

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-59

PROCEDURAL HISTORY

On April 24, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Bethel School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 14, 2023, 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 May 19, 2023, 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.

On May 31, 2023, the OSPI complaint investigator interviewed the Parent regarding their concerns in this matter.

On June 2, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 5, 2023.

On June 14, 2023, the OSPI complaint investigator conducted interviews with District staff.

OSPI considered all 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 the interviews.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 24, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. During the 2022-2023 school year, did the District follow proper procedures for implementing the following portions of the Student's individualized education program (IEP): the accommodation of "being given notes [and/or being] allowed to take a picture of any [available] notes"?
2. On March 14, 2023, did the District follow proper procedures regarding consent for reevaluations?

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 served through enrollment 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. 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(3)(a).

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1). The District may proceed with a reevaluation, without obtaining consent if it can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond. The District must record its efforts to obtain parental consent. A district does not violate its child find obligations if it declines to pursue the reevaluation. A district is not required to obtain informed parental consent prior to reviewing existing data. 34 CFR §300.300; WAC 392-172A-03000. A district is required to obtain consent when conducting a functional behavioral assessment (FBA). *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

FINDINGS OF FACT

Background

1. During the 2021–2022 school year, the Student attended a virtual academy in the District.
2. On April 29, 2022, the Student's IEP team developed a new annual IEP for the Student. The IEP included annual goals in writing, with progress reporting at each trimester. The Student's April 2022 IEP described the Student's annual goals in writing as:
 - By 05/03/2023, when given a writing assignment [the Student] will organize and write a multi-sentence paragraph with correct transitions improving basic writing skills from 1/3 attempts accurately to 2/3 attempts accurately as measured by classroom assessments and assignments.
 - By 05/03/2023, when given a writing topic [the Student] will use standard conventions (capitalization, punctuation, and spelling) improving basic writing skills from 10% of the time to 60% of the time as measured by classroom assessments and assignments.

The Student's IEP also included a number of accommodations. The frequency of these accommodations was divided into "as needed" or "as needed or requested by the student," and "daily." The accommodations listed with the frequency of "as needed" or "as needed or requested by the student" were "allow additional time," "allow extra time to complete assignments with student engagement," "break material into manageable parts," "provide preferential seating," "provide use of graphic organizers," "SBA-extra time per test protocol," "small group," and "take pictures of notes or have notes provided." The Student's IEP indicated that the accommodation "give short, concise directions" would be provided "daily."

2022–2023 School Year

3. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of other health impairment, was in the 11th grade, attended a District high school, and their April 29, 2022 IEP was in effect.
4. The District's 2022–2023 school year began on September 6, 2023.
5. On March 3, 2023, the District sent an email to the Parent, seeking the Parent's consent for the Student's reevaluation. Attached to the email were the relevant forms required by the District for the three-year reevaluation, including a consent form, to begin the reevaluation process.
6. On March 10, 2023, the District forwarded the March 3, 2023 email to the Parent, reiterating the request that the Parent complete the attached consent forms.
7. Also, on March 10, 2023, the District called the Parent, referencing the March 3 and 10, 2023 emails, seeking consent to start the three-year reevaluation. The District left a voicemail, requesting a return call and verbal consent to start the reevaluation process.
8. The Parent reported to the OSPI complaint investigator that they do not generally access computers or utilize emails on a regular basis. The Parent reported that this accounted for the delay in their response to the District's March 3, 2023 email. The Parent further reported that the District's phone call gave them one business day to respond prior to the District initiating the reevaluation process.
9. On the morning of March 14, 2023, the District pulled the Student from class for testing as part of the reevaluation process.
10. On March 14, 2023, the Student sent text messages to the Parent, alerting the Parent that the District was initiating testing.
11. In the afternoon of March 14, 2023, the Parent sent an email to the District, expressing concerns, posing questions, and communicating a desire to have those issues addressed before providing consent for the reevaluation. The Parent raised such questions as what the evaluation would evaluate and observed that the Student had attended the high school for

only a little over six months, questioning whether the District had sufficient information to reevaluate the services being provided to the Student.

