

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-27

PROCEDURAL HISTORY

On February 18, 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 Renton School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regards to the Student's education.

On February 24, 2020, 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 by March 17, 2020.

On March 13, 2020, OSPI received a request from the District for an extension of time to respond to the complaint. OSPI approved the extension of time to March 20, 2020.

On March 20, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on March 23, 2020. OSPI invited the Parent to reply. The Parent did not reply.

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

ISSUES

1. Did the District address the need for a paraeducator in the Student's individualized education program (IEP) at the November 7, 2019 IEP meeting?
2. Did the District provide the Parent with special education progress reports during the 2019-2020 school year?
3. Did the District address the Student's need for assistive technology in his IEP 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 was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

IEP Must State Amount of Services: An individualized education program (IEP) must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

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).

Consideration of Special Factors: In developing, reviewing and revising each student's IEP, the team must consider whether the student needs assistive technology devices and services. 34 CFR §300.324; WAC 392-172A-03110(2).

FINDINGS OF FACT

August 2019

1. In August 2019, the Student was about to start eleventh grade in the District and was eligible for special education services under the category autism.
2. The District's response to the complaint included a "Progress Report (Amendment)", dated August 23, 2019. The report listed the Student's goals and stated progress would be reported by a "written progress report" at each District trimester. The report did not include any information about the actual progress on specific goals.
3. On August 23, 2019, the District held an individualized education program (IEP) meeting for the Student. Under "Team Considerations," the IEP stated, in relevant part:
Assistive technology: "The IEP team will determine assistive technology needs upon attendance/performance within his appropriate Special Education placement with [District]. It is noted that [Student] has historically had access to assistive technology program (word processing, speech-to-text, laptop, etc.) – this need will be addressed in the future IEP meeting when the discussion of appropriate accommodations are taken into further account."

Behavior impeding learning: "There are no known behavior concerns that impede [Student's] learning, or the learning of others, at this time. His behavior will be addressed on an ongoing basis as part of the IEP process."

The Student's IEP included annual goals in the areas of reading, writing, math, and social/emotional. The IEP goals were as follows:

Math

- By 06/03/2020, when given a problem at his instructional grade level involving more than one step [Student] will correctly solve the problem improving mathematical calculation and problem-solving strategies from 0 out of 10 opportunities to 5 out of 10 opportunities over

more than one collection date as measured by formal and informal classroom-based assessment(s).

- By 06/03/2020, when given a problem containing rational numbers (fractions or decimals) [Student] will correctly perform the appropriate operation improving multiplication, division, addition, and subtraction skills from 2 out of 10 opportunities to 8 out of 10 opportunities as measured by formal and informal classroom assessment(s) on more than one data collection date.

Written Language

- By 06/03/2020, when given a writing prompt [Student] will write or type an average of 5 on-topic sentences using correct subject/verb agreement improving writing skills and grammar from 2 out of 5 opportunities (sentences) to 4 out of 5 opportunities (sentences) on more than one collection date as measured by formal and informal classroom assessment(s).

Reading

- By 06/03/2020, when given a reading text at his instructional level (5th grade) [Student] will correctly answer open-ended, literal comprehension questions (presented verbally or in written form) improving reading comprehension skills from 5 out of 10 opportunities to 9 out of 10 opportunities on more than one collection date as measured by formal and informal classroom assessment(s).

Social/Emotional

- By 06/03/2020, when given frustrating situations (e.g. noisy classroom(s), distracting peers, difficulty with task(s)) [Student] will communicate his needs/wants in an appropriate way (e.g. 'I need to take a break', or, 'I need help with _____, could you help me?') improving ability to self-advocate and communicate appropriately in more than one context from 30% of the time to 70% of the time on more than one data collection date as measured by formal and informal classroom observation(s).

The IEP stated progress was to be reported by a written progress report each District trimester.

The IEP provided the following specially designed instruction in a special education setting:

- Reading: 70 minutes, 5 times per week (provided by a special education teacher)
- Written Language: 70 minutes, 5 times per week (provided by a special education teacher)
- Math: 70 minutes, 5 times per week (provided by a special education teacher)
- Social/Emotional: 70 minutes, 5 times per week (provided by a special education teacher)

The Student's IEP provided for fifteen accommodations, including speech-to-text software, text-to-speech software, and spelling and grammar devices on an "as appropriate and needed" basis.

