

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-64

PROCEDURAL HISTORY

On September 17, 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 Seattle 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 18, 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 October 11, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on October 12, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

The Parent declined to provide any additional information regarding the complaint or reply to the District's response.

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 elementary school and was eligible for special education services under the category of developmental delay. At the Student's initial individualized education program (IEP) meeting in April 2017, the Student's IEP team determined, in part, the Student's placement in the least restrictive environment (LRE) and the amount of time the Student would spend in the general education setting. The initial IEP stated that the Student would receive most of his specially designed instruction in a special education classroom. The Parent disputed the regular education time calculated on the IEP and alleged that the Student was being denied access to the general education setting based on the District's behavior intervention strategies, as the Student had to earn his time in the general education setting. The Parent also alleged that the District failed to provide the Student with the accommodations stated in his IEP. The District acknowledged that there was an LRE miscalculation in the Student's IEP, and the Student was denied access to the general education setting for two days, but that the Student received more access to the general education setting than what was stated in the IEP. Regarding the accommodations, the District stated it implemented the accommodations and modifications.

ISSUE

1. Is the District implementing the Student's individualized education program (IEP) in place during the 2017-2018 school year?

LEGAL STANDARDS

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) extended school year (ESY) services, if necessary for the student to receive free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR §300.323; WAC 392-172A-03105. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Least Restrictive Environment: School districts are required to establish and implement procedures that meet least restrictive environment (LRE) requirements. Those procedures must ensure that special education and related services are provided in a student's LRE, which to the maximum extent appropriate, should be in the general education environment with students who are nondisabled. A student with a disability is to be placed separately from the general education environment only when, due to the nature or severity of her or his disability, the

student cannot be satisfactorily educated in general classes with the use of supplementary aids and services. 34 CFR §300.114; WAC 392-172A-02050.

FINDINGS OF FACT

2016-2017 School Year

1. At the beginning of the 2016-2017 school year, the Student attended a District elementary school and was not eligible to receive special education services.
2. On February 10, 2017, the Student was referred for special education. The referral form stated that the Parent referred the Student for a special education evaluation due to concerns about the Student's social/behavioral needs.
3. On March 29, 2017, the District held an evaluation meeting to review the results of the Student's initial evaluation, and a group of qualified professionals and the Parent determined that the Student was eligible to receive special education services under the category of developmental delay.
4. On April 27, 2017, the Student's individualized education program (IEP) team, including the Parent, met to develop the Student's initial IEP. The April 2017 IEP included annual goals in the areas of mathematics, reading, writing, and social/behavior. The IEP provided for the following specially designed instruction in a *special education setting*:
 - Math – 150 minutes weekly
 - Reading – 150 minutes weekly
 - Writing – 150 minutes weekly
 - Social/Behavior – 875 minutes weekly

The IEP also provided for the following specially designed instruction in a *general education setting*:

- Social/Behavior – 80 minutes weekly

The IEP stated that the Student would spend a total of 24% of his school week in the general education environment that included choice time, lunch, recesses, and PE class. The IEP provided the following accommodations and modifications to instruction throughout the school day:

- Access to visual daily schedule
- Break larger assignments into smaller parts
- Frequent checks for understanding
- Inform Student prior to transitions and/or change in routine
- Preferential seating
- Provide immediate feedback
- Shortened assignments
- Provide desktop list of tasks
- Utilize oral responses to assignment/tests
- Modify/repeat/model directions

- Provide individual/small group instruction
- Allow breaks (during work, between tasks, during testing, etc.)

The April 2017 IEP did not include a behavioral intervention plan (BIP).

2017-2018 School Year

5. The District’s 2017-2018 school year began on September 6, 2017. The Student continued to attend the same District elementary school and his April 2017 IEP was in place.
6. The student’s class schedule for the fall of 2017 was as follows:

Time/Place	Placement	Description
7:55–8:25 a.m.	Special Education	Morning routine: calendar, morning work, community circle
8:25–9:00 a.m.	Special Education	Social Skills
9:00–9:45 a.m.	Special Education	Reading
9:45–10:00 a.m.	General Education	Recess
10:00–11:20 a.m.	Special Education	Writing/Math
11:20–11:55 a.m.	General Education	Lunch/Recess
11:55 a.m. –12:25 p.m.	General Education with Instructional Assistant	Specials: Physical Education, Music, Art
12:25–1:40 p.m.	Special Education	Writing/Math
1:40–2:25 p.m.	General Education with Instructional Assistant	Community Circle, End of day, End of day recess

