

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-26

PROCEDURAL HISTORY

On April 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 Eatonville 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 April 21, 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 May 11, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on May 12, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism. In February 2017, the District sent the Parent a prior written notice, proposing to develop a new individualized education program (IEP) for the Student, and also sent the Parent invitations to the IEP meeting for that purpose. In March 2017, the Student's IEP team met to review the results of the Student's independent educational evaluation (IEE), and develop his annual IEP. At the meeting, the Parent made several requests. After the meeting, the Parent emailed the District director of student services, restating her requests, and asking for clarification regarding whether the District was agreeing to adopt the recommendations in the IEE report. The District then sent the Parent a prior written notice, which did not address her requests, or the recommendations in the IEE report. The Parent expressed concern that the notice did not meet the requirements of state regulations, and the District sent the Parent another notice, which addressed some of her requests, and the recommendations in the IEE report.

The Parent alleged that the District failed to follow procedures for scheduling the Student's March 3, 2017 IEP meeting and failed to provide her with prior written notice consistent with the requirements of WAC 392-172A-05005 during the 2016-2017 school year. The District denied the allegations.

ISSUES

1. Did the District follow procedures for scheduling the Student's March 3, 2017 individualized education program (IEP) meeting?

2. Did the District provide the Parent with prior written notice consistent with the requirements of WAC 392-172A-05005 during the 2016-2017 school year?

LEGAL STANDARDS

Invitations to 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: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student, and participation of the Part C service coordinator or other designated representatives of the Part C system as specified by the state lead agency for Part C at the initial IEP team meeting for a child previously served under Part C of IDEA. Beginning not later than the first IEP to be in effect when the student turns sixteen, or younger if determined appropriate by the IEP team, the notice also must: (a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the student and that the agency will invite the student; and (b) Identify any other agency that will be invited to send a representative. 34 CFR §300.322; WAC 392-172A-03100.

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 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. During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism.
2. The District's 2016-2017 school year began on September 7, 2016.

3. The Student's individualized education program (IEP) in place at the beginning of the school year was developed on March 8, 2016. The March 2016 IEP included annual goals in the areas of cognitive, social/emotional, communication, fine motor, gross motor, and adaptive skills, and provided for specially designed to address the goals.
4. On October 31, 2016, the Student's special education teacher emailed the Parent, stating that she wanted to add more objectives to the Student's IEP as he had mastered several of the objectives. The teacher stated that the IEP could be revised without holding a meeting, or that an IEP meeting could be scheduled. The teacher then provided additional information about the proposed changes to the IEP. In response, the Parent agreed to amend the IEP without holding a meeting.
5. On November 14, 2016, the District sent the Parent a prior written notice, proposing to amend the Student's March 2016 IEP to reflect "new cognitive objectives." The notice stated that the District was amending the IEP per discussion with the Parent via email correspondence. The reason for the amendment was that the Student had progressed and mastered multiple objectives. The prior written notice did not state when the amendment to the IEP would be implemented.
6. In November and December 2016, the Student received an independent educational evaluation (IEE).
7. The District was on break December 19, 2016 through January 2, 2017.
8. On January 7, 2017, the Parent emailed the District director of special education, stating that the Student's IEE and his sibling's IEE had been completed, and she wanted to schedule IEP meetings to review the results of the evaluations. The Parent also stated that she wanted to first hold a meeting for the Student's sibling, and then for the Student. The Parent hoped that at the meeting for the Student, the IEP team could also update the Student's IEP, or make any needed changes. The Parent and the director then exchanged additional emails about scheduling the meetings.
9. On February 8, 2017, the Student's special education teacher emailed the Parent an electronic meeting invitation for a March 3, 2017 IEP meeting. The invitation included the time of the meeting, a list of meeting participants, and had an option to indicate if the Parent could attend.
10. Also on February 8, 2017, the District sent the Parent a meeting invitation for the March 3, 2017 IEP meeting. The invitation included the time of the meeting, a list of meeting participants, and stated that if the meeting was not scheduled at a convenient time, to contact the Student's special education teacher.
11. Also on February 8, 2017, the District sent the Parent prior written notice, proposing to review and develop a new IEP for the Student. The notice stated that the reason for the action was that the Student's IEP would expire and a new IEP would be developed.

