

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-25

PROCEDURAL HISTORY

On February 20, 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 Pasco 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 February 20, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on February 21, 2024. OSPI asked the District to respond to the allegation made in the complaint by March 8, 2024.

On March 7, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on March 8, 2024. OSPI invited the Parent to reply.

On March 18, 2024, the OSPI complaint investigator interviewed the Parent.

On March 18, 2024, the Parent provided OSPI with additional information. Because the emails were originally between the Parent and District, OSPI did not resend the information.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received by the complaint investigator during the interview.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on February 21, 2023. 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.

ISSUE

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 2023-24 school year?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also 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).

Program Accommodations and Modifications: An IEP must include a statement of the program modifications and/or accommodations that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

FINDINGS OF FACT

2022–23 School Year

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of traumatic brain injury (TBI), was in the eighth grade, and attended a District middle school. The Student's October 19, 2021 individualized education program (IEP), developed in another Washington state school district, was in effect. The Student transferred into the District in April 2022.
2. The District's 2022–23 school year began on August 30, 2022.
3. The Student's annual IEP meeting occurred on October 13, 2022, and the IEP included goals in reading (text comprehension), written language (independent writing), math (2-step equations), and communication (identifying main idea, inference questions), with progress reports provided congruent with the issuance of report cards. The Student's IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - Reading: 147 minutes/week (to be provided by special education staff)
 - Written Language: 148 minutes/week (to be provided by special education staff)
 - Math: 295 minutes/week (to be provided by special education staff)
 - Communication: 30 minutes/week (to be provided by speech language pathologist (SLP))

The Student's October 2022 IEP included the following general education accommodation/modifications: extended time, chunking of tasks, task reminders, small group work, check lists, when possible, copies of notes, read aloud text, visuals when available, repeat of instructions as needed, calculator, and use of notes on exams.

2023–24 School Year

4. At the start of the 2023–24 school year, the Student continued to be eligible for special education services, was in the ninth grade, attended a District high school, and his October 13, 2022 IEP was in effect.
5. The District's 2023–24 school year began on August 29, 2023.

6. The Student was enrolled in the following classes for trimester 1:
 - Geography
 - IP 9 English
 - IP 9 algebra
 - Art
 - Sports/fitness
7. On September 7, 2023, the Parent contacted the high school vice principal with concerns that the Student felt overwhelmed in geography class and that the teacher was not aware the Student had an IEP. In addition, the Parent shared that the case manager had not yet met with the Student. The communication log also indicated the vice principal would have the case manager meet with the Student and talk with the geography teacher.
8. Also, on September 7, 2023, the Student's special education case manager emailed all the Student's teachers for trimester 1, alerting them to the accommodations the Student required as part of his IEP. The email directed them to look up the specific accommodations within the Student's "PowerSchool" (student information system) file. The case manager also requested to be contacted should they see the Student struggling in class. One teacher responded that they could not find the Student's accommodations in "PowerSchool" and requested the case manager send him a hard copy of the accommodations.
9. On September 9, 2023, the geography teacher began to email the Student regarding accommodation support. These emails from the teacher to the Student continued through November 2023. The support included technical assistance and/or links to access: text-to-speech notes and how to make a copy to use when needed, speech-to-text for map work, support for completing homework and reiterating that notes can be used on tests, text-to-speech accommodation for a test, and speech-to-text for vocabulary work.
10. On September 27, 2023, the District sent the Parent a "Notification of IEP Meeting" for October 6, 2023, and the notification indicated the Parent had agreed to the date and time.
11. On October 6, 2023, the Student's IEP team developed a new annual IEP for the Student. Participants included the Parent, a general education teacher, SLP, special education teacher, counselor, District representative, and school psychologist. The IEP included annual goals in reading (recalling main idea/supporting details), written language (editing and revision of written work), math (multi-step math problems), and communication (answering inference questions, self-advocacy) with progress reporting at the end of each trimester. The Student's October 6, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:
 - Reading: 157minutes/week (to be provided by special education staff)
 - Written Language: 157 minutes/week (to be provided by special education staff)
 - Math: 314 minutes/week (to be provided by special education staff)
 - Communication: 90 minutes/month (to be provided by an SLP)

The Student's October 6, 2023 IEP included the following general education accommodation/modifications: extended time, chunking of tasks, task reminders, small group work, check lists, when possible, copies of notes, read aloud text, visuals when available, repeat of instructions as needed, calculator, and use of notes on exams.

