

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-73

PROCEDURAL HISTORY

On October 5, 2017, the Office of Superintendent of Public Instruction (OSPI) received a complaint from the parent (Parent) of a student (Student) attending the Tacoma School District (District). The complaint did not show a possible violation of Part B of the Individuals with Disabilities Education Act (IDEA) or the regulations implementing the Act. On October 10, 2017, OSPI sent a letter, informing the Parent that the complaint was insufficient.

On October 20, 2017, OSPI received additional information from the Parent, alleging a possible violation of the IDEA and opened a Special Education Citizen Complaint.

On October 24, 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 November 8, 2017, the District requested an extension of time for the submission of its response. OSPI granted the request, extending the timeline to November 21, 2017.

On November 21, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 1, 2017, the Parent provided her response. On December 4, 2017, the Parent's response was forwarded to the District.

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 high school in the District and was eligible to receive special education and related services under the category of specific learning disability. The Student's individualized education program (IEP) addressed behavior through an accommodation that allowed for the Student to "cool down" when frustrated. The Student also had some concomitant mental health issues.

The Parent alleged that the District did not implement the Student's IEP accommodation that would have prevented the Student from engaging in inappropriate behavior. The District denied the allegation.

ISSUE

1. Did the District implement the Student's behavior related accommodations in the individualized education program (IEP) during the 2016-2017 school year?

LEGAL STANDARDS

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(a); WAC 392-172A-03105(1). 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. 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.

IEP Development for a Student with Behavioral Needs: In developing, reviewing, and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral analysis (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of specific learning disability.
2. On October 5, 2016, the IEP team, including the Parent, developed the Student's annual individualized education program (IEP). The IEP stated that the Student had not passed state required assessments, including the Biology End of Course, and the reading and mathematics

state balanced assessment consortium. The IEP also stated that the Student demonstrated difficulties with language skills that hindered his participation in class activities. The IEP included annual goals that addressed reading, mathematics, and written language. The IEP also included post-secondary goals, which addressed attending college to pursue a career as a writer and performer, and learning to self-advocate. The IEP did not document any concern regarding the Student's behavior, except for a behavior related accommodation, nor did the IEP indicate that the Student's behavior was interfering with his learning or the learning of others. The behavior related accommodation in the IEP stated:

- Behaviorally related: Student will have access to breaks to "cool off" when frustrated; please send the student to main office or Case Manager when requested.

The IEP provided for specially designed instruction in the areas of speech/language, mathematics, reading, and writing language, all within the special education setting.

3. On October 19, 2016, the special education teacher emailed the Student's other teachers, stating:

[Student] just had his IEP meeting. He has some mental health needs that are separate from the qualification area on his IEP but that his previous schools accommodated. His mom requested that he has a designated "cool down space." His mental health diagnosis sometimes causes him to become upset, overwhelmed, or frustrated and advocate for a "cool down." As I am out of my room for a lot of the day, I need an alternative space for him in case I am not there. Please allow him to "cool down" in the chairs outside of the principals' offices (or in another space nearby) if he needs it. I just need a space where he is not alone. He has rarely advocated for it this year, but I want to be prepared if the situation arises. When I am in my room he knows he can go to my room.

4. Also on October 19, 2016, the special education teacher emailed the Student's teachers and included the "IEP at a Glance" version of the Student's IEP. The email, in relevant part, stated, "Cool down room: If [Student] becomes overwhelmed, frustrated, or upset, his cool down space will be in the main office chairs or (during 2nd, 1st, lunch, or 6th) my classroom."
5. According to the documentation in this complaint, on December 14, 2016, the special education teacher met with other school staff that were working with the Student. The teacher requested input from other staff regarding the Student's performance and the implementation of the accommodation. No other information was provided about the meeting.
6. On February 13, 2017, the special education teacher emailed the Parent, stating, in relevant part:

[Student] seemed to be having a really tough day today. I'm used to having him swear or get upset in class which tend to be typical manifestations of his disability and we can address those situations with a 1:1 check-in, but he seemed particularly anxious today and I was concerned... We went out in the hallway to check in but he did not want any of those options. He threatened to walk out of class and leave campus but we were able to de-escalate and keep him in class. I arranged for an administrator go on a walk with him and he appeared to cool down after that. I also arranged with a staff member to offer to

go on a walk with him during fifth period every day for about five minutes if he needs to decompress before he goes into class as he seems to struggle more towards the end of the day (or at least mid-afternoon.) He still always has the cool-down option but he hasn't been using that. His frustration, as well as continued phone use, has been impeding his academic progress in class so those are ongoing issues that we are working on. He did talk with our administrator about the counseling option again and she has made that arrangement if he will access it. Earlier in the year he refused to attend but it is still an option and we hope he will utilize it again if you believe it will benefit...

7. On March 8, 2017, according to an email from the special education teacher to administration, the Student called another student a derogatory name in response to another student's comment. The special education teacher stated, "He does not appear to be aware that his language was a problem as he said was "joking." The documentation did not indicate what action, if any, the District took regarding the incident.
8. On March 10, 2017, the Student made an inappropriate comment to another student and was sent to the administrator's office. The documentation in this complaint does not indicate whether staff was implementing the Student's behavior accommodation or administering routine disciplinary procedures. In her complaint, the Parent stated that the Student was overstimulated and overwhelmed on March 10, 2017, and the District was not using the "cooling off method agreed upon." The documentation in this complaint does not indicate whether the Student was overstimulated or overwhelmed.
9. On April 24, 2017, according to an email from the special education teacher to an administrator, the Student refused to stop "side conversations" with a classmate during class time and then left class without permission.
10. On May 1, 2017, the Parent emailed the special education teacher and all the Student's regular education teachers about the Student failing some of his classes. The Parent stated "the medications can really only do so much. I think he is being overly stimulated and may need to be in a smaller class room and separated from some kids to ensure long term success."
11. On May 4, 2017, the Student's computer graphics and photography teacher responded to the Parent's May 1, 2017 email, and stated that they were working with the Student to get caught up with his classwork.
12. On May 8, 2017, the special education teacher and the Parent exchanged emails to arrange a meeting with the Parent and the Student's teachers.
13. On May 10, 2017, the Student was suspended for two days because of a behavioral incident. According to an email from the special education teacher to an administrator, the Student and a classmate began to argue. The special education teacher then tried to calm the Student and asked him to sit down. The Student closely approached the special education teacher and swore at the teacher. While the teacher called administration, both students became

quiet. When the teacher asked them to sit down, the Student stated, "You can't tell me what to do, *****."

14. Later on May 10, 2017, the Parent emailed the District administrator, stating that the Student had diagnoses of schizophrenia, paranoia, and bipolar disorders. The Parent requested "to have him placed in a more suitable classroom setting." The administrator replied, proposing to hold a meeting.
15. Also on May 10, 2017, the Parent emailed the special education teacher, stating that the Student did not have a history of violence or outbursts, which should be taken into consideration in the suspension.
16. On May 11, 2017, the Parent met with two District administrators about the Parent's concerns about the suspension. No details about the meeting were reported.
17. Later on May 11, 2017, the Parent sent a follow up email, stating, in part:

[Student's] response to his teacher was completely out of his character and for that reason alone he should not have been suspended, he was hearing voices, which is very common for someone with schizophrenia especially if he or she is being overstimulated. I have made all staff members aware of his condition as well as triggers and I thought we had systems in place to support [Student] in case of a schizophrenic breakdown...The staff members have complete permission to ask [Student] if he is hearing voices, to investigate his mental health state whenever they it is necessary and if they would have asked him if he was hearing voices at the time of this incident, they would have been able to take a healthier approach.
18. On May 15, 2017, the Parent, the Parent's advocate, the Student, and all of his teachers met; this meeting was not an IEP meeting. There was no documentation about the meeting other than an email on the same day from the special education teacher to the other teachers, reminding them of the meeting. The Parent's advocate provided a statement about the meeting that reiterated the District was not implementing the accommodation.
19. On June 6, 2017, the IEP team, including the Parent, reviewed and revised the IEP to state that the Student's behavior interfered with his learning or learning of others. The IEP team added the following medical/physical information:

Family reported a mental health diagnosis of schizophrenia. Student currently takes medication for this need. From (Hospital) (Result Date: May 29, 2016)... DSM-5 Diagnosis: Principal Diagnosis: Schizophrenia.

Crisis Prevention Plan

- Triggers: People getting into my face, telling me what to do.
- Early warning signs: Punching things, pacing, having a hard time understanding the topic, losing focus, threats.
- When early signs are noticed, caregivers can: provide a low stim environment-low levels of noise/light/activity; help me keep on a schedule/routine, keep things predictable, don't try to reason that the voices aren't there-remind me that I'm safe and in safe place.

- Things [Student] can do when he notices early warning signs: sing a song, take a break.

The IEP team also added two behavior related accommodations to the IEP:

- Behaviorally Related: Student will have access to a menu of preferred structured break options. Ex. Short walk, mindful breathing, cool down room, distress tolerance box, social break.
- Behaviorally Related: Student will the opportunity to alert teacher of his current emotion/feeling using “Personality Colors” key.

20. Also at the June 6 meeting, the IEP team agreed to conduct a reevaluation of the Student, which included a functional behavioral assessment (FBA), at the beginning of the 2017-2018 school year.
21. On June 8, 2017, the special education teacher emailed staff the “IEP at a Glance” form, reflecting the June 6 amendments to the Student’s IEP, and informed them of the Student’s new accommodations.
22. The 2016-2017 school year ended on June 19, 2017.
23. According to the Parent, the Student was hospitalized for a month during the summer for being “overly stimulated and not being given the relief he needed throughout the school year.”

2017-2018 School Year

24. On September 6, 2017, the District’s 2017-2018 school year started.
25. On September 18, 2017, the Student’s IEP team, including the Parent, conducted an FBA of the Student. The FBA stated that the Student “greatly” struggled during the start and end of class, direct instruction, guided instruction, small group work, and independent work. The primary concerns were the Student not paying attention if overstimulated, failing to complete work on time, and confusion about assignments and instruction. The FBA recommended that a behavioral intervention plan (BIP) be considered for the Student and supports to improve behavior, including one-to-one checks for understanding, a transition checklist, modified assignments, a visual schedule, and de-escalation strategies, among others.
26. On October 3, 2017, the IEP team met to review the reevaluation conducted by the District. The review of existing data section in the evaluation report included the following:
[The Student] was diagnosed with Attention Deficit Hyperactivity Disorder: Predominantly Inattentive Type...on 06/09/2011. A diagnosis of Schizophrenia was documented... on 05/29/2016. [The Student] was hospitalized at the time.... He presented with psychosis and "grave disability" with precipitating factors for admission being lack of good compliance with medication administration, and less structure/more independence at his (then) current school placement (Boarding School). It was noted that [the Student] had received subtherapeutic treatment to date for his psychosis...[Student] was more recently hospitalized... for 13 days in July 2017. A diagnosis of Schizophrenia was

documented. [Student] currently takes Zyprexa and allergy medication for side effects of Zyprexa.

The reevaluation results indicated that the Student was cognitively functioning in the intellectually disabled range. Both his achievement and adaptive behavior scores were significantly low with “moderately serious” problem behaviors and “serious” internalized maladaptive behaviors. He exhibited “significant” difficulties in executive functioning and social skills. Based on the evaluation results, the District and the Parent determined that the Student was eligible for special education services under the category of intellectual disability, although emotional behavioral disorder and other health impairment were also considered. The evaluation report recommended specially designed instruction in the areas of math, reading, written expression, adaptive/self-help, social/emotional/behavioral, and speech/language.

