

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-35

PROCEDURAL HISTORY

On March 13, 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 North Thurston 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 March 16, 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 March 31, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on April 4, 2023. OSPI invited the Parent to reply.

On May 1, 2023, OSPI requested additional information from the District, and the District provided the requested information on May 1, 2023. OSPI forwarded the additional information to the Parent on May 2, 2023.

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

On May 4, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. OSPI forwarded the information to the Parent the same day.

On May 4, 2023, OSPI interviewed the District's two special education directors.

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 March 14, 2022. 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. Per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly, including but not limited to the Student's specially designed instruction in math, since March 14, 2022?
2. Since March 14, 2022, has the District followed proper IEP development procedures in relation to the Student's needs in math resulting from the Student's disability, including: (a) ensuring

the IEP team made decisions based on sufficient, relevant data on the Student's needs in math; and (b) following proper parental participation procedures in relation to the Parent's math-related requests?

LEGAL STANDARDS

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Parent Participation in IEP Development: 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).

IEP Revision: A student's 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).

Decisions about Educational Methodology: As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. *In the Matter of Dieringer School District*, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014); *See also, Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (finding parents do not have the right to dictate any particular educational program and explaining that a school district's denial of a parent's placement request reflected a "difference of educational philosophy with [parent], not a denial of opportunity to participate.")

Generally, districts are not required to include methodology in a student's IEP *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 952 (9th Cir. 2010) (district did not violate the IDEA by not specifying teaching methodology in student's IEP); *R. E. B. v. Dep't of Educ.*, 770 F. App'x 796, 801 (9th Cir. 2019) (not necessary for IEP to specify methodology); *Carlson v. San Diego Unified Sch. Dist.*, 380 F. App'x 595, 597 (9th Cir. 2010) (parent's disagreement with educational methodology insufficient to prove IEP was inappropriate). The IDEA accords educators discretion to select from various methods for meeting the individualized needs of a student, provided those practices are

reasonably calculated to provide him with educational benefit. *See, e.g., Adams v. Oregon*, 195 F.3d 1141, 1149–50 (9th Cir.1999). So long as a district offers a program that can meet the student’s individual needs and allows the student to make educational progress, it will meet its obligations under the IDEA. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 208, 102 S. Ct. 3034, 3052, 73 L.Ed.2d 690 (1982); *D.T. and D.T. ex rel. N.T. v. Seattle Sch. Dist.*, 57 IDELR 249 (W.D. Wash. 2011).

FINDINGS OF FACT

1. The Parent alleged that the Student was “being taught 3-4th grade math in an 8th grade classroom.” The Parent also alleged the District did not provide a “curriculum” that met the Student’s instructional level and did not provide the Parent with information on the Student’s present levels and the District’s math curriculum. The Parent later clarified to OSPI that the complaint regarded the Student’s math services was during the 2022–2023 school year.

2021–2022 School Year

2. During the 2021–2022 school year, the Student was eligible for special education services under the category of specific learning disability, was in the seventh grade, and attended a District elementary school.
3. The District provided the following reports regarding the Student’s progress toward the math goal:

Date of Review:	06/18/2021	09/30/2021	10/31/2021	11/30/2021	12/31/2021	01/31/2022
Progress:	SP ¹	SP	SP	SP	SP	SP

4. There was an undated progress report during this period, which stated:
 [Student] has made progress in math this year. She has a tendency to talk herself into ‘I’m not good at math’ but she has the potential to be a good math student. She needs to focus on math and try to not get distracted by other things and she could make a lot of progress. She actually was in the top half of my 6th grade math class. She is a very talented person.
5. On March 14, 2022, the one-year timeline for this complaint investigation began.
6. On March 15, 2022, the Student’s team, including the Parent, conducted an annual review of the Student’s IEP. The results of district and state-wide math assessments—“District EasyCBM Benchmarks”—were as follows:
 - Winter 2022: Math 11th percentile (Some risk)
 - Fall 2021: 8th percentile (High risk)

The IEP included annual goals in math (calculation and problem solving) and reading (comprehension) with progress reporting at the end of each quarter. The Student’s IEP provided the following special education services according to two time periods:
Services 03/16/2022–09/01/2022

¹ “SP” means sufficient progress being made to achieve annual goal within duration of IEP.

