

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-72

PROCEDURAL HISTORY

On October 13, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint filed by an attorney (Complainant) on behalf of the parent (Parent) of a student (Student) attending the Port Townsend 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 educational records. However, the complaint did not provide sufficient facts to show that a specific violation had occurred. On the same day, OSPI contacted the Complainant and left a voicemail, stating that OSPI needed additional information in order to open the complaint.

On October 17, 2017, OSPI again contacted the Complainant and stated that we could not open the complaint without additional information. In response, the Complainant provided additional information later that same day.

On October 18, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On November 8, 2017, OSPI received the District's response to the complaint and forwarded the District's letter to the Complainant on November 9, 2017. All student personally identifiable information was removed, as OSPI had not received signed consent from the Parent to release the Student's records. OSPI invited the Complainant to reply with any information he had that was inconsistent with the District's information. On November 17, 2017, OSPI received a signed release from the Parent and provided the Complainant with the complete District response on the same day. The Complainant did not reply.

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 was enrolled in the District and was eligible to receive special education and related services. In October 2016, the Parent, through her attorney (Complainant), expressed concern that the Student's educational records contained information about a 2015 incident in which the Student was involved, and asked to review the records. The incident occurred in a different school district in Washington and resulted in the Student's expulsion from that district and enrollment in the current District. The principal at the Student's school responded to the initial letter from the Complainant seven days later, and the principal indicated that he was aware that information regarding the incident could potentially impact the Student and that he was happy to host a meeting to discuss the Parent's concerns. In April 2017, the Complainant sent two letters to the principal and requested that the principal contact him to arrange a meeting to review the Student's educational records. The second letter indicated that the principal responded to the Complainant after the first letter, likely by phone, and that they

had a conversation. The date of the conversation was not specified. In May 2017, the Complainant sent two more letters that asked the principal to let him know what day and time worked to meet. During the 2017-2018 school year, the Student started at a different school in the District. In November 2017, the Complainant, Parent, and principal at the Student's current school met and reviewed the Student's complete educational records.

The Complainant, on behalf of the Parent, alleged that the District failed to follow procedures for responding to the request to review the Student's education records consistent with the requirements of WAC 392-172A-05190. The District stated that they were unable to locate any written or electronic records of a response during the investigation time period.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on October 18, 2016. 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 time period.

ISSUE

1. Did the District follow procedures for responding to the Parent's request to review the Student's educational records, consistent with the requirements of WAC 392-172A-05190?

LEGAL STANDARDS

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. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

FINDINGS OF FACT

Background Facts

1. During the 2014-2015 school year, the Student attended school in another Washington school district.

2. According to the complaint, in March 2015, the Student was involved in an incident. As a result, the Student was emergency expelled and legal charges were filed against the Student.
3. During the 2015-2016 school year, the Student was enrolled in the current District. However, based on the results of a threat assessment, the Student did not attend school, but instead was provided with a tutor pending his legal trial.
4. The complaint also stated that on February 1, 2016, the legal case against the Student was dismissed, and that the Student began attending school in the District at the end of February 2016.

2016-2017 School Year

5. During the 2016-2017 school year, the Student attended a District middle school and was eligible to receive special education and related services under the category of specific learning disability.
6. On October 10, 2016, the Parent's attorney (Complainant) sent a letter to the middle school principal (principal 1), which stated that the Parent was concerned that information about the March 2015 incident and subsequent court case were part of the Student's school record and that this could "be a stain upon the rest of his school experience." The Complainant asked to discuss what steps could be taken to "minimize or eliminate this false charge" from the Student's school records. Further, the Complainant expressed concern about the Student's academic progress. The Complainant asked principal 1 to contact him to discuss arranging a meeting.
7. On October 17, 2016, principal 1 sent a response letter to the Complainant, addressing the Complainant's request for a meeting. Principal 1's letter stated that the Student had a "comprehensive Special Education plan," that he was in "good contact with [the Student's] family," and that the family was "very pleased with [the Student's] experience." Principal 1 went on to state that he was aware of the past situation and the potential impact it could have, but that he believed the Student was set up to "continue to flourish and mature" at the school. Principal 1 indicated that he was happy to host a meeting in the near future to discuss the Student.
8. There is no indication in the documentation for this complaint that the Complainant acknowledged receiving the October 17, 2016 letter or that he responded to it.

