

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-141

PROCEDURAL HISTORY

On November 28, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Pullman 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 November 29, 2022, 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 December 1, 2022, OSPI received additional and clarifying information from the Parent and on the same day, OSPI notified the District and Parent it was amending one of the issues in the complaint to clarify the dates investigated.

On December 15, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On December 16, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on December 20, 2022. OSPI forwarded the information to the Parent the same day.

On December 20, 2022, the OSPI complaint investigator interviewed the Student's special education teacher/case manager.

On December 26, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 27, 2022.

On January 4, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on January 9, 2023. OSPI forwarded the information to the Parent the same day.

On January 5, 2023, OSPI interviewed the District's assistant superintendent and director of special education.

On January 9, 2023, OSPI received additional information from the Parent. OSPI provided the information to the District on January 10, 2023.

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 interviews.

ISSUES

1. Whether the District invited the required IEP team members, including the Parent, to the meeting held *on or around November 16 or 18, 2022* per WAC 392-172A-03095?
2. Whether the District provided the Student specially designed instruction in math from the start of the 2022–2023 school year through November 15, 2022?
3. Whether the District followed procedures outlined in WAC 392-172A-02020 to determine the Student’s need for extended school year (ESY) services in fall 2022?

SCOPE OF INVESTIGATION

This decision references events that occurred that are outside the scope of the issues identified for investigation; for example, the facts include information about the development of the Student’s IEP during fall 2023 and the Parent’s reply raised additional concerns about IEP development. OSPI notes that the issues identified for investigation related to IEP team membership, IEP implementation, and ESY. References to IEP development are included to add context. Any references to the development of the IEP are not intended to identify additional issues or potential violations.

LEGAL STANDARDS

IEP Team: An individualized education program (IEP) team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

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. A school 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).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school

year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a free appropriate public education (FAPE) to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. 34 CFR §300.106; WAC 392-172A-02020.

A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

FINDINGS OF FACT

1. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of autism, attended a District high school, and her November 2021 IEP was in effect.
2. The November 2021 IEP included, in part, an annual goal and specially designed instruction in math. The goal stated, "By 11/29/2022, when given 2 linear equations [Student] will rearrange linear equations into slope intercept form, determining if lines are parallel, perpendicular, or neither improving math calculation skills from 70% accuracy to 85% accuracy..." The IEP included 20 minutes of specially designed instruction in math, 4 times a week, to be provided by a special education teacher in a special education setting.

Based on progress reporting, as of June 10, 2022, the Student made sufficient progress on her math goal and was averaging 85% accuracy.

3. The District's 2022–2023 school year began on August 31, 2022.
4. The Parent, in her complaint, alleged that between the start of school and November 15, 2022, the Student was not provided specially designed instruction in math, but instead only "tested [on] the goal but [not] provided direct instruction."

The Parent, in her reply to the District's response, stated that the District had not provided her with "any data to substantiate my student's progress between August 24, 2022 and 11/15/2022 on any of her math goal" and the Parent stated that the District never told her that the previous math goal had been met.

5. Regarding specially designed instruction in math, the District stated in its response:

Per the Parent's request, the student's math goal was written to address math content related to a specific course (Geometry during the 2021-2022 school year.) Data from the 2021-2022 Case Manager indicated that the student had met their goal in math (Geometry specific) by the end of the school year...Student's math goal was not continued into 2022-2023 school year because Student was in Statistics to fulfill their mathematics requirements related to graduation. The Case Manager focused mathematics specially designed instruction directly related to statistics work completion and concept understanding. Student received 740 minutes of specially designed instruction in math during current school year...IEP dated 11/15/22 includes two math goals related specifically to the statistics course, per Parent request. Goal completion is set for March of 2023 and June of 2023 to align with the completion of the course at the end of the school year.

6. During the first semester of the 2022–2023 school year, the Student's class schedule included an academic skills class and a statistics and algebraic concepts class, among other classes.

The Student's academic skills class period was a special education setting, taught by the Student's special education teacher/case manager. The Student's statistics class was a general education setting, taught by the general education math teacher.

