

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-05

PROCEDURAL HISTORY

On January 5, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Tenino 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 5, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 11, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On January 17 and 24, 2024, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on January 24, 2024.

On January 29, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On January 25, 26, and 27, 2024, the Parent provided OSPI with additional information. On February 16, 2024, OSPI provided a copy of the same to the District.

On February 16, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on February 20, 2024. OSPI forwarded the information to the Parent on February 22, 2024.

On February 21, 2024, OSPI's investigator conducted a joint Microsoft Teams interview of both the special education teacher and the assistant superintendent.

OSPI considered 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 concerned fall 2023, per the complaint allegations. 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.

OSPI notes much of the documentation provided to OSPI during this investigation, such as email communications, related to matters not identified as matters for investigation during this community complaint. For example, some of this documentation related, in part, to allegations of potential discrimination against the Student, allegations of potential retaliation against the Parent, parental concern that proper discipline procedures were potentially not followed, parental concern the Student was subjected to potential bullying, and whether the Student had a potential

need resulting from the Student’s disability in the area of social-emotional-behavior. OSPI notes that any references to such information are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations.

ISSUE

1. In fall 2023, did the District follow proper procedures for materially implementing the Student's individualized education program (IEP) accommodations?

LEGAL STANDARDS

IEP Implementation: A district must also ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of autism, was in the ninth grade, attended a District high school, and the Student’s April 17, 2023 individualized education program (IEP) was in effect.
2. The April 2023 IEP included the following accommodations: allow breaks; allow digital completion of classroom assignments; allow oral responses with assignments and class tests; confirm with Student for mastery of skills; extra time on tests/quizzes; extra time to complete assignments; preferential seating; shortened assignments; and take classroom test in separate location. The frequency of provision for the foregoing accommodations was “as needed,” and the location—for all but one of the accommodations¹—was “itinerant.”
3. The District’s 2023–24 school year began on September 6, 2023.
4. The Student’s schedule for the 2023–24 school year was as follows:
 - Period 1: Resource Support (sped)
 - Period 2: English (gen ed)
 - Period 3: Sports and Fitness (gen ed)
 - Period 4: Japanese (gen ed)
 - Period 5: Environmental Science (gen ed)

¹ The location for the accommodation of “allow digit completion of classroom assignments” was “classroom.”

- Period 6: Algebra (gen ed)
- Period 7: Advisory (gen ed)

5. The Parent's community complaint request read, in part:

Student's accommodations were not followed for the first ten weeks of school....[One of Student's IEP] accommodations...allows digital completion of assignments [because Student has dysgraphia].² Student thought he had to write his assessments...The superintendent stated [this accommodation] doesn't say Student cannot write [his assessment answers]. [The superintendent also observed that the accommodation] says 'as needed.' Student was told by his English teacher he could not use his computer on several occasions.

...

Student's IEP accommodations were not [provided to him during] the first quarter [of the academic year].

According to the Parent's community complaint request, at some point during the first 10 weeks of the school year, the Student's "computer was shut down."

6. In its response, the District provided the following written statement regarding the Student's accommodation of "allowing digital completion of classroom assignments":

Student engaged in using school technology to access off limit sites which resulted in a violation of school policy. Staff worked to make sure he still had access to Google Classroom and the needed access to the tools to complete assignments, even with not being able to access the internet for a short period of time on his school device due to the inappropriateness of activity...The District followed proper IEP procedures when implementing the accommodations [and is] open to a facilitated IEP [meeting moving forward].

7. Based on OSPI's reading of the Student's attendance data included in the District's response, the Student was absent for approximately two days of school between September 11, 2023 and January 16, 2024.

8. According to the District, during the 2023–24 school year, the Student had a school-issued Chromebook that the Student would transport to-and-from school and between his various classes.

9. The District's response included browsing history related to the Student's use of a computer between September 29, 2023 and early January 2024. This browsing history showed, in part:

² Whether the Student has needs related to dysgraphia—a neurological condition in which someone has difficulty turning their thoughts into written language—OSPI notes the Parent believed the Student had certain needs in this area, but the District stated it had "not received any documentation of a diagnosis of dysgraphia", that it had "conduct[ed] motor evaluation [testing] last spring", and, "based on the evaluation and Student performance, the District does not agree [the Student has dysgraphia]." OSPI further notes in her interview with OSPI's investigator, the special education teacher stated one of the Student's written language IEP goals related to being able to write legibly and on a line, and that, generally, the Student was making progress on this goal throughout the 2023–24 school year, particularly when the Student was "focused."

the clear majority of searches were related to educational matters; and on occasion, the Student would search for material not related to educational matters, such as music, social media sites, comics, and/or games.

