

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-54

PROCEDURAL HISTORY

On April 16, 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 Richland School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 16, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 17, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 3, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on May 14, 2024. OSPI invited the Parent to reply.

On May 21, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

ISSUES

1. Whether the District reviewed and revised the Student's individualized education program (IEP) needed to address any unexpected lack of progress towards the annual goals and general curriculum according to WAC 392-172A-03110?
2. Whether the District implemented the Student's IEP regarding reporting progress according to WAC 392-172A-03090?
3. Whether the District addressed the Parent's concerns about the Student's safety according to WAC 392-172A-03110?

LEGAL STANDARDS

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

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).

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

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 third grade, attended a District elementary school, and their September 11, 2022 individualized education program (IEP) was in effect.
2. The District's 2023–24 school year began on August 29, 2023.

3. On September 9, 2023, the Student's IEP team developed a new annual IEP for the Student. According to the chronology provided in the District response to this complaint, the meeting was held with the Parent and mandatory IEP meeting members in attendance.

The IEP included annual goals in reading, math, written expression, adaptive skills, social/emotional skills, communication, and fine motor, with progress reporting at the trimester. The Student's September 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Adaptive: 15 minutes, 5 times a week (to be provided by special education staff)
 - Social emotional: 15 minutes, 5 times a week (to be provided by special education staff)
 - Reading: 15 minutes, 5 times a week (to be provided by special education staff)
 - Math: 15 minutes, 5 times a week (provided by special education staff)
 - Fine Motor: 30 minutes, 3 times monthly (to be provided by occupational therapist)
 - Communication: 30 minutes, 3 times monthly (to be provided by speech language pathologist)
 - Written Expression: 15 minutes, 5 times a week (to be provided by special education staff)
4. On September 18, 2023, according to District notes, an IEP amendment review meeting was held to discuss the Student's strengths and concerns from the Parent who stated they wanted more inclusion. The IEP team decided, according to the notes, that the Student would attend a general education teacher's class for reading core, science/social studies, lunch, recess, and specials.
 5. An October 16, 2023 data collection sheet provided by the District shows data in reading comprehension, fluency and decoding, math addition and subtraction, social/emotional situations, adaptive and written expression. The data shows the Student made progress in each area.
 6. On October 24, 2023, the Parent emailed the District to request a discussion about the Student being injured a day prior, indicating that this was the second incident.
 7. According to the chronology provided in the District response, on October 24, 2023, a meeting was held between the Parent and the District to discuss the incident with the peer and the team discussed strategies that would be implemented, such as keeping the Student and peer in different groups and having additional adult supervision.
 8. In reference to the October 23 safety incident in the complaint, according to the Parent's reply to the District's response, in part:

It was after school that [Parent] was told that [Student] had been strangled while sitting at her seat. [Student] was focused on her work at the table. Another student was wandering around the classroom and picked up a book from Student's pile at the table. Student said 'no'. The book was removed from the other student's possession. Next, the student put both hands around [Student's] neck before they were separated by an adult. This is the second time [Student] was strangled by this same student, the first time occurring in March of 2023. The parents still have not received any physical documentation of either assault.

