

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-95

PROCEDURAL HISTORY

On October 12, 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 October 12, 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 October 23, October 27, and October 29, 2018, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on October 31, 2018.

On November 2, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on November 5, 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.

ISSUE

1. Did the District follow procedures for responding to the Parent's request for a stenographer in order to ensure Parent participation at the Student's eligibility determination meeting?

LEGAL STANDARDS

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

The evaluation must comply with the IDEA's procedural requirements. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the

student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he or she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

Evaluation Group: The group of individuals that determines if a student is eligible for special education services following an evaluation consists of the parent(s) of the student and a group of qualified professionals selected by the school district. WAC 392-172A-03040; WAC 392-172A-03020. "Qualified professionals" included those professional members of the group who are required to sign the evaluation report certifying that the report represents their conclusions. WAC 392-172A-03035.

Parent Participation: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team or evaluation group meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend a team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. WAC 392-172A-03100.

FINDINGS OF FACT

1. At the beginning of the 2018-2019 school year, the Student attended preschool and was not yet eligible for special education services.
2. The District's 2018-2019 school year started on September 10, 2018.
3. On September 13, 2018, the District's "Guidance Team" (referral group) met with the Parent and discussed the Parent's request for a special education referral for the Student. According to the District's documentation, the Parent shared information about services the Student has received and that the Student appears to be "more high functioning [Autism Spectrum

Disorder] ASD.” The group referred the Student for a special education evaluation and the Parent consented to the evaluation.

4. According to the documentation in this complaint, the Student began kindergarten in a District elementary school on September 13, 2018.
5. On October 4, 2018, the District’s director of special services (director) emailed the Parent and stated that the District had received the Parent’s request to record the Student’s eligibility meeting. The director cited Revised Code of Washington (RCW) 9.73.030 (Intercepting, recording, or divulging private communication-Consent required-Exceptions) and stated that consent must be obtained from all parties before the meeting can be recorded, and that if anyone declines to be recorded, the meeting would not be recorded. The Parent replied and stated, “You refer to audio recordings below. I am also requesting a stenographer.¹ Please reply to my request.”
6. On October 9, 2018, the Parent emailed the director and stated, “I’ve yet to receive your response to my request for a stenographer.” According to the District’s response, the director, at this point, interpreted the Parent’s request to include a stenographer as a request that the District provide (i.e., pay for) a stenographer.
7. On October 10, 2018, the director emailed the Parent that the District would not be providing a stenographer, and stated that a note taker will be provided, the Parent would receive copies of the notes, and the Parent would receive copies of the evaluation documents.
8. Also on October 10, 2018, the Parent replied to the director’s email and stated she was asking permission for a stenographer and would pay for the stenographer, and that she was not asking the District to pay for this service. In a second email to the director, the Parent stated that her email served as “advance notice that a stenographer will attend the scheduled October 24th meeting...I will cover the cost of the stenographer. Services will be rendered by [company] Reporting and Video.” The director forwarded both emails to the District’s executive director of special services and federal programs (executive director).
9. Later on October 10, 2018, the director emailed the Parent and stated that the request for a third party stenographer, paid for by the Parent, was denied. The director stated that the District would provide a note taker and that the Parent would be provided with a copy of the notes as well as a prior written notice. The director also stated that the District had received the Parent’s request to record the meeting, and that if everyone consented to being recorded, the Parent and the District would record the meeting.
10. On October 11, 2018, the Parent emailed the occupational therapist (OT), the special education teacher, the department coordinator, and the speech language pathologist (SLP), and stated that during the “team referral” meeting in September, the District provided a note taker. The Parent stated that for the eligibility meeting, she wanted a stenographer present, at her own

¹ Stenographer – A writer of shorthand; a person employed chiefly to take and transcribe dictation. See <https://www.merriam-webster.com/dictionary/stenographer>.

expense. The Parent asked for a response by email if there were any objections and included the text of RCW 9.73.030.

11. On October 11, 2018, the director replied to the Parent's email, and copied all of the members of the Student's eligibility group, to provide clarification regarding the Parent's requests for a stenographer and/or audio recording of the meeting. The director stated that the request for a stenographer was denied because "a note taker will be provided from the evaluation team. You will be provided notes as well as Prior Written Notice. The denial is based upon the availability of other means of documentation." The email also stated that the District had received the Parent's request for recording and that the District would proceed as follows: "If anyone declines to be recorded the meeting cannot be recorded. If there is agreement by all parties to record the meeting, you may record and the school district will also record, separately."

The Parent replied to the director and stated that she filed a complaint with OSPI. The Parent stated in her email that her complaint "centered on [her] emails dated October 4, 2018...October 9...and October 10..., which only requested a stenographer...Your unilateral denial of my request for a stenographer clearly indicated that only ESD is allowed a note taker at my daughter's Eligibility Determination meeting...Your denial of my request clearly inhibits my ability to fully participate."

