

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-05

PROCEDURAL HISTORY

On January 13, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Cashmere School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On January 17, 2023, 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 January 30, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on February 3, 2023. OSPI invited the Parent to reply.

On February 15, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on February 16, 2023.

On March 2, 2023, OSPI requested additional information from the District. OSPI received the additional information from the District on March 2 and 3, 2023, and forwarded the information to the Parent on March 6, 2023.

On March 3, 2023, the OSPI complaint investigator interviewed the District special education director by Zoom and the Parents by Zoom.

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

ISSUES

1. Did the District follow evaluation procedures according to WAC 392-172A-03035, providing the Parent with a copy of the evaluation report prior to the December 13, 2022 individualized educational program (IEP) meeting?
2. Did the District follow procedures according to WAC 392-172A-03110 in developing the Student's IEP, including the following:
 - Annual goals;
 - Secondary transition plan; and,
 - Parent participation?
3. Did the District address the Student's need for recovery services within the past year, starting January 14, 2022?

LEGAL STANDARDS

Evaluation Report: A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

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).

IEP Definition: An IEP must contain a statement of the student's present levels of academic achievement and functional performance and measurable annual academic and functional goals designed to meet the student's needs resulting from their disability. 34 CFR §300.320; WAC 392-172A-03090.

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; the transition services including courses of study needed to assist the student in reaching those goals; and a description of how the postsecondary goals and transition services align with the high school and beyond plan. 34 CFR §300.320(b); WAC 392-172A-03090(1)(k). Beginning no later than one year before the student reaches the age of majority under state law (18), the IEP must include a statement that the district has informed the student of the rights under IDEA Part B that will transfer to him or her on reaching the age of majority, unless an exception applies. 34 CFR §300.320(c); WAC 392-172A-03090(l).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures and pandemic generally and to enable the student to make progress on individualized education program (IEP) goals, used if students have not been provided or were unable to access IEP services during COVID-19 school facility closures or the pandemic impacted their access to education. Districts were not prohibited from providing recovery services during

the 2020-2021 school year and recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures on the student's overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

FINDINGS OF FACT

1. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of specific learning disability, was in the ninth grade, attended a District high school, and their December 2021 individualized education program (IEP) was in effect.
2. The District's 2022–2023 school year began on September 1, 2022.
3. In or around December 2022, the District conducted a reevaluation of the Student. The evaluation was expedited to have the results of the evaluation available for the annual IEP meeting.¹
4. On December 13, 2022, the school psychologist verbally reviewed the evaluation results with the team. The District did not provide the Parents with a copy of the draft evaluation report prior to the meeting. The District evaluated the Student in the areas of cognitive, math, reading, and written language. The results of the cognitive assessment were in the low average range of 66 to 80, taking into account the 95%ile confidence interval. The Student's academic results ranged from low to below average. The evaluation stated the Student had a seizure disorder, with seizures that occurred several times an hour, lasting a few seconds. The Student had an "emergency care plan" to address the seizures. The evaluation recommended the Student's disability be changed from a specific learning disability to other health impairment. The evaluation recommended services in the areas of reading comprehension, writing, and math.
5. Each professional member of the evaluation group, and the Parents, signed the evaluation summary without any dissenting opinion.² When interviewed, the Parents stated they agreed with the evaluation results but did not recall signing the document.
6. In the interview with the Parents, the Parents did not explain how not having a draft copy of the evaluation negatively affected their participation or ability to effectively participate. Further, given that the evaluation discussion was a verbal discussion of the evaluation without a draft evaluation report to review, the Parents did not indicate that there was information they were not provided.

¹ The previous December 2021 IEP expired on December 15, 2022.

² According to the WAC 392-172A-03035, the Parents were not required to sign the evaluation summary, indicating their agreement or disagreement.

