

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-13

PROCEDURAL HISTORY

On February 3, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Shoreline School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 5, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day.

On February 25, 2020, OSPI received a request from the District for an extension of time to respond to the complaint. OSPI granted the extension of time to March 5, 2020. OSPI asked the District to respond to the allegations made in the complaint in two parts. Part 1 would be received by February 27, 2020, and part 2 would be received by March 5, 2020.

On February 27, 2020, OSPI received the District's part 1 response to the complaint and forwarded it to the Parent on March 12, 2020.

On March 5, 2020, OSPI received the District's part 2 response to the complaint. OSPI forwarded part 2 to the Parent on March 6, 2020. The District invited the Parent to reply.

On March 12, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUE

1. Did the District implement the Student's individualized education program (IEP) regarding American Sign Language (ASL) during the 2019-2020 school year?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is enough evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

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 served through enrollment 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. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, the Student was eligible to receive special education services under the category of multiple disabilities. The District placed the Student in a preschool program at the Hearing, Speech and Deaf Center.
2. In May 2019, the Student was reevaluated by the District. The group of qualified professionals in the District and the Parent determined the Student continued to be eligibility for special education services under the category of multiple disabilities. The identified disabilities were deafness and autism. The evaluation results stated the Student had a profound bilateral hearing loss that "requires a visual, and/or manual method of communication." The Student's pre-academic and cognitive skills were significantly delayed. The Student also displayed needs in social/emotional and daily adaptive skills that required specially designed instruction. Regarding communication, the evaluation, in part, stated:
 - Although [Student] is immersed in signing environments both at school and at home, he does not use ASL [American Sign Language] nor conventional gestures (pointing, beckoning, etc.) to communicate. [Student's] school team has been encouraging him to sign and use the Picture Exchange Communication System (PECS), mostly for requesting his favorite beverage, milk. [Student] requires a great deal of prompting to use a communication symbol (either PECS or ASL sign) to request. His aide and teachers report that he occasionally produces the signs for milk and cracker.
 - [Student's] placement should be carefully considered. While he does not yet communicate expressively using ASL, it is the only language to which he has access...
 - A multi-modal approach to communication should be used, providing [Student] with opportunities to use ASL, PECS, or other augmentative/alternative communication (AAC) methods...
 - [Student's] family communicates using ASL, and they have identified ASL as [Student's] primary mode of communication. At this time, [Student] is not using conventional ASL signs or gestures to communicate. It is recommended that [Student] continues to receive support in regards to his ongoing development of ASL...Staff who are not familiar with ASL or working with children with significant hearing loss, should receive in-service and training in order to support [Student's] communication hearing needs. [Student] would also benefit from additional visual aids, ensuring that he has consistent visual access to the instructor, obtain his attention before communicating with him, to reduce visual distractions when possible/appropriate...
3. On May 20, 2019, the District held an individualized education program (IEP) meeting to develop the Student's IEP. The IEP was written for two time periods: the first time period was from May 25, 2019 to June 20, 2019, and the second time period was from June 21, 2019 to

May 19, 2020. According to the Parent, the complaint pertains to the second time period of June 21, 2019 to present.

4. The Student's May 2019 IEP stated the Student had needs related to both deafness and autism. The "Team Considerations" section, in part, documented the following statements:

- "[Student] is deaf with multiple disabilities and requires direct instruction in American Sign Language (ASL)."
- "A variety of communication modalities are used with [Student] which currently includes the Picture Exchange Communication system (PECS) and gestures in addition to ASL."
- "[Student] is a deaf student with autism spectrum disorder (ASD). He is non-verbal. [Student's] communication level in American Sign Language is at a beginning level. He has demonstrated use of signs, in particular, "milk" and "cracker." He needs continued immersive exposure to ASL as well as direct language instruction."
- "He has a 1:1 aide to provide support in the classroom. Although [Student] is immersed in signing environments both a school and at home, he does not use ASL nor conventional gestures (pointing, beckoning, etc.) to communicate."

The Student's IEP provided annual goals in the areas of communication, daily living/adaptive, social/emotional, and cognitive. The following IEP goals were directly related to ASL:

- Communication: By 5/19/2020, when given a structured activity or task and a visual [Student] will use a variety of communication methods (ASL, picture symbols) to request "more" and "all done" improving [Student's] ability to express his basic want and needs and generalize expressive communication from level 0 (does not demonstrate the skill) to significant assistance (3+ verbal prompts, partial physical prompts and/or modeling) 50% of the time, as measured by speech/language pathologist data.
- Communication: By 5/19/2020, when given an array of items up to five and a method of communication (e.g., picture symbols, ASL) [Student] will request an item using a communication method improving receptive and expressive language from using a communication system less than 5% of the time to using a communication system 60% of the time with significant assistance (3+ verbal prompts, partial physical prompt and/or modeling) as measured by SLP data.

