

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-34

PROCEDURAL HISTORY

On March 22, 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 Longview 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 March 23, 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 24, 2022, the District requested an extension of time for the submission of its response regarding SECC 22-34. That same day, OSPI granted the District's request until April 15, 2022.

On April 15, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on April 19, 2022. OSPI invited the Parent to reply.

On May 2, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 4, 2022.

On May 3, 2022, the Parent provided OSPI with additional information she believed relevant to the investigation. On May 4, 2022, OSPI provided the District with a copy of the same.

On May 3, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information from the Parent on May 3, 2022. OSPI forwarded that information to the District on May 4, 2022.

On May 3, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on May 9, 2022. OSPI forwarded that information to the Parent on May 10, 2022.

On May 5, 2022, OSPI's investigator conducted a phone interview of the Student's special case manager.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on March 23, 2021, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to March 23, 2021 is mentioned for informative, background purposes only.

ISSUE

1. From March 23, 2021 through the present, has the District followed proper procedures for implementing the Student's individualized education program (IEP)?

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. It must also 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. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

Background: 2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was eligible for special education services under the category of specific learning disability, was in the tenth grade, and attended a District high school. At that time, the Student's December 2019 individualized education program (IEP) was in effect.
2. On December 13, 2020, the Parent emailed the special education teacher, stating the Student did "not know how to use" the IEP accommodation of text-to-speech.
3. The Student's IEP team developed a new IEP for the Student on December 17, 2020.
4. On January 8, 2021, the librarian emailed the Student's teachers, stating she had "sat down with Student this afternoon" and discussed, in part: the fact that the Student has access to "a high contrast screen" and "a couple of text-to-speech options [including] the Natural Reader app;" and reminded the Student's teachers to "allow Student to use the Zoom Tech link that I emailed him so that I can walk him through the process and then send him virtually back to you."
5. Meeting notes related to a February 25, 2021 meeting show, in part, the following: the Student's lifetime fitness teacher reported that "she provides accommodations and modifications to Student such as shortening his tests, giving him extra time on assignments, and accessing a one-to-one help during the afternoons and providing him with pencil paper tests instead of online [tests]"; and "The geometry teacher's evaluation report [states that the

geometry teacher] gives Student accommodations/modifications such as notes, tasks broken down, and reads directions to him when needed.”¹

6. The Student’s IEP team amended the Student’s December 2020 IEP on March 19, 2021. The March 2021 amended IEP provided the Student with the following non-concurrent specially designed instruction in a *special education setting* from March 19, 2021 through December 10, 2021:
- **Reading:** 25 minutes 5 times a week (to be provided by a special education teacher)
 - **Written Language:** 25 minutes 5 times a week (to be provided by a special education teacher)

The March 2021 amended IEP included the following reading goal: “By 12/10/2021, when given a grade level text to independently read [Student] will read and accurately answer comprehension questions (CCSS aligned questions that [] include multiple choice and short answer responses) improving reading comprehension from (38%) overall compression to (60%) as measured by CommonLit reading assignments.”

The March 2021 amended IEP included the following written language goal:

By 12/10/2021, when given a writing prompt, a set of grade level texts, and graphic organizer [Student] will write 5 paragraphs including a topic sentence, supporting details and a conclusion, improving his ability to write a 5 paragraph essay from writing a single paragraph response scoring (2/4) in purpose & organization, (2/4) in evidence & elaboration, and (1/2) in conventions **to writing** a multi-paragraph response scoring (3/4) in purpose & organization, (3/4) in evidence & elaboration, and (1/2) in conventions as measured by classroom data and observation.

(emphasis added).

The March 2021 amended IEP included the following accommodations:

- Call on only when hand is raised (to address anxiety/self-advocacy struggles);
- Check work to ensure understanding;
- Copies of notes/powerpoints/study guides (highlighter to mark important things to remember);
- Divide work into smaller units;
- Extra time to respond and complete work;
- Frequent breaks;
- Have Student restate directions/expectation to ensure his comprehension of them;
- Verbal prompts to begin or return to task;
- Preferential seating;
- Small group setting;
- Teacher read directions aloud;
- Text-to-speech;
- Use of graphic organizers;
- Use of high-motivation, low-distraction setting;

¹ Based on an email thread included in the Parent’s reply, it appears these meeting notes were created by both the Parent and the District; the Parent shared her meeting notes and then the District edited and/or changed certain portions of those notes wherein its recollection of events was different from that of the Parent.