Services	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Math	Special Education Teacher	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education
Reading	Special Education Teacher	Special Education Teacher	25 Minutes / 5 Times Weekly	Special Education

Services 09/02/2022–03/15/2023

Services	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Math	Special Education Teacher	Special Education Teacher	40 Minutes / 5 Times Weekly	Special Education
Reading	General Education Teacher	Special Education Teacher	25 Minutes / 5 Times Weekly	General Education

Regarding the Student’s present level of performance in math, the IEP stated:

[Student] is doing well in math. She has attempted sixteen different math skills since completing the placement part of the program and of the 16 skills, she has mastered 15 of them. Her mastery of skills average is 90% at this time. She has mastered identifying a figure showing a fraction of a region shaded halver [sic] to eighths and adding units of capacity in pints. Areas of difficulty for [Student] include calculating subtraction problems using basic math facts and reading an analog clock. When given a set of math problems that contain subtraction that requires re-grouping, [Student] will solve the problems improving accuracy from 50% accuracy to 75% accuracy on 4 of 5 trials. Same age peers can apply and extend previous understandings of arithmetic to algebraic expressions.

The IEP included seven accommodations, including extended time, multiplication table, and shortened assignments.

According to the District, the team reviewed the Student’s progress using “Successmaker,” an online math program “that all secondary buildings have for student progress monitoring and practice.”

7. According to the District, the Student’s special education teacher used “KEMS Level D” for his math curriculum during the school year. However, the teacher was unable to provide OSPI with the underlying progress monitoring documentation because the documentation was shredded at the end of the school year.

2022–2023 School Year

8. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of specific learning disability, was in the eighth grade, and attended a District middle school.
9. On September 7, 2022, the first day of school began in the District.
10. According to the Parent, the Parent emailed the Student’s case manager on November 14, 2022, and requested the Student’s “present levels of math.” The Parent also asked what curriculum math book the Student was in and the standards to be covered. On November 17,

2022, the case manager responded by listing the math topics being taught. The case manager stated transition and data sharing meetings would be occurring in April or May, which would have current data for the transition to high school.

11. On November 18, 2022, the Parent emailed the school principal, requesting more information on the high school grade level standards in math. The Parent stated she was concerned that the Student was still being instructed in “multiplication facts and fractions” that would not prepare her for high school. The Parent stated, “My daughter has a right to a grade level education...” The Parent requested a “MDT” team meeting, and it was later clarified that she was requesting an IEP meeting.
12. On December 8, 2022, the case manager emailed the Parent a list of math standards that the Student was not proficient in, which included the following:
 - Multiplication and division of whole numbers
 - Geometric Reasoning (angles)
 - Fractions and decimals
 - Patterns and algebra
 - Data representation and interpretation
13. According to the documentation, an IEP meeting was scheduled for December 8, 2022. However, the Parent arrived late, and the IEP team had been dismissed. But the case manager and the Student’s special education teacher met with the Parent and provided the Parent with data that indicated the Student was at the third-grade level in math—depending on the specific skill. The option of being placed in the general education math classroom was discussed and the case manager and teacher expressed concern that progress would be difficult because the Student’s learning gaps would overwhelm the Student. The Parent indicated the Student was capable of achieving at a higher level.
14. On December 12, 2022, the Parent emailed District staff, requesting help in finding a home curriculum to help the Student in math.
15. From January 6 to March 13, 2023, the date the complaint was filed, the Parent and District exchanged numerous emails about scheduling an IEP meeting. Both the District and Parent had difficulty scheduling the IEP meeting; some of the reasons included the District’s volume of IEP meetings and the Parent’s vacation. The Parent also expressed concern that the home math program was not working well.
16. On March 13, 2023, the Parent filed this complaint with OSPI.
17. The District provided the following math progress report for the Student’s calculation goal:

Date of Review:	04/30/2022	05/31/2022	11/10/2022	02/03/2023
Progress:	ES ²	ES	IP ³	IP

² “ES” means emerging skill demonstrated but may not achieve annual goal with duration of IEP.

³ “IP” means insufficient progress demonstrated to meet this annual goal and may not achieve annual goal within duration of IEP.

And the District provided the following math progress report for the Student’s problem-solving goal:

Date of Review:	04/30/2021	05/31/2022	11/10/2022	02/03/2023
Progress:	SP	SP	IP	M ⁴

18. The District reported that the Student’s case manager administered the following classroom assessments during the 2022–2023 school year to determine the Student’s progress in math and the results were as follows:

- September 8, 2022: Corrective Mathematics Comprehensive Placement Test – Did not attempt 1-digit by 1-digit multiplications. No evidence of division skills.
- September 12, 2022: 8th Grade Fall easyCBM benchmark – 19/45 problems correct on grade-level questions.
- October 17, 2022: Multi-Digit Multiplication screening – 23/25 problems correct 2-digit by 1-digit; 2/25 problems correct 3-digit by 1-digit.
- December 15, 2022: Corrective Mathematics Comprehensive Placement Test (same as September 8, 2022 assessment) – limited success through short division.
- January 5, 2023: 8th Grade Winter easyCBM benchmark – 20/45 correct on grade-level questions.
- February 6, 2023: Grade 6 Readiness Test for envision Curriculum – 10/36 problems correct.
- March 17, 2023: 4th grade easyCBM progress monitoring probe – 16/30 problems correct.