The June 2019 to May 2020 portion of the IEP provided the following specially designed instruction and related services in the special education setting:

- Communication: 40 minutes per week (provided by a speech/language pathologist)
- Cognitive: 375 minutes per week (provided by a special education teacher)
- Social/Emotional: 375 minutes per week (provided by a special education teacher)
- Daily Living/Adaptive: 360 minutes per week (provided by special education staff)
- Communication: 430 minutes per week (provided by a special education staff)¹
- Occupational Therapy: 20 minutes per week (provided by an occupational therapist)
- Occupational Therapy: 20 minutes per month (provided by an occupational therapist)
- 1:1 Adult Support/Paraeducator: 360 minutes, 4 times per week (monitored by teacher of the deaf)
- 1:1 Adult Support/Paraeducator: 180 minutes, once per week (monitored by teacher of the deaf)

¹ The IEP stated the communication services were provided "concurrently" with other services.

- 1:1 Adult Support/Paraeducator: 1700 minutes per week (monitored by a special education teacher)
- Teacher of the deaf consultation with general education staff: 60 minutes per week (provided by the teacher of the deaf)

The IEP also provided for the following modifications/accommodations:

- Access to visual supports
- Give short, concise directions
- Manipulative materials
- Reinforcement system/schedule
- Use of American Sign Language (ASL)
- Use of study carrel/eliminate distractions

The IEP also provided the following supports for school personnel:

- In-service on Student's hearing needs
- In-service on Student's communication needs
- Teacher-of-the-Deaf consultation with classroom staff

5. The prior written notice, dated May 20, 2019, stated the District proposed the Student receive 1:1 paraeducator services in a "blended" special education classroom. The IEP team also considered placement in an ASL program in a nearby school district, but determined the Student needed a program that also developed his behavior skills. The notice stated, "He needs a 1:1 paraeducator with signing skills so that he can continue to develop his receptive and expressive language skills."

2019-2020 School Year

6. At the start of the 2019-2020 school year, the Student continued to qualify for special education under the category of multiple disability and attended a District special education kindergarten program.
7. On September 5, 2019, the District and the Parent met to discuss the Student's need for ASL and the paraeducator. The Parent expressed concern about the paraeducator's knowledge of ASL. As a result, the District agreed to assess the paraeducator on her signing skills. The notice, dated September 5, 2019, in part, stated:

Reading the IEP, [Student's] level of communication involves a picture exchange system with signing. He seemed to be making progress in this form of communication. [Student] needs consistent approach to learning with pictures and signs. He needs the pictures paired with sign. If you only show him the picture with the ASL then he does not understand and will throw the pictures. From [Parent's] perspective, [Student] does not yet have this skill and needs the signing with the pictures. Therefore, the school district will be doing a signing assessment with the one on one...

Mom says it is not right to have him here without the correct support (a one on one fluent in ASL). We agree that we need someone with [Student] who has some signing skills and someone who can work with [Student's] challenging behaviors. Finding someone who has the skillset to address both behavioral and address communication/language needs is a challenge. [Teacher of the hearing impaired] will also be working with the team to provide support in language...

[Parent] says that [Student] is a challenging child. The para cannot be learning sign while working with him. [Parent] says that she knows what [Student's] rights are and point being school is not ready for him. Therefore, [Parent] says she is going to keep [Student] at home because [Student] does not have a one to one who signs...

8. The first day of school was September 9, 2019. Despite the Parent's statement that she was going to keep the Student out of school, the Student's attendance record showed the Student attended school at the start of the 2019-2020 school year.
9. On January 21, 2020, the Parent filed this complaint.
10. On February 3, 2020, the District held an IEP meeting to "clarify long-term goals for [Student], including the role of ASL interpreter services during his school day." According to the meeting notes, the Parent wanted a 1:1 paraeducator who was fluent in ASL, knowledgeable of the deaf community and culture, had an understanding of autism, and was "familiar with people who are emerging in their knowledge of ASL." One of the District's goals was for the Student to learn ASL, but the District also had to address the Student's attention span that prevented him from being "ready to learn." The Student's signing skills continued to be at the "emerging" level. The District stated ASL alone did not facilitate the Student's learning; his instruction needed to be supplemented with PECS. The District and the Parent discussed an out-of-district placement in a deaf program, but the other district would not accept the Student until he was better able to function in the classroom.
11. The special education progress report, dated February 10, 2020, stated, in part:
 - **Communication goal** – using variety of communication methods to request "more" and "all done" – Sufficient Progress being made to achieve annual goal within duration of IEP. Comments: [Student] needs full assistance to communicate "more" and "all done" (full physical prompting, hand over hand assistance.)
 - **Communication goal**– requesting items using variety of communication methods – Sufficient Progress being made to achieve annual goal with duration of IEP. Comments: Deaf/HH [hard of hearing] services, itinerant TOD [teacher of deaf] therapy sessions –
 - [Student] is seen twice weekly in the area of receptive and expressive ASL signs. In October of 2019, [Student] was successfully using the correct ASL sign for "more" when he requested another snack such as a pretzel or fruit snack. [Student] stopped using the sign within the month.
 - The lesson involves a consistent approach focusing on joint attention. This approach is used throughout his learning activities in the classroom and with his SLP.
 - In ASL, he is instructed "Work first, then reward." (i.e., a small snack of his hourglass toy). Note: The reward is pointed or shown to [Student].
 - The signs are presented individually, then the objects/pictures signed are put together in a group of two or three. When the teacher gives the ASL sign for one of the objects/pictures, [Student] is to point to the object/picture.
 - [Student] will sit in his chair and watch the teacher for the lesson presentation. If he gets off task, the direction of "work first, the reward" are repeated. [Student] looks at the face of the speaker.
 - In these sessions, his 1:1 para is with him. She will repeat the sign when needed. These lessons are then repeated in his classroom at various times in the day.

