

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-60

PROCEDURAL HISTORY

On August 23, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Sumner 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 August 23, 2017, 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 15, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on September 18, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On October 2, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On October 4, 2017, OSPI interviewed the Parent via telephone.

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

OVERVIEW

During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of other health impairment. In September 2016, prior to the first day of the District's 2016-2017 school year, the Student's individualized education program (IEP) team met to review the Student's IEP and made amendments to the IEP. In December 2016, the Student's IEP team met to develop the Student's annual IEP. In May 2017, members of the Student's IEP team met and discussed the Student's December 2016 IEP. The Parent alleged that the Student's December 2016 IEP did not include the Student's present levels of academic performance in the areas of reading, writing, and math and did not include a measurable annual goal for writing. The District admitted to the allegations in part, and denied in part.

ISSUES

1. Did the District follow procedures for developing the Student's December 2016 individualized education program (IEP)?
2. Did the District implement the Student's IEPs in place during the 2016-2017 school year?

LEGAL STANDARDS

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) extended school year (ESY) services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive a free appropriate public education (FAPE); (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090 (effective January 29, 2016).

Present Levels: IEPs must include a statement of the student's present levels of academic achievement and functional performance, including: how the student's disability affects the student's involvement and progress in the general education curriculum; or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. 34 CFR §300.320(a)(1); WAC 392-172A-03090(1)(a).

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. Additionally, for students who take alternate assessments aligned to alternate achievement standards, the statement of measurable annual goals should include a description of the benchmarks or short-term objectives the student should meet. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the

educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c). A need for special education is not limited strictly to academics; it also may include physical education, transition services, behavioral progress, and the acquisition of appropriate social and/or organizational skills. 34 CFR §300.39; WAC 392-172A-01175.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also 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. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105(3)(a).

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

1. During the 2016-2017 school year, the Student attended a District high school and was eligible to receive special education and related services under the category of other health impairment.
2. On September 6, 2016, prior to the beginning of the District's 2016-2017 school year, the Student's individualized education program (IEP) team met to review the Student's December 2015 IEP. The IEP team agreed to amend the December 2015 IEP. The amended December 2015 IEP stated the Student had a diagnosis of attention deficit hyperactivity disorder (ADHD), was color blind, and had a slight hand tremor. The IEP stated the Student may be easily distracted, experience difficulty paying attention, and may get anxious. The IEP included the Student's present levels of performance in the areas of reading, writing, mathematics, and social/emotional behavior. The IEP stated the Student "engages in

behaviors that are consistent with anxiety problems,” struggles with the subtleties of social communication, and has difficulties with his executive functioning. The IEP also stated the Student was missing basic foundational skills in mathematics and writing and struggled with multiplication and division, and lacked control of grammar, usage, and writing mechanics. The IEP also stated the Student’s behavior negatively impacted his learning and included a behavioral intervention plan (BIP). The IEP included the following annual goals in reading, writing, mathematics, and social/behavioral:

- Reading (fluency): when given an eighth grade curriculum based assessment probe, the Student will read aloud for 1 minute improving reading fluency from 147 words correctly read with 5 errors to 175 words correctly read with 3 or less errors as measured by AIMSweb Reading Fluency Probes.
- Reading (comprehension): when given an eighth grade curriculum based MAZE probe, the Student will read a passage and choose the best response when coming to words that make the most sense improving reading comprehension from 20 correct responses with 1 error to 25 correct responses with 2 or less errors as measured by AIMSweb MAZE Reading Comprehension probe.
- Writing (controlling idea and purpose): when given a writing probe scored on a 6 point rubric where 6 is exemplary, the Student will establish a controlling idea with a clear purpose and present appropriate details to support focus and controlling idea improving in the areas of Controlling Idea and Development from level 3 to level 4 (proficient) as measured by The Six Traits Rubric measuring ideas.
- Writing (present relevant information): when given a writing prompt graded on a 6 point rubric where 6 is exemplary, the Student will demonstrate an ability to organize information from reading materials relevant to the writing prompt improving organization from level 3 to level 4 (proficient) as measured by The Six Traits Rubric measuring accuracy in organization.
- Writing (written language/conventions & sentence construction): when given a teacher created, district, or state writing prompt scored on a 6 point scale, where 6 is exemplary the Student will demonstrate a growing command of standard English conventions and sentence fluency improving conventions and sentence fluency from a level 3 to a level 4 (proficient) as measured by The Six Traits Rubric.
- Math (fluency): when given a math problem involving algebra concepts the Student will keep up with classroom pace improving his ability to accurately solve the problem from 72% accuracy to 90% accuracy as measured by classroom curriculum assessments.
- Math (Basic Expression/Equation): the Student will accurately interpret and evaluate the numerical or algebraic expression improving equation solving from 66% accuracy to 90% accuracy as measured by classroom curriculum assessments.
- Social/behavioral (1): when given an activity, the Student will maintain focus and raise his hand when ready to comment improving social skills from an average of 1.6 on a 4 point scale to a 2.60 (an increase of 1.0) on a 4 point scale (0 to 3), 3 being proficient as measured by a behavior points sheet.
- Social/behavioral (2): when given a behavior tracking form and the support of his teachers, the Student will use self-regulation strategies to manage emotions improving ability to verbalize needs (use self-advocacy skills) from one or more times per day to no more than one time per week as measured by a tracking form and teacher observation.