10. According to a 'Referrals by Behavior' document included in the District's response, between September 29 and October 30, 2023, the Student had five "referrals [for] behavior"; two for "defiance," two for "tech [policy violations]", and one for "disrespect."

11. According to September 2023 emails, on September 6, the Parent noted the Student was permitted to use the computer in English class, that this would "be difficult for Student to do in Japanese class" given the nature of learning in that environment, and so the Parent requested the Student "get some help in [that] class."

12. According to the District:

Teachers gave many redirection opportunities when the Student was accessing games, videos, or other non-educational content in class. When the Student continued to disregard teacher input, it was referred to building leadership that followed up with the 'no fun list' limitations and a parent conference: [In early October 2023], when investigating [a potential] breach of appropriate use, the Student did leave his Chromebook with the tech department for less than 24 hours. He was assigned to the 'no fun list' for four days (10/2-10/4). During this four-day period he was able to access all materials related to his schoolwork (Google Classroom, Skyward, PowerPoint, Clever, etc.); his limitation was open internet searches.

13. According to October 2023 emails:

- On or about October 26, the assistant principal worked to ensure the Student's Chromebook was "functioning to meet his academic needs without restrictions." The assistant principal reported, "Student's Chromebook should [now] be functioning to meet his academic needs without restrictions. If there is an additional issue, we will replace the Chromebook to ensure it is not a hardware issue."
- In an October 27 email, the Parent wrote a "detention person" that worked for the District had told the Parent, "[It's] not [the District's] fault that the computer wasn't working, it was the...software."
- In an October 28, email, the Parent stated on or about that date, the Student temporarily had a webpage up related to a comic book character, this was witnessed by a staff member, the Student was assigned a "detention", and Parent believed this was an inappropriate course of conduct.
- On October 30, the resource teacher wrote, "Student is getting his assignments on the computer."

14. A 'Discipline Referral Detail,' dated October 19, 2023, read, in part, "Back on September 29, 2023, Student was warned about downloading apps that block [District] sites³ and unblocks

³ According to the District, "THS sites" refers to "approved educational sites that meet the District's firewall criteria as [being] appropriate for student use."

other sites. He has downloaded Holy Unblock⁴ this time. [He] will not be put back on the ABSOLUTE NO FUN LIST⁵ again" (emphasis in original).

According to the District, "[Software] did not directly communicate with the District to confirm or deny this incident." (According to its website, in part, the software program permits instructors to see what students are doing on school-issued Chromebooks during instructional time.⁶)

15. In an October 27, 2023 email, the Parent stated the "Student's computer [had been] shut off" and that this represented an IEP implementation failure, as "Student need[ed] to use it due to his fine motor disability." The Parent stated this negatively impacted the Student's ability to complete work in his English class.
16. On November 6, 2023, the Student's "team" met to discuss the Student's "high school transition and beyond" plan, and services related thereto. The Parent did not attend this meeting, though the Parent had been invited.

In an email recounting the meeting, the assistant principal wrote, in part:

Across all settings he is needing frequent reminders to stay on approved content and keep the phone put away during class time. This can become a safety issue (such as when he is in PE class and other students are actively engaging in sports near him and he is watching his phone screen) and it can be an academic issue (such as watching content on websites instead of completing assignments). We will continue to remind him of appropriate times to use these devices (ex. before school and at lunchtime).

Student is having difficulty with allowing staff to help him both in his academics and with social interactions. All staff present today shared that they frequently check in with Student to ensure that he has classroom and school support. He has not yet been willing to share academic work that is in process to have input from teachers and when teachers have checked in with him about safety or social conflict he has not shared any ongoing concerns...Student's teachers are also working together to provide common language and expectations to help his success.

In a related email, the Parent wrote, "It was my understanding the resource teacher was to make sure the assignments were finished if not done in class...His computer was also turned off for 4.5 days. [Student is not being provided with] emergency bathroom usage [support]," and, "Student needs some one-on-one [assistance] to help [with math] problems".

⁴ According to the District, "Holy Unblock" refers to "a secure web proxy that allows the users to bypass the filters that the school has put into place."

⁵ According to the District, the "Absolute No Fun list" refers to "a group created with the District's content filter that limits sites students can access to only approved curriculum and associated educational material."

