

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-76

PROCEDURAL HISTORY

On September 22, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the South Kitsap 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 September 23, 2021, 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 14, 2021, OSPI received part of the District's response to the complaint.

On October 15, 2021, the District requested an extension of time to respond to the complaint. On the same day, OSPI granted the extension and asked the District to provide the remainder of its response on October 22, 2021.

On October 25, 2021, OSPI received the remainder of the District's response to the complaint and forwarded the District's complete response to the Parent on the same day. OSPI invited the Parent to reply.

On October 25 and November 5, 2021, OSPI phoned the Parent to request additional information. The Parent did not respond.

On November 8, 2021, OSPI emailed the Parent to request additional information. The Parent did not respond.

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

ISSUE

1. Did the District follow the in-state transfer procedures when implementing the Student's individualized education program (IEP) at the beginning of the 2021–2022 school year?

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 was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Transfer Student Who Transfers from an In-State School District with expired IEP: If a student who received special education and related services pursuant to an individualized education program

(IEP) in a previous district (even if that district failed to meet the annual review requirements in 34 CFR §300.324(b)(1)(i)) transfers to a new district in the same state and enrolls in a new school within the same school year, the new district (in consultation with the parents) must, pursuant to 34 CFR §300.323(e), provide FAPE to the child (including services comparable to those described in the child's IEP from the previous district), until the new district either (1) adopts the child's IEP from the previous district; or (2) develops, adopts, and implements a new IEP that meets the applicable requirements in 34 CFR §§300.320 through 300.324. *Questions and Answers on IEPs, Evaluations, and Reevaluations* (OSERS June 2011) (Question A-1).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

Background

The Parent filed the complaint alleging "the school has not provided a prior written notice nor initiated a meeting to discuss interim plans for my child's IEP (individualized education program) on September 22, 2021."

2020-2021 School Year

1. During the 2020–2021 school year, the Student attended school in another Washington school district and was eligible to receive special education services under the category of autism.
2. On April 19, 2021, while attending the previous school district, the Student's team in the previous school met to review the Student's IEP. The IEP stated social/emotional and communication delays impacted the Student's ability to interact appropriately with peers and adults. The special factors section of the IEP identified assistive technology, communication, and behavior as needs for the Student. The IEP provided for annual goals in the areas of speech/language and social/emotional behavior. Accommodations included, in part, using visual aids, modeling assignments, and providing an emotions chart.

Special education and related services were as follows:

- Social/Emotional: 1,330 minutes weekly (provided by a special education teacher in a special education setting)
- Social/Emotional: 300 minutes weekly (provided by a special education assistant in the general education setting)
- Speech/Language: 30 minutes weekly (provided by a speech/language pathologist)

The IEP indicated that the Student would be participating in general education 20% of the school day. Supplementary services included transportation monitored by the special education teacher, and "regular district transportation guidelines apply" was checked "no." The IEP stated: "[Student] requires the support and structure provided on the special education bus to be safe on the bus."

3. The prior written notice, dated April 19, 2021, stated, in relevant part:
[Student] started attending [special education teacher's] self-contained SPED (special education) classroom in the mornings (Tuesday-Friday). On Tuesday and Thursday afternoons, [Student] attends her general education class with a SPED Educational Assistant. Since this model has been very successful for [Student] with improved behavior and work production, we will continue this model for the rest of the 2020-2021 school year. [Student] will participate in academic activities in the self-contained SPED classroom and will go into a general education classroom for socialization with her peers.

2021–2022 School Year

4. At the beginning of the 2021–2022 school year, the Student was a first grader who was enrolled in a District elementary school and continued to be eligible to receive special education services under the category of autism.
5. On September 2, 2021, the District office coordinator emailed the Parent, stating the Student was assigned to a first-grade teacher. The email further stated:
Her enrollment indicated an IEP with speech and resource services. An [District] IEP services will be assigned by our OSS (office of special services) dept. after the IEP transfer is completed from her prior school. Her assigned case manager will reach out once that process is completed.
6. On September 6, 2021, according to the Parent, the Parent talked to someone in the District about what class the Student would attend and was told the Student would be placed in a general education classroom, not a special education classroom.
7. On September 8, 2021, the 2021–2022 school year began.
8. At the beginning of the school year, the Student became ill and could not attend school until September 20, 2021.
9. Between September 8 and 21, 2021, the documentation showed the Parent and the District exchanged numerous emails and had phone conversations about the Parent's request that the Student be placed in a self-contained special education classroom. The Parent believed

the Student was going to be placed in a general education classroom because she was assigned a general education teacher. On September 21, 2021, the Student's special education teacher emailed the Parent, stating, in part: "...All students are assigned a general education teacher no matter where they spend the majority of their time."

