

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-75

PROCEDURAL HISTORY

On June 13, 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 Castle Rock 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 June 14, 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 July 7, 2022, OSPI received part of the District's response to the complaint and forwarded it to the Parent on July 11, 2022. OSPI invited the Parent to reply.

On July 19, 2022, OSPI received the remainder of the District's response to the complaint and forwarded it to the Parent on July 20, 2022. OSPI invited the Parent to reply.

On July 22, 2022, OSPI received the Parents' reply. OSPI forwarded that reply to the District on July 26, 2022.

On July 28, 2022, OSPI received part 2 of the Parents' reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

The Parents also provided information, documentation, and allegations relating to events that occurred prior to June 14, 2021. OSPI can only investigate possible violations of the IDEA that occurred within the year prior to receipt of the complaint. Therefore, our office cannot investigate allegations of possible violations which occurred before June 14, 2021. Parents may file a request for a due process hearing on allegations that occurred in the past two years.

This decision references events that occurred prior to the investigation period. 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. Since June 14, 2021, has the District implemented the Student's individualized education program (IEP)?
2. In the fall of 2021, did the District follow procedures to develop an appropriate IEP for the Student based on her unique, disability related needs and taking into consideration the Parents' concerns about math?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"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).

Initial IEP: For an initial IEP, a school district must ensure that: a) the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and b) as soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR §300.323; WAC 392-172A-03105.

Consent for Initial Provision of Services: A school district that is responsible for making a free appropriate public education (FAPE) available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student. If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district: Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and is not required to convene an IEP team meeting or develop an IEP. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, Question 9).

FINDINGS OF FACT

Background: 2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was eligible for special education services under the category of specific learning disability, was in the fourth grade, and her February 2020 individualized education program (IEP) was in effect.
2. The Student's February 2020 IEP included annual goals in reading fluency and reading comprehension, and several accommodations. The IEP included specially designed instruction in reading for 40 minutes, 4 times weekly, provided by special education staff in the special education setting. The IEP noted the Student would spend 91.06% of her time in the general education setting.
3. In their complaint, the Parents stated the Student did not do well with online schooling during the 2020–2021 school year, did not do well trying to receive services with a mask on, and never received math interventions. The Parents alleged the Student was not provided math interventions since they were requested in February 2020.
4. In February 2021, the District reevaluated and exited the Student from special education eligibility.
5. In their complaint, the Parents stated they disagreed with this decision, stating the testing the District stated supported exiting the Student was inadequate. In response, the Parents requested, and the District agreed to, an independent educational evaluation (IEE).
6. The District stated in response to this complaint that during the IEE, and subsequent District reevaluation, the District continued to provide the Student with the services identified in her February 2020 IEP, "in an effort to maintain the status quo as the District worked to resolve the disagreement with Parents, even though Student did not qualify for special education services following completion of the February 2021 reevaluation."

7. In March 2021, the Student underwent a private evaluation, which diagnosed her with a specific learning disorder in reading (dyslexia), a specific learning disorder in writing, and a specific learning disorder in math.
8. On May 17, 2021, the Student began twice weekly tutoring in reading and writing. The Parents stated this tutoring has continued through the present.
9. On June 10, 2021, according to a later June 24, 2021 email from the Student's special education teacher to the Parents, the teacher did a "progress monitoring assessment" with the Student and reading comprehension and fluency assessments.
10. On June 11, 2021, the Student's team met to review the private evaluation. The team determined, based on the IEE, that it would be appropriate to initiate a new initial evaluation to address the results of the IEE and gather additional data.
11. The complaint investigation timeline began on June 14, 2021.
12. On June 16, 2021, the District's 2020–2021 school year ended.

2021–2022 School Year

13. At the start of the 2021–2022 school year, the Student was not eligible for special education services. The Student was in the fifth grade.
14. The District's 2021–2022 school year began on August 30, 2021.
15. On September 1, 2021, the evaluation group and Parents met to review the recently completed evaluation for the Student. The evaluation report indicated the Student was reevaluated and exited from special education services in February 2021 and subsequently, an IEE was completed. The District then opened a new initial evaluation to consider the IEE findings. The reevaluation report also noted that between "February and the end of the school year, [the Student] continued to receive special education services...until resolution. The services were in the area of Reading."

