

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-55

PROCEDURAL HISTORY

On May 29, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District No. 114 (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 May 30, 2018, 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 June 20, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on June 21, 2018. 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 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education services. In March 2018, the Student's individualized education program (IEP) team met to develop his annual IEP. The IEP team originally agreed to meet at 4:00 p.m., but on the day of the meeting, the Parent requested that the team meet at 2:30 p.m. The requested time conflicted with a staff meeting, but staff agreed that the IEP meeting could occur at 2:30 p.m., if the principal could attend approximately fifteen minutes late. The Parent was informed that the principal would be late, and agreed to proceed with the meeting. During the IEP meeting, the general education teacher, special education teacher, and the Parent began discussing the Student's IEP and the principal later joined the meeting. Once the IEP team had finished discussing the Student's progress and time in a general education setting, the general education teacher was dismissed from the meeting. The remaining team members finished discussing the IEP, and then moved into a discussion unrelated to the Student's education at school. At that point, the principal was dismissed from the meeting.

The Parent alleged that the District failed to follow procedures for excusing members of the Student's IEP team from the March 28, 2018 IEP meeting. The District denied the allegation.

ISSUE

1. Did the District follow procedures for excusing members of the Student's individualized education program (IEP) team from the March 28, 2018 IEP meeting?

LEGAL STANDARDS

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

FINDINGS OF FACT

1. During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education under the category of other health impairment.
2. The District's 2017-2018 school year began on August 30, 2017.
3. The Student's elementary school has the following schedule:
 - Monday, Tuesday, Thursday, and Friday: 9:20 am – 3:50 pm
 - Wednesday: 9:20 am – 1:35 pm
4. The Student's individualized education program (IEP) in place at the beginning of the school year was developed on March 16, 2017. The IEP included annual goals in the area of social/emotional and provided for the following specially designed instruction in a special education setting:
 - Social/emotional – 750 minutes per week (provided by a special education teacher)
 - Social/emotional – 750 minutes per week (provided by an instructional assistant)

The IEP stated that the Student spent 12.54% of his school week in a general education classroom. The IEP stated that the Student attended general education for PE, lunch, recess, music, and library, and would begin to increase his time in the general education setting, using data to determine the success rate.

5. On March 13, 2018, the Parent emailed the elementary school principal and the Student's special education teacher, stating that the "school" had contacted her regarding the Student's upcoming annual IEP meeting. The Parent stated that she had been told the Student's IEP "expired" on March 16, 2018, and that she had to attend an IEP meeting on March 15. The Parent stated that she had explained that this was not enough time, as she needed to arrange for her advocate to attend, had not received a draft of the IEP, and was not available at the proposed meeting time. The Parent said that the school staff person had stated that the District would hold the IEP meeting without the Parent, and the Parent had responded that this was unacceptable. The Parent stated that she did not give her permission for the District to hold the IEP meeting without her or her advocate. The Parent asked that the principal and the special education teacher get back to her as soon as possible to discuss this.
6. On March 14, 2018, the principal responded to the Parent, apologizing that the first attempt to schedule the meeting did not give the Parent sufficient notice. The principal stated that it was his understanding that the special education staff were working to reschedule the meeting for a later date, and asked that the Parent please let him know if this was not the case. Based on the District's documentation in this complaint, the District and the Parent later agreed to hold a meeting on Wednesday, March 28, 2018.
7. On March 26, 2018, the Student's special education teacher emailed the Parent a draft of the Student's March 2018 IEP, and asked that the Parent let him know if she had any questions or things she wanted revised. Attached to the IEP draft was a meeting invitation. The invitation stated that a meeting was scheduled for March 28 at 4:00 p.m. The invitation also stated that the following people had been invited to the meeting:
 - District Representative
 - Student's general education teacher
 - Student's special education teacher
 - Parent (Student's mother)
 - Student's father
8. The draft March 2018 IEP included annual goals in the area of social/emotional and provided for the following specially designed instruction:
 - Social/emotional – 750 minutes per week (special education setting)
 - Social/emotional – 90 minutes 5 times weekly (general education setting)The draft IEP stated that the Student would spend 56.27% of his school week in a general education setting.
9. Later on March 26, 2018, the Parent forwarded the draft IEP to her advocate.
10. On Wednesday, March 28, 2018, staff at the elementary school had a training scheduled from 2:00 p.m. – 3:00 p.m.
11. On the morning of March 28, 2018, the Parent emailed the special education teacher, stating that she "had the IEP at 3" that day, but noticed the meeting invitation showed that the meeting was at 4:00 p.m. The Parent stated that she could be there at 2:30 p.m. and asked

if this worked for the special education teacher. The Parent stated that she had looked over the draft IEP and did not have questions, and asked that the special education teacher let her know if the IEP meeting could begin at 2:30 p.m.