7. The prior written notice from the evaluation meeting indicated the District proposed to change the Student's disability from a specific learning disability to other health impairment.
8. Also, on December 13, 2022, after the team reviewed the evaluation results, the Student's IEP team reviewed the draft IEP. The District's documentation showed the proposed IEP was marked "draft" and there was an agenda outlining the IEP. In reviewing the draft IEP and final IEP, there were numerous changes made to the draft IEP by the IEP team. In response to the Parents' concern about math progress, the IEP team increased the amount of instruction the Student would receive from the case manager.
9. The IEP team developed annual goals in math, reading, and writing with progress reporting each quarter. The Student's December 2022 IEP provided the Student with the following specially designed instruction:
 - Math: 15 minutes, 5 times weekly (to be provided by the general education/paraprofessional/special education teacher in a special education setting)
 - Math: 30 minutes, 5 times weekly (to be provided by the general education/paraprofessional/special education teacher in a general education setting)
 - Writing: 15 minutes, 5 times weekly (to be provided by a special education teacher in a special education setting)
 - Writing: 30 minutes, 5 times weekly (to be provided by the general education/paraprofessional/special education teacher in a general education setting)
 - Reading: 30 minutes, 5 times weekly (to be provided by the general education/paraprofessional/special education teacher in a general education setting)

The IEP included the following math goal:

By 12/14/2023, when given an equation [Student] will solve the equations with rational number coefficients, including equations whose solutions require expanding expressions using the distributive property and combining like terms, improving skills with algebraic equations, from 40% to 80% as measured by data from student practice and assessments.

For comparison, the previous December 2021 IEP math goal stated the following:

By 12/15/22, when given linear equations, [Student] will solve equations with rational number coefficients, including equations whose solutions require expanding expressions using the distributive property and combining like terms, improving skills with algebraic equations, from correctly solving 2/10 opportunities to correctly solving 6/10 opportunities as measured by data from student practice.

The December 2022 IEP showed the Student's annual goals were marked "Non CCSS (common core state standards) Goals." The special education director told the OSPI complaint investigator that identifying the goals as non-CCSS was a mistake in the electronic IEP program. The Student's goals were all CCSS goals.

10. Under the "Adverse Impact Summary" for the Student's reading and math goals, the IEP stated, in part, "[Student] qualifies for special education services under the eligibility category of Health Impairment due to absent seizures..." For the writing goal, the summary stated: "[Student] qualifies for special education services under the category of having a specific learning disability..."

- 11. The Student’s IEP provided a secondary transition plan that listed the Student’s strengths, preferences, and interests that included being punctual, agriculture class, snowmobiling, and post-secondary goals for attending a trade school and becoming a diesel mechanic. According to the documentation, the special education teacher provided the Student with a questionnaire about his strengths, preferences, and interests, but the IEP did not identify the age-appropriate transition assessment conducted with the Student.
- 12. The meeting notes showed the Parents asked questions and the District sought input from the Parents, including adjusting the IEP service matrix.
- 13. Regarding recovery services, the District’s response acknowledged that recovery services for the Student had not been discussed with the Parents. In response to the complaint, the District has proposed discussing recovery services for the Student.
- 14. From December 20, 2022 to January 2, 2023, the District was on winter break.
- 15. On January 6, 2023, the District sent the Parent a copy of the Student’s evaluation and the finalized IEP. When asked by the OSPI complaint investigator, the Parents stated they agreed with the evaluation results after receiving a copy of the evaluation. In addition, after receiving the finalized copy of the Student’s IEP, the Parents did not request an IEP meeting to discuss any questions or disagreements.

16. The complaint alleged that the District failed to address the following IEP provisions:

Allegation	Parent Statement
Predetermination of IEP	“We feel the school’s special education team worked off of predetermination from [Student’s] previous IEP to draft this current one rather than using evidence from evaluations and testing.”
Lack of Parent Participation	“...parents did NOT have informed consent or meaningful participation at the meeting for the IEP draft as we were only given verbal results to the most recent evaluation.”
No Copy of Evaluation	“We did not receive the evaluation document until 1/6/23.”
Adverse Educational Impact	“[Student] qualifies under the eligibility category of Health Impairment due to absent seizures, not SLD”
Baseline Data for Math Goal	“The math is not correct on this, it says 40% but 6/10 is not 40%.”
Progress on Math Goal	“This goal is exactly the same as last year and based on algebra. [Student] is now in geometry...shows minimal progress.”
Age-Appropriate Transition Assessment	“This is not a transition assessment.”
Non CCSS goals	“We believe this is supposed to be grade level goal.”

