

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-34

PROCEDURAL HISTORY

On March 12, 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 Bellevue 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 March 12, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent. OSPI asked the District to respond to the complaint's allegations.

On March 12, 13, and 20, 2024, OSPI received responsive information from the District and forwarded the information to the Parent on March 22, 2024. OSPI invited the Parent to reply.

On March 19, 2024, OSPI received additional information from the Parent, and forwarded that information to the District on March 20, 2024.

On March 26, 2024, OSPI interviewed the Parent.

On April 1, 2024, OSPI received the District's response and forwarded it to the Parent on April 2, 2024. OSPI invited the Parent to reply.

On April 2, 2024, OSPI amended the first issue to extend the investigation period to March 13, 2023.

On April 2, 2024, OSPI received the District's response to the amended issue and forwarded it to the Parent on April 3, 2024. OSPI invited the Parent to reply.

On April 3, 2024, OSPI received additional information from the Parent, and forwarded that information to the District on April 4, 2024.

On April 3 and 4, 2024, OSPI received additional information from the District, and forwarded that information to the Parent on April 4 and 5, 2024.

On April 5, 2024, OSPI received additional information from the Parent, and forwarded that information to the District on April 6, 2024.

On April 5, 2024, OSPI received additional information from the District, and forwarded that information to the Parent on April 6, 2024.

On April 22, 2024, OSPI received additional information from the District, and forwarded that information to the Parent on April 23, 2024.

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

ISSUES

1. Since March 13, 2023, per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly, including the Student's specially designed instruction in reading and writing, and the Student's accommodations/modifications?
2. Since February 2024, per WACs 392-172A-03110 and 392-172A-03100/05001, has the District ensured that the Parent has had the opportunity to provide input into the Student's IEP?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (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. 34 CFR §300.323; WAC 392-172A-03105(3)(a).

"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).

Parent Participation: The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. WAC 392-172A-05001. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's individualized education program (IEP). 34 CFR §300.324; WAC 392-172A-03110(1)(b).

Parent participation is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due

process hearing. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

FINDINGS OF FACT

Background

1. On February 6, 2023, the Student’s IEP team met to draft the Student’s IEP. The Student was a ninth grader at a District high school and was eligible for special education services under the category of autism. The Student’s IEP included specially designed instruction (SDI), to be provided from February 5, 2023 until February 5, 2024, primarily by a special education teacher in a special education setting, as follows:
 - Math: 240 minutes/weekly
 - Reading: 240 minutes/weekly
 - Written Expression: 240 minutes/weekly
 - Social Emotional: 240 minutes/weekly
 - Adaptive: 240 minutes/weekly (by a paraeducator in a general education setting)
 - Speech Language Pathology: 30 minutes/weekly (by a speech language pathologist (SLP))

The IEP also included the following supplementary aids and services:

- Additional Adult Support: 960 minutes/weekly (by a paraeducator in a general education setting)

The Student received 1,830 minutes per week of building instructional time, with 750 minutes per week served in the special education setting, and the percent of time in a general education setting was 59.02%. The Student’s LRE was LRE 40–79%. The IEP’s description of services stated:

[Student] receives SDI in reading and written expression concurrently in one Targeted English class period. He receives SDI in math in one Targeted Math class period. [Student] receives SDI in social-emotional and Adaptive in one special education class period (CCC¹ or Adaptive Living Skills). [Student] will receive 1:1 Para-Educator Support in his general education classes.²

This IEP had 33 accommodations and no modifications. It included progress notes from the following dates:

Goals	Progress Notes
Social/Emotional	June and November 2023, and January 2024

¹ “CCC” stands for a Communication, Collaboration, and Connection. This course provides instruction in social and behavior related areas, including self-regulation, conflict resolution, and conversation skills.

² An April 3, 2024, email from the District explained as follows, “The primary purpose of [Student] having this additional adult support in general education classes is to ensure that he is receiving all of the accommodations and modifications he needs in those classes.”

