

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-55

PROCEDURAL HISTORY

On April 11, 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 [REDACTED] 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 April 11, 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 April 28, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on May 2, 2023. OSPI invited the Parent to reply.

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

On May 25, 2023, OSPI received additional information from the District. OSPI forwarded that information to the Parent on the same day.

On May 30, 2023, the OSPI complaint investigator interviewed the District's state and federal programs director.

On June 2, 2023, the OSPI complaint investigator interviewed the Parent.

OSPI considered all 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 April 12, 2022. 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 in conformity with the individualized education program (IEP) according to WAC 392-172A-03105 during the 2022–2023 school year?
2. Did the District develop an IEP designed to meet the Student's needs according to WAC 392-172A-03110, including social-emotional and audiology?

LEGAL STANDARDS

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 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.

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was a ninth grader who attended a District high school. According to the documentation, the Student had a 504 plan.
2. In March 2022, the Student was evaluated for special education services. The Student was found eligible for special education services under the category of hard of hearing. The evaluation report stated that the Student recently had a third surgery in her right ear. The hearing impairment adversely impacted her access to the general education curriculum. According to the behavior assessment conducted, the Student demonstrated problems with self-control, challenges in school, and social stress and challenges with attention, which required specially designed instruction in social/emotional skills. The evaluation recommended specially designed instruction in the area of social-emotional skills and an audiology consultation. Regarding her communications needs, the IEP stated the Student required a FM (frequency modulation) system, preferential seating, and would include “additional recommendations by her audiologist as they were made available.”

The Student’s teacher stated:

When [Student] shows up to school consistently she does just fine. She will ask questions and complete her class work most days. She is motivated by softball, so I assume that is why we’ve seen better attendance this trimester...I worry about [Student’s] attendance. I pulled her attendance record last tri[mester], she was present for roughly 53% of the days, so she missed just under ½ of the instruction. Like I mentioned earlier she is motivated by softball so she only missed 15 days thus far. She has to be in school to implement any services/accommodations 504 or otherwise.

3. On April 2022, the Student’s team met to develop an IEP for the Student. The IEP provided goals in the area of social/emotional skills (following directions, attending school, and bringing materials to class). The IEP provided the following special education and related services through April 2023:

Service(s)	Service Provider Delivering Service	Monitor	Frequency	Location (setting)
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Social/ Emotional/ Behavioral	General Education Teacher	Special Education Teacher	61 Minutes / 2 Times Daily	General Education
Social/ Emotional/ Behavioral	Special Education Teacher	Special Education Teacher	25 Minutes / Weekly	Special Education
Social/ Emotional/ Behavioral	Special Education Teacher	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education

The IEP included the following accommodations:

- Allow advance passing between periods
 - Snack in classroom or office
 - Extra time to complete assignments
 - Opportunities for positive communication and interaction with peers
 - Frequent checks for understanding
 - Front row classroom seating – left ear is positioned closest to teacher
 - Initiate frequent parent communication (phone is best)
 - Provide student breaks to visit the counselor
 - Separate location (all state, district, classroom tests)
 - Frequency Modulation (FM) user training
4. The prior written notice that accompanied the IEP stated, in part, "The team will incorporate any further recommendations from audiologists after her May appointment(s)."

2022–2023 School Year

5. At the start of the 2022–2023 school year, the Student was a tenth grader who attended the District high school. The Student continued to be eligible for special education services under the category of hard of hearing. The Student's April 2022 IEP was in effect.
6. The school year began September 7, 2022.
7. Between September 9, 2022 and April 7, 2023, the District documented approximately 30 emails and communications between the Parent and the District, primarily about the Student completing assignments and attendance.
8. On September 26, 2022, the Student emailed the school counselor and principal, asking if she could do "online schooling" so she could make up assignments. The school counselor responded that the District did not offer an online option for classes.
9. On September 30, 2022, the Parent sent the District a letter from the Student's physician who recommended an "emotional support dog" contingent on the District's approval. The District did not approve the emotional support dog.
10. On January 3, 2023, the resource teacher emailed the Parent to request an IEP meeting.

