

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-101

PROCEDURAL HISTORY

On June 29, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Pullman 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 June 29, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 30, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 25, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On August 2, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on August 3, 2023.

On August 21 and 23, 2023, OSPI requested that the District provide additional information. The District provided the requested information on August 23, 2023. OSPI forwarded the information to the Parent on August 24, 2023.

On August 23, 2023, OSPI's investigator conducted an interview of both the special education teacher and the principal.

On August 24, 2023, OSPI received additional information from the Parent. OSPI forwarded this information to the District the same day.

On August 25, 2023, OSPI received additional information from the District. OSPI forwarded this information to the Parent the same day.

OSPI considered 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 with the start of the 2022–23 school year for Issue 2 and November 16, 2022 for Issue 1. 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. From November 16, 2022 through the end of the 2022–23 school year, did the District follow proper procedures for implementing those portions of the Student's individualized education program (IEP) that related to specially designed instruction (SDI) in math?

2. From the start of the 2022–23 school year through May 11, 2023, did the District follow proper procedures for implementing those portions of the Student’s IEP that related to SDI in social emotional?

LEGAL STANDARD

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school 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

2022–23 School Year

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of autism, was in the eleventh grade, attended a District high school, and the Student’s March 2022 amended IEP was in effect.
2. The March 2022 amended IEP provided the following SDI in social emotional: 45 minutes a week in a *special education setting* (to be provided by a special education teacher).

The March 2022 amended IEP included the following social emotional goals:

- Social Emotional 1: By 11/29/2022, when given general education assignments Student will without prompting, advocate for herself by determining what she needs help with and work with the general education teacher to advocate for one of her accommodations/modifications improving self advocacy and work completion from not advocating for herself to independently reach out to the general education teachers and advocating for herself 50% of the time, as measured by student self advocacy form and student/teacher discussions.
- Social Emotional 2: By 11/29/2022, when given challenging, uncomfortable frustrating or distressing events, tasks or circumstances that cause anxiety, Student will identify a minimum of three staff members (teacher, counselor, school administrator or other school staff) and independently contact one of them to work with and determine an appropriate response or solution improving self regulation and self advocacy from shutting down, contacting home, or requiring adult prompting/questioning to independently reaching out to teacher, counselor, school administrator or other school staff for assistance as measured by teacher observation and data collection.
- Social Emotional 3: By 11/29/2022, when given social situations with a peer that are uncomfortable to her Student will work with staff to identify how to establish appropriate social boundaries for the situations, how to communicate that social boundary to peers improving interpersonal skills and social skills from not identifying appropriate boundaries

with peers to identifying and establishing appropriate boundaries with peers 50% of the time, as measured by teacher observation and data sheets.

3. During the 2022–23 school year, the Student’s schedule included the following courses:
 - American Literature;
 - Design Studio;
 - Statistics;
 - Veterinary Science;
 - Academic Skills; and,
 - US History.

The Student’s academic skills class met for approximately 220 minutes each week. (During his interview with OSPI’s investigator, the special education teacher stated the academic skills class met four times a week for an average of 55 minutes during each meeting.)

4. The District’s response included a social emotional service log created by the special education teacher in response to the Parent’s community complaint (social emotional log). The social emotional log recorded the special education teacher’s knowledge of when he provided the Student with SDI in social emotional. The social emotional log showed, in part, between September 1 and November 9, 2022, the special education teacher provided the Student with SDI in social emotional on 19 occasions.
5. The District’s response included a service log that recorded certain SDI in both math and social emotional provided to the Student between September 1 and October 26, 2022 (joint log). The joint log included 24 entries for social emotional, but these entries did not include activity descriptions. The math entries on the joint log frequently specified time was spent working with the Student on statistics coursework.
6. The Student’s IEP team developed a new IEP for the Student on October 26, 2022. The October 2022 IEP provided the Student with:
 - 80 minutes a week of SDI in math (to be provided by a special education teacher and a general education teacher in a *general education setting*); and,
 - 45 minutes a week of SDI in social emotional (to be provided by a special education teacher in a *special education setting*).

The October 2022 IEP read, in part:

Student is currently earning a B in Statistics and Algebraic Concepts. During the first term of the fall semester, Student has demonstrated the ability to grasp concepts, maintain the pace, manage workload, and meet deadlines. Student has also consistently asked for assistance when needed in the general education class, as well as the resource room.

