

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-40

PROCEDURAL HISTORY

On March 28, 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 Olympia 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 30, 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 30, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on April 17, 2023. OSPI invited the Parent to reply.

On May 8, 2023, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on May 11, 2023. OSPI forwarded the information to the District on the same day.

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 29, 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.

ISSUE

1. Did the District provide the Student with accommodations in conformity with the Student's individualized education program (IEP) according to WAC 392-172A-03105 from September 2022 through November 2022?

LEGAL STANDARDS

IEP Implementation: A 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.

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).

FINDINGS OF FACT

Background: 2021–2022 School Year

1. During the 2021–2022 school year, the Student was a tenth grader who attended an online program (program 1) through the District and was eligible for special education under the category of emotional behavioral disability.
2. On January 12, 2022, the Student’s team met to conduct an annual review of the IEP. The IEP stated the Student’s behavior impeded his learning and stated that he had difficulty completing assignments and attending classes. The IEP noted that some of the Student’s previous behaviors displayed in the classroom were not present in the virtual setting, but his “engagement and work completion are below average.” The IEP stated:
[Student] has struggled to engage in the Virtual setting. It is recommended that students spend 5-6 hours a day on their schoolwork. [Student] has significant difficulty comprehending and completing schoolwork in a variety of academic areas, is poorly organized, has difficulty turning in assignments on time, and has weak study skills.

The IEP included an annual goal in the area of social/emotional and specially designed instruction in the area of social/emotional for 55 minutes, once a week. The IEP also provided for the following accommodations:

- Ability to take breaks
- Allow 50% more time to complete assignments
- Allow extra time to respond
- Allow student to listen to music with earbuds and chromebook or ipod during quiet independent work activities
- Alternative setting during testing
- Break material into manageable parts
- Check work frequently to ensure understanding
- Communication plan between Parent and sped teachers
- Copy of notes/study guides
- More time during testing
- Reduce length of assignments
- Small learning groups for math and English
- Text-to-speech during testing

The Student’s secondary transition plan included goals in the areas of education/training (on the job or technical skills school) and employment (will be employed upon leaving school).

3. The prior written notice, documenting the annual IEP meeting, stated the following:
Parent has elected for [Student] to attend the [program 1] with Special Education services provided remotely. [District] is prepared to provide in-person Special Education services should this change. [Student] will receive his minutes in Specially Designed Instruction in Social Emotional through weekly optional synchronous Zoom classes and an optional virtual Social Emotional Learning (SEL) class with virtual classroom SEL support through his teachers.

2022–2023 School Year

4. At the beginning of the 2022–2023 school year, the Student, who was an eleventh grader, enrolled in a different online program (program 2) through the District, due to program 1 closing. The Student also attended a program providing vocational skills training (skills center) part-time. The Student continued to be eligible for special education services under the category of emotional behavioral disability.
5. Program 2's website stated the following regarding enrollment:

...Students are expected to maintain satisfactory progress in each course (70% or higher), or they will be placed on an intervention plan at the end of the month. Parents/caregivers are required to attend these intervention meetings with their students. If a student is not making satisfactory progress for three months in a row, we are required to make a substantial change to the student's program, which may involve transferring the student back to their neighborhood school.
6. On September 7, 2022, the school year began in the District.
7. On October 31, 2022, according to the District, the Student was withdrawn by the District from online program 2 because of a failure to participate and make adequate progress. The District stated, "The participation requirements were not connected to IEP progress measures."
8. On February 2, 2023, the Parent emailed program 2's principal, requesting the Student be able to attend program 2 again. The Parent stated the Student's lack of attendance at program 2 jeopardized his part-time placement at the skills center and the Student was ready to return to program 2.
9. On February 3, 2023, the principal responded and denied the Parent's request for the Student to attend program 2 based on the lack of adequate progress. The principal offered the Parent options that the Parent could pursue, including full-time at the skills center or the Student attending his neighborhood high school. On February 5, 2023, the Parent replied that some of the options would require the Student to withdraw from the skills center.
10. On February 5, 2023, the principal replied to the Parent and expressed concern about the Student attending an online program. The principal stated:

...I am still very concerned that he is not getting enough support to work on his core classes through an online program with one zoom per class per week. He was not willing to attend the zoom classes earlier this year, but even if he is willing to now, his progress on the online courses at home was minimal, and I do not feel we are adequately serving him. I certainly want to support him in his education, which is why I suggested that he either enroll in [skills center] full time so he can do the core subjects there, or go to [high school] in the morning for core classes and then catch the school bus to [skills center]. I agree that homeschooling or another online school are the least desirable options. I am including our special education directors, [District superintendent], and my supervisors so everyone is on the same page for the conversation. I am more than happy to help facilitate a solution. I am wondering why he is not willing to do [skills center] full time? I have had a lot of success with students doing this in the past, but I do want to make sure this is an option for him.

