

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-81

PROCEDURAL HISTORY

On October 12, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Steilacoom Historical 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 October 13, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 3, 2021, OSPI spoke with the District's director of special education regarding efforts the District had taken to resolve the Parent's concerns and next steps for the complaint investigation.

On November 8, 2021, OSPI spoke with the Parent regarding her complaint and the Parent confirmed that she wanted OSPI to proceed with its investigation.

On November 8, 2021, OSPI notified the District that the District was still required to provide a response as the Parent declined to withdraw the complaint and OSPI was continuing the investigation.

On November 10, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply. The Parent did not provide a reply.

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

ISSUE

1. Did the District implement the Student's individualized education program (IEP), specifically the specially designed instruction in math during the 2021–2022 school year?
2. Did the District follow proper IEP amendment procedures if it changed the setting of the Student's specially designed instruction in math during the 2021–2022 school year?

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. 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.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

FINDINGS OF FACT

Background: 2020–2021 School Year

1. The Student attends high school in the District and is eligible for special education services under the eligibility category other health impairment.
2. On October 27, 2020, the Student's individualized education program (IEP) team met and developed the Student's IEP. The IEP indicted that, among other areas¹, the Student's disability impacted his progress in math. The IEP included math goals (computation and problem solving). The IEP provided the Student with 55 minutes of specially designed instruction in math, five days a week, provided by special education staff in the special education setting.
3. According to the Parent's complaint, the IEP team agreed that the Student would be "placed in a sped algebra 1 class" and that the Student was "excelling in this class, and making good progress."

¹ The Parent's complaint was only related to the provision of specially designed instruction in math and therefore, this decision will not detail the other areas in which the Student receives special education services.

4. A May 27, 2021 prior written notice indicated the Student's IEP team met to review the Student's reevaluation. The prior written notice indicated the Student had met his math goals and that the team reviewed the Student's services. The prior written notice stated the Student's math placement was discussed and that "while [Student] has made excellent progress this year, [Parent] and [Student] want him to continue in a RESOURCE Algebra I class" and that the Parent, Student, and current math teacher "agree that given [Student's] anxiety issues and the pace of the general education Algebra classes, the Resource setting is the best placement for him." The prior written notice stated that placement in a general education math class for the following school year had been rejected.
5. The District noted in its response to this complaint that the May 27, 2021 prior written notice had never been submitted to the District office for filing and the District did not know of its existence until the Parent referenced a meeting in May 2021. The District stated it learned this meeting was held without a District representative or a general education teacher being invited or included. The District stated the prior written notice indicated the case manager (who was the resource room math teacher) met with the Parent and Student to determine what the Student's services and schedule would look like for the following school year.²

2021–2022 School Year

6. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services and the Student's October 2020 IEP remained in place. The Student was scheduled to attend a general education math class.
7. The Parent, in her complaint, alleged the District terminated the Student's "math class resource placement" and failed to provide prior written notice of that decision, resulting in the Student being in the incorrect placement and not receiving his minutes of specially designed instruction in math. The Parent stated in her complaint that the Student was "floundering in a [general education] class setting and...is not getting appropriate support, per IEP."
8. The District admitted that it did not follow procedures to implement the Student's IEP with respect to instruction in math or properly amend the IEP at the start of the 2021–2022 school year. The District explained:

[District high school] removed resource math classes from the master schedule for this school year. The intention was for students who had previously had general education math instruction completely supplanted by resource math to be enrolled in a general education math class with co-teaching support as a 'home base' and then be removed for services to the extent appropriate for each individual (specifics determined by IEP teams). At the time the parent initially contacted us, case managers were still in the process of calling parents to propose the changes and schedule meetings. The option of separate math classes was/is still available. The case manager for this Student did not contact the Parent in a timely

² The District provided information that this appeared to be an issue with the specific staff person—the case manager—who subsequently retired in June 2021. However, as detailed below, the District stated it is providing the Student's current case manager and other staff training in areas like documenting the setting of services and prior written notice procedures.

manner, which resulted in the IEP as written not being implemented during the first part of the school year.

