

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-86

PROCEDURAL HISTORY

On October 22, 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 Concrete School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 22, 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 8, 2021, OSPI received the District's response to the complaint and on November 9, 2021, forwarded it to the Parent. OSPI invited the Parent to reply.

On November 19, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On November 11, 2021, OSPI requested that the District provide additional information, and on November 19, 2021, the OSPI complaint investigator conducted an interview with District personnel, including the special services director and Student's special education teacher.

On November 22, 2021, the District provided OSPI with additional documentation. OSPI forwarded a copy to the Parent on December 9, 2021.

On November 9, 2021, the OSPI complaint investigator interviewed the Parent.

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 the interview.

ISSUE

1. Did the District implement the Student's individualized education program (IEP), including accommodations, 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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to

implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

1. During the 2021–2022 school year, the Student was eligible for special education services under the category of specific learning disability, was in the twelfth grade, and attended a District high school.
2. The Student's April 13, 2021 individualized education program (IEP) was in effect at the beginning of the 2021–2022 school year and for the entirety of the timeframe covered by this complaint. The April 2021 IEP included annual goals in the areas of reading and writing, accommodations for each of these areas of educational need, and the following specially designed instruction, to be provided concurrently within the special education setting:
 - Written Expression: 50 minutes/5 times weekly; and
 - Reading: 50 minutes/5 times weekly.

The Student's IEP provided that she would be in a general education setting for approximately 88% of her time at school.

3. The District's first day of school for the 2021–2022 school year was September 1, 2021.

The Parent filed this complaint on October 14, 2021, 31 school days after the first day of school. As of the District's final response and interview on November 19, 2021, no IEP amendment had occurred, nor had there been a change in how the District implemented the Student's IEP (see below facts), reflecting a period of an additional 29 school days.

4. According to the District's response and interviews, the Student was scheduled in three core classes at her neighborhood high school. The core courses included "Current World Problems", "Careers", and "Integrated Physical Science." All courses were exclusively taught in the general education setting.
5. At the request of the Parent, the Student traveled to a local college "Skills Center" for her remaining four courses daily in culinary arts vocational education. While attending the "Skills Center," she was provided accommodations by a different Washington school district. Based on the information provided, none of this course time included a special education setting in which the Student was provided written expression or reading specially designed instruction, as required by the Student's IEP.
6. The District's response acknowledged that it did not implement the Student's IEP as agreed upon during the period relevant to this complaint, and the response and interviews with District special education personnel provided the following information:
 - According to the Student's special education teacher, the Student's IEP team did not convene at the beginning of the 2021–2022 school year to discuss the alignment of the Student's schedule with her IEP.

- The special education teacher reported, via interview, that she attended the Student's "Current World Problems" and "Careers" classes, providing services in a "push in model," in which she "tried to be accessible to support Student's access and engagement with the general curriculum" and that she was not implementing a particular curriculum or providing direct instruction in the areas of reading or written expression.
 - The special education teacher indicated she did not have a set schedule, her support for the Student varied from being present for both courses all of the first two weeks of school to a variety of support totaling a maximum of 210 minutes across both classes per week.
 - The special education teacher described her work with the Student's three core teachers to support the Student. This included supporting the Student's use of a read aloud option with google docs of text, helping teachers to provide the Student access to cell phone for sensory support, allowing breaks for anxiety, a google document for spelling resources, and the creation of alternate science tests as the special education teacher does not support the Student in that core class.
 - The special education teacher provided no work samples or data regarding the implementation of the Student's IEP goals during the relevant period.
7. On October 14, 2021, the Parent emailed the Student's special education teacher, the District's special education director, and the District superintendent with concerns that the special education teacher was not providing writing accommodations to the Student, stating that accommodations were being offered after school instead of during school.
8. The Parent also raised concerns in her complaint about a specific assignment. The District's response explained that the particular assignment was given on September 27, 2021, and it acknowledged that the "timing of the assignment occurred during a period of absence for the student due to illness and COVID quarantine." According to the District, the Student was excused and absent from September 29 through October 7, 2021.

Email correspondence from the Student's general education teacher confirmed that he modified the length of the assignment for the Student. Email correspondence from the special education teacher, dated October 14, 2021, indicated that the assignment of specific concern had been modified in length by the Student's general education teacher and that the Student was welcome to join the special education teacher after school for additional assistance from 3-5 pm Monday through Thursday. Documentation from the District confirms that the after-school program was available to any student needing extra help and was not an offer related to special education services specifically, nor was the after-school program intended to implement the Student's IEP.

