

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-62

PROCEDURAL HISTORY

On August 27, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a teacher (Complainant) who works at Green Hill Academic School (school) located in the Chehalis School District (District), as well as a Student who attended that school. The Complainant and Student 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 August 28, 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 September 19, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant and the Student on September 20, 2019. The Complainant was not provided with any personally identifiable information related to the Student. OSPI invited the Complainant and the Student to reply with any information that was inconsistent with the District's information.

On October 2, 2019, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on October 3, 2019. The Student did not provide a reply.

On October 10, 2019, the OSPI complaint investigator conducted a site visit and interviewed the Student.

OSPI considered all of the information provided by the Complainant, Student, and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit/interviews.

ISSUE

1. Did the District follow procedures in response to the Student's requests for an Individualized Education Program (IEP) meeting?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

IDEA Applies to Washington State Juvenile Inmate Facilities: The IDEA applies to all political subdivisions and public institutions of Washington State that are involved in the education of students eligible for special education, including...education programs for juvenile inmates

established and operated pursuant to chapters 28A.193 and 28A.194. RCW. WAC 392-172A-01010(1)(a)(iii).

Transfer of Rights at Age of Majority: All of the IDEA procedural safeguards, duties, and responsibilities transfer to a student at age eighteen. 34 CFR §300.520; WAC 392-172A-05135. An adult student possesses the rights and responsibilities formerly given to the parent, unless: he or she (1) has been judged incapable of exercising these rights by a court of law pursuant to chapter 11.88 RCW; or (2) has been certified as unable to provide informed consent, or to make educational decisions, and has an educational representative appointed for them, pursuant to WAC 392-172A-05135(5).

Request for IEP Meeting: If a parent, or an adult student, requests an individualized education program (IEP) meeting because the parent or adult student believes that a change is needed in the provision of a free appropriate public education (FAPE) to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents or adult student of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of a FAPE to the student. Individuals with Disabilities Education Act (Appendix A to 34 CFR Part 300, Question 20).

FINDINGS OF FACT

Background

Green Hill Academic School (school) is a school in the District. The school is located at a Washington medium/maximum security juvenile correction setting, which is run by the Juvenile Rehabilitation Administration (JRA) and the District is responsible for the educational and special education programming at the facility.

The Student whose educational program was at issue in this complaint was 19 years old and all rights previously afforded the parent were transferred to the Student.

The timeline for this complaint began on August 28, 2018.

2018-2019 School Year

1. During the 2018-2019 school year, the Student attended the school and was eligible to receive special education services under the category of other health impairment.
2. On October 22, 2018, the District conducted an annual review of the Student's individualized education program (IEP), which was attended by the Student. The new IEP (effective October 22, 2018 to October 22, 2019) provided an annual goal in the area of behavior and the following special education services:
 - Behavior: 60 minutes, 1 time a week (provided by the counselor)

- Behavior: 1 minute, 5 times a week (provided by the general education teacher)¹
3. On June 12, 2019, the dean of students (dean) emailed the District's special education director (director), the school principal, and the Complainant² that the Student had mastered his one annual goal and might require a new goal.
 4. On the same day, the director emailed the dean and special education teacher and stated, "We will need to have an IEP amendment with the new goal done in 1 week so we can begin working on it with the student."
 5. On June 13, 2019, the Complainant emailed the director, the dean, and the principal and stated the Student had requested to have an IEP meeting to find out what classes he needed to graduate.
 6. On the same day, the dean emailed the Complainant, the director, and the principal, stating that the Student had received "credit information" approximately two weeks ago.
 7. The documentation provided by the District and Complainant included a "Note for Counselor/Dean of Students" form signed by the Student and dated June 13, 2019, requesting an IEP meeting "to discuss another goal and to talk with principal about graduation."

According to the District's response, the District did not receive this form. In the Complainant's reply to the District's response, the Complainant stated he put the form in the dean's mailbox for the Student.

8. On July 9, 2019, according to the Complainant's reply, the Complainant and the principal had an "informal conversation" about, in part, the Student's request, "but with no conclusion."
9. The documentation provided by the District and Complainant included another "Note for Counselor/Dean of Students" form signed by the Student and dated July 16, 2019, that stated, "I would like an IEP meeting. This is my second request. The first one was not answered." According to the Complainant, the Student told him that he had not heard anything about an upcoming IEP meeting and the Student filled out the second form to request an IEP meeting.
10. On July 26, 2019, the dean emailed the principal about the Student's request for an IEP meeting.
11. As part of the documentation the District provided in response to this complaint, there was an undated meeting notice describing the purpose of a meeting scheduled for July 31, 2019 meeting, which stated the meeting was to "discuss need for an IEP meeting."

¹ The District acknowledged that the "1 minute, 5 times a week" was a typographical error. It should read "ten minutes, 5 times a week."

² The Complainant was the Student's special education teacher during the 2018-2019 school year.