9. According to the District, the October 2023 incident involved a classmate taking a book from the Student and when the teacher took the book away, the classmate wrapped their hands around the Student's neck from behind and leaned over, putting weight on the Student.
10. A November 9, 2023 data collection sheet provided by the District shows data in reading comprehension, fluency and decoding, math addition and subtraction, social/emotional situations, adaptive and written expression. The data shows the Student made progress in each area.
11. On November 13, 2023, according to the chronology provided in the District response, progress reports were provided to the Parent at conferences. The Parent provided copies of the progress reports in this complaint.
12. A December 4, 2023 data collection sheet provided by the District shows data in reading comprehension, fluency and decoding, math addition and subtraction, social/emotional situations, adaptive and written expression. The data shows sufficient progress in each area, except for phonics/decoding, in which the Student did not answer any words or sounds correctly.
13. On January 4, 2024, a meeting was held between the Parents and District administrators to discuss safety issues from December 2023 and a safety plan was agreed upon by all parties.
14. A January 10, 2023 data collection sheet provided by the District shows data in reading comprehension, fluency and decoding, math addition and subtraction, social/emotional situations, adaptive and written expression. The data shows the Student made progress in each area.
15. On January 10, 2024, the Parent and District met again and developed a safety plan, which outlined 11 steps to mitigate incidences in which the Student is around the peer involved in the December 2023 incident. The District staff were responsible for implementing the safety plan.
16. On January 12, 2024, the draft safety plan was emailed to the Parent with a request for input. The Parent responded to the District safety plan email same day with notes.
17. On January 16, 2024, the Parents were provided a copy of the safety plan via email and accepted the contents in an email response the same day, with District staff responding to make adjustments and acknowledging Parent input.
18. On February 5, 2024, according to the chronology provided in the District response, the IEP team met to discuss the effectiveness of the safety plan and the team agreed, according to the District response, that the Student had not sustained any injuries since the safety plan was implemented.
19. A February 14, 2024 data collection sheet provided by the District shows data in reading comprehension, fluency and decoding, math addition and subtraction, social/emotional

situations, adaptive and written expression. The data shows the Student made progress in each area.

20. On February 29, 2024, according to the chronology provided in the District response, the District provided progress reports at conferences.

The February 29, 2024 progress report included data and progress notes in the area of math with progress and skills described as "solving addition equations up to 50 with number lines/hundreds charts/manipulatives with adult support." In comparison, Student skills were described in the November 2023 progress report as "solving addition equations up to 40 with number lines/hundreds charts, independently and up to 60 with minimal adult support" with "sp" sufficient progress listed as progress code.

The February 29, 2024 progress report in the area of reading described the Student as being able to tell details about leveled books with some prompting and tell the main idea, decoding up to 10 words independently, indicating "sufficient progress" and a note indicating that the Student met a reading goal and is able to identify the sounds in the beginning, middle, and ending of cvc words. The Student was reported to be able to answer five questions from the text with an improvement in level.

The February 29, 2024 progress report included data and progress notes in the area of writing from June 2023, November 2023, and February 2024. The progress report stated steady progress and that in February 2024, the Student was able to write five-word opinion sentence with correct phonetic spelling and spacing 80% of trials. The writing goal stated "sufficient progress" for each reporting period.

21. A March 4, 2024 incomplete data collection sheet provided by the District shows some data in reading comprehension, fluency and decoding, math addition and subtraction, social/emotional situations, adaptive and written expression. The data shows some progress in each area.
22. A March 11, 2024 data collection sheet provided by the District shows data in reading comprehension, fluency and decoding, math addition, social/emotional situations, adaptive and written expression. The data shows progress in each area, except for phonics, in which the Student did not answer any words or sounds correctly.
23. In March 2024, the District conducted the Student's triennial reevaluation.

A March 2024 reevaluation report indicated the Student was performing in the very low range in academic skills, including not being able to read any of the presented basic sight words, or write a word that was verbally given. The report stated that significant deficits exist in the areas of reading, writing, written expression, and math. The evaluation included progress reports in the same area, which showed progress incongruent with evaluation data.

The March 21, 2024 triennial reevaluation meeting notes, provided by the District response, outlined a meeting agenda with the Parent and District IEP team member's reviewing Student existing data and relevant information and recommendations for specially designed instruction. Handwritten statements are observed on the meeting notes, which added that there was a discussion on how to best serve the Student due to regression and a need for more specially designed instruction to compensate for observed regression.

24. On March 22, 2024, the Parents contacted the District office via email about concerns in the progress reports, specifically noting Student regression in reading and progress reports that are marked as making sufficient progress. The Parent noted safety concerns as well.
25. On March 25, 2024, the Parent emailed another District staff to seek resources and expressing concern and disappointment that regression was noted at the triennial IEP meeting held the week prior.

The District responded to the Parent's request with resources and recommendations.

