

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-79

PROCEDURAL HISTORY

On October 9, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from a complainant (Complainant) regarding a student (Student) attending the Spokane School District (District). The Complainant alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 10, 2019, 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 16, 2019, the Complainant contacted OSPI and provided additional information to OSPI, which led the OSPI complaint investigator to conclude the issue under investigation should be amended.

On October 18, 2019, OSPI sent a letter to the District, informing it of the amendment to the issue under investigation and asked the District to respond with as much information as possible by the required deadline.

On November 1, 2019, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day. All personally identifiable information regarding the Student was redacted. OSPI invited the Complainant to reply.

On November 12, 2019, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

Also on November 12, 2019, OSPI received a call from the Parent, requesting to speak with the OSPI complaint investigator. The same day, the OSPI complaint investigator called and interviewed the Parent.

On November 13, 2019, OSPI received additional information from the Complainant. OSPI forwarded the additional information to the District on the same day.

On November 13, 2019, the Parent provided consent to release information to the Complainant, including educational records regarding the Student relating to SECC 19-79. On November 26, 2019, OSPI forwarded the full District response to the Complainant.

On November 25, 2019, OSPI requested clarifying information from the District. On November 26, 2019, OSPI spoke to the Director of Special Education and interviewed the District via telephone.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during interviews.

ISSUE

1. Did the District follow procedures to amend the Student's individualized education program (IEP) regarding paraeducator support from March 5, 2019 through the end of the 2018-2019 school year?

LEGAL STANDARDS

IEP Amendments: After the annual individualized education program (IEP) team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

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 a free appropriate public education (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

1. The District's 2018-2019 school year began on August 30, 2018.
2. During the 2018-2019 school year, the Student was a fifth grade student in the District. The Student qualified for special education services under the category autism.

3. On December 19, 2018, the Student's individualized education program (IEP) team met to review the Student's IEP. The Student's IEP team provided the Student with the following specially designed instruction and related services:¹
 - Math, for 120 minutes per week;
 - Writing, for 120 minutes per week; and,
 - Instructional Assistant² Related Support, for 1,800 minutes per week.

The Student's IEP also provided for a physical therapy consultation as needed, as well as occupational therapy consultation as needed for assistive technology support. The Student's IEP indicated the Student would spend 87% of his time in the general education setting.

4. The Student's December 2018 IEP additionally included a feeding and swallowing and health care plan, as well as a dysphagia management request form, which was dated September 7, 2018. The form contained other information regarding modifications required for the Student's food and liquid intake.
5. On February 27, 2019, the principal at the Student's school emailed the director of special education for the District (director), noting their school had a paraeducator who was no longer needed for the Student, to whom she was assigned. The principal wrote, "[Paraeducator] is a district hired para, and there must be a need out there. Also, if she is here but not needed for the student should she be assigned to other resource students who would greatly benefit from her assistance in the classroom? The Student is [Student's name]. Please advise." The same day, the director responded, "Thank you! – We can use them somewhere else for sure. What is the paras name?"
6. Later on February 27, 2019, the principal responded to the director with the name of the paraeducator and added, "we will need to amend the IEP. Parents will be reluctant but he has not need [sic] her since winter break. He has shown to be independent with his medical needs. We would formulate a plan with regular staff and resource staff to monitor his progress."
7. On February 28, 2019, the director responded to notify the principal she was going to reassign the paraeducator to another middle school in the District starting on the Wednesday of the following week. She asked the principal to notify the paraeducator so the paraeducator could be at the team meeting at the new school to discuss the new student.

¹ Regarding specially designed instruction in math and writing, the Student's IEP team suggested the Student required a "combination of specially designed instruction and/or related services within a general education inclusion program and some instruction within a special education class," to be provided by special education staff. The Student's IEP recommend the Student receive his paraeducator services in the special education setting.

² The terms "instructional assistant (IA)" and "paraeducator" are used interchangeably throughout this decision.