7. On October 26, 2022, the Student's IEP team met. The attendees at the meeting included the Parent, five general education teachers, the principal, the special education teacher/case manager, the speech language pathologist (SLP), a special education teacher on special assignment (TOSA), and the Student.

The IEP present levels included information related to math, including that the Student's "greatest area of struggle continues to be math related content" and a statement from the Student's general education math teacher: "[Student] is a good thinker who likes to learn. I get a little concerned about her attendance. [Student's] executive functioning skills are a bit below the average stats student."

The present level specifically for math stated that during the first term of the fall semester, the Student "has demonstrated the ability to grasp concepts, maintain the pace, manage workload, and meet deadlines. She has also consistently asked for assistance when needed in the general education class as well as the resource room." With respect to the Student's goal (2 linear equations), the present levels indicated the Student was at 77% accuracy in January 2022, 85% accuracy in June 2022, and 38% accuracy on September 10, 2022. The IEP stated, "The September assessment was given after the summer break and without any review, and is comparable to the performance of her nondisabled peers. [Student] was given a series of problems based on the 8th grade common core math standards (9/15/22). She solved the problems with an accuracy of 62%."

The IEP included the following math goals:

- "By 03/31/2023, when given an opportunity to determine the probability of an event using a sample space of all possible outcomes [Student] will be able to compare the number of favorable outcomes to the number of total outcomes improving math calculation skills from 0% accuracy to 75% accuracy as measured by general education assessments."

- "By 06/16/2023, when given a series of situational word problems that require the student to identify the pertinent information [Student] will use the information to construct a linear function that will answer the question improving Math Calculations from 0% accuracy to 75% accuracy as measured by general education assessments."

One of the Student's transition goals in the IEP also involved math, including a goal around salary/income and creating a budget for independent living (financial literacy and transition skills). The IEP indicated the Student, in part, would receive 80 minutes of specially designed instruction in math per week, provided by the general education teacher/special education teacher, in a general education setting. The IEP stated the Student would attend general education classes and an "academic skills class 280 minutes per week (four sessions per week)."¹

8. On November 8, 2022, the case manager emailed the Parent a copy of the draft IEP and noted that the focus of the follow up IEP meeting would be to finalize the goals and discuss/finalize the transition plan.

The Parent responded, stating in part that there was clear "evidence of regression in notes around the goals. [Extended school year] ESY needs to be discussed in this next IEP."

9. On November 15, 2022, the Student's IEP team met. The meeting attendees included the Student, Parent, principal, special education teacher/case manager, four general education teachers, the TOSA, and a representative from DVR.

The November 15, 2022 prior written notice indicated the team met on October 26 and November 15, 2022, to develop the Student's IEP. The notice indicated the team considered and discussed the following at the meetings, in part:

- October 26 Meeting: "The team considered adding additional math goal to focus on life skills and budgeting...rejected...[because] it would be more appropriate to be placed under the transition category."
- November 15 Meeting:
 - "The team considered continuing with a math goal specific to 8th grade Common Core Standards...rejected this and accepted that the math goals will be written specifically to support [Student's] access to her Statistics class...The two math goals are as written to be address in a specific order to support [Student's] access to the Statistic's curriculum as determined by the scope and sequence of instruction. The goal written for probability will be addressed from the initiation date to March 31, 2023. The goal written for algebra will be addressed from April 10, 2023 to June 16, 2023."
 - "The team considered parent feedback surrounding present levels of performance in math and the parent request for ESY services...rejected the consideration of ESY because the team agreed that the loss of skill over the summer months of 2022 is

¹ OSPI notes the IEP included additional special education services in learning strategies, transition, social emotional behavioral, and speech/language consultation. Details of these services are omitted as the complaint allegations related to math services.

typical of her nondisabled peers and does not meet the requirements for ESY services. The parent disagrees with this decision.”

The prior written notice further stated the IEP team did not finish the IEP on November 15, 2022, and that the IEP would be reviewed with the Student on November 18, 2022. The IEP was to be initiated as written on November 28, 2022.

