

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-153

PROCEDURAL HISTORY

On December 19, 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 Highline 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 December 20, 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 21, 2022, the Parent provided OSPI with additional information. OSPI forwarded the additional information to the District on the same day.

On December 19, 2022, OSPI received the District's partial response to the complaint and forwarded it to the Parent on December 22, 2022.

On December 21, 2022, OSPI requested additional information from the Parent. OSPI received the additional information on December 22, 2022 and forwarded the information to the District on the same day.

On December 27, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On January 6, 2023, OSPI received the District's second response to the complaint. The response was forwarded to the Parent on January 9, 2023.

On January 10, 2023, OSPI received the Parent's reply, and it was forwarded to the District on January 11, 2023.

On February 6, 2023, OSPI interviewed the Student's general education teacher.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 20, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District ensure the Student's individualized education program (IEP) was accessible to the Student's classroom teachers and inform the Student's teachers of their specific responsibilities under the Student's IEP according to WAC 392-172A-03105 during the 2022–2023 school year?
2. Did the District implement the accommodations in conformity with the Student's IEP according to WAC 392-172A-03105 during the 2022–2023 school year?

LEGAL STANDARDS

Purposes: The purposes of the regulations under 34 CFR Part 300 and Chapter 392-172A are to: 1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; 2) Ensure that all students eligible for special education services have available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; 3) Ensure that the rights of students eligible for special education services and their parents are protected; 4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education services; and 5) Assess and ensure the effectiveness of efforts to educate students eligible for special education services. 34 CFR §300.1; WAC 392-172A-01005.

IEP Notification: Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation. Each teacher and provider must be informed in a timely manner of their specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. WAC 392-172A-03105.

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.

FINDINGS OF FACT

2021–2022 School Year

1. On June 7, 2022, the District conducted a meeting to develop the Student's initial individualized education program (IEP). The Student was a six-year-old first-grader who was eligible for special education services under the category of autism. The IEP provided for annual goals in the areas of communication, adaptive behavior, and social/emotional/behavioral. The Student's IEP included the following accommodations/modifications:
 - Allow breaks (available at all times)

- If upset, allow drawing to regulate feelings and express himself (available at all times)
- If upset, provide yes/no questions and allow non-verbal gestures to communicate (available at all times)
- Preferential seating (available at all times)
- Provide 5-point scale of feelings to check in about the need for regulation (available at all times)
- Presentation: Break tasks into smaller portions (daily)
- Presentation: display timer (daily)

The Student's IEP provided for the following special education and related services:

- Occupational therapy: 15 minutes, 3 times monthly (provided in a general education setting)
- Communication: 20 minutes, 2 times monthly (provided in a special education setting)
- Adaptive behavior: 15 minutes, 2 times weekly (provided in a general education setting)
- Social/Emotional/Behavioral: 15 minutes, 2 times weekly (provided in a special education setting)

To address sensory needs, the IEP noted that the Student had access to the following "universal supports" that were available to all students in the classroom. The IEP stated:

This year, [Student] has demonstrated appropriate sensory regulation in his first-grade classroom using the universal supports and without additional, individualized supports. Universal supports are tools and strategies that are made available to all students in the classroom and students are encouraged to select and use the tools that best support their learning. The universal supports that have been most helpful for [Student] include:

- Whole class brain breaks
- Alternative seating ([Student] uses a "wobble cushion")
- Visual timers
- Structured and predictable classroom routines
- Hand fidgets
- Demonstrated and written directions to support verbal instruction that match strengths and interests

2022–2023 School Year

2. At the beginning of the 2022–2023 school year, the Student attended a District elementary school and continued to be eligible for special education services under the category of autism.
3. On September 1, 2022, the school year began in the District.
4. According to the District, the District's procedure to inform teachers of their IEP responsibilities at the beginning of the school year was to provide a "form" to each teacher that included the student's goals, accommodations, and modifications. However, in this case, the form was not "formally used."
5. When interviewed by OSPI, the Student's general education teacher (teacher) stated she received a copy of a summarized version of the Student's IEP that included the accommodations "within the first couple days of school" and implemented it "right away." The

teacher stated she had questions about implementation because the IEP reflected the Student having high behavioral needs.