8. March 5, 2019 was the Complainant's³ last day working with the Student.
9. On March 6, 2019, the Complainant was scheduled to begin her new assignment.
10. On March 7 and 8, 2019, the Student's Parents and principal exchanged emails regarding concerns about modifications to the Student's IEP. The Parents told the principal they did not agree with changes to the level of paraeducator support in the Student's IEP and requested the Student's IEP be implemented per the agreements made at the December 2018 IEP meeting.
11. In the Complainant's reply to the District, the Complainant said she was told by the Parents that the new paraeducator assigned to the Student was not in place for the first couple of days after the Complainant was transferred. During this time, the Complainant alleged the Student did not receive paraeducator support. During an interview with the Parent,⁴ the Parent similarly told the OSPI complaint investigator the Student did not receive paraeducator support for a few days after the change in paraeducators. The Parent further told OSPI the Student suffered great confusion and anxiety at school because they (the Parents) were not made aware of the change in paraeducator support prior to its implementation and were accordingly unable to help the Student prepare for the change to his routine.
12. On March 8, 2019 the Parent emailed the director, the assistant director, and the State Superintendent. In the Parent's email, the Parent wrote:

We need some help with our sons iep. We received call from the principal of [school] on Monday March 4th. After finding out [principal] changed our iep. without our consent and against our wishes. We requested a meeting with her to go over why this happened. We feel she had already made a decision and was not listening to our concerns. He currently receives 1800 minutes a week of IA/para she removed that and has reassigned his aid to a different school. We just redid his IEP in December 2018. She told us this was a district decision and not hers, and she told us all of his needs can now be met through other resources in the school. We feel they can not be met through the resources she has gave to us. We feel our needs for our child [Student] is not being met. In this last week we now have a child who is feeling lost and doesn't understand why his aid is gone one that he has had since kindergarten. I will attach his accommodation paper to this and if you would like we can forward the emails between us and [principal] as well. The best option for communicating with us as we live in separate households is email and his mom [Parent] will be included in emails as well. [Sic]

³ The Complainant is the Student's former paraeducator. The Complainant had been assigned to work with the Student as a full-time 1:1 paraeducator for multiple years before being reassigned to another school in the District in March 2019 once it was determined the Student no longer required full-time paraeducator support. The Complainant expressed concerns over the Parents not being informed of the reduction in minutes of paraeducator services prior to her reassignment, as well as the Student not being informed of the change to his routine prior to her reassignment.

⁴ OSPI complaint investigator interviewed the Parent on November 12, 2019.

13. On March 8, 2019, the director spoke with the Parents and then emailed them regarding scheduling an IEP meeting on March 12 or 13, 2019. The Parents responded to the director on March 8, 2019 that they were available both dates.
14. On March 8, 2019, the director emailed the case manager and principal that she received confirmation from the Parents that they could meet on March 12, 2019 for an IEP meeting. She asked the case manager to send out meeting invites and to "bring data that shows how often [Student] requires the assistance of paraeducator."
15. On March 10, 2019, the director emailed the case manager and notified them that the Parents had requested all of the Student's specialists be invited as well. The director requested the case manager include the specialists on the invite list.
16. On March 11, 2019, the case manager sent a meeting invitation by email to the Parents, notifying them an IEP meeting was scheduled for March 12, 2019 to discuss concerns related to the Student's use of paraeducator support. The school nurse, special education teacher, principal, and general education teacher were also invited to attend.
17. Also, on March 11, 2019, the case manager and principal exchanged emails regarding the upcoming IEP meeting:
 - At 7:34 am, the case manager emailed the director and principal and requested to know when the meeting was so he could generate the notices. In his email he wrote; "In light of the situation, I think it is important that we give parents adequate time to rearrange their schedules if necessary." He suggested the Student's previous general education teacher and physical therapist be included on the invitation list, adding, "They have known and worked with [Student] for years and were part of the meeting in December when we decided to continue [paraeducator] support while we worked on a couple of issues. The intention was set at that meeting to monitor his progress towards independence and revisit his need for [paraeducator] support in the spring." In his email, he concluded, "Lastly, please do not set up a meeting date with [Parents] without checking with all those who need to be involved to be sure they aren't already booked for that time and date. I think it is important that everyone on the team is at the meeting. I'd be happy to help if you would like."
 - At 8:13 am, the director responded, "The meeting is set for tomorrow at 8:00 am. I have been communicating with both parents and they can both make it. If that time does not work for the [school] team I will let you take over to find another time that works and communicate with the family, however, I am not available the rest of the week other than tomorrow am. This is not the typical way I would have a meeting set up, however, this matter is time sensitive given that we have a current IEP with 1800 min of [paraeducator] support that the parents believe is not being followed."
18. On March 12, 2019, an IEP meeting was held. According to the director, the case manager, Parents, director, and two general education teachers were present.⁵ The director told the complaint investigator the meeting was relatively small and informal, and that anecdotal data

