

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-53**

### **PROCEDURAL HISTORY**

On April 7, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 7, 2023, 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 April 13 and 14, 2023, OSPI received additional information from the Parent. That information was forwarded to the District on April 17, 2023.

On April 25, 2023, 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.

On May 1, 2023, OSPI requested additional information from the Parent. OSPI received that information on the same day and forwarded to the District on May 2, 2023.

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

### **ISSUE**

1. Per WAC 392-172A-03110, did the District follow procedures for developing an individualized education program (IEP) based on the Student's unique needs, including scheduling IEP meetings as needed at a mutually agreeable time during 2022–2023 school year?

### **LEGAL STANDARDS**

IEP Development: A student's IEP must be developed annually, and reviewed and revised periodically if necessary. 34 CFR §300.324; WAC 392-172A-03110. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them to make joint, informed decisions regarding: the student's needs and appropriate goals and the services needed

to support that involvement and participation and to achieve agreed-upon goals. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Enrolled Student. "Enrolled student" means a person residing in Washington state who is eligible to enroll in the school district's education programs because he or she resides in the school district with or without an address. See WAC 392-121-106.

## **FINDINGS OF FACT**

### **2022–2023 School Year**

1. The Student was enrolled in a District early childhood program (program), and the first day of the program for the 2022–2023 school year was August 30, 2022. At this time, the Student's March 1, 2022 IEP was in effect.
2. On January 3, 2023, the Student's teacher sent an email to the Parent that stated, "Does the morning of Wed Feb 8 at 8:45 work for you to hold the meeting? Then prior to that, you and I can meet and discuss future goals and supports we'd like to request, giving extra consideration for transitioning to kindergarten."
3. A prior written notice (PWN), dated January 9, 2023, indicated the Student's IEP team met and stated, in part:

[Student's] family and the IEP team met to craft and adopt her IEP review. . .The IEP review includes new goals, services, and accommodations that are intended to support [Student's] transition into the General Education Kindergarten setting.

...

The input of [Student's] parents was included in the planning process.
4. On January 9, 2023, the District's compliance clerk sent an email to the Parent that stated, "Hello, would you be available to join us for a remotely held IEP meeting for [Student] on Wed Feb 8 at 2:00 PM?"
5. On January 25, 2023, the Student's teacher emailed the Parent with a draft of the goals for the Student's upcoming annual IEP meeting.
6. On February 8, 2023, the teacher emailed the Parent as follows, "Attached you will find the updated copy of [Student's] IEP DRAFT."
7. Also, on February 8, 2023, the teacher sent the following internal District email, "[P]arents would like more time to review the new IEP Draft. At this time, they disagree with the decision to remove the interpreter from the IEP and have requested we postpone the meeting."
8. On February 27, 2023, the teacher emailed the Parent as follows, "The nearest date and time that will work for the IEP team to meet will be Wednesday March 15 from 2:00-3:00pm (our time). Will this date and time work for you?"
9. On March 1, 2023, the Parent replied, "Thank you for the invitation. Unfortunately, this time will not work for us."

10. On March 1, 2023, the teacher emailed the District staff as follows:

[Student's] parents...have let me know that March 15 will not work to hold the IEP meeting due to their travel schedule.

Here is what I know: the family is currently in Florida visiting family, since they are not able to stay in their home due to the tree falling on it. They plan to come back sometime in the next week or so. . .At some point the family will be going to spend time [out of the country], and at that point [Student] will likely be out the remainder of the school year...[Student] will be back for kindergarten. [Parent] acknowledged that this extended leave might lead to [Student] being temporarily withdrawn.

I believe we should still hold the meeting when they are available, so that there is an IEP in place when she returns for kindergarten next fall.

11. On March 16, 2023, the teacher emailed the District's special services program coordinator (coordinator) as follows:

[Student] is now out of the country and will be gone until June at least. It sounds like they will be spending time with family, and they are awaiting their house to be rebuilt from the tree damage. . .the mother, would still like to hold the IEP meeting. She gave me some dates and times that will work for them given the time difference. I will reach out to the whole team with some proposed dates and times.

