

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-115

PROCEDURAL HISTORY

On September 20, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Sumner-Bonney Lake School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, to the Student's education.

On September 22, 2022, 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 22, 2022, the Parent provided additional and clarifying information and OSPI amended the issues being investigated in the complaint.

On October 3, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District same day.

On October 7, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On October 20, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

SCOPE

OSPI notes the Parent has also filed a complaint with the District regarding the professional conduct of District staff members. The professional conduct of specific staff is outside of OSPI's scope of authority to investigate in a special education community complaint. Any references to that information are included only context if needed, and not to identify potential violations.

ISSUES

1. Did the District follow the resolution session procedures outlined in WAC 392-172A-05090(1)(a)-(d)?
2. Has the District implemented the remedies in due process decision 2021-SE-0136, given the Parent's provision of proof of payment?

LEGAL STANDARDS

Resolution Process: Within fifteen days of receiving notice that a parent has served a due process hearing request on the district and filed a copy of the due process request with the office of

administrative hearings, and prior to the initiation of a due process hearing, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that: (i) Includes a representative of the school district who has decision-making authority on behalf of that district; and (ii) May not include an attorney of the school district unless the parent is accompanied by an attorney. The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request. The parent and the school district determine the relevant members of the IEP team to attend the meeting. WAC 392-172A-05090.

Enforcement of Due Process Decisions: Once a decision is entered in a due process proceeding, and if that decision includes provisions ordering the school district to take corrective action, the district must implement the order consistent with the terms of that decision. If a parent believes a district has failed to implement a due process decision, they may file a citizen complaint with OSPI. OSPI must resolve any complaint that alleges a school district's failure to implement a due process decision. 34 CFR §300.152(c)(3); WAC 392-172A-05035(3); OSEP Memorandum 00-20 (July 17, 2000) (Question 5).

FINDINGS OF FACT

1. At the start of the 2021–2022 school year, the Student was eligible for special education services and attended school in the District.
2. On October 29, 2021, the Parent filed a request for a due process hearing, due process cause no. 2021-SE-0136. Relevant to the complaint allegations here, one of the remedies the Parent requested was related to transportation to a summer behavior camp, as follows, "The District shall provide travel expenses, such as mileage for transporting the Student between home and...Summer Camp each year...This includes two 93-mile round trips each day."
3. On November 3, 2021, the District's executive director of special services (executive director) contacted the Parent regarding scheduling a resolution session, offering times on November 9 and 10, 2021.
4. On November 4, 2021, the Parent requested the resolution session occur on November 9, 2021 at 11:30 am. The Parent requested the District send the meeting notice to the Parent's advocate.
5. Also, on November 4, 2021, the executive director sent the Parent a meeting invitation for the resolution session that identified the participants as the Parents, Parent advocate, executive director, and the director of special services (director). The executive director also emailed the Parents that she had sent a Zoom invitation to everyone on the meeting invitation.

The District stated in its response that the Parent accepted the resolution session invitation, and "did not object to the attendees or request the attendance of anyone else."

6. On November 9, 2021, a resolution session was held regarding the Parent's due process. The Parent, advocate, executive director, and director participated. The District stated the parties were unable to reach a resolution and thus the due process proceeded to a hearing.
7. Regarding the resolution session, the Parent alleged in her complaint that:
 - The District failed to invite or have in attendance any "relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint."
 - The District failed to "uphold the purpose of the Resolution meeting" because the District "did not attempt to 'resolve the dispute.'"
 - The District failed to "provide the Parent the opportunity to 'determine the relevant members of the IEP Team to attend the [Resolution] meeting.'"

The Parent stated the only IEP team member that was invited was her, the Parent. The Parent stated the principal, special education teacher, and general education teacher all had knowledge of the facts identified in the due process complaint. The Parent stated that the District did not attempt to resolve the dispute with her during the resolution session.

8. Regarding the resolution session, the District stated in its response that it timely convened a resolution session; that the District legal counsel did not participate because the Parent was not accompanied by an attorney; and that the executive director had decision-making authority on behalf of the District. The District stated it determined that the director was the relevant member of the Student's IEP team who:

had specific knowledge of the facts identified in the due process hearing request. [Director] attended every IEP team meeting held for Student during the time period at issue in the due process hearing request...Specifically, [director] participated as a team member in IEP meetings held for Student on May 13, October 15, and December 14, 2020; and January 7, February 1, February 24, March 15, April 19, May 11, May 27, and June 23, 2021.

