

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-110**

### **PROCEDURAL HISTORY**

On September 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 Seattle 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 September 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 September 19, 2022, the Parent provided OSPI with additional information. OSPI forwarded the information to the District on the same day.

On September 30, 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 November 4, 2022, OSPI interviewed the Parent.

On November 4, 2022, OSPI requested additional information from the Parent. On November 4, 2022, OSPI received the information from the Parent and forwarded it to the District on November 8, 2022.

On November 4, 2022, OSPI requested additional information from the District. On November 7, 2022, OSPI received the information from the District and forwarded it to the Parent on November 8, 2022.

On November 8, 2022, OSPI interviewed the paraeducator from the Student's class.

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 September 14, 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 implement the Student's accommodations during math testing in mid-May 2022 according to the Student's individualized education program (IEP)?
2. Did the District provide the Parent with special education progress reports according to the Student's IEP during the 2021–2022 school year?

## LEGAL STANDARDS

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

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).

### ISSUE ONE: FINDINGS OF FACT

1. At the beginning of the 2021–2022 school year, the Student was a kindergartener who attended a District elementary school and was eligible to receive special education services under the category of developmental delay.
2. On November 15, 2021, the Student's IEP team met to review and amend the IEP. The Student's IEP indicated delays in attending to tasks, processing information, initiating and maintaining peer interactions, and engaging in cooperative play. The IEP indicated that the Student's behavior did not interfere with the Student's learning or the learning of others. The Student's IEP provided for annual goals in the areas of pre-academics and social/behavior, which were addressed by the special education services. Accommodations that were provided to the Student on a daily basis and in the general education setting were as follows:
  - Break time
  - Opportunities for movement
  - Noise-cancelling headphones
  - Sensory objects
  - Visual aids
  - Notice of transitions
  - Visual letters and numbers
3. On May 20, 23, and 25, 2022, the special education teacher administered the "MathTrack" assessment for Kindergarteners. The 90-minute assessment was administered over the three days, each day included a 30-minute long period of assessment.

4. In the complaint, the Parent stated, “[The Student] was not provided counting objects or a visual of numerals for reference. He was not also provided ‘fidgets’ or other accommodations necessary. During/after the assessment [Student] regressed significantly in behavior (saying school was disgusting, crying, clinging to IA (instructional assistant), being aggressive to other children...”
5. Regarding the accommodations the District provided to the Student during testing, the District’s response stated the Student received advance notice of the test to understand there was a change in routine. The paraeducator was present to support the Student. In addition, the testing was done in a small group and the Student was able to take breaks. The special education teacher helped the Student understand the questions and scribed as needed.
6. Later, the Student’s special education teacher provided the following information to OSPI regarding the testing sessions:
  - Accommodations that were available during testing were frequent movement breaks and access to break space (in the testing area). He was informed prior to the transition & change in the routine.
  - The Student had a break when he asked and breaks were offered several times.
  - The assessment involved recalling numbers and how to write. Letter models were not needed.
  - Regarding any behavior issues that appeared during the test, the Student crawled under the table without requesting a break. He often refused to attempt tasks.
  - The special education teacher and paraeducator interpreted the Student crawling under the table as a need for a break. He stayed under the table for 3–4 minutes and proceeded with the assessment. When the Student refused a task, the paraeducator would assist in reengaging him.
  - The paraeducator would encourage the Student return to the task. The paraeducator would also provide hints to the Student.
  - In general, the Student was “playful throughout the assessment.” The Student would refuse to answer if the special education teacher asked him a question and would wait until the paraeducator to ask.
  - Headphones had not been used in the classroom so they were not provided at the time.
7. According to the paraeducator who assisted the Student during the math testing, the Student was tired from the MAP testing that occurred in the morning. The Student exhibited some frustration and cried once or twice during the three sessions. The Student was difficult to engage at times.
8. On May 25, 2022, the Student’s IEP team reviewed the Student’s IEP. The team added the following accommodations to the IEP:

• Practice and skill review	• Checks for understanding
• Access to snacks	• Positive reinforcement
• Bands on chairs/wiggle seat/standing	• Short, one-step directions
• Reducing assignments	• Noise-cancelling headphones
• Extra time to complete assignments	• Quiet area for sensory breaks
	• Short breaks
9. On June 13, 2022, the IEP team met to discuss the Parent’s request that IEP assessments be administered at a different time period than District and statewide assessments and providing

breaks during the assessments. The District concurred and incorporated the accommodation into the IEP.

10. On November 4, 2022, OSPI interviewed the Parent about the complaint. The Parent clarified that the complaint was about the approximately 90-minute math testing that was administered by the special education teacher over three days.

### **ISSUE ONE: CONCLUSIONS**

The complaint alleged the District failed to provide the Student with accommodations in conformity with the Student's IEP during math testing. A district is required to implement the special education services and accommodations in accordance with the IEP.

