

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-79

PROCEDURAL HISTORY

On August 24, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Vancouver 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 August 29, 2018, 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 20, 2018, 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. The Parent did not reply.

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

ISSUES

1. Did the District follow procedures for initiating an individualized education program (IEP) for the Student who enrolled in a private school and was dual-enrolled in the District?
2. Did the District follow procedures for providing a prior written notice to the Parent when the Student's services were changed?

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 the legal standard. OSPI reviews the documentation received from the complainant and district to determine whether there is sufficient evidence to support a violation. If there is a violation, there will be corrective action to correct the violation and maintain compliance.

Attendance Rights of Part-Time Public School Students: An eligible part-time public school student who qualifies as a resident of a public school district pursuant to the definition of a "resident student" set forth in chapter 392-137 WAC, as now or hereafter amended, shall be entitled to attend the schools of the district within his or her attendance area tuition free on a part-time basis. Eligible part-time public school students who meet the admission policies of a public charter school shall be entitled to attend the school tuition free on a part-time basis. WAC 392-172A-04010.

Home School and Part-time Enrollment: Students who are home schooled are entitled to enroll part-time in their resident district for any course, activity, or ancillary service provided by the

district in addition to the home school instruction. A student whose parents elect to enroll him/her part-time in their resident school district in order to receive special education and/or related services is served through an individualized education program (IEP) and is counted for federal and state special education reimbursement. 34 CFR §300.132; WAC 392-172A-04010.

Individual Services Plans: Districts must provide equitable services to students eligible for special education who are enrolled by their parents in private, including religious, schools located in the school district boundaries, and who are not part-time enrolled for special education services. 34 CFR §300.132; WAC 392-172A-04010. A parentally placed private school student does not have an individual right to a free, appropriate public education (FAPE), which means the student does not have an individual right to receive some or all of the special education and related services that the student would receive if enrolled full- or part-time in a public school. WAC 392-172A-04035.

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 Facts

This decision references events which occurred prior to the investigation time period, which began on August 24, 2017. These references are included to add context to the issue under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

1. On August 1, 2017, the Parent filed an intent to home school the Student with the District.

2017-2018 School Year

2. On August 30, 2017, the 2017-2018 school year began in the District.

3. At the beginning of the 2017-2018 school year, the Student was a third grader who was eligible for special education services under the category of autism.
4. Sometime during September 2017, the Parent began home schooling the Student, upon which the Student no longer was eligible to receive services under an IEP, as she was not currently part-time enrolled in the District.
5. On September 5, 2017, the District along with the Parent, conducted a review of the Student's June 2017 individualized education program (IEP) (effective June 20, 2017 to June 20, 2018). The IEP provided for annual goals in the areas of speech/language, social/emotional behavior, adaptive skills, math, reading, and writing. The IEP provided for the following special education and related services to be provided in a special education classroom:
 - Occupational therapy – 30 minutes/1 time weekly
 - Writing – 50 minutes/5 times weekly
 - Communication – 30 minutes/1 time weekly
 - Adaptive skills – 45 minutes/5 times weekly
 - Math – 50 minutes/5 times weekly
 - Reading – 50 minutes/5 times weekly
 - Social/Emotional/Behavioral – 45 minutes/5 times weekly
6. On September 25, 2017, the Parent enrolled the Student part-time in an elementary school (school 1) in the District.¹ The District's general enrollment policy was for students to be enrolled in their neighborhood school. To enroll part-time, a home school student would enroll in the neighborhood school and a private school student would enroll in the district school closest to the private school. As a result, the neighborhood school (school 1) provided special education services requested by the Parent under the June 2017 IEP to the Student (i.e., speech/language and occupational therapy), who was also being home schooled.
7. According to the Parent, she enrolled the Student in a private school on March 5, 2018. There is no indication in the documentation in this complaint that the Parent notified the District at the time of enrollment.
8. According to the District, the Student continued to be part-time enrolled in school 1 despite the change from home school to private school. The Student continued to receive the parent-selected services from the IEP.
9. On April 19, 2018, the Parent and the District speech/language pathologist began a series of emails to schedule an IEP meeting.
10. On April 30, 2018, the Parent emailed the District area manager and stated that the Student had been enrolled in a private school for seven weeks. The Parent also stated that the Student should be receiving special education services at another elementary school (school 2) because it was close to the private school.

