

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-85**

### **PROCEDURAL HISTORY**

On November 8, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Highline School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On November 8, 2019, 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 2, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on December 3, 2019. OSPI invited the Parent to reply. The Parent did not provide a reply.

On December 11, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District concerning the same. OSPI received the requested information from the District on December 13, 2019 and forwarded it to the Parent on December 17, 2019.

On December 11, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the Parent concerning the same. OSPI received the requested information from the Parent on December 16, 2019 and forwarded it to the District on December 17, 2019.

On December 17, 2019, OSPI received additional information from the District. OSPI forwarded this information to the Parent on December 18, 2019.

On December 18, 2019, OSPI determined that additional information/documentation would be helpful to the investigation and contacted the District concerning the same. OSPI received the requested information from the District and forwarded it to the Parent that same day.

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

### **ISSUE**

1. Did the District follow procedures for implementing the Student's individualized education program (IEP), specifically accommodations related to study guides, outlines, organizers, written instructions, and visual supports during the 2019-2020 school year?

## 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 who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure 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 child with a disability and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a free appropriate public education (FAPE) to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors.

School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020.

"Typically, ESY services are provided during the summer months. However, there is nothing...that would limit a [school district] from providing ESY services to a child with a disability during times other than the summer, such as before and after regular school hours or during school vacations, if the IEP Team determines that the child requires ESY services during those time periods in order to receive FAPE. The regulations give the IEP Team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child." IDEA, 71 Fed. Reg. 46,582 (2006) (comments to the final regulations).

When IEPs Must be in Effect: "At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education that it is service through enrollment in the district." WAC 392-172A-03105(1); *see also* OSPI's Monthly Update (September 2019). For

example, a school district policy mandating that services for all students eligible for special education will begin at a specific time after the beginning of the school year (e.g., the third week of the school year) would not be consistent with the IDEA and its implementing regulations. *Letter to Ackerhalt*, 60 IDELR 21 (OSEP 2012).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). "There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.

## FINDINGS OF FACT

### 2019-2020 School Year

1. The District's first day of the 2019-2020 school year was September 4, 2019.
2. At the start of the 2019-2020 school year, the Student qualified for special education services under the category of specific learning disabilities, was in the fourth grade, and attended a District elementary school. At that time, the Student's January 2019 IEP was in effect.<sup>1</sup> The Student's January 2019 IEP included the following accommodation: "Provide study outlines/guides/graphic organizers."
3. This complaint concerns: a) the meaning of the above-quoted accommodation language; and b) whether this accommodation was appropriately provided to the Student in regard to the Student's math homework.

As per the Student's math homework, the District's interpretation of this language was as follows: The Student needed to be provided written examples of problems that were similar

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<sup>1</sup> The Student's January 2019 IEP provided the Student with the following specially designed instruction: 30 minutes three times a month of occupational therapy; 30 minutes three times a month of speech language therapy; 30 minutes four times a week of math; 30 minutes four times a week of reading; and 30 minutes four times a week of written language. The Student's January 2019 IEP included the following annual goals: 5 communication goals; 2 reading goals; 2 math goals; 1 written language goal; and 1 motor goal.

to those that appeared in his math homework; but the Student did not need to be provided with written instructions for each actual, individual problem in the Student's math homework.<sup>2</sup>

The Parent's interpretation of this language was: The Student needed written instructions for each actual, individual problem in the Student's math homework.<sup>3</sup>

4. The District provided the following explanation of the Student's math homework during the 2019-2020 school year:
  - "Math homework was to be completed each week. [It was] given every Monday and expected to be turned in by Friday. Math homework [usually consisted of] 3-4 pages of [a] math homework packet;" and,
  - Every Monday a "Unit Parent Letter" was sent home with "the math homework packet that gives parents an idea of what to expect from the unit and other ways they can support their student's understanding."
5. On September 17, 2019, the learning resource teacher emailed the Parent, stating, in part: "We start [special education] services tomorrow."<sup>4</sup>
6. In a separate email on September 17, 2019, the Parent emailed the Student's math teacher, stating the Student was having trouble with his math homework and the Parent was having trouble helping the Student with his math homework.

On September 18, 2019, the math teacher responded to the Parent, stating:

In regards to the math homework, we will be going over the pattern for the math problem on page 12 today. With future problems that may be difficult, Student is welcome to leave [them] blank as we will go over it as a class or I will meet with him one-on-one.