Recovery Services	"[Student] has never received or been offered any 'recovery services' due to COVID 19."
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CONCLUSIONS

Issue One: Copy of Evaluation – The complaint alleged the District failed to provide the Parents with a copy of the Student’s evaluation before the December 13, 2022 evaluation review and IEP meeting. The evaluation report must include the date and signature of each professional member of the group, certifying that the evaluation reports represent his or her conclusion. A district is required to provide the parent with a copy of the evaluation. There is no requirement that the district provide a parent with a draft copy of the evaluation report, unless the parent is unable to participate without one.

Here, the District and the Parent agreed to conduct the December 2022 evaluation before the IEP meeting so they could use the results to develop the Student’s annual IEP.³ On December 13, 2022, the IEP team reviewed the Student’s evaluation results. The Parents expected a copy of the draft evaluation report before the meeting, but were not provided a copy. Before the evaluation meeting, a copy of the evaluation would have been considered a “draft” copy because the evaluation was not finalized until each professional member of the evaluation group certified their agreement or disagreement with the evaluation. At the December 13, 2022 meeting, the professional members signed the evaluation report. The completed evaluation report was sent to the Parent on January 6, 2023. Further, there is no indication that not receiving a draft evaluation report prior to the meeting limited the Parent’s ability to participate in the meeting. Since there is no requirement that the Parent received a draft copy of the evaluation before the evaluation meeting, no violation is found.

Issue Two: IEP Development – The complaint alleged the District failed to develop an appropriate IEP for the Student. When developing each child’s IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. In addition, beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student’s IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments.

The Student’s team reviewed and revised the Student’s IEP on December 13, 2022, after reviewing the results of the District’s evaluation. The Parents raised the following issues regarding the development of the Student’s IEP which are addressed accordingly.

Predetermination: The Parents alleged the District predetermined the IEP team decisions because they “worked off of...[Student’s] previous IEP to draft this current one,” rather than using the evaluation. There was no evidence the District predetermined decisions at the IEP team meeting. After reviewing the evaluation results, the documentation showed the team, including the Parents,

³ The Student’s December 15, 2021 IEP was due to expire.

reviewed the Student's IEP part-by-part, asked questions, and discussed the Student's needs. The proposed IEP was marked "draft" and in reviewing the draft and final IEP, the draft copy showed multiple changes and additions in response to the discussion. No violation is found.

Lack of Parent Participation: The Parents alleged they were unable to meaningfully participate in the IEP decision-making because the evaluation results were provided verbally without a draft copy of the evaluation. The Parents did not indicate to the OSPI complaint investigator what information they were not provided or what IEP decisions they were unable to make because the evaluation was verbally discussed. The Parents had the opportunity to ask any questions about the evaluation results and indicated their agreement with the evaluation by their signatures on the evaluation summary. Had the Parents had questions about the evaluation that did not get answered or if they wanted to wait until they received a written copy of the evaluation, the Parents could have requested another IEP meeting to discuss the IEP in light of the evaluation results. The Parents did not request another IEP meeting once they received a copy of the evaluation report. Further, the Parents attended and participated in the IEP, which is illustrated by the changes made to the draft IEP based on the Parents' input. Based on insufficient evidence the Parents were not able to participate in the IEP meeting, no violation is found.

Copy of Evaluation: The complaint alleged the District failed to provide the Parents with a copy of the evaluation report. The draft evaluation was reviewed on December 13, 2022. All professional members accepted the results. The Parents received a copy of the finalized report on January 6, 2023. Meanwhile, the District was on winter break from December 20, 2022 to January 2, 2023. Although there is no designated timeline to provide a copy of the evaluation, a district is expected to provide a copy of the evaluation in a reasonable time given the circumstances. Here, the District provided the report to the Parents approximately three weeks after the evaluation meeting. But given winter break occurred within those three weeks, the Parents received a copy of the evaluation within a reasonable period of time. Because the Parents received a copy of the evaluation within a reasonable time, no violation is found.

