

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-50

PROCEDURAL HISTORY

On April 29, 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 Moses Lake 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 May 2, 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 May 19, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on May 20, 2022. OSPI invited the Parent to reply.

On May 31, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on June 1, 2022. OSPI forwarded that information to the Parent on June 2, 2022.

On June 2, 2022, OSPI's investigator conducted an interview of the Student's Spanish teacher via Zoom.

On June 2, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District the same day. OSPI forwarded that information to the Parent on June 3, 2022.

On June 2, 2022, OSPI received additional information from the Parent. OSPI forwarded a copy of that additional information to the District on June 3, 2022.

On June 3, 2022, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District the same day. OSPI forwarded that information to the Parent on June 8, 2022.

On June 7, 2022, OSPI received additional information from the Parent. OSPI provided the District with a copy of that information on June 8, 2022.

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

ISSUE

1. During the 2021–2022 school year, did the District follow proper procedures for implementing the accommodations and modifications in the Student's individualized education program (IEP) that related to the Student's Spanish class?

LEGAL STANDARD

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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).

FINDINGS OF FACT

2021–2022 School Year

1. The District's first day of school was September 1, 2021.
2. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of specific learning disability, was in the seventh grade, and attended a District middle school. At that time, the Student's December 2020 amended IEP was in effect.

The December 2020 amended IEP included the following accommodations¹:

1. Editing checklist for longer writing assignments;
2. Extra time if Student effort is shown;
3. Graphic organizers (during longer writing assignments);
4. Monitored breaks (daily as needed to approved location);
5. Provide copies of notes/study guides (daily as needed);
6. Speech-to-text for all writing assignments beyond short answer (daily as needed);
7. Streamline (during testing as available);
8. Testing: can test in a separate location with familiar adult);
9. Text-to-speech (during testing as needed – not reading passages); and,
10. Use of Chromebook and tech tools for all writing assignments beyond short answer (daily as needed).

The December 2020 amended IEP provided the Student with the following modifications:

1. Content Area: shortened assignments (daily as needed);
 2. Grading Modifications: pass/fail when grade falls below D, but significant effort shown (at grading periods); and,
 3. Testing Accommodation: use of notes on tests (during testing as needed).
3. The Parent's complaint request read, in part:
I believe the school violated special education requirements by keeping my son in Spanish class when the lessons became more challenging with written assignments [and] when they

¹ Frequency and location data is shown only if determined relevant to an understanding of the IEP's contents.

gave him an F and did not provide alternate methods to take exams that were weighted heavily in grading...[On] September 16, 2021, [I] was advised that there was signage throughout the [Spanish] classroom and the learning material was audio...I would also like for teachers to receive more education specifically about dyslexia and the impact it has on students. Most people who don't have firsthand knowledge or experience with it, don't understand what it means and that it is something that cannot be seen or treated.

4. On September 2, 2021, the counselor emailed several District staff members, including the Spanish teacher, stating, in part, "Please make a point to read the IEP for Student. Student will need to be graded pass fail in all his classes...Also, if you use a textbook in your class you will want to make sure you have it available in audio so that student can listen as he reads."
5. According to the District, on September 9, 2021, the Student's IEP team met "to review the Student's needs, accommodations, and modifications."
6. The District's response included meeting notes related to a September 16, 2021 IEP meeting for the Student. These notes included feedback from the Student's teachers. The following is the entry from the Spanish teacher:

So far in Spanish, Student is doing well—lots of visuals, auditory, not a lot of writing, lots of repetition. [Instruction is] based [on] alphabet sounds, phrases, pictures to words. Have not seen any deficits from Student – he is participating along with everyone else. [Student is] welcome to use voice-to-text, like any [other] student.
7. On October 6, 2021, the Parent emailed the Spanish teacher, asking what IEP accommodations were being provided to the Student in that class and why the Student's grade was so low.

Later that same day, the Spanish teacher responded, stating, in part:

I talked with Student just now and he was not aware that he had not done a slide project and he is now going to work on it for homework. It is worth a lot of points. Besides that, he is doing well. If he gets that done, he will be passing.

Later that day, the Parent responded, stating, in part, "Student will need extra time and assistance [in Spanish class] to be able to stay on top of his work."

