

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-76**

### **PROCEDURAL HISTORY**

On June 14, 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 June 15, 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 June 17, 2022, the District requested an extension of time for its response to the complaint. OSPI approved the extension.

On June 1 and 7, 2022, OSPI received Part I and II of the District's response to the complaint and forwarded it to the Parent on June 11, 2022. OSPI invited the Parent to reply.

On July 12, 2022, OSPI received Part III of the District's response and forwarded the information to the Parent on July 14, 2022. OSPI invite the Parent to reply.

On July 26, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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 June 15, 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 review and revise the Student's individualized education program (IEP) to address information provided by the Parents during the 2021–2022 school year, including developing a timely annual IEP?
2. Did the District provide the Parent with progress reports in conformity with the Student's IEP during the 2021–2022 school year?
3. Did the District provide the accommodation for grading rubrics according to the Student's IEP during the 2021–2022 school year?

## LEGAL STANDARDS

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

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).

IEP Implementation: A district must ensure that the special education services are implemented in conformity with the 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. During the 2020–2021 school year, the Student was a twelve-year-old sixth grader who attended a District elementary school and was eligible to receive special education services under the category of specific learning disability.
2. On April 20, 2021, the Student's team reviewed the individualized education program (IEP) after completing a reevaluation in March 2021. The IEP provided annual goals in the areas of communication (progress reported four times a year), study/organization skills (progress reported two times a year and three times a year), and written language (progress reported three times a year).<sup>1</sup> The IEP provided fifteen accommodations for the Student, including extra

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<sup>1</sup> See Appendix A.

time to complete assignments and access to a grade specific scoring rubric on written work. The rubric would be provided "as needed when doing written assignments" in the classroom. The prior written notice stated the Student "can keep a copy of the Rubrics in his notebooks and in his desk."

The specially designed instruction was as follows:

- Communication: 90 minutes, monthly
- Study/Organization: 125 minutes, weekly
- Written language: 125 minutes, weekly

Supports for school personnel included occupational therapy.

### **2021–2022 School Year**

3. At the beginning of the 2021–2022 school year, the Student was in seventh grade attending a District elementary school and continued to be eligible under the category of specific learning disability. The Student received in-person services during the school year.
4. On September 1, 2021, the 2021–2022 school year began in the District.
5. The complaint stated the Parent requested an IEP meeting "at the start of the year" to discuss regression during remote learning.
6. In September 2021, the Parent exchanged numerous emails with school staff about an assistive technology (AT) evaluation concerning the Student's writing, recovery services, and math instruction.
7. On October 8, 2021, the Parent emailed the school principal and other school staff, stating she did not receive special education progress reports last year and asked for a writing sample. In October 2021, the Parent and school staff continued to exchange emails regarding the AT evaluation, recovery services, implementation of services, and progress reports.
8. From November 2021 through February 2022, a private tutor provided 14 sessions of tutoring in writing to the Student.
9. On November 8, 2021, a progress report stated "some progress made" towards the communication goal. The comments stated:  
[Student] has recently begun attending speech sessions with increased frequency and demonstrates a willingness to participate in speech sessions and to establish systems that make practicing more systematic and likely. These are exactly the behaviors that will lead [Student] toward success in his production of the R sound. Great job, [Student]!
10. On November 14, 2021, the Parent emailed the principal and requested an IEP meeting.
11. On November 16, 2021, the Student's case manager responded to some of the Parent's questions and provided copies of the progress reports from the previous year. Much of the report was incomplete.

During the remainder of November and December 2021, the Parent and school staff exchanged numerous emails, attempting to schedule the IEP meeting and set the meeting agenda. The meeting was set for December 17, 2021, but it was canceled and rescheduled for January 24, 2022.

12. From December 20–31, 2021, the District was on winter break.
13. On January 19, 2022, the Parent emailed the private speech/language evaluation, dated January 6, 2022. The report stated there was a significant articulation delay with the “r” sound. The report recommended speech therapy 60 minutes, 1–2 times weekly.
14. On January 24, 2022, the Student’s team met to discuss the Student’s progress reports, implementation of services, and “readdressing and clarifying his IEP goals for writing.” According to the meeting notes, the Student’s case manager discussed the Student’s grades, the Student’s motivation, and described the specially designed instruction that was being provided. The case manager gave an update on the Student’s progress towards each of the Student’s goals, which indicated he was making some progress. The team also got an update from the Student’s general education teachers. No prior written notice was provided regarding the meeting.
15. The complaint stated the team discussed “revising goals prior to April IEP so these could be implemented promptly” at the IEP meeting.
16. On January 26, 2022, the first semester ended. The Student’s grades for the first semester were as follows:
  - Physical Education: A
  - Science 7: C
  - Language Arts 7: B
  - Math 7&8: B+
  - Student Skills: A
  - World History 7: C+
  - Community Relations: Pass
17. On February 9, 2022, the District and Parents signed a written settlement agreement with the District to provide the following:
  - The District would reimburse the Parent up to \$2000 for tutoring services;
  - The District would reimburse the Parent for up to 30 hours of compensatory writing services; and,
  - Four hours of compensatory speech therapy services provided by a provider the Parent chooses.