⁶ <https://www.securly.com/classroom/>

17. According to November 2023 emails:

- The Parent believed the Student was not being provided "redirection" by a certain teacher.
- The Parent wrote, "Student's notes need to be done on a Google document. He is unable to write legibly due to his dysgraphia. All of his answers on tests and labs need to be typed."
- On November 1, the Parent wrote, "The English teacher is not using Hapara⁷ the way it was designed. It was meant to redirect and educate kids on how to responsibly use the computer. Instead she has used it as a tool for punishment."
- On November 2, the Parent stated certain staff had allegedly "discovered [they] could not see Student's [search] history in Hapara."
- On November 13, the Parent wrote, "Student's IEP says notes on computer since he has dysgraphia. He needs to be shown how to do this, if he doesn't remember or was never shown."
- On November 15, the Parent stated the Student was prevented from using his computer to complete a "Hero's Journey" assignment in English class.
- On November 15, the Parent wrote the science teacher, "Student's notes need to be done on a google document. He is unable to write legibly due to his dysgraphia. All of his answers on tests and labs need to be typed. He told me he had to write today. This needs to stop immediately."
- On November 16, the Parent stated herself, the principal, and the resource teacher had "all spoke" and determined the Student would "be able to [complete] all his assignments typing [as] Student cannot write."
- On November 20, the Parent wrote the science teacher, "Student told me he hand wrote his notes today...Student's accommodations say he is allowed to type them. Please have him redo them on the computer so they are legible."
- On November 22, the Parent emailed the English teacher, stating the Student had an IEP accommodation of "extra time to complete assignments."
- On November 22, the Parent wrote the English teacher, "Student turned in assignments that were handwritten today. Those should have been typed. Please do not make him hand in work that is not legible due to his dysgraphia."
- On November 28, the assistant principal wrote the Parent, "I have confirmed with both the English teacher and the resource teacher that all of the assignments that Student has yet to complete can be found on his google classroom, and [that] he has been informed daily in both settings that he has the option to complete his work electronically."

18. According to December 2023 emails:

- On December 1, the assistant superintendent emailed the Parent, stating, in part, "When I reviewed the accommodations listed on his IEP, there was no accommodation stating he would not write in school. I want us to make sure if there is anything to be addressed for his accommodations, please let's convene the IEP team to discuss." The Parent responded, stating, in part, "Student is to be allowed to electronically do his assignments." The Parent stated the resource teacher, the principal, the assistant principal, and the Parent had all met and discussed this accommodation at the start of the 2023-2024 school year.

⁷ According to the District, "Hapara is a classroom management tool that allows teachers to monitor student use when they are in class. Teachers can see what students are accessing in real time and gives teachers management rights to student Chromebooks (remote access or an enabled chat feature to remind students of appropriate use of technology tools). [Other software] is different in that it is a web content filter which acts as a firewall and tracks student internet use. It will alert school leadership if students access sites that are deemed inappropriate due to content that may be violent, indicating self harm, [etc.]"

- The Parent stated the Student had an “inability to hand write properly.”
- On December 6, the assistant superintendent wrote, “I do not take [the accommodation at issue] as meaning Student will never write while in school. It looks like it would be important to clarify [via a] meeting with the team?” The Parent responded, “I will not be having any IEP meetings for the remainder of this school year.”
- On December 8, the Parent emailed the assistant principal, stating, in part, “Student is continuing to be expected to do handwritten assignments. Paper assignments – apart from math and Japanese, which [involve] symbols that he can do, albeit slowly – [are not appropriate and Student should] be allowed to [complete these] digitally.” The assistant principal responded, stating, “Student’s accommodation for digital completion of assignments has been made available at every opportunity where it is possible. As you called out, things like math and Japanese are obvious places where this is not applicable. Other classroom assignments that are short answer / fill in the blank activities fall into this category as well.”
- On December 11, the assistant principal stated she would begin “check[ing] in with Student a couple times a week to make sure Student stays on track” with completing his assignments.
- On December 11, the Parent wrote, “Student was never given one of his nine accommodations written in his IEP for the first 10 weeks of this school year.” Separately, the Parent wrote, “Student will no longer be entering into administrative offices without a parent and an Advocate.”
- On December 12, the Parent asserted the Student’s accommodations first “started [being provided to Student on] week 10 [of the 2023-2024 school year], when I sent a copy [of the Student’s IEP accommodations] to the teachers myself...His digital submissions for paper assignments in class began at week 10.”
- The assistant principal proposed an IEP meeting take place in January 2024, to discuss the Parent’s concerns regarding the Student’s IEP accommodations, but the Parent stated she was not interested in such a meeting.