The amended IEP provided for accommodations/modifications and stated the Student used a “Chromebook computer” to help combat the Student’s hand fatigue and that the Student

used “google drive tools to support his learning”. The amended IEP also provided for progress reporting on a quarterly basis, and the following specially designed instruction in a general education setting:

- Reading: 30 minutes, four times per week
- Writing: 30 minutes, four times per week
- Math: 60 minutes, four times per week
- Social/Behavioral: 300 minutes, one time per week

The IEP also provided for the following supplementary aids and services:

- Assistive Technology: 30 minutes, two times per month
- Guidance Counselor: 30 minutes, one time per week

3. Also on September 6, 2016, the District issued prior written notice regarding the amended December 2015 IEP. The notice stated the Student was attending school in a new setting for the 2016-2017 school year and the IEP team updated the Student’s annual goals and services minutes for the school year. According to a telephone interview with the Parent, the Student began attending his neighborhood high school for the 2016-2017 school year and attended another District high school the year prior.
4. The District’s 2016-2017 school year began on September 7, 2016.
5. The District’s documentation in response to this complaint included a weekly report of the Student’s academic progress in his classes from September 7, 2016 through June 13, 2017. The weekly reports provided a current grade percentage for each of the Student’s classes, and showed the overall progress in each class and how much the Student’s progress made in the last week. The District also issued “monthly evaluations” of the Student’s progress in his algebra, world civilization, and physical education classes. The “monthly evaluations” included information regarding the Student’s current grade percentage and how much of the course was completed, and a narrative of the Student’s monthly progress. The “monthly evaluations” also stated whether the Student’s efforts each month were satisfactory or unsatisfactory and stated when and how the “monthly evaluation” was shared with the Student and the Parent. The District’s documentation in this complaint does not show it provided the Parent with progress reporting toward the Student’s annual IEP goals during the 2016-2017 school year.
6. On December 1, 2016, the District invited the Student and the Parent to a December 8, 2016 meeting to develop the Student’s annual IEP. The invitation stated the IEP team would review the Student’s IEP and discuss the Student’s instructional needs, the progress on his annual goals, transition services, and graduation.
7. On December 8, 2016, the Student’s IEP team, including the Parent, but not the Student, met to develop the Student’s annual IEP. The December 2016 IEP stated the Student was attending a District high school, which provided “a more alternative setting than a traditional high school campus”, and that the Student preferred the “independent or free schedule” the program provided. The IEP stated the Student was interviewed in November and stated that:

his academic strengths were history and reading; he was confident in his ability to accurately write short paragraphs and sentences; he could complete basic computations and understand relevant information in a word problem, but needed help to comprehend materials if content-specific vocabulary were used. The IEP also stated that the Student reported that he struggled with lengthy essays, units of measure and time, geometry, and the application/selection of appropriate mathematical formulas. The IEP also stated the Student completed a twenty-question mathematics test and independently answered 14 of 15 questions correctly, and was assisted on five questions. The IEP stated the Student's disability impacted his understanding of mathematical computation, algebraic expressions and geometric formulas, his ability to logically structure paragraphs containing main ideas and supporting details, and his ability to spell. The IEP further stated the Student's score for the End-of-Course (EOC) exam for Algebra 1 was level 1, his score on the Smarter Balanced Assessment in English Language Arts was a level 2, and that he must pass at the next level or higher for each assessment in mathematics and English Language Arts. The IEP stated "the Student had made tremendous progress in the area of social/emotional skills", that he met both his social/emotional annual goals from the previous year, and that his behavior did not negatively impact his learning. The IEP also stated the Student's postsecondary goal was to enlist in the Army to become a Ranger. The IEP did not include annual goals in the area of writing, but included the following annual goals in reading, mathematics, and social/behavioral:

- Reading (comprehension): when given an eighth grade curriculum based MAZE probe, the Student will read a passage and choose the best response when coming to words that make the most sense improving reading comprehension from 20 correct responses with 1 error to 25 correct responses with 2 or less errors as measured by AIMSweb MAZE Reading Comprehension probe.
- Mathematics (skills): when given a mathematics problem involving algebra concepts the Student will accurately with precision [improve his] ability to accurately solve the problem from 72% accuracy to 90% accuracy as measured by classroom curriculum assessments.
- Mathematics (basic expression/equation): the Student will accurately interpret and evaluate the numerical or algebraic expression improving equation solving from 66% accuracy to 90% accuracy as measured by classroom curriculum assessments.
- Social/behavioral (1): when given a behavior tracking form and the support of his teachers, the Student will use self-regulation strategies to manage emotions improving ability to verbalize needs (use self-advocacy skills) from one or more times per day to no more than one time per week as measured by a tracking form and teacher observation.
- Social/behavioral (2): when given a problematic situation the Student will use a Social Behavior Map for Adults (SBM-A) improving to visually dissect the situation, from improving social understanding from completing a SBM-A in 0/3 opportunities a month to complete a SBM-A in 2/3 opportunities a month as measured by staff observations.

The December 2016 IEP provided for accommodations/modifications and stated the Student competently used his "Chromebook" and "google tools" to support his learning. The IEP stated the Student's progress toward his reading, mathematics, and first social/behavioral goals would be provided quarterly, and his second social/behavioral goal would be provided

“hexamester”.¹ The IEP provided for the following specially designed instruction in a general education setting:

- Reading: 30 minutes, four times per week
- Writing: 30 minutes, four times per week
- Mathematics: 60 minutes, four times per week
- Social/Behavioral: 300 minutes, one time per week

The IEP also provided for the following supplementary aids and services:

- Assistive Technology: 30 minutes, one time per month
- Guidance Counselor: 30 minutes, one time per week

8. On December 8, 2016,² the District issued prior written notice regarding the December 2016 IEP. The notice also stated the IEP was updated to meet the needs of the Student’s 11th grade year and the IEP team considered input from the teachers, the Parent, and the Student.
9. The District was on break from December 19, 2016 through January 2, 2017.
10. The District’s documentation in response to this complaint included “daily goals” log sheets, dated January 9 through April 25, 2017. These daily sheets included a handwritten list of “objectives per class”. The objectives included reading, writing, and mathematics as part of the Student’s daily goals, in addition to alternating topics in world civilizations, history, and physical education. The daily sheets showed the time the Student spent working towards a daily goal varied from 20-60 minutes.
11. The District was on break from March 27, 2017 through March 31, 2017.
12. According to the complaint, on May 23, 2017, the Student’s case manager, the executive director of special services, the Parent, and the Parent’s family advocate attended a meeting and discussed the Student’s December 2016 IEP. The complaint also stated that at the meeting, the Parent’s family advocate expressed concern that the Student’s December 2016 IEP did not address the Student’s present levels of academic achievement and functional performance in the areas of reading, mathematics, and written language, but “no changes were made to the [Student’s] IEP to correct the errors”.
13. The District’s 2016-2017 school year ended on June 23, 2017.

CONCLUSIONS

Issue 1: IEP Development – An IEP must contain a statement of the student’s present levels of academic achievement and functional performance, and measurable annual academic and functional goals designed to meet the student’s needs resulting from their disability. The Parent

¹ The District’s documentation did not define the duration of a “Hexamester”.