12. The District provided a prior written notice (PWN) to the Parent on October 6, 2023, following the annual IEP meeting of same date, describing the Student's IEP goals and objectives, that current levels of performance were reviewed, and that a new IEP was developed.
13. On November 22, 2023, the end of the first trimester, the District provided IEP goal progress information to the Parent as follows:
 - The Student made progress on his reading goal and was able to recall main ideas and supporting details 40% of the time (an increase over baseline).
 - The Student maintained performance in the use of written language conventions, scoring 1/4 based on in-class writing assignments.
 - The Student did not make progress on the math goal, though the teacher stated the Student had completed 100% of the practice problems for solving equations.
 - On communication goals, the Student was answering inference questions related to grade-level text with 75%-80% accuracy.
 - The SLP noted that the second communication goal (self-advocacy) was not addressed to focus on the first goal.
14. On November 28, 2023, trimester 2 began and the Student was enrolled in the following classes:
 - Earth science
 - IP 9 English
 - IP 9 algebra
 - Music
 - Photography
15. On December 4, 2023, the Student's case manager sent an email to all the Student's teachers to let them know the Student had accommodations as part of his IEP, and to offer help regarding any of the accommodations. The case manager provided instructions on how to locate the Student's goals and accommodations in "PowerSchool" and requested that if the teachers saw the Student struggling, to reach out to her as soon as possible.
16. On January 18, 2024, the Parent emailed the earth science teacher to express concerns told to her by the Student. The Parent also shared that the Student has a disability and has accommodations as part of his IEP. The Parent asked specifically what accommodations the teacher was providing and what could be provided in the class.
17. On the morning of January 29, 2024, the Parent emailed the principal, following up on a previous conversation they had regarding concerns about the Student's accommodations. The Parent understood that the principal would send out an email to the Student's teachers about the IEP accommodations, and that she would receive a copy of the email, as well. The principal responded later that same day that the vice principal was following up and the Parent should receive a copy of the email sent to the teachers.
18. In the afternoon of January 29, 2024, the vice principal sent an email to the Student's teachers regarding the IEP accommodations, inclusive of a list of the general education accommodations the Student was to receive.
19. On February 6, 2024, the Parent sent the principal an email, requesting an in-person meeting to "discuss what has still not been being met for their IEP accommodations."

20. On February 7, 2024, the Parent sent an email to the vice principal and the Student's teachers, requesting an in-person meeting to discuss IEP accommodations "since there are still classes that are failing to provide these requirements." The Parent and vice principal exchanged additional emails that day, discussing details and who should attend the meeting. The Parent shared she was most concerned with photography and earth science.
21. On February 8, 2024, the in-person meeting was confirmed for February 14, 2024, at 2:40 pm.
22. District documentation indicated a meeting with the Parent that was held on February 14, 2024, with the earth science and photography teachers, as well as the vice principal and the Student's case manager.
23. Information gained from the Parent regarding the discussion that occurred at the meeting on February 8, 2024, indicated that the photography teacher expressed difficulty with implementing the speech-to-text accommodation, and shared that the Student has speech therapy services when she is available to provide extra help.
24. On February 22, 2024, the Parent met with the executive director of special services to discuss concerns about the implementation of accommodations. Both District documentation and information gained from the Parent interview indicate that the Parent's request for a new case manager was approved and a new case manager was assigned. The new case manager is meeting daily with the Student.