12. The District's documentation in this complaint includes a statement from the Student's special education teacher. Based on the special education teacher's statement, the following occurred on March 28, 2018:

- In response to the Parent's request to hold the IEP meeting at 2:30 p.m., the special education teacher discussed the Parent's request with the school principal.
- The school principal agreed that the special education teacher and the Student's general education teacher could leave the scheduled staff training at 2:30 p.m. to meet with the Parent, and that the principal could attend the IEP meeting around 2:45 p.m., when he was able to leave the training.
- The special education teacher informed the Parent that the principal would not be able to attend the IEP meeting until 2:45 p.m. and the Parent did not object.
- The special education teacher and the general education teacher met with the Parent at 2:30 p.m. and began discussing the Student's performance in the general education class, and then moved on to discussing annual goals and the amount of time the Student would participate in the general education setting.
- The principal joined the IEP meeting around 2:45 p.m. The teachers then "briefed" the principal on what the team had discussed so far, and disclosed that the team had covered most of the meeting's content.
- The general education teacher then shared additional observations and input and the special education teacher asked the Parent if she had any questions. The Parent reported that she did not have any questions because the general education teacher had been so "thorough".
- The special education teacher then asked the Parent if she was comfortable excusing the general education teacher, and the Parent reportedly agreed because the team had all agreed that the general education teacher's presence was no longer necessary, as none of the remaining IEP content pertained to the general education teacher's expertise.
- The special education teacher, principal, and Parent then completed an overview of the IEP in its entirety and the Parent signed the IEP. The Parent did not ask any questions.
- The team then moved into a discussion about developing a plan for the Student while he attended his daycare during the District's upcoming spring break (April 2-6, 2018). Because the Student had a difficult time in daycare during the summer of 2017, the Parent had asked the special education teacher to help create a structured routine for the Student to use at the daycare so that the Student could be safe and successful.
- While discussing the daycare plan, the Parent received several phone calls from the Student's caregiver, indicating that the Student was having behavioral issues.
- The special education teacher then asked if the Parent was comfortable dismissing the principal from the meeting and the Parent reportedly agreed.
- The special education teacher and the Parent then spent a few additional minutes developing the spring break plan.

13. The District's documentation in this complaint includes a statement from the Student's general education teacher. Based on the general education teacher's statement, the following occurred at the IEP meeting on March 28, 2018:

- The general education teacher attended the IEP meeting at 2:30 p.m.

- The special education teacher led the meeting, and the general education teacher briefly discussed the Student's progress and engagement in reading for the short time the Student spent in the general education class every morning.
- The general education teacher was then excused from the rest of the meeting.

14. The District's documentation in this complaint includes a statement from the elementary school principal. Based on the principal's statement, the following occurred at the IEP meeting on March 28, 2018:

- The principal joined the IEP meeting a few minutes after 2:45 p.m., at which point the teachers and the Parent were discussing the Student's IEP.
- The teachers told the principal that the team was almost finished discussing the IEP.
- The general education teacher gave a brief account of the Student's performance in the general education classroom. When she was finished, the special education teacher asked if the Parent had any questions for the general education teacher, and if not, whether the Parent objected to the general education teacher leaving the meeting. The Parent reportedly did not object.
- The special education teacher then continued to review the Student's IEP.
- The Parent then received a phone call from the Student's caregiver, who expressed concern about the Student's behavior.
- The team's conversation then turned toward a conversation that was no longer about the IEP, and the special education teacher asked the Parent if she objected to the principal leaving the meeting. The Parent reportedly did not object, and the principal left the meeting.

15. After the IEP meeting on March 28, 2018, the Parent's advocate responded to the Parent's March 26 email, in which she had included a copy of the Student's draft March 2018 IEP. The advocate stated that she had reviewed the IEP and felt that the IEP was "pretty well written" and it appeared the Student's special education teacher "gets" the Student and his needs. The advocate then listed some suggestions for the IEP. On March 29, the Parent forwarded the advocate's email to the special education teacher and stated that she wanted to "share" the information with the special education teacher.

16. According to the special education teacher, shortly after the March 28 IEP meeting, a prior written notice¹ and a copy of the March 2018 IEP were placed in the Student's "go home box", but the Student forgot to take them. On April 16, 2018, the special education teacher emailed the Parent a copy of the March 2018 IEP, and asked that the Parent let him know if she had any questions.