12. On March 23, 2023, the Parent emailed the District as follows, "Hello Special Services, Will a representative be available April 12 (Wed) at 2 PM or April 18 (Tue) at 4:15 PM for [Student's] IEP meeting?"

13. On March 25, 2023, the Parent emailed the principal as follows, "11 AM there is 2 AM here. I can make that work if needed. Alternatively, 8 AM (11 PM my time) would work for me."

14. On March 27, 2023, the principal emailed the Parent, documenting a phone call they had and writing as follows:

Thank you for the phone call this morning, thank you for being flexible and staying up late for us. I wanted to follow up with you regarding our conversations and next steps to help support [Student]. I'm cc'ing [coordinator] from special services and...[Student]'s teacher.

1.) At this time, we will unenroll [Student] from school due to her being out of the country. Here is the WA State Law that discusses enrollments.

2.) We will not hold an IEP at this time because we will not be able to serve or have access to [Student].

3.) We will reconvene either late June or late August when you return to the states. When you return, please email [coordinator] & myself to ensure we get the IEP team together asap.

4.) Boundary Exception: If I hear anything before you do, I will let you know asap if her [boundary exception] is approved for [school] next year.

5.) [Coordinator] will work with [teacher] on the IEP Draft on the accommodations piece like she mentioned.

15. A PWN, dated March 27, 2023, also documented the Student's unenrollment and the phone call with the Parents, stating:

District has withdrawn [Student] from district enrollment.

...

The District proposed this action because under Washington state regulations, a student must, at a minimum, be a resident of Washington state to be considered an 'enrolled student.' WAC 392-121-106. Additionally, The District's Board Policy No. 3111 (Admission) contains residency requirements for a student's admission to the District's educational program. Further, consistent with WAC 392-172A-03105(1), the District does not provide special education services to student who the District is not serving through enrollment.

...

The District had a phone conversation with the student's parent(s) on 3/27/2023, at which time the family confirmed the student is currently residing out of the country. The family intends to return to Washington state after the 22-23 school year ends (June 16<sup>th</sup> 2023), and before the 23-24 school year begins (August 28<sup>th</sup>, 2023). The person in the 3/27/23 phone conversation were [Student's mother and father], principal, and special services program coordinator.

16. On March 29, 2023, the coordinator sent the Parent an email that reiterated information about the Student's unenrollment and the residency regulations that was also documented in the PWN. The coordinator also stated:

If and when [Student] returns to the District, we stand ready to convene her IEP team and provide her with special education services as appropriate. Upon return to the District, please contact me...so the District can schedule an IEP meeting as soon as possible. We look forward to your return.

17. On April 7, 2023, the Parent filed this complaint that alleged, in part:

1. District edited the draft IEP without Parent's input to remove an ASL (American Sign Language) interpreter accommodation and change of LRE to a neighborhood school.
2. District delayed holding an IEP meeting and was not responsive to rescheduling.
3. Unenrolled the Student blocking access to further work on the IEP citing our being out of the country because of a family emergency made us non-Washington residents.

18. On April 25, 2023, the District submitted its response to the Parent's complaint, which stated, in part:

The District believes it followed proper procedures for developing an IEP for the Student based on the Student's unique needs, including scheduling IEP meetings as needed at a mutually agreeable time during the 2022-2023 school year. As the evidence shows, the District made multiple attempts to schedule and hold the Student's annual IEP review meeting with the Parent at a mutually agreeable time prior to the Student's relocation [out of the country] in mid-March 2023. Specifically, the District was ready to participate in an IEP meeting that was scheduled for February 8, 2023, however, at the Parent's request, that meeting was canceled and rescheduled to a later date. The District then proposed that the IEP meeting be held on March 15, 2023, but the Parent declined to meet at that time.

