

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-75**

### **PROCEDURAL HISTORY**

On October 4, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Oak Harbor School District (District). The Parents 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 October 7, 2019, 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 October 25, 2019, OSPI received the District's response to the complaint and forwarded it to the Parents on October 28, 2019. OSPI invited the Parents to reply with any information they have that was inconsistent with the District's information.

On November 5, 2019, OSPI received the Parents' reply. OSPI forwarded that reply to the District on November 6, 2019.

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

### **ISSUE**

1. Did the District follow individualized education program (IEP) team meeting procedures for the IEP meeting held in November 2018?

### **LEGAL STANDARDS**

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop a student's individualized education program (IEP), and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. A student's parents and school personnel will develop, review, and revise an IEP for the student. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. 34 CFR §300.501; WAC 392-172A-050005.

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. An IEP invitation need not be in writing; however, the district

must keep adequate documentation to show that all the components were included in the invitation. 34 CFR §300.322; WAC 392-172A-03100.

### **FINDINGS OF FACT**

1. During the 2018-2019 school year, the Student was in first grade and attended an elementary school in the District. The Student was eligible for special education services under the category communication disorders.
2. The timeline for this complaint investigation began on October 5, 2018.
3. On November 1, 2018, the Parents attended a parent teacher conference with the Student's speech language pathologist (SLP). At the meeting, the Parents were asked if they could hold the Student's annual individualized education program (IEP) meeting at that time because the annual IEP was due in a week. According to the SLP, the Parents agreed, but the SLP admitted they went through the IEP he had developed, "fairly rapidly." The Parents signed the IEP. The IEP was also signed by the principal and general education teacher. A special education teacher was not present at the IEP meeting. According to the SLP, the date on the IEP (November 8, 2018) that was later sent to the Parents, was the date the IEP was due, not the date of the meeting.
4. The November 8, 2019 IEP contained a meeting invitation that stated it was sent to the Parents on October 29, 2019. The meeting invitation indicated the meeting was scheduled in order to review the Student's current IEP. The contact attempt record attached to the meeting invitation stated the Parents were contacted by letter and another method listed as "other." The contact attempt record indicated the Parents had responded the same day that they could attend.

In the Parents' complaint, the Parents stated this information was incorrect. In an interview conducted by the director of special programs for the District (director) in response to this citizen complaint, the SLP acknowledged the Parents' account of the events was accurate and the meeting invitation included with the IEP was inaccurate.

5. On November 8, 2018, a prior written notice (PWN) was sent to the Parents that the District was proposing to continue the Student's placement and the provision of speech and language services to the Student in accordance with the Students IEP, dated November 8, 2018.
6. In the District's response, the District wrote that after it completed an investigation into the allegations raised in this citizen's complaint, it concluded:

There 'was no evidence that [Parents] had been informed of the [November] meeting. The SLP stated that he went to the [S]tudent's [parent] teacher conference and asked the [P]arents if they could meet about the IEP. The Parent agreed and they held a 'brief' meeting. The parent and team signed with little discussion except that [Student] was progressing in speech. In addition, the date on the IEP does not correspond to the date of the Parent Teacher Conference. The SLP, also noted that he took scores for testing from

the cumulative file and did not discuss with the classroom teacher whether or not these scores were at grade level.'