11. On February 3 and 24, 2023, the Student's biology teacher emailed the Parent and the Student that the Student was failing or in danger of failing her class. The email stated, "...Email me to set up a time with me next week to work on the assignments."
12. On February 3, 2023, the Parent replied that the Student lost her folder. On February 6, 2023, the biology teacher replied that the Student's biggest challenge was "staying in class." The teacher offered to look at the Student's work up to date and determine what to excuse.
13. On February 8, 2023, according to an email from the director, the Parent, director, superintendent, principal, and school counselor met to discuss the Parent's concerns about the Student cutting classes, being overwhelmed with the amount of work, the District not notifying the Parent about behavioral issues, and teachers not implementing the IEP regarding communicating about missed assignments and positive praise. The District proposed meeting with the Student to discuss how she could catch up with her assignments and an IEP meeting to address teachers not following the IEP.
14. On February 9, 2023, the school counselor emailed the school staff and stated the director, the principal, and her met with the Parent and Student about missing assignments. The Student was going to work on assignments in the office on Mondays, Wednesdays, and Fridays. The email stated the Student worked better alone and she could go to the library, office, or the hallway to work on an assignment. The director replied, stating, among other things, the Student needed "incredible amount of positivity and praise. The idea is that we see progress in the number of missing assignments to help reduce her feeling of being overwhelmed, contributing to her desire to not want to be in school..."
15. On February 22, 2023, the office administrative assistant emailed the Student, asking if the Student needed the FM system anymore or if someone needed to remind her to pick it up since it was not being used. The Parent replied that the Student "probably does still need it but she said she doesn't like how office staff treats her in general..." The assistant emailed back and offered to hand it to her without the Student having to enter the office. The assistant disputed that the Student was treated inappropriately.
16. On March 3, 2023, the school psychologist emailed the director about an interview with the Student the previous day. The Student reported being tired and sleeping through her first five periods but was alert during sixth period. When the psychologist asked about the Student's grades, the Student said she was not engaging in classes and planned to fail while waiting to enroll in a youth reengagement program. The psychologist stated, in part, "...Overall impression is that [Student] is able to be at school and be actively engaged in classwork. Her behavior seems more in line with manipulation of adults." The email also stated, "I don't think hearing is an issue at all. She is manipulating the system and her mother from what I can glean from conversation and body language."
17. On March 7, 2023, the Parent emailed the director and stated she was "revoking all permissions for the school 'psych' to have access to my child."

18. Also on March 7, 2023, the Student emailed the school counselor, requesting working on assignments at home two days a week. The school counselor forwarded the email to the director who stated to the school counselor, "She needs to be in school. When she is at home, who will hold her accountable to complete her work?"
19. The Parent's complaint stated, in part, that the District failed to provide the Student with a quiet place to work.

On March 9, 2023, the Parent emailed the director, asking about the Student using headphones because the Student wanted to leave school for the day, apparently due to the noise. To address the headphones and a quiet area, on March 14, 2023, the director replied:

...Yes, we can provide noise cancelling headphones and the quiet workspace in [teacher's] room (separate room). [Teacher's] room is at its quietest at 4th and 6th period. We are doing what we can to support her in all her efforts to get her grades up, including 1-1 support with [teacher] and prioritized assignment from all teachers. However, it appears that she is refusing to report to [teacher's] room receive the 1-1 support we are trying to provide to her. We need her to uphold her responsibilities as a student, have you been able to discuss these responsibilities with her? I would also like to see if you can check in with her about her FM device. My understanding is that she is supposed to check in with [teacher] in the morning about her FM device, I don't believe she has been obtaining this device every morning, could you please check in with her around this accommodation as well?