10. Regarding ESY, the Parent alleged in her complaint that the District refused to discuss ESY services “because [according to the Parent she was told] they do not provide ESY to [high school] students, and only provide ESY when the school has resources to do so.” The Parent further stated:

There is no protocol in place in the [District] about what to do when a student does not meet or is not progressing towards goals completion. The district failed to train staff on what do to if a student is not meeting goals, where at the end of one school year they were on track to meet goals, but then after summer comes back and is not only behind in the goal, but does not recoup the skills that they had by the end of IEP.

I understand that the reason my student did not meet her goals is related to failure to implement the IEP instead of summer learning loss. This brings up a lack of training of district staff on how to deal with concerns about ESY at the high school level. I felt more that this was not something available to any High School student so the team wouldn't discuss it.

In additional information, the Parent stated that “per the documentation provided by the district in their response it looks like no SDI was provided on the math goal in this school year, meaning that the conversation should have shifted to compensatory services rather than esy.”

11. Regarding ESY, the District stated that the Student had met her November 2021 IEP math goal by the end of the 2021–2022 school year. However, the District stated the Student’s case manager administered a math screener to all students upon returning to school in fall 2022 and the Student scored at 35% in geometry. The District stated, “This screener was without any instruction and was not specific to the goal.” The District noted the “Parent claims this constituted ‘massive regression,’ but a screener is not an indicator of regression.” The District stated, “regression recoupment is the standard for determining if Extended School Year is appropriate” and that the Student “passed Geometry in Semesters I (C) and 2 (D) [during the 2021-2022 school year and is] currently...passing Statistics.”

The District further stated that ESY was provided to high school students, if IEP teams determined a particular student had a need for ESY. The special education director and assistant superintendent noted that the Student’s IEP team would have been aware of that, especially given the Student’s case manager has previously served as the ESY provider to high school students. Further, the TOSA provided that:

1. Our district process for determining ESY is based on individual IEP team decisions. We guide our case managers to look at the regression of student skills and track the amount of time it takes to recoup that skill. We typically utilize the holiday breaks (November and December) as our guideline for time out of instruction, then beginning in January, track student skills if there are any forms of regression. We guide our case

managers to look for a 9 week window for recoupment. If the student requires 9 weeks to recoup skills lost over the holiday breaks, then IEP teams offer ESY to the families to consider.

2. Yes, ESY is absolutely offered to high school students. This is supported by our process of having it be an individual IEP team decision.

Our district has offered and provided ESY for students both at the Elementary and Secondary levels the last few summers.

12. On November 17, 2022, the Parent emailed the case manager, principal, the TOSA, and general education math teacher regarding her concerns. These concerns included:

- ESY: The Parent stated she was told that ESY “was not provided at the high school level and for the district only when funding allowed them to provide ESY to any students” and that the Student would not “qualify based on the information provided.” The Parent stated that ESY was not added to the agenda, although there was discussion of why it would not be added to the agenda and data collection.
- Math Goal: The Parent stated the team “clarified” that “no [specially designed instruction] has been provided on the annual [goal on 2 linear equations].”

13. On November 18, 2022, the District stated the case manager spoke with the Student regarding any questions she had related to the IEP. The District stated in its response that the Student wanted a copy of the IEP to take home to have over the Thanksgiving break and that she would follow up with the case manager if she had questions.

The District stated the Student took a copy of the IEP home and that the “conversation on November 18, 2022 did not constitute an IEP meeting.”

14. According to the Parent’s complaint, this was a meeting held by the special education teacher to finalize the Student’s IEP and the only attendees were the Student and the special education teacher. The Parent alleged the required IEP team, including the Parent, were not included in the meeting.

Also, according to the Parent’s complaint, this was not an IEP meeting and the special education teacher misrepresented this as an IEP meeting. The Parent stated that the special education teacher “handed [the Student] her IEP with no discussion” and that the “Student does not recall this conversation,” that the Student “remembers that the Case Manager handed them the IEP and told them basically her is your IEP.”