¹ Based on WAC 392-134, a student who is home schooled and is part-time enrolled, or dual-enrolled, in the resident school district is entitled to receive special education services based on the student's IEP.

11. On May 1, 2018, the area manager responded to the Parent's April 30 email and stated: "...When a student is enrolled in a private school their IEPs are served at the locations closest to that school..." In this case, the closest District school to the private school was school 2.
12. Between May 1 and May 30, 2018, the District and the Parent continued to exchange emails regarding scheduling an "IEP meeting." The District also asked the Parent if she wished to continue with only speech/language and occupational services or would consider accessing other services while at school 2. The Parent indicated she was interested in other services. The annual review of the IEP was eventually scheduled for June 7, 2018.
13. On May 30, 2018, the District sent a meeting notice to the Parent that the meeting was scheduled for June 7, 2018, and stated an individual services plan would be discussed despite the prior references in communications to an IEP meeting. The notice stated:

This is to notify you that an IEP meeting has been scheduled for this student. Your participation and attendance at this meeting are very important. This Service Plan meeting must be scheduled at a mutually agreed upon time and place. The purpose of this meeting is to [Service Plan checked].
14. On June 4, 2018, the school 1 speech/language pathologist emailed the Parent, stating the speech/language pathologist from school 2 would talk with the Parent at the June 7, 2018 meeting "so you can work together to find speech time for [Student] for last week of school." According to the District, the Parent agreed to delay implementing the services until the start of the 2018-2019 school year.
15. On June 7, 2018, the District and Parent met to develop the Student's service plan. The service plan provided for annual goals in the areas of writing, math, reading, and communication. The service plan provided for the following special education services:
 - Reading – 120 minutes/weekly
 - Math –120 minutes/weekly
 - Writing – 120 minutes/weekly
 - Communication – 30 minutes/weekly

According to the meeting notes taken by the District, the District proposed an individual services plan because the Student had enrolled in a private school. The meeting notes stated: "Since she is enrolled at a private school, she will have a service plan. If you dually enroll her at [school 2] and [private school], the service plan would be changed to an IEP." The District staff asked the Parent if her intent was to enroll part-time in the District now that the Student was attending a private school. The Parent stated she wanted an IEP, that included occupational therapy, not an individual services plan, and that she did not want to continue the meeting. The Parent stated she was going to part-time enroll the Student at school 2. According to the documentation, the IEP team stated "IEP will remain unlocked for now" meaning that the discussion about the need for an individual services plan or an IEP would continue until the next meeting on June 18, 2018. No other IEP decisions were made at the time. The District stated that a draft IEP would be prepared for the next meeting.

16. On June 18, 2018, the District and the Parent again convened, but this time to develop an IEP. The IEP provided for annual goals, with accompanying benchmarks or short term objectives, in the areas of math, reading, writing, communication, and social/emotional/behavioral skills. The IEP provided for the following special education and related services to be provided in a special education classroom:

- Occupational therapy – 30 minutes/1 time weekly
- Writing – 30 minutes/4 times weekly
- Communication – 30 minutes/1 time weekly
- Adaptive skills – 30 minutes/4 times weekly
- Math – 30 minutes/4 times weekly
- Reading – 30 minutes/4 times weekly
- Social/Emotional/Behavioral - 30 minutes/4 times weekly

According to the meeting notes, the IEP team discussed the annual goals, the accommodations, transportation, and when services would be provided. The notes also stated that the District was “unable to change attending school from [school 1] to [school 2] until [Student] is registered at [school 2].”

17. On the same day, the District provided the Parent with prior written notice. The notice stated that the District would provide the Student with speech/language services, occupational therapy, transportation, and consultation in reading, writing, and math to the private school, which were the services that the Parent requested be implemented from the Student’s IEP. The completed IEP would be sent to the Parent before initiating services.