26. On March 27, 2024, the District case manager emailed the Parent and let the Parent know to expect paperwork and a meeting to discuss extended school year (ESY), stating that the Student is an excellent candidate for this intensive intervention.
27. On April 8, 2024, a new case manager was hired, and a separate classroom was created.
28. On April 15, 2024, the Parent emailed the District to notify them that they had filed an OSPI complaint based on their concerns about the Student's IEP. OSPI received and opened the complaint on April 16, 2024.

The Parent's complaint included the following concerns:

- That the Student's lack of demonstrated skills and results of recent evaluation indicating skills that do not match the progress reported in the IEP, alleging that goals in the IEP were not met or accurately recorded.
- That the progress updates that report steady progress that do not match the reevaluation data indicating regression of skills.
- There were safety concerns in the classroom, including bullies, and student violence that resulted in the Student being "strangled", and as a result, missing school out of fear.

The Parent requested compensatory educational services for the Student in addition to ESY and increased IEP progress monitoring to every four weeks, with clarification on progress monitoring and data collection methods. The Parent requested that the safety plan be updated and revised to include weekly check-ins with staff.

29. On April 15, 2024, the Student started attending instruction in the new classroom.
30. On April 17, 2024, the Parent emailed the District to discuss the development of an updated IEP with the new case manager in the new classroom, requesting clarification as to the reason the previous teacher and case manager was involved in finishing and drafting the Student's current IEP.

31. The District responded to the complaint on May 3, 2024, and provided the following information:

- Issue 1: The District did review the annual IEP but failed to address the lack of progress.
- Issue 2: The District did report progress in line with the timelines of WAC 392-172A-03090 but a review of the data indicated that the progress was misrepresented as sufficient when it appears that there was little to no progress in reading. The District stated that there was little data and progress monitoring assessments to support the progress report.
- Issue 3: The District met with the Parents over several meetings to discuss safety concerns, develop a safety plan, implement and review the plan and monitor the effectiveness. The District reported that the Parent reports the Student was not discussing bullies as often.

The recommended solution proposed in the District's May 3, 2024 response to this complaint was to place the Student with another case manager, offer 30 hours of compensatory education in reading, with an assessment in reading by the District English language arts coordinator to develop appropriate targets for the Student, and 10 hours of compensatory education in math. The District also proposed training for all case managers in the area of progress monitoring and data collection prior to the first day of school for the 2024–25 school year. And the District proposed training for all staff working in the Student classroom received de-escalation and behavioral interventions.

32. On May 21, 2024, OSPI received the Parent's reply to the District's response, in which the Parent agreed with the District's proposed compensatory education and requested an additional 20 hours of compensatory education for writing. The Parent also requested an updated safety plan be established before August 27, 2024, including a physical injury report which describes any physical incident that occurs to the Student, emphasizing how the Student's disability impacts communication with others. The Parent cites not receiving paperwork or physical reports regarding previous safety incidents.

The Parent disagreed with the District description of an incident where the Student was strangled, stating this was described differently in the District response than was reported to the Parents and noted that documentation does not exist as the reports were verbal. Regarding the October 23, 2023 physical incident, the Parent describes a District staff reporting the assault in person at pick up rather than in an email.

CONCLUSIONS

Issue One: IEP Review and Revision – The Parent alleged that the District failed to review and revise the Student's IEP and address the Student's lack of progress, as demonstrated by results of the reevaluation. As part of this, the Parent stated that the Student's IEP progress reports provided by the District stated sufficient progress, which was contrary to data in the March 2024 reevaluation.

Special education regulations outline that IEPs must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; with the results of any reevaluations and information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

While the District reviewed the Student's IEP, the District did not revise and address the data and lack of progress in the Student's IEP and the District failed to demonstrate that they were addressing the demonstrated lack of progress toward the annual goals and in the general curriculum. Thus, the District did not adjust the Student's IEP services or support. The IEP meetings held focused primarily on the Parent's safety concerns and ensuring that the Student had a safety plan in place, which while important, meant the team did not discuss or address the academic data and inconsistencies between classroom data and performance and the results of the reevaluation. The District acknowledged this in its response.

The solution proposed in the District's response, to address the failure to address progress, was 30 hours of compensatory education in reading, with an assessment in reading by the District English language arts coordinator to develop appropriate targets for the Student, and 10 hours of compensatory education in math. The Parent requested compensatory education in writing and highlighted data a misalignment in the the reevaluation data and Student progress reports.

