in the publishing class, as she had not been notified of any homework in the class. In response, the special education director indicated that the principal and assistant principal would be able to address the Parent’s question, and also stated that some teachers did not record all assignments immediately, but did so when they had time. As a result, until the teachers were able to enter the graded assignments, the grading system would sometimes show a different grade than it would when assignments were recorded. On September 20, 2016, the Student’s publishing teacher clarified that the online grade system mistakenly showed the Student had a missing assignment and confirmed the Student did not have an “F” grade, but instead had an “A-“.
9. On September 20, 2016, the Student’s IEP case manager emailed the Student’s teachers and other staff members, stating that he had placed a copy of a “data tracking matrix” in the teachers’ mailboxes. The case manager stated that the matrix was designed to be as user friendly as possible and asked that the teachers indicate on the matrix when they saw the Student completing a described action. The case manager stated that he would collect the matrix at the end of each week. The District’s documentation in this complaint shows that the “data tracking matrix”, was used to track the Student’s progress toward his IEP social skills goals. The District’s documentation also shows that the Student’s teachers regularly completed the data tracking matrix from September 2016 through May 2017.
10. The District’s documentation in this complaint shows that the school staff provided the Parent with weekly assignment sheets and weekly progress updates from September 19, 2016 through May 19, 2017. No assignment sheet or progress update was provided during the week of February 13, 2017, when the Student was absent.
11. On October 28, 2016, the Student’s general education geometry teacher (geometry teacher 1) resigned due to a family member’s health issues. On October 31, 2016, a new teacher (geometry teacher 2) began teaching the Student’s class.
12. On November 9, 2016, the Student’s IEP team, including the Parent, met to review the Student’s IEP and his current educational program. The IEP team agreed to amend the Student’s IEP. The amended IEP stated:

When the Student is interested in a topic he produces research with great depth and he cannot be held back. He will share with other students those things he clearly understands. He is the first to finish his geometry. Once he gets into something, he is diligent. He has built strength in communicating and has become more friendly and social. He knows a lot about a multitude of subjects. He is able to be redirected and receptive to redirection. He know the deadlines for assignments and what to do on an assignment and has become more cooperative when he needs to be redirected. Has taken a leadership role with other students in biology class.

The amended IEP also stated that although the speech language pathologist (SLP) “indicated [the Student’s] mastery in a therapy context, several basic conversation skills, there is continued monitoring and data gathering from classroom teachers on these goals. There is noted improvement in the Student’s integration with his peers and his willingness to assist others in areas he is comfortable.” Additionally, the amended IEP included a new social skills goal aimed at improving his relationships with others and also included the following new accommodations/modifications:

- Clearly inform the Student as to the expectation for mastery or above on each assignment
- Cueing: Keep voice firm, calm, quiet, and consistent
- Redirection words: Take a 15 minute break; Hey Student, I see you are taking a break- When do you think you can get back to this?; Do the task/chore/job now, or do it in 15 minutes.
- Teachers seek workable verbal cuing and/or words, phrases, strategies that help redirection
- When the Student turns in an assignment on which he has earned a “C” or lower, the assignment is returned to him with the option of improving the grade. Provide assignments requiring research
- Assign projects incorporating all of the disciplines
- Assign projects incorporating his area of interest: biology and politics
- Have the Student develop questions and answers based on what he has learned for other students
- Develop PowerPoint presentation for other students and/or staff

13. The District was on break December 21, 2016 through January 3, 2017.

14. Based on the documentation in this complaint, the District’s first semester ended on approximately January 27, 2017. The Student’s grades for the first semester were as follows:

- English – “B-“
- American Sign Language (ASL) – “C+”
- Biology – “A-“
- Geography – “A-“
- Weight Lifting – “A-“
- Geometry – “B-“
- Desktop Publishing (includes yearbook) – “B+”

15. On approximately January 30, 2017, the District’s second semester began. The Student’s schedule at the beginning of the second semester was as follows:

- Period 1 – English
- Period 2 – American Sign Language (ASL) (online course)
- Period 3 – Biology
- Period 4 – Teacher’s Aide
- Period 5 – Weight Lifting
- Period 6 – Geometry
- Period 7 – Desktop Publishing (includes yearbook)

16. In February 2017, the District conducted the Student's triennial reevaluation. On March 1, 2017, the Student's evaluation group met and determined the Student continued to be eligible for special education services. The evaluation report recommended the Student no longer receive specially designed instruction in the area of communication, but continue to receive instruction in the area of social skills. The report also recommended that the Student receive services in the area of organizational skills. Based on the District's March 2, 2017 prior written notice, at the meeting, the group discussed if the Student continued to need special education services, or if he could be served through a section 504 plan to receive his accommodations. The group determined that the Student required more services than could be provided by a section 504 plan.

17. On March 31, 2017, the Student's IEP team, including the Parent, met to develop a new IEP for the Student based on the March 1, 2017 evaluation report. The March IEP stated that the Student's current grades were: English – "C", Biology – "C+", Weight Lifting – "A-", Geometry – "B+", and Desktop Publishing – "B-". No grade was given for the Student's ASL class or teacher's aide class. The IEP included annual goals in the areas of social skills, organizational skills, and post-secondary transition. The IEP provided for the following specially designed instruction in a general education setting:

- Social skills – 15 minutes weekly
- Organizational skills – 15 minutes weekly (concurrently)

The Student's IEP also provided for the following accommodations/modifications:

- Teacher will work with the Student to determine a comfortable place in the classroom as a seating space.
- Use the high school resource room or office, before an incident occurs, he may self-time out in a designated safe area. A teacher can request a time out.
- Alternative test area
- Alternative, but comparable, assignment
- Clearly inform the Student as to the expectation for mastery or above on each assignment.
- Cueing: Keep voice firm, calm, quiet and consistent
- Extra time for assignment completion if continued effort shown
- Prior notice for fire drill. This accommodation will be phased out throughout the year. General education teachers will be informed of fire drills so that they can tell the Student.
- Use of note taking template, complete written work on computer and email it to teacher; turn in assignments electronically, give a verbal prompt to turn in work. Use verbal cueing to help in redirection. Use common language: "I see you taking a break. Please get back to work in five minutes."
- When the Student turns in an assignment on which he has earned a "C" or lower, the assignment is returned to him with the option of improving the grade.
- Physical education credit maybe earned by the Student's participation in a sport. Student may also earn physical education credit through weight training.
- Student will be eligible to participate in athletics and other extracurricular activities if he is making progress toward meeting IEP goals.

- Core teachers email assignments for the week and those not yet turned into the resource teacher, who will be emailed twice per week to parents. Monday and Thursday will be the email day or parents will be notified of change in the email date.
- If student is unable to participate in an activity scheduled during regular school hours, an alternative activity will be provided to the student.

18. The District was on spring break April 3-7, 2017.

19. During spring break, geometry teacher 2 had a medical emergency and was unable to return to work. A substitute teacher (geometry teacher 3) then began teaching the Student's class on approximately April 10, 2017. At that time, District staff assumed that geometry teacher 3 had access to the information regarding the Student's IEP, which geometry teacher 2 had previously been given. However, the information was not available to geometry teacher 3 until May 15, 2017.

20. On April 18, 2017, the Parent emailed the assistant principal stating that it looked like the Student would finish his ASL course early, as he only had about eight more lessons to complete.

21. On April 19, 2017, the Student's IEP case manager emailed the Parent stating that he had heard the Student was doing "great" in his online ASL course and was expected to complete the course early. The case manager stated that the school counselor was out that week, but when she returned they could discuss the next course the Student could take. The next day, the Parent responded stating that the Student had finished his ASL course, and that the Student was interested in taking an online Japanese course. The Parent provided website links to three possible online courses, and asked if they were an option for the Student. Two of the links were for courses offered through a university.