11. On the same day, the Parent responded, "He has a hard time being at the school in general. His anxiety has increased since Covid. He is willing to do [program 2] now, and make progress in the online classes."
12. On February 5, 2023, the director of the skills center, Parent, District director of student support, and other District staff exchanged emails, attempting to arrange a meeting to discuss the program options that were available to the Student.
13. On February 7, 2023, the District social worker emailed the two directors of student support and the principal of program 2 about a conversation with the Parent. The email stated, in part:

...[Student] was dropped from [program 2] in November and the family has not been able to find another placement. His enrollment at [skills center], which he has been successful at, is in jeopardy due to loss of enrollment here. Additionally, he is an IEP student and is not getting any support. His home school is [high school], are we providing services for him?

On the same day, the principal of program 2 replied that the situation was being discussed with District leadership.

14. On February 9, 2023, according to the District, the Parent informed the District that the Student was enrolled in another district.
15. On March 28, 2023, the Parent filed this complaint with OSPI.
16. The District provided the following information in response to the complaint regarding the implementation of the Student's accommodations:

Accommodation	District Implementation Comments
Breaks	"All classes online but breaks would have occurred if student attended."
More time for assignments	"Unlimited time per quarter to get assignments in."
Extra time to respond	"Three teachers were aware of this accommodation and if student attended this would have occurred."
Listen to music	"Not available in an online program."
Independent work activities	"Student was offered support during in-person time with teacher of choice but was never used."
Alternative setting for test	"No testing occurred due to no attendance."
Break materials in manageable parts	"All 4 teachers were aware of this accommodation and had excused many of the assignments."
Check work frequently	"All 4 teachers were aware of this accommodation and would have checked in through chat during zoom."
Communication plan	"Parent had email and phone number of case manager and spoke many times on the phone."
Copy of notes/study guides	"The 3 teachers were aware of this accommodation and if student attended this would have occurred."
Reduce length of assignments	"The 3 teachers were aware of this accommodation and if student attended this would have occurred."

Small learning groups	"Due to Student being in [alternative program], these classes were to occur second semester."
Speech-to-text	(No information provided)

17. OSPI requested the Parent provide information about what accommodations were not implemented and when. The Parent was unable to provide any specific information, including the times and circumstances the District did not provide the accommodations, other than during the "2022–2023 school year." The Parent argued that the Student’s failing grades, missing assignments, and lack of 1:1 support were evidence that the District did not implement the Student’s accommodations.

CONCLUSIONS

Issue One: Accommodations – The complaint alleged the District failed to implement the Student’s accommodations as outlined in the IEP. A district is required to implement the special education services in conformity with the IEP.

Here, the Student’s January 2022 IEP provided for special education services in the area of social/emotional to address initiating and completing tasks. The IEP also provided 13 accommodations for the Student. In September 2022, the Student enrolled in program 2, a District online program, while attending the skills center part-time. The documentation showed the Student did not attend program 2, but participated in the skills center. The District reported that the Student was not provided the accommodations in his IEP because the Student did not attend the online classes. The exception to this was the accommodation related to communicating with the Parent, as the documentation indicated there was communication between the Parent and District. Because the Student did not participate and failed to make adequate progress while attending program 2, program 2 withdrew the Student. The Parent alleged the District failed to provide the Student with his IEP accommodations in program 2.

Since the Student did not participate in program 2, the District could not provide the Student with his accommodations. The District was not necessarily responsible for ensuring the Student attended the program; but a district is responsible for providing a student a free appropriate public education (FAPE) through implementation of an IEP, and 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. Here, the Student’s IEP team was responsible for reviewing the Student’s IEP and revising it as necessary to include any strategies, supports, or interventions to address the challenges the Student was having related to attendance and relatedly the lack of progress on IEP goals as the lack of attendance prevented the IEP from being implemented. At minimum, the District should have had an IEP meeting to discuss the challenges with implementing the Student’s IEP.

After the Student was withdrawn from the online program, the District did attempt to explore general education program options with the Parent and Student and expressed concern about whether an online program was viable or appropriate for the Student. However, no IEP meeting was held to discuss how the District would provide a FAPE to the Student. While there is no

violation for failing to provide the Student with accommodations, because the Student's lack of attendance prevented implementation, and this was not addressed by the IEP team, there is a violation for not convening the Student's IEP team. The District is required to provide program 2 with written guidance regarding convening the IEP team to address a lack of progress towards the annual goals. OSPI notes that the Student specific corrective actions, such as an IEP meeting, are not warranted because the Student is now enrolled in another Washington school district.

CORRECTIVE ACTION

By or before **June 2, 2023** and **June 16, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **June 9, 2023**, the District will ensure that the following individuals receive written guidance on the topic listed below: the Student's IEP team, the District special education administrators, and the program 2 administrators. The guidance will include examples.

Topic 1: Convening a student's IEP team to address any unexpected lack of progress, including problems, due to attendance issues.

By **June 2, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments.

By **June 16, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 17th day of May, 2023

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.)