9. In an interview with the Parent, the Parent shared that at least one of the Student's general education teachers, her "Careers" class teacher, had made an effort to connect with the Student and provide accommodations outlined in her IEP. The Parent stated the Student was enjoying the class and doing well, getting good grades in the class.

CONCLUSIONS

IEP Implementation: The complaint was initially opened on the issue of whether the District implemented the Student's individualized education program (IEP), including accommodations,

during the 2021–2022 school year. A district must ensure it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. 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.

Here, the Student’s IEP included 50 minutes a day of specially designed instruction in reading and written expression, provided concurrently, in the special education setting. As of November 19, 2021, the District acknowledged it did not implement the daily 50 minutes of special education services. It is plausible that, through the push-in model described, the special education teacher was able to work with the Student and the “Current World Problems” and “Careers” teachers to provide special education services and accommodations to the Student in a manner consistent with her IEP. The special education teacher provided only alternate tests for the science class and did not assist with other required accommodations during that course. The Parent also shared that the Student’s “Careers” class teacher was making an effort to connect with the Student and provide accommodations. The Parent further stated that the Student was having a good time in the class and getting good grades, which OSPI highlights as an example of how important it is for teachers to provide accommodations as needed and required by IEPs.

However, while some accommodations were provided by the special education and general education teachers, the specially designed instruction was not; thus, OSPI finds that the difference between the amount of special education services provided for in the Student’s IEP and the acknowledgment that these services were not provided constitutes a material failure to implement the Student’s IEP. OSPI accordingly finds the District to be in violation for not implementing the Student’s IEP for the 2021–2022 school year for the period of time from September 1 through November 19, 2021, a period of approximately 60 school days. During the period specified above, the Student was to receive 50 minutes of specially designed instruction in the areas of written expression and reading per day. This resulted in the Student not accessing 3,000 minutes (50 hours) of special education services.

OSPI finds that compensatory services are an appropriate remedy for the Student’s loss of instruction. Additionally, the District will be required to convene the Student’s IEP to discuss how the Student’s IEP will be implemented moving forward and whether the Student’s IEP needs to be amended to meet her needs, or her schedule adjusted to support full implementation of the IEP.

There is no requirement that compensatory services must be ordered hour for hour. Compensatory services are an equitable remedy designed to place the Student in the position the Student would have been in had the violation not occurred in the first place. Typically, the analysis of compensatory services would be informed by progress data and updated information regarding the Student’s current level of performance of each of the targeted IEP goals. In this instance, no progress data was available. However, as the Student would have received the intended specially designed instruction in a small group special education setting, OSPI therefore finds it equitable to award 50% of the missed time to the Student for a total of 25 hours of

compensatory education related to the reading and written expression goals developed for the Student in her April 2021 IEP.

CORRECTIVE ACTIONS

By or before **January 21, 2022, April 15, 2022, July 15, 2022,** and **September 7, 2022,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **January 14, 2022,** the Student's IEP team will meet to determine how it will implement the Student's current IEP and whether the IEP needs to be amended to reflect the Student's current needs. The IEP team will deliver 25 hours of compensatory education to the Student during Semester 2 of the 2021–2022 school year and into summer 2022, if necessary. At the IEP meeting, the IEP team will discuss and document in a prior written notice the following:

- Out of the total 25 hours offered, how many hours will be allocated to each IEP goal area and the IEP should document what data and information was used as the basis for its decision;
- The agreed upon schedule for providing the compensatory hours through the remainder of the 2021–2022 school year and summer 2022; and,
- Plan for implementing the Student's accommodations throughout all general education courses in which the Student is enrolled.

By **January 21, 2022,** the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice (PWN), summarizing the IEP team's discussion and decisions concerning each of the above bullet points and the data and information used as the basis for the decision; c) the Student's schedule for receiving services; d) a list of people, including their roles, who attended the meeting; and, e) any other relevant documentation.

Compensatory Education

The District will deliver 25 hours of compensatory education to the Student. The compensatory education will occur in-person and will be provided by a certificated special education teacher, and instruction may occur in a 1:1 or small group instructional setting. 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 with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **August 31, 2022,** including those needing to be rescheduled.*

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **April 15, 2022** and **July 15, 2022** 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. No later than **September 7, 2022,** the District shall provide

OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by 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 **September 7, 2022**.

DISTRICT SPECIFIC:

None.

Dated this ___ day of December, 2021

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