The evaluation found that the Student was eligible for special education services under the specific learning disability eligibility category, and the report recommended the Student receive services in reading, math, and written language.
16. On September 8, 2021, the Parent emailed the school psychologist questions regarding the Student's IEP supports. The school psychologist forwarded the email to the special education teacher, District's special education director (director), and principal.
17. On September 9, 2021, according to the Parents' complaint, a meeting was held online to discuss the new IEP proposed by the District.

18. On September 9 and 13, 2021, the District sent the Parents an IEP meeting invitation for an IEP meeting scheduled for October 12, 2021. The District offered the Parent three times (September 28, October 12, and October 14, 2021), and the Parent stated that October 12, 2021 would be best.
19. On September 23 and October 11, 2021, the Parent provided input into the IEP via email. The input included the Student's strengths and interests, and areas for growth. The Parent noted academics as an area for growth and indicated that the Student's behavior at home was different than school.
20. On October 12, 2021, the Student's IEP team met and began developing her IEP.
21. The District stated in its response, that following the October 12, 2021 meeting, the District worked with the Parents for nearly two months to refine the IEP goals as the Parents made multiple requests for modifications to the Student's goals in reading, spelling, and math. The District stated staff worked to address the Parent's requests and concerns. The District also stated that while it worked to address the Parent's concerns, it continued to implement the Student's prior IEP.

The Parents, in their reply to the District's response, stated that they requested time to review and consider the new IEP. The Parents stated that the IEP included "weak progress goals" and that they "requested that the goals be more aligned to grade level progress."

22. Email documentation provided in the Parent's complaint and District response included numerous email discussions regarding developing the IEP and responding to the Parent's requests, including:
 - October 27: The Parent emailed the special education and stated they did not think that the "goals and proposed instruction in reading are sufficient" as the approach seemed to be "a collection of techniques that are not multi-modal researched-based learning programs to improve reading comprehension and phonetic reading abilities." The Parent stated that the IEE recommended the Student receive instruction through an "Orton-Gillingham approach." The Parent noted they had been paying for private instruction and tutoring in "Lindamood-Bell" and an Orton-Gillingham based program. The Parent additionally requested specificity in the spelling goals and more detail in the math goals.
 - October 28: The special education teacher emailed District colleagues to determine how best to incorporate the Parent's concerns into the IEP.
 - The special education teacher stated she collaborated with colleagues regarding dyslexia, programming, math, and reading interventions.
 - The teacher noted the Student already had a fluency goal, but they could add a phonics goal and a spelling goal. The teacher noted they had utilized "researched based Phonics for Reading," which was a "research based systematic phonics program with spelling included" or noted another instructional program that could be used. The teacher stated she would update the math goals related to money to incorporate the Parent's feedback.
 - The District's special education director (director) provided feedback and resources, and the director noted that while they would not name a specific program or

curriculum in the IEP, they can “state that she needs a systematic, explicit, multisensory approach in the interventions” as that was what the teacher was providing.

- October 30: An email from the special education teacher indicated she added the following to the Student’s IEP: “[Student] needs a systematic, explicit, multisensory approach in the interventions to be delivered to make progress towards her goals.” The teacher also stated the general education reading interventions used an Orton Gillingham approach, and that she and another teacher discussed providing the Student her specially designed instruction that way. The teacher also noted she added an objective to the math goal in response to the Parent’s feedback.
- November 4: The special education teacher and director emailed about adding “explicit and multisensory accommodations for reading instruction in the classroom” to the accommodations section of the IEP.
- November 8: The director emailed the Parent, responding to the Parent’s concerns and questions regarding the IEP. The director stated the special education teacher “included additional assurances on explicit, systematic, and multisensory strategies within the IEP...for her educational services and accommodations.” The director noted that “research based interventions and specially designed instruction will be provided through her services and included in her instruction services is Orton Gillingham as one resource” and that other researched based interventions would be utilized. The director also provided information about progress monitoring and noted the team could meet as needed to address progress or a lack thereof. The director attached the Student’s IEP.
- November 16: The Parent resent her October 27, 2021 email with concerns about the IEP and goals. The Parent stated she has not received a response. The director responded and resent the email and IEP she sent on November 8, 2021.
- November 22: The Parent and her advocate emailed a document, asking for amendments to IEP and goals.
- November 29: The director emailed the Parent and stated, “following your input, [special education teacher] has been making revisions and re-sending [the IEP] for your review to be sure that we are including your feedback in the document.” The director stated that they needed the Parent consent to implement the special education services.
- December 3 and 7: The District updated drafts of the IEP and sent the drafts to the Parents.

