

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-04**

### **PROCEDURAL HISTORY**

On January 13, 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 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 January 13, 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 February 1, 2022, the District requested an extension of time to respond to the complaint. OSPI granted the extension to February 4, 2022 for records and February 7, 2022 for the remainder of its response, including a narrative response to the issue.

On February 3, 7, 9, and 10, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on February 8 and 14, 2022. OSPI invited the Parent to reply by February 18, 2022.

On February 14, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On February 28, 2022, OSPI received additional information from the Parent and forwarded that information to the District on the same day.

On March 1, 2022, the OSPI complaint investigator conducted an interview with the District's director of special services to confirm some dates.

On March 2, 2022, the OSPI complaint investigator conducted an interview with the science teacher.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interview.

### **ISSUE**

1. During the 2021–2022 school year, did the District materially implement those portions of the Student's individualized education program (IEP) applicable to the Student's time in the general education science class?

### **LEGAL STANDARDS**

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. 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. The initial IEP must be implemented as soon as possible after it is developed. 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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit the student to benefit from that instruction. The instruction and support services must be provided at public expense and under public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982). Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when the student receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an IEP designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080.

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress," the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

## **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 autism and received services in the areas of math,

social/emotional, and communication. The Student attended a District high school, and her November 2020 individualized education program (IEP) was in place.

2. The District's school year started on August 25, 2021.
3. The Student's November 2020 IEP noted that of her 1,850 minutes per week in school, the Student would receive 247.5 minutes per week of special education services and 86.62% of the Student's time would be in a general education setting. The IEP provided for special education services in the areas of math and social/emotional, which were to be implemented in the special education setting by a special education teacher and a paraeducator. The Student had three special education math goals: linear equations within graphing, graphs of linear equations and functions, and explaining linear equations.

The Student's IEP provided for related services for transition. The Student's transition services were to be provided by the school counselor and special education teacher. The Student had one social/emotional goal to be implemented by a special education teacher to support the Student's post-secondary goals that related to decision-making process steps and making decisions between two choices. The Student also had one related service goal for transition to support the Student's post-secondary goals, which was to research and compare "Running Start" programs at two higher education institutions.

The Student also had two goals for related services in communication that were to be implemented by a speech language pathologist assistant (SLPA). The purpose of the communication related service was to support the Student's post-secondary goals, which related to "Skill: language (executive function)." The goals were that when given direct instructions: (1) the Student will clarify directions, initiate, a plan, and state the steps needed to timely complete the task and (2) will identify tasks which are difficult for her, request assistance as needed, and create a plan to complete the tasks.

The IEP also included 13 accommodations and two modifications in general education settings. Some of these accommodations<sup>1</sup> were:

- Access to lecture notes or guided notes provided before presentation is given to allow additional information to be added by Student, daily.
- Assistance to break large assignments (multiple class period assignment) into smaller components with due dates, as needed.
- Check for understanding the concept presented on a daily and weekly basis, daily/weekly.
- Check work frequently to ensure task initiation and understanding the directions, daily.
- Full-page sheet of student-generated notes to be allowed on all tests, on all tests.
- Provide reteaching/mastery of topic when submitted assignment is below 70%, as needed.
- When pulled out for special education services or mental health services, or absences due to COVID-19, the Student will have the opportunity to verbally show mastery on assignments, after an absence.

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<sup>1</sup> OSPI notes that the accommodations listed here were the accommodations that are relevant to the concerns raised by the Parent in the complaint or to which the District's response addressed. Other accommodations, for which there were no concerns, were omitted for brevity.

- When pulled out for special education services or mental health services, or absences due to COVID-19, teachers will provide access to missed instruction on any important information missed.

The following two modifications were also listed on the IEP and were to be provided to the Student as needed:

- Grading Modifications: modified grading when necessary to reflect effort.
  - Modification: reduce/shorten assignments by 50% of grade level content, with all skills being addressed in the shortened assignment.
4. On October 5, 2021, one of the Student's general education teachers (science teacher or general education teacher) reached out to the special education teacher about the Student. The general education teacher explained that she had been struggling to connect with the Student who seemed disengaged in class, but that she had provided the Student with assignments, examples from other students, and more time. According to the science teacher, the Student said she knows what she needs to do, knows the teacher is available after school, and seems to be in a good group that seems welcoming. But the Student was not getting work turned in and was missing four assignments: measurement lab, electromagnetic spectrum lab, iodine assessment, and reflection and growth. The science teacher also told the special education teacher that she had checked in with the Student on Monday, so she knew she had the assignments. The special education teacher shared the email with the Parent and said she would work on assignments with the Student during her class that day. The Parent replied that the Student was absent that day.
  5. On October 11, 2021, the Parent raised concerns with the general education teacher about the Student only having a "41" in the science class. The Parent asked whether the Student could be graded only on the work she turned in. The Parent also asked about amending the Student's IEP.
  6. Also, on October 11, 2021, the general education teacher replied to the Parent via email that the Student could be graded based on what was turned in, which would result in an A- overall in the class so far. Additionally, the general education teacher noted that the Student's special education teacher had reported that the Student had other assignments completed, but had not turned them in, and agreed to meet to discuss this with the Student.
  7. On October 12, 2021, the Parent emailed the District's special services director (director) and special education teacher, stating she managed to get the Student's grade modified, but the Parent was concerned that the general education teacher was not providing accommodations. The Parent stated that the Student ends up doing her science work with the special education teacher in her resource classroom, and thus was not working "on [specially designed instruction]." The Parent stated, "To a point I get this as working on her goals, but...the assignments and the worksheets are pretty time consuming." The Parent noted that the Student's accommodations and modifications are working in the other classes, and she believed this was a problem with the specific teacher. The Parent suggested adding as an IEP accommodation for science, "The teacher will ask for homework on due dates."

8. On October 13, 2021, the director replied that she was out of town, but wanted to speak with the teacher on Monday, October 18, 2021, to gather background information.
9. On October 14, 2021, the special education teacher raised concerns with the general education teacher about the difficulty the Student and others with IEPs were having accessing the teacher's Google Classroom and that the Student needs paper copies of notes and materials. The general education teacher replied and explained that she had, that day, reorganized her Google Classroom to make it more user friendly. She then explained that work is organized into two folders: (1) materials, which have slides of takeaway notes from the lesson and keys to practice problems; and, (2) assignments with due dates for work to be turned in during class, including assignments if they are absent, and quizzes.
10. On October 18, 2021, the Parent emailed the director, the high school principal, the special education teacher, and the science teacher. The Parent stated that it appeared the Student was not receiving the following IEP accommodations:
  - Breaking down assignments with due dates
  - Access to lecture notes
  - Check for understanding on a daily and weekly basis
  - Full page of student generated notes allowed on tests
11. The same day, October 18, 2021, the District contacted the Student's Parent and sought consent for reevaluation. The Student's Parent provided consent on October 21, 2021.
12. Also, on October 18, 2021, the general education teacher met with the Student and the Student's sibling, who was also in the class, to discuss better ways to support them.
13. On October 19, 2021, the general education teacher replied to the Parent's email and provided information about her meeting with the Student. The general education teacher said that during the meeting, she reminded the Student that Google Classroom has materials, keys, and due dates, and that the Student could print notes in her academic skills class and bring them to science class. The general education teacher also told the Student to provide written feedback on "Feedback Friday" forms if she is not comfortable giving verbal feedback or asking questions. The Student reported to the general education teacher that group work was "fine."

The general education teacher also replied to the Parent's concerns about oral instructions, group activities, breaking down of assignments, access to lecture notes, allowing a full page of notes during tests, and reteaching of assignments. The general education teacher said about each:

- **Oral instructions:** Labs results are not explained prior to completing the lab so that students engage in scientific inquiry by making observations to discover and think about what they see. But, at the end of class, there is always class discussion of results to come up with "takeaways." The directions are always explained thoroughly while the slides with instructions are up, and the instructions are included on the lab handout, and they are often printed at lab stations.
- **Participation in group activities:** The Student is assigned to a group and group members are assigned roles as facilitators, quality control, spokesperson, and positive vibes manager. And, when absent members are an issue, students are allowed to move to other groups' tables to

complete lessons and lab work. Students are also given an opportunity on Feedback Fridays to state they would like to switch up groups.

- **Breaking down assignments with due dates:** Assignment due dates are posted in four locations: (1) on the board at the beginning of each week, (2) Google Classroom, (3) at the beginning of class daily and anything due is highlighted, and, (4) Skyward. Additionally, the teacher noted that if a due date is missed and the student receives a zero, students can still turn assignments in for review and update of their grade. The general education teacher then explained the following four recent assignments, how the assignments were taught, and how they were worked on by students: a measurement lab, electromagnetic spectrum lab, iodine assessment, and reflection and growth.
- **Access to lecture notes:** Slides are posted in Google Classroom, and the teacher often passes out abbreviated notes and practice problems. Students also have skill quizzes every Friday, are provided answer keys in class and in Google Classroom, and have three tries to pass each week. Keys to practice problems are also available in class and on Google Classroom. And the skills learned the past week/prior day is reviewed in the first 5-10 minutes of class with the teacher reviewing individual students' answers.
- **Full page of student generated notes allowed on tests:** The Student is allowed to use any and all resources she has on skills quizzes, including the notes posted in Google Classroom or her own notes.
- **Reteaching of assignments:** The class has skill quizzes and they review them and students can ask questions. Additionally, the general education teacher is available before school at 7:50 am every day except Tuesday, and after school daily until 3:30 pm.