Adaptive	June and November 2023, and January 2024
Math	June and November 2023, and February 2024
Reading	May, June and November 2023
Written Expression	May, June and November 2023
Speech	May, June and November 2023, and January 2024

2. An April 6, 2023 prior written notice (PWN) stated in part:
The team is proposing to keep the original IEP goals as outlined in the IEP dated 02/06/2023.

The reason we are proposing or refusing to take action is:
[Student's] current levels and progress since 02/04/2023 indicate the goals are aligned with his abilities.

Description of any other options considered and rejected:

1. The team considered and rejected new IEP goals proposed by the parents.
2. The team considered and rejected changing [Student's] math goals to be more functional.
3. The team considered and rejected additional accommodations proposed by the parents.

The reasons we rejected those options were:

1. The proposed IEP goals do not align with [Student's] current rate of progress.
2. Functional math goals are not taught in Targeted Pre-Algebra and this would result in a schedule change to Targeted Math. Furthermore, parents are focused on [Student] passing the Smarter Balance Assessment and this assessment does not cover functional math.
3. Currently [Student] has 34 accommodations listed on his IEP that cover all his academic needs.

2023–24 School Year

3. On September 5, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was a tenth grader at a District high school and his February 6, 2023 IEP was in effect.
4. On December 1, 2023, the Student's IEP team met to amend the Student's IEP. This IEP included the same SDI and paraeducator support, for the same number of minutes as was provided in the February 6, 2023 IEP. A PWN stated, "The team is proposing to implement a new IEP goal in the area of Written Expression - Editing...[Student] has mastered his previous IEP goal in this area...No other options were considered or rejected."
5. On February 1, 2024, the Student's IEP team met to draft the Student's annual IEP. This IEP included the same SDI and paraeducator support from February 5, 2024 until February 3, 2025, for the same number of minutes as was provided in the February 6, 2023 IEP.

The IEP's description of services noted:

[Student] receives SDI in reading and written expression concurrently in one Targeted English class period.³ He receives SDI in math in one Targeted Math class period. [Student] receives SDI in social-emotional and Adaptive in one special education class period (CCC or Adaptive Living Skills).⁴ [Student] will receive additional adult support in his general education classes. [Student's] communication services may occur in the SLP therapy room, classroom, community setting or elsewhere in the school setting to support generalization of social language (e.g., lunchroom, etc.). Therapy may consist of 1:1, small group or large group contexts.

This IEP also had 31 accommodations and the following three modifications⁵:

- Provide alternative assignment at instructional level.
- Reduce length of assignments.
- Grade on modified standards determined through collaboration between general education teacher and special education teacher.

The IEP also included "Updates from Teachers", stating, in part:⁶

Modern World

Strengths:...His written work on digital responses is well above the writing levels of his peers. All assignments are completed to perfection, especially written, digital assessments from home.

Challenges: [Student] struggles with reading comprehension and seems to struggle with understanding questions within assignments. There are moments when [Student] asks for help on assignments that he has already completed which can create stress and confusion for both myself and [Student].

...

Other Comments: I am worried that [Student] might not be completing the digital assignments himself as there is a clear difference between the work that is completed in class compared to the work done at home. I am fearful that this might have a negative impact on [Student's] long term success.

6. A February 7, 2024 PWN stated:

The team is proposing a new IEP with new IEP goals. The team is proposing adding modifications to [Student's] IEP. The team is proposing the addition of testing accommodations.

³ Under the "Area of Concern" for the Student's writing goal, it stated, "[Student] copies the information from online. He is unable to create a written idea independently."

⁴ Based on the Student's report cards, "Adaptive Living Skills" was offered during the first semester and "CCC" was offered during the second semester.

⁵ On April 2, 2024, the District emailed OSPI and provided as follows, "Instructional coach 1 is supporting modifications in Chemistry...The special education teachers are the ones who support both general education teachers in modifications for both classes."

⁶ The Student's Spanish, Targeted English, Targeted Math and Computer Graphics teachers also provided updates. The Chemistry teacher did not provide an update.

The reason we are proposing or refusing to take action is:

It has been a year since [Student's] last IEP and the current goals reflect his current level of progress. Adding modifications to the IEP support his learning in general education classes and allow him to have access to modified curriculum and grading, supporting his current level of progress. It would further allow [Student] to complete his own work at his academic level.

