

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 13-76

PROCEDURAL HISTORY

On November 15, 2013, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the attorney (Complainant) for a parent (Parent) of a student (Student) attending the Kent School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or regulations implementing the IDEA, with regard to the Student's education.

On November 15, 2013, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. The District was asked to respond to the allegations made in the complaint.

On November 19, 2013, the Complainant notified OSPI that she requested that two of the issues identified for investigation be removed. On November 20, 2013, OSPI notified the Complainant and the District that the requested issues would be removed.

On December 6, 2013, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day. The Complainant was invited to reply with any information she had that was inconsistent with the District's information.

On December 18, 2013, OSPI received the Complainant's reply. The information was forwarded to the District on the same day.

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

OVERVIEW

The Student is in twelfth grade and attends a District high school. He is eligible for special education services under the category of other health impaired. The native language spoken in the Student's home is Spanish. In September 2013, the Complainant sent a request for the Student's education records. The Complainant sent the request to the District's legal department, which apparently had been disbanded by the District in September 2013. The request was not subsequently forwarded to any other District department, and the District did not respond to the records request until the Complainant sent a second request in November 2013. The Complainant alleged that the District did not follow special education procedures for providing access to the Student's educational records, and did not provide prior written notices to the Parent in her native language. As a result, the Complainant alleged that the Parent was denied meaningful participation in meetings. The District admitted that it did not provide all notices in the Parent's native language but denied the other allegations.

SCOPE

The investigation time frame for citizen complaint decisions is one year from the date a complaint is filed. The Student's reevaluation and IEP meeting on October 5, 2012 were not included as part of the investigation.

ISSUES

1. Did the District follow special education procedures for responding to the Parent's request for educational records, including providing the Parent's representative access to inspect and review the Student's educational records within required timelines?
2. Did the District follow procedures for providing the Parent with prior written notice(s) in the Parent's native language?
3. Was the Parent afforded a meaningful opportunity to participate in IEP or evaluation meetings?

LEGAL STANDARDS

Communications in Native Language: "Native language", when used with respect to an individual of limited English proficiency, is the language that the individual normally uses, or in the case of a student, the language normally used by the parents of the student. In all direct contact with a student, including evaluations, native language means the language normally used by the child in the home or the learning environment. 34 CFR §300.29; WAC 392-172A-01120. Prior written notice and procedural safeguards should be provided in the native language of the parents, unless it is clearly not feasible to do so. 34 CFR §300.503; WAC 392-172A-05010. A district must take whatever action is necessary to ensure that the parents understand the proceedings at an IEP meeting and other meetings, including arranging for an interpreter in a parent's native language. 34 CFR §300.324; WAC 392-172A-03100.

Parents' Access to Educational Records: Districts must permit parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of FAPE to the student, including disciplinary proceedings. The district will respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve any disputes. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

1. The Student attends a District high school and is in the twelfth grade. He is currently eligible for special education services under the category of other health impairment. The Parent's native language is Spanish.
2. On September 10, 2013, the Complainant made a request to view the Student's educational records from 2008 to the present. This request was sent by email and facsimile to a staff person in the District's legal department. The District's legal department had been disbanded in September 2013.
3. The District sent the Parent a written invitation to an IEP meeting scheduled for September 30, 2013. Some of the form was translated into Spanish. However, the portion of the pre-printed form addressing the purpose of the meeting was in English. The Student's IEP team met on September 30, 2013. The Student, the Student's Mother, staff from the Parent's wraparound team (parent partner and wraparound facilitator), and a District interpreter attended the meeting, in addition to other District team members. The District prepared a prior written notice dated September 30, 2013 for the Parent, addressing the IEP meeting. The notice stated that the Student's annual IEP was due, and was being updated. Under options considered, the notice stated that the option being considered was to continue the Student's enrollment in special education, and no other options were rejected. Under other factors, the notice indicated that the Student was a senior, and the IEP team wanted to make sure he was given all of the accommodations he needed in order to graduate on time. A copy of the prior written notice form was also provided in Spanish. However, all of the information prepared by the Student's special education teacher and inserted in the form was written in English.
4. On October 4, 2013, the Parent's wraparound parent partner sent the District an email regarding the September 30, 2013 IEP meeting, and asked the District to schedule another IEP meeting to address issues that were not completed at the September 30 meeting. According to the email, the Parent had asked at the meeting that the Student's eligibility category be changed to autism. In addition, the parent partner stated that the Parent had concerns about credit retrieval information provided to her at the meeting, the Student's academic functioning level, his post school transition plan, and the projected graduation date that was set for the end of

the 2013-2014 school year. Finally, the parent partner stated that at the meeting, the teacher indicated that the District would invite a representative from the Division of Vocational Rehabilitation (DVR) to attend the follow-up IEP meeting. On October 23, 2013, the District and Parent's wraparound partner confirmed an IEP meeting for November 6, 2013. The District did not provide documentation that a meeting occurred on, or after November 6, 2013 in its chronology or in any of the written documentation submitted in response to this complaint.

5. On November 6, 2013, the Complainant sent the original records request dated September 10 to clerical staff in the District's special services department. The District also received a copy of the original records request by mail from the Complainant on November 14, 2013. The District indicated that the Student's educational records were sent to the Complainant on November 15, 2013. The Complainant stated in her reply that the District sent copies of the Student's records from 2012 to the present, even though the request was from 2008 to the present.
6. On January 2, 2014, the complaint investigator sent an email to the staff person that had been part of the District's legal department that the Complainant initially emailed regarding the records request. The email was not returned to the complaint investigator as "undeliverable". Additionally, OSPI checked the District's website to determine whether there were revised instructions for parents requesting educational records. OSPI was unable to locate current information on the process for requesting educational records.