23. The October 2021 IEP indicated the Student was eligible for special education services under the category of specific learning disability. The IEP included teacher input, present levels, and goals in the areas of reading (comprehension moving from 3rd to 4th grade level, phonemic awareness, fluency at the 5th grade level), written language (conventions, spelling at grade level), and math (value of coins, money value calculation, computation). Several goals included objectives and progress reporting was to be provided at the semester.

The IEP included several accommodations—including “reading instruction that includes multi-sensory engagement (visual, kinesthetic, auditory, tactile)”—and modifications, and provided the following as supports for school personnel: “provision of the Washington State Dyslexia Guide.” The IEP provided the Student with the following specially designed instruction, provided by a special education teacher in the special education setting:

- Math: 120 minutes weekly
- Reading: 120 minutes weekly
- Written Language: 30 minutes weekly

The IEP also included "Math SDI Support w/ Paraprofessional" as a related services for 120 minutes per week, provided by a paraeducator. The IEP indicated the Student would spend 80.15% of her time in the general education setting.

The October 12, 2021 prior written notice stated, in part:

Parent was provided with IEP dates and chose one outside the time frame needed from the evaluation meeting. During the meeting, the parent expressed that she would prefer not to have easyCMB assessments for goal development or progress monitoring. Additional assessments based on the evaluation and parent request were also given which included phonemic awareness, value of money, and spelling.

Specially designed instruction is created by the Special Education Case Manager/Teacher and there are times throughout the academic school year that trained special education paraprofessionals carry out these services. This was discussed in the meeting and with the accommodation/modification section of the IEP under supplementary aides and services, this has been reflected.

24. On December 13, 2021, the Student's IEP team, including the Parents, met regarding the IEP. Following the meeting, the director emailed the Parent a copy of the updated IEP.

25. On December 14, 2021, the Parent emailed the director and special education teacher and stated the IEP looked good, except that the IEP stated the general education teacher was providing the reading services. The Parent stated she thought this might be a typo.

The director responded that the special education teacher would fix the service provider.

26. On December 15, 2021, the Parent emailed the director and special education teacher, stating, "I have signed the IEP, even though some changes need to be made...[Student] needs services ASAP. We are already half way through 5th grade and Christmas break starts in 3 days."

27. In response to the Parent's December 15, 2021 email, the special education teacher emailed the director and stated, "FYI...we have been providing 'intervention' services since...February, including honoring all of the accommodations that were previously placed...we have been ensuring that [Student] has been receiving support."

28. On or about December 15, 2021, the Student's IEP was implemented.

29. The District was on winter break between December 20, 2021 and January 2, 2022.

30. On February 7, 2022, the District reported on the Student's progress, which the Parents stated they received on February 10, 2022. The process report provided the following information:

- Reading (comprehension): Sufficient progress – "On a 3rd grade Goal Book assessment, [Student] had 100% accuracy in responding to questions and providing information from the text to support her answers."
- Reading (phonemic awareness): Sufficient progress – "When decoding words from a Goal Book 2 syllable word assessment, [Student] has 96% accuracy (read 48 of 50 words correctly). On the Phonics for Reading assessment, [Student] read 89 of 96 words correctly (92% accuracy)."

