

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-02**

### **PROCEDURAL HISTORY**

On January 20, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen 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, with regard to the Student's education.

On January 23, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 10, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on February 13, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On February 21, 2017, OSPI granted the Parent an extension of time to submit her reply.

On February 21, 2017, OSPI requested additional information from the District. On February 22, 2017, OSPI received additional information from the District and forwarded it to the Parent on February 23, 2017.

On February 24, 2017, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On February 28, 2017, OSPI received additional information from the Parent and forwarded it to the District on the same day.

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

### **OVERVIEW**

During the 2015-2016 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of other health impairment. On January 22, 2016, five days before her individualized education program (IEP) was due for annual renewal, the Student's IEP team met to develop a new IEP for the Student, but the IEP was not completed at that time. The IEP team later agreed to hold another meeting on February 4, 2016, which was after the annual renewal date. The District then contacted the Parent, stating that the Student's IEP must be completed by February 1, 2016, and suggested "locking" the Student's partially completed January 22, 2016 IEP in order for the District to be "compliant" with state enrollment reporting requirements, and then holding a meeting at a later date to change the "locked" IEP. The Parent did not agree to "lock" the Student's IEP, and the IEP team met on February 4, 2016.

## SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation time period, which began on January 21, 2016. 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 time period.

## ISSUE

1. Did the District follow procedures for ensuring parent participation in the development of the Student's January 2016 individualized education program (IEP)?

## LEGAL STANDARDS

IEP Development: Each school district must ensure that an IEP team reviews the student's IEP periodically, but not less than annually, to determine whether the annual goals for the student are being achieved; and revises the IEP, as appropriate, to address: any lack of expected progress toward the annual goals described in WAC 392-172A-03090 (1)(b) and in the general education curriculum, if appropriate; the results of any reevaluations; information about the student provided to, or by, the parents, as described under WAC 392-172A-03025; the student's anticipated needs; or other matters. 34 CFR §300.324; WAC 392-172A-03110.

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: either notifying parents of the meeting early enough to ensure that they will have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. Additionally, the notification must indicate the purpose, time, and location of the meeting and who will be in attendance. WAC 392-172A-03100; 34 CFR §300.322; 20 U.S.C. 1414. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent's home or place of employment and the results of those visits. WAC 392-172A-03100; 34 CFR §§300.322. Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP...the Supreme Court and the 9<sup>th</sup> Circuit have both

repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

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: proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice required under this section must include: a description of the action proposed or refused by the agency; an explanation of why the agency proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; 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; sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; a description of other options that the IEP team considered and the reasons why those options were rejected; and 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**

1. During the 2015-2016 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of other health impairment.
2. The Student's individualized education program (IEP) in place at the beginning of the 2015-2016 school year was developed on January 27, 2015. The January 2015 IEP included annual goals in math, reading, writing, behavior, and social/communication. The IEP provided for the following specially designed instruction:
  - Math – 10 minutes 5 times weekly (general education setting)
  - Reading – 20 minutes 5 times weekly (general education setting)
  - Writing – 10 minutes 5 times weekly (general education setting)
  - Behavior – 30 minutes 3 times weekly (special education setting)
  - Social/communication – 30 minutes per week (special education setting)

The January 2015 IEP also provided for the following related services:

- 1:1 Paraeducator – 1,800 minutes per week (general education setting)
- Social/communication – 30 minutes per week (special education setting)

The IEP stated that the Student's specially designed instruction would be "delivered in a variety of settings such as the resource room, general education, and pull-out... All other areas will be served with her non-disabled peers." The IEP also included classroom and testing accommodations, and provided for special transportation.

3. The District was on break from December 21, 2015 through January 1, 2016.
4. On January 6, 2016, the Student's special education teacher emailed the Parent regarding the Student's upcoming annual IEP meeting. The teacher asked if the Parent was able to attend an IEP meeting on January 13 or 14, 2016. The teacher stated that a January 14 meeting would work best, as the high school assistant principal may not be able to attend a meeting on January 13. The teacher also stated that the Student's speech language pathologist (SLP) was not available to meet on January 14. The teacher asked that the Parent let her know what date she could meet, and also stated that "in order to adhere to the five day due process" the IEP team had to meet by the end of the following week. In response, the Parent stated that due to her work schedule, the earliest she could meet was January 22 at 2:15 pm, but if January 22 did not work, she could meet on January 27 at 2:15 pm. Additionally, the Parent stated that in order to fully participate in the IEP process, she needed a draft copy of the proposed IEP prior to the IEP meeting.
5. On January 7, 2016, the Student's special education teacher sent the Parent and the District members of the Student's IEP team an electronic meeting invitation for a January 22, 2016 IEP meeting. The Parent confirmed she could attend the meeting.
6. On January 15, 2016, the District sent the Parent a written meeting invitation for the January 22, 2016 IEP meeting. Also that day, the Student's special education teacher emailed the Parent a draft copy of the proposed IEP for the Student.