Student is demonstrating increased [and] unprompted socialization with her peers and staff. She initiates conversations regularly, often with students with whom she does not have [a] prior relationship. The one exception is US History. In this setting, she does engage with peers, but does so with less regularity.

...

Student continues to demonstrate growth in the areas of self-advocacy, work completion, and stress management. She currently has no missing/past due assignments and is earning an A in all classes with the exception of Stats, where she is earning a B...Student independently requests assistance/accommodations/modifications in the resource room

50 percent of opportunities, and is always receptive to help when offered...Student states she is...making progress in communicating with [teachers] in-person.

According to the District, "at the Parent's request, the math goals [in the October 2022 IEP] were written to specifically meet identified standards in the Student's Statistics and Algebraic Concepts course." The October 2022 IEP included the following math goals:

[Math 1:] By March 31, 2023, and given an opportunity to determine probability of an event using a sample space of all possible outcomes, student will be able to compare the number of favorable outcomes to the number of total outcomes, improving math calculation skills from 0% accuracy to 75% accuracy, as measured by general education assessments.

[Math 2:] By June 16, 2023, when given a series of situational word problems that require the student to identify pertinent information, student will use the information to construct a linear function that will answer the question, improving math calculations from 0% accuracy to 75% accuracy, as measured by general education assessments.

According to the District, "the general education teacher was also responsible for implementation of the Student's [math] SDI and provided such instruction [in] the classroom."

The October 2022 IEP included the following social emotional goal:

By October 25, 2023, when given the opportunity to participate in group assignments/projects in the general education classroom, Student will voluntarily join a group or her peers, improving interpersonal and social skills from voluntarily engaging in group work 25 percent of opportunities with 0 adult prompts to voluntarily engaging in group work 75 percent of opportunities with 0 adult prompts as measured by general education teacher reporting and interviews with the Student.

7. A January 27, 2023 progress report for math goals 1 and 2 read, in part:
Sufficient Progress: The class has not reached [the] unit of instruction [during which event probabilities are covered]. Math instruction in the special education room has focused on supplementing general education instruction in the current [class] unit, providing reteaching and support in retaking assessments, and providing extended testing time for current assessment.

A January 27, 2023 progress report for the social emotional goal read, in part, "Sufficient progress...Student voluntarily joins a group of her peers 60% of opportunities with no adult prompts."

8. The District's response included a math service log created by the special education teacher in response to the Parent's community complaint (math log). The math log recorded the special education teacher's knowledge of when he provided the Student with SDI in math. The math log showed, in part, between February 13 and June 12, 2023, the special education teacher provided the Student with SDI in math on 43 occasions. Attached to the math log was approximately 18 pages of Student work samples related to math.

9. According to the Parent, during a March 9, 2023 meeting:

- When asked for an update on the provision of math SDI to the Student, the special education teacher provided the Parent with “a topical outline from the Student’s general education class” and the special education teacher stated the Student worked in a small group with math students from a different statistics class (other than the statistics class that the Student was enrolled in), and that the Student often “opted out of” the small group work because it “was not what Student was currently working on” in her own statistics class¹;
- And regarding the social emotional goal, District staff shared with the Parent that staff were gathering data via a google form, but District staff did not provide information showing the Student had received SDI in social emotional; and the superintendent recommended the special education teacher speak with the “consulting speech language pathologist (SLP) to get some materials to provide...instruction” on the social emotional goal.

The District’s response included meeting notes, dated March 9, 2023. They read, in part:

The special education teacher explained that [he] worked with the math teacher to determine appropriate math goals that will fall in line with the scope and sequence of the math class. The timelines of the goals are written to be specific with the dates at which they fall within the class timeline. Currently working on probability goal, then after spring break, instruction shifts to algebraic concepts.

...

[Regarding the Student’s social emotional goal related to working with a group], the general education teacher report[ed] that when given the change to work in a group, Student may choose to work independently [and] the collaboration includes creating opportunities for Student to have more ownership in how the groups may be set up.

10. An April 28, 2023 progress report read, in part:

[Math 1]: Sufficient Progress: When completing assessments in the general education classroom, Student averaged 79% accuracy when using a sample space to compare outcomes. When completing assessments in the special education room, Student averaged 83% accuracy. Over the three summative assessments given in the general education classroom during the probability unit, Student averaged 74% accuracy.