17. The District was on break April 2-6, 2018.

18. Based on the documentation in this complaint, at the end of April 2018, the Student began to display worsening and aggressive behaviors at home and at daycare. The Parent attributed the change in the Student's behavior to a new special education teacher beginning to take over responsibilities in the Student's classroom, as a way to prepare the students in the

¹ The District's documentation includes a prior written notice, dated April 4, 2018, regarding the March 28, 2018 IEP meeting.

classroom for a change in teachers during the 2018-2019 school year, when the Student's special education teacher would no longer work in the District.²

19. On May 2, 2018, the Parent emailed the special education teacher, asking for suggestions to help the Student be able to regulate his behavior so he could be successful in attending daycare over the summer. The Parent stated that the family was meeting with the Student's private counselors that evening to see if she had any idea. In response, the special education teacher agreed to help and offered to attend the meeting with the private counselors. The Parent replied that she would ask the counselors if they would be interested in "brainstorming" with the teacher.
20. On May 7, 2018, the Parent emailed the elementary school principal, asking to schedule an "emergency meeting" for the Student, which would include the Student's counselors, his daycare provider, the Parent's advocate, and the Student's health care provider. The Parent stated that with the recent change at school, the Student had become "extremely violent" at home and more "aggressive and violent" in daycare. The Parent stated that they had been "doing so well" with the Student, but then the change happened with a new teacher coming in. The Parent stated that they all needed to come together to figure out a plan for the Student. The Parent asked that the District provide possible dates to hold the meeting and that a District administrator, preferably the executive director of special services, attend the meeting. Based on the documentation in this complaint, the special education teacher responded and proposed meeting on May 17. On May 8, the Parent sent a follow-up email, stating that the counselor and others would attend the May 17 meeting.
21. On May 9, 2018, the Parent emailed the District executive director of special services (executive director), stating she had called an emergency meeting at the elementary school, and provided information that the meeting was scheduled for May 17. The Parent relayed that the Student had been doing very well in his special education class, until the new special education teacher had been introduced, but had now become "extremely violent" at daycare and home, and had also struggled in his general education classes. The Parent stated that the Student had his violence under control for many months, but when the school made the switch in teachers, the Student did not do well with it. The Parent stated that she was requesting that the District pay for applied behavior analysis (ABA) therapy for the Student to help him control his anger and violence, and that the executive director attend the upcoming May 17 meeting. The Parent then stated that she had not complained about the March 28, 2018 IEP meeting, which was "illegal". The Parent stated that the meeting consisted of the special education teacher and herself, and that the special education teacher had a general education teacher come in for 5-10 minutes and then the school principal only stayed for about five minutes. The Parent stated that she was telling the executive director this because she:

Wanted to work with [the special education teacher], as he has been amazing for [the Student] and our family. This teacher has gone above and beyond for his

² Based on the documentation in this complaint, the Student's special education teacher was moving to another state over the summer of 2018.

students...Regardless the IEP meeting was illegal. I still do not have a copy of the IEP meeting from March. With this said, I think it is a fair request to have the district pay for ABA for [the Student] to help resolve something the school has done.

The Parent then provided a list of people who were coming to the May 17 meeting and asked that the executive director make sure the meeting stayed as planned.

22. On May 10, 2018, the executive director responded that the Parent had requested an emergency meeting to discuss issues occurring outside of the Student's IEP and the school day, but that based on her May 9 email, it was clear that the Parent was requesting an IEP meeting. The executive director stated that May 17 was not a date the IEP team agreed to have an IEP meeting. The executive director said that staff would continue to identify a mutually agreeable time to meet to discuss the Parent's concerns with the Student's IEP that was developed in March 2018 and currently being implemented, and that once a date was identified, the Parent could invite individuals with knowledge or special expertise regarding the Student to participate in the IEP meeting. Additionally, the executive director stated that at the upcoming IEP meeting, the IEP team would review the Student's progress on the goals in the March 2018 IEP, and that if data identified that the Student was not making progress toward the goals, then the IEP team would consider whether additional services were required for him to make progress, and indicated that such determined services would be provided during the school day. The executive director asked that the Parent please connect with the principal, special education teacher, or the structured learning teacher (the new special education teacher for the Student's classroom) to finalize a date and time for the IEP meeting.
23. On Friday, May 11, 2018, the Parent met with the principal and also with the structure learning teacher. The Parent later sent a follow-up email to the principal, structured learning teacher, and the special education teacher, asking if they could keep the May 17 meeting and not call it an IEP meeting. The Parent stated that she just wanted everyone to come together and share what they were all doing for the Student and come up with a plan as a group. The Parent stated that if they needed to adjust the IEP, this could be done at a later date.
24. On Monday, May 14, 2018, the structured learning teacher responded to the Parent's email, stating that the staff could not meet on May 17 at 2:45 p.m., as this was a time the structured learning teacher was working with the students. The teacher indicated that she was available most days before and after school and asked what days would be good for the Parent to meet. In response, the Parent stated that this was not good, and that they needed to figure something out as soon as possible, especially with the Student losing his daycare services due to the "school switching." The Parent stated they needed to have all of the Student's supports on board.
25. On May 16, 2018, the Parent emailed the executive director, asking for a copy of the Student's IEP. The Parent also stated that she needed to request an immediate move to another elementary school and asked what procedures she needed to follow to start the process. In response, the executive director stated that the special education secretary would email the

Parent a copy of the IEP. The executive director also stated that not every elementary school in the District offered a specialized classroom, as indicated in the Student's IEP, and because of this, any changes to service location would need to be discussed within an IEP meeting, and determined to be needed in order to implement the IEP. The executive director stated that this would be added to the agenda to be discussed at the upcoming IEP meeting. Based on the documentation in this complaint, the Parent and the District had agreed to hold an IEP meeting on June 6, 2018.