12. On February 9, 2017, the Parent emailed the District director of student services, stating that she had received the invitation for the March 3, 2017 IEP meeting, and wanted to also review the results of the Student's IEE at the meeting. The Parent asked to include the private evaluator who conducted the IEE in the meeting. In response, the director asked the Parent to invite the private evaluator to the meeting. The private evaluator later agreed to participate in the meeting by phone.
13. On February 26, 2017, the Student's special education teacher emailed the Parent a draft of the Student's March 2017 IEP.
14. On March 3, 2017, the Student's IEP team, including the Parent, met to review the results of the Student's IEE and develop a new IEP for the Student. The Student's March 2017 IEP included annual goals in the areas of cognitive skills, social/emotional, communication, fine motor, gross motor, and adaptive skills and provided for specially designed instruction to address the goals. The IEP also included communication consultation services as a related service.
15. On March 5, 2017, the Parent emailed the District director of student services, asking if the District was accepting or rejecting the requests she had made at the IEP meeting and the reasons why. The Parent stated that she knew her requests needed to be listed in a prior written notice, even though she had received a prior written notice as part of the invitation to the March 3 meeting. The Parent then restated the following requests:
- That the District use applied behavior analysis (ABA) and the Student have a full-time, board certified behavior analyst (BCBA).
 - That the Student have access to the picture communication system that was being used in the classroom, and to incorporate some basic sentence strips for him to use.
 - That the District speech language pathologist (SLP) receive proper training on an iPad with the augmentative assistant technology application Proloquo.
 - A plan regarding how the IEP team would increase the Student's access to time with typically developing peers, which would specify the data to be collected to measure progress.
 - That the Student's IEP include adaptive skills goals which focused on teeth brushing and independent toileting.
 - That the Student receive extended school year (ESY) services.
 - That the Parent be allowed to observe the classroom or receive video of the Student at school.
 - That the District clarify if it was accepting the recommendations in the Student's IEE report.
16. On March 10, 2017, the Student's special education teacher emailed the Parent and attached a final copy of the Student's March 2017 IEP and a prior written notice, dated March 9, 2017.¹ The March 9 notice stated that the IEP team was proposing to implement the IEP developed on March 3. The notice also stated, "the district

¹ The District's documentation contains three prior written notices, dated March 9, 2017. One is addressed to the Parent, one is addressed to the Student's father, and one is addressed to both the Parent and the Student's father. Other than the difference in the addressees, the notices are the same.

proposes to implement special education services as defined by the annual individual educational program for [the Student]. The individual educational program (IEP) team would like to thank you for participating in the development of [the Student's] IEP held on 3/3/17." Additionally, in the "reason for the action" section, the notice stated that "the district will implement services per the attached individualized education program." The notice further stated that "the team had determined there were no other factors related to the proposed action at this time" and that no other options were considered and rejected. The notice did not state when the District would implement the Student's March 2017 IEP.

17. On March 13, 2017, the Parent emailed the Student's special education teacher and copied the District director of student services. The Parent expressed concern that the March 9 prior written notice was not "capturing some of the key requirements", had left her feeling like she was not considered part of the Student's IEP team, and that the District was not following the procedures for prior written notices outlined by OSPI. The Parent then included information regarding the purpose and requirements of a prior written notice. The Parent also stated that she had emailed the director of student services after the March 3 IEP meeting to request clarification regarding the District's decisions about the Student's IEE report, and the Parent's requests. The Parent said that since she was not offered an explanation in the March 9 prior written notice as to why her "input" was either accepted or rejected, and the IEP was finalized beforehand, she felt that the District had reached a decision about the Student's IEP, instead of the IEP team reaching a decision.

18. On March 14, 2017, the District director of student services responded to the Parent's email, stating that the prior written notice sent by the special education teacher was "the standard" notice that the Parent had received every year since the Student had begun special education services. The director also stated that she believed the notice the Parent was looking for was one the director wrote after an IEE had been done, which she had mailed to the Parent on March 13. The director then attached a copy of the March 13 prior written notice. Additionally, the director stated that she had also attached a consent form for the District to conduct a functional behavioral assessment (FBA) of the Student and a release of information form, so the District could contact the Student's private ABA therapist to discuss working with the school team on strategies for the Student.

19. The District's March 13, 2017 prior written notice stated:

The purpose of this letter is to notify you of the District's actions regarding [the Student's] educational program.

Description – The District proposes to implement the following strategies outlined below in Reason for Action.

Explanation – [The Parent] requested an IEE at public expense. The team met on 3.3.2017 with the outside evaluator via phone to review the information and determine what additional services if any needed to be added to [the Student's] current IEP.

Reason for Action – After a review of the outside evaluation, the District agreed with the IEE from page 19, that [the Student] would benefit from increased time in a general education setting. The team discussed having this start out in Art with one of the 1st grade classes with paraeducator support to see how well [the Student] can tolerate the larger group setting. If [the Student] tolerates the Art setting well, we can look at adding other general education settings like music, library, and PE. Currently, [the Student] is with his general education peers at lunch and recess.

