

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-58**

### **PROCEDURAL HISTORY**

On April 18, 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 18, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 22, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 9, 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 20, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 3, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on June 4, 2024. OSPI forwarded the information to the Parent on the same day.

On June 5, 2024, the OSPI complaint investigator interviewed the Parent.

OSPI considered all 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 began on April 19, 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.

### **ISSUES**

1. Did the District develop an individualized education program (IEP) that addressed the Student's needs that were related to the disability according to WAC 392-172A-03095?
2. Did the District implement the special education services in conformity with the Student's IEP, including accommodations for providing work notes and student work samples and specially designed instruction according to WAC 392-172A-03105?
3. Did the District follow progress monitoring procedures regarding the Student's progress towards the annual goals according to WAC 392-172A-03090?

## LEGAL STANDARDS

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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).

Decisions about Educational Methodology: As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. *In the Matter of Dieringer School District*, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014); *See also, Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (finding parents do not have the right to dictate any particular educational program and explaining that a school district's denial of a parent's placement request reflected a "difference of educational philosophy with [parent], not a denial of opportunity to participate.")

## FINDINGS OF FACT

### Background

1. In November 2021, the Student transferred to the District from another Washington state school district. The prior written notice stated that the Student was eligible for special education and received services in the areas of math, written expression, and reading, along with occupational therapy (OT).

2. In March 2022, the Student was reevaluated and was found to continue to be eligible for special education services under the category of specific learning disability. The Student's reading and written language levels were very low for his age, but his math level was average or above. The prior written notice that accompanied the evaluation stated the Student was "no longer exhibiting a need in the area for SDI (specially designed instruction) in the area of OT or adaptive skills" and the reevaluation found the Student no longer needed SDI in math.
3. In March 2023, the Student's team developed a new individualized education program (IEP).

The Student's March 2023 IEP stated the following regarding the need for assistive technology:

[Student] is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). He has difficulty with focus, concentration, academic stamina, and remaining on task for long periods of time. He is also diagnosed with Dysgraphia, Dyslexia, Sensory Processing Disorder, and Anxiety. He requires access to audio books, digital versions of school work, text-to-speech, and speech-to-text in accessing his general education curriculum improving his focus, concentration, stamina, and sensory processing there by relieving much of his anxiety.

The IEP also noted that the Student's behavior does not interfere with his learning or the learning of others. The IEP provided annual goals in the areas of reading and written expression. The Student's annual goals were as follows:

- Reading: "By 03/20/2024, when given a varied level text (grades 7-8) [Student] will answer literal and inferential comprehension questions improving his reading comprehension skills from 80% accuracy on grade 7 text to 90% or greater accuracy on varied text on 4 out of 5 data collection points as measured by curriculum based assessments, teacher collected data, and/or student work samples."
- Written Expression: "By 03/20/2024, when given a writing prompt [Student] will use a graphic organizer and speech-to-text application to produce clear and coherent writing appropriate to the task improving his written expression skills from producing written responses with loose sentence structure that are about 70% accurate in conventions to producing written responses with paragraphs with topic sentences, 3-5 details, and a closing sentences that are 85% accurate in conventions on 2 out of 3 data collection points as measured by curriculum-based assessments and/or student work samples."

To meet the annual goals, the IEP provided specially designed instruction (SDI) in these areas:

- Reading: 53 minutes, 5 times weekly (provided by special education staff in a special education setting)
- Written Expression: 53 minutes, 5 times weekly (provided by special education staff in a special education setting)

The IEP also provided 17 accommodations, including "copies of notes." There was no accommodation for providing Student work samples.

4. On April 19, 2023, the one-year investigation timeline began on the complaint.
5. The June 2023 report on the Student's progress toward the annual goals stated the Student was making sufficient progress. The report also provided the following narrative:

- Written Expression: “[Student] is making sufficient progress on this goal. He continues to utilize his speech-to-text in order to produce his written responses. Additionally, he has made progress in editing his own work. [Student] is averaging responses with 75% accuracy. He continues to need support in including details and wrapping up his paragraphs with a closing sentence.”
- Reading: “Student is making sufficient progress on this goal. [Student] shows strengths in answering literal and selected-response questions. When answering inferential and constructed response questions [Student] benefits from talking through his responses. [Student]’s overall comprehension on varied level text is 70%.”

