

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-56B

PROCEDURAL HISTORY

On May 29, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the North Thurston 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 and the other students (Students) in the classroom.

On May 30, 2018, 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 5, 2018, the Parent and the District were notified that because there was a pending due process hearing, No. 2017-SE-0109, regarding the Student which contained some of the same issues identified in SECC 18-56, OSPI's investigation of SECC 18-56 regarding the Student would be placed in abeyance. OSPI's investigation of SECC 18-56 regarding the other Students would continue as SECC 18-56A.

On June 21, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on June 22, 2018. All personally identifiable information regarding the Students was removed. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On July 6, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On July 12, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On July 26, 2018, OSPI requested clarifying information and spoke with the District special education teacher.

On July 27, 2018, OSPI issued a decision in SECC 18-56A regarding the Parent's allegations related to the other Students.

On October 15, 2018, the Administrative Law Judge rendered a decision in the due process hearing.

On November 5, 2018, OSPI received a copy of the due process decision.

On November 6, 2018, OSPI determined that the due process decision did not address the complaint issues and notified the Parent and District that the complaint regarding the Student was no longer held in abeyance and would proceed with the investigation as SECC 18-56B.

On November 19, 2018, the Parent provided OSPI with additional information regarding the complaint. On the same date, OSPI sent the additional information to the District.

On November 19, 2018, OSPI received a copy of the District's response to the complaint.

On November 21, 2018, OSPI sent the Parent a copy of the District's response. The Parent was invited to reply to the District's response.

On December 10, 2018, OSPI received a copy of the Parent's reply, which contained additional issue allegations. On the same day, the Parent's reply was forwarded to the District.

On December 10, 2018, OSPI notified the Parent that she was raising issues in her reply to the District and that those were previously addressed in the due process hearing. As result, OSPI could not investigate those issues.

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

ISSUES

1. Did the District follow procedures for addressing a shortened school day in the Individualized Education Programs (IEPs) for the Student and other Students in the classroom during the 2017-2018 school year?
2. Did the District implement the special education and related services on the Student's IEP and other Students' IEPs during the 2017-2018 school year?

LEGAL STANDARDS

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend a full school day, the reason must be documented in his or her educational records and addressed in the student's individualized education program (IEP). 34 CFR §300.320; WAC 392-172A-03090. *See also Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010).

IEP Implementation: At the beginning of each school year, each district must have in effect an 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. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student attended a District high school and was eligible to receive special education services under the eligibility category of multiple disabilities.
2. On September 6, 2017, the District's 2017-2018 school year began.
3. The special education classroom's schedule, which followed the high school's schedule, was as follows:
 - (Passing time: 7:25 a.m. – 7:30 a.m.)
 - Period 1: Life Skills (7:30 a.m. – 8:25 a.m.)
 - Period 2: Teacher Preparation (8:30 a.m. – 9:25 a.m.)
 - Period 3: Life Skills (9:30 a.m. – 10:25 a.m.)
 - Period 4:
 - 1st Lunch (10:30 a.m. -11:00 a.m.) or Life Skills (10:30 a.m. – 11:25 a.m.)
 - Life Skills (11:05 a.m. – 12:00 p.m.) or 2nd Lunch (11:30 a.m. – 12:00 p.m.)
 - Period 5: Life Skills (12:05 p.m. – 1:00 p.m.)
 - Period 6: Life Skills (1:05 p.m. – 2:00 p.m.)
 - Passing Time: (2:00 p.m. – 2:05 p.m.)
 - School Ends: 2:00 p.m.
4. The Student's individualized education program (IEP) (from September 18, 2017 to September 17, 2018) addressed needs in the areas of basic academics and functional living skills and included annual goals in the areas of written language, social skills, adaptive behavior, math, and reading. The Student received his special education services in the same special education classroom, and spent the majority of his school day (91%) in the special education classroom, including the last class in the day. The IEP provided the following specially designed instruction and related services, in the special education setting:
 - Speech/Language Therapy: 30 minutes, 2 days weekly (speech-language pathologist)
 - Occupational Therapy: 30 minutes, 2 days weekly (occupational therapist)
 - Individual Paraeducator Support: 1800 minutes, 1 day weekly (special education teacher)
 - Written Language: 60 minutes, 5 days per week (paraeducator)
 - Social Skills: 55 minutes, 5 days per week (paraeducator)
 - Adaptive: 100 minutes, 5 days per week (paraeducator)
 - Reading: 50 minutes, 5 days per week (paraeducator)
 - Math: 50 minutes, 5 days per week (paraeducator)

The IEP also provided the following specially designed instruction in the general education setting:

- Social Skills: 55 minutes, 5 days per week (paraeducator)

The IEP also included accommodations, including breaks, preferential seating, and visual supports. Supports for staff included the following:

- Board certified behavior analyst (BCBA) consultation with case manager;
- BCBA consulting with the Parents and private service providers;

- Applied Behavioral Analysis training for special education service providers; and,
- Occupational therapist collaboration with classroom staff.

The IEP did not provide for a shortened school day.