⁵ The director was interviewed by the OSPI complaint investigator on November 27, 2019 regarding the March 12, 2019 and March 21, 2019 IEP meetings.

was discussed regarding the Student's use of the paraeducator during certain times of day—including during lunch, transitions, when completing assignments, and for help with navigating peer situations. No amendments were made to the Student's IEP following the meeting and no prior written notice (PWN) was provided.

19. On March 13, 14, and 20, 2019, the case manager contacted the Parents to notify them an IEP meeting had been scheduled for March 21, 2019 at 7:45 am.
20. On March 21, 2019, the Student's IEP team met to amend the Student's IEP. The IEP meeting was attended by the Parents, a special education teacher, general education teacher, director, school nurse, school counselor, occupational therapist, physical therapist, and speech and language pathologist. The IEP team determined the Student required the following specially designed instruction and related services:
 - Math, for 120 minutes per week in the special education setting, to be provided by special education staff;
 - Writing, for 120 minutes per week in the special education setting, to be provided by special education staff;
 - Instructional Assistant Related Support, for 900 minutes per week in the general education setting with special education instruction &/or related services.

The Student's IEP also provided for physical therapy consultation as needed, as well as occupational therapy consultation as needed for assistive technology support. The Student's IEP indicated the Student would spend 87% of his time in the general education setting.

The Student's IEP contained two goals, which were reviewed at the March 2019 IEP meeting.

- IEP Goal 1—Writing: "Given a writing prompt, [S]tudent will be able to independently write paragraphs containing a topic sentence and 3 or more sentences containing supporting evidence, improving from 1 out of 5 paragraphs to 4 out of 5 paragraphs to be measures [sic] by teacher data of student's writing responses by 12-18-2019."

On March 2019, the first progress note was entered; It stated, "2 out of 5 paragraphs showing nice improvement."

- IEP Goal 2—Math: "When given 5 grade level word problems, [Student] will be able to independently solve the problems, improving from 0 out of 5 problems to 4 out of 5 problems over 3 consecutive trials to be measured by teacher data of student responses by 12-18-2019."

On March 2019, the first progress note was entered on the goal, which stated: "0 out of 5 independently, but can solve with prompting questions as a guide."

21. On March 21, 2019, the District sent the Parents PWN the District was proposing to change the Student's IEP. Under the description of the proposed action, the PWN stated, "annual update of the Student's IEP as required by WAC regulations," and under the reason for the proposed action, the PWN noted "regulations require that a student's IEP is updated annually," Under a description of each evaluation, procedure, test, record, or report, used as the basis for the action being taken, the PWN stated, "classroom performance [and] measures of the student's progress toward meeting the annual goals."