Later that day, the Spanish teacher responded, stating, in part, "He has all the time he needs (before the end of the quarter). He just needs to let me know when it is done so I can grade it"; and "I showed Student exactly where to find it on Google Classroom and what he needs to do. There are two videos attached that he can re-watch to get the information."

8. On November 12, 2021, the Student's IEP team developed a new annual IEP.

The November 2021 IEP cover page indicated the Spanish teacher attended the November 12, 2021 IEP meeting.

The November 2021 IEP provided the Student with the following accommodations:

1. Alternate response: may give verbal responses to written questions;
2. Editing checklist for longer writing assignments (when requested – all classes);

3. Extra time if Student effort is shown (general education up to one week without deduction);
4. Graphic organizers;
5. Monitored breaks (daily as needed to approved location);
6. Provide copies of notes/study guides;
7. Speech-to-text for all writing assignments beyond short answer;
8. Streamline (during testing as available – online standardized testing as available);
9. Can test in a separate location with familiar adult;
10. Text-to-speech (during testing as needed (NOT reading passages)); and,
11. Use of Chromebook and tech tools for all writing assignments beyond short answer.

The November 2021 IEP provided the Student with the following modifications:

1. Content Area: shortened assignments;
2. Grading modifications: pass/fail when grade falls below D, but significant effort shown; and,
3. Testing Accommodation: use of notes on tests.

9. The District was on break November 25–26, 2021.

10. According to the District, on December 14, 2021, an IEP meeting was held to amend the Student’s IEP. Based on the cover page for the December 14, 2021 IEP meeting, it does not appear the Spanish teacher attended this IEP meeting.

The accommodations in the December 2021 amended IEP appear to be substantively similar to those in the November 2021 IEP.

The modifications in the December 2021 amended IEP are as follows:

1. Content Area: shortened assignments and ability to show learning in alternate ways (e.g., verbal answers);
2. Grading modifications: pass/fail when grade falls below D; and,
3. Testing Accommodation: use of teacher-provided notes on tests and option to verbally answer questions.

11. The District was on break December 20–31, 2021.

12. According to the District, the Student’s Spanish class was an “elective class [lasting] one semester long (September 1, 2021 – January 28, 2022)”; and “Student completed the course and changed electives for the second semester.”

13. The District’s response included a page that detailed the Student’s grades in his respective courses, as well as his attendance for the same. According to this page, the Student was absent from Spanish class on one occasion in the first semester.

14. According to the District, on February 17, 2022, an “assessment revision” of the Student was completed in response to Parental concerns regarding the Student’s social and emotional development.

15. On February 26, 2022, the Parent emailed the resource teacher, asking whether the Student should have received “a pass for attendance and participation” in Spanish class rather than an F.

Later that day, the resource teacher responded, stating, in part:

I took a quick look at Skyward and there were quite a few missing assignments for Spanish last semester. The pass/fail modification isn't a guaranteed pass on every class a student takes. It is a tool for teacher to be able to modify grading of assignments that have been turned in so that a student can still earn a pass if he/she turns things in but doesn't do very well on them.

...

I took a look at the new version of the pass/fail wording [in the draft amended IEP], and it doesn't change [the requirement that Student] attempt to turn in assignments to earn a pass, but there are some [other] changes that are important for teachers to be aware of.

16. On February 28, 2022, the Parent emailed the resource teacher, asking, “Did Student have a checklist for Spanish?...Student received Fs on several quizzes...and my guess is that the quizzes were written. So, it also leads me to ask if Student was given accommodations or were there any [accommodations] made so he could take the test orally.”
17. On March 17, 2022, the resource room teacher emailed the director, stating, in part:
[A]ccording to Skyward, the Student was missing 9 assignments in Spanish...[I]t seems to me that missing 9 assignments is a logical reason for not passing the class...Student's Spanish teacher got back to me and said she would accept the missing assignments late and change his grade [to passing] if he completes the missing work.
18. According to the District, on both March 14 and 21, 2022, a “virtual meeting [was] held [to] address concerns in [a] parent[al] email received by the District.”