The agreement, in part, contained the following provision:

Release of Claims. In consideration for the promises from the District as set forth in this Agreement, the Parents agree to release and waive all claims under the IDEA, known or unknown, of any kind, on behalf of themselves and on behalf of the Student, against the District through the date of execution of this Agreement. The Parents further agree and understand that they have read this entire Agreement, including the release and waiver of claims; understand these provisions; waive their claims in exchange for valuable consideration, to which they acknowledge they would not have been otherwise guaranteed; and have executed this Agreement in consultation with their legal counsel.

18. In February 2022, the Student was privately evaluated and the Parent provided the District with a copy of the report. Based on testing in the areas of cognitive, achievement, reading, and behavior, the Student was diagnosed with attention deficit/hyperactivity disorder, specific learning disability in written expression, dysgraphia, and twice-exceptional (gifted + specific learning disorder). The behavior assessment included input from two of the Student's teachers. The Parent stated that the Student's school records were provided to the evaluator. The report stated, in part:

Given [Student's] complex profile, he is at risk for increasing academic difficulties and potential emotional/behavioral deterioration without appropriate services and supports as he moves forward.

The report provided the following recommendations, in part:

- Instruction in writing by only a certified special education teacher or specialist 45 minutes, 5 times weekly;
- Use of graphic organizers and conceptual maps;
- Occupational therapy for keyboarding skills;
- Assistive technology evaluation to determine "if he would benefit from this line of assistance;"
- Direct instruction in time management, planning multistep tasks, and setting schedules;
- Weekly parent/teacher consultation;
- Accommodations such as additional time for tests and assignments, preferential seating, reduced writing demands, a scribe, copy of instructor's notes, direct feedback, a signal to maintain attention to task, prompt from teachers to check in weekly, teacher follow-up after instruction, and modifying the complexity of writing tasks;
- Bringing a special education attorney to IEP meetings to advocate for Student;
- Referral to a medication specialist; and,
- Private tutoring in keyboarding, written expression, reading fluency and comprehension.

19. On February 8, 15, and 17, 2022, the Parent and case manager exchanged emails about the January meeting notes. The discussion included the Student's progress. The case manager stated in a previous phone call with the Parent that progress was discussed. The emails regarded the Student as not engaging in written work, but strategies were being used to address it. The Student had not made progress towards his study/organization and written language goals due to the Student's difficulty with task initiation and breaking assignments into parts.

20. On March 8 and 10, 2022, the Parent and case manager exchanged emails regarding the implementation of the Student's supports, including AT. The Parent responded, in part:

I've attached a new psychological evaluation of [Student] which details his disabilities, characteristics of how they play off of each other in unique ways, and suggestions on how to support him through them. This is in addition to a similar eval from years ago that we have submitted as part of his IEP for years now. Many of our suggestions and requests are sourced from those evals and a writing tutor that we employ for him, [private tutor], who was also on the last call. We would like to know how, if at all, this information is being used to support [Student's] education. So far, we've seen little to no evidence that topics and standard suggestions raised by these sources are being taken into consideration but have not received any explanation as to why this is...

The emails included the following exchange between the Parent and case manager:

Parent: It sounds like you will not consider other sources of information to support Evan beyond the SPS 3 year evaluation? Is this correct?

Case manager: Respectfully, we find these additional recommendations from professionals as an invaluable resource in finding how to best support [Student] and engage him in his learning. We will be leaning heavily on the neuropsych report to show areas of growth and regression, as well as developing his IEP goals and accommodations. In reading the last evaluation you sent and listening to what the tutor added, I do not see where we are NOT following the recommendations that are possible for us to follow.

21. On March 15, 2022, the Parent received an IEP invitation.
22. On March 20, 2022, the Parent sent the case manager a report from the private tutor and summary of the private evaluation. The tutor report stated, in part:

We worked on the 5 W's, transition words and phrases, compound and complex sentences, types and purposes of adjectives and adverbs, creating topic sentences from the 6 most common types, and analyzing student writing samples. He already has strong grammar understanding, and understands tense, dialogue punctuation rules, appositives, and misplaced modifiers.