- Reading (fluency): Sufficient progress – “When given a 5th grade Read Naturally timed fluency, [Student] read...89 correct words per minute.”
- Written Language (conventions): Sufficient progress – “[Student] had great ideas in her writing! When given a picture and a word bank, [Student] wrote multiple sentences related to the topic of a ‘special breakfast.’ For the three sentences that are scored, [Student] had 9 out of 12 points with errors in spelling...”
- Math (coins): Emerging skill – “[Student] knows a dime and a quarter and their value...Although when [Student] solved word problems involving money (another goal areas), she was able to solve problems with 100% accuracy; some of the word problems included needing to know the value of pennies and nickels.”
- Written Language (spelling): Sufficient progress – “When given a Goal Book conventions assessment...[Student] had 80% accuracy in correcting all errors, which included her correcting 3 of the 3 spelling errors.”
- Math (money value calculation): Sufficient progress – “[Student] had 100% accuracy when solving word problems involving pennies, nickels, dimes, and quarters.”
- Math (computation): Sufficient progress – “[Student] had 81% accuracy on a 3rd grade assessment.”

31. Also, on February 7 and 9, 2022, the Parents emailed the special education teacher with questions about the math intervention services the Student was receiving, as the Parents stated the Student was not understanding math and was struggling with a “rotating of different math instructors” and that the Student thought the way the special education teacher taught did not make sense. The Parents requested weekly updates regarding instruction.

32. On February 10, 2022, the special education teacher emailed the Parents that there had been teacher changes due to staff absences. The special education teacher stated that she directed the paraeducators working with the Student and was in “continual daily contact” with the paraeducators. The teacher also provided the schedule of the Student’s ELA group, math group, and writing group. The special education teacher also provided information about the math tools the Student had access to and stated she was collaborating with the Student’s teacher to provide additional strategies and support.

33. On April 26 and 27, 2022, the Parent and teachers emailed regarding the Student’s “testing in a separate location” accommodation and where the Student would be comfortable taking the state assessment.

34. In their complaint, the Parents stated that in May 2022, they obtained private evaluation/assessments of the Student. The private evaluation reports indicated the Student’s reading and math skills were not at grade level.

35. In their complaint, the Parents provided the May 17, 2022 recommendations and information from the Student’s private tutor:

One year of tutoring in reading completed with [private tutor], [Student’s] tutor has stated [Student] needs the individualized instruction due to her severe dyslexia and slow processing speed in order to gain the needed skills at her individual language processing

needs. She is making progress, but much practice and repetition has been needed to ensure [Student's] mastery of concepts and application to reading and writing.

Parents want to bring attention to the fact [Student] has finally started making great gains to her reading skills from 1.7 Level in reading to 3.7 after one year of receiving appropriate instruction by her tutor with an appropriate intervention program. Two years of progress has been made with the appropriate instruction per her diagnosis of dyslexia...Math is still a struggle currently, and [Student] has not received tutoring for math all school year. Math tutoring to start June 2022.

36. On June 2, 2022, the special education teacher emailed the Parent progress graphs for the Student's goals and noted they were doing another progress monitoring assessment the following week.
37. In their complaint, the Parents stated they questioned the progress graphs because they stated they were not provided sufficient supporting documentation and that there were discrepancies in the documentation. The Parents also stated they believed the Student's progress was largely due to the private tutoring. Additionally, the Parents stated the Student's goals now needed to be updated to be closer to sixth grade level goals.
38. On June 13, 2022, the District reported on the Student's progress as follows:
 - Reading (comprehension): Mastered – "In March, [Student] was given a 3rd grade passage and she read the passage and responded to comprehension questions with 80% accuracy. In April, [Student] was given a 4th grade level passage due to her previous assessments. [Student] had 70% accuracy when responding to questions. On a recent assessment, [Student] was given another 4th grade assessment, and she had 70% accuracy when responding to questions."
 - Reading (phonemic awareness: Sufficient progress – "In March, [Student] read 48 of 50 Goalbook multi syllable words with 96% accuracy, and Phonics for Reading words with 89% accuracy (113 of 126 words). In June, [Student] read 13 of 15 multisyllabic words with 87% accuracy (13 of 15 words read correctly), and Phonics for Reading multi-syllabic words with 92% accuracy (116 of 126 words)."
 - Reading (fluency): Sufficient progress – "In March, [Student] read 112 correct words per minute on a 5th Grade Read Naturally fluency passage, and read 93 correct words per minute on a 5th grade AIMSweb fluency passage. In May, [Student] read 89 correct words per minute on a 5th grade AIMSweb passage, and on a recent assessment she read 97 correct words per minute on an AIMSweb passage."
 - Written Language (conventions): Sufficient progress – "On a March writing prompt, [Student] had 9 out of 12 points with errors occurring in spelling...On a recent assessment, [Student] also scored 9 points with errors in conventions..."
 - Written Language (spelling): Sufficient progress – "In April [Student] was given a draft needing corrections of spelling and punctuation errors, and she was able to correct 2 of the 5 error/40% accuracy...On a recent assessment, [Student] had 40% accuracy correcting 2 of 5 spelling errors."
 - Math (coins): Sufficient progress – "As the associated goal involving monetary word problems requires the identification and value of coins in order to solve correctly, [Student] has met with goal as she is solving problems with 100% accuracy."