### **2023–24 School Year**

6. At the start of the 2023–24 school year, the Student was a ninth grader who attended a District high school and was eligible for special education services under the category of specific learning disability. The March 2023 IEP, which was based on the March 2022 evaluation, was in effect.
7. The District’s 2023–24 school year began on September 4, 2023.
8. The Student’s schedule showed the Student attended “instructional lab” once a day. According to the District, this was the special education resource room that was taught by the special education teacher.
9. On November 3, 2023, the first quarter of the school year ended.
10. The November progress report stated the Student was making sufficient progress to achieve each goal. The report provided the following narratives:
  - Written expression: “[Student] is making sufficient towards this goal. He currently has a 79% in his LA9 class. He has made progress in editing his work averaging an accuracy of at least 75% as measured by work samples.”
  - Reading: “[Student] is making sufficient progress on this goal. He currently has a 78% in his LA9 (Language Arts 9) class. His most recent reading comprehension measurement had him reading a 7th grade text at above 80% accuracy. We will continue to gather data towards the mastery of this goal.”
11. On January 19, 2024, the second quarter of the school year ended.
12. The Student’s January 2024 progress report stated the Student was making sufficient progress to achieve the annual goals. The report provided the following narrative:
  - Written Expression: “[Student] recently completed a writing assessment (1 minute think, 3 minute write) and on his response he wrote 63 total words, with 12 words spelled incorrectly. Sentence structure and writing conventions showed moderate structure but still needs improvement, overall his writing conventions were just under 80% accuracy. Spelling was the most consistent error in his writing and will need to be a focus. His LA 9 teacher reported: ‘[Student] works very hard, he is not afraid to ask questions and is always engaged in the lesson. If he doesn’t understand something he stays after school to work on his assignment with me during office hours. [Student]

could continue to work on his spelling and expanding his ideas beyond short sentences.”

- Reading: “[Student] recently completed the Winter iReady Reading assessment and obtained a score of 571 which is comparable to a 6th grade performance level for comprehending what he has read. Additionally, when given a 8th grade reading level passages his last 3 scores are 90%, 80%, 100%. [Student] continues to make growth in the area of reading. His LA9 teacher reports that he works very hard and is not afraid to ask questions.”

13. According to the District, on February 9, 2024, the English language arts and social studies coordinator provided the Student’s special education teacher and other teachers training on “Phonics for Reading,” which is a program to support students with dyslexia and “Lexia” that incorporated “multimodal and multisensory instructional strategies.”

14. According to the District, on March 16, 2024, the District sent the Parent a draft copy of the proposed IEP for the Student. On March 22, 2024, the District sent an updated draft of the Student’s IEP.

15. On March 28, 2024, the Parent provided the District with the following:

- Private neurological evaluation (2019)
- Progress notes from a hospital (2022 and 2024)
- Report from Dyslexia on Demand (2024)

The recent March 2024 evaluation from “Dyslexia on Demand” stated the Student’s strengths were in word comprehension and passage comprehension and his weaknesses were in word identification, word attack, and oral reading fluency. Phonological awareness and rapid automatization naming was below average. Recommendations included an Orton-Gillingham reading program “taught by the Certified Academic Language Therapists and Therapists in training that teach for Dyslexia on Demand.” The recommendations were made without any contact with the Student’s teachers at the District about the services being provided to the Student at school. The 2024 progress report by a hospital was a medical status update.

16. On March 29, 2024, the third quarter of the school year ended.

17. At the March 29, 2024 meeting, the Student’s IEP team developed a new annual IEP for the Student. According to the meeting notes, which included the progress reports, the Student was missing some assignments. The Parent stated the Student was “pretty low” in reading and writing and was not receiving SDI. The Parent wanted “literacy instruction and the focus to be on dyslexia and dysgraphia.” The IEP “Teams Considerations” section included access to assistive technology on the chrome book that could provide text-to-speech and speech-to-text.