[Math 2]: Progress Made But Not Mastered: The function’s unit is just beginning general education classroom. In an effort to help Student review and prepare for this unit, instructions related to linear equations, slope intercept form, and parallel [and] perpendicular lines has been provided in the special education room. When given two linear equations, Student is able to put them in slope intercept form and determine if they are parallel, perpendicular, or neither, with an average accuracy of 55%.

Social Emotional: Sufficient Progress...Student voluntarily joins a group of her peers 70% of opportunities with no adult prompts.

11. The Student’s IEP team amended the Student’s IEP on May 11, 2023. The May 2023 amended IEP provided the Student with:

¹ On the issue of math SDI, the Parent’s reply read, in part, “I do not think that the general education teacher provided SDI to the student during the 2022-2023 school year, nor do I think that he was informed that he was responsible for providing SDI this year.”

- 80 minutes a week of SDI in math (to be provided by a special education teacher and a general education teacher in a *general education setting*); and,
- 45 minutes a week of SDI in social emotional (to be provided by a special education teacher in a *special education setting*).

The May 2023 amended IEP included the same math and social emotional goals that were included in the October 2022 IEP.

The May 2023 amended IEP added "direct" communication services to the Student's IEP as a related service. Specifically, 30 minutes a week of related services in communication in a *special education setting*, to be provided by an "SLP [or] aide" was added to the Student's IEP. The May 2023 amended IEP included three communication goals: communication 1 (ability to share and describe feelings); communication 2 (ability to analyze and describe interpersonal interactions); and communication 3 (ability to engage in active listening).²

12. According to the Parent, on May 11, 2023, the Parent, Student, and SLP met and communication goals were added to the Student's IEP that related, in part, to the Student's social emotional needs. (The Parent alleged, "Before May 11, 2023, Student received no SDI from the special education teacher regarding the social emotional goal.")

13. The Student's IEP team created a new IEP for the Student on June 13, 2023. The June 2023 IEP provided the Student with:

- 60 minutes a week of SDI in math (to be provided by a special education teacher in a *special education setting*);
- 45 minutes a week of SDI in social emotional (to be provided by a special education teacher in a *special education setting*); and,
- 30 minutes a week of related services in communication (to be provided by an "SLP [or] aide" in a *special education setting*).

The June 2023 IEP included the following math goals:

[Math 1:] By June 6, 2025 [sic], when given a salary and income and the opportunity to create a budget for independent living in three different cities, student will identify fixed and variable expenses, calculate expenses monthly and yearly, and create a complete monthly and yearly budget, improving financial literacy and transition skills from not having a monthly or yearly budget, to producing a complete monthly and yearly budget for three different cities, with 80% accuracy.

[Math 2:] By June 8, 2024, when given real world scenarios and problems with interest rates [such as] loans, credit cards, [or] utility bills, student will calculate how much interest will need to be paid, improving math calculation, financial literacy and life skills, from calculating how much interest will be paid 0% accuracy, to calculating how much interest will be paid with 80% accuracy, as measured by student work samples.

² The October 2022 IEP did not include communication goals, and provided the Student with 75 minutes a month of communication consultation as a related service.

[Math 3:] By June 8, 2024, when given a series of situational word problems that require the student to identify pertinent information, student will use the information to construct a linear function that will answer the question, improving math calculations from 48% accuracy to 75% accuracy.

[Social Emotional:] Ability to independently describe, in writing, her disability and accommodations that will help her success in high school.

The June 2023 IEP included three communication goals (Communication 1–3) that, broadly speaking, addressed the following skill sets: ability to share and describe feelings; ability to analyze and describe interpersonal interactions; and ability to engage in active listening.

The June 2023 IEP read, in part:

Student has shined on her probability goal and on [the] linear functions [goal] she was very close to meeting. Student stated it was ok to keep the linear functions as a goal.³

The year has been a success for Student in math. On the hardest test of the year (probability), Student saw her highest score of the year (80%) and on what would be the 'easiest' test, she scored her lowest. (This test was at the end of the year when Student said she was really tired.) Student is a good thinker when it comes to problems. Student wants to learn and will ask appropriate questions. She does great with one-on-one instruction, specifically on items she is not fully grasping, and benefits if she stays after school some with the math teacher to work on skills. Student is good at being stubborn about learning, that she will stick with it. She is weaker on the whole class items. Group investigations can be a hit or miss with Student and at times Student needs double the time to complete the group work...Student is currently earning a D (currently retaking an assessment) in Statistics and Algebraic Concepts. Student has advocated for herself and asked for assistance in [both] the general education and special education classroom setting[s] throughout the year...She has kept up with the pace and workload of the course.

