

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-65

PROCEDURAL HISTORY

On September 15, 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 Federal Way 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 September 15, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on September 20, 2017. OSPI asked the District to respond to the allegations made in the complaint.

On September 25, 2017, OSPI received a second request for a citizen complaint from the Parent, raising additional allegations that the District violated the IDEA in its education of the Student.

On September 25, 2017, OSPI forwarded a copy of the Parent's second complaint to the District Superintendent and notified the District that an additional issue had been added to SECC 17-65.

On October 13, 2017, 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 with any information she had that was inconsistent with the District's information.

On October 23, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On November 9, 2017, OSPI requested additional information from the District. On November 13, 2017, OSPI received the requested information from the District and forwarded the information to the Parent 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 2017-2018 school year, the Student attended a District high school and was eligible to receive special education services under the category of other health impairment. On the first day of school, the Student's class schedule showed the Student was not assigned to a fifth period class. Two days later on September 8, 2017, the Student's class scheduled was rearranged and the Student was enrolled in a special education "Content Mastery" class, which was inconsistent with his individualized education program (IEP). On September 13, 2017, the District contacted the Parent regarding the Student's schedule change, and determined not to make further changes to the Student's schedule based on the Parent's input. On September 15, 2017, the Parent requested that the Student be removed from the "Content Mastery" class and the District complied. Also in September 2017, the District contacted the Parent to schedule a meeting to

review the Student's IEP, but the Parent stated that she was unable to attend the meeting and that she did not want to hold another meeting until February 2018 when the Student's annual IEP was due. The Parent then requested that the District provide accommodations to address the Student's potential absences and tardiness during the school year. In response, the District proposed to hold an IEP meeting to discuss the Parent's request. The Parent alleged that the District failed to follow procedures to implement the Student's IEP and develop/amend the Student's IEP. The District admitted in part and denied in part.

ISSUES

1. Did the District follow procedures for implementing the Student's individualized education program (IEP) during the 2017-2018 school year?
2. Did the District follow procedures for developing/amending the Student's IEP, including for allowing for parent participation, during the 2017-2018 school year?

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 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. The initial IEP must be implemented as soon as possible after it is developed. 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.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Provision of FAPE: "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

1. During the 2017-2018 school year, the Student attended tenth grade at a District high school and was eligible to receive special education services under the category of other health impairment.
2. The Student's individualized education program (IEP) in place at the beginning of the 2017-2018 school year was developed on February 3, 2017. The Student's IEP stated the Student's disability adversely impacted his social/emotional skills and organizational/study skills. The IEP stated the Student had good peer relationships, but that he needed to increase his self-advocacy skills and increase his coping strategies when he was anxious or upset. The IEP also stated the Student had established an organizational system but the Student needed to complete his work and maintain the organizational system. The IEP provided for two goals in the area of social/emotional and two goals in the area of organizational/study skills. The IEP provided for the Student to receive accommodations/modifications. The IEP also provided for the following specially designed instruction from February 3, 2017 through February 2, 2018:
 - Social/emotional: 10 minutes, one time per week – special education setting
 - Organizational/study skills: 20 minutes, one time per week – special education setting

The IEP provided for the following specially designed instruction from February 3, 2017 through June 21, 2017:

- Organizational/study skills: 150 minutes, one time per week – general education setting

The February 2017 IEP stated, "the IEP team agreed to provide organizational support through the College & Career prep class. Since this is only a ninth grade class, the team will need to revisit where [the Student] will receive additional minutes if needed" for the next school year. The IEP further stated that during the 2017-2018 school year, the Student would participate with non-disabled peers during the school day, except for the 30 minutes of his specially designed instruction.

3. The District issued progress reporting regarding the Student's progress toward his February 2017 IEP goals on June 19, 2017. The report stated the Student's progress was not sufficient to meet his two social/emotional goals and one goal in organizational/study skills by the time the IEP would end, and that the Student made some progress on his second annual goal for organizational/study skills but the goal may not be met.
4. The District's documentation does not show that a meeting occurred after the 2016-2017 school year ended to discuss whether the Student continued to need additional service minutes during the 2017-2018 school year.
5. The District's 2017-2018 school year began on September 6, 2017.
6. The District's high school operates on a four period bell schedule on Monday, Thursday, and Friday. On Tuesdays and Wednesdays, the high school operates on five period bell schedule

with shorter class periods to allow for a 27-minute advisory period. Additionally, the high school has an A/B block schedule wherein students alternate class periods every other day for the duration of the semester.