Adverse Educational Impact: The complaint alleged the District failed to identify the Student's correct disability. Here, the adverse impact summary for the writing goal stated the Student's disability was a specific learning disability. The reading and math goals referred to the Student's health impairment. Elsewhere in the Student's IEP, all references were to a health impairment. Since the most likely explanation was that it was a clerical mistake rather than confusion over the Student's disability, no violation is found. OSPI does recommend the District correct the clerical mistake in the IEP.

Math Goal: The complaint alleged the baseline for the Student's December 2022 math IEP goal was inaccurate. The baseline and goal for the December 2021 math goal were 2/10 and 6/10, respectively. The December 2022 math goal baseline and goal were 40% and 80%, respectively. While the Parent stating that 40% is not the same as 6/10 is correct, the Parents appeared to assume that the Student met his 2021 goal of 6/10 and the baseline for the 2022 goal should be 6/10 or 60%. However, the 2022 goal specifically states the baseline is 40% and not 6/10 or 60%. Thus, no violation is found.

Math Progress: The complaint alleged the 2022 math goal was the same as the 2021 math goal, which indicated the Student made no progress. As addressed above, the 2021 math goal was not the same as the 2022 math goal. The 2022 goal increased the level of proficiency from 40% to 80% which also indicated the Student made progress in the goal in the past year. Since there was evidence that the Student made progress toward the goal, no violation is found.

Non-CCSS Goals: The complaint alleged the Student's goals were aligned with non-common core state standards. The Student's December 2022 IEP indicated that the IEP goals were aligned with non-CCSS. The District stated to the OSPI complaint investigator that this was a clerical error with the IEP program and the goals were aligned with CCSS. The Student's goals were consistent with CCSS. Based on the evidence that identifying the goals as non-CCSS was a clerical error, no violation is found. OSPI does recommend the District correct the clerical error.

Age-Appropriate Transition Assessment: The complaint alleged the District failed to provide an age-appropriate transition assessment to the Student. The Student's December 2022 IEP provided a secondary transition plan that included post-secondary goals. The IEP did not identify the transition assessment used with the Student, but the District provided the OSPI complaint investigator with the questionnaire used by the District to identify the Student's strengths, preferences, and interests in developing post-secondary goals. Which transition assessment is used should be used based on the individual student's needs. The questionnaire used with the Student was not inconsistent with the Student's abilities and needs. Thus, there is no violation.

Issue Three: Recovery Services – The complaint alleged the District failed to notify the Parents about the availability of recovery services and discuss the need for recovery services with them. A student's IEP team is required to consider the impact of school closure due to the pandemic on a student and determine whether a student requires recovery services to make up for the lack of progress.

Here, the District acknowledged that the Parents were not made aware of the possibility of recovery services and that the IEP team did not discuss the need for recovery services. In response to the complaint, the District has proposed to convene the Student's IEP team to address the possible need for recovery services for the Student. Based on the District not addressing the potential need for recovery services, a violation is found. OSPI accepts the District's proposed action to convene the Student's IEP team and address the possible need for recovery services.

CORRECTIVE ACTION

By or before **March 31, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

IEP Meeting

By **March 24, 2023**, the District is required to hold an IEP meeting to discuss the Student's possible need for recovery services with the Student.

By **March 31, 2023**, OSPI must receive a copy of the meeting notice, Student's IEP, and prior written.

DISTRICT SPECIFIC:

None.

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.

RECOMMENDATION

The Parents asked many questions in their complaint about the Student's IEP. OSPI did not consider these questions as complaint allegations and therefore, were not addressed. OSPI recommends the Parents and District meet to give the Parents an opportunity to ask their questions about the IEP. Additionally, OSPI noted a few clerical errors in the IEP, which OSPI recommends the IEP team fix.

Dated this 10th day of March, 2023

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.)