

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-23

PROCEDURAL HISTORY

On March 2 and 3, 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 Renton School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or regulation implementing the IDEA, regarding the Student's education.

On March 4, 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 March 21, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On March 25, 2022, the complaint investigator interviewed the District's assessment coordinator.

On March 25, 2022, the complaint investigator interviewed the Parent.

On March 28, 2022, the complaint investigator interviewed the high school principal.

On April 1, 2022, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on the same day. OSPI forwarded the information to the District on April 4, 2022.

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

ISSUES

1. Did the District implement the Student's individualized education program (IEP) regarding participation in district and state-wide testing during the 2021–2022 school year?
2. Did the District implement the Student's IEP regarding reporting progress towards the annual goals during the 2021–2022 school year?

LEGAL STANDARDS

Statewide and Districtwide Assessments: An individualized education program (IEP) must a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student on state and district-wide assessments. If the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why the student cannot participate in the regular assessment; and the particular alternate assessment selected is appropriate for the student. WAC 392-172A-03090(1)(f).

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

FINDINGS OF FACT

2020–2021 School Year

1. During the 2020–2021 school year, the Student was a fifth grader who attended a District elementary school and was eligible for special education services under the category of other health impairment.
2. On April 1, 2021, the Student's individualized education program (IEP) team conducted an annual review of the Student's IEP. The Student's IEP provided annual goals in the areas of reading, written language, math, communication, and fine motor. Progress towards the goals would be reported each trimester. The IEP also provided 13 accommodations that included extended time to complete assignments, graphic organizers, and an individual health plan. The IEP showed the Student would participate in the Smarter Balanced Assessment (SBA) in English language arts and math. The IEP also showed participation in the i-Ready assessment. Both assessments were listed as "Current Grade Tests" and "Next Grade Tests."

The IEP included the following special education services:

- Fine Motor: 30 minutes, one time weekly (provided by an occupational therapist)
 - Reading: 29 minutes, 5 times one weekly (provided by a special education teacher)
 - Written Language: 30 minutes, 5 times weekly (provided by a special education teacher)
 - Math: 59 minutes, 5 times weekly (provided by a special education teacher)
 - Communication: 15 minutes, 2 times weekly (provided by a speech/language pathologist)
3. On June 18, 2021, the Student's IEP team met to primarily add testing accommodations for the SBA and i-Ready assessment to the Student's April 2021 IEP. The added accommodations included a separate setting, text-to-speech, and multiplication table.
 4. Also, on June 18, 2021, the Student's progress towards the annual goals was reported as follows:
 - Communication – sufficient progress to achieve goal
 - Reading – sufficient progress to achieve goal
 - Written language (content and organization) – sufficient progress to achieve goal
 - Written language (conventions) – sufficient progress to achieve goal

- Math (fractions) – sufficient progress to achieve goal
- Math (division) – sufficient progress to achieve goal
- Math (word problems) – sufficient progress to achieve goal
- Fine motor (writing) – Emerging skill demonstrated but may not achieve goal

2021–2022 School Year

- At the beginning of the 2021–2022 school year, the Student was enrolled in a virtual school in the District. The Student continued to be eligible for special education services under the category of other health impairment. The Student’s April 2021 (amended in June 2021) IEP was in place.
- On September 1, 2021, the 2021–2022 school year began in the District.
- According to the “2021–2022 Middle School Assessment Calendar,” the schedule for statewide and Districtwide assessments was, in relevant part, as follows:
 - Trimester 1: September 1, 2021, to December 2, 2021
 - i-Ready – Literacy and Math – Administered September 7, 2021 to October 1, 2021
 - SBA – English language arts and math (previous grade level) – Administered October 4, 2021 to November 4, 2021
 - Trimester 2: December 2, 2021, to March 13, 2022
 - i-Ready – Literacy and Math – Administered January 10, 2022 to January 28, 2022
 - Trimester 3: March 22, 2022, to June 20, 2022
 - SBA – English language arts and math (current year grade level) – Administered April 18, 2022, to May 27, 2022
 - i-Ready – Literacy and math – Administered May 23, 2022, to June 10, 2022
- According to the District’s response, from September 2021 through January 2022, the District had difficulty finding a special education teacher for the Student’s program, which resulted in no specially designed instruction being provided to the Student in the areas of reading, written language, and math. In addition, no progress reports were provided in these areas for the first trimester. But the District stated the Student received communication and fine motor services and progress reports were completed in those areas during this period.
- Sometime during September or October 2021, the high school assistant principal sent an email to “Students, Parents and Guardians” in the District, stating the SBA would be administered on October 27, 2021. The email also stated: “If you/your student would like to participate in this opportunity, you/your student MUST sign up by October 13, 2021 by filling out the following form...”
- According to the Parent, and later confirmed by the high school principal, the email was sent to the Student and not the Parent. Thus, the Parent was unaware of the process and timeline to have the Student participate in the SBA, which led to the Student not taking the assessment.
- On December 3, 2021, the Student’s special education progress report stated the following:
 - Communication – sufficient progress to achieve the goal
 - Fine motor (writing) – sufficient progress to achieve the goal