7. On January 21, 2019, the Parent emailed the SLP and "[school] staff" requesting an IEP meeting. In her email, she stated she had concerns she felt needed to be addressed by the entire IEP team—including herself, the general education teacher, SLP, principal, and school psychologist. She described the events that occurred on November 1, 2018, explained she had not received notice of the meeting, and that she did not believe procedures had been followed, including that all required members of an IEP meeting were not present. She also described several concerns with the November 8, 2018 IEP, including the wording of the Student's IEP and what she felt were inaccuracies with how it documented the Student's performance on certain tests.
8. On January 28, 2019, the Parent signed a consent form to reevaluate the Student.
9. On March 18, 2019, the District sent the Parents notice that a meeting had been scheduled for March 20, 2019 to review evaluation reports and determine the Student's eligibility for special education.
10. On March 20, 2019, the IEP team met to review the results of the Student's reevaluation. The IEP team determined the Student qualified as a Student with a specific learning disability in the areas of reading comprehension and reading fluency. The IEP team determined the Student no longer qualified for speech and language services.
11. On April 11, 2019, the IEP team met to develop the Student's IEP. The Parent, general education teacher, principal, and special education teacher attended. The IEP developed at the April 11, 2019 meeting incorporated the findings and conclusions from the March 20, 2019 reevaluation.
12. After investigating the Parent's complaint regarding the November 2018 IEP meeting, the District's response determined the incident "certainly [did] not [follow] the procedures taught and expected for IEP meetings" in the District. The District additionally provided documentation to show it has implemented the following corrective actions:
  - On October 8, 2019, the SLP involved was given a formal letter of direction which provided written guidance on how the SLP could improve his practice. The written guidance included, "Notify parents about upcoming IEP meetings a minimum of one week in advance by calling and confirming the date with the parent or guardian. Follow this up with a letter home in the student's backpack or by mail, whichever the parent prefers," and, "Make sure dates and times are correct on the IEP. If you want to have an IEP during conferences, be sure parents are informed and additional time is allotted." The SLP was also informed he should "go directly to the classroom teacher to get current scores and [information regarding] performance in the general education setting."
  - The Teacher on Special Assignment (TOSA) and building principal began the process of monitoring the IEPs managed by the SLP who was assigned as case manager to the Student's IEP. On October 23, 2019, the SLP sent the building principal and TOSA a list of his IEPs and evaluations due during the 2019-2020 school year with all due dates highlighted.

- On November 17, 2019, training was provided to building administrators at the school involved in the complaint on common areas for legal disputes. At the training, this complaint was specifically discussed. The District included an agenda and handouts from the training with its response for review by the OSPI complaint investigator.

## **CONCLUSIONS**

**November IEP Meeting** – The Parents alleged the District did not follow procedures for the individualized education program (IEP) meeting held in November 2018. A district must ensure parents are given an opportunity to attend and/or otherwise are afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. An IEP invitation need not be in writing; however, the district must keep adequate documentation to show that all the components were included in the invitation.

The District acknowledged it did not follow IEP meeting procedures regarding the November 2018 IEP meeting, and OSPI agrees. The meeting invitation contained in the Student’s record and attached to the November 2018 IEP was not accurate and the Parents were not notified of an IEP meeting until they arrived at the Student’s parent teacher conference on November 1, 2018. Further, the meeting did not consist of a properly constituted IEP team—only the speech language pathologist (SLP) and Parents attended—and the Parents were not afforded an opportunity to meaningfully participate because the meeting was rushed and the information reviewed with the Parents was not entirely accurate. OSPI accordingly finds the District in violation.

However, following the November 1, 2018 IEP meeting, the Parent notified the District of her concerns and in response, the District conducted a reevaluation, held a reevaluation meeting, and then held a new IEP meeting. The Parent received notice for the new IEP meeting and all required IEP team members were present. In addition, after the Parents filed this citizen complaint, the director implemented corrective actions at the school level to make sure similar violations did not occur. Specifically, a direction letter and monitoring were provided to the staff member involved and training was provided to the building at issue in this complaint. Thus, while OSPI finds the District to be in violation, the District has also remedied the violations with the Student and at the building level and no further corrective actions are warranted.

## **CORRECTIVE ACTIONS**

### **STUDENT SPECIFIC:**

None.

### **DISTRICT SPECIFIC:**

None.

## RECOMMENDATIONS

In her reply to the District's response, the Parent raised multiple issues which were outside the scope of this complaint. The Parent is reminded that this complaint only addressed the issue that was raised in the initial complaint filed with OSPI (i.e., proper procedures for the November 2018 IEP meeting) and that the time frame for special education citizen complaints is one year. The Parent has been informed, and is reminded now, that if she has additional concerns outside the scope of this complaint, she may address her concerns with the District special education director, file a new complaint, or access one of the alternative dispute resolution processes available to her.

Dated this \_\_\_\_ day of November, 2019

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.)