The District is therefore found to be in violation. The District will provide compensatory education in writing, reading, and math. The District will also provide case managers with training on this topic.

Issue Two: IEP Implementation – The Parent alleged that the District failed to provide sufficient progress reports, per the Student's IEP.

The purpose of progress reporting is to ensure that 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.

The District provided the Parent with progress reports as outlined in the IEP at the trimester.

However, as discussed above, there was contradictory information about progress provided to the Parents. The data collection sheets provided by the District in October and November 2023, and January, February and March 2024, reported data in reading comprehension, fluency and decoding, math addition, social/emotional situations, adaptive and written expression. The data indicated progress in each area, with the Student generally making sufficient progress toward the IEP goals. Yet, the March 2024 reevaluation data directly contradicted the data provided in the IEP progress reports related to the Student's performance, present levels and skills, highlighting an inconsistency.

The District acknowledged that a review of the data indicated that the progress was misrepresented as sufficient when it appears that there was little to no progress, particularly in reading. The District stated that there was little data and progress monitoring assessments to support the progress reports. As corrective action, the District proposed training for all case managers in progress monitoring and data collection.

The District is found in violation and will conduct training on this topic.

Issue Three: Parent Safety Concerns – The Parent alleged that the District failed to address the Parent’s concerns about the Student’s safety.

In the case of a parent concern or request, when a parent or district believes that a required component of a student’s IEP should be changed or reviewed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE.

In this case, the Parent expressed a safety concern after an October 23, 2023 incident between the Student and a peer, which resulted in meeting and discussion the same day, and did not result in a change to the Student’s IEP at that time. Following another incident in December 2023, involving the same peer, an IEP meeting was held on January 4, 2024, and a safety plan that was developed beginning on January 10, 2024. The safety plan was drafted with Parent input and notes, and revised and sent to the Parents on January 16, 2024. On February 5, 2024, the IEP team met to discuss the effectiveness of the safety plan and the team agreed that the Student had not sustained any injuries since the safety plan was implemented. Additionally, the Student was moved into a new classroom with a new teacher and case manager by the District on April 15, 2024.

OSPI notes that while the Parent’s concerns were serious regarding the incidents, the District met with the Parents to discuss concerns, developed a safety plan, and then implemented and reviewed the plan to monitor the effectiveness. Prior to the safety plan, while the Student’s IEP was not amended specifically to address this, the District and Parent address strategies, such as keeping the Student and the peer in different groups and having additional adult supervision. OSPI finds that the District responded reasonably to the Parent’s concerns and finds no violation. OSPI does note the District proposed staff working in the Student’s classroom receive de-escalation and behavioral intervention training, which OSPI will not require as part of the corrective actions but encourages the District to do.

CORRECTIVE ACTIONS

By or before **September 13, 2024, September 20, 2024, September 27, 2024, October 18, 2024, November 1, 2024, February 3, 2025, April 1, 2025, and May 30, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **September 13, 2024**, the District and Parent will develop a schedule for 50 hours of compensatory education, divided as follows:

- Reading: 30 hours
- Math: 10 hours
- Written Expression: 10 hours

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or

a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **September 20, 2024**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **May 23, 2025**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **November 1, 2024, February 3, 2025** and **April 1, 2025** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **May 30, 2025**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **May 30, 2025**.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 24-54.

The following District staff will receive training: special education case managers. The training will cover the following topics:

- IEP Review and Revision
- Progress monitoring and data collection

The training will include examples.

By or before **September 13, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By of before **September 27, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by October 4, 2024.

By **October 11, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 18, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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.

RECOMMENDATIONS

OSPI notes that the Parent raised a concern around communication and notification of safety incidents, such as occurred with the Student. OSPI recommends the District review and either revise or develop procedures for reporting such incidents to families and ensure staff are trained accordingly.

OSPI also recommends the District provide the Student's classroom staff with de-escalation and behavior intervention training as proposed by the District in its response to this complaint.

Dated this 10th day of June, 2024

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.)