12. From December 20 through December 31, 2021, the District was on winter break.
13. In an interview with the Parent, the Parent stated that he received no progress reports in any of the areas of special education services, including communication and fine motor.

In the District's response, the District stated it believed the communication and fine motor progress reports were sent to the Parent, but the District was unable to verify that progress reports in communication and fine motor were sent to the Parent.

14. In the District's response, the District stated that special education services in the areas of reading, written expression, and math were not provided to the Student from September 2021 to January 2022. The District proposed compensatory education as a remedy for both the failure to provide the services and the progress reports not being provided to the Parent. The District calculated the Student missed 160 hours of instruction. As a remedy, the District proposed that 80 hours of compensatory education be provided to the Student.

In an interview with the Parent, the Parent expressed concern that the District's response addressed the implementation of services that did not pertain to the Parent's complaint. The Parent requested OSPI to limit its investigation to the two issues identified in the complaint and not investigate IEP implementation with respect to specially designed instruction and related services.

15. On February 2, 2022, the Parent emailed the District's superintendent, stating the Student did not participate in the SBA and i-Ready assessments according to the middle school's schedule, among other issues.
16. On February 15, 2022, the District's deputy superintendent emailed the Parent and stated, in part:

The Middle School Assessment Calendar has students participating in 2 academic assessments and a school climate survey during 1st trimester:¹

- i-Ready assessment – this is an assessment given to in-person learning students only. This is a formative assessment, and the results are used to determine next steps in instruction in the classroom. Because...[Student is] in the ALE (alternative learning program) program, this assessment is not used.
- Fall SBA – this assessment was given to students who were in-person. Additionally, students who were in the ALE program were offered to come in-person to take the SBA. After reviewing what communication was sent, it appears that an email (SBA Parent Email) was sent to [sibling] and [Student] through School Messenger on September 30, 2021.
- For 3rd Trimester, you (and other families in the Virtual Program) will be sent a letter letting you know when the Spring SBA assessment will be held. The letter will also include dates/times for the in-person assessment. Families will be given an option to take the SBA at [high school] or at the [education center].

¹ The school climate survey was not identified in the Student's June 2021 IEP.

17. On March 2 and 3, 2022, the Parent filed this complaint with OSPI.
18. On March 10, 2022, the Student's progress report stated the Student mastered the communication goal. There were no progress entries for the Student's other goal areas.
19. On March 25, 2022, OSPI interviewed the District's assessment director. The assessment director confirmed the Student did not take the fall SBA or the i-Ready assessment. The assessment director stated the i-Ready can be administered remotely provided a student is under the direction of the teacher and more importantly, the assessment is taken during the school day. Most of the assessment coordination came from the high school, which was where the virtual program was located rather than the middle school. The director noted this caused some confusion regarding the schedule, but stated the middle school assessment schedule should have been the schedule the Student followed. The schedule says the SBA can take place in Fall 2021 and Spring 2022.
20. On March 30, 2022, the complaint investigator interviewed the high school principal that oversaw state and Districtwide testing for the high school and virtual program. The principal confirmed that the emails were sent to the Student regarding the administration of the SBA rather than to the Parent. Regarding the i-Ready assessment, the administration of the assessment is different from the SBA, which is set at a particular time and administered as a group. The i-Ready assessment is an individual classroom-based assessment administered by the classroom teacher and can be administered at any time. According to the principal, it was the responsibility of the special education department to ensure the Student received the assessment.

CONCLUSIONS

Issue One: Statewide and Districtwide Testing – The complaint alleged the District failed to implement the Student's individualized education program (IEP) regarding participation in statewide and Districtwide testing during the 2021–2022 school year. A district is required to ensure a student with an IEP participates in statewide and districtwide testing, including identifying and providing needed accommodations.