14. On October 20, 2021, the Parent replied that her concerns were misunderstood. The Parent clarified that the Student was not understanding the classroom instruction and the Student was not being included by her peers in group activities and has difficulty in social interactions. The Parent also raised concerns that the strategies being described by the general education teacher were being applied for all students, but that they were not effective for the Student who becomes emotionally drained by group interactions. Additionally, the Parent raised concerns about the teacher's suggestion that the Student stay after school for reteaching or that work or reteaching occur in the Student's academic skills course, as that is a course designed for the Student to receive her specially designed instruction. Additionally, the Parent raised a concern that the general education teacher was not allowing the modification of a "50% reduction to assignments as needed."

15. On October 26, 2021, the director informed the Parent via email that she and the principal had observed the teacher and met with her for a follow-up interview. The director explained that the general education teacher used a lot of inquiry-based learning strategies, which involve open-ended questions. Thus, the director speculated that the questions were not concrete enough for the Student due to her autism diagnosis and may be causing distress. Additionally, it was reported that shortened assignments were not consistently being utilized. Therefore, the director coached the general education teacher on ways to do that. The director stated, "other accommodations are being used." Additionally, the teacher was asked by the director to provide the Student's special education teacher with the Student's science quizzes a week ahead of time so the Student could practice the concepts.

16. On November 3, 2021, the Parent emailed the Student's special education teacher and the school psychologist and asked that the Student be removed from her sixth period science class and that her school day end after fifth period.
17. On November 4, 2021, the Parent emailed the District, stating that she had removed the Student from the science class "to prevent further distress."
18. The Student was disenrolled from the physical science class on November 9, 2021, and she transferred into an earth, space science class. At the time of her transfer, the Student had a C+ in physical science.
19. On November 10, 2021, the District completed a reevaluation for the Student. The reevaluation addressed the following areas: review of existing data, general education, academic, social/emotional, cognitive, communication, and age-appropriate transition assessment.
20. On November 29, 2021, the Student's IEP team—including the Student, the Parents, a District representative, an SLP, a special education teacher, five general education teachers, and District staff person interpreting the Student's three-year reevaluation—met to review the reevaluation and update the IEP. It was determined that the Student continued to be eligible and in need of special education services under the category of Autism. Special education services would be provided for learning strategies, transition, social/emotional/behavior, and math. The IEP team determined that the Student would receive also related services for speech/language consultation and transition.
21. The Student's IEP team met again on December 20, 2021, to finalize the IEP. The IEP included one new math goal and one new transition goal. The IEP also included two new learning strategies goals and two new social/emotional/behavioral goals to support the Student's post-secondary goals. The new learning strategies goals were to occur in a special education setting with instruction provided by a special education teacher, and the goals were to improve self-advocacy: (1) by requesting accommodations/modifications from teachers; and, (2) emailing teachers about missing and late assignments to request accommodations. The Student's two social/emotional/behavioral goals were also to be provided in a special education setting by a special education teacher to support the Student's post-secondary goals, and included (1) identifying three staff members and contact one of them when there were challenging, uncomfortable, frustrating, or distressing events, tasks or circumstances that cause anxiety, and (2) when in social situations with a peer that are uncomfortable, the Student will work with staff to identify how to establish and communicate appropriate social boundaries to improve interpersonal and social skills. The new IEP also included 16 accommodations, many of which were carried over from the prior IEP, and the same two modifications as in the prior IEP.
22. It is the District's position that it implemented the Student's IEP accommodations in the general education science class. The District's response noted, "Accommodations are an access point for students to participate in general education classes, not a guarantee of a passing grade." And the District noted, "The Student was making adequate progress."

23. The District also provided a written response from the general education teacher that identified how each of the Student's accommodations and modifications were implemented during her lessons and class. Additionally, the general education teacher explained this during her interview with OSPI.

24. In the reply to the District's response, the Parent raised the following concerns:

- The modification of "reduce/shorten assignments by 50% of grade level content, with all skills being addressed in the shortened assignment" had not been consistently applied.
- Prior to October 14, 2021, the science teacher's Google Classroom had notes labeled inconsistently and the Student and special education teacher were unable to find the notes and they were therefore inaccessible to the Student. Additionally, the Student does not do well with Google Classroom and needs paper copies or additional support to access Google Classroom.
- The general education teacher should have documented reteaching material in assignments if the Student had 41% in the class, because the Student's IEP states that reteaching will occur when the Student has a baseline below 70%.

The Parent also questioned whether things were sufficiently broken down for the Student and whether modifications were made to labs and classroom assignments.