6. The District response to the complaint stated, "The general education teacher and IEP Case Manager worked in collaboration to support the student...The IEP case manager provides support within the general education classroom three days a week working directly with the student and consulting with the teacher."
7. The complaint stated that based on the Parent's emails and conversations with the Student's general education teacher, the teacher "hadn't read his IEP." According to the Parent, the teacher was informed that the Student sat in the front and had a textured sticker on the desk, but "the rest of his accommodations would be when his case supervisor visits the classroom but not on an everyday basis." The Parent stated that the District's failure to implement the Student's accommodations "directly led to the number of days [Student] is calling in sick, going to the nurse's office to try to come home, or just trying to run home off the school grounds like he attempted today."
8. From September 1 to December 14, 2022, the Student was absent ten days, two days of which were for medical appointments.
9. On November 22, 2022, the Parent met with the Student's general education teacher and visited the Student's classroom, according to a later email, dated December 13, 2022, from the Parent to the principal and teacher.
10. On December 14, 2022, the Parent visited the Student's classroom after the Student had become upset at school. The Parent stated he did not observe the accommodations/modifications on the IEP and "universal supports," such as the wiggle seat and hand fidget, which may have contributed to the Student becoming upset.
11. On December 13 and 14, 2022, the Parent, school principal, and classroom teacher exchanged emails about the Student's IEP not being implemented based on the Parent's observation. The Parent, among other things, expressed concerns about the availability of fidget toys, a visual timer, and a wiggle cushion to the Student. The Parent also indicated that the Student's case manager stated, "I'm not sure exactly what's in [Student's] IEP at this moment but I know getting breaks is probably in there." The Parent apparently took this statement as an admission by the case manager that the case manager was not informed of the Student's accommodations/modifications in the IEP and they were not being implemented. The email stated the Parent brought up concerns about the impact of the level of noise in the classroom on the Student's sensory processing disorder and that many of the other IEP supports were not being implemented. The Parent did not elaborate.
12. On December 19, 2022, the Parent filed the complaint with OSPI.
13. In an interview with the Student's general education teacher, the teacher described the Student as usually happy in class. The Student got along with others in the class and followed

directions. The Student was academically proficient with strengths in reading (“one of the most proficient readers in class”) and math, although the Student needed work broken in smaller parts to avoid feeling overwhelmed occasionally.

The Student’s behavior was “good,” although the Student required assistance with organization at times. There was one incident when the Student became very upset and it was difficult to calm the Student down. The teacher stated that some of the accommodations and universal supports were rarely used because the Student did not get upset (except the one incident) or require them at the time.

The teacher explained that the Student was noise-sensitive and did not like the timer because it made noise. When the teacher was asked about the need for preferential seating, the teacher stated that the Student sat in different places and performed well no matter where the Student sat. Regarding universal supports, the teacher stated there were other students with IEPs in her class and she made available the universal supports to all students, including hand fidgets, alternative seating (wobble seat), yoga balls, and other supports.

CONCLUSIONS

Issue One: IEP Notification – The complaint alleged the District failed to inform the Student’s teachers about their responsibility to implement the Student’s accommodations/modifications provided by the Student’s IEP. A district is required to inform a student’s teachers and service providers of their responsibilities under the IEP.

Here, the Student’s June 2022 IEP provided for accommodations and modifications, such as breaks, preferential seating, and a display timer, among others. The Parent based the allegation the teacher was not informed about the IEP on a conversation with the teacher and a classroom visit where he did not observe a timer, the hand fidget, wobble chair, and other supports. However, the teacher reported she did receive a summarized version of the Student’s IEP within the first few days of school and had reviewed it because of the behavior supports. The teacher also reported that she told the Parent she had reviewed the Student’s IEP and was implementing it. Likewise, the Parent inferred that because the case manager could not on the spot recite from memory what services were on the IEP, the case manager was not informed of their responsibilities under the IEP. It was unreasonable to infer that the case manager was not informed of their responsibilities under the IEP because the case manager—with an underdetermine number of students with IEPs to account for—could not at the moment tell the Parent what was on the IEP. The District stated the case manager and the teacher worked closely together to implement the IEP. Based on the documentation, there is insufficient evidence to support a violation. No violation is found.

Issue Two: IEP Implementation – The complaint alleged the District failed to implement the Student’s accommodations/modifications, including a display timer, hand fidget, preferential seating, and a wobble seat. A district is required to provide special education services in conformity with the student’s IEP.

The Student's June 2022 IEP provided for accommodations/modifications, such as breaks, preferential seating, and a display timer, among others. Their frequency was "available at all times" or "daily," which implies some discretion about their implementation. In addressing sensory regulation, the IEP described the use of "universal supports" that were available to all students in the classroom and a list of those supports "most helpful" to the Student. The Parent inferred that the requirement to implement the accommodations/modification listed in the IEP extended to the universal supports in the classroom that were described in the IEP. However, read in context, the universal supports listed were general strategies that any student could use, including the Student, but were not necessarily required for the Student to receive a free appropriate public education (FAPE), unlike the specific accommodations/modifications. Thus, the District was only required to implement the accommodations/modifications listed in the Student's IEP.

In an interview with OSPI, the teacher was able to describe the accommodations/modifications and their purpose for the Student. The teacher explained how and when the accommodations were provided, which was consistent with the frequency of the accommodations/modifications in the IEP. For example, the Student sometimes needed his math assignment to be broken down into smaller portions to avoid the Student from feeling overwhelmed. The teacher also explained that the Student was noise-sensitive and did not like the sound of the timer, utilized preferential seating, and at times only needed certain accommodations in infrequent situations when the Student became upset.

Based on the information provided by the Parent and the District, there was insufficient evidence to support a violation. If the Parent believes any or all of the universal supports are required for the Student to receive FAPE, the Parent can request an IEP meeting to discuss including the universal supports in the Student's accommodations/modifications. However, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 14th day of February, 2023

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.)