20. On March 28, 2023, one of the Student's teachers completed the "IEP/504/EL/Accommodation Failing Grade Documentation" form that included the grade report, copy of the accommodations, work samples, and communication log between the case manager and the Parent and Student. It was not clear what the form's purpose was or what was done with the form.
21. On April 4, 2023, the Student's English language arts teacher emailed the Parent and stated that Student is "so smart," but her issues were missing class and "being too tired to function." The Parent replied, "...Last semester was me letting her fail. Literally everything. She made up so much work at the end but it didn't seem to effect (sp) her grade. It's unfortunate but okay. I don't understand why she is so tired. And yes, we've had a lot of illness this last year. It's been a little much for us, too..."
22. On April 5, 2023, the Student's team conducted an annual IEP review. The Parent's concerns were related to more communication with the Student's teachers so she could help at home, appropriate accommodations, and using an FM system when the Student had congestion. The Parent noted that the Student missed many days at school for illness and two days for "emotional health." The IEP also stated the Student's behavior did not impede her learning. Regarding her communications needs, the IEP repeated that the Student required a FM system, preferential seating, and would include "additional recommendations by her audiologist as they were made available." The Student's teachers stated the Student was a hard worker and able to do "all of the work" even without accommodations, but the Student "struggles with attending school regularly and staying awake when she is here."

The IEP continued to provide social/emotional goals regarding following directions, attendance, and executive functioning. The IEP provided the following special education services through April 2024:

Services	Service Provider	Monitor	Frequency	Location
Social/ Emotional/ Behavioral	General Education Teacher	Special Education Teacher	57 Minutes / 2 Times Daily	General Education
Social/ Emotional/ Behavioral	Special Education Teacher	Special Education Teacher	25 Minutes / Weekly	Special Education
Social/ Emotional/ Behavioral	Special Education Teacher	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education

The Student's IEP provided the following accommodations:

- Allow Student to eat snack in the office or classroom
- Noise-cancelling headphones during work time as needed
- Daily checks for understanding
- Extra time to complete large projects/assignments
- Ratio of 10:1 positive communication and interactions with peers and teachers
- Front row classroom seating – left ear is positioned closest to teacher
- Initiate frequent, detailed communication (phone is best)-for missing assignments
- Modify/repeat/model directions
- No disciplinary actions for tardies to first period only
- Provide student breaks to visit the counselor
- Separate testing location
- Use of non-verbal signal (request card on desk) to ask for help

Staff supports included FM system user training once a year.

The accompanying prior written notice, in part, stated that the Student had not used the FM system during the 2022–2023 school year, but it was still available to her. The school counselor recommended the Student not have an open first period because the Student had difficulty monitoring her behavior.

23. At OSPI's request, the Parent provided information about the accommodations that were not provided. The Parent alleged that all of the accommodations were not followed because of the following reasons:

- Checks for understanding: Teachers did not make checks during instruction, paraeducator did. Classroom was "poorly managed."
- Bringing materials 80% of time: Received detention for not bringing laptop.
- Front row seating: Student reported the teacher on opposite side of room.
- Hearing device: Student reported "snide" comments from staff in office which discouraged her from getting device.
- Quiet, separate location for testing: Testing location was "loud and distracting."

- Positive communication with Student: "They never provided any form of measure for this accommodation about the accommodation was made [sic]."
- Parent communication: District did not communicate "what the Student was struggling with and what issues were happening in the classroom." District did not inform her that the Student was skipping classes.

24. On April 10, 2023, the Student's case manager emailed the Student's teacher regarding the new accommodations.

25. On April 11, 2023, the Parent filed this complaint with OSPI.

26. According to the Student's attendance record, from September 8, 2022 to April 24, 2023, the Student was absent for 48 days.

27. When interviewed, the director denied the allegations and reported that the accommodations were implemented as written. The case manager informed the Student's teacher at the beginning of each trimester of the responsibilities and each teacher signed a statement they received the information. However, the District only provided an email on April 10, 2023, from the case manager informing the teachers of the new accommodations in the Student's IEP. The director reported the District had no documentation, contemporaneous or otherwise, that the accommodations were implemented, although the director observed some of the accommodations implemented in the hallway, for example. The District did not have a procedure to ensure that the accommodations were implemented, such as classroom observations. In an effort to address absences and the missed assignments, the District reduced the Student's load to three courses to help the Student not feel overwhelmed. The director stated she provided instruction to the Student at times, and she would refuse to work. The director stated she did not know whether the Student was not able to do the work or was just refusing to do it.