Additionally, in her reply, the Parent indicated that the “there was sufficient information that needed to be reviewed with at least with a smaller team including the parent, math teacher and case manager either by email or in person”² and that another IEP meeting was needed,

² In the Parent’s reply, she stated the IEP was not finalized at the end of the IEP meeting on November 15, 2022, and that she “felt that there were still some weaknesses in the IEP draft that I had.” The Parent noted that the math goal was not finalized at the November 15 IEP meeting, and that while the team agreed to write goals related to statistics, it “appears that neither the student nor the parent were given the goals for

thus the meeting on November 18, 2022 should have been an IEP meeting. The Parent also, appears to allege in her reply to the District's response that there was a meeting between the case manager and general education math teacher to write the math goals that should have been an IEP meeting and/or included the Parent and Student.

15. The District additionally noted in its response that the Student attended and participated actively in both IEP meetings so far this school year. Additionally, the District stated the Student was "developing self-advocacy and voice in their program" and was "thriving academically and socially this school year."

16. The District's response included documentation of the math instruction and assessment provided to the Student, which included the following from September 2022:

- Sept. 7: Math CBM assessment self-advocacy (30 minutes)
- Sept. 8: Math CBM assessment self-advocacy (15 minutes)
- Sept. 12: CBM assessment review/Stats support Gen Ed accommodations discussion (25 minutes)
- Sept. 14: Gen Ed/Teacher contact strategies/planning (20 minutes)
- Sept. 15: Discussed gen ed pace/challenge and proactive strategies (15 minutes)
- Sept. 19: Stats support (Sample Bias) (25 minutes)
- Sept. 21: Absent
- Sept. 22: Stats support managing pace returning from absences (35 minutes)
- Sept. 26: Stats review and test prep (25 minutes)
- Sept. 28: Unit 1 Stats Test (50 minutes)
- Sept. 29: Unit 1 Stats Test (35 minutes)
- Oct. 3: Stats support placebo effect/study types) (25 minutes)
- Oct. 5: Stats support experimental design (35 minutes)
- Oct. 6: Stats support/reteach (25 minutes)
- Oct. 10: Stats support case/control studies (20 minutes)
- Oct. 12: Gen Ed pace/challenge conversation Stats support (35 minutes)
- Oct. 13: Stats support transition planning (35 minutes)
- Oct. 19: Return from absence support (45 minutes)
- Oct. 20: Support planning/managing make up work from absence stats support (30 minutes)
- Oct. 21: Transition planning (20 minutes)
- Oct. 26 and 27: Absent
- Oct. 31: Return from absence support (20 minutes)
- Nov. 3: Stats support percents/percentile (35 minutes)
- Nov. 7: Stats support mean, median, mode (25 minutes)
- Nov. 9: Planning/communication about make up work with Gen Ed teachers (35 minutes)
- Nov. 10: Transition planning (20 minutes)
- Nov. 14: Stats review for test retake scheduling discussion (20 minutes)
- Nov. 16: Stats reteaching/reassessment prep continued support for catching up after absence (25 minutes)
- Nov. 17: Support with late/missing assignments. Support in planning for and communicating with teachers regarding reassessing in Stats and Science. (15 minutes)

review prior to implementation." The Parent detailed several areas of the IEP that she felt needed additional work, including secondary transition, graduation pathways, and goals in communication.

17. The Parent, in her reply, stated the information related to math instruction only shows that "452.5 minutes of SDI related to statistics were provided, 0 minutes were provided on the math goal from the 11/29/2022 IEP."

The Parent stated that based on what the Student has told her, the class "functions more like a study hall than a special education class." The Parent also stated it "appears that there is not specially designed instruction that was developed by the special education teacher" and that "all work completed in the class related to the math goal was created by the general education math teacher."

18. In an interview with the Student's case manager, the case manager stated he provided the Student's specially designed instruction in math (and other areas) during the academic skills class (a resource room model). The Student also has a general education math class, and the case manager stated that he worked with the general education teacher to ensure the Student was provided her accommodations and that they generally consult to ensure the Student is supported.

