

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-71**

### **PROCEDURAL HISTORY**

On June 8, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Oroville 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 June 10, 2022, 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 June 23, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on June 27, 2022. OSPI invited the Parent to reply.

On July 29, 2022, the OSPI complaint investigator interviewed the Parent, by phone.

OSPI considered all of 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 on June 9, 2021. 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. Did the District develop appropriate annual individualized education program (IEP) goals for the Student for the 2021–2022 school year?
2. Did the District implement the special education services in conformity with the Student's IEP from August 2021 to November 2021?

### **LEGAL STANDARDS**

IEP Content – IEP Goals: An individualized education program (IEP) must contain a number of specific legal requirements, including a statement of the student's present levels of academic achievement and functional performance; measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; and the special education services, related services, and supplementary aids to be provided to the student; See 34 CFR §300.320; WAC 392-172A-03090.

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. See 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

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 develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. See 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. 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.

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**

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of specific learning disability (SLD), was in the fourth grade, and attended a District school. The Student's individualized education program (IEP), dated April 21, 2021, was in effect.
2. The April 2021 IEP included two annual goals, one goal for reading fluency and one goal for reading comprehension. The April 2021 IEP also included accommodations to allow the Student to have frequent breaks, books on tape, pre-teaching of significant vocabulary, read tests aloud, and to give the Student adequate time to respond. The April 2021 IEP included 120 minutes of weekly specially designed instruction, to be provided by a special education teacher, in a special education classroom. The Student's placement for this IEP was to be in a general education classroom for 80–100% of his time.
3. The District provided progress monitoring data for the Student's reading fluency goal. This data showed that the progress was monitored and reported four times during the 2021–2022 school year and that the "Aimswest" system, which looked at the Student's correct words per minute, was also used to monitor progress in this area.

4. The District also submitted data to verify that the Student's progress was monitored for the reading comprehension goal, throughout the school year, and that progress reports related to this goal were sent four times during the school year.
5. The District submitted a sample of five different lessons that showed that the Student had an 80% success rate or higher after completing lessons for reading comprehension. The District reported that the Student's reading comprehension was also monitored in the general education curriculum. The District reported that the Student's reading comprehension was monitored using Aimsweb data.
6. On October 26, 2021, the Student's special education teacher emailed a school staff member, and stated that she worked with the Student from 2:10–2:45 pm for spelling and reading.
7. The District sent the Parent an IEP meeting invitation, dated April 12, 2022. The purpose of the meeting was noted as discussing and reviewing the Student's IEP.
8. On April 22, 2022, according to a "Meeting Summary" document submitted by the District, the Student's annual IEP review meeting occurred. The notes showed that the Parent was in attendance at the meeting and that an IEP with the effective date of April 22, 2022 was created. The notes showed that the Parents attended the meeting, but refused to sign the IEP.
9. The April 22, 2022 IEP stated the following present level information related to the Student's reading comprehension needs, "Student is capable of participation in grade level comprehension activities with adult support. Due to his reading level being below grade level, the assignments need to be read aloud with a peer or teacher or using text to speech software. There has also been a small dip in his Aimsweb data..."

The April 2022 IEP included the following reading comprehension goal: "By 4/21/2023, given a short grade level reading passage, [Student] will be able to answer written comprehension questions with 60% accuracy over three consecutive trials." The IEP also included a goal for reading fluency, which read, "by April 21, 2023, [Student] will demonstrate reading fluency skills by reading a third-grade fluency passage at 59 words correctly per minute, over three consecutive trials."

The present levels statement also indicated that the Student was still reading at a 1<sup>st</sup> grade level, but that he was making progress in reading. The team recommended continued specially designed instruction (SDI) for reading comprehension and fluency. The April 2022 IEP noted that "It would benefit the Student's growth to change his services from the General Education classroom to a smaller group Special Education setting." The April 2022 IEP also noted the "Student needs additional one on one help after the delivery of a lesson..." These determinations were supported by recent reading assessment scores and data that were also noted in the IEP. The District reported that both of the Student's reading needs were addressed by the IEP's increase in his reading SDI time to 240 minutes weekly.

The April 22 IEP included the following accommodations: pre-teach significant vocabulary, allow for cooperative learning opportunities, post word blanks/create a spelling list around

the subject matter, regular check-ins with the Student, decrease amount (not content) of homework, books on tape, use of computers as tools, give directions orally and in writing, tests read aloud, provide a word bank, and reduce the number of choices on tests and quizzes.

