

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-03A

PROCEDURAL HISTORY

On January 9, 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 Yakima 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 10, 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 January 31, 2018, OSPI received notice that the Parent filed a due process hearing request regarding one of the issues identified for investigation in SECC 18-03.

On February 1, 2018, OSPI informed the Parent and District that the issue identified in the Parent's due process hearing request would be placed in abeyance, but that OSPI would continue to investigate the remaining issue in SECC 18-03.

On February 1, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on February 2, 2018. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information. The Parent provided no reply.

On February 15, 2018, OSPI spoke with the Parent and the Parent provided clarifying information.

On February 20, 2018, OSPI received notice that the Parent's due process hearing request had been dismissed because the parties had reached a resolution agreement.

On February 22, 2018, OSPI notified the Parent and the District that due to the parties reaching a resolution regarding the issue raised in the due process hearing request, OSPI would close its investigation of that issue.

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

OVERVIEW

During the 2017-2018 school year, the Student attended a District middle school and was eligible to receive special education services. On one occasion, a District staff member emailed the school counselor, relaying that the Student had mentioned being bullied by a teacher. Following the District's procedures to address bullying, the District investigated the Student's allegation, and the issue was resolved. The Parent alleged in the complaint that the Student was also bullied in other ways during the 2016-2017 and 2017-2018 school years. However, neither the Parent nor the Student reported additional incidents to the District. The District denied the allegation.

ISSUE

1. Did the Student experience bullying that resulted in a denial of a free appropriate public education (FAPE)?

LEGAL STANDARDS

Bullying, Harassment, and Intimidation: Each school district shall adopt a policy and procedure that prohibits the harassment, intimidation, or bullying of any student. RCW 28A.300.285. Bullying is defined as aggression used within a relationship where the aggressor has more or real perceived power than the target, and the aggression is repeated or has the potential to be repeated. (Dear Colleague Letter, 61 IDELR 263.) In addition, under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that his/her IEP is no longer providing educational benefit. (Dear Colleague Letter, 61 IDELR 263.) If a teacher is deliberately indifferent to teasing of a disabled child and the abuse is so severe that the child can derive no benefit from the services that he or she is offered by the school district, the child has been denied FAPE. *In the Matter of Federal Way School*, OSPI Cause No. 2011-SE-0013 citing *M.L. v Federal Way Sch. Dist.*, 394 F3d 634, 105 LRP 13966 (9th Cir. 2005).

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education and related services under the category of specific learning disability.

The Timeline for this Complaint Begins on January 10, 2017

2. On February 16, 2017, the Student's individualized education program (IEP) team developed a new IEP for the Student. The February 2017 IEP stated that the Parent had expressed the following concerns for the Student:
[Student's] mom, [parent] is concerned that [Student] is being negatively influenced by his older brother after school. [School staff] recommended that [Student] attend homework center after school. [School staff] will have the counselor speak to [Student] to check in with him. [School staff] all reported that [the Student] is a joy to have in class, and there are no concerns at this time.

The IEP also indicated that the Student's behavior did not negatively impact his learning or the learning of others. The IEP included annual goals in areas of reading, writing, mathematics, and communication and provided for the following specially designed instruction and related service:

- Reading – 260 minutes/week
- Written Language – 260 minutes/week
- Mathematics – 260 minutes/week
- Speech – 30 minutes/week

The IEP provided for the following accommodations and modifications:

- Shortened assignments
- Limited multiple choice
- Rephrase test questions and/or directions
- Provide test/quiz study guide
- Simplify test wording
- Read class materials orally
- Extra time on tests/quizzes
- Provide individualized/small group instruction
- Take test in separate location
- Preferential seating
- Allow dictation to a scribe
- Allow use of a calculator
- Spelling and grammar devices
- Hands-on assignments
- Modified assignment
- Provide homework lists
- Provide daily assignment list
- Modified grading

3. In his complaint, the Parent alleged that bullying occurred, but did not include any specific information about the Student being bullied during the 2016-2017 school year. The District's response to the complaint did not include any information about the Student being bullied during the 2016-2017 school year.

2017-2018 School Year

4. At the beginning of the 2017-2018 school year, the Student attended a District middle school and his February 2017 IEP was in place.
5. The District's 2017-2018 school year began on August 30, 2017.
6. According to the District's documentation in this complaint, the middle school principal trained the school staff and students on September 7, 2017 and October 11, 2017, respectively, on the District's harassment, intimidation, and bullying policy, including the reporting requirements.
7. On October 11, 2017, the District speech assistant emailed the school counselor, stating:
Hello, we just had [Student] for speech and most of his answers were pretty negative about teachers and he specifically named [teacher] when describing what a teacher was like. During the activity he answered with the following comments: they're mean, they embarrass you, kick you out of class, they are bullies, and strict...
8. According to the District's response, after the school counselor received the email, the school resource officer and assistant principal met with the Student on October 11, 2017. The District's response stated: "...The outcome of this meeting determined the issue was about [Student's] anger directed at the teacher for taking his book and giving it to another student because [Student] was not using the book." According to the District, no further action was taken on the matter.