The case manager explained that he provides specially designed instruction in math through 1:1 or small group instruction and focuses mostly on breaking down math assignments and concepts, reteaching concepts from the general education math class curriculum, and reassessing the Student. The case manager stated he has access to the curriculum for the Student's general education math class so he modifies instruction based on that, and that there is not a separate special education math curriculum he is using—he is providing instruction based on the general education math curriculum.

The case manager shared that he and the Student have focused on learning how to manage the work rate, workload, and deadlines in the general education classes, as the pace of instruction and the assignments are challenging for the Student. The case manager also shared that since the start of the year, he has focused a lot on rapport building with the Student and helping her acclimate to classes, in part to address some challenges that occurred the prior school year and to address concerns expressed by the Parent at the start of the school year about the importance of the school year getting off to a good start for the Student.

The case manager also stated that he thought that focusing initially on rapport and managing workload worked really well, and that all the Student's teachers report she is doing well this year in terms of academics, social skills, and attendance.

CONCLUSIONS

Issue One: IEP Team Members – The Parent alleged that an IEP meeting was held on or around November 18, 2022 with the Student that failed to include all the required IEP team members, including the Parent, because the meeting was only between the Student and the case manager. The Parent also alleged that this was not an IEP meeting but was misrepresented as an IEP meeting and the case manager only "handed [the Student] her IEP with no discussion."

An IEP team is composed of several required team members. Here, on November 18, 2022, the case manager spoke with the Student regarding the IEP, asked whether the Student (who was 18 years old) had any questions about the IEP, and gave the Student a copy of her IEP. The District stated this was not an IEP meeting, and there was no indication in any documentation that this was represented as being an IEP meeting. It is reasonable that a student's case manager would go over an IEP with high school student; however, that does not make every time a case manager and student talk about the IEP an IEP meeting. Given that this was not an IEP meeting, there was no requirement to have the full IEP team present, nor was there a requirement to invite the Parent. OSPI finds no violation.

Issue Two: Math Instruction – The Parent alleged the District did not provide the Student specially designed instruction in math between the start of school and November 15, 2022, but instead only “tested [on] the goal but provided not [sic] direct instruction.” In her reply to the District's response, the Parent stated it appeared that only approximately 452.5 minutes of specially designed instruction were provided.

A school 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 student with a disability and those required by the IEP.

At the start of the 2022–2023 the Student was to receive 20 minutes of specially designed instruction in math, 4 times a week, to be provided by a special education teacher in a special education setting. The Student's IEP in place at the start of the year included a math goal specific to linear equations, and the District explained that the math goal was written to address math concepts for a specific math class—in this case geometry—which the Student took the previous school year. During the 2022–2023 school year, the Student was enrolled in a statistics and algebraic concepts class, and thus the math goal in the IEP was no longer applicable. Further, per the documentation in the complaint, the Student had largely mastered her IEP goal at the end of the 2021–2022 school year (although the Parent disputes that the Student met her goal).

Regardless, the documentation in the complaint and interview with the Student's special education teacher indicate the Student was provided specially designed instruction in math, and that instruction focused on statistics concepts aligned with the Student's current general education math class, rather than the IEP goal. The Student received instruction in math during her academic skills class period, which was a special education setting, taught by the special education teacher. The teacher noted he provided specially designed instruction in math based on the Student's general education statistics class curriculum. The documentation provided included the special education teacher's log of areas he provided instruction, assessments, and other support he provided September through November 2022, which indicates specially designed instruction was provided (e.g., baseline assessments, reteaching and support in various areas of statistics, and retesting). Further, in an interview, the special education teacher described how he provides specially designed instruction through 1:1 or small group instruction and focuses mostly on breaking down math assignments/concepts, reteaching concepts from the general

education math class curriculum, and reassessing the Student. In addition, and in response to concerns from the Parent, the special education teacher provided information on how he has worked to develop rapport with the Student and develop executive functioning skills related to workload management.

