

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-06

PROCEDURAL HISTORY

On February 14, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Prosser School District (District). The Parents 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 February 16, 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 March 6, 2017, OSPI received the District's response to the complaint and forwarded it to the Parents on March 7, 2017. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information. The Parents did not reply.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended a District high school, and had a Section 504 plan in place. In November 2016, the Student's father contacted the District special services director and requested the Student be evaluated for special education. In December 2015, the District held a meeting to review the results of the Student's evaluation and the evaluation group, including the Student's father, determined that the Student was eligible for special education under the category of other health impairment. In January 2016, the Student's individualized education program (IEP) team met to develop the Student's initial IEP. The District proposed to provide the Student services in the area of reading, writing, and math, but the Student's father did not want the Student to participate in a special education math class. The father then left the meeting without providing consent for the initial provision of special education. Two days later, a district staff member approached the father in the school parking lot to obtain his signature, and the father signed the consent for initial services. The Parents alleged that the District failed to follow procedures for obtaining their informed consent for the initial provision of special education services. The District admitted the allegation and proposed correction actions to address the violation.

ISSUES

1. Did the District follow procedures for obtaining informed consent for the initial provision of special education services?

LEGAL STANDARDS

Definition of Consent: 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; the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040.

Consent for Initial Provision of Services: A school district responsible for making a free appropriate public education (FAPE) available must obtain informed consent from the parent of a student before initially providing special education and related services to the student. If the parent of a student fails to respond or refuses to consent to services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, the school district will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent. 34 CFR §300.300; WAC 392-172A-03000.

FINDINGS OF FACT

1. At the beginning of the 2016-2017 school year the Student attended a District high school and had a Section 504 plan in place.
2. From October 13, 2016 through November 7, 2016, the District held meetings with the Student's father to update the Student's 504 plan. At the November 7, 2016, meeting District staff and the Student's father discussed that the Student's specific needs could not adequately be addressed through the accommodations on a 504 plan.
3. On November 10, 2016, the Student's father contacted the District director of special services and requested that the Student be evaluated for special education services.
4. On December 14, 2016, the Student's evaluation group, including the Student's father, reviewed the Student's evaluation report, and determined that he was eligible for special education services under the category of other health impairment. The evaluation report recommended that the Student receive specially designed instruction in the areas of reading, writing, and math. According to the District's response to this complaint, the Student's father requested during the meeting that

the Student remain in his current general education classes until the end of the high school's first semester, and then begin attending some special education classes during the second semester on January 26, 2017.

5. The District was on break December 19, 2016 through January 2, 2017.
6. On January 23, 2017, the Student's individualized education program (IEP) team, including the Student's father, met to develop the Student's initial IEP. The January 2017 IEP included annual goals in post-secondary transition, reading, writing, and math. The IEP provided for the following specially designed instruction in a special education setting:
 - Reading – 140 minutes per week
 - Writing – 140 minutes per week
 - Math – 280 minutes per week
7. The Student's father did not sign consent for the initial provision of special education services at the January 23, 2017 IEP meeting, and expressed that he wanted to speak with the Student before consenting to services. Based on the District's documentation, the father also expressed that he did not want the Student to attend a special education math class unless the Student continued to have access to a high school geometry curriculum, as the Student was currently enrolled in a general education Geometry class.
8. On January 24, 2017, the Student's high school class schedule was changed to reflect the addition of a special education English language arts class, and a special education math class.
9. On January 25, 2017, the high school special education teacher approached the Student's father in the school parking lot with a consent form for the initial provision of special education services and the father signed the consent form. According to the Parents' complaint, the teacher asked that the Student's father sign the form, but did not explain the form. The father reportedly was not wearing his glasses at that time, and did not understand that he was signing initial consent for the Student to be placed on an IEP. According to the District's response to this complaint, the special education teacher explained to the Student's father what he signing, and stated that without consent, the District could not provide the Student with specially designed instruction.
10. Also on January 25, 2017, the high school's first semester ended.
11. On February 3, 2017, the Student's father spoke with the District superintendent about his concerns regarding the Student's Section 504 plan, and the special education status. The superintendent then sent a follow-up email to the Student's father asking that the father provide a list of his concerns, so the superintendent could address each concern. The next day, the father provided a list of his concerns to the superintendent.

12. On February 6, 2017, the District held a meeting to review the Parents' concerns. According to the District's response to this complaint, District administration became aware at the meeting that the Parents' consent was not "gathered according to District expectations" and the special education teacher was given a verbal reprimand. The "entire team" was then reminded of protocols for holding meetings and "gathering signatures."
13. Also on February 6, 2017, the Student's father emailed the District superintendent and the District school psychologist revoking consent for the Student to receive special education services.

CONCLUSIONS

The Parents alleged that the District failed to follow procedures for obtaining their informed consent for the initial provision of special education services. The District acknowledges that it did not follow procedures for obtaining the Parents' consent because the District did not follow its own procedures of gathering signatures during a meeting, and instead obtained a signature in the school parking lot. There is no requirement in the IDEA that a district obtain a parent's signed consent during a meeting. However, a district is required to obtain informed consent, which means that a parent has been fully informed of all information relevant to the activity for which consent is sought, understands, and agrees in writing to the carrying out of the activity for which consent is sought. While the District states that special education teacher explained the reason for consent for the initial provision of special education prior to the Student's father signing the consent form, the father's stated confusion about the parking lot encounter, indicates that he did not fully understand the consent he was providing. The District will develop procedures for obtaining a parent's fully informed consent.

CORRECTIVE ACTIONS

By or before **April 26, 2017** and **May 26, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

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 obtaining a parent's fully informed consent as stated in WAC 392-172A-03000 and WAC 392-172A-01040. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers. The guidance will discuss will include examples.

By **April 26, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance, or provide comments by May 10, 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 26, 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 of the guidance.

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 April, 2017

Douglas H. Gill, Ed. D.
Assistant Superintendent
Special Education
PO BOX 47200
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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.)