25. In the interview with the science teacher, the teacher explained that, per the Student's IEP, she was to provide reteaching when a submitted assignment was below 70%, but the Student's grade had been low (at 41%) because she had not submitted several assignments. But the Student was graded based on what was turned in and initially received an A- in the class. The Student later turned in missing assignments and those were accepted and graded. The general education teacher also explained:

- All students regularly use Google Classroom and had been doing so for over a year, and at the start of the 2021–2022 school year, the general education teacher went over with students in her class where to find things in her Google Classroom.
- Lecture notes, materials, and slides with due dates were placed in Google Classroom before the Student's class each day with naming conventions that are aligned with other teachers in the District, and show up with the most recent files first.
- On October 14, 2021, the general education teacher did not rename documents but just moved things from one section titled unit topics into folders for each week.
- The general education teacher checked in with the Student daily about the course and the check-ins were not limited to yes or no questions, but also included explanations and scaffolded instruction.
- The general education teacher met with the Student outside of class once and checked in with the special education teacher about the Student and her course work and progress.
- There were several methods by which the Student could raise concerns if she did not understand or had difficulty locating things in Google Classrooms.
- The Student did not request any shortened assignments or other modifications, which were to be applied "as needed."

## CONCLUSIONS

**Issue: Individualized Education Program (IEP) Implementation** – The Parent alleged the District failed to implement the Student's IEP with respect to the Student's accommodations and modifications between August 25 and November 8, 2021, in a general education science class.



A 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 disabled child and those required by the IEP.

Here, the Student's IEP called for several accommodations and two modifications in the general education science class. The District provided credible information that those accommodations and modifications were materially provided to the Student in her general education science class.

August 25 to October 11, 2021: On October 5, 2021, the general education teacher reached out to the special education teacher about the Student. The general education teacher explained that she has been struggling to connect with the Student who seemed disengaged in class. The teacher noted the Student had been provided with assignments, examples from other students, and more time. But the Student was not turning in work and was missing four assignments. The general education teacher had checked in with the Student on Monday, October 4, 2021, so the Student was aware of the assignments. The special education teacher then shared the email with the Parent and said she would work on assignments with the Student, but the Parent replied that the Student was absent that day.

Later, on October 11, the teacher agreed to only grade the work the Student had submitted. Although the Student had not completed the four assignments, the Student was not penalized and was graded only on work submitted, which resulted in an A- grade.

October 11 to November 4, 2021: On October 14, 2021, when the special education teacher raised concerns with the general education teacher about the difficulty the Student and others were having accessing the Google Classroom, the general education teacher reorganized her Google Classroom to make it more user friendly. The teacher organized documents into two folders: (1) materials, which have slides of takeaway notes from the lesson and keys to practice problems, and, (2) assignments with due dates for work to be turned in during class, including assignments if they are absent, and quizzes.

On October 18, 2021, the Parent emailed the director, the high school principal, the special education teacher, and the general education teacher with concerns that the Student was not receiving IEP accommodations related to breaking down assignments with due dates, access to lecture notes, check for understanding, and Student notes on tests. The same day, the general education teacher met with the Student to discuss better ways to support the Student. On October 19, 2021, the general education teacher addressed the Parent's concerns via email. The general education teacher also clarified that the Student was permitted to turn in completed work after due dates without penalty, as long as the work gets turned in before the end of the semester.

On October 20, 2021, the Parent replied that her concerns were misunderstood and raised additional concerns about group activities and interactions. The Parent also raised a concern that the general education teacher was not allowing the modification of a "50% reduction to assignments as needed."

After the Parent expressed concern, the director and the principal observed and met with the general education teacher for follow up on October 26, 2021. The director reported that shortened assignments, which were to be provided "as needed," were not consistently being utilized. Therefore, the director provided the general education teacher with coaching and information about ways to do that. The director stated, "other accommodations are being used." Additionally, the teacher was asked by the director to provide the Student's special education teacher with the Student's science quizzes a week ahead of time so the Student could practice the concepts.

Ultimately, in early November 2021, the Parent asked that the Student be removed from the science class and on November 9, 2021, the Student was withdrawn from the science teacher's science class and enrolled in a different science class.

Special education case law provides that if a 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. There is no indication that the Student's IEP was not implemented during the first two and a half months of school. While there were some concerns emerging about the Student's participation, this does not necessarily mean the IEP was not being implemented. Here, the information provided in the complaint indicates that the Student's accommodations and modifications were materially implemented, and that the District was responsive when the Parent raised concerns. A material failure occurs when there is more than a minor discrepancy between the services provided and those required by the IEP. Between August 25 and November 9, 2021 of the 2021–2022 school year, even if the IEP was not implemented perfectly, there is no indication of a material failure. OSPI finds no violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

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

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.)