There was likely some miscommunication about the provision of math instruction because the math goal in the IEP, in place at the start of the year, did not align with the Student's current math class (and was instead aligned with the previous math class). When the Parent stated she was told that "data had not been collected on the math goal" and that instruction was not being provided on the linear equations goal, this is possible. However, just because instruction was not provided on that specific math goal does not mean that *no* specially designed instruction in math was being provided. Instead, the special education teacher provided specially designed instruction related to the Student's statistics class and curriculum. Ideally, the Student's IEP would have been amended earlier to align the instruction and goal; however, the Student was still being provided special education services. The Parent stated that the special education teacher was not creating the curriculum and thus was not providing specially designed instruction. However, as the teacher explained, his instruction was based on the general education math curriculum. Modifying and reteaching the general education curriculum and modifying the delivery of instruction is specially designed instruction, even if the special education teacher was using the general education curriculum.

Overall, OSPI finds that the Student was provided specially designed instruction in math, even though she was not provided instruction specifically on the linear equations goal. OSPI finds that not providing instruction on that goal and instead focusing on the current general education statistics curriculum does not amount to a material failure to implement the IEP. OSPI finds no violation.

Issue Three: Extended School Year (ESY) Services – The Parent alleged the District refused to discuss ESY services, "because they do not provide ESY to [high school] student, and only provide ESY when the school has resources to do so."

ESY services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a free appropriate public education (FAPE) to a student eligible for special education services. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor.

Prior to the November 15, 2022 IEP meeting, the Parent emailed the case manager and stated based on the draft IEP, that there was clear "evidence of regression in notes around the goals. ESY needs to be discussed in this next IEP." The Parent stated the team refused to discuss ESY. However, at the Student's November 15, 2022 IEP meeting, it appears the IEP team discussed ESY

to some degree as the prior written notice, documenting the two IEP meetings (October 26 and November 15), included that:

The team considered parent feedback surrounding present levels of performance in math and the parent request for [extended school year] ESY services...rejected the consideration of ESY because the team agreed that the loss of skill over the summer months of 2022 is typical of her nondisabled peers and does not meet the requirements for ESY services. The parent disagrees with this decision.

OSPI finds that the Student's IEP team appropriately considered the Student's need for ESY as of November 2022. Although, OSPI notes that if there are concerns about regression and recoupment after winter break, the Student's IEP team should gather data and meet to review.

As this complaint investigation progressed, the Parent clarified that she had come to understand that ESY was not the correct framework and instead she was asking for compensatory education, for example: the Parent stated, "per the documentation provided by the district in their response it looks like no SDI was provided on the math goal in this school year, meaning that the conversation should have shifted to compensatory services rather than esy." As discussed above, OSPI finds no failure to implement the IEP.

One additional concern must be analyzed, as the Parent alleged a potential systemic concern, stating that the TOSA and principal stated at the IEP meeting that ESY "is not typically provided at the high school level" and that the District did not have a protocol in place to assess whether a student was eligible for ESY. Upon investigation, OSPI finds this not to be the case. The District, in its response, and multiple different District staff members explained the District's process for determining whether a student needs ESY, including individual IEP team decisions, tracking data, and looking at data on regression and recoupment. The District also stated that ESY was offered and provided to students at the elementary and secondary levels. OSPI finds no evidence of a systemic issue and finds the District has an appropriate process for considering ESY. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI notes that the IEP the Student's IEP team developed this school year indicates the specially designed instruction is to be provided by the general education teacher/special education teacher, in a general education setting. However, the special education teacher indicated he is currently the primary provider of specially designed instruction and instruction occurs in a special education setting. While the Parent's allegation was not with respect to the implementation of this IEP, OSPI

recommends the Student's IEP team review this portion of the IEP and determine if the IEP needs to be amended or whether they need to adjust how the Student's instruction is provided.

Additionally, in her reply to the District response, the Parent appeared to allege additional issues with respect to IEP development. For example, the Parent now appears to be saying that the meeting on November 18, 2022 should have been an IEP meeting because the IEP had not yet been finalized. OSPI recommends the District and Parent convene an IEP meeting to discuss whether there are any remaining concerns about the IEP that need to be resolved.

Dated this 24th day of January, 2023

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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.)