7. On September 6, 2017, the Student was enrolled in the following classes:

Period	Classes	M, Th, F	Tu, W
1	English Language Arts	84 min	77 min
2	Chemistry in Earth Systems	84 min	77 min
3	Spanish	84 min	77 min
4	Web Design	88 min	77 min
5	No class assigned	84 min	77 min
6	Geometry	84 min	77 min
7	Team Sports	84 min	77 min
8	World History	88 min	77 min
9	Advisory	0 min	27 min
11	SS Caseload		

8. Based on the District’s documentation, the Student is scheduled to receive special education services during his advisory class on Tuesdays and Wednesdays. The instructor of the Student’s advisory class is a special education teacher who is also assigned as the Student’s case manager. The District’s documentation in this complaint stated that typically, all students have an advisory class where students: work on homework, meet with teachers to get extra help, attend a club activity, meet with mentors, write in planners, check grades with an advisor or individually, work on “Master Portfolios”, meet with case managers to discuss schedule changes, organize binders and materials, and work with peers and for Positive Behavior Interventions and Supports (PBIS) lessons.
9. On September 6, 2017, the Parent emailed the Student’s special education case manager, inquiring who was assigned as the Student’s school counselor. The Parent stated the Student wanted “to speak to someone about his classes.”
10. On September 8, 2017, a school counselor (school counselor 1) emailed the Student’s IEP case manager, stating that the school psychologist had changed the Student’s class schedule that morning. School counselor 1 attached a copy of the Student’s updated schedule, which showed the Student was now enrolled in a special education “Content Mastery” class. The Student’s updated schedule was as follows:

Period	Classes	M, Th, F	Tu, W
1	World History 2-1	84 min	77 min
2	Chemistry in Earth Systems	84 min	77 min
3	Spanish	84 min	77 min
4	Web Design	88 min	77 min
5	English Language Arts	84 min	77 min
6	Geometry	84 min	77 min

7	Team Sports	84 min	77 min
8	Content Mastery	88 min	77 min
9	Advisory	0 min	27 min
11	SS Caseload		

11. According to the District's response to this complaint:
 "Content Mastery is a class that is designed to enable students receiving special education services to be more successful in content area classes. The course combines a strategic intervention approach with specially designed instruction. Students who have goals in study skills, organization, and/or adaptive skills often receive services in this class."
12. On September 10, 2017, the Parent emailed the school psychologist, inquiring why the psychologist changed the Student's schedule without first contacting the Parent.
13. According to the District's documentation, on September 13, 2017, two high school assistant principals (assistant principal 1 and assistant principal 2) called the Parent to discuss the Student's schedule. Assistant principal 2 asked the Parent if the Parent wanted the Student's schedule changed to remove the Student from the "Content Mastery" class. According to the District's documentation, the Parent declined to change the Student's classes because the Student was "happy with his schedule".
14. According to the District's documentation, on September 15, 2017, assistant principal 2 and the assistant director of student support (assistant director) called the Parent. Assistant principal 2 stated the services the Student was receiving in the "Content Mastery" were inconsistent with his IEP, and asked the Parent if she would be willing to agree to amend the Student's IEP to reflect the services the Student was currently receiving without convening an IEP team meeting. According to the documentation, the Parent declined to amend the Student's IEP without a meeting.
15. Also on September 15, 2017, the Parent emailed assistant principal 2 and the assistant director and stated that she was "not agreeing to any changes to [the Student's] current IEP" and if the Student's schedule did not conform to the Student's IEP, "then you need to put [the Student] in a class he should be in".
16. Additionally, on September 15, 2017, the assistant director emailed the Parent and stated that the Student's class "schedule can be adjusted as soon as Monday, September 18, 2017, to offer an alternative class during 8th period." Additionally, the assistant director stated that there were "no changes to [the Student's] initial IEP from 2/3/2017" and said that "we will be inviting you to participate in an IEP meeting at a mutually available time. Please expect an IEP invitation from a [school] staff member within the next week." According to the District's response to this complaint, "given the Student's lack of progress on the Progress Report from June 2017, the school-based team [wa]s inviting the Parent to participate in an IEP meeting" to review data "to determine if changes [were] needed to the Student's services".
17. Also on September 15, 2017, the Parent filed this citizen complaint.

18. On Sunday, September 17, 2017, the Parent emailed the assistant director, inquiring why the Student had “10-11 classes and all the other students had 8”. The Parent then requested that the District: remove the Student from the “Content Mastery” class; provide the Student with a paraeducator; and assign the Student’s previous counselor (school counselor 2) to the Student for the 2017-2018 school year.
19. According to the Student’s class schedule, as of September 18, 2017, the Student was removed from the “Content Mastery” class and enrolled in a Culinary Arts class during eighth period. According to the District’s documentation, the Student was only scheduled to attend the “Content Mastery” class for three school days on September 8, 12, and 14 due to the high school’s alternating bell schedule. While enrolled in the “Content Mastery” class, the Student received approximately 253 minutes of specially designed instruction in excess of his IEP, delivered by a special education teacher in a special education setting.
20. On September 19, 2017, assistant principal 2 emailed the Parent, stating that she had spoken with school counselor 2 and that school counselor 2 had agreed to act as the Student’s counselor for the 2017-2018 school year.
21. On September 21, 2017, assistant principal 2 emailed the Parent, stating that the Student had been removed from the “Content Mastery” class and was now enrolled in a Culinary Arts class. Assistant principal 2 stated the Student was enrolled in eight classes with a ninth period for advisory, which occurred during the school day. Assistant principle 2 further stated the eleventh period reflected the assignment of the Student’s case manager.¹ Additionally, assistant principal 2 invited the Parent to attend an IEP team meeting to “collaborate with [the Parent] in providing support for [the Student]” and proposed meeting on October 16 or 17, 2017. The Parent responded to the email, inquiring about the purpose of the IEP meeting and stated she was unable to attend a meeting on those days and proposed the IEP team meet in February 2018.
22. On September 22, 2017, assistant principal 2 emailed the Parent in response to the Parent’s earlier telephone message regarding excusing the Student’s absences and tardiness during the school year. Assistant principal 2 stated a parent could call or write a note to excuse a student’s absence or tardiness, but it was the principal’s decision to excuse the absence or tardy , and that the principal may ask for information or documentation before accepting the absence as excused. Assistant principal 2 also stated that since the Parent was not able to attend an IEP team meeting on the previously proposed dates, the IEP team meeting to develop the Student’s IEP was scheduled for November 2, 2017. Attached to the email was the IEP meeting request, which stated, “the purpose of the meeting is to develop an IEP, including transition planning as appropriate”.

