

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-86

PROCEDURAL HISTORY

On July 8, 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 Shoreline 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 July 8, 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 25, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on July 26, 2022. OSPI invited the Parent to reply.

On July 27, 2022, an OSPI investigator spoke with the Parent regarding the complaint and the District's response.

On August 2, 2022, OSPI received a written reply to the District's response from the Parent. OSPI forwarded that reply to the District on the same day.

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 July 9, 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.

ISSUE

1. Did the District follow procedures in January/February 2022 to assess the Student's need for recovery services, including ensuring Parent input?

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. 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.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Recovery Services: Recovery services are intended to mitigate the impact of COVID-19 school facility closures in spring 2020 and COVID-19 pandemic generally. Recovery services should enable the student to make progress on IEP goals and be used if students have not been provided or were unable to access IEP services during the COVID-19 pandemic. While the need for recovery services may not be able to be fully measured while schools were operating in remote or hybrid models, districts were not prohibited from providing recovery services during the 2020-2021 school year. Recovery services should be determined by IEP teams on a case-by-case basis. Districts should examine the effect of COVID-19 and the special education and related services provided during school building closures and during the 2020-2021 school year on the student's overall progress and engagement, including progress toward their IEP goals. *Questions and Answers: Provision of Services to Students with Disabilities During COVID-19 in Fall 2020* (OSPI, August 26, 2020).

FINDINGS OF FACT

Background: 2019–2020 School Year

1. At the start of the 2019–2020 school year, the Student was in second grade, was eligible for special education services under the category of speech or language impairment, and attended a District elementary school.
2. According to the Parent, she and the Student's second grade classroom teacher requested a complete reassessment with appropriate testing prior to the school facility shutdown due to COVID-19 in early-March of 2020.
3. While in the second grade, the Student met grade level standards in reading, writing, and math. A guidance team meeting was held in December 2019 due to academic concerns, such as comprehension and organization in reading, writing, and math. Social-emotional concerns were noted around anxiety and a school guidance team created an action plan for a weekly anxiety group with the school counselor (January to March 2020). The team also added accommodations to the Student's individualized education program (IEP).

4. The Parent asserted that after the COVID-19 school facility shutdown, the Student did not receive any special education and general education services for the remainder of the 2019–2020 school year.
5. The District’s subsequent reevaluation on December 16, 2020 indicated the Student received general education services remotely. Specifically, the reevaluation stated that “during the transition to remote learning the spring,” the Student was active in “Seesaw” activities and on “Imagine Learning” for reading. It also said he attended all Zoom sessions with Parent support, completed his Seesaw activities, and wrote an informational animal book on crocodiles with Parental support. No social emotional or behavioral concerns were noted during remote learning. The evaluation report also noted reading strengths in “word recognition and vocabulary, but [he] needed to continue to work on reading comprehension and required support with sequencing and breaking up large chunks of information into small steps.”

2020–2021 School Year

6. At the start of the 2020–2021 school year, the Student was in the third grade and attended a District elementary school. The Student continued to be eligible for special education services.
7. The 2020–2021 school year was initially fully remote, then went to a “hybrid” configuration before resuming in person.
8. As noted above, the Student’s most recent reevaluation was completed on December 16, 2020. While the Student was previously determined eligible for special education, the team determined a change in his eligibility category from speech language impairment to other health impaired (OHI) was warranted, as well as continuing specially designed instruction (SDI) in communication and adding SDI in study skills/organization. Due to an inability to conduct in-person testing as a result of COVID-19 and the remote schooling model, a direct, individualized, standardized cognitive measure was not administered. The reevaluation also noted the Parent’s concerns regarding non-standardized tests administered remotely.
9. On May 6, 2021, the Student’s IEP team met and created a new IEP that was implemented on May 10, 2021. In addition to several accommodations, the IEP provided for the Student to be served for 80 minutes in a special education setting out of 1,755 minutes per week of schooling. Specific special education and related services were identified as:
 - Communication: 40 minutes per week to be provided and monitored by a speech language pathologist (SLP).
 - Study Skills/Organization: 20 minutes, 2 times a week to be provided by special education staff until the monitoring of the special education teacher.