The IEP continued to include annual goals in reading and written expression with progress reporting at each quarter. The present levels were based on a February 2022 evaluation, but they were still valid according to the District. The Student’s new goals were as follows:

- Written Expression: "By 03/28/2025. When given a writing prompt [Student] will write a 2 paragraph (at least 8 sentences) response improving his written expression skills from producing written responses with loose sentence structure and 20 or more spelling or grammar errors to producing a 2 paragraph written response with less than 10 spelling or grammar errors and paragraphs with topic sentences, 3-5 details, and a closing sentence as measured by curriculum-bases assessments and/or student work samples."
- Reading: "By 03/28/2025, when given a varied level text (grades 8-9) [Student] will answer literal and inferential comprehension questions improving his reading comprehension skills from 80% accuracy on grade 8 text to 90% or greater accuracy on varied text on 4 out of 5 data collection points as measured by curriculum-based assessments, teacher collected data, and/or student work samples."

The Student's March 2024 IEP provided the Student with the following SDI:

- Reading: 52 minutes, 5 times a week (to be provided by special education staff in a special education setting)
- Reading: 52 minutes, 5 times a week (to be provided by the general education teacher in a general education setting)
- Written Expression: 52 minutes, 5 times a week (to be provided by special education staff in a special education setting)
- Written Expression: 52 minutes, 5 times a week (to be provided by the general education teacher in a general education setting)

The IEP also provided 17 accommodations, including "copies of notes." The accommodations did not list providing Student work samples.

As a follow up to the meeting, the team wanted to review the medical information and schedule another IEP meeting after spring break.

18. On March 29, 2024, the Student's case manager emailed the English language arts and social studies coordinator, stating the Parent asked for more intensive support for dyslexia and dysgraphia.
19. According to the complaint, the District failed to address all the Student's needs in his March 2024 IEP. These needs included math, accommodations and services for assistive technology, and OT. The complaint stated that OT services were needed because the Student has dysgraphia. The District also failed to draft the Student's March 2024 goals "without review of last year's progress of goals."

The Parent also alleged that the District failed to provide the Student with SDI according to his IEP. When OSPI asked the Parent what her concern was regarding instruction, the Parent stated that the District did not explain the specific interventions or curriculum that were being provided to the Student. The Student reported to the Parent that he was not receiving any instruction. The Parent also stated that the instructional lab had 30 other students so the Student was not provided with SDI. Based on the lack of instructional information, the number of students in the class, and the Student reporting to the Parent that he was not receiving any

instruction during the instructional lab, the Parent concluded the Student was not receiving any SDI.

The Parent also stated:

The implementation of the student's SDI is not clear nor what is designed for the student's SDI. For example, the student is supposed to receive SDI in his Instructional Lab 5 times per week yet the only instruction that is given is a "writing prompt" and then he writes in a journal. Clearly this is not SDI nor are the results of this activity being used, evaluated, or considered for progress and IEP changes. 'Concurrent' SDI is problematic.

20. In response to the complaint, the District stated the SDI, which was provided concurrently, was provided in conformity with the Student's IEP. The District provided OSPI with numerous copies of the Student's assignments in the areas of reading and written expression. Beginning in March 2024, the District began documenting the lesson plans in reading and writing. For example, for the week of April 15 to April 19, the objective was to finish up on the graphic organizer and begin writing the rough draft on paper.
21. Regarding the implementation of accommodations and specifically copies of notes, the District stated that all teachers were informed of the Student's accommodations and that the special education teacher had conversations with the Student about accessing copies of notes through Canvas, which the Student preferred.
22. The April 2024 progress report stated the Student's progress was "emerging" but may not achieve the annual goal with the duration of the March 2024 to March 2025 goals. The report's narratives are as follows:
  - "[Student] is continuing to demonstrate growth in writing. He is doing well in his LA class overall, though he does have a few missing assignments. This is likely due to some absences over the last few weeks. A IEP review is currently pending, to re-assess [Student]'s written expression needs."
  - "[Student] continues to do well in his LA 9 course, though his grade reflects some missing assignments. [Student] has been given access to Lexia, an online software designed to help remediate reading difficulties for students with dyslexia through systematic instruction. Data is still being collected in this area, and a review of [Student]'s IEP is underway."
23. The Parent alleged that the Student's progress reports were not compliant. The complaint stated:

Though progress monitor reports were received they did not provide the necessary quantitative detail or assessment of the goals themselves to determine student progress against those goals. Student performance results are intermixed with academic performance on the progress reports and the information provided to assess progress towards meeting goals does not address all elements of the IEP goals. In addition, the District provides no evaluation basis (e.g., rubrics) for each goal so it is unclear how student work was assessed and at what frequency.
24. On April 18, 2024, the Parent filed this complaint with OSPI.

25. As of June 4, 2024, the Student's attendance records show the Student had missed 33 days of school (19%) during the 2023–24 school year so far. When asked the impact of the Student's attendance on progress, the District stated:

In our perspective, when [Student] misses a day, or chunks of days, on a consistent basis, a significant gap is created in his learning. This is apparent in his progress with his...SDI as it is difficult to create and maintain growth when attendance is sporadic. [Student's] infrequent attendance compounds his disability in reading and written expression and impacts the consistency of instruction needed in order to be successful in the General Education and Special Education settings. Further, these extended absences from school affect his ability to 'get back in the swing of things' with the stamina to make it through a full school day. [Student] thrives when provided with routine. With infrequent attendance, it takes time for him to get back into those routines, and increases stress due to feeling behind from having missed instructional time. Upon returning, there is a disconnect as he navigates social relationships, catching up on assigned work and ever-changing classroom dynamics. Frequent absences greatly affect his progress in both reading and written expression in the General Education Setting and the Special Education setting. [Student] is a hard-working student with a good attitude, and in our perspective, he is best served [when] he is able to attend school regularly and is able to receive consistent support and instruction.

26. Regardless of the outcome of the complaint, the District stated it would agree to implement the following:

- Provide training on data collection and monitoring progress
- Ongoing training on structured literacy
- Work samples will be provided to the Parent
- Given the Parent's concern about math, the District will propose a reevaluation

## CONCLUSIONS

**Issue One: IEP Development** – The complaint alleged the District failed to develop an appropriate IEP for the Student. The complaint stated the IEP failed to address all the Student's needs, including math, assistive technology, and OT. A district is required to develop an IEP that meets the unique needs of the student. The District denied the allegation.

Here, the Student's March 2023 and 2024 IEPs provided specially designed instruction in the areas of reading and written expression, which addressed the Student's diagnoses of dyslexia and dysgraphia and aligned with the March 2022 reevaluation. The March 2023 IEP also provided assistive technology services, such as text-to-speech, speech-to-text, and audio books. The March 2024 IEP provided a chrome book for text-to-speech and speech-to-text. Although the complaint alleged that the Student's IEP failed to address assistive technology, the March 2024 IEP showed that assistive technology was addressed in the Student's IEP.

The Parent also claimed that the District did not review the Student's last year's progress in developing the March 2024 goals. However, the documentation showed that the March 2024 goals reflected the progress made by the Student in the previous year and the meeting notes indicated the team reviewed the Student's progress reports.

The complaint also stated that the IEP did not meet the needs of the Student in the areas of math and OT. The Parent appeared to refer to decisions made prior to the one-year complaint timeline, which began on April 19, 2023. According to the 2022 evaluation, the Student demonstrated no need for services in math or OT. Since then, there was no evidence that the Student needed math or OT services. The documentation showed that the March 2024 IEP was based on Student-specific data and was consistent with the needs and abilities of the Student.

Overall, no violation is found.