The Parent also questioned whether the Student's IEP accommodations were provided. The Parent provided their understanding of the function of the Student's IEP, and IEPs in general, and the IEP reevaluation process. The Parent also requested documents relevant to the Student's education in their email to the District.

12. Later in the afternoon of March 14, 2023, the District responded to the Parent's email from earlier in the day. The District assured the Parent that the Student's accommodations were being provided and provided an explanation of classroom staffing. The District also inquired about the Parent's availability to attend an IEP meeting.
13. On March 20, 2023, the District emailed the Parent, asking for times when the Parent and District could meet to review the Student's IEP accommodations.
14. On March 20, 2023, the Parent responded that they were physically unable to attend a meeting at that time due to illness. The Parent also expressed the perspective that reviewing the Student's accommodations was of no use as they should operate the same in all classes. The Parent also pointed to questions from their March 14, 2023 email, which they felt the District had yet to answer. The Parent's email also included additional questions about IEP process and requested additional documents.
15. In the Parent's reply to the District's response in this complaint, the Parent explained that they sought clarification and answers to earlier posed questions and did not understand the purpose of the meetings the District was proposing. The Parent interpreted the scheduling of the meeting as the District arranging an opportunity for them to confront teaching staff about their concerns, rather than provide them an explanation regarding the purpose for the suggested IEP meeting.
16. On March 21, 2023, the District emailed the Parent, asking to contact them by phone to discuss the Parent's concerns. The Parent responded by email the same day with their preferred contact method and available times.
17. In the Parent's reply to the District's response, the Parent explained that the District did not contact them by phone that week.
18. On March 31, 2023, the District sent the Parent an email, asking if they preferred to hold one IEP meeting to review the results of the Student's reevaluation and formulate the revised IEP, or two meetings where the evaluation and IEP would be considered separately.
19. In the Parent's reply to the District's response, the Parent wrote that they had responded by email to the District's March 31, 2023 email, inquiring why the District had not responded to their earlier questions.

20. On April 3, 2023, the Parent sent an email to a teacher at the virtual academy the Student attended during the 2021–2022 school year. The Parent asked the teacher how IEP progress data was gathered. The Parent wrote in relevant part:

...in [the Student's] progress report I received it says that [the Student] mastered one of [their] goals in June 2022 and the other one was nearly met by June 2022. I'm very confused about how [the Student] mastered [their] goals in less than 6 weeks and what classroom assessments and assignments could have possibly been used to determine this in the 6 weeks following our IEP meeting. I just don't understand how that is even possible when we had just revised [the Student's] new goals and [they] submitted [their] work the last week of school since it was taking [them] so long.
21. On April 3, 2023, the teacher from the virtual academy responded to the Parent, observing that with an online school, teachers are unable to observe the Student doing their work, but rather can only evaluate the "perfectly edited work turned in." The teacher went on to observe that had the District been able to see the Student's work, "process and progress then [the District] would have truly been able to assess where [the Student] was at in [their] goals."
22. On April 6, 2023, the Parent responded to the District's March 31, 2023 email, reporting the concern that the question posed in their previous emails had not been answered, nor concerns addressed. The Parent alleged that the documents requested had also not been provided. The Parent also alleged that despite the District asking for their phone number and a time to call, no one from the District had called them.
23. On April 7, 2023, the District expressed an interest in calling the Parent to discuss concerns, observing that prior calls were not answered. The Parent responded, explaining that they had no missed calls. The District responded by email and confirmed that the prior calls were misdialed.
24. Also, on April 7, 2023, the District called to speak with the Parent regarding their concerns. During the call, the Parent requested consent to record the call. The District declined the request, which ended the call. The District followed up with an email, extending an invitation to the Parent to meet regarding their concerns with the Student's IEP.
25. In the Parent's reply to the District's response, the Parent expressed the hope that the District would have answered their questions in advance of either scheduling, or holding, an IEP team meeting.
26. On April 10, 2023, the District sent an email to the Parent, explaining that test scores requested by the Parent were available to view electronically in the Student's file, and that the District's school psychologist was available to answer questions regarding the Student's triennial reevaluation. The District also explained that no determination regarding the Student's eligibility for special education, nor changes to the Student's specially designed instruction or accommodations, had been made. Rather, the District sought to schedule an IEP meeting with the Parent in attendance to discuss these issues.