5. In September 2017, the District also conducted a functional behavioral assessment (FBA) that targeted the Student's withdrawal and elopement behaviors. Using the information from the FBA, the IEP team developed a behavioral intervention plan (BIP) to address the target behaviors. The BIP included a visual schedule and physical prompts to address elopement. According to the documentation, the Student also had considerable difficulty with transitioning off the bus in the morning. The problem was significant enough that the District developed a bus transition plan in spring of 2017.

6. On March 22, 2018, the assistant principal emailed the special education director. The email stated:

On March 22, 2018, near the end of the school day, I received a call over the radio from [paraeducator] that [Student] was running away from school. I immediately ran out of the building and asked for more communication about the direction that he was heading. [Parent] walked past me as I was going from the parking lot to the sidewalk along [road] walking/running toward [road]. At the [location], I saw [paraeducator] in the parking lot of the [location]. I ran, caught up with her, and we took the path for as far as we could take it. We did not find [Student]. Upon doubling back, we saw [special education teacher], walking back toward the school on [road]. He informed us that [Student] was in the car with [Parent] and that they were heading back to the school.

According to the documentation, the Student left his special education classroom to go to another classroom to participate in practice for unified sports day.¹ It was unclear the exact time the Student left the special education classroom, but it appeared to be approximately five to ten minutes before dismissal at 2:00 p.m. According to video screenshots of the incident, while in the other classroom, the Student ran from the paraeducator who accompanied him at 1:54 p.m. and eloped from school.² A number of staff went looking for the Student. This occurred approximately five minutes before school was dismissed at 2:00 p.m.³ The Student's special education teacher was not present in any of the video screenshots.

7. In her complaint, the Parent alleged that on March 22, 2018, the Student was dismissed ten minutes early from his sixth period special education class to go to another classroom at the end of the day, which shortened the Student's school day. The Parent stated she observed a video recording of the Student leaving the classroom ten minutes before school dismissal to

¹ Unified sports day is an event in which both students with and without disabilities participate in competitive sports.

² The time was based on screenshots taken from a school video.

³ The Student was eventually found off-campus by the Parent.

go to the other classroom and that the Student’s teacher was not present in the classroom to provide services to the Student.

8. On May 29, 2018, the Parent filed this citizen complaint.
9. In response to the complaint, the District conducted a 5-day sample taken on May 29-31, June 1, and June 4, 2018, regarding the average amount of time the Student needed to get ready to dismiss, including the activities involved. The data showed the following:

Student	Average time for dismissal before whole school dismissal	Absences during 5-day sample	Use of time, IEP goal completion, student needs
Student	3.5 Minutes	2 Days	Opening lock on locker: when given a 6-piece picture jig task [Student] will complete the task by following the sequential order improving sequencing and fine motor skills. Transition: when given an opportunity to transition, [Student] independently complete transitions while walking on school campus.

10. The District also provided extensive documentation regarding the implementation of the Student’s special education and related services. Documentation regarding implementation was kept on a daily basis, including March 22, 2018.

CONCLUSIONS

Issue 1: Shortened Day Schedule – The complaint alleged that the District failed to provide a full day of special education instruction because the Student was released early to go to another classroom. The complaint stated that the March 2018 incident demonstrated that the Student was being released early. A student’s individualized education program (IEP) must address and document the need for partial day attendance.

Here, the Student’s IEP did not provide for a shortened school day. On March 22, 2018, at the end of the school day, the Student transitioned from the special education classroom to another classroom. However, the District continued to provide the Student with special education services when he left the special education classroom, which in this case, was the services of the paraeducator who accompanied the Student to support his transition needs. The Student’s transition to another classroom did not constructively shorten his school day because he continued to receive the services of a paraeducator. His subsequent elopement initiated the services of additional staff who attempted to locate him. The implementation of the Student’s special education services are not limited to his classroom but include the entire school. Further, leaving his special education classroom a few minutes prior to the end of the school day to participate in an activity with students without disabilities was not inconsistent with the implementation of his IEP, and therefore, not a failure to implement the IEP. Regarding other

days, the Student continued to receive services when the Student transitioned from the classroom to the bus. Based on the evidence, there was insufficient evidence that the Student's school day was shortened on March 22, 2018, or systemically during the 2017-2018 school year. No violation is found.

Issue 2: Implementation of Special Education Services – The complaint alleged that the District failed to implement the special education and related services in the Student's IEPs because the Student was dismissed from the special education room to transition to another room at the end of the school day. A school district is required to implement the special education and related services in an IEP.

Here, the Parent observed a video tape of the Student being dismissed one day from class ten minutes before the general dismissal time of 2:00 p.m. As a result, the Parent alleged that the Student missed his special education services. According to the documentation, the Student's services did not stop once the Student transitioned to the other classroom for the unified sports day. The paraeducator was assisting the Student when the Student eloped. During the time prior to the Student's elopement, the District continued to provide services after the Student left the special education classroom. According to the documentation in this complaint, the Student needed assistance with transitions in general, particularly bus transitions, and opening his locker. The documentation provided by the District showed that the Student consistently received his special education and related services, including on March 22, 2018. Based on the documentation that the services continued to be provided during the time period before the school day ended, the District substantiated that it implemented the Student's IEP. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

Dated this ____ day of December, 2018

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.)