OSPI notes, though, that regarding the development of the IEP, the Parent stated she made requests to know what interventions and curriculum were being provided to the Student. OSPI reminds the District that although the District has discretion to choose the methodology and has discretion in how interventions and instruction are provided to a student, the District does need to answer parent questions and provide information so that parents can participate in the special education process.

**Issue Two: IEP Implementation** – The complaint alleged the Student did not provide the SDI and accommodations, specifically providing copies of notes and work samples in the Student’s IEP. A district is required to provide the special education services and accommodations in conformity with the IEP. The District denied the allegation.

Here, the Student’s March 2023 and 2024 IEPs provided services in the areas of reading and math in both the general education classroom and special education classroom. (The special education classroom was called the instructional lab.) The IEPs also had many accommodations, including copies of notes, but there was nothing in the IEP accommodations related to providing work samples. The Parent’s allegation that SDI was not provided was based on the Student’s report to her, the fact there were 30 other students in the instructional lab, and that the Student stated the only instruction provided was a writing prompt.

In response to the allegation, the District provided many examples of assignments provided to the Student that represented the provision of SDI. The District also indicated that the average number of students in the Student’s instructional lab was nine, which was not an impediment to the Student receiving services. Regarding the writing prompt, the Parent may have confused the writing goal, which included a prompt, with the overall SDI the Student was receiving. The SDI was not limited to using a writing prompt and while SDI should address a student’s goals, SDI may address other skills in the service area and be broader than individual goals. Regarding accommodations, the IEP included an accommodation for copies of notes. It was unclear whether the Parent expected hard copies of notes, but the District provided the notes via Canvas per the Student’s request. The Parent also claimed she did not receive Student work samples. The Parent may have confused an accommodation for work samples and wanting the work samples that were used to measure the Student’s progress towards the goals. While the Parent may have wanted work samples, there was no requirement that the District provide them as part of progress monitoring. And there was no accommodation in the IEP related to providing work samples. Based on the documentation that the District complied with implementing the IEP, no violation is found.

The District also addressed the issue of attendance, which affected the implementation of the Student's IEP, and which likely contributed to the Student being, as the Parent stated, "pretty low." According to the Student's attendance records, the Student had missed 33 days of school during the 2023–24 school year. While progress reporting indicated that generally, the Student was making sufficient progress, the District reported that the Student missing school created "gaps" in his learning and negatively affected his progress in reading and written expression. The District stated, "With infrequent attendance, it takes time for him to get back into those routines, and increases stress due to feeling behind from having missed instruction time." Although it is the Parent's responsibility for the Student to regularly attend school, the District should consider whether the attendance challenges were related to the Student's disability and whether additional special education services and supports are needed to help address the impact of attendance on the Student's progress.

**Issue Three: Progress Monitoring** – The complaint alleged the District failed to provide the required information for reporting progress towards the Student's annual goals. The complaint stated that progress reports did not provide the required quantitative data. 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. The District denied the allegation.

Here, the Student's March 2023 and 2024 IEPs provided for quarterly progress reports to be provided to the Parent. The reports provided to the Parent used general descriptions of progress, which in the case for the March 2023 to March 2024 period time was making sufficient progress to meet the goal, although no goal was reached. The April 2024 progress report indicated emerging progress, which was expected given that the annual IEP and new goals were developed in March 2024. The reports also provided descriptive narratives that included quantitative data for some goals. According to the complaint, the Parent believed that all progress reports were required to report quantitative data. Although providing quantitative data in progress is a best practice, there is no regulatory requirement that progress reports provide quantitative data. Here, the Student's progress reports were sufficiently descriptive to provide information about the Student's progress, and in some instances, quantitative data was provided. The Parent may have wanted more detailed reports, but there was no specific right to such detail. OSPI finds no violation.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

## RECOMMENDATION

Although no violations were found in the complaint, OSPI encourages the District to proceed with the follow-up actions it outlined for implementing best practices.

In addition, the District should consider whether the attendance challenges were related to the Student's disability and whether additional special education services and supports are needed to help address the impact of attendance on the Student's progress.

Dated this 11th 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.)