10. On September 14, 2021, the District conducted a "Transfer Review" meeting. The Parent did not attend, and according to the document "Excused Team Members," the Parent agreed with the transfer. The recommendation was to "continue LRE (least restrictive environment) placement in accordance with previous IEP." There was no need to refer to the "eligibility committee." The notice also stated: "Spoke to [Parent] on 9/14/2021 at 11:20AM to discuss the transfer validation. [School psychologist]."
11. A prior written notice, dated September 14, 2021, stated the District proposed to continue the Student's eligibility, placement, and IEP from the previous district. The notice also stated: "Spoke to [Parent] on 9/14/2021 at 11:20AM to discuss the transfer validation. [School psychologist]." According to the complaint, the Parent stated she did not receive the prior written notice. The District stated in its response that the prior written notice was sent on September 22, 2021 to the Parent, along with the transfer review documentation. Although the notice was included in the documentation provided to OSPI, there was no verification of when or how the notice was provided to the Parent.
12. The District's response to the complaint indicated the District was not required to provide the Parent prior written notice of its decision to implement the Student's April 2021 IEP. The District argued that the transfer review procedure did not require a prior written notice and no notice was required because there was no change to the Student's IEP.
13. On September 20, 2021, the Student began attending school and receiving special education services.
14. On September 22, 2021, according to the District, the District sent the transfer review documentation to the Parent, including the prior written notice. On the same day, the Parent requested a meeting because the Parent believed the information provided by the District to her about the Student's placement was "not consistent."
15. Also, on September 22, 2021, the Parent filed this complaint.
16. On September 28, 2021, the Student's IEP team met to discuss the Parent's concerns. The meeting notes indicated the team discussed the Student's slow transition to general education, starting "in small chunks," and how the special education services were being implemented. The team shared that the Student liked going to the general education classroom. The prior written notice, dated September 24, 2021, stated: "We are proposing a review of [Student's] goals, schedule, and accommodations to ensure her needs are being met, at the request of the [Student's] mom [Parent]."¹

¹ It is unclear why the prior written notice is dated September 24, 2021 and the meeting was on September 28, 2021. It is likely that the prior written notice has the wrong date.

CONCLUSIONS

Issue 1: Intrastate Transfer Procedure – The complaint alleged the District failed to provide the Parent with prior written notice or initiate a meeting to discuss plans to implement the Student's individualized education program (IEP) after the Student transferred from another Washington school district. When a student with an IEP transfers from one Washington school district to another, a district is required to, in consultation with the parents, provide comparable services until the District either accepts the IEP or develops, adopts, and implements a new IEP. Regarding prior written notice, a parent has a right to written explanation of a district's decision regarding the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student a reasonable time before the implementation of the decision to consider dispute resolution options if the parent disagreed with the decision.

Here, the Student's April 2021 IEP from the previous school district called for the Student to receive special education services in both the general education classroom and special education classroom. The Student enrolled in the District at the beginning of the 2021–2022 school year. Because of some apparent miscommunication and/or confusion, the Parent believed the Student was going to be placed in a general education classroom, not the special education classroom. The Parent wanted to ensure the Student was placed in a self-contained special education classroom. While the Student was still out of school because of illness, the District conducted a transfer meeting on September 14, 2021 that accepted the April 2021 IEP. The District began implementing the IEP on September 20, 2021, when the Student was able to attend school. There was no dispute raised regarding the implementation of the IEP once the Student began attending school. The District stated it provided the Parent with documentation of the transfer meeting and prior written notice at that time.

The intent of the transfer procedure is to ensure that a student's FAPE is uninterrupted by the transfer from one school district to another. Here, the only interruption was due to the Student's illness. The District had adopted the 2021 IEP and implemented it when the Student first attended school. Initial miscommunication caused the Parent to question whether the District was going to implement the IEP in the correct setting, but the District conducted the transfer review in a timely manner and implemented the Student's IEP as necessary without missing any services. No violation is found.

Regarding the prior written notice, the complaint stated the Parent did not receive notice of the District's decision to accept the Student's IEP without changes. The District stated the notice was provided to the Parent, even though it was not required to under the transfer review process. The District's documentation included prior written notice of its decision to accept the April 2021 IEP.

First, to be clear, despite no changes being made to the April 2021 IEP, the District was still required to provide notice to the Parent of the District's decision to implement the IEP because the District made a decision about the Student's educational placement and the provision of a FAPE to the Student. The Parent had a right to a timely written explanation of the decision; otherwise, the Parent would not have known whether the District planned to implement comparable services and develop a new IEP or adopt and implement the IEP as is. Second, the

District sending the notice to the Parent could not be verified absent some indication like an email attachment, a date stamp, or written note in the documentation to substantiate compliance. Although the District called the Parent and informed her of the decision, a timely prior written notice was still required. The notice was not provided before the IEP was implemented. Thus, a violation is found. Since the District argued there was no requirement for prior written notice, the District must provide written guidance to all special education staff, including teachers, educational staff associates, and administrators regarding the requirement of prior written notice with the transfer review process and consider methods of documenting when and how it is provided to the parent.

CORRECTIVE ACTION

By or before **December 3, 2021** and **December 17, 2021**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **December 10, 2021**, the District will provide written guidance to all special education staff, including District administrators, regarding prior written notice in the transfer review process. OSPI must approve the written guidance. OSPI recommends the District develop a procedure to contemporaneously document how and when the prior written notice is provided to a parent.

By **December 3, 2021**, the District will provide OSPI with a copy of the written guidance. OSPI will provide feedback as needed.

By **December 17, 2021**, the District must provide OSPI with documentation, verifying the written guidance was provided to all special education teachers, educational staff associates, and administrators.

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 November, 2021

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.)