- Use of repetition;
- Visual checklist for assignments/tasks; and,
- Weekly Calendar check.

The March 2021 amended IEP included the following modification: "Content Area: VISUAL: high-contrast text (yellow text on black background), enlarged font." The March 2021 amended IEP also included the following post-secondary goals and transition services:

- **Education/Training:** Upon leaving public school, Student will look into attending...University.
 - Staff will work with the Student to look at programs and requirements in order to attend...University (to be provided by special education teacher/staff)
- **Employment:** Upon leaving public school, Student will look for a job in retail.
 - Staff will provide the Student with opportunities to practice writing a resume and looking for job requirements (to be provided by special education teacher/staff)

Complaint Timeline Began March 23, 2021

7. According to the District, "The Student was scheduled to be in person two days per week during spring 2021 (Mondays and Thursdays). However, the District allowed Student to attend more often than his regularly scheduled in-person days."²
8. The District was on break April 5–9, 2021.
9. According to the District, "As of April 19, 2021, the Student came to school in-person full-time five days per week."
10. Though it is not clear whether the Student attended, in its response, the District stated the Student was invited to attend a "High School Virtual Transition Fair" that took place on April 29, 2021, and the District's response included a copy of a promotional flyer for the same.
11. A late May 2021 progress report showed the Student had made the following progress on the March 2021 amended IEP goals as of that date:
 - **Reading:** "Based on a the CommonLit grade level Post-Assessment, Student demonstrates a 12% comprehension of a variety of grade level text. [S]trengths are in the main idea/central theme (33%). [W]eaknesses are in the ability to identify supporting evidence (R.1 – 0%). Based on responses to question to in-class reading assignments with supports such as text to speech, close reading, and sentence frames Student is showing an 85% comprehension of literary text."
 - **Written Language:** "Student is earning an average score of 2.6 out of 4. His grammar needs coaching and without frames to direct his thinking he lacks elaboration on his thoughts. On his

² In support of this statement, the District referenced a "Remote Schedule 2020–2021", which did show the Student was scheduled to attend in-person on Mondays and Thursdays. The District also referenced a "Remote Attendance 2020-2021" document. The total import of the "Remote Attendance 2020–2021" is not entirely clear but it appears to record COVID-related health information; for example, the Student's temperature, as well as where that temperature was taken and/or where the Student was going after the Student's temperature was recorded. It shows that, at least for February and March 2021, the Student was at least semi-regularly in-person at the school for more than just Monday and Thursday.

most recent writing assignment Student scored 16.25/20 (81%). He takes coaching well and showed an interest in doing well.”

The late May 2021 progress report was emailed to the Parent on June 15, 2021.

12. The Student’s second semester schedule for the 2020–2021 school year was as follows:

- **Period 1:** Art II – taught by a general education teacher
- **Period 2:** Biology – taught by a general education teacher
- **Period 3:** English – taught by a special education teacher in a *special education setting*
- **Period 4:** Lifetime Fitness – taught by a general education teacher
- **Period 5:** Geometry – taught by a general education teacher³
- **Period 6:** US History II – taught by a general education teacher
- **Period 9:** Advisory – taught by a special education teacher

13. In a March 30, 2021 email, the special education English teacher emailed a classroom assistant several assignments the class was currently addressing.

14. On May 17, 2021, the special education English teacher emailed several staff members, stating he had submitted certain data on the Student’s performance in his class.

15. According to the Student’s attendance record, the Student was absent on approximately two occasions and expelled for approximately four occasions between March 23 and June 17, 2021.

16. During this investigation, the following 2020–2021 teachers provided the following statements:

Biology Teacher: Yes, I knew he had an IEP. Yes, I had copy provided on Skyward. Accommodations: preferential seating, extra time to complete assignments, copies of notes available, frequent checks for understanding.

Fitness Teacher: Yes, I was aware that the Student had an IEP and I got a copy of the IEP at a glance online through Skyward. He had accommodations in Lifetime Fitness that included: taking a physical CBA test (classroom based assessment) when we were online. He would regularly come into the building and advocate for himself.