28. When interviewed by the OSPI complaint investigator, the Parent stated her primary concern was the Student falling behind in her assignments, which made her not want to go to school. And the more assignments were missed, the more the Student did not want to attend. According to the Parent, the reason why the Student missed assignments was due to the District not implementing the accommodations. But the Parent acknowledged the Student is a "willful" student but did not know whether the Student was refusing to do the work, not able to do the work, or both. When asked what social/emotional and audiological services the Student was missing, the Parent stated she was "unsure," but "probably an emotional support dog." Audiological services "were fine."

CONCLUSIONS

Issue One: Implementation of Accommodations – The Parent alleged the District failed to implement the Student's accommodations. A district is required to provide special education services and accommodations in conformity with a student's IEP.

Here, the Student was eligible under the category of hard of hearing and received specially designed instruction in the area of social/emotional/behavior. The Student's April 2022 IEP provided a list of accommodations that included extra time to complete big assignments, checks for understanding, separate location for testing, an FM system, and frequent parent communication among other accommodations.

Here, of particular challenge for the Student was an accumulation of missing assignments. The Student had missed many days of school, which caused the Student to have challenges keeping up with assignments. The Parent argued that the Student would have not missed assignments if the District had appropriately implemented the accommodations. The Parent stated the accommodations were not provided based on the District's actions (or lack thereof), such as paraeducators providing checks for understanding, not teachers, giving the Student detention for not bringing her laptop to class, a classroom being poorly managed, difficulty in finding a quiet place for testing, and the lack of consistent communication with the Parent about the Student's missing assignment.

The District denied the allegation. The director stated that all teachers were informed of their responsibilities under the Student's IEP and that accommodations were implemented. The communication between staff and the Parent showed that the staff were aware of the accommodations and implemented them. For example, one of the accommodations was to provide frequent checks for understanding. Although the District had no documentation, contemporaneous or otherwise, when accommodations were implemented, the Parent could not identify any particular time other than "essays" when checks for understanding were not implemented. Further, the Parent stated the checks for understanding were provided, just provided by a paraeducator instead of a teacher. However, implementation of certain accommodations was not without some difficulty. For example, the District had a difficult time finding a quiet location for the Student, but the documentation showed the District was eventually able to offer a quiet location to the Student, although it appeared that the Student was not always cooperative.

Additionally, the Parent claimed that accommodations like front row seating were not provided because many assignments were missed; however, overall, it was more likely that the Student had an increasing amount of missing assignments because the Student was not attending school regularly and the Student had difficulty engaging because of her fatigue. The Parent also stated there was not frequent communication with the Parent. However, the documentation showed numerous emails between the District staff and the Parent identifying problems and trying to work out solutions for a complicated student.

Overall, when the Student attended school, OSPI finds that the District implemented the accommodations, albeit imperfectly at times. However, no violation is found. Although no violation is found, OSPI recommends that the District document providing information to teachers about a student's IEP and a procedure to ensure that the accommodations are implemented with fidelity, such as periodic classroom observations.

Issue Two: IEP Development – The Parent alleged the District failed to develop an IEP to meet the Student’s social/emotional/behavior and audiological needs. When developing each student’s IEP, the IEP team must consider the strengths of the student, the concerns of the parent for enhancing the education of their child, results of the initial or most recent evaluation of the student, and the academic, developmental, functional needs of the child.

Social/Emotional: Here, the Student’s disability was hard of hearing and specially designed instruction was provided in the area of social/emotional/behavior. The Parent’s primary concern was the absences (and late arrivals) that caused the Student to miss assignments. And as the Student missed more school, she missed more school assignments, and then as the missed assignments accumulated, the Student missed more school. One of the Student’s goals was related to attendance and the services attempted to address attendance, along with other skills. The District made attempts to address the missed assignments by scheduling times for the Student to make up the work, even reducing the Student’s course load.