18. On August 24, 2018, the Parent filed this complaint.

19. On September 5, 2018, the 2018-2019 school year began in the District. There was no dispute regarding the status of the IEP or services during the 2018-2019 school year.

20. On September 10, 2018, the Parent part-time enrolled the Student at [school 2] in the District, while attending the private school.

CONCLUSIONS

Issue 1: Part-time Enrollment – The complaint stated that the District offered an individual services plan for the Student when an IEP for the Student was required. A home schooled student whose parents elect to enroll him/her part-time in their resident school district in order to receive special education and/or related services is served through an IEP and may receive any special education or related service on the IEP. Here, the Student was home schooled and part-time enrolled at school 1 at the beginning of the 2017-2018 school year.² The District had reviewed the IEP in September 2017 for the Student but only provided speech/language and occupational services to the Student, at the request of the Parent. The Parent subsequently stopped home schooling and enrolled the Student in a private school in March 2018. The Parent informed the District on April 30, 2018, that she had enrolled the Student in a private school. An eligible student

² Per the District’s policy, the Student’s special education services were provided at school 1.

who is enrolled in a private school may be provided an individual services plan. Private school and part-time enrollment in the district necessitates the development of an IEP for an eligible student. The District provided the Parent with a meeting notice, dated May 30, 2018, stating that an IEP meeting would be held to develop an individual services plan on June 7, 2018. This meeting notice was confounded by also including mention of an IEP.

On June 7, 2018, the District met with the Parent and initially proposed an individual services plan for the Student, as the Student had yet to be part-time enrolled in school 2. The Parent disagreed with an individual services plan and wanted an IEP for the Student. Based on the District's enrollment policy, the District informed the Parent that the Parent needed to re-enroll the Student at school 2, the school closest to the private school, if the Parent wanted an IEP and to receive services at school 2, which the Parent also requested.³ Meanwhile, the Student continued to be enrolled in school 1 and continued to receive services from her IEP. Because of the confusion regarding what school the Student needed to be enrolled in, the District mistakenly proposed an individual services plan, rather than an IEP. However, rather than implementing the individual services plan, the District decided to delay the decision until the June 18, 2018 meeting and consider the Parent's request for an IEP, according to the meeting notes. No other proposals or refusals were made. The District held an IEP meeting on June 18, 2018, and developed an IEP for the Student, not an individual services plan, as the Parent clarified her intent to part-time enroll in school 2.

While the District mistakenly set out to propose an individual services plan, the District self-corrected the error and proposed an IEP for the Student as required at the June 18, 2018 meeting. The District agreed to provide speech/language, occupational therapy, and transportation to school 2 and provide consultation to the private school regarding the Student's reading, math, and writing, which were the services the Parent requested from the Student's IEP. At the June 18, 2018 meeting, the District was required to and did offer an IEP for the Student. OSPI finds no violation, based on the District offering an IEP rather than an individual services plan.

Issue 2: Prior written notice – The complaint stated: "The [District] failed to provide me with a prior written notice for a change in special education services, violating WAC 392-172A-05010. My daughter's IEP was illegally removed, and she was also unenrolled from the District without parent's knowledge, consent, or prior written notice."

A district must provide a parent with written notice before the district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE). Here, the District met with the Parent on June 7, 2018 and mistakenly proposed a services plan instead of the required IEP because of the confusion regarding the Student's enrollment status at school 1 and school 2. However, according to the District, the Student was never unenrolled from the District. After hearing the Parent's disagreement with the individual services plan, the District decided to consider the Parent's request for an IEP after informing the Parent about the need to re-enroll the Student at school 2, because school 2 would be providing services to the Student. No other proposals and refusals

³ The Parent subsequently re-enrolled in school 2 on September 10, 2018.

were made at the meeting; the District instead decided to continue the discussion at the next scheduled meeting. Therefore, no prior written notice was required to be provided to the Parent regarding the June 7, 2018 meeting. The District and the Parent met on June 18, 2018, and the District proposed an IEP for the Student. The District provided the Parent with prior written notice regarding the proposed IEP. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

Dated this ____ day of October, 2018

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.)