Here, beginning in the 2021–2022 school year, the Student attended a virtual program in the District. The Student's June 2021 IEP called for participation in the i-Ready assessment and the Smarter Balanced Assessment (SBA) with accommodations. The SBA would be administered in the areas of English language arts and math (at the previous grade level) in October 2021. The District acknowledged it sent out the notice to sign up for taking the SBA to the Student but not the Parent. This miscommunication resulted in the Student not taking the SBA as required in the Student's IEP.

The middle school assessment calendar showed the i-Ready assessment would be administered in the areas of literacy and math in September 2021 and January 2022. When the Parent notified the District that the Student was not administered the i-Ready assessment, the assistant superintendent informed the Parent that the assessment was not used in alternative learning

environments (which included the virtual program the Student attended), although there was no explanation why it was not administered in alternative learning environments. Contrary to the assistant superintendent's statements to the Parent, in the course of the investigation, the District's assessment director did not refer to any District policy. The assessment director stated the i-Ready assessment could be administered remotely if it was supervised by a teacher and given during the school day. In addition, the principal concurred that the i-Ready assessment could be administered remotely and stated it was the responsibility of the special education office to ensure it was administered to the Student. Given that there was no special education teacher in the program from September 2021 through January 2022, it is likely the teacher's absence caused the failure to have the Student participate in the i-Ready assessment, along with confusion over the using the i-Ready assessment for remote students.

Overall, based on the District's failure to afford the Student a chance to participate in the assessments that were noted in his IEP, a violation is found. The District is required to develop procedures approved by OSPI that ensure students with IEPs have the opportunity to participate in statewide and Districtwide assessments, including those enrolled in virtual programs.

Issue Two: Progress Reports – The complaint alleged the District failed to provide the Parent with special education progress reports during the 2021–2022 school year. A district is required to provide reports of the student's progress towards their annual goals at the frequency delineated in the IEP to ensure parents have sufficient information to allow them to meaningfully participate in decisions about their child's education.

Here, the Student's June 2021 IEP provided annual goals in the areas of reading, math, written language, communication, and fine motor. The IEP stated progress towards the goals would be provided each District trimester. The District acknowledged that progress reports in the areas of reading, math, and written expression were not provided to the Parent during the first trimester, which ended on December 2, 2021. No progress reports were provided because there was no special education teacher in the virtual program from September 2021 through January 2022. (The logical inference is also that no progress monitoring of the Student was conducted given that the District acknowledged specially designed instruction was not provided.) The District stated it provided the Parent with progress reports in the areas of communication and fine motor. However, the Parent stated he did not receive the communication and fine motor progress reports during the first trimester. When asked if the District could provide documentation the reports were sent, the District could not find any verification, such as email or notation on a document that the District sent the reports or the Parent received them. OSPI finds a violation as no progress reporting was provided to the Parent.

As a remedy for the failure to provide services and progress reports, the District offered 80 hours of compensatory education for the Student. Although the implementation of the IEP was not an issue brought up in the complaint, OSPI would have addressed the violation *sua sponte*. However, the Parent requested OSPI not address the implementation violation and the District has offered compensatory education services as a remedy. In response to the Parent's request, OSPI will not address the implementation violation or the District's proposed remedy of compensatory education. To address the failure to provide progress reporting, the District is required to collect

current data and provide the Parent with an up-to-date progress report, and have an IEP meeting to discuss progress and its implications for the Student's program. OSPI expects the Parent and the District to continue discussions about how to address the services that were not provided to the Parent.

CORRECTIVE ACTIONS

By or before **May 13, 2022** and **May 20, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **May 6, 2022**, the District is required to provide the Parent with an updated progress report based on current data that is collected and convene the IEP team to discuss the implications of progress for the Student's program.

By **May 13, 2022**, the District is required to provide OSPI with a copy of the progress report, the invitation to the meeting, the IEP, and prior written notice.

DISTRICT SPECIFIC:

By **May 13, 2022**, the District is required to submit a proposed procedure to ensure that students with disabilities, including those in virtual and hybrid programs, participate in statewide and Districtwide assessments according to their IEPs. OSPI must approve the procedure. Upon approval, the District will disseminate the procedure to all District general education administrators and special education administrators, including case managers.

By **May 20, 2022**, the District will verify OSPI that all administrators and case managers received the procedure.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of April, 2022

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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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.)