7. On September 11, 2017, the Student’s IEP team, including the Parent, met to review the Student’s instructional needs and discussed the need to conduct a functional behavioral assessment (FBA). According to the District’s September 11, 2017 prior written notice, at the meeting, the Parent indicated that her copy of the Student’s April 2017 IEP was not the same as the copy the District staff presented at the meeting. The Parent said that her copy of the Student’s April 2017 IEP stated that the Student’s overall participation in the general education environment would be 40%, not 24%, and that the Student was not receiving services according to the IEP. The Parent also stated that she had not “signed off” on the District’s copy of the IEP.¹ The prior written notice indicated that no changes were made to the IEP at the meeting.
8. According to the District’s response to this complaint, the 24% participation in the general education environment stated in the District’s copy of the April 2017 IEP was a miscalculation, because the IEP did not factor in the Student’s specially designed instruction in the area of social/behavior that was to be provided in the general education setting. The District further

¹ The District is required to provide the Parent with an opportunity to meaningfully participate in the IEP process. However, there is no requirement that the Parent must give consent or “sign-off” on any IEP changes. *Letter to Richards*, 55 IDELR 107 (OSEP 2010).

stated that actual percentage of time the Student would be in the general education setting was 32%.

9. According to the documentation, the classroom handbook for the Student's special education class stated, among other things, that the behavior management system in the classroom was based on students earning points, or "class money," for appropriate behavior and receiving consequences for inappropriate behavior. The students were provided behavioral instruction utilizing the RULER curriculum (Recognizing, Understanding, Labeling, Expressing, and Regulating Emotions). The documentation provided by the District indicated that the special education teacher's plan for the Student at the beginning of the 2017-2018 school year required the Student to earn behavior points for appropriate behavior in order to participate in the general education environment. The Student's April 2017 IEP did not provide for a BIP or behavior supports that used such a strategy. The District's response to this complaint stated that as a result of the behavior intervention, the Student did not participate in general education activities on September 6 and 7, 2017.
10. On September 17, 2017, the Parent filed this complaint. The complaint stated the Student's IEP was not being implemented as written, as the Student was not participating in general education setting per the IEP, and the accommodations were not being provided to the Student. The Parent stated that she had a copy of the IEP that provided for the Student to be in the regular education setting 39% of her school day. The Parent did not provide her copy of the Student's IEP or provide any evidence that the IEP stated the Student would spend 39% of her school day in a general education setting. The Parent also stated that the District did not provide the accommodations in the Student's IEP, including "access to daily schedule, inform student prior to transitions, preferential seating, etc."
11. On October 5, 2017, the IEP team amended the IEP service matrix to reflect the Student being in the general education environment 40% of the school day. The amended IEP stated the Student would participate in the general environment for lunch, recesses, and physical education class, as well as all nonacademic and extracurricular activities. Additionally, the IEP team agreed to add support from an instructional assistant in the general education classroom.

CONCLUSIONS

School districts must ensure that an IEP addresses a student's unique needs. School districts are required to implement procedures that ensure the IEP is implemented as written and meet the LRE requirements. The District admitted that it did not implement the Student's April 2017 IEP regarding the amount of time the Student was to spend in a general education setting from September 6, 2017 to October 6, 2017, because of a calculation error. The Student's April 2017 IEP stated the Student would spend 24% of his school week in a general education setting, but the actual amount of time the Student would spend in a general education setting was 32% of his school week. Per the Student's April 2017 IEP, the Student was to receive 20 minutes per day, four days a week of social/behavior services in a general education setting. However, those 80 minutes were not calculated into the percentage of time the Student would spend in the general

education setting. The Student's class schedule substantiates that the Student was scheduled to spend 32% of his school week in a general education setting, and the calculation error in the Student's class schedule was subsequently corrected on October 6, 2017, when the IEP team amended the Student's IEP.

In her complaint, the Parent also alleged that the District did not allow the Student access to the general education setting based on its behavior intervention policy. The District admitted that the Student did not have access to the general education setting on September 6 and 7, 2017. The special education teacher was implementing a behavior intervention that made access contingent on the Student's behavior. A behavior point system does not supplant the Student's right to an education in the least restrictive environment, which was a decision made by the IEP team that included the Parent. Additionally, restricting the Student's access to the general education setting restricted her access to receive some of his specially designed instruction. The District failed to implement the Student's IEP in the least restrictive environment on September 6 and 7, 2017.

The Parent also alleged that the District failed to provide the Student with his accommodations. The Parent did not provide any additional information regarding this allegation. The District's response stated that all the Student's accommodations and modifications were implemented. The documentation did not substantiate that the District failed to provide the Student with the accommodations stated in his April 2017 IEP.

CORRECTIVE ACTIONS

By or before **November 17, 2017, December 1, 2017, and January 3, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **November 17, 2017**, the District will submit a copy of the Student's most current amended IEP, documenting the corrective LRE calculation.

DISTRICT SPECIFIC:

By **December 17, 2017**, the District will develop written guidance to be provided to all special education certificated staff, including educational staff associates (ESAs), and administrators at the Student's elementary school. The guidance will address the requirement that IEPs must be implemented as written and address the use of behavioral rewards systems that alter the LRE.

By **December 1, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by December 8, 2017 and provide additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, and administrators at the Student's elementary school by **January 3, 2018**. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

Dated this ____ day of November, 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.)