On September 19, 2019, the math teacher added:

Regarding homework, the District has adopted a new math curriculum which you're probably aware of. For some reason, there aren't any written directions that come with it. Every Monday, I will sit with Student to go over the math homework and write in a few

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<sup>2</sup> During this investigation, the District stated: "The District's interpretation of the language 'provide study outlines/guides/graphic organizers' was that support would be provided in the form of examples of [the type] of problems the Student would see on his weekly homework and that...the teacher [would work] with the Student to review homework, [providing] any other written supports as appropriate." Communications from District staff reviewed in this investigation supported that staff understood this to be the interpretation of the accommodation.

<sup>3</sup> As part of this investigation, OSPI's investigator asked the Parent if this is what the Parent understood the "study guide" language to mean. The Parent responded: "Sounds like you pretty much have the gist of it." The District also said this was its understanding of the Parent's position.

<sup>4</sup> The District explained that, because of both delayed construction and newly-created school boundaries, special education services were not provided for the first time until September 18, 2019.

instructions for him.<sup>5</sup> That way, he can ask me any questions and hopefully he will feel more confident doing math work.

7. On October 2, 2019, the Parent emailed the interventionist, the principal, and the learning resource teacher, stating, in part:

Does Student's IEP specify that he is to have written instructions? I know it was a suggestion from the speech therapy evaluation to accommodate his auditory processing disorder, but not sure if it made it in the IEP and I'm not sure if I have an updated copy. If it's not, I need it updated to say that.

I have requested written instructions for Student's math homework and the math teacher said she would send but I am not getting them and I have no idea how to do some of this math homework. If the Student doesn't know how to complete it, and I don't know how to complete it, then Student can't successfully do the work.

Later that day, the learning resource teacher replied, stating:

Student's IEP states under his accommodations 'provide study outlines/guides/graphic organizers.' I was able to catch the math teacher before school started. We looked over the homework assignment together. The math teacher had a very good suggestion. She was wondering if it would be helpful to send home an example of how a problem is solved? I thought that was a good idea.

8. According to the District, the week of October 14, 2019 was the first week in which the math teacher started writing "instructions" on the Student's math homework.
9. On October 20, 2019, the Parent emailed the math teacher, stating, in part: "This is the final time I will request written instructions for Student's homework before going to the state to file yet another citizen complaint."

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

For last week's math homework, I put in examples throughout all the pages. Did that help? I also asked if you'd like to look through the math homework packet and circle any questions you wanted clarification on. We can schedule a meeting for me to go over them in person if you'd like.

10. On November 6, 2019, an IEP meeting took place to "discuss [the] accommodations and modifications in the Student's IEP." The District's meeting notes read as follows:

Parent reports that Student is not receiving written instructions for math homework. IEP states 'study guides, graphic organizer, outlines.' The special education director explained that a study guide was utilized to support students in understanding concepts, tasks, [and that it] could provide abbreviate directions or supports. Parent shared that a study guide should be written instructions for all work. [Parent] requested written, step-by-step

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<sup>5</sup> The District provided the following explanation of what the language "write in a few instructions for [Student]" meant: "Step-by-step written instructions for the problems in the math homework packet; setting up the problems by providing the outline for the strategy. For example, if a problems asks students to multiply a two-digit by two-digit number, we will set up the problem by using the box method. The outline for the box method is set up and the student fills in the partial products and then finds the whole product."

directions for all work—especially math. Teacher provided information regarding what had been sent home as support for homework and shared that the weekly newsletter provided examples at the beginning of every math unit. Parent shared that what was sent [was] not working for abstract problems. The...information sent was not enough to assist in completing homework.

