

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-82

PROCEDURAL HISTORY

On November 8, 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 [REDACTED] 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 November 8, 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 November 30, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on December 1, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not provide a reply.

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 was enrolled in the District and was eligible to receive special education services. The Student's individualized education program (IEP) included an accommodation for a scribe or word processor for lengthy written assignments. The District also developed a "Plan for [Student]" to assist the Student's teachers that included a provision to inform the Student if there was going to be a substitute teacher. The Parent alleged that the District failed to implement the accommodation to provide a scribe for lengthy written assignments and failed to notify the Parent and Student when there was a substitute teacher. The District denied the allegation regarding the scribe and stated that the notification of a substitute teacher was not a part of the IEP.

ISSUE

1. Did the District implement the Student's individualized education program (IEP) during the 2017-2018 school year, including providing a scribe and notifying the Parent and Student that there was a substitute teacher?

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; WAC 392-172A-03105. 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 Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development for a Student with Behavioral Needs: In developing, reviewing, and revising each student's individualized education program (IEP), the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. 64 Fed. Reg. 48, 12479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral analysis (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Behavioral Intervention Plan (BIP): A behavioral intervention plan is a plan incorporated into a student's IEP if determined necessary by the IEP team for the student to receive FAPE. The behavioral intervention plan, at a minimum, describes: the pattern of behavior(s) that impedes the student's learning or the learning of others; the instructional and/or environmental conditions or circumstances that contribute to the pattern of behavior(s) being addressed by the IEP team; the positive behavioral interventions and supports to reduce the pattern of behavior(s) that impedes the student's learning or the learning of others and increases the desired prosocial behaviors and ensure the consistency of the implementation of the positive behavioral interventions across the student's school-sponsored instruction or activities; and the skills that will be taught and monitored as alternatives to challenging behavior(s) for a specific pattern of behavior of the student. WAC 392-172A-01031 (effective January 29, 2016).

FINDINGS OF FACT

1. During the 2017-2018 school year, the Student attended a District junior high school and was eligible to receive special education and related services under the category of autism.
2. On September 6, 2017, the District's 2017-2018 school year started.
3. The Student's individualized education program (IEP) in place at the beginning of the 2017-2018 school year was developed on May 30, 2017. The May 2017 IEP indicated that the Student's assessment scores in reading and mathematics were at the 6th grade and 5th grade levels, respectively. The IEP stated that the Student's communication skills were moderately delayed and that the Student displayed behavioral difficulties in the areas of following verbal directions, paying attention in class, and taking turns. The IEP stated that the Student's behavior interfered with his learning and the learning of others. The IEP provided for goals in the areas of behavior, adaptive/functional, social emotional behavior, and mathematics, along with specially designed instruction in each area. The IEP provided for the following accommodations:
 - Behaviorally Related: remove self to de-escalating center and/or call Parent for assistance with de-escalating
 - Behaviorally Related: contract daily in all classes
 - Content Area: use of scribe or word processor – as needed/requested for all classes for lengthy writing assignments
 - Content Area: use of a planner
 - Content Area: break material into manageable parts
 - Content Area: preferential seating
 - Extracurricular Activities: student will be eligible to participate in athletics and other extracurricular activities if he/she is making progress toward meeting IEP goals
 - School Day Activities: If student is unable to participate in an activity scheduled during regular school hours, an alternative activity will be provided to the student
4. On September 25, 2017, one of the Student's general education teachers emailed the Parent, stating that the Student was doing "great" in class, but recently his afternoon behavior had "disintegrated."

5. On September 26, 2017, the Parent emailed the Student's special education case manager and general education teacher, stating, in part: "Have you reviewed [Student's] IEP and familiarized yourself with it? I think part of the problem is that it's not being followed. He was I ready¹ testing and he says no adult was sitting with him making sure he is understanding and testing correctly. This is in his IEP..." The Parent requested a meeting to review the Student's IEP. The email was unclear whether the Parent was requesting an IEP meeting or a meeting with the Student's case manager and teacher.
6. On October 6, 2017, the Parent and the case manager were scheduled to meet to discuss the IEP, but the Parent was unable to attend, according to the District's documentation. The District subsequently sent the Parent an invitation to meet on October 20, 2017, with all the Student's teachers. On October 14, 2017, the Parent emailed the District back and accepted the invitation.
7. On October 17, 2017, the Student had a substitute teacher in his science and communication classrooms.
8. According to the District's response to this complaint, the Parent and teachers did not meet on October 20, 2017 as scheduled. Despite not meeting, the documentation indicated that the District provided the Parent with a copy of the "Plan for [Student]" that was developed on October 19, 2017. The District stated that no prior written notice accompanied the plan when it was provided to the Parent. Additionally, there is no documentation to show the plan was incorporated into the Student's May 2017 IEP. The "Plan for [Student]" was provided to the Student's teachers and addressed times when the Student became anxious or frustrated. The plan described who the Student could talk to when he became anxious or frustrated, addressed using a Seahawk Way or Daily Assignment Tracking Sheet, and included advice not to argue with the Student. Part of the plan stated:

...Please make sure you have a copy of this in your sub plans when you are not here. It is also important if you know you are not going to be here to let [the Student] know ahead of time so he is not surprised when he sees a sub in the classroom.
9. On November 6, 2017, the District held an IEP meeting that included the Parent to discuss the Student's behavior and proposed that the Student be permitted to go to the student learning center to complete his work from his English language arts class if he chose to. According to the District's November 6, 2017 prior written notice, "The team met to discuss some behavior concerns as well as the plan in place for him which was implemented 10-19-17...[Teacher] said she had been following the plan which was put in place in October."
10. On November 8, 2017, the Parent filed this complaint with OSPI. According to the complaint, the Parent stated:

Sometime during the week of Oct. 9-13, I brought up to my son's case manager that he is telling me there is no adult sitting with him while testing. Her response was that his teacher is in there, sitting close by and wandering around the room. I explained that is

¹ "I ready" or i-Ready is a curriculum that provides mathematics and reading interventions.

not what I asked for and that is not what it says in his IEP but she insisted that this is sufficient. On October 17, I went into the school because my son told me he had no idea that he was going to have a substitute that day, and I not been notified beforehand either. There was no prep time for my son which resulted in negative behavior from my son and the staff member.