27. In the Parent's reply to the District's response, the Parent expressed interest in obtaining the documents and test scores requested ahead of the District testing the Student or scheduling an IEP team meeting. The Parent explained that they felt unprepared to discuss issues at the IEP team meeting without the requested information.
28. On April 11, 2023, the District sent the Parent copies of the Student's previous examinations, including "Smarter Balanced Assessments" (grade 3 through 10). The District offered some interpretation of the Student's past test scores, which indicated that the Student fluctuated between basic or below standard and proficient and meeting standard. The District detailed the requirement for the three-year reevaluation, that the Student's last three-year reevaluation occurred on May 7, 2020, when the Student was in middle school. The District explained that it was then attempting to complete the Student's upcoming required three-year reevaluation due May 7, 2023.
29. On April 12, 2023, one of the Student's teachers sent the Parent an email, explaining how the Student's IEP goals are monitored in class. The teacher explained that the Student was making progress and invited the Parent to share any concerns or questions.
30. On April 13, 2023, the District sent an email to the Parent, inquiring whether they were interested in scheduling the Student's triennial reevaluation review and IEP meeting.
31. On April 21, 2023, the District sent the Parent an email with copies of the drafts of the evaluations and drafts of the Student's IEP, to aid the virtual meeting to edit and discuss the Student's IEP.
32. On April 24, 2023, OSPI received the complaint from the Parent.
33. On April 24, 2023, the District canceled the IEP team meeting scheduled for April 26, 2023.
34. On May 19, 2023, the District submitted its response to OSPI. In the response, the District stated that the Student's English language arts (ELA) class was co-taught by a general education teacher and the Student's special education teacher.
35. On May 31, 2023, the OSPI complaint investigator interviewed the Parent. The Parent explained that they had questions for the District that they sought answers to, before agreeing to the reevaluation. The Parent preferred to review existing documentation regarding the Student's progress before attending any meetings regarding the Student's IEP. The Parent also explained that they did not understand the need for the reevaluation and had concerns regarding the District's implementation of the Student's IEP accommodations and services.
36. On June 14, 2023, the OSPI complaint investigator interviewed members of the District's staff involved in the provision of the Student's IEP services and IEP reevaluation. The District observed that attempts were made to obtain the Parent's consent for the reevaluation, including email communications on March 3 and March 10, and a phone call on March 10.

The District explained that it is their practice to attempt to obtain consent at least two times before proceeding with a reevaluation.

The District reported that the Student was doing well with writing assignments. The Student's placement was general education class setting with special education services provided in the ELA class. The Student's IEP included services in writing. Those services are provided by a special education teacher who co-teaches with the general education teacher. The special education teacher reported to the OSPI complaint investigator that they provide support to the Student in class, such as assistance with essays, shortening directions, starting essays, and breaking down writing assignments for the Student.

The OSPI complaint investigator also discussed with the District the Student's other IEP accommodations. The District was unaware that the Parent or the Student had concerns with the provision of accommodations prior to the filing of this complaint. The District reiterated its understanding that the majority of the accommodations would be provided to the Student when the Student requested. The District also expressed willingness to clarify the accommodations as part of the IEP team meeting process.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged that the District violated the IDEA when it failed to provide IEP accommodations to the Student in conformity with the Student's IEP. The Parent alleged that the accommodations listed in the Student's IEP were not provided during the 2022–2023 school year. The Parent also alleged that the 30 minutes per week of specially designed instruction in writing, as listed in the Student's IEP, were not provided to the Student.

School districts must have in effect, at the beginning of each school year, an IEP for every student within its jurisdiction who is eligible for special education services. The school district must ensure that it provides all services in a student's IEP, consistent with the needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services providers, and any other service provider who is responsible for its implementation.

The Parent alleged that the District had not provided the requisite accommodations and services outlined in the IEP to the Student. The Parent asserted that the District had not provided sufficient documentation of the provision of 30 minutes of specially designed instruction in writing listed in the Student's IEP. The Parent specifically alleged that the Student was not provided, nor provided the opportunity, to take photos of available notes in class. The Parent based their assertion on statements made by the Student to the Parent.