Description of any other options considered and rejected:

Adding modifications for all general education classes was considered and rejected by the family.

The reasons we rejected those options were:

The family felt [Student] needed to have access to the full curriculum and a modified curriculum would hinder his growth in the subject area.

...

The IEP team was unable to complete a review of the IEP goals, services, testing or accommodations. The IEP meeting was terminated and will be reschedule for the following week.

Modifications were agreed upon by the family for Modern World History.

7. On February 8, 2024, the Student's IEP team met to complete the development of the Student's IEP. This IEP included the same SDI and para-educator support from February 12, 2024 until February 3, 2025, for the same number of minutes as was provided in the February 1, 2024 IEP. This IEP also had the same three modifications as the February 1, 2024 IEP.

A PWN attached to this IEP, dated February 26, 2024, stated, in part:

1. The team is proposing to update IEP goals.
2. The team is proposing to add modifications in content and grading to the IEP.
3. The team is proposing the addition of testing accommodations.

...

1. The team amended the reading comprehension goal, added a second writing goal⁷ for focusing on paragraph writing, and added a second adaptive goal addressing executive function. These goals support [Student's] current needs.
2. Modifications will allow [Student] access to materials at his ability level.
3. Since [Student] struggles with recalling information and requires more time/verbal support for processing, a notecard and individual or small group testing will support his test taking.

...

The IEP team determined, with the exception of the parents, that [Student's] current needs dictate modifications in Chemistry are necessary in order for him to be successful.

⁷ On March 19, 2024, the Parent sent OSPI an email that stated, in part, "When you read the Feb. 1st version (IEP) and compare to last year's version, you will find that the writing part had been whittled down to just 3 brainstorming complete sentences. Only after I voiced out to reinstate the writing portion to the literacy expert ... and she agreed, did the case manager reinstate it back into the Feb. 8th version."

8. On February 11 and 17, 2024, the Parent sent emails to the District, suggesting a total of 18 changes to the Student's IEP.
9. On February 26, 2024, the school psychologist emailed the Parent, in part, as follows:

...I wanted to follow-up with you about the team's request to complete a more thorough reevaluation of [Student] at this time. Instead of focusing only on OT/fine motor skills/sensory, the evaluation team is requesting to complete a thorough reevaluation of [Student] at this time. The reason for this request is that a full reevaluation would provide us with updated information on [Student's] current cognitive, academic, adaptive, social/emotional, behavioral, etc. functioning and may help us understand more about his educational needs. While [Student] isn't due for his triennial reevaluation until January of 2025, we are able to complete the reevaluation at any time based on team or parent request. Since there seems to be some disagreement between home and school on his level of need in different areas, having updated reevaluation data would help us understand more about his current functioning so we can come together to support [Student] and meet him where he is.

The Parent responded:

The last complete evaluation was done just over 2 years ago. There are certain fundamental disagreements about how to improve [Student's] education.

...For the last 5 years, [Student's] writing and reading has been languishing.

...That is why I also proposed to add to [Student's] accommodations essentially the strategies that helped [Student] pass SBA. Otherwise, no one will be obliged to follow these successful strategies.

In addition, his social emotional problem solving and communication has also been languishing.

...

In conclusion, I think that the complete evaluation can wait till next year. It is the attitude and thinking of the current batch of teachers that should be open to try the successful learning and testing strategies that helped [Student] pass SBA as well as having the foresight when writing goals and accommodations that will help [Student] read and write well in order for him to survive his upcoming required Social Studies and even now his Targeted English classes.

The school psychologist responded⁸:

Because the last comprehensive reevaluation of [Student] was completed over two years ago is one of the reasons why we think a comprehensive reevaluation is needed now rather than a limited review of his skills and challenges only in the domains that are typically

⁸ On March 13, 2024, The District also emailed OSPI as follows, "One of the reasons why the District is seeking the same as opposed to the limited assessment the Parent is requesting is because there appears to be disagreement between [Parent] and the rest of the IEP team on the Student's ability to complete general education coursework in Chemistry with only accommodations rather than with accommodations and modifications as called for in his IEPs."

assessed by an occupational therapist, including fine motor skills and sensory processing/regulation.