22. On April 21, 2017, the assistant principal emailed the Parent, stating that the school counselor could arrange for an online Japanese course starting on April 27, 2017, and that the school counselor was in the process of reviewing the website links the Parent had provided. The assistant principal stated that she would send the Parent and the Student a website link to the course the counselor selected. Later that day, the assistant principal emailed the Parent a second time, stating that the District was proposing that the Student take the online course through one of two universities, as the universities awarded credit for the Japanese course. The assistant principal and the Parent then exchanged additional emails agreeing on one of the university courses, and also agreed the Student would complete some of the course work over the summer because the Japanese course could not be completed before the District's school year ended in June 2017.

23. On April 26, 2017, the Student was enrolled in the university online Japanese course.

24. In the Parent's complaint, she expressed concern that Fridays in the Student's geometry class were used to discuss cultural diversity. According to the District's response to this complaint, due to concerns about students making racist and

homophobic remarks during the geometry class, geometry teacher 3 asked the high school assistant principal for permission to have a discussion about cultural diversity on Cinco De Mayo (May 5, 2017). The assistant principal agreed the discussion about culture would be appropriate given the Washington state standards, which require school districts to include lessons on diversity as part of their curriculum. On May 5, geometry teacher 3 held the cultural diversity discussion with the Student's geometry class. Afterward, several students requested to have additional cultural diversity discussions, and in response, geometry teacher 3 planned to hold five additional discussions.

25. On Friday, May 12, 2017, geometry teacher 3 held a cultural diversity discussion in the Student's geometry class.
26. On Saturday, May 13, 2017, the District sent the Parent an auto-generated email, stating the Student's grades, which included an "F" grade in geometry. In response, the Parent emailed the District superintendent, the special education director, school principal, assistant principal, and the Student's IEP case manager. The Parent asked what the plan was "regarding the geometry grade since you haven't successfully had a steady teacher" in the geometry class. The Parent stated that an "F" was "unacceptable" and that the District should be proactively letting her know what would be done. The Parent said that she immediately expected to know what the Student needed to do, and that the Student's grade was a direct reflection of the District's lack of ability to keep a teacher. In response, the superintendent asked that the school principal respond to the Parent.
27. On May 15, 2017, geometry teacher 3 emailed the Student's IEP case manager, stating that at the beginning of the high school's fourth quarter the Student was doing "really well" and turning in his work. The teacher also stated that the Student had some absences a couple weeks prior, which she thought placed him behind in a key lesson.² Since that time, the Student had not turned in his work. Geometry teacher 3 stated that she had offered to meet with the Student outside of class, but he had declined, and that she was now concerned about the Student and did not want him to give up. Geometry teacher 3 stated the Student had done a great job during class discussions, but that his grade was closely connected to completing homework. The teacher asked how she should respond.
28. Later on May 15, 2017, geometry teacher 3 called and spoke with the Parent about the Student's grade and how to help better facilitate the Student's success in the geometry class. During the discussion, the Parent informed geometry teacher 3 that the Student had an IEP. The teacher was not previously aware that the Student had an IEP.³ Geometry teacher 3 then agreed to provide daily emails, that would include assignments, and to cut back on having cultural diversity discussions on Fridays. The teacher planned to continue to offer a 20-minute cultural diversity

² The Student's attendance record shows he was absent on April 13, 19, and 21, 2017.

³ The District's response to this complaint included a statement from geometry teacher 3 indicating that the Parent informed her of the Student's IEP.

lesson, as social development was part of the Student's IEP, and planned to adjust classroom instruction and expectations based on the IEP. After the phone call, geometry teacher 3 received a copy of the Student's IEP from the Student's case manager, and then emailed the case manager and the school principal recapping her conversation with the Parent. Geometry teacher 3 also emailed the Parent and attached copies of the Student's missing assignments.