...

US History: With her comfort level, there are times Student chooses to still work independently...Student raises her hand and offers ideas during class discussions...She has improved...her self-advocacy in talking with the teacher...

Veterinary Science: Student works well in small groups and gets along with her classmates. She has been successful and participates during class discussions. Student will initiate conversations with other students...All teachers report that Student has had great growth this year. Student...participates in class and in discussions [and] she is interacting more with peers.

...

[Communication:] When given an opportunity to participate in group assignments/projects in the general education classroom, Student voluntarily joins a group of her peers 75% of opportunities with no adult prompts.

³ The June 2023 IEP stated the Student was performing at 80% accuracy in math goal 1 from the May 2023 amended IEP and was performing at 88% accuracy in math goal 2 from the May 2023 amended IEP.

A June 13, 2023 prior written notice read, in part:

When on [the] performance section [discussion of the IEP], the Statistics and Algebraic Concepts general education teacher shared how Student has had a successful year overall...The team discussed the linear functions goal that was written in October [2022]. Student has made great gains, but not fully mastered the goal and [so] the team agreed to continue this goal in the new IEP.

14. According to the Parent, under the June 2023 IEP, the general education math teacher was responsible for providing some portion of the Student's math SDI; the general education math teacher was "unaware...this was part of his responsibility"; the plan was for the Student to receive at least a portion of her math SDI by working with the general education math teacher after the regular school day concluded; but, the Student was unaware of this plan and only "infrequently" saw the general education math teacher after school.
15. The District stated the Student received a D in her Statistics and Algebraic Concepts course for the 2022–23 school year.
16. In its response, the District asserted "it...met the obligation to...implement those portions of the Student's IEP that related to SDI in math [and] social emotional."
17. On August 23, 2023, OSPI's investigator conducted interviews of the special education teacher and the principal.

During the interview with OSPI's investigator, the special education teacher shared: (1) the special education teacher and the Student's general education teachers each worked with the Student on social emotional goals throughout the school year; and (2) interventions included, in part, analyzing a social interaction with the Student after-the-fact, to better empower the Student for future social interactions, ensuring the Student was provided opportunities to work on the skillsets identified in the various social emotional goals, providing the Student with encouragement when working on the social emotional skillsets, and providing the Student with the vocabulary and reflection and confidence skills to self-advocate in social emotional settings.

During interviews, both the principal and the special education teacher shared the Student made significant advancements in the area of social emotional throughout the school year, on occasion, even leading an activity for a small group of her peers.

During his interview with OSPI's investigator, the special education teacher⁴ stated the math teacher was an attendee of the October 2022 IEP meeting when the math goals were created and the math teacher was instrumental in determining the content of the same, the math teacher had a copy of relevant IEPs, and the special education teacher communicated with the math teacher on a regular basis throughout the school year.

⁴ During this investigation, the District clarified that the math teacher is no longer employed by the District, and was thus unavailable for an interview with OSPI's investigator.

CONCLUSIONS

Issue 1: IEP Implementation: SDI in Math – The Parent alleged the District did not follow proper procedures for implementing the Student’s SDI in math from November 16, 2022 through the end of the 2022–23 school year.

A school district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 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.