He has grown most in his ability to form specific sentences, and examine them for precision. Relying on the tip sheets in his binder will be imperative going forward. He does well with micro goals and time specific demands, from an adult. He needs practice in revision and looking for gaps in information, and in using a large variety of rubrics. Seeing the reader's viewpoint is a growing skill.

Evan has lost much ground during the IEP process. Not only does he need explicit instruction customized to his neuropsychology report, he also needs catch-up time to be "high-school ready" as a writer...
23. On March 25, 2022, the District sent the Parent a draft IEP.
24. On April 4, 2022, the team met to review the Student's progress and proposed new goals. The goals remained in the same areas as communication, study skills/organization, and written expression, but the goals were updated. For communication, progress reports would be sent quarterly. The remaining goals provided for progress to be reported each semester. The IEP continued to provide specially designed instruction in the areas of communication, study/organization, and written expression. More accommodations were added to the IEP, totaling 23 accommodations, and continued to include access to a grade specific scoring rubric on written work.
25. The meeting notes indicated that the team reviewed the Student's grades and progress towards his goals. The Student made progress in breaking down assignments and initiating a task, but was reluctant to edit his work. According to the Parent, the Parent asked for progress reports and the case manager said there were no progress reports to date, but would provide them in February. The Parent requested the goals for study/organization and written language be further modified. The team also reviewed the results from the private evaluation.

26. The prior written notice, dated April 4, 2022, addressed refusing the Parent's requested changes to the goals and accommodations. The reasoning was that the Parent's changes would make the goals less clear and measurable and the accommodations requested were no longer required for the Student to access general education. The notice also stated the team used the private evaluation to update the accommodations.
27. On April 29, 2022, the case manager emailed the Parent about the Student completing assignments. The case manager stated, "He had the name of the assignments given to him along with worksheets and rubrics, but he did not engage." In reference to the rubric, the complaint stated, in part, "We also have requested grading rubrics, which is an accommodation on his IEP, since the beginning of the year and still have not received these." The Parent stated requests for the grading rubrics were made on May 10 and 24, 2022, and June 13, 2022 for the rubrics to be shared with the Parent. The Parent acknowledged that there was "communication among the staff" regarding the rubrics, but the rubrics were not given to the Parent (and the Student's tutor).
28. On May 11, 2022, the Parent received a copy of the AT evaluation. The District later clarified to the Parent that the software recommended by the private evaluation would be too distracting for the Student.
29. In May 2022 and into June 2022, the case manager and Parent exchanged emails regarding the Parent's proposed changes to the goals. On June 7, 2022, the case manager emailed the Parent, rejecting the Parent's proposed goals.
30. On June 14, 2022, the Parent emailed the case manager, stating the Parent would not sign the IEP because "we do not feel it provides enough specificity to ensure it will provide [Student] the support he needs to succeed...."
31. On June 14, 2022, the Parent filed this complaint with OSPI.
32. On June 15, 2022, the case manager provided a finalized copy of the Student's IEP to the Parent.
33. On June 17, 2022, the school year ended. The Student's grades for the second semester were as follows:
  - Teacher Assistant: A
  - Science 7: C-
  - Language Arts7: B
  - Math 7&8: A-
  - Student Skills: A
  - Washington State History: B
  - Community Relations: Pass

## **CONCLUSIONS**

**Issue One: Parent Input** – The complaint alleged the District failed to revise the Student's IEP based on the Parent's input, including the information from the private evaluation and writing tutor. A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education

curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

Here, the Student's April 2021 and April 2022 IEPs provided goals and services in the areas of communication, study skills/organization, and written expression. Throughout the 2021–2022 school year, the Parent expressed concerns about the Student's program. The Parent sought a private evaluation and private tutoring for writing. The Parent made numerous requests for an IEP meeting, which eventually occurred in January 2022 because of delays. In the April 2022 IEP review, the team developed IEP goals that the Parent did not agree with. The District continued to seek Parent input into the IEP until June 2022. The Parent expected the IEP team to incorporate the private evaluator's and tutor's recommendations and to defer to the Parent's version of the Student's goals. In June 2022, the District sent the Parent a finalized copy of the IEP.

The documentation showed the Parent had considerable input into the IEP's development and implementation, even if there was disagreement about what was appropriate for the Student. A district is not required to implement every parent suggestion if the district's decision is based on student-specific data and is consistent with the needs and abilities of the student. The IEP provided goals and services that sufficiently addressed the Student's needs for the Student to make progress. The Student's grades, sporadic progress reports, and teacher reports indicated the Student made some progress towards the goals.