2021–2022 School Year

10. At the start of the 2021–2022 school year, the Student was in the fourth grade, attended a District elementary school, and the Student’s May 10, 2021 IEP was in effect.

11. The Student was privately tested in November of 2021 pursuant to the Parent's request for an independent educational evaluation (IEE) at public expense. The IEE identified new diagnoses, including other specified neurodevelopmental disorder with impairment in processing speed, specific learning disorder with impairment in writing, and moderate dysgraphia (clarity or organization of written expression).
12. The Student's case manager during the 2021–2022 school year is no longer employed by the District and the District stated the case manager was not available to provide information for this complaint. In January 2022, the case manager submitted a prior written notice and recovery services form, indicating that the Student was making adequate progress towards the goals on his IEP and was not eligible for recovery services. The prior written notice indicated that an IEP team meeting was not held because the Student was not eligible for recovery services.
13. The District provided evidence of multiple reminders to the case manager to hold meetings and complete recovery services paperwork for the students on her caseload, including the Student. The District also provided a January 31, 2022, communication sent from the case manager to others in the District that she had "completed paperwork and meetings for the rest" of the students on her caseload.
14. On January 26, 2022, an IEP meeting was held to review the IEE findings for the Student. The IEP team agreed that an "assessment revision" was needed to add SDI in written expression. Additionally, accommodations, modifications, and other strategies were recommended.
15. Although the Student's IEP team met in late January 2021 to review the results of the IEE, the notes from that meeting do not indicate that recovery services were discussed.
16. On March 11, 2022, the District completed an assessment revision, which determined the Student continued to be eligible for special education services under the eligibility category of OHI, and it reiterated the IEP team's January 26, 2022 determination that the Student would benefit from SDI in the area of written expression. The Student also continued to need SDI in study skills/organization and communication.
17. The same day, March 11, 2022, the IEP team amended the Student's IEP to include an additional 60 minutes (30 minutes, 2 times weekly) of written expression instruction, decreased communication services by 10 minutes per week, and changed the setting of the study skills/organization instruction to the general education setting. In addition to several accommodations, the IEP provided for the Student to be served for 30 minutes in a special education setting out of 1,700 minutes per week of schooling. Specific special education and related services were identified as:
 - Communication: 120 minutes monthly (30 minutes per week) to be provided and monitored by a SLP and provided in a special education setting.
 - Study Skills/Organization: 20 minutes, 2 times a week to be provided by special education staff and monitored by the special education teacher in a general education setting.
 - Written Language: 30 minute, 2 times a week to be provided by special education staff under the monitoring of the special education teacher in a general education setting.

18. In the complaint, the Parent alleged that she was not included in a meaningful discussion regarding the Student's need for recovery services and that the District made a unilateral decision. Specifically, she alleged that in response to her inquiry, she was emailed a form that the Student's case manager completed in January or February 2022, which said the case manager had reviewed the Student's IEP and because he had made progress toward goals, he was not eligible for recovery services. The Parent alleged she was not consulted or included in that decision and disagreed.
19. The Parent also raised concerns that the goals and information relied upon by the case manager in January 2021 did not reflect accurate testing regarding the Student's need for writing services due to his disability. The Parent also asserted that lack of timely services and the lack of a writing curriculum throughout the pandemic resulted in the Student being significantly behind grade level in his written expression. She explained that prior to the COVID shutdown, the Student was graded 3 of 4 in "production and distribution of writing" and on his most recent report card, he was graded 1 of 4 and there is no plan to recover this lost education and services despite many requests.
20. The District stated in its response to OSPI that it does not have what the District would consider to be appropriate documentation that the IEP team met to discuss recovery services, or that the Parent otherwise had an appropriate opportunity for involvement in this decision. Therefore, the District has contacted the Parent to schedule an IEP meeting to discuss recovery services and expects to hold that meeting following the Parent's return from summer travel.
21. In reply to the District's response, the Parent said that she agreed with the District that having a meeting to discuss appropriate recovery services is the next step. She also said she had received a message from the District's director of student support services about meeting and moving forward with a plan. It was the Parent's understanding that the Parent and District would schedule a meeting when she (the Parent) returned from vacation and would work toward having a plan in place by August. However, as of August 2, 2022, she had called the District's director of student support services twice over the past two weeks, but she had not received any return phone call to set up a meeting. It was the Parent's position that the District's delay is further harming the Student and his education.