19. According to January 2024 emails:

- The Parent believed it was unfair for the Student to be required to “make up” certain assignments on the computer that the Parent alleged, “were [only] not done properly [the first time] due to [District staff] not [providing Student with] his accommodations.”
- According to the Parent, on at least one occasion, the Student reported “he was getting hassled about his digital assignments” in English class.”

20. On January 16, 2024, the Parent emailed the assistant principal, “Student has had no complaints, detentions, or suspensions since he has received his accommodations.”

21. On January 24, 2024, the Parent emailed the assistant principal, stating she had not been provided “access to the [grading] rubric” for several classes, including English.

22. Progress reporting, dated January 24, 2023, showed the Student made sufficient progress on his social emotional (participation, coping skills, and organization) goals and written language (legibility) goal.

23. On January 27, 2024, the Parent informed OSPI’s investigator, “I had to put my son into an online school.”

24. According to the District, as of February 21, 2024, “the Student is no longer enrolled in the District.”

CONCLUSIONS

Issue 1: Implementation of IEP Accommodations – The Parent alleged the District did not follow proper procedures for materially implementing the following accommodation in the April 2023 IEP, “allow digital completion of classroom assignments.”⁸

As a preliminary matter, OSPI notes the parties had different understandings of the meaning of this accommodation. The Parent believed this accommodation meant all assignments had to be completed on the Chromebook.⁹ The District believed this accommodation meant the Student had the option of completing assignments on the Chromebook, but that the Student was not required to complete each and every assignment on the Chromebook, nor that the accommodation meant the Student would never handwrite things in school. In part, the District’s opinion related to staff observations that the Student sometimes preferred to complete certain parts of assignments via handwriting. For example, in part, the special education teacher noted the Student had an IEP goal related to writing on lines legibly, which would necessitate handwriting, and that the Student was able to make progress on this goal throughout the 2023–24 school year. Under these circumstances, the appropriate course of action would have been to hold an IEP meeting, to both clarify the meaning of the accommodation itself and to clarify the extent of the Student’s potential need in this area.¹⁰ And, here, the District proposed the IEP team meet to discuss these issues, both on December 1 and 6, 2023. But the Parent refused to meet and subsequently withdrew the Student from the District. Given the foregoing, OSPI finds the

⁸ The Parent’s community complaint request, and the email communications provided to OSPI during this investigation, related almost exclusively to the accommodation of “allow digital completion of classroom assignments.” To the extent the Parent did have implementation concerns regarding the other accommodations in the Student’s April 2023 IEP, this investigation showed they were materially implemented. For example, during her interview with OSPI’s investigator, the special education teacher explained, in part, the Student was provided with preferential seating and extra time to complete assignments, and the Student was given the option to take occasional breaks and provide oral responses for quizzes and tests, though the Student did not often prefer to utilize these particular accommodations. Furthermore, the documentation provided to OSPI during this investigation showed District staff redirected the Student and checked in with the Student to “confirm with Student [regarding the] mastery of skills.” For example, in part, the assistant principal’s November 6, 2023 email references District staff providing the Student with reminders. OSPI finds the District materially implemented the IEP accommodations that did not relate to the Student’s usage of his Chromebook.

⁹ With some limited exceptions for certain symbols in math class and Japanese class.

¹⁰ On this latter point, OSPI notes that during the course of this investigation, the District stated it does not agree—based on the data available to it during the relevant time period—that the Student had significant needs resulting from his disability in the area of dysgraphia.

District followed proper procedures in relation to the parties' different understandings regarding the accommodation at issue.

Regarding implementation, a district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

Here, the investigation showed, in part, for approximately three days in early October 2024, the Student's internet search capabilities were restricted more than they normally were, but that, during this time, the Student still had access to the Chromebook for academic purposes—Google Classroom, Skyward, PowerPoint, etc.—and while the Student did complete certain assignments via handwriting throughout the 2023–24 school year, the Student was provided with ample opportunity to complete many assignments via the Chromebook. OSPI does not find an IEP implementation violation.

Here, OSPI notes the Student is no longer enrolled in the District. Should, however, the Student reenroll in the District in the near future, the IEP team should meet, to discuss the meaning of the accommodation at issue, and whether it needs to be revised, as well as whether the Student has certain needs resulting from the Student's disability in the area of dysgraphia.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 5th day of March, 2024

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.)