Art Teacher: Were you aware the Student had an IEP dated March 19, 2021? Yes. If so, were you ever provided a copy of the March 19, 2021 IEP? Yes. And: what accommodations, if any, did you provide to the Student in accordance with that IEP? Extra time for assignments.

Special Education English Teacher: [I was aware the Student had an IEP and was provided a copy of the same. I provided the following accommodations to the Student:] extra Time, sentence/paragraph frames, break large assignments to more manageable parts, frequent checks for understanding, use of graphic/visual organizers.

³ During this investigation, the District stated that the 2020–2021 geometry teacher “no longer works for the District and has relocated [to another state, so] the District was unable to provide [OSPI] with a written response from him [in regards to the accommodations he provided to the Student].”

History Teacher: [I was aware the Student had an IEP and was provided a copy of the same. I provided the following accommodations to the Student:] I followed the IEP within the confines of how it applied to my classroom and instruction.

17. The District's last day of school for the 2020–2021 school year was June 17, 2021.

2021–2022 School Year

18. The District's first day of school was August 31, 2021.

19. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services under the category of specific learning disability, was in the eleventh grade, and attended a District high school. At that time, the Student's March 2021 IEP was in effect.

20. The Student's schedule for the 2021–2022 school year was as follows:

- **Period 1:** American Sign Language – taught by an American sign language teacher
- **Period 2:** Algebra II/Trigonometry – taught by a general education teacher
- **Period 3:** Intro to Business – taught by a general education teacher
- **Period 4:** Social Studies – taught by a general education teacher
- **Period 5:** English – taught by a special education teacher
- **Period 6:** Chemistry – taught by a general education teacher

According to the 2021–2022 bell schedule, period 5 met for 55 minutes on Mondays, Tuesdays, and Thursday, and 45 minutes on Wednesdays and Fridays. According to the 2021–2022 bell schedule, the Student also had an advisory period for 40 minutes each Friday.

OSPI's investigator's notes from the phone interview with the case manager, *see below*, include additional information on the advisory period. But in its response, the District included several emails as well as a classroom schedule, both of which showed following activities, in part, were worked on in the advisory period during the 2021–2022 school year: resume writing; career interest surveys; research and selection of appropriate courses for the next school year—the 2022–2023 school year; and financial literacy.

21. During this investigation, the following 2021–2022 teachers provided the following statements:

Chemistry Teacher: I am aware of the Student's IEP. I do have a copy of the Student's IEP on file. The Student is allowed to use notes on test. Has the ability to retake any quizzes that he is given. The Student is allowed to extra time on any/all homework and quizzes/tests if requested. The Student is allowed to word process any type of writing assignment. The Student has access to all notes electronically via google classroom.

Algebra Teacher: Yes, I was aware of the IEP and I was given a copy of them. In my class, the Student doesn't really need the accommodations...I'll check for understanding, but he's one of the few people that talk out during class. So I know he gets the material. He hasn't ever needed extra time because he's one of the first students to turn the test in. Again, he's one of the first students to turn in assignments so I never have to break it down into smaller

parts. High motivation seating I do use for the Student, but I use him as the highly motivated student. I'll put him by students who are struggling so he can help them out.

Social Studies Teacher: [I was aware the Student had an IEP and was provided a copy of the same. I provided the following accommodations to the Student:] I followed the IEP within the confines of how it applied to my classroom and instruction.

Business Teacher: Yes, I was aware the Student has an IEP. I was provided numerous copies of his IEP. The most recent being January 2022. The Student does really well in my class. He is great with self-advocacy so I have not had to use many accommodations to help him. Here is the list of accommodations that have been used in my class: preferential seating; spell check; and extra time when needed on assignments.

22. According to an October 19, 2021 email from the Student to the business teacher, on that date, the Student completed a "Job Interview Conclusion" assignment.
23. The District was on break November 26–26 and December 20, 2021 through January 2, 2022.
24. On January 12, 2022, the Student's IEP team developed a new IEP for the Student. The January 2022 IEP included the same specially designed instruction as that found in the March 2021 amended IEP.

The IEP team updated the Student's annual reading goal to provide: "By 01/14/2023, when given a grade level text to independently read [Student] will read and accurately answer comprehension questions (CCSS aligned questions that [] include multiple choice and short answer response) improving reading comprehension from (70%) overall comprehension to (85%) as measured by CommonLit reading assignments."