The IEP stated the Student's placement was in a public/private separate day school.

4. The prior written notice, dated the same day, stated the IEP team agreed to pursue placing the Student in separate day school.

2019-2020 School Year

5. At the start of the 2019-2020 school year, the Student was an eleventh grader and continued to be eligible to receive special education services under the category of autism.

6. On August 28, 2019, the 2019-2020 school year began in the District.
7. On September 27, 2019, the District conducted an IEP meeting to review the Student's IEP. The IEP service matrix was amended as follows:
 - Reading: 90 minutes, 4 times per week (provided by a special education teacher)
 - Written Language: 90 minutes, 4 times per week (provided by a special education teacher)
 - Math: 90 minutes, 4 times per week (provided by a special education teacher)
 - Social/Emotional: 120 minutes, 4 times per week (provided by a special education teacher)
8. The prior written notice documenting the meeting stated the Student would be placed at a private day school on a thirty-day trial beginning September 30, 2019. The notice stated:

This placement will consist of the following elements:

 1. A modified schedule to support reentry to school to be 4 full days (8:30-4:30) with no school on Wednesday
 2. [District] will provide to and from transportation daily
 3. [Student] will continue to use [District] provided laptop as defined in the accommodations
 4. [Day school] will administer QRI [Quality Reading Inventory-5] to determine beginning instructional levels
 5. If data supports and [Student] is willing team may reconsider 5 full day attendance prior to end of trial placement
 6. IEP will be amended to reflect partial schedule minutes, special education LRE [least restrictive environment], special education transportation, and service dates of trial placement

A draft was sent to Parent and return with her notations. The changes she requested were to correct dates and spelling, which were changed. She also requested that language regarding the 30-day trial be removed. This was not removed as the 30-day trial placement was agreed upon at the meeting.

9. On September 30, 2019, the Student began attending the private day school.
10. In October 2019, the private day school evaluated the Student to determine the Student's instructional level. The results were as follows:
 - QRI-5: Reading comprehension at the sixth-grade level
 - Writing Sample: Strong phonetic spelling skills and demonstrated knowledge of sentence structure but not consistent with usage and mechanics of writing
11. On November 7, 2019, the IEP team met to review the Student's IEP and his progress. According to the prior written notice, dated November 7, 2019, the following proposals and refusals were discussed, in relevant part:
 - "Assistive technology – [District] computer left home/[day school] to provide any onsite tech needs. Technology presents compliance struggles with academic task presented and appropriateness of content."
 - "[Day school] will pursue securing of BCBA [board certified behavior analyst] to support conversation on 11/26 for services needed upon attendance and para data. Staffing not currently available. If BCBA is applied goals and function will be defined with IEP."

- "Addition of 1:1 (11/8/19) support throughout the day. Function would be direct behavioral redirection, academic support and content access, direct opportunities for behavioral instruction."
- "Parent given [day school] informal assessment data of Diagnostic reporting."

The District stated the IEP team provided the Parent with the results of the October 2019 QRI-5 assessment and classroom based-assessments as of the date of November 7, 2019 meeting. (See Appendix A). This information constituted the written progress report for the first trimester grading period, according to the District.

The District also provided a copy of a later email (dated March 17, 2020) from the director/principal of the day school to the District director of compliance that enclosed "progress reports", dated November 7, 2019, for the first quarter at the day school.¹ The email stated, "These reports were given to the IEP team and used to amend his IEP in providing planning for his individualized instruction..."

12. On November 8, 2019, according to the District, the Student began receiving support from a one-to-one paraeducator, but this support was not recorded in the IEP. The District explained:

At the November 7, 2019 IEP meeting, the team determined, inter alia, that the Student required 1:1 support from a paraeducator and agreed this service would be provided throughout the school day, beginning November 8, 2019. This added service was also reflected in the PWN [prior written notice] following a November 26, 2019 IEP meeting. The Student has been provided with 1:1 support since November 8, 2019.

Upon review of the Student's special education records in responding to the Complaint, the District learned that the 1:1 paraeducator support is not reflected in the printed/electronic copies of the November IEP's service matrix. However, it does appear in the service matrix in IEP Online...The District does not know what causes this discrepancy and only became aware of it as part of this review process. As of January 28, 2020, the Student's IEP (printed/electronic copies and as viewed in IEP Online) correctly reflected the 1:1 services that the Student had been receiving since November 8, 2019.