27. On October 20, 2017, the Student’s IEP team, including the Parent, met to develop a new IEP for the Student. The IEP stated the following:

In a functional behavioral assessment completed 10/2017, data showed [Student’s] target behavior is that he demonstrates inattentive behavior when he becomes overstimulated in the academic environment that impedes his ability to access grade level instruction and prepare to attain his postsecondary goals. A behavior intervention plan was deemed unnecessary by the IEP at this time, but the following strategies are utilized to address inattentive behavior:

- Setting event strategies – [Student] uses transition materials checklist developed with him and his case manager, and a “color” system or another choice system to communicate his mood to teachers and peers. He receives organization accommodations for managing his class materials, frequent checks for understanding, preferential seating away from distraction/high stimulation areas of the classroom, access to structured de-escalation break system, and 1:1 support as appropriate to redirect and support his learning.
- Antecedent strategies – 1:1 checks for understanding, a transition checklist, modified/reduced assignments, class notes, a visual schedule, and pre-teaching of de-escalation strategies to help monitor his transition or independent work tasks. To cope with the trigger, [Student] receives in replacement break options to help manage his overstimulation and frustration.
- Teaching strategies – Modeling, coaching, practice, social stories, development of materials and transition checklists, visual schedule, direct instruction of break system.
- Consequence strategies – [Student] receives positive praise and honored request to receive a de-stimulation break choice as needed.

The IEP provided for additional annual goals in the areas of social/emotional behavior and adaptive behavior, along with the academic goals. The IEP provided for specially designed instruction in the area of behavior that would be provided in the special education setting, along with instruction in the academic areas. The following two behavior related accommodations were retained in the IEP:

- Behaviorally related: Student will have access to breaks to "cool off" when frustrated; please send student to main office or Case Manager when requested.

- Behaviorally Related: Student will have the opportunity to alert teacher of his current emotion/feeling using "Personality Colors" key.

28. On October 20, 2017, the Parent filed this complaint, alleging the District's failure to implement the Student's behavior related accommodation during the 2016-2017 school year.

29. In response to the complaint, the District provided written statements from each of the Student's teachers. According to the special education teacher, she informed staff of the Student's accommodation on a number of occasions. The special education teacher also stated that the accommodation was implemented as necessary. All other staff stated they were aware of the accommodation and provided the Student with "space" as necessary. Some teachers reported observing no behavior problems with the Student that would necessitate a break to cool down.

CONCLUSIONS

Each school district must ensure that the IEP is accessible to all teachers and service providers responsible for implementation of the IEP, that each teacher and provider has been informed of their specific responsibilities, and the specific accommodations, modifications, and supports must be provided in accordance with the IEP. Here, the Student's October 2016 IEP included an accommodation that called for the Student to have an opportunity to have breaks to cool down when frustrated or overstimulated. The Parent claimed that breaks were not being provided when needed because the Student's misbehavior, which was untypical of the Student, was symptomatic of overstimulation, and that had the District provided the cooling off accommodation, the Student would not have misbehaved. The Parent appeared to attribute all of the Student's inappropriate behavior to overstimulation, although there was no documentation to confirm the Parent's contention. The documentation in this complaint does demonstrate that the Student's teachers knew their responsibilities under the October 2016 IEP and implemented the behavior accommodation as needed. However, it is noted that while the Student's general education teachers indicated that the Student did not present any significant behavior problems in class, there were other incidents that indicated that the Student was in need of more behavioral supports than were provided for in his IEP. The District is reminded that an IEP team must consider the behavior needs of a student when developing an IEP and should revise an IEP when there is a change in a student's needs. Given that the District has already conducted a reevaluation of the Student, which included an FBA, and developed a new IEP for the Student that includes additional behavior supports, no corrective actions are required.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

Dated this ____ day of December, 2017

Glenna Gallo, M.S., M.B.A.
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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.)