

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-120

PROCEDURAL HISTORY

On September 11, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a teacher (Complainant) about students (Students) attending the Cheney School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Students' education.

On September 11, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on September 12, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On September 29, 2023, OSPI received the District's response to the complaint and forwarded it to the Complainant on October 4, 2023. OSPI invited the Complainant to reply.

On October 5, 2023, OSPI requested additional information from the District. On October 6, 2023, OSPI received the additional information from the District.¹

On October 16, 2023, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on October 17, 2023.

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

ISSUES

1. Did the District implement the speech services in conformity with the individualized education programs (IEPs) for Students in kindergarten and first grade at the elementary school from January to May 2023?
2. Did the District provide the Parents of the Students with sufficient information regarding the Students' progress toward their annual goals, including when services were provided?

LEGAL STANDARDS

IEP Implementation: Each school 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. "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).

¹ The information from the District was not forwarded to the Complainant because it entirely consisted of Students' personally identifiable information.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

ISSUE 1: FINDINGS OF FACT

Complaint Allegation

1. The Complainant alleged the District failed to provide speech services to kindergarten and first grade Students at a District elementary school from January to May 2023. In addition, the District failed to inform the Parents of the Students that speech services were not being provided by a speech/language pathologist (SLP).

District Response & 2022–23 School Year

2. The District acknowledged the allegation that speech services were not provided to the kindergarten and first grade elementary school Students who had speech services on their IEPs from January to May 2023, despite the efforts to hire qualified staff.
3. According to the District, in October 2022, the District was informed that the SLP would begin maternity leave in January 2023. The District began "seeking a provider through contracting agencies and posting the position multiple times on the district website."
4. In or around February 2023, after a number of Student IEP meetings were conducted, a Parent of one the Students posted a group message on Facebook, intending to notify Parents of Students that speech services were not being implemented and that other Parents were not told by the District.
5. In March 2023, the Complainant emailed the special education director (director) regarding speech services not being provided and Parents not being informed. The director responded that he was attempting to fill the SLP position, which included conducting five interviews since October 2022. The position was offered to all five candidates, but they all declined. The director stated, "We will be offering compensatory services to families for the time missed. Those services typically occur during the summer but may also occur during the school year."
6. On March 30, 2023, the director sent a letter to the Parents of the kindergarteners and first graders who were not receiving their speech services, stating the following:

We are reaching out to share that your student has been identified as having missed Speech and Language Pathology (SLP) services indicated in their IEP due to SLP vacancies. This information is being shared to ensure that the district is addressing the situation and seeking various remedies.

As a district, we have been diligently seeking additional SLP personnel since we became aware of this need. We will be offering compensatory services for students who missed SLP services. Information related to the structure and service delivery model of compensatory services will be forthcoming in May. In the meantime, we will continue to seek to fill the vacancy and will be tracking missed services that will be accounted for through compensatory services...

In what appeared to be an addendum to the letter, it stated:

As a result of conditions we could not control, [District] could not provide speech or language services to your child for a period of this school year. [District] will be doubling the speech and language services for the remainder of the school year.

In addition, [District] is offering compensatory speech and language services during the summer. Please respond to this email by May 25 if you would like your child to receive compensatory services.

7. On or around April 20, 2023, the District hired a new SLP according to an email from the director to District staff. It was unclear exactly when the new SLP began providing services, but it was sometime in the beginning of May 2023.
8. On May 8, 2023, the SLP who was on maternity leave returned to the District. On May 25, 2023, the SLP emailed the director stating, "many of our students are caught up on their minutes and reports." According to the District, speech services were "double up" when possible, to provide the missing services.
9. According to the District, two of the 38 Parents requested compensatory speech services during the summer. The District submitted documentation that the services were provided during summer 2023, although the Students missed some scheduled compensatory sessions.

Student Information

10. OSPI reviewed the IEPs of 38 kindergarten and first grade Students. These Students had IEPs that included speech services to be provided during the period from January to May 2023.
11. According to the Students' IEPs, speech services ranged from 20 to 40 minutes a week.
12. Six of the Students were initially evaluated and found eligible during the January to May 2023 period and after. Two of the Students were evaluated and began receiving services after the SLP was hired.

ISSUE 1: CONCLUSIONS

The complaint alleged that kindergarten and first grade Students did not receive their speech services from January to May 2023. A district is required to provide special education services in conformity with the IEP.

