

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-07**

### **PROCEDURAL HISTORY**

On January 24, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Port Angeles School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 25, 2022, 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 February 11, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on February 14, 2022. OSPI invited the Parent to reply.

On March 11, 2022, the OSPI complaint investigator conducted an interview with the Parent.

On March 15, 2022, OSPI talked with the District's director of special services (director) by telephone and received additional information.

On March 16, 2022, OSPI requested additional information from the District. On the same day, the District provided the information. OSPI forwarded the information to the Parent on March 18, 2022.

On March 18, 2022, OSPI talked with the director by telephone and received additional information.

On March 18, 2022, OSPI received additional information from the Parent. The information was forwarded to the District on March 21, 2022.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on January 25, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUES**

1. Did the District conduct a timely individualized education program (IEP) meeting after the evaluation was conducted in early fall 2021?

2. Did the District consider the Student's need for a 1:1 paraeducator during the 2021–2022 school year?
3. Did the District implement the Student's transportation services during the 2021–2022 school year?

### **LEGAL STANDARDS**

Reevaluation Timeline: A district must obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015.

IEP Revision: A student's individualized education program (IEP) must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's 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. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (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).

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

### **ISSUE ONE: FINDINGS OF FACT**

#### **2021–2022 School Year**

1. On September 2, 2021, the 2021–2022 school year began in the District.
2. At the beginning of the 2021–2022 school year, the Student was a first grader who attended a District elementary school and was eligible to receive special education services under the category of developmental disability.

3. At the time, the Student's individualized education program (IEP), dated October 9, 2020, was in place. The Student's IEP provided annual goals in the areas of communication, adaptive skills, and social/emotional. The IEP provided specially designed instruction in the following areas:
  - Communication: 30 minutes/1 time weekly
  - Adaptive skills: 165 minutes/2 times weekly
  - Social/emotional: 165 minutes/2 times weekly

The "Team Considerations" section regarding behavior in the IEP stated the Student's behavior did not interfere with the Student's learning or the learning of others.

4. On September 16, 2021, according to written meeting notes submitted by the District, the District and Parent met to discuss a reevaluation of the Student. The team discussed some of the Student's academic and behavioral needs.
5. An undated "Reevaluation Notification/Consent" form stated the reevaluation would address the following areas: behavior; academic; medical-physical; general education; adaptive; cognitive; communication; fine motor; and a review of the information from the autism center's report.
6. The consent form indicating the Parent's consent to the reevaluation was not signed. But the Parent and District indicated that the Parent consented to the evaluation at the meeting and did not dispute the date of consent being on September 16, 2021.
7. On November 5, 2021, the 35-school day timeline ended to conduct the Student's reevaluation.
8. The District was on winter break between December 20–31, 2021.
9. On January 10, 2022, the school psychologist emailed the Parent to schedule an evaluation meeting. In addition, the "Notice of Meeting" dated the same day stated: "This is to notify you that a/an Eligibility meeting has been scheduled for this student..." The form stated the purpose of this meeting was to review evaluation reports and eligibility determination.
10. On January 14, 2022, the evaluation team met and determined that the Student was now identified as being eligible for special education services under the category of autism. The evaluation noted that the Student was diagnosed with autism in July 2021 by a private autism clinic and had been receiving applied behavioral analysis (ABA) therapy at a private clinic. The District's evaluation recommended services in the areas of communication, reading, written expression, math, adaptive skills, and occupational therapy.
11. According to the complaint, the Parent "was under the impression it was an IEP meeting." The Parent later clarified that because of the length of time between providing consent for the evaluation and date of the meeting, she believed an IEP meeting was required. The Parent stated in the complaint that because it was not an IEP meeting, the Parent "took the Student out of school."

12. On January 24, 2022, the Parent filed this complaint with OSPI.
13. On February 10, 2022, the Student's IEP team met to develop a new IEP for the Student. The IEP stated the Student was receiving private ABA therapy now at home rather than a clinic. The Student's IEP provided annual goals in the areas of math, reading, written expression, and communication. The IEP provided the following specially designed instruction and related service:
  - Adaptative skills: 30 minutes/5 times weekly
  - Math: 30 minutes/5 times weekly
  - Reading: 20 minutes/5 times weekly
  - Written expression: 20 minutes/2 times weekly
  - Communication: 30 minutes/3 times monthly
  - Occupational therapy: 30 minutes/3 times monthly
14. According to the Student's attendance record, the Student missed nine days of school from January 10 to February 1, 2022.
15. In its response, the District acknowledged that the "evaluation and IEP were out of timeline."
16. In response to the complaint, the District's director conducted a training for District special education staff on evaluation and IEP timelines on February 1, 2022.