¹ Based on the documentation in this complaint, students do not attend eleven periods at the high school, but the eleventh period is included on class schedules in order to reflect who a student’s IEP case manager is.

23. On September 25, 2017, the Parent emailed assistant principal 2, requesting that the Student's absences or tardiness from September 2017 through June 2018 be excused. Attached to the email was a note, dated September 22, 2017, from a medical professional (medical professional 1) that stated the Student "requires accommodation[s] that addresses [sic] his ability to arrive at school and to class in a timely manner". The note further stated, "this accommodation is to be worked out with school administration, counselor, and or [sic] IEP team."
24. On September 27, 2017, assistant principal 2 emailed the Parent, stating she had received the Parent's request for the Student's accommodations regarding absences and tardiness. Assistant principal 2 further stated the "IEP team needed to convene as soon as possible to consider this request for an accommodation and review available data", and asked the Parent about her availability to meet.
25. On September 28, 2017, the Parent emailed assistant principal 2, stating "the attendance request is not an IEP change or update request" and requested that the District "implement the accommodations for his attendance ASAP, without changing the IEP".
26. On September 29, 2017, the Parent emailed assistant principal 2, asking that the Student's absences or tardiness during the 2017-2018 school year be excused. The Parent also stated that she had attached medical documents, which were "separate from the IEP request". Attached to the Parent's email was a note, dated September 29, 2017, from a second medical professional (medical professional 2) that stated, "we are working on health issues, please allow [the Student] to be tardy at times for school and classes as well as have the occasional absence without penalty as soon as possible. To last one school year."
27. On September 29, 2017, assistant principal 2 emailed the Parent, inviting her to an IEP meeting scheduled for October 25, 2017, to consider the Parent's request for an accommodation regarding the Student's attendance "as well as collaborate with [the Parent] in considering potential amendments to [the Student's] IEP to tailor it to [the Student's] needs". Attached to the email was a "Notice of Team Meeting" that stated the purpose of the meeting was to "consider possible amendments to [the] scholar's IEP and consider request[s] for accommodations".

CONCLUSIONS

1. IEP Implementation: The Parent alleged that the District failed to follow procedures to implement the Student's individualized education program (IEP) when it enrolled the Student in a special education "Content Mastery" class. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The Student's February 2017 IEP provided for 10 minutes per week of specially designed instruction in the area of social/emotional and 20 minutes per week in the area of organizational/study skills in a special education setting. The District's documentation states the Student was receiving his specially designed instruction in the areas of social/emotional and organizational/study skills in his special education advisory class on Tuesdays and

Wednesdays from his special education case manager. The high school's bell schedule shows that the Student's special education advisory class meets for a total of 54 minutes each week. This is inconsistent with the Student's February 2017 IEP, which states the Student would be in a special education setting for 30 minutes per week. The District should address the inconsistency in the Student's IEP. Additionally, the District admitted that the Student was also enrolled in a special education "Content Mastery" class for three school days (September 8, 12, and 14), which was inconsistent with his IEP. According to the documentation, the District changed the Student's class schedule on September 18, 2017, and he is no longer enrolled in the special education "Content Mastery" class. Therefore, no corrective actions are required. However, it is noted that the error in scheduling the Student's classes undoubtedly caused the Parent and the Student much confusion and the District needs to ensure that staff review students' IEPs prior to scheduling for classes.

2. IEP Development/ IEP Amendments: The documentation provided by the District and the Parent show the District did not amend the Student's February 2017 or develop a new IEP for the Student within the timeline for this complaint. However, the District is reminded that it must follow procedures for amending a student's IEP, prior to changing a student's placement and/or the amount of specially designed instruction a student receives.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI recommends the District consider using OSPI's third-party facilitator for future IEP meetings with the Parent and also consider using technology, such as telephone conference or video conference, to assist in increasing opportunities for IEP team members to attend meetings.

Dated this ____ day of November, 2017

Glenna Gallo, M.S., M.B.A.
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.)