13. On November 19, 2019, the director/principal of the day school emailed the District secondary director of special education with concerns about the Student's use of the computer. The email stated:

...Today, [Student] returned to school with his computer. At our last meeting we agreed [Student] would leave his computer at home and when needed he would check one out from [special education teacher]. We agreed that he would have access to the computer as needed. It is his preferred choice and this inhibits his ability to do academics. [Special education teacher] gave him 5 prompts and a visual schedule to start the day. His response was work refusal. He also refused to close his computer. We have observed the minute we can get off the computer is when he will engage in academic work. When [special education teacher] took the computer, [Student] charged at her swinging with a closed fist, threatened to bite her face off, rip her arm off, and physically attempted to bite her in her face. Verbal aggression was also observed...

¹ The day school had quarterly grading periods and the District graded on a trimester basis.

14. The Parent's complaint alleged the District and the day school did not permit the Student to use assistive technology – the computer – at school. According to the District's response to the complaint, the Student had problems using the District's computer during the first month at the day school. The Student used the computer for "inappropriate purposes" and refused to relinquish the computer when day school staff attempted to intervene, saying that it was his computer. The District stated that the IEP team agreed the Student would use the District computer at home and day school would provide a computer at school "as his educational team deemed appropriate."
15. On November 26, 2019, the IEP team met again to review monthly programming and the Student's IEP. According to the prior written notice, the Student's service matrix was amended to reflect the Student's early dismissal from school on Fridays. The notice included the following agreements, in relevant part:
 - Computer will be left at home. [District secondary special education director] brought a computer from [District] that will stay here. [District] will provide an additional computer to be kept at school. [Day school special education teacher] will use the computer as a preferred choice. We are seeing great results in not using the computer for academics...
 - [One-to-one paraeducator] is the 1:1 for [Student] and will collect [Student's] class items from [day school special education teacher's] classroom. A new 1:1 will need to be hired in January as [one-to-one paraeducator] is moving to East coast.
 - BCBA would help with maladaptive behaviors such as pulling his hair when asked to do a nonpreferred choice.
16. On November 27, 2019, the first trimester grading period in the District ended.
17. On December 4, 2019, the Parent emailed the day school director/principal, asking if the District had provided the day school with an updated copy of the Student's IEP. On December 6, 2019, the director/principal replied to the Parent, stating, "I will check with [District secondary special education director] to see if [Student's] IEP has been locked."
18. On December 4, 2019, January 3, and 6, 2020, the Parent emailed the District secondary special education director, requesting the paraeducator support to be added to the Student's IEP as agreed at the November 7 and 26, 2019 IEP meetings. On January 3, 2020, the District secondary special education director replied, "...Yes, and the minutes and service matrix of his IEP will need to be adjusted again."
19. On January 28, 2020, the IEP team reconvened to review monthly programming and the Student's IEP. The service matrix was changed to 84 minutes, 5 times per week for each area of service in light of the Student attending school four and a half days a week. In addition, the following supplemental aids and services were added to the IEP service matrix:
 - 1:1 Aide: 1,440 minutes, 4 times per week (provided by a behavior specialist)
 - Other: 4 hours, 1 time per week (provided by a BCBA)

The prior written notice, dated January 29, 2020, stated the following:

Proposals

- Document school attendance of 54.5 hours weekly

- Addition of BCBA support
- Updated assistive technology supports

Reasons

- “[Student] has been attending 4.5 days since 1/6/2020, this is inclusive of a 9-1 schedule on Fridays. After a review of programming data, it has been determined that BCBA supports are needed to increase compliance to adult direction, work completion, and appropriate peer interactions. The impact of access to technology continues to be a compliance barrier, to support this access [District] has provided two laptops. This will school staff control of technology during the school day and [Student] access to technology to support educational services outside of the school day.”

Other Factors

- The BCBA will remain in place for the remainder of the 2019-2020 school year based upon both daily data collection and school attendance at the current 4.5 days.