9. In and around October and November 2017, the District conducted a three-year reevaluation of the Student. The evaluation report, dated November 21, 2017, stated the following:
- Medical History/Physical Condition – the Student had no significant health issues but the Student was having difficulty at home and received behavioral health services. The Student had been diagnosed with disruptive behavior disorder and anxiety disorder.
 - School History – the Student had received special education services since kindergarten, including speech and language services. The Student had received four written referrals for behavior in the last four years.
 - Intellectual Functioning – the Student’s scores were as follows:
 - Nonverbal reasoning score - 2nd percentile/standard score 69
 - Verbal ability - 32nd percentile/standard score 93
 - Spatial ability - 23rd percentile/standard score 89
 - General conceptual ability - 10th percentile/standard score 81
 - Academic Skills – the Student’s scores were as follows:
 - Basic reading – 14th percentile/standard score 84
 - Reading comprehension – 10th percentile/standard score 81
 - Written language composite – 5th percentile/standard score 75
 - Numerical operations - 5th percentile/standard score 75
 - Mathematical problem solving - 5th percentile/standard score 75
 - Classroom observation – the report stated:

...He was on-task and interacted appropriately with his peers. [Student’s] teachers report different behavior in different classes. He has reading, writing, and math in the resource room. In that class he is unmotivated and apathetic. These behaviors are not pronounced in his other classes. During an interview with [Student], he stated that he had an issue with his resource room teacher. He was intentionally not working or participating in that class. However, [Student] added that he thinks their relationship is improving and he intends to complete his work and participate in the future.
 - Adaptive/Self-help skills – the Student is independent and displayed self-care skills, including motor skills, eating, and mobility skills.
 - Speech and language – the Student previously received speech and language services but all his scores were in the average range except for sentence combining, which was below the average range.

The evaluation report stated the Student continued to be eligible under the category of specific learning disability. There were no specific references to the alleged bullying incidents but the evaluation did mention a conflict between the Student and the teacher.

10. On December 6, 2017, the Student violated the student code of conduct by making a threat of violence. The Student was initially suspended for ten school days, but the suspension was subsequently changed to a ninety-day suspension.
11. According to the District, the Student was incarcerated at the local juvenile detention center from December 6-15, 2017, where the District provided special education services one day a week.

12. On December 14, 2017, the District, Parent, and relevant members of the IEP team conducted a manifestation determination review and determined that the Student's behavior of making a threat of violence was not a manifestation of the Student's disability. Relevant information to the decision included the District contracting for a forensic evaluation, although the results were not known at the time of the meeting. The documentation provided by the District in this complaint did not include a copy of the risk assessment or the date that the assessment occurred.
13. From December 18, 2017 to January 1, 2018, school was out of session for winter break.
14. On January 2, 2018, the District provided the Parent prior written notice of the change, proposing to change the Student's placement so that the Student would receive services in an interim alternative education setting (IAES). The prior written notice also stated that nine hours of compensatory services would be provided to the Student because of the services the Student had missed while he was initially suspended.
15. On January 9, 2018, the Student's February 2017 IEP was amended without holding an IEP team meeting. The amended IEP stated that special education services would be provided in the IAES.
16. On January 9, 2018, the OSPI received the complaint.
17. According to the Parent, the Student was bullied in the following ways during the 2017-2018 school year:
 - If the Student did not finish his work, the teacher would not give the Student another assignment and told the other students the reason.
 - The teacher took a textbook from the Student and gave it to another student.
 - The teacher told the other students why the Student was suspended.
 - The teacher sat close to the Student.
 - The District refused to change teachers at the Parent's request because the school had no other teachers at the same grade level.
 - Because the risk assessment came back negative, the suspension was "overkill" and tantamount to bullying.
18. According to the Parent, except for the Student's comment about bullying to the speech assistant on October 11, 2017, the Parent or Student provided no verbal or written reports to the District regarding the other alleged incidents of bullying during the 2017-2018 school year.
19. On January 26, 2018, the Student's IEP team developed his annual IEP. The February 2018 IEP included annual goals in the areas of reading comprehension, written expression, and mathematical reasoning. The IEP also provided for specially designed instruction in the areas of reading, written expression, and mathematics to be provided 60 minutes a week in the IAES.

CONCLUSION

The complaint alleged that the Student's teacher bullied the Student. A school district must ensure that there are procedures in place to address bullying and its effects on a student's ability to receiving FAPE. A school district's deliberate indifference to bullying may result in a denial of FAPE. Here, on October 11, 2017, the Student reported one alleged instance of bullying to the school speech assistant, who then promptly informed the school counselor. The issue was investigated by the District on the same day the Student reported it and the incident was attributed to the teacher allegedly taking a book from the Student, who was not using it, and giving it to another student. In addressing the alleged bullying, the District followed its procedures by investigating the incident, meeting with the Student, and resolving the issue. Based on the documentation, the District did not display deliberate indifference towards the alleged bullying incident on October 11, 2017. The District's documentation also indicated that the apparent conflict between the Student and the teacher was later resolved, as evidenced by the Student's November 2017 evaluation report and there was no evidence that FAPE was denied as a result of the incident.

While the Parent alleged other instances of bullying during the 2017-2018 school year, the Parent did not report the allegations to the District, nor was any factual basis for the allegations identified through the complaint investigation process.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

Dated this ____ day of March, 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.)