The January 2022 IEP continued the Student's previous written language goal and did not add any additional written language goals.

The January 2022 IEP included the same accommodations and modification as that found in the March 2021 amended IEP. It also included the following: communication to parent; speech-to-text; and spell check/word prediction software. The January 2022 IEP also specified that the "weekly calendar check" was to take place via "Skyward."

The January 2022 IEP also included the following post-secondary goals and transition services:

- **Education/Training:** Upon leaving public school, the Student will look into attending a trade school.
 - Staff will work with the Student to look at programs and requirements (to be provided by special education teacher/staff)
- **Employment:** Upon leaving public school, the Student will look for a job in the trades.
 - Staff will provide the Student with opportunities to practice writing a resume and looking for job requirements (to be provided by special education teacher/staff)

25. An early February 2022 progress report showed the Student made the following progress on the January 2022 IEP goals: Student made “sufficient progress” on both goals.^{4 5}
26. According to the Student’s attendance records, the Student was absent on approximately 16 occasions from the start of the 2021–2022 school year through March 18, 2022.
27. The District was on break April 4–8, 2022.
28. During this investigation, the Student’s American sign language teacher provided, in part, the following statement:
- My content is pretty adaptable already. Student had a hard time in the beginning getting into the subject, but he’s been doing well with the [interactive notebook] we have and a good study schedule. He’s actually doing very well now. [I have provided with this statement] an example of how our [interactive notebooks] are structured.
- ...
- All of our reading/writing assignments are short and usually involve working in pairs or groups, which he has done well with. The independent work is bell work and all I ask for is a paragraph explaining their opinion on a topic. In the beginning he struggled with this, but with extra time and support he’s now able to do it on his own.
29. During this investigation, the Student’s 2021–2022 math teacher provided, in part, the following statement:
- Compared to his peers Student would be in the top percentile on all things – including his working memory, how flexible his thinking is, and his self-control. These things can be shown by his test grades, the way he helps students and how he can explain his thinking to other students...With that being said, I have not modified my instruction for Student at all.
30. In her reply, the Parent stated the following in relation to implementation of the Student’s IEP services since March 23, 2021: the Student did not make progress on the written language goal; in terms of the Student’s “progress in his reading/writing goals, no data has been shown other than his grade[s] improving”; and, “no staff have shared what they are doing in order to help Student prepare for [his postsecondary goals and transition service].”
31. In relation to the Student’s postsecondary goals and transition services for the coming school year—the 2022–2023 school year—the District’s response read, in part, “Next year he will visit with [a] disabilities coordinator [and is also] welcome to take our Basic Community Living class that in conjunction with [our local educational service district’s] Pre-Employment Training

⁴ In her interview with OSPI’s investigator, the case manager reported that the early February 2022 progress report likely did not include more detailed information because the Student’s new annual IEP had just recently been created.

⁵ In its response, the District stated, “On 2/11/2022 a Progress Report was sent to the parents through the IEP Online System (Connect).” And the District provided a screenshot purporting to show said communication.

Program, [which] teach[es] interviewing, job shadowing, etc. This is an option for Student this summer, as well.”

32. On May 5, 2022, OSPI’s investigator conducted a phone interview of the special education teacher. OSPI’s investigator’s notes from that interview are as follows:

Advisory Period

This took place every Friday for approximately 40 minutes. All students have an advisory period, and during this class, they work on transition plans and/or high school and beyond plans. This type of work includes, in part: skills inventories; researching different types of jobs; and/or drafting and editing resumes. The special education teacher states the Student participated in the advisory class during the 2021–2022 school year.

At some point during the 2021–2022 school year, as part of the advisory period, the Student attended a college fair wherein different colleges gave presentations on their respective programs. Students got to choose which presentation they wanted to attend, and the Student decided to attend a presentation by a technical school, as the Student’s January 2022 IEP included postsecondary and transition goals related to trade schools.

In the spring of 2022, the Student worked on completing a resume during the advisory period. Recently, though, the Student has expressed renewed interest in attending a traditional college. For example, the Student is preparing to take Algebra II next year, in part, to be prepared to attend a traditional college, if desired.