The District's written response explained that the Student received their IEP services in the general education ELA classroom. That classroom has two teachers who co-teach. The special education teacher described how they assist the Student with assignments in writing in that environment. The special education teacher explained that the Student's writing services were delivered through assistance with starting essays, breaking assignments into components parts, coaching the

Student through assignments, and shortening directions for assignments. District staff further noted the Student's services were provided in the ELA classroom rather than pulling the Student out of class for those services. The District, in its response, further asserted that the accommodations listed in the Student's IEP are of two types, those affirmatively provided to the Student, and those available when the Student requests.

The interviews with those staff persons involved in the provision of the Student's IEP services and IEP reevaluation showed the Student was provided writing services. Additionally, there is no indication the Student was prevented from accessing the accommodation to take photos of available notes in class. Rather, the Parent and the District disagreed over how accommodations listed in the Student's IEP should be provided. However, the District has offered multiple times to schedule an IEP meeting, during which the Parent would have an opportunity to discuss their concerns and ask questions; to date, the Parent has declined to schedule an IEP meeting. For these reasons, OSPI does not find a violation.

Issue Two: Consent for Reevaluation – The Parent alleged that the District failed to obtain their consent prior to beginning the triennial reevaluation process for the Student. The Parent alleged that this was in part due to the District not providing them sufficient time to respond to the consent request.

A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. The district may proceed with a reevaluation, without obtaining consent if it can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond. The district must record its efforts to obtain parental consent.

On March 3, 2023, the District sent the Parent an email, seeking consent for reevaluation ahead of the Student's annual IEP review date (the Student's annual IEP was due at the end of April and the Student's triennial reevaluation was due in May). Receiving no answer, the District reiterated the request by email on Friday, March 10, 2023. The District also called the Parent on the same day. Receiving no answer to the call, the District left a voicemail, requesting that the Parent respond by email or verbally. On Tuesday, March 14, 2023, having received no response from the Parent, the District initiated testing of the Student as part of the Student's triennial reevaluation. OSPI finds the District made three attempts, utilizing two different methods of communication to obtain the Parent's consent. While the time period for the Parent to respond was brief, the District was attempting to complete the required triennial reevaluation prior to the Student's annual IEP deadline, which was a reasonable plan. The Parent had approximately two weeks to provide consent, during which she did not respond. OSPI finds the District reasonably believed the Parent was not going to respond and appropriately initiated the reevaluation. OSPI finds no violation.

In interviews with the Parent, they expressed uncertainty regarding the need for the reevaluation of the Student, which accounted in part, for their delay in responding to the District. When the Parent did ask questions of the District regarding the reevaluation, the District offered to hold a meeting to answer questions and was reasonably responsive in answering the Parent's questions—for example, explaining the requirement for the three-year reevaluation, that the Student's last three-year reevaluation occurred on May 7, 2020, when the Student was in middle school—and provided the Parent Student records per the Parent's requests. The Parent declined to meet with the District, maintaining she wanted questions answered prior to a meeting, despite the fact that the meeting could have been an opportunity to answer questions and discuss concerns. Ultimately, the District expressed that no determination regarding the Student's eligibility for special education, nor changes to the Student's specially designed instruction or accommodations, had been made. Rather, the District sought to schedule an IEP meeting with the Parent in attendance to discuss these issues.

Again, OSPI finds no violation, but does recommend the District continue its attempts to schedule a meeting with the Parent to discuss the reevaluation and IEP and suggests the District attempt to answer the Parent's questions to facilitate scheduling a meeting.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

The Parent's communications with the District indicated the Parent had questions and concerns and sought deeper understanding regarding the IEP process generally, and the reevaluation process especially. The Parent sought answers to questions and documentation ahead of scheduled meetings. OSPI recommends the District continue its attempts to schedule a meeting with the Parent to address the Parent's questions about the IEP and reevaluation processes ahead of any meetings to review or revise the Student's IEP.

Dated this 20th day of June, 2023

Dr. Tania May
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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.)