12. October 12, 2018, OSPI received the Parent's request for a special education citizen complaint.
13. On October 17, 2018, the Parent emailed the director and stated that her previous emails and complaint to OSPI were only related to her request for a stenographer. The Parent also stated that, regarding consent for recording the eligibility determination meeting, she had consent to record because she emailed the participants in the meeting on October 11, 2018. The Parent included RCW 9.73.030 and stated that based on this regulation, she had obtained consent because she announced to all other parties that the conversation was going to be recorded. The Parent stated that her stenographer would be at the meeting, and that one week prior to the meeting, she wanted a copy of all evaluation reports and evidence.
14. On October 18, 2018, the OT emailed the Parent and stated, "I deny having my conversation being recorded by a stenographer."
15. Also on October 18, 2018, the Parent emailed the director and requested that the Student's father be invited to the eligibility meeting and stated that the Student's father was requesting a "recorded video conference due to poor reception." The Parent requested that the District "provide all necessary instructions on how he can connect live to our video meeting prior to our scheduled time so that he may fully participate in the Eligibility Determination."
16. Also on October 18, 2018, the SLP emailed the Parent a draft evaluation report, which included draft evaluation summaries from each school team member.
17. On October 19, 2018, the executive director emailed the Parent and requested additional information regarding the request for a video recording. The executive director stated, "you

have identified that you require an audio recording and a stenographer to meaningfully participate in the meeting. Are you asking for these additions so that [the Student's] father can participate or is there another reason these additions are required to enable your meaningful participation?"

18. Also on October 19, 2018, the Parent emailed the members of the Student's evaluation group and provided feedback on the draft evaluation report. According to the District's response, the group considered the Parent's feedback and made changes to the draft report.
19. Also on October 21, 2018, the Parent replied to the executive director's October 19, 2018 email. The Parent copied a portion of her October 18 email that stated that the Student's father was requesting a "recorded video conference" and that the District was to "Provide all necessary instructions on how he can connect live to our video meeting prior to our scheduled time so that he may fully participate in the Eligibility Determination." The Parent went on to again quote portions of RCW 9.73.030 that stated that "consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or conversation...is about to be recorded." The Parent also stated, "my request for a stenographer is no longer needed...I am no longer requesting an audio recording."
20. Later on October 21, 2018, the Parent forwarded the executive director the email from the OT (which stated that she did not consent to being recorded) and the Parent stated that the OT's email denied her request for a stenographer.
21. On October 22, 2018, the executive director emailed the Parent and requested information to set up the conference call for the Student's father. In a second email to the Parent, the executive director stated that he wanted to make sure the Parent could fully participate and "because of that I need to understand the basis for your requests for the audio recording and stenographer in order to determine if it is a required accommodation for you."

According to the District, the executive director's intent was to determine if the requests were to facilitate the Student's father's participation via an alternative method, or if either parent needed the recordings or a stenographer as an accommodation.

22. Also on October 22, 2018, the Parent forwarded her October 21, 2018 email to the executive director, stating that the Parent was no longer requesting a recording or a stenographer. Later, the Parent emailed the executive director again and stated, "as I made clear in my previous email to you, I am no longer requesting for [sic] an audio recording and stenographer. The live recorded video conference with [Student's father] will allow us to fully participate...It services the purpose of both audio recording and stenographer, which are no longer needed."
23. On October 22 and 23, 2018, the Student's father and the Parent provided the Student's father's contact information and the executive director confirmed that the District would provide video and telephone conferencing to ensure the father's participation. The executive director also clarified that these methods of participation did not include recording the meeting.

24. Also on October 23, 2018, the executive director responded to a second email from the Parent (October 22 emails) and clarified that phone and video conferencing was an alternative means of participation and that the video conference would not be recorded. The executive director went on to state that "in addition to the video conference and the phone conference I will require staff allow an audio recording of the meeting as an accommodation with a withdrawal of the citizens complaint." In another email to the Parent, dated October 23, the executive director stated that he set up a "zoom" meeting "that will allow me to record the meeting as an accommodation with withdrawal of the citizens [sic] complaint."
25. According to the District's response, the executive director offered to record the meeting to ensure he was not missing a need for an accommodation that the recording would address.
26. Later on October 23, 2018, the executive director, the Parent, and the Student's father exchanged emails regarding setting up the video conference element of the meeting. The Student's father stated that he "object[ed] to [the executive director's] statement associating accommodation of conference recording and withdrawal of the citizen's complaint." And that he (the Student's father) failed to see the "association between properly documenting the session (recording) vs the other (the complaint)."

The executive director responded and stated that the District was ready and able to accommodate the Student's father's alternative method of participation, and with the Parent attending in person, the District was ensuring meaningful participation. The executive director went on to state that eligibility meetings were documented via meeting notes, the evaluation report, and a prior written notice following the meeting, but that video or audio recording (while allowable with consent) was not required by law. The executive director stated that he had been in communication with the Parent in order to "try and identify the specific need for video or audio recording and how it is required from your perspective for this meeting for meaningful participation. It is my understanding that it is to ensure you are able to participate."