#### **Timeline for this Complaint Begins on January 21, 2016**

7. On January 22, 2016, the Student's IEP team, including the Parent, met to develop the Student's annual IEP. Based on the documentation in this complaint, the Student's annual IEP was not completed at the January 22 meeting.
8. On January 23, 2016, the Student's special education teacher emailed the Parent regarding the Student's paraeducator support. The teacher stated that she had already requested that a paraeducator provide the Student support during her English and study skills classes, and asked what the Parent wanted to do regarding paraeducator support in the Student's math class. The teacher asked if the paraeducator should begin going into the Student's Algebra class on January 25, and then take the Student into a quiet room with a white board for additional support. The teacher stated that she was "worried" that this approach would be a big change for the Student, and did not want the Student to be surprised. The teacher asked if the Parent wanted to talk to the Student about the paraeducator support over the weekend, and then have the assistant principal speak to the Student on the following

Monday, or if the Parent wanted to have the special education teacher speak to the Student on January 26.

9. On January 24, 2016, the Parent responded to the special education teacher, stating that she thought it would be a “big mistake” to pull the Student out of her math class prior to finalizing her IEP and knowing what the “entire picture would look like”. The Parent stated that last minute changes without proper planning and communication had caused the Student unnecessary anxiety and problems at the beginning of the school year, and the Parent did not want to put the Student through that again, especially at the end of a semester. The Parent also stated that it did not make sense to her to add the pressure of changing the Student’s schedule, when the Student should be concentrating on completing the current semester. The Parent said that the Student had a “big” test in her math class the following week, and thought that they should speak with the Student’s general education math teacher prior to making a change. The Parent also stated that she did not have a problem with the paraeducator being present in the Student’s English and study skills classes, but expressed concern that the proposed paraeducator had not worked well with the Student in the past. The Parent wanted the paraeducator to understand that she should keep the Student on task only when necessary, and should keep her distance when the Student was on task.
10. In response, the special education teacher thanked the Parent for her input, and stated that she agreed. The teacher also stated that she had sent an email to the Student’s general education math teacher regarding what was discussed at the January 22 IEP meeting in order to get his input. The special education teacher then forwarded the Parent a copy of the email that was sent to the math teacher.<sup>1</sup> The Parent replied to the teacher, stating that she was concerned by what the special education teacher had stated in her email to the math teacher, as the special education teacher had “made it sound like this was a done decision”. The Parent stated that she felt strongly that there were still a lot of details that needed to be worked out prior to moving forward, including finalizing the Student’s upcoming IEP, and putting together an action plan that included getting the Student back into her math class full-time without 1:1 paraeducator support. The Parent also stated that she thought the math teacher should be informed of the reason the IEP team was considering the option of paraeducator support. The Parent wanted the math teacher to know that his input was “extremely important” to her, and would be considered in the decision to remove the Student from the math class.
11. Later on January 24, 2016, the Parent emailed the Student’s special education teacher, the District special services coordinator, and the District director of special services and attached her input regarding the Student’s IEP. The Parent asked that she be provided a copy of the most current draft IEP. The Parent stated that she

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<sup>1</sup> The special education teacher’s email to the math teacher stated “It was decided at [the Student’s] IEP meeting that she will have her 1:1 para[educator] in Algebra class supporting [the Student] daily. What the plan is, is to have [the Student] sit in during direct instruction and then to have [the paraeducator] take her to a quiet room with a white board...where [the paraeducator] can ask her clarifying questions and [the Student] can verbally work through the problems on the white board.”

currently had three different copies of a draft IEP. The Parent also stated that the IEP team had discussed making changes to the Student's IEP via email, but wanted to know if the IEP team was required to meet again. If the IEP team did need to meet again, then the Parent asked that the District inform her as soon as possible. In response, the special services coordinator thanked the Parent for her input, and stated that staff would work on incorporating the Parent's input, and consolidate the drafts of the IEP into one document. The special services coordinator also stated that he thought the IEP team should meet again, and that the Student's IEP was due by February 1, 2016, which gave the IEP team a week to continue editing and hold a meeting. The coordinator proposed meeting on January 29, 2016, and also asked the Parent if she had a preferred date and time. The Parent replied that she could not meet that week due to her work schedule.

12. On January 26, 2016, the District special services coordinator emailed the Parent and the District members of the Student's IEP team, asking if they were available the following week to hold another IEP meeting. In response, the Parent stated that she could meet on February 4, 2016 and that she wanted a current draft copy of the Student's IEP, which included all of the changes the IEP team had discussed at the January 22, 2016 meeting.

13. On January 27, 2016, the Student's special education teacher sent the Parent and the District members of the Student's IEP team an electronic meeting invitation for a February 4, 2016 meeting. The invitation stated that the IEP meeting was "a continuation of the last IEP meeting for [the Student] to discuss all the factors we did not have time to finish or go into detail about at the last meeting and the finalizations for her IEP."