In addition, the Parent's request for tutoring support was also approved and tutoring has been provided for an hour weekly. Finally, the Parent requested a meeting with the Student's trimester 3 teachers, which was scheduled to occur on March 13, 2024 (trimester 3 began on March 12, 2024). This meeting would focus on the Student's accommodations and how the teachers can implement them in the classroom.

25. On February 29, 2024, the executive director of special services met with the school staff who taught the Student in either trimester 1 (T1) or trimester 2 (T2). The District documentation also included written documentation from the teachers about the accommodations provided. The following is a compilation of that information regarding the accommodations each teacher provided:
 - Special education language arts teacher (T1/T2): extended time, small group work, chunking of tasks, task reminders, repeat of instruction, read aloud text, visuals, copies of notes, notes on exams, repetition of information, verbal assessment when appropriate, reading abridged version of plan, watching film versions of assigned readings.
 - Special education math teacher (T1/T2): retakes of any assessment, artificial intelligence to adjust the reading level of text, weekly support to increase grade.
 - Geography teacher (T1): text-to-speech, notes during exams, extra practice prior to test.
 - Sports/fitness teacher (T1): Student advocated for himself and did well in the class.
 - Art teacher (T1): extended due dates, including beyond the end of the trimester, shortened assignments; take materials home for additional work time, weekly assignment support, adjustments to assignments.

- Earth science teacher (T2): extra time on reassessments and retakes, allows notes on tests, notes are done together in class, read aloud large text during class, regular check-ins during class.
- Photography teacher (T2): group work.
- Music teacher (T2): teacher's response indicated the Student was engaged in the class and doing well; Student requested support/assistance when needed.

CONCLUSIONS

Issue 1: Implementation of the Student's accommodations in conformity with the IEP – The Parent alleged that the District did not provide the Student's general accommodations in his classes during trimester 1 and trimester 2.

A district must develop a student's IEP in compliance with the procedural requirements of the IDEA/state regulations and ensure it provides all services in a student's IEP. An IEP must include a statement of the program modifications and/or accommodations that will be provided to support the Student in meeting their goals in general education settings.

In this case, the Student was afforded some accommodations in some classes for both trimester 1 and trimester 2. The District provided information to the Student's teachers regarding the accommodations outlined in the IEP, as the case manager sent an email to the teachers on September 7, 2023, six days after the first day of school. In addition, the email sent by the case manager to the Student's teachers for trimester 2, regarding the accommodations required by the IEP, was sent four days after the start of the second trimester. During both trimesters 1 and 2, the Student's teachers did not uniformly provide the Student access to all the accommodations delineated in the IEP. Some of the teachers made available as many of the accommodations as possible, given the subject matter and materials of the course. Others only made available one or two accommodations, when all courses had written materials as part of the class.

After the meeting between the executive director of special services and the Parent (February 22, 2024), the District approved the Parent's request for a new case manager, and one was assigned. The new case manager is meeting daily with the Student. The District also approved the Parent's request for tutoring services for the Student, which have been occurring on a weekly basis for one hour. The tutoring sessions occur between early release from school and the start of track practice and will cease when track season ends.

Therefore, OSPI finds a violation as the Student's accommodations were not consistently implemented in all classes. As corrective action, the District will provide written guidance. No further Student specific corrective actions are required as the District has already addressed the concern with the case manager and has provided tutoring.

CORRECTIVE ACTION

By or before **May 3, 2024** and **May 17, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **May 17, 2024**, the District will ensure that all certified special and general education teachers, and the principal, and vice principal, assigned to the school that the Student is enrolled in this school year, receive written guidance on the requirement for districts to ensure it provides all services in a student’s IEP, including accommodations and modifications, consistent with the student’s needs as described in that IEP to enable the student to advance appropriately toward attaining their annual goals and be educated with nondisabled peers.

By **May 3, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by May 7, 2024.

By **May 17, 2024**, 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 19th day of April 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.)