Also, because you report that [Student] is languishing in social emotional problem solving and communication is another reason why we believe a comprehensive reevaluation is needed now. We can update assessments in these areas as part of a reevaluation without waiting until next January.

10. On March 12, 2024, the Parent filed a complaint with OSPI. Then on March 19, 2024, the Parent sent OSPI four emails, and on March 26, 2024, OSPI interviewed the Parent. Based on the Parent's complaint, emails, and interview, the Parent is alleging:

- The Student's social/emotional goal has been the same for five years without progress.
- The Student is not making any progress in math and English.
- The Student is not receiving occupational therapy services despite the Student's illegible handwriting.
- The District has not hired a special education English teacher to conduct tests and teach the Student reading, vocabulary, and writing.
- IEP goals were not written with foresight for the Student's future needs, such as writing reports and essays so as to cope with the Student's social studies work today. He can write a paragraph but he cannot write an essay. That is why Modern History was modified.
- The District has not hired a special education English teacher to teach the Student reading, vocabulary, and writing.
- Learning strategies suggested by the Parent are not being used.
- Accommodations (monitoring sensory needs and social stories) and goals from the February 2024 IEP were removed and changed without any discussion or notice.
- The District modified the Student's chemistry grade without the Parents' consent, despite the Student receiving a "B" last semester in Chemistry without a modification. There is nothing in the Student's IEP that supports "a demonstrated need" for the modification that is "appropriately documented in the IEP". The Chemistry teacher testified in the February 15, 2024 meeting that he tested our son and he couldn't pass the test. As a result, the teacher implied that someone else (Parents) did his work.

11. The District provided its response, denying the Parent's allegations and has provided OSPI with copies of the certifications for all the special education teachers currently working with the Student. These teachers are either certified in special education or are certified to be a substitute teacher.

CONCLUSIONS

Issue 1: IEP Implementation – Regarding the present case's first issue, IEP implementation, the Parent has alleged:

- The Student's social/emotional goal has been the same for five years without progress.
- The Student is not making any progress in math and English.
- The Student is not receiving occupational therapy services despite the Student's illegible handwriting.
- IEP goals were not written with foresight for the Student's future needs, such as writing reports essays so as to cope with the Student's social studies work today. He can write a paragraph but he cannot write an essay.

- The District has not hired a special education English teacher to teach the Student reading, vocabulary and writing.

At the start of the school year, a district must have in effect an IEP for every student in its jurisdiction served through enrollment who is eligible to receive special education services. "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 disabled child and those required by the IEP."

Based on the applicable regulations, under the SECC process, OSPI can only investigate matters that have occurred within one year prior to the date when the complaint was filed. The present case was filed on March 12, 2024, and thus, OSPI can only investigate potential violations that occurred after March 13, 2023.⁹

Social/Emotional Progress¹⁰: Based on the February 2023 IEP, the Student was entitled to social/emotional SDI for 240 minutes per week, and this case's record shows that the Student has received his social/emotional SDI minutes through either his "Adaptive Living Skill" or "CCC" class. The fact that the Student did not make the amount of progress the Parent wanted regarding his social/emotional goals does not automatically mean that the District has materially failed to implement his social/emotional SDI because there are many reasons why a student may not make the amount of progress desired as to a certain goal. Based on the Student's class schedule and progress reports showing the Student made some progress, the Student has received his social/emotional SDI, and as such, there is not a violation as to these services.

Math & English Progress and IEP Goals: Based on the February 2023 IEP, the Student was entitled to 240 minutes per week of math SDI and 240 minutes per week of reading and writing SDI. As stated just above under social/emotional progress, the Student's lack of progress, in the amount desired by the Parent, in reading, writing, and math does not automatically mean that the District has materially failed to implement the Student's IEP because there are many reasons why a student may not progress as to a certain goal. This case's record shows that the Student has received his SDI minutes in reading, writing, and math, and that the District is attempting to assess the Student's lack of progress by requesting a comprehensive reevaluation of the Student to better understand his needs. The documentation in the complaint indicated there is disagreement between the Parent and District staff as to the Student's specific needs. OSPI notes that a reevaluation would be an appropriate way to gather information about the Student's current needs and encourages the Parent and District to proceed with this process.