22. On November 12, 2019, the OSPI complaint investigator spoke with the Parent. The Parent expressed concern that in March 2019, she had to request an IEP meeting after a change had already occurred to the Student's paraeducator services—a change which she said she did not feel she participated in making and a change with which she did not agree.
23. On November 27, 2019, the OSPI complaint investigator interviewed the director. The director stated she did not recall the Parents ever clearly disagreeing with the IEP team's recommendation to reduce the number of paraeducator service minutes; however, she recalled the Parents "being nervous" about a reduction in minutes. The director's understanding was that the Student was only using his paraeducator during certain times of day (including during meals and during transitions) and it accordingly was recommended by staff that they start to try and decrease the Student's paraeducator services in order to increase the Student's independence. The director said that although the Parents were notified of a change in staff on March 4, 2019, a reduction in number of minutes the Student was supported by a paraeducator did not occur until after the IEP meeting on March 12, 2019. Between March 4, 2019 and March 12, 2019, the director said other building staff were being used to implement the minutes of paraeducator services on the Student's IEP. However, the director acknowledged this likely caused confusion to the Student who had become accustomed to being served by the Complainant prior to the change and who was not informed of the change prior to its implementation. The director suggested communication between the District and Parent could have been better during the staff transition, considering the Student's particular disability and known difficulties with change in routine.

Regarding the two IEP meetings held in March 2019, the director noted the IEP meeting on March 21, 2019 was much bigger with more individuals present than the IEP meeting held on March 12, 2019, which the director described as small, informal, and containing only the Parents, director, case manager and two general education teachers. The director explained that a second IEP meeting was held because all of the individuals who either the Parents or case manager felt should be at the meeting, including those who were at the December 2018 IEP meeting, were unable to attend the March 12, 2019 IEP meeting. The director further confirmed that the Student's IEP was not amended and PWN was not provided until after the March 21, 2019 IEP meeting.

CONCLUSIONS

IEP Amendment: The Complainant alleged the District did not follow procedures to amend the Student's individualized education program (IEP) regarding paraeducator services in March 2019.

Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by the district and parents agreeing to amend the IEP rather than by redrafting the entire IEP. Prior written notice (PWN) must be given to the parent within a reasonable time *before* the district initiates a proposed change to the student's IEP. The PWN must describe the action the district is proposing or refusing to take, explain why the district proposes or refuses to take particular action, describe any other options the district considered and its reasons for rejecting those options, and note if the parents disagree with the proposed actions.

At the beginning of March 2019, the District decided the Student might benefit from a reduction in the number of minutes of daily paraeducator support he received. When the Parents were informed the District was intending to begin the process of fading out the Student's paraeducator, they requested an IEP meeting.

The District scheduled an IEP meeting on March 12, 2019. According to the District director of special education, although the staff member serving as the Student's paraeducator was changed on March 4, 2019 in anticipation of reducing the number of minutes of paraeducator support the Student received, a reduction in number of minutes the Student was supported by a paraeducator occurred only after an IEP meeting on March 12, 2019. OSPI recognizes the District's efforts to hold an IEP meeting on March 12, 2019 after being contacted by the Parents, and agrees with the District's acknowledgement that it should not have been discussing removal or a reduction of paraeducator support without first holding an IEP meeting, or without first obtaining an agreement from the Parent to amend the Student's IEP. However, at the March 12, 2019 IEP meeting, the District still did not amend the Student's IEP and did not provide the Parents with PWN of a recommendation to change the Student's IEP. Because the IEP was not amended and PWN was not provided, the District should not have implemented any changes to the services in the Student's IEP even though a meeting was held on March 12, 2019. OSPI finds the District in violation for reducing the number of minutes per week the Student had a paraeducator following the March 12, 2019 IEP meeting without amending the Student's IEP and without providing PWN.