The private evaluation report contained numerous instructional recommendations, some of which were based on surveys provided by the Student's teachers. The District incorporated some of the recommendations into the IEP, but it did not accept others. It was reasonable for the District not to accept all the recommendations from the private evaluator and tutor because neither observed the Student at school nor sought input from the Student's case manager and teachers beyond a behavior survey. In addition, the Parent may not recognize the difference between clinical recommendations and what may be required to provide a free appropriate public education (FAPE). While a service may be clinically beneficial, it may not necessarily be required for a student to receive FAPE. Based on the documentation that the District considered the input from the Parent, including the private evaluation and tutoring report, no violation is found.

It must be noted that although the District is found to have considered the Parent's input, the District failed to timely respond to the Parent's repeated requests for an IEP meeting, even if some of the delays were unavoidable. And when there was an IEP meeting in January 2022, no prior written notice was provided. The Parent has a right to a written explanation of the decisions made at the IEP meeting. Regarding the April 2022 IEP, the documentation appeared to indicate that a final IEP was developed. However, the District continued to seek Parent input into goals which seemed to send a mixed message about the finality of the April 2022 IEP. Moreover, the District stated it sent the Parent a "finalized" IEP in June 2022. Although working to achieve consensus is good, the IEP needs to be finalized and implemented in a reasonable time. A violation is found. For corrective action, the District is required to develop a procedure to ensure that IEPs are finalized in a reasonable amount of time and a prior written notice is provided.



Since the Parent's complaint failed to mention the February 2022 settlement agreement between the Parent and District, OSPI will address it here. OSPI has no authority to enforce a settlement agreement as opposed to a mediation agreement or due process resolution agreement. But OSPI can look to the parties' resolution of the issues to determine if the District has already addressed the issue in the present complaint in a reasonable manner. In this case, had there been a violation regarding this complaint that required compensatory education, the resolution in the settlement agreement would have been sufficient to address the complaint up to November 9, 2021 when it was signed by both parties.

**Issue Two: Progress Reports** – The complaint alleged the District failed to provide the Parent with progress reports as required in the Student's IEP. A district is required to provide the parent with written progress reports as stated in the IEP.

Here, the April 2021 IEP provided progress reports on different schedules. (See Appendix A.) According to the documentation, the District failed to provide progress reports consistent with the IEP. Some reports were provided and the District did provide the Parent with information about the Student's progress in IEP meeting discussions and through emails. The April 2022 IEP also had progress information based on the previous April 2021 IEP. However, this information was no substitute for regular written progress reports through the 2021–2022 school year to ensure the Parent (and District) had enough progress data based on the Student's measurable goals to ensure the program was working for the Student. Furthermore, general statements about progress are insufficient; progress reports must include objective evidence using the same method of measurement as the goal to substantiate progress, or the lack thereof.<sup>2</sup> Based on the District's failure to provide the Parent with progress reports according to the Student's IEP, a violation is found. For corrective action, the District is required to provide OSPI with a schedule of the dates progress reports are due. The District must send a copy of each progress report to OSPI at the same time as the Parent.

**Issue Three: Accommodation** – The complaint alleged the District failed to implement the accommodation to provide the Student with a grade specific scoring rubric on written work because the District did not provide the Parent with the rubric. A district is required to implement the special education services and accommodations in conformity with the IEP.

Here, the Student's April 2021 and April 2022 IEPs provided for an accommodation for a grade specific scoring rubric for written work, as needed when doing written assignments in the classroom. The documentation showed the District provided the Student with a rubric. It was understandable that the Parent wanted a copy of the rubric when assisting the Student at home. However, the Student's IEP does not provide the Parent with a copy of the rubric. Based on the District implementing the accommodation in conformity with the IEP, no violation is found.

### **CORRECTIVE ACTION**

By or before **September 9, 2022** and **June 30, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

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<sup>2</sup> See Seattle School District, 2012-SE-0069, April 3, 2013.

**STUDENT SPECIFIC:**

By **June 30, 2023**, the District is required to send all of the Student’s progress reports during the 2022–2023 school year. The District will provide OSPI the Student’s progress reporting schedule for each goal, including the dates the reports are due. The District is required to send the progress reports at the same time they are sent to the Parent.

**DISTRICT SPECIFIC:**

By **September 9, 2022**, the District is required to submit to OSPI a proposed plan to address the violations found in this complaint. The plan must be approved by OSPI. OSPI will provide feedback and set further timelines as necessary.

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 August, 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.)