14. Also on January 27, 2016, the District director of special services emailed the Parent, stating that he saw that the Student's IEP meeting was scheduled for February 4, 2016 and that this date posed a "dilemma" for the District. The director stated that the Student's IEP "expired" on February 1, 2017, and that there was no provision for the District to get an extension on that expiration date. The director also said that if the District waited until February 4 to finalize the IEP, it would result in a certain denial of the District's application for safety net funding, as well as monthly state and federal funds the District received for students with compliant IEPs. The director then stated that the state also used the IEPs the District submitted for safety net funding to monitor the District's compliance with various state and federal regulations, and the state would find that the District was out of compliance, which was not what the District wanted. The director stated that what he wanted to do was to "lock" the Student's IEP on January 29, and then "have it be in effect for only the period of time that it takes to meet on the 4<sup>th</sup> and do a new one with all the updated information." This would also give the IEP team "leeway" if everything was not worked out at the February 4 meeting. The director stated that he would be happy to answer any of the Parent's questions.

15. On January 28, 2016, the Parent stated that she did not agree with "locking" the Student's IEP. However, the Parent stated that she assumed the IEP she did not

participate in developing would be “locked” and, would be the draft IEP that the IEP team would be working from at the February 4 meeting. The Parent stated that when the “lock” she did not agree with took place, she wanted “confirmation of the lock and a copy of that draft sent” to her so that she could review it over the weekend. The Parent said that if she did not receive a copy of the “locked” draft, then the February 4 meeting would need to be rescheduled.

16. According to the District’s response to this complaint, the Student’s IEP was “locked” on January 29, 2016. The District’s documentation in this complaint does not include a prior written notice, proposing to implement the Student’s January 22, 2016 IEP.
17. On January 29, 2016, the District sent the Parent a written invitation for an IEP meeting on February 4, 2016. Also that day, the District special services coordinator emailed the Parent and District staff and attached an updated draft of the Student’s IEP. The coordinator stated that the IEP team could review the contents and make changes at the February 4 meeting, as needed.
18. The first semester of the District’s 2015-2016 school year ended on February 2, 2016.
19. On February 4, 2016, the Student’s IEP team, including the Parent, met to finish developing the Student’s IEP. However, based on the District’s documentation in this complaint, the Student’s IEP was not completed at that meeting, and another IEP meeting occurred on February 19, 2016.

## **CONCLUSIONS**

The Parent alleged that the District failed to ensure her participation in the development of the Student’s January 2016 IEP. Each school district must ensure that a properly constituted IEP team reviews the student’s IEP periodically, but not less than once each calendar year in which the IEP is in effect, and revises the IEP as necessary. Here, the Student’s January 27, 2015 IEP was in effect, and the District was required to meet and develop the Student’s annual IEP by January 27, 2016. While the District initially held a properly constituted IEP team meeting on January 22, 2016, the IEP team did not finalize the Student’s IEP at this meeting. As a result, the IEP team should have held another meeting before the January 27, 2016 due date in order to complete the Student’s IEP. However, the District was unable to schedule a meeting before January 27, and instead, agreed to hold a meeting on February 4, 2016. The District then proposed to “lock” the Student’s IEP on January 29, 2016, in order to be “compliant”, and then hold a later meeting with the Parent to review the “locked” IEP. The District’s proposal to “lock the IEP” in order to be “compliant” on January 29, 2016 is problematic for several reasons. First, in the District’s haste to be “compliant”, the District failed to allow for the Parent’s participation in developing the Student’s IEP, as the District cannot override a parent’s right to participate in the development of a student’s IEP to meet an annual deadline. When a district is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, such as parental

participation and timely annual review of the IEP, courts have repeatedly stressed the critical importance of parental participation in the IEP process. Second, as noted above, the Student's IEP needed to be developed by January 27, 2016, which means the District's proposal to "lock" the IEP on January 29, 2016 was both incorrect and unnecessary, as the due date to develop the Student's IEP had already lapsed. Finally, the District's own documentation shows that the IEP team agreed the Student's new IEP was not completed at the January 22, 2016 IEP meeting, and therefore, the District did not have a "compliant" IEP to "lock". An IEP is not compliant with federal and state regulations because it is "locked" by a specific due date; an IEP is compliant with federal and state regulations when it meets all of the procedural requirements stated in those regulations. However, given that the District later completed the Student's January 2016 IEP, the District is not required to take any student specific corrective actions, but will provide staff with written guidance regarding the requirements for developing IEPs.

### **CORRECTIVE ACTIONS**

By or before **April 10, 2017** and **May 19, 2017**, the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

None

#### **DISTRICT SPECIFIC:**

The District will develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), District special education administrators, and principals which addresses the requirements for developing a student's IEP at least annually. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers. The guidance will discuss annual due dates for IEPs, requirements for parent participation, and the state requirements of a compliant IEP. The guidance will include examples.

By **April 10, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by April 24, 2017 and provide additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, and principals with the written guidance by **May 19, 2017**. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

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.



Dated this \_\_\_\_ day of March, 2017

Douglas H. Gill, Ed. D.  
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.)