As per the November 6, 2019 IEP meeting, the Parent's complaint stated:

We...proceeded to debate what a study guide meant, event to the point where I was needing to go to Merriam Webster to get the definitions of those words. I then stopped the debate, [picked up my notebook], and said, "Let's go around the table and have everyone state what they believe that language means – what does 'study guide or outline' mean?" [The school psychologist and ombudsman were uncomfortable with this approach and] the meeting [was ended] with no resolution [and] no agreed upon definition. [We agreed that this issue would have to be further addressed in a future IEP meeting.]<sup>6</sup>

11. The District's response included a copy of the Student's homework from November 6, 2019. The Student's homework for this date includes step-by-step instructions on how to complete a calculation similar to those types of calculations that appear in the assignment.
12. According to the Student's progress reporting, as of November 13, 2019, the Student had either mastered or made sufficient progress on all but one of the annual goals in his January 2019 IEP.<sup>7</sup>
13. On November 14, 2019, the Parent sent two emails to the math teacher. They read, in part:  
I also need better instructions sent home with homework if you could please. Otherwise I can't help him if there is something I don't know how to do, and he gets upset about not being able to do it and I'm helpless when I also don't know how to do the assignment. He may receive verbal instruction in class, but due to retention issues it must also come home written.  
...  
There are also some math problems that I have no idea how to help him with, such as that top one on page 12. He tends to have a hard time retaining information as part of his auditory processing disorder, so it is fine to explain it to him in class but if he doesn't retain it I am helpless to assist if I have no instructions.
14. In a separate email on November 14, 2019, the learning resource teacher emailed the District's co-director of special education, stating, in part:  
The math teacher has provided and sent home math examples and explanations. She checks in with Student daily to make certain he is the new math material. [sic] Student comes into my learning resource math class very confident and happy after being in his general ed math class. He has never expressed concerned or any frustration to me.

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<sup>6</sup> The District's meeting notes support the narrative found in the Parent's complaint concerning this portion of the meeting.

<sup>7</sup> There was no progress reporting data for communication goal 4.

His IEP is being followed. Student would like to have written instructions for homework included in his IEP. We feel that this would put a burden on his teacher. Parent has threatened to file another citizen complaint.

15. The District's response included a prior written notice, dated November 15, 2019. It read, in part:

We have determined that there are no changes to Student's IEP. We discussed what would be helpful to support Student with his homework. The IEP team decided to continue our discussion regarding homework supports at a follow-up IEP meeting to be scheduled later in the month.

16. The District's response included 5 examples of the Student's homework, wherein the math teacher wrote either: a) reminders on the steps to take to solve certain types of problems; or b) the actual first steps to take to solve a specific problem.<sup>8</sup>

17. As of December 18, 2019, the Student's IEP team had not met to determine what the Student's needs are resulting from his disability in regard to assistance with math homework.

## CONCLUSIONS

**Issue 1: IEP Implementation (Accommodations for Math Homework)** – A school district must ensure it provides all services in a student's individualized education program (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 student's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Here, there were several components to the Student's IEPs. The Student's January 2019 IEP included the following accommodation: "Provide study outlines/guides/graphic organizers." The Parent alleged that, during the 2019-2020 school year, this accommodation was not implemented in regard to the Student's math homework.

The Parent believes that this language meant the Student should have been provided with step-by-step, written instructions for each actual, individual problem in his weekly math homework. The District's interpretation of this language was as follows: the Student needed written examples of problems similar to those that appeared in his math homework; but the Student did not need to be provided with written instructions for each actual problem in the Student's math homework.

The record shows that, starting the week of October 14, 2019, the Student received one or more of the following types of "instruction" on his math homework on a semi-regular basis: a) written

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<sup>8</sup> Based on the documentation submitted to OSPI as part of this complaint, it appears that, for some homework assignments, the math teacher wrote instructions before the Student completed the homework, but for other homework assignments, the math teacher wrote instructions after the Student completed the homework.

reminders on the steps to take to solve certain types of problems; or b) the actual first steps to take to solve a specific problem. On at least one occasion, the Student received step-by-step instructions and answers for a complete math problem of the same type that appeared in the Student's math homework for that day.

Here, the actual meaning of the disputed language in the Student's January 2019 IEP is not determinative. What is determinative is this: what are the Student's needs resulting from the Student's disability in regard to assistance with math homework? For example, do the Student's needs resulting from his disability require:

- That a teacher or paraeducator go over the Student's math homework with him after the conclusion of the regular school day once or twice a week?<sup>9</sup>
- That the Student be provided with step-by-step, written explanations on how to solve each individual math problem in the weekly homework?
- That the Student be provided with the assistance he is currently receiving—examples of how to solve similar problems and written reminders on what steps to take for certain types of problems?