- Math (money value calculation): Mastered – “[Student] continues to have 100% accuracy when solving word problems that involve mixed coins. She can identify the value of a coin (other goal area), as it is a necessary component to know the value of the coins in order to problem solve.”
- Math (computation): Mastered – “In March, [Student] had 86% accuracy on computing 3rd grade problems. In April she was given a 4th grade assessment based on this progress and aligned with her goal. She had 55% accuracy when computing 4th grade problems. On a recent assessment, [Student] had 55% accuracy when computing problems on a 4th grade assessment.”

39. June 16, 2022 was the last day of the District’s 2021–2022 school year.

40. Emails and attendance records¹ provided by the Parent in their reply to the District’s response indicated that the Student was picked up from school early throughout the year, for example, every Thursday, for tutoring. There were also dates that the Student was late to school in the morning due to appointments and tutoring.

CONCLUSIONS

Issue One: Individualized Education Program (IEP) Implementation – The Parents alleged the District failed to provide the Student special education services, including math interventions.

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. 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.

June 14–December 15, 2021: When the one-year complaint investigation timeline began on June 14, 2021, the Student had been exited from special education eligibility.² The Student was subsequently found eligible for special education services and the Parents consented to the initial provision of special education services on December 15, 2021. Between June 14 and December 15, 2021, the District stated that it continued to provide the Student the special education services identified in her February 2020 IEP, the IEP in place when the Student was exited, which amounted to 40 minutes, 4 times weekly of specially designed instruction in reading. The District stated it continued to provide these services “in an effort to maintain the status quo as the District worked

¹ The Parents, in their reply to District’s response, noted that there were inaccuracies in the District’s attendance records, and differences between the District attendance records submitted in this complaint investigation and the attendance records the Parent’s had.

² OSPI notes that the Parents disagreed with the decision to exit the Student and the District’s evaluation, and requested an independent educational evaluation (IEE), which the District granted. The decision to exit the Student occurred prior to the complaint investigation timeline and thus, OSPI did not investigate and makes no comment on the appropriateness of the decision.

to resolve the disagreement with Parents, even though Student did not qualify for special education services following completion of the February 2021 reevaluation.” The Parents also alleged that the Student was not provided math interventions. However, during this time, the Student was not eligible for special education and the District did not have a legal requirement to provide special education services in math. As the Student was not eligible for special education during this period, and the Parents did not sign consent for the provision of special education until December 15, 2021, OSPI finds no violation.

December 15, 2021–June 16, 2022: The Student’s IEP, implemented December 15, 2021, included goals in reading, written language, and math, and the following specially designed instruction each week: 120 minutes of math; 120 minutes of reading; and 30 minutes of written language. The IEP also included “Math SDI Support w/ Paraprofessional” as a related services for 120 minutes per week, provided by a paraeducator. The District stated that once the Parents signed consent for the provision of services, the IEP was implemented beginning December 15, 2021. Shortly after the implementation, the District was on winter break from December 20, 2021 until January 2, 2022.