9. In her reply to the District's response, the Parent stated the following regarding the resolution meeting:
 - The Parent was unclear on why the director attended IEP meetings as she is an administrator; the principal also attended and acted as the District representative; and the director did not have "specific, firsthand knowledge or experience of the Student's daily experience at school, of which the majority of the issues were about" in the due process.
 - The Parent stated she was unaware she had the right to request that other members of the IEP team attend the resolution session.
 - The Parent stated that because the District did not invite other members of the IEP team, the District was willfully unprepared to "discuss the due process hearing request, and the facts that form the basis of the request" or to "resolve the dispute that is the basis for the due process hearing request."

10. On July 14, 2022, a decision was issued in the due process. Relevant to the complaint allegations here, the decision ordered:

The Parents are awarded three years of tuition for...Summer Camp as compensatory education for the Student...

The Parents have already paid for the Student to attend...Summer Camp for the summer of [2022]. If the Parents wish reimbursement for the summer of [2022], they may elect to use one of the three summers of compensatory education. Upon reasonable proof of payment provided to the District for the summer of [2022], the District shall reimburse the Parents for the cost of the Student's attendance at [camp].

For future summers, the Parents may pay for the Student to attend...Summer Camp and seek reimbursement from the District upon reasonable proof of payment. In the alternative, the Parents and the District may work together to have the District pay [camp] directly for the Student's attendance. The Parents may select either alternative.

...

The Mother also requests reimbursement for transporting the Student to and from...Summer Camp. This requested remedy is reasonable and is granted as follows. Upon reasonable proof of transportation provided to the District, it shall reimburse the Parents for mileage driven at the then-current IRS Approved Mileage Rate...

(Emphasis in original).

11. Regarding the due process decision and corrective actions, the Parent alleged in her complaint that the District failed to abide by the decision.

12. On July 19, 2022, the District's executive director requested the Parent provide proof of payment for the camp and a mileage form for reimbursement. The executive director stated the District would reimburse the Parent for mileage "to and from your house to camp and from the camp to your home- one time each day you take [Student] to camp."

The Parent responded on July 19 and 25, 2022, noting that the reimbursement was for two roundtrips.

The District responded that their understanding was that the decision ordered reimbursement "of 'to and from,'" which meant "transporting the student to and from home to camp only." In subsequent emails, the Parent and executive director continued to discuss whether the reimbursement was for one round trip or two.

13. On August 16, 2022, the Parent submitted the documentation requested by the District, which included receipts for the camp tuition, a travel expense report for mileage reimbursement, and documentation of the distance between the family's home and camp.

14. In her reply to the District's response, the Parent stated that she submitted documentation of the tuition payment on August 16, 2022, and therefore, should have been reimbursed "once" the tuition documentation was submitted—implying immediately or at least sooner than six weeks as the Parent stated, "both reimbursements were delayed for more than 6 weeks"—because the due process decision stated that "the Parents may pay for the Student to attend...Summer Camp and seek reimbursement from the District upon reasonable proof of payment." (Emphasis in Parent's reply.)

15. On August 17, 2022, the executive director and Parent emailed regarding the reimbursement for the summer 2022 camp tuition and mileage.
16. On August 19, 2022, the executive director directed the special services administrative secretary to pay the Parent the tuition reimbursement and half the mileage reimbursement—in other words—one round trip instead of two round trips.
17. On August 25, 2022, the administrative secretary requested that the Parent revise the mileage reimbursement form to include only one round trip per day instead of two.
18. On September 6, 2022, an attorney contacted the District's legal counsel on behalf of the Parent, stating the Parent was entitled to mileage reimbursement for two round trips per day and requesting the District reconsider its position or "we will file on her behalf and seek clarification and attorneys fees when we prevail."
19. On September 12, 2022, the District's legal counsel notified the attorney and Parent that the District would agree to provide mileage reimbursement for up to two round trips per day, each day the Student attended the camp.
20. Also, on September 12, 2022, the Parent emailed the administrative law judge (ALJ) and requested he clarify the mileage reimbursement remedy ordered in the due process decision.

