

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-105

PROCEDURAL HISTORY

On September 7, 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 Shoreline 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 September 8, 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 September 26, 2022, 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 October 3, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

OSPI considered all of the 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 September 9, 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.

ISSUE

1. Did the District implement the Student's individualized education program (IEP) regarding accommodations for state and district-wide assessments conducted during the 2021-2022 school year?

LEGAL STANDARDS

Statewide and Districtwide Assessments: An individualized education program (IEP) must a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments. If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why the student cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the student. WAC 392-172A-03090(1)(f).

IEP Implementation: Each 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.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

1. At the beginning of the 2021–2022 school year, the Student was a fourth grader who attended a District elementary school and was eligible to receive special education services under the category of other health impairment.
2. On September 30, 2021, the Student's IEP team met to review the IEP. The IEP included 13 classroom accommodations, including speech-to-text, text-to-speech, small group, noise-blocking headphones, and read-aloud – English when text-to-speech was not available and reading was not being assessed. The Student's IEP also stated the Student would participate in the following District and state assessments, including the accommodations:
 - Current Grade Tests
 - i-Ready Reading, Grades 3-5: Noise-blocking headphones, small group
 - i-Reading Math, Grades 1-10: Noise-blocking headphones, Read-aloud – English, small group
 - Smarter Balance Assessment (SBA) English language arts (ELA), Grades 3–8 & 10, 11: Noise-blocking headphones, Read-aloud – English, small group
 - SBA Math, Grades 3–8 & 10, 11: Noise-blocking headphones, Read-aloud – English, small group
 - Next Grade Tests
 - i-Ready Reading, Grades 3–5: Noise-blocking headphones, small group
 - i-Reading Math, Grades 1-10: Noise-blocking headphones, Read-aloud – English, small group
 - SBA ELA, Grades 3–8 & 10, 11: Noise-blocking headphones, small group
 - SBA Math, Grades 3–8 & 10, 11: Noise-blocking headphones, Read-aloud – English, small group
3. On October 4, 2021, the school's testing accommodation coordinator emailed the Student's special education teacher the list of the Student's District and state assessment accommodations. The special education teacher responded that he would "be able to support them during those times."
4. On October 11, 2021, the coordinator followed up with the elementary school staff about each student's accommodations and where the small group accommodations would be located.
5. In October 2021, the Student participated in the SBA in ELA and math. The complaint stated the Student took the assessments in the general education classroom instead of a small group

as stated in the Student's IEP. However, the District stated the assessment was administered in a small group setting.

6. On January 13, 2022, the Parent emailed the accommodation coordinator that the Student mentioned that the resource room "is too distracting and she has been testing back in the classroom." The accommodation coordinator replied and acknowledged the Student was initially sent to the resource room to take the assessment, but returned to the general education classroom because she was too distracted.
7. According to the complaint, the District also did not provide the Student with the text-to-speech accommodation according to the Student's IEP during the January 2022 assessment.
8. On March 30, 2022, the Student's IEP team met again to review the IEP. In pertinent part, the IEP provided for accommodations in the following District and state assessments:
 - Current Grade Tests
 - i-Ready Reading, Grades 3–5: Small group
 - i-Reading Math, Grades 1–10: Calculator for allowed items, multiplication table (Grades 4 to high school), small group
 - SBA ELA, Grades 3–8 & 10, 11: Noise-blocking headphones, read-aloud – English, small group
 - SBA Math, Grades 3–8 & 10, 11: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read-aloud – English, small group
 - Next Grade Tests
 - i-Ready Reading, Grades 3–5: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read-aloud – English, small group
 - i-Ready Math, Grades 1–10: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read-aloud – English, small group
9. On May 11, 2022, the Parent and the substitute for the accommodations coordinator exchanged emails about the upcoming assessment. The Parent expressed concern about speech-to-text being available for the Student because the Student was "nervous about asking questions to the 'teacher' in Monday's test." The substitute accommodation coordinator replied that "it would be better for [Student] to stay in the classroom for her test. I will be available the entire time and can help her with speech-to-text tools or anything else that she needs..."
10. Sometime in May 2022, the Student took the SBA. According to the District, headphones, a multiplication table, and an on-screen digital calculator were available to the Student during this administration. However, the text-to-speech function on the SBA was not turned on during the assessment. Later, the Student was able to retake the test with all the accommodations, including text-to-speech. The District pointed out that the text-to-speech accommodation was not a testing accommodation required by the Student's March 2022 IEP, but it was provided during the retake.
11. On June 2, 2022, the Student's IEP team met to discuss accommodations in the classroom, for District and state assessments, and additional SBA assessments. According to the prior written

notice, dated June 2, 2022, the notice stated, in part, "The recently amended IEP did not fully designate accommodations to be served for state and district testing..."