During this investigation, the District stated:

The December 2021 amended IEP is the most up-to-date IEP. Any amendments that were made as a result of the meetings from December 2021 through March 2022 were all included in the same amendment and documented on the same prior written notice due to the overlapping of meetings, parent requests, breaks, and assessment revisions. As read in the emails, there was a significant amount of back-and-forth during this entire time period before a conclusion and agreement on what all needed to be amended was confirmed.²

19. On March 23, 2022, the Parent emailed the resource teacher, requesting documentation showing the Spanish teacher provided the Student with appropriate IEP supports. In this same

² As OSPI understands this explanation: changes were made to the Student's IEP as a result of the March 14 and 21, 2022 IEP meetings, and those changes were reflected in the “December 2021 amended IEP” that was provided to OSPI—in other words—the District was unable to provide OSPI with a copy of the IEP that existed from approximately December 14 2021 through March 14 and/or 21, 2022.

email, the Parent requested the Spanish teacher “decide to either pass or fail Student based on the work that he has submitted for the first semester.”

20. On March 31, 2022, the Spanish teacher emailed the Parent’s educational advocate, the Parent, and the resource teacher, stating, in part:

[I]f Student would like to do the missing assignment (project) (that counted as an assessment) of which he is very capable of doing, he would pass the class. The assignment is ‘Christmas in Other Countries’. It is in English and requires no previous knowledge of Spanish. It was a cultural focus.

...

Student is a wonderful person and was a delight to have in class. He is very capable and he learned Spanish and was able to use it in all its forms – speaking, writing, listening, and reading...If Student still has access to his Google classroom for Spanish, he will find the assignment there. Otherwise, he could just do the assignment on Google slides and email it to me.

21. The District was on break April 4–8, 2022.

22. Between April 11 and 18, 2022, the Parent, Spanish teacher, educational advocate, and special education director (director) exchanged emails wherein the following was discussed:

- The Student believed he had completed the assignment referenced in the Spanish teacher’s March 31, 2022 email “prior to spring break”;
- The Spanish teacher stated the assignment was supposed to be related to “Christmas in Nicaragua” but the Student’s submission related to “a dance in May...daily food, and music from Puerto Rico”, and that the Spanish teacher had informed the Student soon after submission that it dealt with an unrelated topic;
- The education advocate expressed the belief that the Student’s completion of the assignment on an unrelated topic was evidence appropriate accommodations and modification had not been provided in Spanish class;
- The Spanish teacher stated: (a) she provided the Student with “specific words that he [could] search to be successful” and “extra help”; (b) the Student had shown throughout the academic year that he was “completely capable of researching the basic information that is being requested”; (c) if the Student wanted a passing grade, he had to complete the relevant assignment; and (d) the Student could “come in at lunch on Thursday” or “after school” and the Spanish teacher would help him complete the same;³
- The educational advocate informed the Spanish teacher that the Parents determined the Student would not be “redoing” the assignment; and,
- The director stated, in part, “[A]lthough teachers have to provide accommodations and modifications, there is no log requirement [for provision of accommodations and modifications].”

In part, on April 12, 2022, the Spanish teacher wrote the education advocate:

I am sure his IEP does not stipulate that his teachers need to calling home constantly when grades are readily available [on Skyward] at any moment of the day. His parents did not

³ On April 18, 2022, the director wrote, in part, “At the last IEP meeting, we discussed that the resource teacher would support Student meeting with the Spanish teacher to submit the work needed to obtain a pass in Spanish from the first semester even [though is is] a couple months later.”

ask about [the grade for] this [assignment] at the time, either, or I would have gladly made concessions like I am doing now.

23. On June 2, 2022, OSPI received additional information from the Parent. It read, in part: Yes, the District did provide him with the technology software of Talk-to-Text, but failed to provide technology for translation...We also stressed our concern again when they advised us that Student would be going from conversation Spanish to written Spanish. We knew that it would prove to be more difficult for him, since he struggled with [this particular skillset in] English. If Student's accommodations and modifications had been implemented, Student would have had more successful in this class.
24. On June 2, 2022, OSPI's investigator conducted a Zoom interview of the Student's Spanish teacher. OSPI's investigator's notes from that interview are as follows:

December 2020 amended IEP

Spanish teacher was provided a copy of the December 2020 amended IEP prior to the start of the 2021–2022 school year. On date of interview (June 2, 2022), Spanish teacher has a copy that was printed on September 1, 2021.