19. The OSPI complaint investigator requested that the District provide a description of the specially designed instruction the Student received in math. The special education teacher provided the following description:

Content <i>What</i>	Method <i>How</i>	Delivery <i>How</i>
Instructional materials: <ul style="list-style-type: none"> • Instructional materials obtained from other educators throughout career (after confirming fit to student needs and alignment with CCSS and district standards) including instructional presentations with modeling, guided process worksheets, and “game” pages that require mathematical solving to complete • <i>enVision</i> Grade 6 (print and online components) • <i>All Things Algebra</i> curriculum (provided by parent) 	Instructional method/approach: <ul style="list-style-type: none"> • Classroom direct instruction in multi-digit operations • Classroom direct instruction in identification of relevant and extraneous information in word problems • Short (<10 questions) drill activities to strengthen automaticity • Board work as preferred by the student and at her request • Team relay games focused on multiplication and equation setup • Review of skills in the above-mentioned areas prior to lessons in advanced topics that rely 	Amount of time: 40 minutes, 5x/week Location: Special Education Resource Math class Provider: Special Education teacher ([special education teacher] 2021-2022; [special education teacher] 2022-2023) Group size: Varied throughout the period of the IEP, but no larger than 13. Student is currently receiving 1-to-1 instruction with a paraeducator to focus on advancing skills unique to the student.

⁴ “M” means mastered the goal.

	<p>heavily on that prior knowledge</p> <ul style="list-style-type: none"> • One-to-one paraeducator instruction in integers using materials provided by parent to develop pre-algebra skills • Instruction in multiple ways to approach solving any given problem, including videos/animations and static notes outlining different approaches to solving. 	
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CONCLUSIONS

Issue One: IEP Implementation – The complaint alleged that special education math services were not implemented appropriately. A district is required to implement the special education services in conformity with the IEP.

Here, the Student was in eighth grade during the 2022–2023 school year and the Student’s March 2022 IEP provided annual math goals in the areas of calculation and problem solving. In the area of math, the IEP provided specially designed instruction to the Student 40 minutes five times a week. The District stated services were provided as written and described the specially designed instruction in math in detail and how the services were implemented. In addition, the District provided progress reports, indicating the Student made progress, albeit mixed progress, towards the math goals.

The complaint stated that the District failed to provide “curriculum” that met the Student’s instructional level. Curriculum is generally considered the general education curriculum a student receives, whereas specially designed instruction is adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction and is provided to help a student access their general education curriculum. Specially designed instruction is based on a student’s unique needs and present levels. Here, the documentation showed the Student’s present levels in math were below the eighth-grade level. Therefore, special designed instruction at the eighth-grade level would have been inappropriate. The specially designed instruction the Student received was consistent with the Student’s abilities and needs. No violation is found.

Issue Two: IEP Development – The complaint alleged the District failed to follow proper IEP development procedures in determining math services, including having relevant data and ensuring Parent participation. A district is required to consider multiple sources of data in developing the IEP, including parent input, and must review and revise the IEP as appropriate to address any unexpected lack of progress towards the goals.

Relevant Data: The documentation showed the District used various sources of data in developing the Student's IEP. The data sources included grade-level "easyCBM" benchmarks, progress monitoring probes, readiness assessments of curriculum, and regular classroom work. The Student's progress reports during the 2022–2023 school year showed the Student making progress in problem solving, but the Student was making insufficient progress in calculation according to the November 2022 and February 2023 progress reports. The District and the Parent attempted to convene the IEP team beginning in January 2023, but were unsuccessful at scheduling a meeting as of the date of the complaint, March 13, 2023. Both the Parent and the District contributed to the delay in scheduling the meeting. While OSPI finds no violation related to this allegation, OSPI recommends the IEP team meet as soon as possible to address the lack of progress in calculations.

Parent Participation: The complaint alleged the District failed to provide the Parent with information about the Student's present levels and the curriculum. As stated above, the curriculum refers to the general education curriculum. The Parent requested specific information about the Student's general education math curriculum. In this case, the Student's general education teacher, whose role is to address the general education curriculum, attended the Student's March 2022 IEP meeting. Here, the Parent had an opportunity to ask questions about the Student's access to the general education curriculum. The Parent continued to have questions about the general education curriculum and the District was reasonably responsive to her requests. Regarding the math present levels in the IEP, the Student's IEP, progress reports, and classroom assessments, all provided information on the Student's present levels, and all were provided to the Parent.

Based on the documentation that the District used relevant data to make decisions and responded to the Parent's math-related requests, no violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 10th 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.)