CONCLUSIONS

1. The District did not comply with procedures for responding to the Parent's request for educational records. While OSPI acknowledges that the legal department, formerly responsible for addressing records requests had been disbanded, the District provided no information to address the process in place to route information sent to the legal department to any other appropriate departments. In addition, when the District did provide educational records to the Complainant, it did not send all of the requested information. The District will provide the Complainant with the Student's educational records consistent with the requested dates, or provide the Complainant with access to the requested records. In addition, the District will review its current process to ensure that other requests involving students eligible for special education have been appropriately forwarded and addressed by the District.
2. The District did not follow procedures for providing prior written notices to the Student's mother in her native language. The District used preprinted forms in Spanish but did not translate the information that was to be contained in the prior written notice into Spanish. Even if the prior written notice had been translated appropriately, the content of the notice did not address the IEP team's decisions at the meeting. Based on the information provided in an email from the Parent's wraparound parent support person, there were many requests at the September 30, IEP meeting, including: a request for an eligibility category change; a request for an

outside representative to attend a follow-up meeting; and, more information about the Student's current academic functioning and post school transition needs. This is precisely the type of information that needs to be addressed in a prior written notice. However, the District did ensure that an interpreter attended the Student's September 30, 2013 IEP meeting.

3. The District did not ensure that the Parent had an opportunity for meaningful participation in the IEP team meeting on September 30, 2013. While the Parent's wraparound team participated in the IEP team meeting, based on the follow-up email from the parent partner, the Parent wanted a representative from DVR present at the meeting to address the Student's post school transition needs, and wanted more information about the Student's academic achievement. Given the lack of information about the IEP meeting in the prior written notice, and the failure to provide educational records addressing the Student's current academic functioning in a timely manner, the Parent was unable to meaningfully participate in the IEP meeting.

CORRECTIVE ACTIONS

On **February 10, 2014** and **March 13, 2014**, the District will provide documentation to OSPI that the following corrective actions have been completed.

STUDENT SPECIFIC:

1. By **February 3, 2014**, the District will provide the Complainant with copies of or access to the Student's educational records from 2008 to the present.

The District will provide OSPI with documentation that it has provided the required records by **February 10, 2014**.

2. By **March 3, 2014**, the Student's IEP team, including the Parent and the Student, will meet to address the Parent's requests, review the Student's current academic and functional performance, post school transition needs, and any other information about the Student based on the Student's records, Parent input, and current classroom data to determine whether to revise the Student's IEP, including the Student's projected graduation date. The District will ensure that it obtains the Parent's consent to invite a representative from DVR, and will also coordinate the meeting time and date to ensure that the Parent's wraparound team and Complainant can attend the meeting, if the Parent wishes to invite those additional participants.

By **March 13, 2014**, the District will provide OSPI with a copy of the IEP, if revised, a copy of the prior written notice in English, and a copy of the prior written notice in Spanish, and any other documentation including meeting notes, if any, addressing the decisions made at the IEP meeting.

DISTRICT SPECIFIC:

1. By **February 10, 2014**, the District will provide OSPI with a narrative and any documentation to address the steps it has taken to ensure that documents and requests affecting students eligible for special education have been appropriately forwarded from the District's former legal department to the District's special services department. Those steps will include, but not be limited to: steps the District's informational technology department has taken to ensure that emails to former staff in the legal department are forwarded for review by appropriate staff in the District; steps the District has taken to ensure that any mail and other written documents directed to former District staff in the legal department are appropriately routed to the District's special services department; and, review of information available to parents or the public to ensure it contains accurate information about the steps that should be taken to request educational records.
2. By **February 10, 2014**, the District will provide OSPI with documentation that it has reviewed its translated invitation and other forms used by the District for providing information to parents of students with procedural protections under the IDEA to ensure that the entire documents are translated into a parent's native language. If they are not translated, the District will make arrangements for such translation.
3. By **February 10, 2014**, the District will develop and provide guidance to certificated staff with a special education endorsement and ESA staff to ensure that the information written into the forms by District staff are translated into the appropriate native language. The District will also include what steps District staff will take if it is not feasible to translate the material in a particular native language. The District will provide OSPI with a copy of guidance by **February 10, 2014**, a list of the staff who should have received the instructions or guidance, and documentation that the guidance was provided to the required staff.
4. By **February 10, 2014**, the District will provide OSPI with an assurance that: the Student's special education teacher was provided a copy of this complaint decision; the decision was reviewed with the teacher; and, information regarding prior written notice and its purposes were provided to the teacher.

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.

NOTE: The district may request an electronic version of the matrix by e-mailing [Thinh Le](mailto:Thinh.Le@k12.wa.us) at Thinh.Le@k12.wa.us.

RECOMMENDATION

Although the contents of the IEP were not reviewed as part of this investigation, OSPI strongly recommends administrative staff review the Student's IEP, using the OSPI IEP

checklist, to ensure that the IEP contains present levels of the Student's academic and functional performance in order to determine the annual measurable goals, and that the Student and Parent have been informed of the rights that will transfer to the Student when he turns 18.

Dated this 6th day of January, 2014



Douglas H. Gil, Ed. D.
Director, 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.)