The ALJ responded on September 19, 2022, as follows:

Specifically, your questions is does this award of mileage reimbursement include 'two 93-mile round trips each day'? It would be inappropriate to provide the confirmation you request, as I would be interpreting my Final Order for the parties beyond the express language in that order. I can confirm that the Final Order does not expressly limit reimbursement for transportation to any set number of trips per day.

21. On September 13, 2022, the administrative secretary emailed the Parent and copied the executive director and director, stating that the District agreed to reimburse the Parent for two round trips per day. In a second email, the District requested the Parent provide a record of the Student's attendance at the summer camp.
22. According to the Parent's complaint and reply, the District imposed additional documentation requirements in the middle of the reimbursement process. The Parent stated:

On top of the documentation required by [executive director] on 07/19/2022 of 'receipt of payment' for camp tuition and the 'mileage form'...which is the District's own Travel Expense Report...they are now also requiring an attendance record from...Summer Camp to show that the Student actually attended camp and so therefore the Parent must have actually driven her there.

The Parent noted in her reply that the District did not require attendance records when it reimbursed her in 2021. The Parent further stated that she requested the District let her know what she needed to do to process the reimbursement and provided answers to all the District's clarification questions.

23. On September 14, 2022, the Parent provided the District the attendance records.
24. On September 20, 2022, OSPI received and opened the investigation into the Parent's complaint.
25. On September 29, 2022, the District mailed the Parent the reimbursement check.
26. On October 3, 2022, the Parent notified OSPI that she had received a reimbursement check from the District, which was "the accurate reimbursement for...Summer Camp 2022 tuition and mileage as ordered." The Parent stated she believed the District only sent the reimbursement because she filed a complaint.

And, in her reply to the District's response that while she was aware the District stated they would reimburse her, at that point, the Parent no longer trusted the District and believe the "delay tactics would continue."

27. The District, in its response, noted it communicated with the Parent on September 12 and September 13, 2021, prior to the Parent filing the complaint, that it agreed to provide mileage reimbursement for two round trips per day. The District noted the Parent provided proof of payment of tuition on August 16, 2022, and attendance records to support the mileage reimbursement on September 14, 2022. The District stated its business office processed and mailed the reimbursement approximately two weeks after receiving the complete reimbursement documentation.

CONCLUSIONS

Issue One: Resolution Session Procedures – The Parent alleged the District failed to invite and failed to allow her to invite relevant members of the IEP team, who had specific knowledge of the facts identified in the due process, to attend the resolution session. The Parent also alleged the District failed to uphold the purpose of the resolution session because the District did not attempt to resolve the dispute.

Within 15 days of receiving notice that a parent has served a due process hearing request on the district and filed a copy of the due process request with the office of administrative hearings, and prior to the initiation of a due process hearing, the district must convene a resolution session with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that includes a representative of the school district who has decision-making authority on behalf of that district. The parent and the district determine the relevant members of the IEP team to attend the meeting. The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

Here, the Parent filed a request for a due process hearing on October 29, 2021, and a resolution session was scheduled for November 9, 2021. The Parent, Parent's advocate, District executive director of special services (executive director), and director of special services (director) attended

the resolution session. The resolution session did not result in a resolution agreement and the due process proceeded, ultimately to a hearing.

The District stated the executive director had decision making authority on behalf of the District and the director was a relevant member of the Student's IEP team, as she had attended the Student's IEP meetings in 2020 and 2021—the period at issue in the due process. While there may have been other members of the IEP team that could have attended the resolution session, such as the principal, special education teacher, or general education teacher, as suggested by the Parent, there is no requirement to have a specific IEP team member or all IEP team members, beyond the requirement that the parent and district determine the relevant members of the IEP team. The District determined the director was a relevant member of the IEP team. And, while the Parent stated she was unaware of her right to request that others attend, the Parent did request that the District invite her advocate. Thus, it was reasonable for the District to believe that had the Parent wanted to suggest other attendees, she or her advocate could have requested that other individuals attend.

The Parent stated the District did not attempt to resolve the dispute with her during the resolution session. The Parent stated that because the District did not invite other members of the IEP team, the District was "willfully unprepared" to "discuss the due process hearing request, and the facts that form the basis of the request" or to "resolve the dispute that is the basis for the due process hearing request." OSPI understands the Parent's frustration; however, the requirement is to hold a resolution session. There is no guarantee that the dispute be resolved during the resolution session. OSPI finds no violation based on the fact that the dispute was not resolved in the resolution session and finds that the District followed the requirements set forth in the regulations regarding the resolution session attendees.