The IEP provided the following accommodations for District and state assessments:

Current Grade Tests

- i-Ready Reading, Grades 3–5: Noise-blocking headphones, read directions and test items verbatim aloud, read-aloud - English, small group, speech-to-text, text-to-speech
- i-Reading Math, Grades 1–10: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read directions and test items verbatim aloud, read-aloud – English, small group, speech-to-text, text-to-speech
- SBA ELA, Grades 3–8 & 10, 11: Noise-blocking headphones, read directions and test items verbatim aloud, read-aloud – English, small group, speech-to-text, text-to-speech
- SBA Math, Grades 3–8 & 10, 11: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read directions and test items verbatim aloud, read-aloud – English, small group, speech-to-text, text-to-speech

Next Grade Tests

- i-Ready Reading, Grades 3–5: Noise-blocking headphones, read directions and test items verbatim aloud, read-aloud - English, small group, speech-to-text, text-to-speech
- i-Reading Math, Grades 1–10: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read directions and test items verbatim aloud, read-aloud – English, small group, speech-to-text, text-to-speech
- SBA ELA, Grades 3–8 & 10, 11: Noise-blocking headphones, read directions and test items verbatim aloud, read-aloud - English, small group, speech-to-text, text-to-speech
- SBA Math, Grades 3–8 & 10, 11: Calculator for allowed items, multiplication table (Grades 4 to high school), noise-cancelling headphones, read directions and test items verbatim aloud, read-aloud – English, small group, speech-to-text, text-to-speech
- SBA Science, Grades 5, 8, & 11: Calculator for allowed items, noise-cancelling headphones, read directions and test items verbatim aloud, read-aloud – English, small group, speech-to-text, text-to-speech

CONCLUSIONS

Issue One: District and State Testing Accommodations – The complaint alleged the District failed to provide the Student with testing accommodations according to the Student's IEP. A district must ensure that the IEP address any accommodations needed for a Student to participate in district and state assessments.

Here, the September 2021 and March 2022 IEPs provided the Student with accommodations to take the District and state assessments. These accommodations included a small group testing location and headphones, which appeared to address the Student's need to avoid distractions. During the testing in January 2022, the District had the Student take the test in a small group, but the small group was too distracting. The Student then went back to the regular classroom to finish the test and no further problems with distractions were noted in the record. The Student's teacher continued to recommend the Student take the test in general education classroom rather than in a small group.

The Student's IEP required the District to provide a small group setting for the Student to take the test, the point of which was to be free of distractions. Taking the test in the general education classroom was not a small group. Likewise, a small group with distractions does not meet the intent of the accommodation. Based on the District not implementing the small group accommodation for the Student, a violation is found. The District is required to find the Student a place to take the test in a small group away from distractions that are reasonably foreseeable.

Although the classroom accommodations included text-to-speech and speech-to-text in the September 2021 and March 2022 IEPs, the testing accommodations did not include text-to-speech and speech-to-text. Only later, in June 2022, were both accommodations added to the testing accommodations in the Student's IEP. Thus, the District was not required to provide the Student with an accommodation for text-to-speech or speech-to-text during the October 2021, January 2022, and May 2022 assessments. No violation is found.

CORRECTIVE ACTION

By or before **November 28, 2022**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By **November 18, 2022**, the District is required to find the Student a location in the Student's school to take the District and state assessments that is in a small group and free of distractions.

By **November 28, 2022**, the District will notify OSPI of the testing location with a description of the location.

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.

Dated this 3rd day of November, 2022

Dr. Tania May
Assistant Superintendent of 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.)