29. On May 16, 2017, geometry teacher 3 emailed the Parent and provided a copy of the in-class assignment for that day, and corresponding lesson.
30. During the week of May 15-19, 2017, students at the District high school participated in state testing, which required the use of a computer. Due to this, the computers in the room the Student normally used to work on assignments for his online foreign language course were in use and not available for the Student. Based on log-in records for the Student's online Japanese course, the Student did not log into the course on May 15, 2017.
31. On May 17, 2017, the Student did not have access to the school computer he normally used for his Japanese course. As a result, at approximately 8:45 am, the Student went to his IEP case manager's classroom and asked a paraeducator to use a laptop computer. The Student then took a laptop off of a stack of computers and left the room. The Student then returned to the classroom and stated that the laptop was not charged. The Student did not take another laptop from the stack of computers, but instead left the room.⁴ A short time later, the Student posted on a social media website that he did not have access to a computer to work on his Japanese course work. The Parent then saw the Student's post.
32. At 10:47 a.m., the Parent emailed the school counselor and included a quotation of the Student's social media post. The Parent stated that this was "unacceptable". At 10:52 a.m., the school counselor responded that she had a laptop and a desktop computer in her office that Student could use, and that she wished she had know he needed one. At 10:54 a.m., the Parent replied asking that someone let the Student know.
33. At 11:50 a.m., the Parent emailed the District superintendent, special education director, the high school principal, assistant principal, IEP case manager, and the school counselor and again stated that what happened that day was "unacceptable". The Parent also stated that what was "more unacceptable" was that she could not get a hold of "anyone in charge". The Parent stated that she filing a special education citizen complaint and attached a copy of the complaint. The Parent then sent another email at 1:29 pm expressing concern that she had found out via social media that the Student did not have access to the tools he needed to work on his Japanese course.
34. Also on May 17, 2017, OSPI received the Parent's citizen complaint.

⁴ This information is taken from an email sent by the paraeducator on May 17, 2017.

35. According to the District's response to the complaint, after the Parent filed the complaint, geometry teacher 3 did not hold any additional cultural diversity discussions in the Student's geometry class.
36. On May 18, 2017, geometry teacher 3 emailed the Parent, stating that she had entered two assignments the Student was missing into the online grade book, which had brought the Student's grade up to a "D". The teacher also stated that she had told the Student if he redid two other assignments on which he received low grades, this would bring up his grade.
37. On May 20, 2017, the District sent the Parent an auto-generated email, stating the Student's grades, which included a "C+" grade in geometry.

CONCLUSIONS

In her complaint, the Parent alleged that the District failed to inform the Student's long-term substitute (geometry teacher 3) of his IEP. A school district must ensure that the student's IEP is accessible to each general education teacher who is responsible for its implementation. The District admits that geometry teacher 3 was not provided a copy of the Student's IEP until May 15, 2017, which was approximately five weeks after geometry teacher 3 began teaching the Student. To address the violation the District is developing procedures for sharing IEP information with staff members and has provided reminder emails to staff about accessing and implementing IEPs.

The Parent also alleged that the Student was not provided resources to complete assignments his online foreign language class. The District's documentation substantiates that the Student consistently had access to a computer to complete his online assignments for the foreign language course throughout the 2016-2017 school year, and that on May 17, 2017 specifically, the Student had access to a "stack of computers", but chose not to select another computer from the stack when the first computer he chose had a low battery. While the Student may not have had access to a computer on May 15, 2017 in order to log-on to the Japanese course, neither party has provided information about what occurred on this day.

CORRECTIVE ACTIONS

By or before **August 14, 2017** and **September 15, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

OSPI accepts the District's proposed corrective actions of developing procedures to ensure staff are informed of students' IEPs. By **August 14, 2017**, the District will provide OSPI with a copy of the procedures. By August 28, 2017, OSPI will provide comments and additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated staff, educational staff

associate (ESAs) (including school nurses), principals, and assistant principals with the procedures by **September 15, 2017**. 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 July, 2017

Glenna L. 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.)