Issue Two: Implementation of Due Process Decision – The Parent alleged the District failed to abide by the due process decision because it delayed providing the tuition and mileage reimbursement for summer 2022 required in the due process decision.

Once a decision is entered in a due process proceeding, and if that decision includes provisions ordering the school district to take corrective action, the district must implement the order consistent with the terms of that decision.

Interpretation of the Decision: The due process decision, issued on July 14, 2022, required the District to reimburse the Parent for three years of tuition and mileage for the behavior summer camp the Student attended. Specifically, in the due process, one of the remedies requested by the Parent stated, "The District shall provide travel expenses, such as mileage for transporting the Student between home and...Summer Camp...This includes two 93-mile round trips each day." In the due process decision, the corrective action read:

The Parents are awarded three years of tuition...The Mother also requests reimbursement for transporting the Student to and from...Summer Camp. This requested remedy is reasonable and is granted as follows. Upon reasonable proof of transportation provided to the District, it shall reimburse the Parents for mileage driven at the then-current IRS Approved Mileage Rate...

Between July 19 and mid-September, 2022, the District and Parent discussed via email whether the mileage reimbursement was for one round trip or two round trips per day. The District understood the decision to require mileage “to and from your house to camp and from the camp to your home – one time each day you take [Student] to camp.” The Parent maintained that the decision referenced her requested remedy, two round trips per day. The administrative law judge clarified only that the order did not “expressly limit reimbursement for transportation to any set number of trips per day.” Ultimately, by September 12, 2022, the District agreed that it would reimburse the Parent for two round trips per day, each day the Student attended camp.

OSPI’s interpretation is that the decision required the District to reimburse the Parent for two round trips per day the Student attends the camp, as the corrective action referenced the Parent’s requested remedy—two round trips per day—and then stated that the “requested remedy is reasonable and is granted.” Thus, OSPI finds that the District will need to reimburse the Parent for mileage for two round trips per day when the Student attends the camp during the summers of 2023 and 2024. As the District has reimbursed the Parent for mileage for two round trips for the summer of 2022, OSPI finds no violation.

Timing of Reimbursement: On August 16, 2022, the Parent provided the District with the documentation it initially requested, including receipts for the camp tuition, a travel expense report for the mileage reimbursement, and documentation of the distance between the family’s home and camp. The Parent stated that per the wording of the decision—that the Parents could “seek reimbursement from the District upon reasonable proof of payment”—the reimbursement should have been provided as soon as the Parents provided the documentation. The Parent stated that a delay of more than six weeks indicated the District failed to comply with the decision.

The Parent further objected to what she saw as the District imposing additional documentation requirements, specifically that the District requested in September 2022 that the Parent provide an attendance record to confirm the dates the Student attended the camp. The Parent stated that this was not initially requested from her in July/August 2022 and that in previous years when she was provided a reimbursement by the District, this was not required. Despite her objection, the Parent provided the attendance record on September 14, 2022. On September 29, 2022, the District mailed the Parent the reimbursement check, which the Parent received on October 3, 2022.

OSPI understands the Parents frustration, both that it took several weeks to get the reimbursement and that the Parent thought she had provided all required documentation, but then was asked to provide additional documentation. However, the due process decision did not specify an exact deadline for the reimbursement. Thus, the question becomes whether the District’s actions were reasonable. OSPI notes that the request for attendance records was a reasonable request, as it is valid to verify the Student’s attendance in order to reimburse the Parents for transporting the Student to and from the camp. And, overall, while the reimbursement took several weeks, the reimbursement was sent approximately two weeks after the District received the attendance records. Overall, OSPI finds that the District’s process was not unreasonable and while the reimbursement was not immediate, the delay in processing the reimbursement does not amount to a failure to implement the due process decision. OSPI finds no violation.

OSPI does note that with this decision, the interpretation of the due process decision is settled, and it is clear for the summer of 2023 and 2024, what documentation the Parent needs to provide. OSPI expects that the reimbursement process will occur more quickly in future summers. OSPI also notes that the District and Parent, per the due process decision, could explore having the District pay for the camp directly, which may resolve some of the concerns around future reimbursements.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 9th day of November, 2022

Dr. Tania May
Assistant Superintendent of 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.)