² The Prior written notice is dated December 4, 2016, but this is assumed to be a typographical error since the IEP team meeting occurred on December 8, 2016.

alleged that the Student's December 2016 IEP did not include an annual goal in the area of writing. The District has admitted that the Student's December 2016 IEP did not include a writing goal even though the IEP provided for special designed instruction in writing. The Parent also alleged that the District failed to include the Student's present levels of academic performance in the areas of reading, writing, and mathematics in the Student's December 2016 IEP. Present levels of academic performance can include information from a variety of sources. The Student's December 2016 IEP contained present levels of performance in the areas of reading and mathematics, including state assessment results for Algebra and English Language arts, results from a twenty-question mathematics test, baseline data identified in the Student's reading and mathematics goals, and input from the Student's interview in regards to his strengths and weaknesses in mathematics and reading. The IEP did not contain present levels regarding the Student's academic performance in the area of writing, while the IEP included information from the Student's interview regarding his strengths and weaknesses in the area of writing; the IEP did not include additional information to indicate the Student's current level of ability. Given that the District still has not corrected the issues with the Student's IEP to include the Student's present levels in writing and an accompanying annual goal, the District will immediately convene an IEP team meeting with the Student and the Parent to develop an IEP.

Issue 2: IEP Implementation – At the beginning of each school year, each district must have an IEP in effect for a student who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The Parent alleged that the District did not implement the Student's December 2016 IEP because the District failed to provide the Student with specially designed instruction in the area of writing. The District denied the allegation, stating "the [Student's] teachers were not operating on a written language goal and instead used a curriculum based upon the Common Core" for English language arts. Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction to address the unique needs of the student that result from the student's disability. Here, while the District may have provided the Student with instruction in the area of writing, as it is required to do for all students, the District has not provided documentation to show that the writing instruction was specially designed to meet the Student's unique needs as determined by his IEP team. Given the failure to provide the Student with specially designed instruction, the District will provide the Student with compensatory services. The Student's December 2016 IEP provided for specially designed instruction in writing for 30 minutes, four times per week. Had the District implemented the IEP, the Student should have received 49 hours of instruction from December 10, 2016 through June 23, 2017. Taking into consideration the more intensive individualized instruction that can be provided through one-to-one instruction, the District will provide the Student with approximately 1/3 the amount of hours he should have received had his IEP been implemented. The District will provide 16 hours of compensatory education to the Student in individual instruction sessions to address writing skills. The tutoring will occur outside of the District's school day and be provided by a certificated special education teacher.

Also, it is noted that while the District provided weekly and monthly reporting regarding the Student's progress in his academic classes, the District is still obligated to provide the Parent with progress reporting regarding the Student's progress toward his annual IEP goals.

CORRECTIVE ACTIONS

By or before **November 22, 2017, January 12, 2018, February 2, 2018, and April 13, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **November 9, 2017**, the District will hold an IEP team meeting to develop the Student's IEP, including the Student's present levels of academic achievement and functional performance and annual goals. By **November 22, 2017**, the District will provide a copy of the: 1) meeting invitation; 2) the IEP; 3) prior written notice; and, 4) any other related documentation.
2. By or before **November 17, 2017**, the District will meet with the Parent to develop a schedule for a total of 16 hours of compensatory services in the area of writing skills. Services will occur in a one-on-one setting and be provided by a certificated special education teacher. The District will provide OSPI with documentation of the schedule for services by or before **November 22, 2017**.

The District must provide OSPI with documentation by **February 2, 2018**, of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. By or before **April 13, 2018**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation will include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. Additionally, this documentation will include payments, if any, made to the Parent for travel reimbursement.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District special education certificated staff, including educational staff associates (ESAs), addressing the procedures for developing IEPs, specifically focusing on the necessary components of an IEP. The guidance will include examples.

By **November 22, 2017**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by December 8, 2017, and provide additional dates for review, if needed. By **January 5, 2018**, the District will provide all District special education

certificated staff, including ESAs, with the written guidance. By **January 12, 2018**, the District will provide OSPI with documentation showing all required staff received the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross-reference the list with the actual recipients.

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 ___ day of October, 2017

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.)