⁹ If the Parent would like to address allegations prior to March 13, 2023, one option would be to file a due process claim, which allows for consideration of up to two years prior to the filing of the claim.

¹⁰ The District has suggested to the Parent that the reevaluation that the parties have agreed to should also perform an updated assessment as to the Student's social/emotional needs, but as of the writing of this decision, the Parent has refused to provide consent for a reevaluation in the area of social/emotional.

The Parent has also alleged that IEP goals were not written with foresight for the Student's future needs, such as writing reports so as to cope with the Student's social studies work today. According to the Parent, the Student can write a paragraph, but cannot write an essay.

A student's goals are written by the IEP team with a student's current skills in mind and what is necessary to get a student to the next step in their learning journey. While districts and IEP teams should always keep in mind what the future needs of a student will be, it is not always appropriate to write a goal such as "the student will be able to write a five-paragraph essay" if a student does not have foundational skills. Here, it is apparent based on the teachers' comments that the Student struggled with writing, and while this is unfortunate and should be an area the Student's IEP team continues to address, based on the Student's class schedule and progress reports indicating the Student made some progress, the Student has received his reading, writing, and math SDI, and as such, there is not a violation as to these services.

Occupational Therapy: The February 2023 IEP applicable in this case did not include occupational therapy (OT) services for handwriting, and as such, there is no IEP implementation violation for not providing a service not included in an IEP. However, the Student is currently being reevaluated for OT and sensory needs services. Thus, the IEP team can determine whether OT services are needed for the Student following the reevaluation.

Instructors' Certifications: The Parent alleged that the District has not hired a special education English teacher for the Student's reading, vocabulary and writing SDI.

Regarding certifications, teachers may be certified to teach English and/or special education, but there is not a specific certification for "special education English". In the present case, the District has provided OSPI certifications for the Student's special education teachers. These teachers are certified to teach special education, or are certified to be a substitute teacher; thus, the Student's special education teachers were and are appropriately certified.

For the reasons provided above, OSPI does not find a violation as to the first issue.

Issue 2: Parent Participation – The Parent alleged, in part:

- Learning strategies suggested by the Parent are not being used.
- Accommodations (monitoring sensory needs and social stories) and goals from the February 2024 IEP were removed and changed without any discussion or notice.
- The District modified the Student's chemistry grade without the Parents' consent despite the Student receiving a "B" last semester in Chemistry without a modification. There is nothing in the Student's IEP that supports "a demonstrated need" for the modification that is "appropriately documented in the IEP". The Chemistry teacher testified in the February 15, 2024 meeting that he tested our son and he couldn't pass the test. As a result, the teacher implied that someone else (Parents) did his work.

The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and FAPE to the student. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. Parent

participation is an active role in which the parents provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with other participants in deciding how the child will be involved and progress in the general curriculum and participate in state and district-wide assessments, and what services the agency will provide to the child and in what setting.

The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to resolve any disagreements by initiating an impartial due process hearing.

In the present case, the Parent disagrees with how the Student is being taught and with some of the changes that were made to the Student's IEPs in February 2024, such as certain accommodations and goals being removed from the IEP, and the decision to modify the Student's grading in Chemistry. The record shows that the Parent expressed his opinions to the District and according to the PWN, dated February 26, 2024, this resulted in one goal being changed. The Parent also attended and participated in the IEP meetings. Based on the present case's PWNs and emails, it is apparent that the District did take into consideration the Parent's requests and the District's decision not to comply with each one of the Parent's requests regarding the Student's IEP does not establish a violation. The District is not required to adopt or agree with every request made by the Parent, such as suggestions for how the Student should be taught, nor does disagreement necessarily mean the Parent was not able to participate. For the reasons stated above, OSPI does not find a violation as to the second issue.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 6th day of May, 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.)