12. On July 31, 2019, the Student met with the dean and the principal to discuss whether an IEP meeting was necessary. The meeting notes stated, “[Student] said he only wanted to talk about graduation and credits. He had made the request wrong. He didn’t want to talk about his IEP.” The notes stated they talked about, among other issues not relevant to this complaint, amending the Student’s IEP. However, they decided the annual goal was still appropriate because of the change from the closed campus to the open campus.
13. On August 22, 2019, according to the Complainant, the Student informed the Complainant that he had not heard anything about having an IEP meeting. Because the Student allegedly stated he still wanted an IEP meeting, the Complainant agreed to file a special education citizen complaint on behalf of the Student.
14. On August 27, 2019, the Complainant filed this complaint.
15. On a prior written notice, dated September 8, 2019, the notice referred to the meeting on July 31, 2019. The notice reiterated the meeting notes that stated the meeting was to determine if the Student wanted an IEP meeting. According to the notice, the Student did not want an IEP meeting, but only wanted to talk about credits and the Student’s path to graduation. They also agreed that the behavior goal would continue as written. The Student’s signature was at the bottom of the prior written notice.

Student Interview

On October 10, 2019, the OSPI investigator conducted a site visit and interviewed the Student about the complaint. The Student verified his two requests for an IEP meeting and stated the District did not follow up with him regarding an IEP meeting.

When asked why the Student requested an IEP meeting, the Student replied he wanted information about graduation credits. The Student did not indicate that he wanted to address his IEP goal.

Regarding the July 31, 2019 meeting, the Student stated the meeting notes were accurate and he received the credit information he was seeking, among other information not relevant to this complaint. The Student also agreed in the meeting that an IEP meeting was not necessary given that the annual goal did not need to be changed. However, the Student pointed out that the District still did not hold an IEP meeting. When asked what would be the purpose of the IEP meeting, the Student stated he had twice requested IEP meetings and not had one.

CONCLUSIONS

Request for an IEP Meeting – The complaint alleged that the District failed to convene the Student’s individualized education program (IEP) team upon request by the Student. If a parent or adult student requests an IEP meeting, a district must conduct an IEP meeting if required to ensure a free appropriate public education (FAPE). If a district refuses to convene the IEP team,

because no change is necessary for the provision of FAPE, the district must provide the parent or adult student with prior written notice, explaining why an IEP meeting is not required.

Here, in June and July 2019, the Student (assisted by the Complainant) requested an IEP meeting to find out how many credits he needed to graduate and—initially—to address another annual IEP goal. Although the District stated it was unaware of the June 2019 request and had not received the Student's form requesting a meeting, the question about changing the Student's IEP goal was raised by the District to begin with. Further, the Complainant emailed the director, dean, and principal the same day the Student filled out the form, requesting a meeting and stated the Student had requested an IEP meeting. It is not clear why, based on the potential need to change the Student's IEP goal, the District did not itself initiate scheduling an IEP meeting. Further, it seems unlikely that the District did not know the Student had requested an IEP meeting given the Complainant's email.

Regardless, a meeting ultimately did occur. Following the Student's second request, the principal and dean met with the Student on July 31, 2019, to determine if an IEP meeting was needed. At the meeting, the Student received information about credits and graduation, and all agreed the annual goal did not need to be changed. They agreed that an IEP meeting was not necessary. The District provided the Student with prior written notice, dated September 9, 2019, documenting the July 31, 2019 meeting and the decision to not hold a subsequent IEP meeting.

Despite the Student's insistence during the interview with OSPI, there was no apparent reason to have an IEP meeting. The Student did not need the full IEP team to meet in order to get an update on the number of credits he needed to graduate. Further, the Student, principal, and dean agreed an IEP meeting was unnecessary to change the IEP goal after it was clarified that the annual goal was still appropriate.

However, the District was required to provide the Student with prior written notice, explaining why an IEP meeting was not necessary for the provision of FAPE, within a reasonable time after the IEP meeting requests. The notice dated September 9, 2019—almost three months after the second request to hold an IEP meeting, and more than a month after the meeting discussing credits—was not provided within a reasonable time to inform the Student of the District's decision and its reasons. Further, OSPI notes that regardless of the ultimate decision regarding the necessity of an IEP meeting, the District did not address the Student's request for a meeting within a reasonable amount of time. While OSPI finds that an IEP meeting was likely not necessary, a violation is found based on the failure to respond in a reasonable amount of time and to provide timely prior written notice. The District will be required to provide guidance on prior written notice requirements and meeting requests.

CORRECTIVE ACTION

By or before **November 8, 2019** and **November 22, 2019**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **November 15, 2019**, the District is required to provide the special education staff and administrators at the school written guidance regarding timely responding to requests for IEP meetings and providing timely prior written notice when refusing to conduct an IEP meeting.

By **November 8, 2019**, the District will provide OSPI with a draft of the written guidance. OSPI must approve the guidance.

By **November 22, 2019**, the District will provide documentation that the guidance was provided to all necessary staff.

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 October, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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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.)