On November 6, 2019, the Student's IEP team determined that they would address this issue in a future meeting. As of December 18, 2019, that meeting has not occurred. **So, while the District was implementing its interpretation of the accommodation, the District had an obligation to respond to the Parent's concern about the accommodation and implementation of the Student's IEP. Here, the District has not finished addressing the Parent's concern as it has not yet had another IEP meeting. Therefore, OSPI will require the Student's IEP team to meet to answer the question: what are the Student's needs resulting from the Student's disability in regard to assistance with math homework?**<sup>10</sup>

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<sup>9</sup> ESY services means services provided to a student that are beyond the normal school year. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. "Regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. **Typically, ESY services are provided during the summer months. However, there is nothing that would limit a school district from providing ESY services to a child with a disability during times other than the summer, such as before and after regular school hours or during school vacations, if the IEP team determines that the child requires ESY services during those time periods in order to receive FAPE. The regulations give the IEP team the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child.**

<sup>10</sup> As a reminder, this determination must be based on thorough and relevant data. *See generally* WAC 392-172A-03110(1)(a)-(d), -(3)(b)(i)-(v) (IEP decisions must be based on an accurate understanding of a student's needs, including, but not limited to, a consideration of that student's progress on his or her annual goals); *see also generally* WAC 392-172-03020 (A sufficient evaluation includes accurate data from multiple sources).



**Issue 2: IEP Implementation (Delayed Start to Provision of IEP Services)** – OSPI’s instant investigation was limited to whether the District provided the Student with appropriate accommodations in math homework. However, in the investigation of that issue, OSPI identified another implementation issue: the Student did not begin receiving IEP services at the beginning of the school year (September 4, 2019). Rather, the Student first started receiving IEP services on September 18, 2019.

A district is required to provide students eligible for special education with the services included in their respective IEPs beginning on the first day (and/or week) of school. So, while this was not in the original issue identified, it is a clear violation of the IDEA and state implementing regulations.

Compensatory education is only warranted in certain circumstances: it is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district’s violations of the IDEA. Here, as of November 13, 2019, the Student had either mastered or made sufficient progress on all but one of the annual goals in the January 2019 IEP. (The progress reporting for the Student that the District provided to OSPI did not include data for communication goal 4. The District explained that this was because the Student had several communication-related goals, and communication goal 4 was not being worked on around November 2019). Therefore, the District’s two-week delay in providing services to the Student did not impact the Student’s ability to make progress on the Student’s annual goals. Therefore, no Student specific corrective actions or compensatory education is warranted.

The District will, however, be required to provide certain staff with a copy of Pages 9-10 of OSPI’s September 2019 Monthly Update, which addresses the topic of when students should start receiving special education services.

### **CORRECTIVE ACTIONS**

By or before **January 16, 2020** and **January 27, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **January 24, 2020**, the Student’s IEP team will meet to answer the following question: what are the Student’s needs resulting from the Student’s disability in regard to assistance with math homework?

Each District staff member on the Student’s IEP team will review this decision before the meeting. A copy of this decision will also be brought to the meeting, to reference if and as needed.

By **January 27, 2020**, the District will provide OSPI with: i) a prior written notice summarizing the group’s discussion and decision (or decisions) concerning the above question; ii) a copy of the Student’s amended IEP; iii) any relevant meeting invitations and prior written notices; and, iv) a list of people, including their roles, who attended the meeting.

**DISTRICT SPECIFIC:**

By or before **January 15, 2020**, the District will provide the following staff with a copy of OSPI's September 2019 Monthly Update, directing them to review the section entitled, 'When Do Students Start Receiving Special Education Services,' on Pages 9 and 10: all the principals and assistant principals, special education administrators, and special education certified staff, including educational staff associates (ESAs), at the school the Student attended in the 2019-2020 school year. The District will ensure that the staff have an opportunity to review this portion of the September 2019 Monthly Update and ask questions.

A copy of OSPI's September 2019 Monthly Update can be found here: <https://www.k12.wa.us/sites/default/files/public/specialed/monthlyupdates/Sept2019Updates.pdf>.

By **January 16, 2020**, the District will provide OSPI with documentation that the required staff has reviewed the written guidance. The documentation will include an official human resources roster of the required staff, so OSPI can cross-reference the list with the actual recipients.

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 December, 2019.

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
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.)