Here, the Student's November 2021 IEP provided for daily accommodations in general education, including sensory objects, access to movement, visual aids, visual letters and numbers, and breaks. The IEP did not specifically address accommodations during testing. In May 2022, the special education teacher, along with a paraeducator, assessed the Student in math over a period of three days. Each session lasted 30 minutes. According to the complaint, the Student became upset during and after the testing because the Student did not have access to the necessary accommodations, such as fidgets, counting objects, or visual letters or numbers. The District stated that it gave the Student advanced notice about the test, provided the testing in a small group, gave the Student extended time, and provided the Student breaks during the testing. In addition to these accommodations, the paraeducator was present to assist the Student. Some of the accommodations provided were not included in the Student's IEP.

The complaint stated that because the special education teacher and paraeducator failed to provide fidgets, visual letters and numbers, and other accommodations, the Student became upset. The alleged fact that the Student became upset was not necessarily evidence the Student did not receive the appropriate accommodations during testing. Not all accommodations were necessarily required to be implemented, as the accommodations were not specified as testing accommodations, and some may not have been appropriate during a test, such as headphones. It is important to note that even when a student has access to accommodations and those accommodations are faithfully implemented by a district, there may still be instances when a student acts out or gets upset. The documentation showed the accommodations that were provided, along with the other supports not listed in the IEP, reasonably met the Student's needs given the circumstances during the math testing. It should also be noted that the Student's team added accommodations, including a testing accommodation, to the May 2022 IEP. No violation is found.

### **ISSUE TWO: FINDINGS OF FACT**

11. On June 15, 2021, the Student's team developed an initial IEP for the Student. The Student's IEP provided for annual goals in the following areas: reading, math, written language, and social behavior. Progress towards the goals would be reported each trimester.

12. On November 15, 2021, the Student's IEP team met and amended the special education service minutes. Progress continued to be reported each trimester.
13. Also, on November 15, 2021, the Student's first semester progress report was completed. But according to the District, there was no documentation in the record that the report was sent to the Parent.
14. On December 1, 2021, the first trimester ended.
15. On March 9 and 14, 2022, the Student's second semester progress report was completed. According to the District, the special education teacher's practice was to send the progress reports home in the students' backpacks.
16. On March 17, 2022, the second trimester ended.
17. On April 20, 2022, the Parent emailed the special education teacher and inquired about receiving special education progress reports. The Parent stated she had not received the progress report that was sent in the Student's backpack.
18. On June 15, 2022, the Parent emailed the special education teacher, requesting the "progress reports we are to receive each trimester."
19. On June 17, 2022, the special education teacher emailed the Parent, stating the progress reports were sent in a "separate email."
20. The Parent later indicated to OSPI that she eventually received all the progress reports during the 2021–2022 school year, but not until June 2022.
21. On June 17, 2022, the third trimester ended.
22. In September, 2022, the school principal emailed the special education teachers at the school, stating:

This is a directive regarding progress reports for IEP students:

  - Access IEP Online to create progress reports
  - Save progress reports as a PDF
  - Email all progress reports to parents/guardians
  - Grades K–5 must receive a progress reports three times a year per trimester (minimum) unless additional times are noted in the IEP
  - Grades 6–8 must receive quarterly progress reports
  - All progress reports must be emailed out as stated above

## **ISSUE TWO: CONCLUSION**

The complaint alleged the District failed to provide the special education progress report to the Parent as required in the Student's IEP. A district is required to provide special education progress reports to the parent in conformity with the IEP.

Here, the Student's June 2021, November 2021, and May 2022 IEPs provided for the Parent to receive progress reports each trimester. The District acknowledged that it was unable to verify that the progress reports for the first and second semesters were sent to the Parent in a timely manner. A violation is found.

But the Parent confirmed that all the progress reports were eventually sent in June 2022. Although the regulations do not specify how a district sends progress reports to a parent, reports must be sent in a timely and secure manner to ensure the parent can meaningfully participate by having information about whether the district's program for the student is working. Sending important documents, such as progress reports by way of a student's backpack, is ill-advised as it is easy for a document to get misplaced or overlooked. In September 2022, the school principal emailed special education teachers in the school, directing them to send progress reports through email. The corrective action requires the District to monitor whether special education progress reports are sent as specified in the IEPs to parents of students with IEPs in the school.

### **CORRECTIVE ACTION**

By or before **December 2, 2022, January 1, 2023, February 1, 2023, March 1, 2023, April 1, 2023, May 1, 2023,** and **June 1, 2023,** the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

By **December 2, 2022,** the District will develop a spreadsheet or similar system for monitoring progress reports. The spreadsheet will list each student with an IEP in the school, the frequency of progress reports, when the progress report was sent, and how it was sent. The District must assign a person to log the data, track the data, and report the data to OSPI on a monthly basis, beginning January 2023 and ending June 2023. The report will be due to OSPI on the first day of each month. The District will notify OSPI who will monitor the data and their contact information.

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 9th day of November, 2022

Dr. Tania May  
Assistant Superintendent of 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.)