## **CONCLUSION**

**Issue One: IEP Meeting** – The Parent alleged the District failed to convene an individualized education program (IEP) team meeting within a reasonable time after the Student's January 14, 2022 reevaluation meeting. A district is required to conduct a reevaluation within no more than 35 school days after parent consent is received. Although there is no specific requirement or timeline to convene an IEP meeting after a reevaluation, a district is required to convene the IEP team within a reasonable time after the reevaluation is conducted to address the evaluation results, if the results have an impact on the student's free appropriate public education (FAPE).

Here, the District and Parent indicated the Parent consented to the reevaluation on September 16, 2021 and the reevaluation meeting was conducted on January 14, 2022, which exceeded the 35-school day timeline. The reevaluation should have been completed by November 5, 2021—35 school days after September 16, 2021. Regarding the January 14, 2022 meeting, the Parent appeared to be confused about the nature of the meeting—thinking that the meeting was an IEP meeting despite the notice stating it was an evaluation meeting. As of the date the complaint was filed, January 24, 2022, the IEP meeting had not been conducted. However, after the complaint was filed, an IEP meeting was held on February 10, 2022, to develop a new IEP for the Student. The February 2022 IEP provided additional services in the areas of reading, math, and written expression. The District acknowledged the Student's evaluation and IEP were conducted beyond the required timelines. 30 calendar days is considered a reasonable amount of time to convene an IEP meeting, which in this case would have been December 6, 2021. Based on the District not completing the evaluation and IEP within required and reasonable timelines, a violation is found.

The District will be required to provide compensatory education for the Student in the new areas of services (as the Student's other areas of service were unchanged, the Student continued to receive services in those areas despite the delay in completing the evaluation and IEP). The IEP meeting was eventually conducted on February 10, 2022, which resulted in the addition of math (30 minutes per day), reading (20 minutes per day), and written expression (20 minutes, twice a week) services for the Student. Had the IEP meeting been held within a reasonable 30-calendar day timeline, the Student would have been able to receive 27 days of new services from December 6, 2021—when the meeting should have occurred—to the date of the February 10, 2022 IEP, which factors in the fact that the Student did not attend nine days during this period of time. The compensatory services are adjusted accordingly and the District is required to provide compensatory education for the missed 27 days of services or 13.5 hours of math, 9 hours of reading, and 3.5 hours of written expression as compensatory education. Since the District has already provided training to the staff regarding evaluation and IEP timelines, no additional training is required.

## **ISSUE 2: FINDINGS OF FACT**

17. According to the Student's 2018 evaluation, the Student previously attended an inclusionary preschool in another school district and received 1:1 paraeducator support. When the Student transferred to the District in the 2018–2019 school year, the Student was placed in a self-contained special education preschool with a greater staff-to-student ratio.
18. The complaint alleged the District failed to consider the Parent's request for a 1:1 paraeducator for the Student. When the Parent was asked by OSPI when she requested a 1:1 paraeducator for the Student, the Parent replied, "at the beginning of the school year." Later, the Parent stated the 1:1 paraeducator was discussed at the January 2022 evaluation team meeting and the February 2022 IEP meeting.
19. On January 14, 2022, the Parent met with the general education teacher, director, school psychologist, principal, speech/language pathologist, school counselor, special education teacher, and the Parent's board-certified behavior analyst (BCBA) to discuss the Student's strengths and weaknesses according to the District's meeting notes. The notes indicated the principal stated the Student was at a "crucial point." The Student needed to catch up on skills, but there were no current behavior problems. According to the notes, the Parent stated the Student needed a 1:1 paraeducator "to provide constant prompting."
20. The January 2022 evaluation stated there were different findings regarding behavior problems in school and home. In school, behavior problems were mostly "average-typical" while at home they were "clinically significant." The evaluation report noted that scores in academic areas were low to very low.
21. According to an interview with the Parent, the District denied the Parent's request that a 1:1 paraeducator be assigned to the Student because the District could not afford to pay for a 1:1 paraeducator for an individual student and that 1:1 paraeducators are only assigned to students who eloped. The request for a 1:1 paraeducator was, in part, based on the

recommendation from the Student's private board-certified behavior analyst (BCBA) who, according to the Parent, did not observe the Student at school.

22. In response, the director stated there was no District-wide policy limiting 1:1 paraeducators as the Parent indicated. The director stated the District's procedures call for the IEP team to make a decision based on a student's individual needs. The school principal also reported to OSPI that the Parent requested a 1:1 paraeducator at the January 2022 evaluation meeting. The Parent was told that special education services would be determined by the IEP team. The principal noted that no one mentioned the cost of a 1:1 paraeducator or that only students who eloped received a 1:1 paraeducator. The principal also noted the Student was doing "very well" in class and making expected progress. The Student was not exhibiting any behavioral issues.
23. On February 10, 2022, the District conducted an IEP meeting to develop a new IEP for the Student. Although the Parent stated the team discussed a 1:1 paraeducator, there was no indication from the principal, who attended the meeting, the IEP document, or prior written notice that the Parent brought up the Student's need for a 1:1 paraeducator or that this potential need was discussed.