In response to the complaint, the District stated that the accommodation for providing a scribe when offered by a teacher or requested by the Student was implemented, although there was no documentation verifying its implementation. The District did not provide any copies of the Student's writing assignments that used a scribe or word processor. The District also stated there was no requirement in the IEP for notifying the Parent and Student if there was a substitute teacher, but the District attempted to notify both when there was a substitute teacher.

11. The District provided the following classes and dates when substitute teachers were used in the Student's classes until November 8, 2017, the date of the complaint:

- Communication – 10/16, 10/17, 10/18/2017
- Pre-Algebra – 10/16
- Science – 9/18, 10/16, 10/17/2017
- Band – 9/15, 10/30, 10/31/2017
- WA History – None
- English – 10/16, 10/17, 10/18/2017
- Academic Support – 9/18, 9/19, 10/10, 10/23, 10/24, 10/25, 10/26, 10/27/2017

CONCLUSIONS

Accommodation Regarding Scribe/Word Processor – A school district is required to implement an IEP as written. Here, the Parent alleged that the District failed to implement the Student's accommodation for a scribe. The Parent interpreted the accommodation to mean that a staff member was required to sit with the Student during testing and ensure that the Student understood what he was supposed to do. The Student's May 30, 2017 IEP included an accommodation, which called for a scribe or word processor to assist the Student with "lengthy writing assignments." A scribe merely copies down the words of the student without explanation or further assistance, which is inconsistent with the Parent's interpretation of the accommodation.² Additionally, the accommodation was to assist the Student with lengthy writing assignments, not testing, as the Parent has asserted. Based on the Student's May 2017 IEP, the District was not required to provide the Student with a scribe or word processor during testing.

In the District's response to this complaint, the District stated that it implemented the accommodation to provide a scribe or word processor for lengthy writing assignments, but provided no documentation to verify this. The District bears more responsibility to verify

² The role of a scribe is described at <http://www.k12.wa.us/assessment/StateTesting/pubdocs/GuidelinesToolsSupportsAccommodations.pdf> pg 26.

implementation of an IEP than simply stating the IEP was implemented as written, even if the accommodation was misconstrued by a parent. While the District may have provided this accommodation, the District did not provide any examples or approximate how many times the accommodation was implemented that would help to verify implementation. Given the nature of the accommodation, documentation of implementation should have been easy to come by, as there should be examples of the Student's assignments copied down by a scribe or showing the Student used a word processor. The District did not dispute the Parent's description in the complaint of how the accommodation was implemented by the Student's teacher; that is the teacher was either sitting close by the Student or wandering around the classroom offering assistance. This description is inconsistent with having a scribe. Given the Parent and District staff's misunderstanding of the Student's accommodation, the District will hold an IEP meeting to clarify the Student's accommodations and determine if additional accommodations are needed.

Notification to Parent/Student of a Substitute Teacher – Again, a school district is required to implement an IEP as written. Here, the Parent alleged that the District failed to implement the Student's IEP when it failed to notify the Parent and Student that there was a substitute teacher on October 17, 2017. The Student's May 30, 2017 IEP, which was in place on October 17, 2017, did not include any notification regarding substitute teachers. The "Plan for [Student]", which was developed on October 19, 2017, stated that the Student should be notified if there was going to be a substitute teacher. The plan did not include notifying the Parent when there would be a substitute teacher. Given that the plan was not created until October 19, 2017, the District did not fail to implement the plan on October 17, 2017.

According to the District's response to this complaint, the October 19 "Plan for [Student]" was not a behavioral intervention plan (BIP) and was not part of the Student's May 2017 IEP. An IEP is required to address a student's behavioral needs and is required to include a BIP when the IEP team determines it is necessary for a student to receive a free appropriate public education (FAPE). Here, given the Student's behavior needs and the Parent's misunderstanding that the October 19 plan was either part of the Student's IEP or enforceable in some other manner, the District will hold an IEP meeting to discuss whether the Student is in need of a BIP or additional behavior related accommodations.

CORRECTIVE ACTIONS

By or before **January 31, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

The District will hold an IEP meeting by January 26, 2018, which will include all of the Student's special education and general education teachers. The IEP team will review the Student's behavior needs, and if determined necessary, develop a BIP for the Student. Additionally, the IEP team will review and clarify the Student's IEP accommodations, and if determined necessary, amend the Student's IEP to include additional accommodations. By **January 31, 2018**, the District will provide: 1) a copy of any meeting invitations; 2) a sign-in sheet from the meeting; and, 3) a

copy of a prior written notice, clearly outlining the IEP team's decisions. If applicable, the District will also provide a copy of the Student's BIP and amended IEP.

DISTRICT SPECIFIC:

None

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 January, 2018

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.)