Also on page 19, the District agrees that [the Student] should have academic goals. Right now these are addressed through his cognitive goals...but if mom would like those broken into straight academics on the service page we can do that. Currently, [the Student] is participating in the STAR curriculum for students with Autism which is structured and systematic. The entire curriculum focuses on 6 curricular areas, receptive & expressive language, spontaneous language, functional routines, academic, play and social skills...This is evidenced based, ABA based, and research[] validated.

The District also agrees that [the Student] should start utilizing other assistive devices to help with his communication skills along with his current PEC system. Mom is going to provide the teacher a list of words she uses at home and then the teacher will create those for the family using our Boardmaker system. This will help with consistency both at home and at school. The District also has an iPad that [the Student] can use at school along with touch Chromebooks. We will work with the outside SLP to get the same apps she is using with him on communication. [The Student] will continue to receive school-based and outside speech services. [The Student's] school team is using sentence strips along with the pictures to help [the Student] form complete sentences.

We also discussed the need for mom to come in and watch how the school day works for [the Student] during his transitions throughout his day so that again we can be consistent in both school and home. We did discuss the option to video tape [the Student] in the school setting since we know he will act different when mom is around.

For social/emotional functioning, the district agrees with the IEE, page 24, that [the Student] should focus on 1 or 2 behaviors at a time so that he sees the success. At this time there are four goals written into his IEP, so we will just work on 1 or two of these at a time over the next IEP year.

The District also agrees that we would try out [the Student] in a friendship group with same aged general education peers. A permission form was sent home to mom. This will be with our PBIS specialist at the school.

Other Factors – It was also discussed at the IEP meeting the need [for] a grooming and hygiene goal, which was added to the IEP. The family utilizes a token board at home which the school is trying to replicate as close as possible. Also we discussed ESY which the District will be taking data over the spring break to see how [the Student] is regressing and recouping back his skills. We will convene in May to go over the data.

Other Options Considered and Rejected – none are needed at this time.

20. Also on March 14, 2017, the Student's special education teacher emailed the Parent, stating that the Student had participated in a friendship group at lunch time that day.
21. Also on March 14, 2017, the District purchased the Proloquo communication application for the Student's iPad, which the Parent had requested.
22. On April 13, 2017, the Student's special education teacher emailed the Parent and attached a video of the Student during his school day. The teacher then sent another video on April 18, 2017, showing the Student working on fine motor tasks.
23. On April 20, 2017, the Parent filed this citizen complaint.

CONCLUSIONS

Issue 1: March 3, 2017 IEP Meeting – In her complaint, the Parent alleged that the District sent her a prior written notice as a meeting invitation for the March 3, 2017 IEP meeting. A prior written notice is not a meeting invitation, as the purpose of a prior written notice is to inform parents that the district is proposing to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student, or refusing to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. However, the District's documentation shows that the District also sent the Parent an electronic meeting invitation and a written meeting invitation for the March 3 meeting. The District followed procedures for scheduling the March 3, 2017 IEP meeting.

Issue 2: Prior Written Notice – The Parent alleged that the District failed to respond to her requests made at the March 3, 2017 IEP meeting in a prior written notice. The District's March 9, 2017 prior written notice does not meet the requirements in WAC 392-172A-05010, as the District's prior written notice form does not align with the requirements in WAC 392-172A-05010, and the notice did not inform the Parent when the District planned to implement the IEP. Without specifying when the District plans to take a specific action, parents have no way of knowing when to assert their due process rights in situations where they do not agree with a proposed or refused action. Additionally, the March 9 prior written notice did not address the requests the Parent made at the March 3 meeting, or the Student's IEE report. While the District subsequently sent another prior written notice on March 13, 2017, the March 13 notice did not address the Parent's request for a full-time board certified behavior analyst to work with the Student. A prior written notice must also include a description of an action a district is refusing to take, and an explanation of why the district refuses to take the action. The District is also reminded that a prior written notice should be individualized to address any decisions an IEP team or a District has reached in regard to a student's individualized needs and educational program, and a "standard" notice that does not address an individual student's situation should not be used.

CORRECTIVE ACTIONS

By or before **August 14, 2017** and **September 15, 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), and principals and assistant principals, which will address the requirements for prior written notice. The guidance will include examples. The District will also revise its current prior written notice form to align with the requirements in WAC 392-172A-05010. It is recommended that the District review the state model form when revising its current prior written notice form. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers. The guidance will include examples.

By **August 14, 2017**, the District will submit a draft of the written guidance and revised prior written notice form. OSPI will approve the written guidance or provide comments by August 25, 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 and assistant principals with the written guidance by **September 15, 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 June, 2017

Douglas H. Gill, Ed. D.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

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.)