26. On May 18, 2018, the special education provided the Parent with a copy of the Student's March 2018 IEP.

27. On May 29, 2018, the Parent filed this citizen complaint.

CONCLUSIONS

The Parent alleged that the District failed to follow procedures for excusing members of the Student's IEP team from the March 28, 2018 IEP meeting, because the school principal and the Student's general education teacher left the meeting early.

At a minimum, an IEP team must include the parent, one general education teacher, one special education teacher, and a representative of the school district. Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP prior to the meeting. Here, the District and the Parent agreed to hold an IEP meeting on March 28, 2018 at 4:00 p.m., and the District informed the Parent that the IEP team would include herself, the Student's special education teacher, general education teacher, and the school principal.

Principal's Participation in the IEP Meeting: On the morning of March 28, 2018, the Parent requested that the time of the IEP meeting be changed to 2:30 p.m. However, because the requested 2:30 p.m. time conflicted with a staff meeting that ran from 2:00-3:00 p.m., the principal could not attend a 2:30 p.m. meeting, but agreed that the special education teacher and general education teacher could leave the staff meeting early to attend the 2:30 p.m. IEP meeting, and that he could attend the IEP meeting around 2:45 p.m. Based on the information in this complaint, the Parent was informed of this, prior to the meeting time being changed, and the Parent agreed that the principal could attend the meeting approximately fifteen minutes late. While ideally, the District should have documented this agreement in writing, the documentation and information provided in this complaint do not support that the principal's arrival at the IEP meeting fifteen minutes late, negatively impacted the development of the Student's IEP, as the Parent did not raise any concerns about the content of the March 2018 IEP after the meeting, but only raised concerns about the principal's participation in the IEP meeting when she became

frustrated with a change in the Student's behavior while at home and at daycare, nearly four weeks later, which she attributed to the change in the Student's special education teacher.

Additionally, while the Parent alleged that the principal only stayed at the meeting for "5 minutes", the information provided in this complaint does not support this allegation. Instead, the information supports that once the principal arrived at the IEP meeting, he remained for the entirety of the discussion regarding the Student's IEP, and that only when the IEP team had completed its discussion of the IEP and moved on to discussing a plan for the Student to follow at his daycare during the District's spring break, which was not related to the Student's IEP or educational program at the elementary school, the principal left the meeting. The District was not required to seek the Parent's agreement to excuse the principal from participating in a discussion about the Student, which was unrelated to his IEP and school program.

General Education Teacher's Participation in the IEP Meeting: Based on the information in this complaint, the Student's general education teacher arrived on time to the 2:30 p.m. IEP meeting, and that while at the meeting, she provided information about the Student's progress in the general education class and participated in a discussion regarding IEP goals and the proposed increase in the amount of the time the Student would spend in a general education setting. When the discussion of the items related to the Student's participation in general education was completed, the special education teacher asked the Parent if the general education teacher could be dismissed, and the Parent reportedly agreed. Again, the District should have documented any agreement to excuse a team member in writing. However, the information and documentation in this complaint do not support that the failure to document the Parent's agreement to excuse the general education teacher from the IEP meeting, negatively impacted the development of the Student's IEP, as the general education teacher still provided input into the development of the March 2018 IEP, participated in a discussion with the team, and the Parent had the opportunity to ask the general education teacher questions. Further, as discussed above, the Parent did not raise concerns about the content of the March 2018 IEP after the meeting, but only raised concerns about the general education teacher's participation in the IEP meeting when she became frustrated with a change in the Student's behavior, which she attributed to the change in the Student's special education teacher.

The District will provide staff with written guidance regarding the procedures for documenting a parent's agreement to excuse staff members from an IEP meeting.

CORRECTIVE ACTIONS

By or before **August 24, 2018** and **September 24, 2018**, 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 regarding the requirements to excuse staff members from IEP meetings as stated in WAC 392-172A-03095.

By **August 24, 2018**, the District will submit a draft of the procedures. OSPI will approve the procedures or provide comments by September 7, 2018 and provide additional dates for review, if needed.

By **September 24, 2018**, the District will provide OSPI with documentation showing it provided all District certificated special education staff, including ESAs, principals, and assistant principals, at the Student's elementary school with the procedures. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. This will include a roster of all staff members who were required to receive the procedures, 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 July, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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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.)