As shown above, on March 27, 2023, the District received confirmation from the Parent that the Student was residing out of the country and would not be returning to...WA, prior to the conclusion of the 2022-23 school year.

Under Washington state regulations, a student must at a minimum be a resident of Washington state to be considered an "enrolled student." WAC 392-121-106. Further,

consistent with WAC 392-172A-03105(1), the District is not obligated to provide special education services to students who the District is not serving through enrollment.

Accordingly, upon receiving confirmation on March 27th of the Student's relocation [out of the country] until at least the end of the 2022-2023 school year, the District sent the Parent a PWN informing the Parent, among other things, that the Student had been disenrolled and that the District stands ready to convene the IEP team and provide special education services to the Student upon her return to...WA.

The District further stated in its response, regarding the development of the IEP:

As the Student's IEP team has not yet convened to complete the annual review of the Student's IEP, the District has not proposed any changes to the Student's last implemented IEP dated March 1, 2022. As shown above, draft IEPs were presented to the Parent prior to the IEP meetings scheduled for February 8, 2023 and March 15, 2023, as a means to provide the Parent with a meaningful opportunity to provide input into the Student's IEP prior to the annual IEP review. The evidence further shows that the District considered the Parent's input and made changes to the draft IEPs based on the Student's unique needs. Again, the District continues to stand ready to convene the Student's IEP team and provide special education and related services to the Student if and when she returns to...WA, and re-enrolls in the District.

In sum, while the District believes it followed proper procedures for developing an IEP for the Student based on the Student's unique needs, including scheduling IEP meetings as needed at a mutually agreeable time during the 2022-2023 school year, the District acknowledges that it was confusing for the Student's...special education teacher/case manager to send the Parent on February 8th and February 27th draft PWNs of actions the District had not proposed. As a result, on March 8, 2023, the District provided training to this teacher that specifically addressed PWNs, including but not limited to when such notices are required to be sent to parents and in what form.

19. On May 1, 2023, OSPI emailed the Parent the following questions:

1. Is your child currently attending school in the...District on a daily basis?
2. If not, when was the last time your child attended school in the...District?
3. If not, when do you expect your child to return to school on a daily basis in the...District?

Later that day, the Parent responded:

1. No.
2. March 9.
3. Aug 30 (next school year).

## CONCLUSIONS

**Issue One: IEP Implementation** – The Parent's main allegation was that the District did not arrange an IEP meeting at a convenient time for the Parent to attend.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the

child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them to make joint, informed decisions regarding the student's needs and appropriate goals and the services needed to support that involvement and participation and to achieve agreed-upon goals.

"Enrolled student" means a person residing in Washington state who is eligible to enroll in the school district's education programs because he or she resides in the school district with or without an address.

The facts show that the District tried on multiple occasions to set up an IEP meeting with the Parent in February and March 2023, but the Parent either requested the District reschedule or the District offered dates and times that did not work for the Parent. When the District learned that the Student was living out of the country, and would not be returning before the end of the school year, the District unenrolled the Student. The Parent confirmed to OSPI that: (1) the last day the Student attended school was March 9, 2023; and (2) the Student would not be returning to school during the 2022–2023 school year. Thus, in the present case, the District's actions were reasonable and in line with state regulations as the District attempted to schedule an IEP meeting and then communicated with the Parent that the IEP meeting would be held when the Student was back in the District. For these reasons, OSPI does not find a violation regarding the present case's issue.

The Parent also alleged that the Student's IEP was amended to remove the ASL interpreter. As the facts above show, the Student moved out of the District before the annual IEP was finalized, therefore, at this time, there is no violation. If, and when, the Student returns to residing within the District's boundaries and enrolls with the District, then OSPI recommends the District and Parent schedule an IEP meeting as soon as possible to address the annual IEP, ASL interpreter, and any other relevant issues.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this 25th day of May, 2023

Dr. Tania May  
Assistant Superintendent of 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.)