9. On October 6, 2021, the Parent emailed the District, expressing concern regarding the changes to special education services for her Student.

The District's director of special education (director) responded that they should schedule an IEP team meeting as soon as possible to address the Parent's concerns and ensure that the Student is "provided with the correct schedule, placement, and services to meet his needs." The director asked for the Parent's availability for a meeting.

10. On October 18, 2021, the Student's IEP team met to discuss the Student's math services. The prior written notice documenting the meeting indicated the District proposed to provide the Student with "special education math services for 20 minutes per day, 5 days per week in his [general education] algebra class." The notice documented that the team, "Agreed that the best option was for [Student] to be provided with services and more 1:1 support services from a certified special education teacher in his general education algebra class daily for the remainder of the first semester." The team rejected changing the Student's schedule and moving him to a new math class at that time because:

[Parent] shared that he feels comfortable with his current math teacher and wants to keep the same schedule. The disruption of a schedule change would cause him anxiety. [Student] also feels anxiety about leaving his scheduled classes for services. [Student] is succeeding in his general education algebra class and is able to make progress but requires more support.

The notice also documented that the Parent:

Expressed her frustration about [Student's] schedule not reflecting the math class placement decision she agreed to last year with [Student's] previous case manager who no longer works for the district. District administration apologized for the mistake. The team agreed that [Student] will participate in a math lab second semester in which he will receive specially designed instruction from a certified special education teacher for the second semester of the 2021-2022 school year.

11. On October 25, 2021, the Student's IEP team, including the Parent and Student, met to develop the Student's IEP. The IEP noted the Parent's concern with the Student's general education math placement and the general education teacher report indicated the Student was growing more comfortable in his math class but was missing assignments from the beginning of the semester when "the assignments I had given him were unfortunately not modified correctly."

The IEP included goals in math (algebraic expression, multi-step word problems, and computation). The IEP provided the Student with 20 minutes of specially designed instruction in math, daily, provided by special education staff in the general education setting.

The prior written notice documenting the meeting indicated the team considered "including a double service matrix in the IEP, with the second matrix reflecting additional math services provided in a math lab in the second semester of the 2021-2022 school year." The prior written notice indicated this was rejected as the Parent "stated she prefers to wait and see how he is

doing in math prior to formalizing a change on the IEP prior to second semester. The team can reconvene at any time to review [Student's] progress in math and amend his services and/or placement as necessary." The prior written notice documented that the Student's general education teachers "shared that [the Student] is doing well in class and [Student] said that he prefers not to leave his classes in order to receive services" and that the team "will continue to seek input from [Student] and his mom in order to respond to his needs."

12. The District stated it has been working to repair the relationship with the Parent and restore trust. The District also shared several things it learned and actions it would be taking as a result of the complaint, including:

- Start the process of calling parents to arrange IEP meetings prior to the beginning of school if there are potential impacts to special education services at the start of the school year.
- "Through our monthly updates to all parents of students who receive special education services, we had been providing information about inclusion and upcoming changes, but we relied too heavily on individual case managers to have critical conversations with parents and to propose changes of placement,"
- Provide parents more information about schedule changes as "schedules looked different this year as courses had different titles and it wasn't clear when and how students would receive services."
- The Student's current case manager received additional training related to writing prior written notices and measurable annual goals.
- As a part of bi-weekly "Collaborate & Connect" training and paperwork help sessions with case managers, the District will offer training to all participants around delivering and documenting specially designed instruction in inclusive settings.

13. Emails between the Parent and District's director following the October 2021 IEP meetings indicated the Parent felt that the IEP team had addressed her concerns. In a phone interview with the Parent, the Parent indicated she was happy with how her concerns were resolved, but wanted to ensure the District followed through with what it had communicated during the IEP meetings.

CONCLUSIONS

Issue One: Individualized Education Program (IEP) Implementation – The Parent alleged the District moved the Student from a resource room math class to a general education math class, and thus the Student was not getting appropriate support or specially designed instruction as required by the Student's IEP.