Provision of Specially Designed Instruction

2020–2021 School Year: The Student received specially designed instruction in reading and written language during his English class. This class was taught by a special education teacher, and it represented a special education setting. The special education teacher provided the instruction, and the case manager monitored the same. The Case manager reports they met regularly and there were no concerns during the spring 2021 in regard to provision of specially designed instruction in reading and written language.

2021–2022 School Year: The Student received specially designed instruction in reading and written language during his English class, which was taught by the case manager.

The Case Manager’s Process to Ensure Accommodations are Provided in General Education Classes

The Case manager reported: (a) at the beginning of the school year, her ‘first task’ is to make sure all general education teachers that will be responsible for providing accommodations in a particular students’ IEP have a copy of that student’s IEP, including for this Student; and (b) she just recently checked in with the Student’s general education teachers to ensure they were providing the required accommodations, in addition to seeing if they believed the Student required other, additional accommodations.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent alleged from March 23, 2021 through the present, the District did not follow proper procedures for implementing the Student’s individualized education programs (IEPs).

A district must provide 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 student with a disability and those required by the IEP.

Here, the documentation provided to OSPI during this investigation shows:

- Both the March 2021 amended IEP and the January 2022 IEP provided the Student with the same specially designed instruction: 125 minutes a week in reading and 125 minutes a week of written language. Both areas of specially designed instruction were to take place in a special education setting. And here:
 - Both the Student's spring 2021 and 2021–2022 schedule permitted the Student to obtain this specially designed instruction. For example, both schedules included a special education setting English class taught by a special education teacher. At least for the 2021–2022 school year, this class met for a total of 255 minutes each week, which is more than 250 minutes a week (the total specially designed instruction the Student was to receive in reading and written language each week).
 - During her interview with OSPI's investigator, the 2021–2022 special education teacher was familiar with, and spoke with detail about, the Student's IEP goals. The 2021–2022 special education teacher said she designed and monitored the Student's specially designed instruction in reading and written language in 2020–2021, and that she herself provided said instruction during the 2021–2022 school year.
 - The Student's progress on the Student's IEP goals was noted in both late May 2021 and early February 2022.⁶ And, in both instances, the Student had made some progress on his IEP goals.
- Both the March 2021 amended IEP and the January 2022 IEP provided the Student with numerous accommodations. And here:
 - The 2021–2022 case manager reported during her interview with OSPI's investigator that she made sure each of the Student's general education teachers had a copy of the Student's IEP at the start of the 2021–2022 school year, and was aware of the accommodations they each needed to provide to the Student.
 - During this investigation, the Student's general education teachers—from both school years—provided statements asserting they were aware the Student had an IEP and detailed, in part, the accommodations they provided the Student.
 - Though dated prior to the date the instant investigation starts—March 23, 2021—the documentation provided to OSPI included an email and a copy of meeting notes showing the Student was provided with certain accommodations on or about January and February 2021. See January 8, 2021 email from librarian to the Student's teachers; see *also* February 25, 2021 meeting notes.
- Both the March 2021 amended IEP and the January 2022 IEP included certain postsecondary goals and transition services, including, principally, researching program requirements for various postsecondary programs and constructing resumes. And here:
 - Both of these activities were worked on during the Student's advisory period, which met regularly during both the spring of 2021 and the 2021–2022 school year.

⁶ These progress reports were subsequently provided to the Parent, on June 15, 2021 and February 11, 2022, respectively.

- The 2021–2022 special education teacher, during her interview with OSPI’s investigator, was able to speak to the Student’s work on these goals.
- During and/or as part of the advisory period, the Student also completed job interest surveys and attended career fairs.

The foregoing information shows the Student’s IEPs were materially implemented from March 23, 2021 through the date of the instant decision. And no corrective actions are warranted.

OSPI does make one recommendation though. The postsecondary goals and transition services section of the Student’s January 2022 IEP stated the Student will look into attending a trade school. In her interview with OSPI’s investigator, though, the 2021–2022 special education teacher stated the Student recently expressed renewed interest in attending a traditional college upon graduate from high school, and as a result of this renewed interest, was preparing to take Algebra II next year. Therefore, OSPI encourages the Student’s IEP team to consider whether the postsecondary goals and transition services portion of the January 2022 IEP needs to be amended.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of May, 2022

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)