

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-44**

### **PROCEDURAL HISTORY**

On June 2, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Clover Park School District (District). The Parent alleged that the District failed to implement a due process resolution agreement.

On June 5, 2017, 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 22, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on June 23, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 26, 2017, OSPI called the Parent and requested additional information, which the Parent provided verbally that same day.

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

### **OVERVIEW**

During the 2016-2017 school year, the Student attended a District high school and was eligible for special education services under the category of autism. On September 7, 2016, the Parent filed a request for a special education due process hearing. The Parent and the District participated in a due process hearing in December 2016. On January 3, 2017, the District held a second due process hearing resolution meeting during which the District and the Parent entered into a signed, written agreement, resolving their disagreement. The Parent's due process hearing request was dismissed. The resolution agreement stated, in relevant part, that the District would reimburse the Parent \$650 for the cost of a private forensic psychological evaluation of the Student, but the District did not reimburse the Parent for several months. The Parent alleged that the District did not implement the due process hearing resolution agreement. The District denied the allegation.

### **ISSUE**

1. Did the District implement the provision in the January 10, 2017 resolution agreement with the Parent, regarding reimbursing the Parent for the private December 12, 2016 evaluation?

### **LEGAL STANDARDS**

Enforcement of Due Process Resolution Agreements: Parents and districts may resolve issues that are raised when a parent files a due process hearing request through a

resolution session. The district is to hold a resolution session within 15 calendar days of receiving notice of the parent's request for a due process hearing, unless the parties agree to waive the session. If the parties are able to resolve some or all of the issues raised in the due process hearing request at the resolution session, they will write an agreement that is signed by the parent and a representative of the school district who has the authority to obligate the district. A resolution agreement is voluntary, but also legally binding and enforceable in state or federal court. 34 CFR §300.510(d); WAC 392-172A-05090(4). The due process request will be dismissed if all issues have been resolved through a resolution agreement. A parent may file a citizen complaint if he or she believes a district has failed to implement a due process resolution agreement. 34 CFR §300.537; WAC 392-172A-05025(2)(a)(i)(B).

### **FINDINGS OF FACT**

1. During the 2016-2017 school year, the Student attended a District high school and was eligible for special education services under the category of autism.
2. On September 7, 2016, the Parent filed due process hearing request No. 2016-SE-0086, alleging that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.
3. On September 15, 2016, the District held a resolution session per the IDEA and state regulations governing due process hearing requests. The Parent and the District were unable to resolve their issues and did not enter into a resolution agreement at that time.
4. On December 12-14, 2016, the Parent and the District participated in a due process hearing.
5. On January 3, 2017, the District held a second resolution session, prior to the administrative law judge (ALJ) issuing a decision regarding due process hearing 2016-SE-0086. At that resolution session, the Parent and the District resolved their issues and entered into an agreement that stated (in relevant part):
  - The District will work with the Parent to find a psychotherapy provider to address the Student's social/emotional issues. Upon identifying a mutually agreed upon provider, the District will amend the Student's IEP to include up to 6 hours/month of individual/group therapy and develop behavioral goals to be supported by therapy.
  - The District will connect the Student with an individual for designated adult supervision during extracurricular activities.
  - The Student's case manager will change, effective the date of the semester change, on January 30, 2017. The Student's schedule will be agreed upon between the Parent and the special education teacher prior to January 20, 2017.
  - The District will reimburse the Parent \$650.00 for the forensic psychological evaluation dated December 12, 2016.
  - The District will amend the current evaluation and add to the Student's IEP under present levels, medical physical, to include the listed diagnosis, dated November 29, 2016: autistic disorder, major depressive disorder, recurrent, unspecified, other mixed anxiety disorders, attention deficit hyperactivity disorder, underachievement in school.

- The Student's IEP meeting scheduled for January 9, 2017 will include input from a redacted medical document, dated November 2016.
  - The District will provide the Parent with no contact orders for the 2015-16 and 2016-17 school year by January 6, 2017.
6. On January 10, 2017, the Parent and the District signed the due process resolution agreement.
  7. On January 17, 2017, at the request of both parties, the ALJ dismissed the Parent's due process hearing request.
  8. On March 23, 2017, the Parent exchanged emails with the executive director of special education, wherein they worked to find the Student a psychotherapy provider, as per the January 2017 due process resolution agreement. The executive director asked the Parent if she had pursued any of the referrals for therapists, and the Parent responded that she and the Student had met with one, but still needed to meet with two others. The Parent also stated, "I have not received the \$650.00 reimbursement amount set on in our agreement in January."
  9. On June 2, 2017, the Parent filed this citizen complaint.
  10. On June 6, 2017, the Student's IEP team, including the Parent, met and discussed fulfilling the terms of the resolution agreement as they related to the Student's IEP. The issue of the \$650 reimbursement was also discussed in this meeting, and the Parent stated she was moving, and requested that the mailing of the finalized IEP and reimbursement check be held until the Parent arrived at their new home on June 19, 2017.
  11. On June 8, 2017, the Parent emailed the Student's special education teacher, the District executive director of special education, and a District administrator to provide her new address. The Parent stated the new address would not be valid until June 19, and asked that the District not mail the reimbursement or the finalized IEP until June 14, 2017.
  12. On June 12, 2017, the District issued a check for \$650.00, to reimburse the Parent for the forensic psychological evaluation, dated December 12, 2016, but did not immediately mail the check, per the Parent's request.
  13. On June 20, 2017, the District mailed the Parent the reimbursement check.
  14. On June 24, 2017, the Parent received the reimbursement check.

## **CONCLUSIONS**

The Parent alleged that the District failed to implement the January 2017 resolution agreement in regard to reimbursing her for the cost of the Student's private December 2016 evaluation. The District's documentation in this complaint substantiates that the District reimbursed the Parent \$650 for the private December 2016 evaluation. While the

District did not reimburse the Parent until after she filed this complaint, the resolution agreement did not include a specific timeline by which the District would reimburse the Parent. Conversely, other elements of the agreement did have agreed upon completion dates, and there is no indication from the Parent, or the District's documentation in this investigation, that the District caused undue delay or failed to comply with any of the other terms of the resolution agreement. Although the District did not articulate a reason the reimbursement had not been paid prior to June 2017, the District's delay does not indicate that the District did not implement the resolution agreement in good faith. However, it is noted that had the District been more prompt in reimbursing the Parent, it could have avoided the Parent filing this complaint.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:** None.

**DISTRICT SPECIFIC:** None.

Dated this \_\_\_\_ day of July, 2017

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
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.)