Here, the District acknowledged that the Students did not receive speech services from January to May 2023. The documentation showed the District made considerable effort to hire an SLP but was unable to do so until late April 2023 and services began in May when the new SLP started and the SLP on maternity leave returned. The speech services were "doubled up" when possible, to make up the missing services. The District provided documentation confirming this. The District also offered compensatory speech services during summer, which two Parents opted for and accessed.

Based on the District failing to provide speech services from January to May 2023, a violation is found. The District's efforts starting in October to hire a new SLP were commendable, as well as trying to make up for the missing services and the offer to provide compensatory speech services. Regardless, a violation is found as services were not provided as written in the IEPs. OSPI accepts the corrective action implemented by the District, which included doubling services at the end of the school year and offering compensatory speech services. No further corrective action is required for this issue.

ISSUE TWO: FINDINGS OF FACT

Complaint Allegation

1. The complaint alleged the District failed to provide the Parents with special education progress reports, including not informing Parents that speech services were not provided.

District Response

2. The District stated:
[District] acknowledges that some students did not receive progress reports in March due to the staff shortage in speech and language services. However, all families of students receiving IEP services related to speech and language were provided with progress notes during annual IEP meetings and through direct communication with the Speech and Language Pathologists (parentheses omitted). After hiring additional speech and language providers, [District] promptly informed families about when services would be provided (parentheses omitted).

Student Information

3. Upon review of the 38 Students' special education progress reports, 23 Students were missing progress reports for speech services during the January to May 2023 period based on their IEP cycles.²
4. In October 2023, the District began looking for another SLP to replace the SLP that was going on maternity leave in January 2023.

² OSPI notes that progress reports included information for other services areas, but per the issues alleged in this complaint, OSPI primarily reviewed progress reporting related to speech services in this investigation.

5. On March 30, 2023, the director sent a letter to the Parents, informing them that the District was not providing speech services and offered to provide the Students who missed speech services compensatory speech services.
6. The documentation showed that during the IEP meetings that were conducted during this period, there was no mention, including in the IEPs or prior written notices, that Students were not receiving speech services. There was documentation in IEPs and meeting notes that mentioned progress in speech, but it was mostly anecdotal information.
7. On September 23, 2023, the Complainant filed this complaint.

ISSUE TWO: CONCLUSION

Issue Two: Progress reports and Parent Notification – The complaint alleged the District failed to provide the Parents of the Students with progress reports in speech from January to May 2023 and failed to notify the Parents that the Students were not receiving their speech services during the same period.

Here, the District acknowledged that some Students did not receive progress reports for speech from January to May 2023. The documentation showed that 23 Students did not receive progress reports in speech during this period, although there were references to progress in the meeting notes and IEPs that were conducted. However, this information was no substitute for the progress report required by the IEP and based on the information in the IEPs and notes, it would have been difficult for a parent to ascertain whether the student was on track to meet their speech goals. The intent of the progress report is to give a parent enough information to know if a student's program is working for them so a parent can fully participate in decision-making. The lack of progress reporting can impede a parent's participation, even if it was for a limited time. A violation is found.

In addition to failing to provide the progress reports in speech during this period, the District also did not inform the parents in a timely manner that the Students were not receiving speech services, which is just as important as a progress report. Parent participation includes monitoring whether services are provided. The District was diligent in attempting to hire an SLP and it was reasonable to expect that one would be hired soon. However, after the SLP left for a planned maternity leave in January 2023 and there was still no new SLP, the District should have timely informed the parents that services were not being provided sooner than end of March 2023, given the amount of services that were missed and given that several IEP meetings occurred during this time period where the lack of services could have been discussed. It is unclear how a parent could truly participate in an IEP meeting and engage in discussions of speech progress—including discussing updated present levels and goals—if the parents did not know their Student was not receiving speech services. Thus, a violation is found as the lack of timely notice impacted parent participation. The District is required to provide written guidance to special education administrators, general education principals, and assistant principals that parents must be informed of missing services that amount to a material violation.

CORRECTIVE ACTION

By or before **November 17, 2023** and **December 8, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **December 1, 2023**, the District will ensure that all special education and general education principals and assistant principals in the District receive written guidance regarding notifying parents when students are not regularly receiving services.

By **November 17, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments as needed.

By **December 8, 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.

Dated this 6th day of November, 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.)