Accommodation One: this accommodation was not applicable to Spanish class because there were no major writing assignments.

Accommodation Two: 'Student was given as much time as needed until the week before grades were due. This was because I required time to get grades complete.'⁴

Accommodation Three: not applicable.

Accommodation Four: the Student never asked for any and did not appear to need any. Spanish class was the second. So the Student was still fresh.

Accommodation Five: 'Any notes that would have been taken in Spanish class would have been fill in the blank. And, if any students asked me for copies of notes, I would provide them.'

Accommodation Six: 'This accommodation was not necessary in Spanish class because it was beginning Spanish, so most all assignments were short answer. But Student did have access to this accommodation available on is computer/chrome book.'

Accommodation Seven: not applicable.

Accommodation Eight: 'Student could have used this accommodation but student never asked for it, and it did not appear Student needed it.'

Accommodation Nine: 'Student did not need this accommodation in Spanish class but it was available.'

Accommodation Ten: 'There were never longer writing assignments in Spanish class.'

⁴ Single parentheses signify paraphrasing—a close approximation of the Spanish teacher's actual statement.

Modification One: 'We did not have any longer assignments in Spanish class — homework was not even really given.'

Modification Two: the Spanish teacher interpreted this modification as applying to the course grade.

Modification Three: 'Yes, all students use their notes. And for most tests, students could use notes. If students were not permitted to use notes for a particular test, students could use the informative posters on the wall. If a student needed to retake the test or quiz, this particular Student and one other student were allowed to retake tests and quizzes as many times as needed.'

November 2021 IEP

Spanish teacher does not have an individual, after-the-fact recollection of having received the November 2021 IEP, though she stated she cannot recall ever not having received a copy of an IEP for one of her students when she was responsible for some portion of IEP services.

Accommodation One: 'Permitted? Yes. Structured to make use available? Not really.'

December 2021 amended IEP

Modification One: According to the Spanish teacher, there was a quiz on December 14, 2021, but no quizzes after that date. And there was not a final test to conclude the semester course.

General

During the interview, the Spanish teacher reviewed the Student's grades online, and noted that there were a couple zeros for uncompleted assignments near the beginning of the school year.

In regard to the research assignments extensively discussed by the parties in emails beginning roughly March 31, 2022, the Spanish teacher stated she did provide a video to aid the Student in completion of this assignment.

The Spanish teacher stated, 'a lot of the class was verbal; and, some of the 'quizzes' (for grading purposes) were actually homework assignments and/or projects.'

In general, the Student was very participative and talkative in Spanish class.

The Spanish teacher would occasionally excuse assignments for the Student.

According to the Spanish teacher, as of January 9, 2022 (and/or around that date), her grading records showed the Student had approximately nine missing assignments.

The Student did well on some quizzes but struggled with others.

The Student's grade was what it was, in large part, because certain assignments were not completed, or if they were completed, they were not responsive to the particular prompt. The Spanish teacher stated she'd offer to help and give the Student the opportunity to re-do such assignments.

CONCLUSIONS

Issue 1: Individualized Education Program (IEP) Implementation – The Parent alleged the District did not follow proper procedures for implementing the Student’s IEP accommodations and modifications in the Student’s Spanish class.

A district must provide 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.

Here, OSPI’s investigation showed the following:

First, several accommodations—and at least one modification—were not applicable to the Student’s Spanish class. For example, in the December 2020 amended IEP, accommodations 1, 2, and 10, as well as modification 1, related—at least in part—to breaking up longer writing assignments. However, in her interview with OSPI’s investigator, the Spanish teacher repeatedly highlighted the fact that most all assignments in the Spanish class were short answer. Additionally, accommodation 7 in the December 2020 amended IEP was specific to the context of standardized testing, which did not take place during the Student’s Spanish class.⁵ Finally, the December 2021 amended IEP provided the Student—for the first time—with two modifications that permitted the Student to complete, in part, tests and quizzes using an alternate style of communication (modifications 1 and 3), such as verbal responses. But the Spanish teacher indicated that she did not administer any tests or quizzes after December 14, 2021, so there was no need for this modification type to be implemented.