27. On October 23, 2018, the SLP emailed the Parent the second draft of the evaluation summaries to review prior to the meeting.
28. The District provided the Parent a notice of meeting on October 23, 2018 for the eligibility meeting scheduled on October 24, 2018. The meeting notice listed the following participants as being invited to attend the meeting: occupational therapist, physical therapist, Parent, Student's father, general education teacher, special education teacher, an administrator, a representative from the District, the speech language pathologist, and the elementary school counselor/social worker.
29. On October 24, 2018, prior to the meeting, the executive director emailed the Student's father a copy of the draft evaluation report to ensure he had a copy for the meeting.
30. On October 24, 2018, the Student's eligibility group, including the Parent and the Student's father, met. The Parent attended and participated in the meeting in person and the Student's

father participated via video and telephone conference. The meeting was also recorded, once consent to record was obtained by all the individuals present at the meeting.

31. On October 27, 2018, the Parent emailed the OSPI complaint investigator and stated, in part:
As a parent participating in the meeting, it is difficult to **actively participate in accurate note taking** while engaging with team members. My notes are my own to which I can freely refer back to for clarification or better understanding of conversation at the Eligibility Determination Meeting. I am a person who is more visual than auditory so note taking helps me fully grasp the entirety of conversations.
32. On October 29, 2018, the Parent filed an additional request for a special education citizen complaint, alleging that the executive director was limiting the Parent's rights by suggesting that recording the meeting as an accommodation met the initial request and resolved the complaint, and requesting that the Parent withdraw the complaint. OSPI declined to open an additional complaint on this allegation because attempting to resolve a complaint informally is not a violation of the IDEA.

CONCLUSIONS

Issue 1: Parent Participation – The Parent alleged that the District improperly denied her request to have a stenographer at the eligibility determination meeting and thus limited her ability to participate. Once a special education evaluation is completed, the evaluation group determines if the student is eligible for special education services. The evaluation group consists of the qualified professionals selected by the school district and the parents of the student. The qualified professionals include those professional members of the group who are required to sign the evaluation report certifying that the report represents their conclusions. The parents of the student should be given an opportunity to participate in discussions around their student's need for special education. A district must ensure that one or both of the parents of a student are present at the meeting; and, if a parent cannot attend a team meeting, the district must use other methods to ensure participation, including video or telephone conference calls.

The Student's eligibility determination meeting was scheduled for October 24, 2018. In early October 2018, the Parent requested that a stenographer be present at the meeting. The documentation in this complaint suggests that the District initially believed the Parent was requesting that the meeting be recorded, and the District stated the meeting could be recorded if all members of the group consented. The documentation in this complaint indicates that the Parent requested a stenographer attend the meeting several times. The District initially denied the Parent's request, and then later again denied the Parent's request after the Parent clarified that she would pay for the stenographer. The District stated that this denial was based on the fact that the District would have a staff person taking notes and that the Parent would receive all documentation of the meeting (i.e., copies of the meeting notes, prior written notice, and the evaluation).

The Parent also requested copies of the evaluation report be sent to her one week prior to the meeting and that the Student's father be invited to the meeting. The Parent then requested that the District set up a "recorded video conference" to allow the Student's father to participate in the

meeting. The documentation in this complaint shows that the District attempted to determine whether the Parent wanted an audio/video recording of the meeting and a stenographer to allow the Student's father to participate in the meeting, or if there was another reason why the Parent needed a stenographer and a recording to meaningfully participate. In response, the Parent continued to state that she wanted a way to conference call the Student's father into the meeting so that he could participate. The Parent never provided the District with an explanation of why she needed a stenographer to participate, and ultimately on October 21, 2018, the Parent withdrew her request for an audio recording or a stenographer. OSPI notes that the Parent later provided some explanation to OSPI as to why she felt she could not take notes herself and actively participate in the meeting, although this does not explain why the District's note taker was insufficient. Further, OSPI notes that the Parent never provided this explanation to the District, despite several attempts on the District's part to clarify and understand the Parent's requests. At this point, the District suggested to the Parent and the Student's father that the original issues in the complaint had been resolved and requested that the Parent withdraw the complaint. The Parent declined to withdraw the complaint.

The District provided the Parent and the Student's father with several draft copies of the evaluation summaries about a week prior to the meeting. At the meeting, the Parent attended and participated in person and the Student's father participated via video and telephone conference. Additionally, the District recorded the meeting. There is no indication in this complaint that the Parent's ability to participate in the eligibility meeting were in any way limited.

There is no requirement that a district allow a parent to bring a stenographer to an eligibility meeting, as the stenographer is not a professional member of the eligibility group. The District's reasons for the denial were permissible, and the District ultimately recorded the meeting, which it was not required to do. Additionally, it is clear that the District made several attempts prior to the meeting to try and clarify the Parent's request to record the meeting and the request for a stenographer. The Parent did not provide additional information as to why these requests were required to facilitate her participation in the meeting. The District followed all required procedures and worked diligently to ensure the Parent and the Student's father had an opportunity to participate in the meeting. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC: None.

DISTRICT SPECIFIC: None.

Dated this ____ day of November, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
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.)