The OSPI complaint investigator asked the Parent what services the Student should receive to appropriately address the Student’s needs. The Parent recommended an emotional support dog to address the Student’s social/emotional/behavior needs. The Parent alone is not responsible for identifying the services the Student needs—this is the IEP team’s responsibility—but the Parent’s responses were an indication of the frustration over how to break the cycle of the Student’s absences. It was noteworthy that both the Parent and the director, who had worked with the Student, could not determine whether the Student was incapable of the work assignments, did not want to do the work, or both. Thus, it is not clear whether the Student required specially designed instruction or accommodations to address this challenge. It also should be noted that last year’s teachers stated the Student could do the work, at least at that time, and the school psychologist suggested that the Student was manipulating adults. When faced with conflicting information, the District should have considered conducting a reevaluation and a functional behavioral assessment to provide the IEP team with sufficient data about the Student’s anxiety, fatigue, willfulness, and present academic levels to come up with more definitive supports, strategies, and interventions that would enable to the Student to make progress.

While the IEP included services and supports related to the Student’s challenges with attendance, it is not clear the IEP was fully meeting the Student’s needs, especially given the conflicting or lack of information about the Student’s abilities to complete assignments. Based on the failure to consider the need for a reevaluation and functional behavioral assessment, a violation is found. The IEP team is required to meet to determine whether a reevaluation and functional behavioral assessment are required for the Student.

Audiology: The Student’s March 2022 and April 2023 IEPs stated the Student’s communication needs required an FM system, preferential seating, and any recommendations provided by the Student’s private audiologist. However, there was nothing in the record that referred to any recommendation by an audiologist or audiology consultation and nothing documented in the IEP. Further, if the IEP team was waiting on outside recommendations, there is nothing that indicates the District followed up with the audiologist, or in the alternative, had a District audiologist assess the Student’s needs. As a result, there is nothing in the April 2023 IEP that addressed the Student’s

audiology needs other than social/emotional goals and accommodations that relate to the Student's hearing impairment. According to the documentation, the Student does not currently use the FM system and there is no audiology consultation in the IEP, despite this being a recommendation in the evaluation. Based on the apparent lack of documented need for audiology as a special education service (except accommodations) *or documentation and data that this was no longer a need*, the District should have reevaluated the Student to determine whether the Student continued to be eligible for special education under the category of hard of hearing or what audiology services the Student actually needed. OSPI finds a violation.

The Student's IEP team is required to consider whether a reevaluation of the Student is needed to determine the Student's audiology needs. If there are not needs for audiological services, the District should reconsider eligibility under hard of hearing. The District will also develop and disseminate written guidance on the issue identified in this complaint.

CORRECTIVE ACTIONS

By or before **September 8, 2023, September 29, 2023, and October 13, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By **September 29, 2023**, the District must convene the IEP team that includes the Parent to determine whether there is a need to reevaluate the Student to address the Student's audiology and attendance needs, including any need for additional social/emotional or behavioral supports to support regular attendance. If the Parent does not consent, the District must conduct a review of existing data. By **October 13, 2023**, the District will provide OSPI with a copy of the meeting notice and prior written notice regarding the decision to reevaluate the Student. OSPI will provide the District additional timelines regarding the completion of the evaluation and completing an IEP meeting for the Student.

DISTRICT SPECIFIC:

Written Guidance

By **September 29, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the school counselor, and special education-certified staff, including educational staff associates (ESAs)¹, at the school that the Student was enrolled in during the 2022–2023 school year. The guidance will include examples.

Topic 1: Reevaluations/FBA, including when IEP teams should consider whether a reevaluation is needed. The District may want to consider using the TAP #5 as guidance.

¹ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

Topic 2: School attendance, including IEP team responsibility to address challenges with attendance faced by students with IEPs.

By **September 8, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments.

By **September 29, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

OSPI recommends that the District document providing information to teachers about a student's IEP and a procedure to ensure that the accommodations are implemented with fidelity, such as periodic classroom observations.

Dated this 6th day of June, 2023

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.)