20. On February 18, 2020, OSPI received the Parent’s complaint.

21. On March 13, 2020, the second trimester ended in the District.

CONCLUSIONS

Issue 1: Consideration of a One-to-One Paraeducator – The complaint alleged the Student’s individualized education program (IEP) did not include the services of a paraeducator after it was agreed upon at the November IEP meeting. A district is required to document the special education and related services that a student needs to receive a free appropriate public education (FAPE) on the IEP.

Here, the IEP team agreed to provide the services of a paraeducator—and began providing paraeducator support—to the Student at the November 2019 IEP meeting, but the services were not documented in the Student’s IEP. According to the District, a technical problem with the IEP software program that was discovered during its review of this complaint caused the Parent’s copy of the IEP not to include the services, although the District online version did. The November 2019 prior written notice from this meeting also documented the agreement to provide paraeducator services. In January 2020, the Parent received a corrected copy of the IEP that included the paraeducator services. There was no dispute whether the IEP team agreed to the paraeducator services or whether the services were provided. The Parent’s sole concern was the Student’s IEP reflecting the paraeducator services. The Student’s November IEP should have documented the paraeducator services, but because both the District and Parent were aware of the agreement to provide the services, the prior written notice documented the agreement, the services were provided, the error was an inadvertent technological mistake, and the Parent received a corrected copy of the Student’s IEP in January 2020, no violation is found.

Issue 2: Progress Reports – The Parent’s complaint alleged the District did not provide any written progress reports during the 2019-2020 school year. A district must ensure that the IEP includes a statement of how progress will be measured and when the district will provide periodic progress reports to the parents, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards.

Here, the Student's August 2019 IEP provided for annual goals in the areas of reading, math, written language, and social/emotional. The reading and written language goals were to be measured by formal and informal classroom assessment(s). The measurement of math progress included formal and informal classroom assessments "on more than one data collection date." The social/emotional goal were to be measured "on more than one data collection date as measured by formal and informal classroom observations." Progress on all the goals were to be reported by "written progress report" and on a trimester basis.²

According to the District, the District provided the Parent with a written progress report that consisted of the results from the October 2019 QRI-5 and classroom assessments at the November 2019 IEP meeting. The QRI-5 and classroom assessments addressed reading, math, and written language; neither addressed progress toward the Student's social/emotional goal. Each classroom assessment reported a single data point (November 7, 2019), which was inconsistent with the IEP, which stated the progress reporting would measure "on more than one data collection date." Although the QRI-5 and classroom assessments provided some information about the Student's current levels of academic progress, the information in the assessment did not relate closely enough to the Student's goals to gauge progress. Because the assessments were not closely related to the specific goals and did not include information in that area of social/emotional, the progress reporting is insufficient. A violation is found. The District is required to provide the Student's IEP team with written guidance on progress monitoring, including progress reports.

Issue 3: Assistive Technology – The complaint alleged the District did not allow the Student to have access to assistive technology, specifically the computer. A district must consider whether a student needs assistive technology devices and services.

Here, the Student's August 2019 IEP provided for the use of a computer and supportive software programs, such as speech-to-text, text-to-speech, and spelling and grammar devices. The frequency was "as appropriate and needed." According to the documentation, after the Student was placed at the day school on September 30, 2019, problems developed with the Student using the computer. The day school found the computer was interfering with the Student completing his work and that the Student was using the computing inappropriately. In November 2019, the IEP team agreed to have the Student use the day school computer at school and the District computer at home. The Student's use of the computer was monitored by the day school, which resulted in the Student apparently not being able to access the computer as much as he wanted. However, the Student's IEP stated the computer and its applications would be used as appropriate and needed. The documentation showed that the Student's access to the computer was consistent with the Student's IEP. No violation is found.

² The District's first trimester ended on November 27, 2019. On March 13, 2020, the District's second trimester ended. As the second trimester ended after the complaint was filed, only the first trimester progress reporting will be addressed in this decision.

CORRECTIVE ACTION

By or before **June 1, 2020** and **June 15, 2020**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **June 10, 2020**, the District will provide written guidance to the Student's 2019-2020 school year IEP team regarding progress monitoring and progress reports.

By **June 1, 2020**, the District will provide a draft to OSPI. The written guidance must be approved by OSPI.

By **June 15, 2020**, the District will provide written verification that the written guidance was provided to the Student's 2019-2020 school year IEP team.

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, 2020

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.)