CONCLUSIONS

Issue One: Recovery Services – The Parent alleged the District failed to follow procedures to determine the Student's need for recovery services in January/February 2022. Specifically, the Parent alleged the District failed to ensure Parent input and failed to consider information from the independent educational evaluation (IEE) that was completed and provided to the District and the Parent in January 2022.

Recovery services are intended to mitigate the impact of COVID-19 school facility closures in spring of 2020 and COVID-19 pandemic generally. Recovery services should enable a student to make progress on IEP goals and be used if students have not been provided or were unable to access special education services during the COVID-19 pandemic. There was no specific process

a district was required to use to plan recovery services, nor did OSPI dictate what recovery services should look like in a district (type, format for services, duration, etc.). Rather, recovery services should be determined by IEP teams on a case-by-case basis. While the need for recovery services may not have been able to be fully measured while schools were operating in remote or hybrid models, districts were not prohibited from providing recovery services during the 2020–2021 school year.

In the complaint, the Parent alleged that she was not included in a meaningful discussion regarding the Student’s need for recovery or compensatory services and that the District made a unilateral decision that the Student did not need recovery services.

The District stated in its response to OSPI that it does not have what the District would consider to be appropriate documentation that the IEP team met to discuss recovery services, or that the Parent otherwise had an appropriate opportunity for involvement in this decision. The documentation available indicated the case manager noted in January or February of 2022 that the Student was making adequate progress towards the goals on his IEP and was not eligible for recovery services. The prior written notice indicated that an IEP team meeting was not held because the Student was not eligible for recovery services. Further, despite several IEP meetings during the 2021-2022 school year, there is no documentary evidence that the IEP team discussed recovery services.

As there is insufficient evidence to establish that the IEP team met to discuss recovery services or that the Parent otherwise had an opportunity to participate in the decision about recovery services, OSPI finds a violation. The Student’s IEP team will be required to meet and determine if he requires recovery services.

CORRECTIVE ACTION

By or before **September 21, 2022**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

IEP Meeting

By or before **September 14, 2022**, the Student’s IEP team will meet to discuss the Student’s need for recovery services. OSPI recommends the IEP team review the following sources of data and any other information the IEP team would find beneficial:

- Progress reporting;
- Teacher observations;
- The Student’s progress in light of the information provided by the IEE, District assessment revision, and additional services already added to the Student’s March 2022 IEP; and,
- The Parent’s concerns about the Student’s written expression and missed special education services or writing curriculum during the pandemic.

By or before **September 21, 2022**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP

team's discussion and decisions; c) the plan for recovery services if determined appropriate; d) supporting documentation and data reviewed to make the recovery services determination; and e) any other relevant documentation.

By September 23, 2022, OSPI will either approve the plan or provide feedback on the plan, and based on the amount of recovery services, if any, provide further monitoring dates as needed.

OSPI notes the District's response indicates that it plans to schedule and hold an IEP meeting to discuss recovery services with the Parent. It is unclear whether that meeting has since occurred. If it has, the District should submit documentation from that meeting. However, OSPI notes the IEP team may need to meet again following this complaint decision if the previous IEP meeting did not meet the requirements of this corrective action.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

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.)