- [Student's] receptive language skills are the focus in the above-described therapy. He is also encouraged to use the ASL signs given in the lesson and making the sign with his hands is practiced.

12. In response to the complaint, the District provided the following description, in part, explaining how ASL was used in the Student's program:

Special education teacher

- When I am teaching, I sign core words regardless of if [Student] is looking or not. All students in my classroom learn sign to help them make the connections to the learning we are doing in the classroom. I also connect picture icons with ASL. His 1:1 paraeducator signs core vocabulary and does hand over hand prompting with him.
- He is provided with ASL every time communication is involved.
- [Student] works with a 1:1 paraeducator who signs with him daily at the single word/simple sentence level. All paraeducators in the classroom are learning ASL to be able to communicate with [Student]. [Student] does not attend for long periods of time.
- ASL is being used daily in all parts of [Student's] day.

Speech/Language pathologist (SLP)

- I am teaching [Student] to make a connection between something (noun/verb) and ASL. We are using picture, providing a visual along with the sign before presenting an object.
- He is provided with ASL every time communication is involved. I work at the single word, phrase and simple sentences level.
- When [Student] is presented with ASL of more than a few words he turns away and does not focus on the ASL.

Teacher of the deaf (TOD)

- [Student's] direct instruction with the SLP and TOD is in ASL. His classroom teacher uses ASL in the content areas for vocabulary and concept development.
- Direct receptive and expressive language instruction provided by the SLP and TOD is in ASL. Eye contact is obtained in the instructional setting.
- In his receptive ASL work, names of familiar person are a target area: for [Student] to identify the photo or person given the name sign or ASL sign (e.g., Mom/photo of Mom, teacher, Dad). The ASL sign foods that [Student] chooses for lunch or snack are another noun group being addressed. [Student] is given the ASL sign and then chooses the correct food item.
- [Student] has a 1:1 para that signs the basic concepts of the lesson provided by his teacher. [Student's] para also is with him during his individual therapy with the SLP and TOD. He has an adult Para (with ASL skills) with him throughout his day. When his 1:1 para has a break, the other para does know essential ASL signs.
- ASL sign is used in his classroom by his teacher for basic concepts and directions. The 1:1 para will direct [Student] to watch and stay on task with a sign as needed while the teacher presents lesson to the class.

CONCLUSIONS

Issue 1: Implementing American Sign Language – The Parent's complaint alleged the District failed to implement the Student's individualized education program (IEP) by not providing a 1:1 paraeducator who was fluent in ASL.

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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Here, the Student's May 2019 IEP addressed the Student's multiple needs in the areas of communication and autism. Based on the evaluation and IEP, the Student's language and communication development was significantly delayed and his ability to understand ASL was only "emerging." The IEP emphasized the Student's need to learn ASL, but also emphasized using multiple teaching modalities, such as PECS and visual prompts, along with ASL itself as described in the IEP. According to the documentation, the special education teacher, speech language pathologist, teacher of the deaf, and 1:1 paraeducator all used ASL while instructing the Student.² Although the Parent wanted the 1:1 paraeducator to be fluent in ASL, the Student's IEP did not require such a level of proficiency for the Student to benefit. The documentation from the special education progress reports demonstrated the Student was making progress toward his communication goals related to ASL, thus indicating that the Student was receiving sufficient instruction and ASL communication. The documentation in this complaint indicates the Student's IEP was being implemented as written. No violation is found.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of March, 2020.

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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² It should be noted that according to the September 2019 IEP meeting notes, the District stated the 1:1 paraeducator would be given a signing assessment. No results were provided in the District's response to the complaint.

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.)