The April 22 IEP provided the Student with 120 minutes of SDI for fluency and 120 minutes of SDI for reading comprehension, and that both would be provided in the special education classroom. The Student's placement was 80–100% in a general education setting for the IEP.

10. A progress report, dated May 30, 2022, stated that the "Student's IEP is newly in place. He is still anticipated to meet his goal in 5<sup>th</sup> grade." The report also noted that the Student successfully completed an animal project, and demonstrated the ability to use technology to look up and write down answers with adult assistance and to answer questions about his assigned topic.
11. The District responded that it believed that the Student's IEP goals are appropriate, because after one year's time, the Student continually increased toward his goal and showed progress. The District also reported that the Student was able to access grade level comprehension text when accommodated in a general education classroom or when working in a small group with specially designed instruction.
12. The District provided a service matrix that showed that the special education teacher provided the Student with at least 120 minutes of reading weekly during the fall of the 2021–2022 school year.
13. The Student's teachers' schedules and other District materials also reflect that the Student's IEP was implemented during appropriate reading instructional service hours. Both the special education teacher's schedule and the classroom teacher's schedule show that reading instruction was provided to the Student on Tuesday–Friday from 8:30–9 am and 2:10–2:45 pm, during the 2021–2022 school year. Additionally, the email messages from October 2021 corroborate the 2:10–2:45 service times.
14. The District also provided substitute teacher plans for the Student, to evidence that SDI in reading was provided to the Student even during his teacher's absences during the 2021–2022 school year.
15. During an interview, the Parent reported that the District kept making the Student's IEP reading goals have a 100% attainment rate, but the Parent stated these goals are too hard for the Student. The Parent stated the Student is still reading several levels below grade level, because the goals are so unattainable. The Parent reported that she wanted the success rate for the reading goals to be 30%, but that she thought that the lowest the District would go for the Student's attainment in the IEP goals was 60%.
16. The Parent also reported that she met with the superintendent in April of 2022 to share her concerns about the IEP goals, and that the superintendent cursed at her during this meeting.

17. The Parent reported in interviews with OSPI that the Student came home saying he did not go to the special education room for reading until November 2021. The Parent did not have any documents to corroborate this or to disprove the documents provided by the District.

## **CONCLUSIONS**

IEP Content – IEP Goals: The first allegation examines whether the District developed appropriate annual individualized education program (IEP) goals for the Student for the 2021–2022 school year. The Parent alleged that the goals were inappropriate because the attainment rate for the goals was too high.

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.

In this case, the Student is eligible for special education services under the eligibility category specific learning disability and his disability specifically impacted reading. His goals on both the April 2021 and April 2022 IEPs are specific to his disability related needs in reading comprehension and fluency. There is no evidence that the Student needed functional goals. The IEPs both included a statement of the goals that is comprehensive and understandable for the Student’s Parent and staff. The District also presented data to show that the Student was making progress on both goals. There is no legal requirement to have a specific attainment level or percentage for goal achievement for students with disabilities. While the Parents may not have agreed with the goals, and did not sign the IEPs, there is no evidence that the goals themselves are legally insufficient or that the Student was not making progress in the general education curriculum. Further, the District appears to have considered the Parent’s input for the goals, as the Parent stated that the District originally had the goal attainment at 100%, but the Parent wanted the goal attainment to be 30%, so ultimately, the IEP team agreed on 60% for the Student’s attainment level. Additionally, the April 2022 IEP showed that the District added new accommodations and supports to help the Student get to grade level in reading and that he is anticipated to reach grade level in fluency and comprehension next year.

Therefore, OSPI finds the Student’s IEP goals were appropriate and finds no violation.

IEP Implementation: The second allegation that was investigated is whether the District implemented the special education services in conformity with the Student’s IEP from August to November 2021. According to the Parent, the Student stated he did not receive special education services in the “special education room” until November 2021.

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. 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.

The District denied that the Student's IEP was not implemented in the fall of 2021 and the District submitted evidence of the Student receiving his special education services in the form of lesson plans, a corroborating email, and teacher service schedules for the school year. Further, the District provided progress reporting, indicating the Student was making progress on his goals, which indicates he was receiving specially designed instruction.

While the Parent provided information that she believed that her child was not making progress or getting services, during her interview with OSPI, there was no evidence that more than a minor discrepancy occurred with respect to the Student's reading services and accommodations.

Therefore, OSPI finds that the District provided sufficient documentation that the IEP was implemented and OSPI finds no violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of August, 2022

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.)