Regarding the implementation of math SDI from November 16, 2022 through the end of the 2022–23 school year, this investigation showed, in part:

- At the Parent’s request, the math goals in the October 2022 and May 2023 amended IEPs were written to align with specific curriculum topics in the Student’s general education statistics and algebraic concepts class.
- The Student first started receiving SDI in math goal 1 between mid-February 2023 and early March 2023. For example, a January 2023 progress report for math 1 read, in part, “The [general education math] class has not reached [the] unit of instruction [during which event probabilities are covered]”; the math log includes entries beginning February 13, 2023; and the March 9, 2023 meeting notes read, in part, “Currently working on [the IEP] probability goal.”
- The Student first started receiving SDI in math goal 2 in late April 2023. For example, an April 28, 2023 progress report read, in part, “Math 2...[This] unit is just beginning [in the] general education classroom.”
- Prior to mid-February 2023, while the Student was not receiving SDI on either math goal 1 or 2, the Student still received some SDI in math. For example, the Student received instruction in math during her academic skills class period, which was a special education setting, taught by the special education teacher. The teacher noted he provided SDI in math based on the Student’s general education statistics class curriculum. In part, SDI took the form of baseline assessments, pre-teaching, re-teaching, and scaffolding approaches to statistics and algebraic concepts work. Further, in an interview, the special education teacher described that he provided SDI through 1:1 or small group instruction.
- Both the October 2022 and May 2023 amended IEPs provided the Student with 80 minutes of math SDI each week, and the Student’s academic skills class met for approximately 220 minutes each week. During his interview with OSPI’s investigator, the special education teacher stated the academic skills class met four times a week for an average of 55 minutes during each meeting.
- The Student also received some portion of her math SDI from the general education math teacher. For example, during his interview with OSPI’s investigator, the special education teacher⁵ stated the math teacher was an attendee of the October 2022 IEP meeting when the math goals were created and the math teacher was instrumental in determining the content of the same, the math teacher had a copy of relevant IEPs, and the special education teacher communicated with the math teacher on a regular basis throughout the school year.

⁵ During this investigation, the District clarified that the math teacher is no longer employed by the District, and was thus unavailable for an interview with OSPI’s investigator.

- Throughout the school year, the Student made some progress on both math goal 1 and 2 specifically, and in statistics and algebraic concepts skills more generally.⁶

On the basis of the foregoing, OSPI finds the District to have materially implemented the Student's math SDI from November 16, 2022 through the end of the 2022–23 school year. OSPI does not find a violation.

Issue 2: IEP Implementation: SDI in Social Emotional – The Parent alleged the District did not follow proper procedures for implementing the Student's SDI in social emotional from the start of the 2022–23 school year through May 11, 2023.

The March 2022 amended IEP, October 2022 IEP, and May 2023 amended IEP each provided the Student with 45 minutes a week of SDI in social emotional. This investigation showed the District materially implemented this portion of the Student's IEP between the start of the 2022–23 school year and May 11, 2023. For example, in part:

- During the interview with OSPI's investigator, the special education teacher shared: (1) the special education teacher and the Student's general education teachers each worked with the Student on social emotional goals throughout the school year; and (2) interventions included, in part, analyzing a social interaction with the Student after-the-fact, to better empower the Student for future social interactions, ensuring the Student was provided opportunities to work on the skillsets identified in the various social emotional goals, providing the Student with encouragement when working on the social emotional skillsets, and providing the Student with the vocabulary and reflection and confidence skills to self-advocate in social emotional settings.
- During interviews, both the principal and the special education teacher shared the Student made significant advancements throughout the school year, on occasion, even leading an activity for a small group of her peers.
- The social emotional log noted 19 occasions between September 1 and November 9, 2022, during which the Student was provided with SDI in social emotional, and the joint log noted 16 occasions between September 1 and October 26, 2022, during which the Student was provided with SDI in social emotional.⁷
- The October 2022 IEP noted the Student had made progress on the three social emotional goals in the March 2022 amended IEP.
- The January 27, 2023 progress report noted the Student had improved from 25% (the baseline in the October 2022 IEP) to 60%.
- The March 9, 2023 meeting notes recorded the fact that a particular general education teacher collaborated with the Student in "creating opportunities for Student to have more ownership in how the [peer] groups [and interactions] may be set up."
- The April 28, 2023 progress report noted the Student had improved from 60% (the Student's performance level in the January 2023 progress reporting) to 70%.

⁶ While the Student made some progress on the linear functions math goal (increasing from approximately 0% accuracy to 48% accuracy), the IEP team decided to retain this goal in the June 2023 IEP.

⁷ OSPI notes it is possible there was some overlap in entries between the social emotional log and the joint log, given the fact each log addressed similar time periods.

The foregoing supports a finding the Student's social emotional SDI was materially implemented between the start of the 2022–23 school year and May 11, 2023. OSPI does not find a violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 28th day of August, 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.)