At the beginning of each school year, a district must have in effect an IEP for each student eligible for special education services and provide the services outlined in the IEPs, consistent with each student's needs. Here, at the start of the 2021–2022 school year, the Student's October 2020 IEP was in place, which provided him with 55 minutes of specially designed instruction in math, five days a week, provided by special education staff *in the special education setting*. Following a meeting in May 2021 between the Parent and then current special education case manager, they decided the Student would continue to receive specially designed instruction in math in the special education setting, specifically in a "resource algebra class."

At the start of the school year, the Student was scheduled in a *general education math class*. The District explained that it was working to increase inclusion but recognized that for this specific Student, special education procedures were not followed and there was a delay in contacting and communicating with the Parent. Thus, the District admitted that the Student's IEP was not implemented as written as specially designed instruction in math was not provided in the setting specified on the IEP (special education setting). Further, the general education teacher indicated she was initially not modifying assignments for the Student, but that appears to have been resolved when the team developed the Student's new annual IEP.

Overall, OSPI finds a violation. To ensure continued implementation of the IEP—as a corrective action—the District will hold an IEP meeting in January 2022 to discuss the plan for the Student's special education services during the second semester.

Issue Two: IEP Amendment Procedures – The Parent alleged the District unilaterally terminated the Student's resource room "placement" and failed to provide prior written notice of this change.

An IEP is updated annually but can be amended more often following an IEP meeting or an agreement by the parent and district that the IEP team does not need to meet to amend the IEP. A student's placement, which includes whether they are provided special education services in the general or special education setting, is also determined annually by the IEP team. As discussed above, the District acknowledge that it failed to implement the Student's IEP as written and thus did not follow procedures to amend the Student's IEP when a change was made to the setting for services. Thus, OSPI finds a violation.

However, the District has largely corrected the violation, as following an email from the Parent on October 6, 2021, the District worked to resolve the Parent's concerns and held two IEP meetings to address how math instruction was to be provided. On October 18 and 25, 2021, the Student's IEP team met and discussed the Student's math services and developed his annual IEP. The October 2021 IEP provided the Student with "special education math services for 20 minutes per day, 5 days per week in his [general education] algebra class." The team agreed that it was best to continue providing the Student special education services in the general education setting with "more 1:1 support services from a certified special education teacher" for the remainder of the first semester and then provide additional support through a math lab class second semester. The documentation provided indicated the Student was making progress, did require additional support, and that a schedule change would be disruptive and cause the Student anxiety. The prior written notice documenting the meeting indicated the Parent preferred to "wait and see how he is doing in math prior to formalizing a change on the IEP prior to second semester." Further, the District noted it was focusing on how it provides information to parents and was providing training to the Student's current case manager and other special education staff. As a corrective action, OSPI requires the District to provide OSPI with copies of its training materials for review and feedback, and the training will address how to address individual student needs while focusing on an inclusion model.

CORRECTIVE ACTIONS

By or before **December 15, 2021** and **February 8, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **February 1, 2022**, the Student's IEP team will meet to discuss the plan for the provision of the Student's specially designed instruction in math during second semester. The IEP team will amend the IEP as needed. The team should also discuss the Student's progress in math.

By **February 8, 2022**, the District will provide OSPI with documentation from the IEP meeting, including: 1) IEP meeting agenda or notes (if used/taken); 2) a copy of amended IEP if applicable; 3) prior written notice; and, 4) any other relevant documentation.

DISTRICT SPECIFIC:

Training Materials Review

By or before **December 15, 2021**, the District will provide OSPI with copies of the training materials used or further explanation of the trainings it referenced, as follows:

- The Student's current case manager received additional training related to writing prior written notices and measurable annual goals; and,
- As a part of our bi-weekly "Collaborate & Connect" training and paperwork help sessions with case managers, we will offer training to all participants around delivering and documenting specially designed instruction in inclusive settings.

Regarding documenting specially designed instruction in inclusive settings, the training will also include information on best practices for meeting individual student needs in an inclusion model.

By December 29, 2021, OSPI will provide the District with feedback on its trainings and include suggestions for future training, if necessary.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of November, 2021

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)