Notable in this instance is the progress reporting, which indicates the IEP was being implemented. As of the February 7, 2022 progress report, after the IEP had only been implemented for a little over a month, the Student was making sufficient progress on all her reading and written language goals, and sufficient progress on two math goals and was only at the emerging skill level on the other math goal. In early February 2022, the Parent raised concerns about the Student’s math services, noting the Student was struggling. The special education teacher responded that there had been some changes in teachers, but that the special education teacher was working with the paraeducators who provided the Student specially designed instruction and would collaborate with the general education teachers to provide additional supports. Email discussion with other teachers about accommodations indicated that the Student’s teachers were familiar with her IEP and were implementing accommodations. The Student’s June 2022 progress reporting noted the Student had either mastered or made sufficient progress on her reading goals, made sufficient progress on her writing goals, and mastered two of her math goals and made sufficient progress on the third math goal.

The Parents raised questions about the Student’s progress because they stated they were not provided sufficient supporting documentation with the progress reports and the Parents stated the Student’s progress was largely due to the private tutoring. OSPI notes that the private tutoring likely did improve the Student’s progress; however, the fact that private tutoring impacted progress does not mean that the IEP was not implemented. Further, the Student was not receiving tutoring in math, thus, the tutoring did not impact the Student’s progress on her math goals.

Overall, OSPI finds that the Student’s IEP was materially implemented.

Issue Two: IEP Development – The Parents alleged the District failed to provide the Student math interventions and that the IEP was not properly developed to address the Student’s unique needs related to her disability

Initial IEP: For an initial IEP, a district must ensure that the district holds a meeting to develop the student's IEP within 30 days of a determination that the student is eligible for special education services. Here, the Student's IEP team met on September 1, 2021 to review the reevaluation and they determined the Student was eligible for special education services under the specific learning disability eligibility category. The IEP team met on October 12, 2021, just over a month after the eligibility decision. However, this is not a violation in this case because the Parent had not yet consented to the initial provision of special education services. If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district is not required to convene an IEP team meeting or develop an IEP. Thus, technically, the IEP team was not required to meet until after the Parent signed consent. Further, here, the District was attempting to ensure the Parent was able to participate when it gave the family multiple dates for the IEP meeting (September 28, October 12, and October 14, 2021) and the Parent selected October 12, 2021. While not a violation, OSPI does recommend the District propose dates for initial IEP meetings that are within a month of the eligibility decision.

Student's Unique Needs: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child.

Here, the Student's IEP team met on October 12, 2021 and began developing the IEP. The IEP team considered the results of and recommendations in the Student's IEE and the District's evaluation. Prior to this, on September 23 and October 11, 2021, the Parent provided input into the IEP via email. Following the IEP meeting, the Parents emailed several times with detailed input into the IEP, including requests for modifications to the Student's goals and feedback about the learning methodology and programs being used. The documentation indicates that the Student's special education teacher reviewed the Parents' input, collaborated with colleagues, and made several updates to the Student's IEP based on the Parent's input, including adding a phonics goal, a spelling goal, and objectives to the math goals; and adding accommodations referencing the Student's need for systematic, explicit and multisensory approaches.

The District provided the Parent with information about the teaching strategies and programs used in the classroom and provided opportunities for the Parent (and her advocate) to review the draft IEP as the special education teacher updated it. The resulting IEP included goals in all areas of the Student's needs: reading (comprehension moving from 3rd to 4th grade level, phonemic awareness, fluency at the 5th grade level), written language (conventions, spelling at grade level), and math (value of coins, money value calculation, computation). Several goals included objectives and progress reporting was to be provided at the semester. The IEP included specially designed instruction in math, reading, and written language, and additional math support as a related service. The IEP also included that school personnel would review the "Washington State Dyslexia Guide."

While it did take approximately two months to develop and finalize the IEP, the documentation indicates that the District was trying to ensure Parent participation and be responsive to her concerns and the Student's needs. As discussed above, the District had continued to implement the reading services in the Student's prior IEP, thus, minimizing the impact of the lengthier IEP development. The IEP addressed the Student's needs related to her disability in reading, writing, and math. OSPI finds the District followed procedures to develop the IEP, was responsive to and incorporated Parent input, and developed an IEP that met the Student's needs. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI recommends that when providing parents with options for when to schedule an initial IEP meeting, the District propose dates that are within a month of the eligibility decision.

Dated this ____ day of August, 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.)