Second, accommodation 2 in the December 2020 amended IEP was materially implemented. For example, this accommodation read, “extra time if Student effort is shown.”⁶ Here: an October 6, 2021 email thread showed the Student was permitted significant extra time—“[Student just needs to complete it] before the end of the quarter”—to complete a particular project; and during her interview with OSPI’s investigator, the Spanish teacher noted, in part, ‘Student was given as much time as needed [to complete assignments] until the week before grades were due. [This deadline was imposed because] I required time to get grades completed.’ Similarly, modification 2 in the December 2020 amended IEP was materially implemented. For example, this modification read, “pass/fail when grade falls below [a] D, but significant effort shown.”⁷ And here: in her interview

⁵ As a note applicable to each of the three IEPs (December 2020 amended; November 2021; and December 2021 amended IEP), OSPI observes: several of the accommodations appeared, in a substantially similar format, in each IEP.

⁶ This accommodation appeared in the other two IEPs as well.

⁷ This modification appeared in all three IEPs, though there does appear to have been some confusion as to its import: the Spanish teacher believed it applied to the end-of-course final grade, whereas the Parent appears to have potentially believed it applied to individual assignments. The Student’s IEP team is

with OSPI's investigator, the Spanish teacher noted she would occasionally excuse assignments for the Student; and in relation to the spring 2022 research project on 'Christmas in Other Countries'/ 'Christmas in Nicaragua', the Spanish teacher informed the Parents that if the Student completed the project, the Student would pass Spanish class.⁸

Third, there were at least two accommodations in the December 2020 amended IEP that were ostensibly available to the Student—but the Student did not use the same—and it is unclear whether the Student required use of these accommodations in Spanish class. The two accommodations that clearly fall within this category are accommodation 4 (monitored breaks) and accommodation 8 (testing: can be in a separate location with familiar adult).⁹ To the extent necessary, OSPI encourages the IEP team to meet to determine which classes, if any, the Student requires these accommodations be provided, and for the IEP team to discuss a communication mechanism whereby the Student can articulate for their usage.

Fourth, the Parent's principal concern appears to be: due to the Student's dyslexia, most of the learning and grading in the Spanish class should have been based on auditory and/or verbal communication. On this point, OSPI notes: the September 16, 2021 meeting notes show the Spanish teacher communicated to the IEP team that instruction in Spanish class consisted of "lots of visuals [and] auditory [instruction], not a lot of writing"; in a March 13, 2022 email to the Parent, the Spanish teacher noted the Student had done a good job "speaking [and] listening" in Spanish (in addition to reading and writing Spanish); during her interview with OSPI's investigator, the Spanish teacher noted 'a lot of the class was verbal' and that the Student was an active participant in class conversations; the District did have speech-to-text software available on his Chromebook, though the extent to which the Student required it in Spanish class was unclear; and one of the reasons the Student's grade in Spanish was comparatively low was because the Student did not complete several assignments – and not because the Student had performed poorly on certain verbal assessments or because non-auditory quizzes had been administered to the Student.

For the foregoing reasons, OSPI does not find the District materially failed to implement the Student's IEP accommodations and modifications in the Student's Spanish class. And OSPI finds no violation.

encouraged to resolve this ambiguity, to the extent necessary, for proper implementation in the Student's other courses.

⁸ OSPI acknowledges there was a dispute here. The Parent believed the Student did complete the project, the Spanish teacher stated what was turned in was not responsive to the particular prompt, and the Spanish teacher offered to assist the Student in completing work responsive to the prompt.

⁹ Accommodation 5 in the December 2020 amended IEP ("provide copies of notes/study guides (daily as needed)") also likely belongs in this implementation category (category three). For example, during her interview, the Spanish teacher stated, 'Any notes that would have been taking in Spanish class would have been fill-in-the-blank. And, if Students asked me for copies of notes, I would provide them [with a copy].'

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of June 2022

Dr. Tania May
Assistant Superintendent of 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.)