Timeline for this Complaint Begins on October 18, 2016

9. On April 3, 2017, the Complainant sent a letter to principal 1 that referenced the Complainant's October 10, 2016 letter as being a "request by [the Parent] and myself to review [the Student's] school records." The Complainant stated that he believed the Parent had a right to review the Student's educational records, obtain copies of the records, and to request an explanation of the contents of the records if necessary. He requested that principal 1 contact him to arrange a meeting to review the records.

10. According to the documentation provided in the complaint, principal 1 responded and had a conversation with the Complainant at some point between April 3, 2017 and April 13, 2017. The exact date of the conversation was not provided, nor was information regarding the details of the conversation.
11. On April 13, 2017, the Complainant sent a second letter to principal 1. The Complainant thanked principal 1 for his “quick response” to the April 3 letter and mentioned the conversation he had with principal 1. The letter indicated that there was some confusion regarding who was supposed to suggest possible dates for a meeting, and the Complainant asked that principal 1 let him know “what works best for you.”
12. On May 5, 2017, the Complainant sent another letter to principal 1, noting that he had previously written twice about setting up a meeting. The Complainant requested that the principal let him know what day and time worked best to meet.
13. On May 16, 2017, the Complainant sent another letter to principal 1, stating that there was no reason to delay setting up a simple meeting and that this had become frustrating. The Complainant asked again for a response from principal 1.
14. The District’s 2016-2017 school year ended on June 16, 2017.
15. There is no indication in the documentation for this complaint that further communication or a meeting to review the records took place during the 2016-2017 school year.

2017-2018 School Year

16. During the 2017-2018 school year, the Student began attending a District high school and continued to be eligible for special education services.
17. The District’s 2017-2018 school year began on September 5, 2017.
18. On October 13, 2017, the Complainant filed this complaint on behalf of the Parent.
19. According to the District’s response to this complaint, the District was unable to locate any additional written or electronic record of a response to the Complainant’s request. In addition, the District stated that principal 1 was no longer employed by the District and thus it was not possible to determine whether principal 1, who received the October, April, and May letters from the Complainant, had any record or recollection of responding to the requests.
20. On October 25, 2017, the high school principal (principal 2) emailed the Complainant as a follow-up to the voicemail she left the Complainant on October 24, 2017. In the email, principal 2 stated that she knew the Parent wanted to review the Student’s file after an unsuccessful attempt to do so last year. Principal 2 let the Complainant know that the Student’s educational records were now stored at the high school, and invited the

Complainant to contact her in order to schedule an appointment to review the Student's file, if the Parent was still interested.

21. According to the District response to this complaint and additional information provided to OSPI, on November 14, 2017, the Parent and the Complainant met with principal 2 to review the Student's cumulative file, discipline file, and special education file.

CONCLUSIONS

Parents' Access Rights to Student Records: The Complainant, on behalf of the Parent, alleged that the District failed to follow the procedures outlined in WAC 392-172A-05190 for responding to a request to review the Student's educational records. A district is required to allow the parents of students eligible for special education to inspect and review any educational records relating to the student. A school district must respond to the request within 45 calendar days.

The Complainant originally contacted the District on October 10, 2016, and requested a meeting to discuss concerns regarding the Student's records and academic problems. The District responded to the request within seven calendar days when principal 1 sent a letter on October 17, 2016, indicating that he would be happy to host a meeting to discuss concerns, but the Complainant did not respond to the letter. Six months later, the Complainant renewed his request to access the Student's educational records in a letter dated April 3, 2017. The District responded, presumably by phone, within ten calendar days. The Complainant again made requests to review the records in letters dated April 13, May 5, and May 16, 2017, but the District did not respond to clarify when a meeting could occur. The documentation provided substantiates that the District did respond within 45 calendar days to the request to review records. However, the Parent and Complainant did not gain access to the records until November 2017, more than seven months after the April 2017 request. Given that the District staff, the Parent, and Complainant have already met and reviewed the Student's complete educational file on November 14, 2017, no corrective actions are required. Additionally, given that principal 1 is no longer employed by the District and principal 2 properly responded to the request to review records, there is no need for training. However, the District is reminded that it must respond to all parent requests to review student records and allow access to those records promptly.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ___ day of December, 2017

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)