Following the March 21, 2019 IEP meeting, the District amended the Student's IEP to reflect the change in service minutes regarding paraeducator support and provided the Parents with PWN. However, the PWN did not indicate the IEP team had recommended a reduction in number of minutes the Student required paraeducator support during the school day—or any other change regarding paraeducator support. Instead, the District checked a box on the PWN, stating the District was proposing to change the Student's IEP. Under "description of the proposed action," the PWN provided "annual update of the Student's IEP as required by WAC regulations." Under reason for the proposed change, the PWN provided "Regulations require that a student's IEP is updated annually." Under "a description of each evaluation, procedure, test, record, or report we used or plan to use as the basis for taking this action," the PWN stated, "classroom performance measures of the student's progress toward meeting the annual goal." Interviews with the District and Parent and the documents reviewed—including communications between the District and Parent—showed the reduction in paraeducator support was initiated due—at least in part—to a belief the Student no longer required 1800 minutes of paraeducator support. The IEP team felt the Student had become increasingly independent in caring for some of his medical needs as described in his individual health care plan and his IEP team wanted to continue encouraging the Student to become more independent. However, the IEP team recognized the Student continued to require paraeducator support during certain times of day. This information should have been included in the PWN along with the Parents' disagreement to any reduction in number of minutes of paraeducator services.⁶

⁶ OSPI recognizes there may have been a genuine misunderstanding regarding whether the District was aware, prior to the filing of this complaint by the Complainant, that the Parents disagreed with the

So while the March 21, 2019 IEP meeting remedied the need to amend the Student's IEP, the District failed to complete this process by failing to provide a sufficient PWN. OSPI finds the District in violation for not providing PWN that included all required components, including the description of the proposed action and the reason the District was proposing or refusing to take the action, *prior* to initiating and implementing a change in the Student's IEP regarding paraeducator services. The District will be required to complete training on prior written notice.

CORRECTIVE ACTIONS

By or before **January 24, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By or before **January 17, 2020**, District special education administrative staff, the case manager, the special education teacher who attended the March 21, 2019 IEP meeting, and the principal identified in this complaint will complete a training module on prior written notices. The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>. By or before **January 24, 2020**, the District will submit documentation that required staff have completed the training module.

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.

recommendations of the IEP team. During the interview by the OSPI complaint investigator with the Parents, the Parents stated they did not agree entirely with the change to the IEP regarding the paraeducator. The Parents made similar statements in writing in emails sent to the District prior to the March 2019 IEP meeting. However, similar emails expressing discontent were not sent following the IEP meetings. The District recalls the Parents being open at the IEP meetings held in March 2019 to the reduction of minutes of paraeducator support in order to transition the Student to increased independence. However, because the District did not clearly indicate the recommendation of the IEP team in a PWN, the Parents were not afforded a reasonable opportunity to be put on notice of the District's intention to reduce the number of minutes of paraeducator support in the Student's IEP and of their reason for doing so, or of the District's understanding following the IEP meeting that the Parents were in agreement with their recommendation. Consequently, it appears the Parents and the District left the March 21, 2019 IEP meeting with two different interpretations of what occurred during the meeting and what was agreed upon. Had the District provided the Parents with PWN containing all of the required elements, this misunderstanding may have been avoided and alternative dispute resolution options, including working with the director or requesting mediation, may have been encouraged earlier in the process to address any disagreements.

RECOMMENDATION

During conversations with the Parents, the Parents raised concerns that the current IEP was not being implemented regarding paraeducator services. Additionally, the Parents raised concerns during interviews with the OSPI complaint investigator that supports which they were told would be available to the Student in lieu of a paraeducator were not being made available or were ineffective. While outside the scope of the current complaint, the Parents are encouraged to consider requesting an IEP meeting to discuss any ongoing issues regarding paraeducator support. If an IEP meeting is held, the IEP team is encouraged to be as specific as possible in the IEP regarding the Student's use of paraeducator support. This could include using specific language to describe the tasks and functions the paraeducator will perform, the time of day the Student will utilize the paraeducator, the intended benefit the Student is expected to receive from the paraeducator, how the Student will be introduced to new staff, etc. Also, if increasing the Student's independence by decreasing the Student's reliance on a paraeducator over time is a goal the IEP team has set for the Student, as was mentioned by the District in this complaint, the IEP team, which includes the Parents, is encouraged to discuss at an IEP meeting—and to document in the IEP—what this process looks like and what supports the Student requires in order to achieve that goal.

Dated this ____ day of December, 2019

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.)