## **CONCLUSION**

**Issue Two: 1:1 Paraeducator** – The complaint alleged the District failed to consider providing a 1:1 paraeducator to the Student. The IEP team is required to consider appropriate behavior supports, interventions, and strategies to address a student's behavior needs. An IEP team is required to consider the input from a parent and outside service provider, but it is not necessarily obligated to accept their recommendations.

Here, the Parent indicated she requested a 1:1 paraeducator for the Student at the beginning of the school year, although there was no documentation of the request. The Parent also stated she was told the District could not afford a 1:1 paraeducator for just one student and 1:1 paraeducators were only provided to students who eloped. But this was not substantiated by the principal and director who attended the meetings with the Parent, and both stated the alleged reasons were not consistent with the District's policies and procedures or information provided to the Parent. The documentation also showed the Parent brought up a 1:1 paraeducator at the January 2022 evaluation meeting. The District properly deferred the decision to the IEP meeting that eventually occurred in February 2022. However, the documentation from the February 2022 IEP meeting did not substantiate that the Parent brought up the 1:1 paraeducator at the meeting. The IEP meeting would have been the appropriate venue for the Parent to address the request and the District was aware that the Parent had requested this in January.

Meanwhile, there was no data in the Student's evaluation or IEP to support the need for a 1:1 paraeducator during the school year. The January 2022 evaluation showed the Student had significant behavior problems at home, but the behaviors were not observed at school. Although the Parent's BCBA recommended a 1:1 paraeducator for the Student at school, the Parent may not be aware of the difference between clinical recommendations and educational requirements

to provide a free appropriate public education (FAPE). In addition, the private BCBA did not observe the Student while at school. Based on the lack of documentation to support the Parent making a request for a 1:1 paraeducator at the February 2022 IEP meeting and the lack of data to support the need for a 1:1 paraeducator, no violation is found. OSPI does recommend that the Parent request and the District promptly schedule an IEP meeting if the Parent still wishes to discuss whether the Student has a need for a 1:1 paraeducator.

### **ISSUE 3: FINDINGS OF FACT**

24. The complaint alleged the District failed to provide special transportation according to the Student's October 2020 IEP. Specifically, the complaint alleged that the District initially refused to transport the Student after school to the Student's ABA therapy appointments.
25. The October IEP 2020, which was in place at the beginning of the 2021–2022 school year, provided for special transportation, but the IEP did not specify what was required or details of the transportation arrangements.
26. The District's response to the complaint clarified the reason for the special transportation: in the previous school year, the Student had been placed in a school that was not her neighborhood school. The notes from the September 16, 2021 meeting stated the Student's transportation services included a seat belt and adult support.
27. Between August 26 and September 20, 2021, the District and Parent exchanged numerous emails regarding the Parent's request that the District transport the Student to the appointments after school. The District offered to transport the Student home but not to the location of the appointments. Although the District initially denied the Parent's request based on their general transportation policies, on September 20, 2021, the District began transporting the Student to the appointments because the agency the Student was going to clarified it was providing "after school supervision" to the Student which was consistent with the District's general transportation policies.

### **CONCLUSION**

**Issue Three: Transportation** – The Parent alleged the District failed to implement the Student's IEP regarding special transportation. A district is required to provide special education services in conformity with the student's IEP.

Here, the Student's October 2020 IEP provided for special transportation. The IEP did not specify what supports were needed or the details of the transportation arrangements. The District indicated that the Student's transportation need was because in the previous school year, the Student was transported to a school other than the neighborhood school. (Notes from the September 2021 meeting also mentioned the Student needed a seat belt and adult support for transportation.) The Student's special transportation did not provide for the Student to be dropped off at an alternative location other than at home. Although the Parent wanted the Student transported to the appointments, the District's offer to transport the Student home was

consistent with the Student's special transportation on the IEP. The Parent's disagreement was with the District's general transportation policies; there was no indication from the documentation that the Parent's request for transportation to the Student's appointments was related to the Student's transportation needs based on their disability. No violation is found.

### **CORRECTIVE ACTIONS**

By or before **April 8, 2022** and **September 16, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

The District is required to provide 13.5 hours of math, 9 hours of reading, and 3.5 hours of written expression.

By **April 1, 2022**, the District is required to collaborate with the Parent to develop a schedule for the compensatory education to be provided to the Student. By **April 8, 2022**, the District must send a copy of the schedule to OSPI.

The compensatory education will be provided by a certificated special education teacher. The instruction will occur outside of the District's school day and may occur on weekends or during District breaks. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 5, 2022**, including those needing to be rescheduled.*

No later than **September 16, 2022**, the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 16, 2022**.

#### **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.



## RECOMMENDATION

The District should consider convening the Student's IEP team if the Parent again requests the 1:1 paraeducator for the Student.

Dated this \_\_\_\_ day of March, 2022

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