

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-73

PROCEDURAL HISTORY

On June 9, 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 Renton 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 June 10, 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 June 30, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on July 1, 2022. OSPI invited the Parent to reply.

On July 13, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on July 14, 2022.

On July 14, 2022, OSPI received the Parent's reply. OSPI forwarded the information to the District on July 19, 2022.

On July 18, 2022, OSPI received additional information from the Parent. OSPI forwarded the information to the District on July 19, 2022.

On July 26, 2022, the OSPI complaint investigator interviewed the occupational therapist.

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

ISSUE

1. During the 2021–2022 school year, did the District follow proper procedures for implementing those portions of the Student's individualized education program (IEP) that related to occupational therapy services?

LEGAL STANDARDS

IEP Implementation: Each district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Decisions about Educational Methodology: As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. *In the Matter of Dieringer School District*, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014); *See also, Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003) (finding parents do not have the right to dictate any particular educational program and explaining that a school district's denial of a parent's placement request reflected a "difference of educational philosophy with [parent], not a denial of opportunity to participate.")

FINDINGS OF FACT

2020–2021 School Year

1. During the 2020–2021 school year, the Student was a 10-year-old fifth grader who attended school virtually in the District and was eligible to receive special education services under the category of other health impairment.
2. On June 18, 2021, the Student's individualized education program (IEP) team convened to review the IEP. According to the Student's teacher, the Student worked hard and stayed on task. He continued to need support for reading, writing, and math. The IEP provided annual goals in the areas of reading, writing, math, communication, and fine motor skills. The pertinent fine motor goal was as follows:

By March 31, 2022, when given a notetaking task from dictation or copying far point [Student] will make a distinct height difference in tall, short and descending letters, begin notes to the left margins of the page and maintain horizontal handwriting to ¼" on unlined paper while copying at a rate of 12 words per minute improving writing speed and legibility for notetaking from 0/4 writing opportunities to 3/4 writing opportunities as measured by work samples, observation and monthly OT (occupational therapy) data.

The IEP included 22 accommodations that included graphic organizers, extended time, and a calculator. The special education and related services in the IEP were provided according to the following two time periods:

June 19–August 31, 2021

- Fine motor: 30 minutes, 1 time weekly
- Written language: 15 minutes, 4 times weekly
- Math: 30 minutes, 4 times weekly
- Reading: 15 minutes, 4 times weekly
- Communication: 15 minutes, 2 times monthly

September 1, 2021–March 31, 2022

- Fine motor: 30 minutes, 1 time weekly
- Written language: 30 minutes, 5 times weekly
- Reading: 29 minutes, 5 times weekly
- Math: 59 minutes, 5 times weekly
- Communication: 15 minutes, 2 times weekly

2021–2022 School Year

3. During the 2021–2022 school year, the Student continued to receive remote instruction from the District and continued to be eligible for special education services.
4. On September 1, 2021, the school year began in the District.
5. According to the documentation provided by the District, the OT sessions began on September 10, 2021, meeting almost weekly until April 11, 2022. The documents included service logs for the same time period. The entries included the following examples:
 - September 16, 2021: "Student participated in typing simple I-word responses into chat box in response to 'All about me' prompts. Good use of typed capital letters. Student participated in visual perceptual/fine motor task with focus on visual scanning on screen (near point) to locate matching picture to letter to solve riddle. Completed indep (independently) without assist. Writing: used standard composition lined paper with correct formation of conventional letters, correct line placement of uppercase and lowercase letters, left margin for the word 'Bright'. Transcribing the phrase 'On the School buzz' with 14/15 letters written using correct letter formation. S written in uppercase, left margin, good line placement."
 - October 14, 2021: "Student logged into OT zoom session at 1:29pm. Scheduled OT session is normally 1-1:30pm. Student participated with fine motor and visual perceptual activities with focus on writing proper letter size on composite notebook paper and completing picture puzzle. Student writing single words to the left margin, good attention to baseline, good letter formation and legibility, and good letter sizing without prompts. Student collected (2) sentences from a model with good attention to left margin, writing on baseline, good word spacing and capitalization, and legibility without prompts."
 - November 18, 2021: "Student participated in fine motor and visual scanning activities with focus on tracking in all visual quadrants of computer screen (top/bottom, left/right), handwriting of conventional sentences from near point and writing on unlined paper to maintain horizontal placement. Student writing 19 wpm (words per minute) with proper spacing between words/letters, good legibility and distinction of lowercase letters. 2nd trial of copying from near point- spelling was better. No difference with maintaining horizontal writing between timed vs untimed copying. Visual motor – student engaged in visual tracking typing activity. He demo increased mistakes on left side of screen, but overall demo quick speed with typing skills."
 - March 10, 2022: "Student participated in a fine motor task and visual perceptual skills with focus on handwriting/sentence stem completion using a word bank and completing a sentence using a word bank. Worked on visual perceptual skills to decode a series of icons to unscramble a word. Student demonstrated good visual skills to find the matching lowercase letter, but had difficulty unscrambling the letters to come up with a word. Occasional errors in sentence structure with nouns, verb, adjective selection to make the most sense."
6. The District also provided a series of screenshots of the Student's notetaking and other activities, beginning September 23, 2021 through June 2, 2022, during the Student's sessions with the occupational therapist. Some of the screenshots showed the Student's notetaking. Another screenshot was a hidden word puzzle the Student was working on.

7. On December 12, 2021, the District issued a report on the Student's progress towards the annual goals. The report stated the Student was making satisfactory progress towards the OT goal for notetaking but had not yet achieved it. The report stated:

December 2021: [Student] currently receives his OT services over distance learning via Zoom. He is making continued progress with his handwriting legibility. Focus has been on writing when copying from a near point model. He is demonstrating consistency with starting his writing at the left margin with good legibility of his letters, letter formation, and is showing continued progress with writing his lowercase letters using distinct height difference. When writing on unlined paper, [Student] is demonstrating improvement with orienting his writing horizontally to the page. [Student] is working towards legibility with increased writing speed. Based on recent work sample, he is currently writing notes from near point copy at an average rate of 16 words per minute on 3/4 opportunities.

8. On March 21, 2022, the District issued another progress report. The report stated the Student mastered the notetaking goal.
9. On April 19, 2022, the OT emailed the Student's special education teacher, requesting a writing sample "to get an idea of his use of writing conventions by use of typing."
10. On May 4, 2022, the team reviewed the Student's IEP. Regarding OT, the IEP stated the Student made "significant progress with his monthly timed writing speed trials" when copying on unlined paper. The IEP stated:

Based on student work samples, writing legibility is good. Student is consistent with copying his sentences beginning on the left margin, uses consistent spacing between words/letters, and proper use of ending punctuation in a sentence. [Student] has also participated in simple keyboarding tasks from a sentence starter while typing single sentences with conventional case use and punctuation. Visual perception- [Student] has shown functional skills with scanning items on screen during visual perceptual activities focused on identifying similarities/differences, visual form constancy, and visual figure-ground when the stimulus has been located in various visual fields on screen with little to no verbal prompting needed. At times, he benefits from cuing and increased time to attend to items in the background of a picture.

Recommendations: OT to continue as a related service to support classroom written language goal (writing conventions) and continue to work on his visual motor/visual perceptual skills. Related service includes but is not limited to small group, large group, consult/collaborate with the teacher, staff training, equipment modification, and working directly with the student.

The Student's IEP provided for OT for 30 minutes, one time weekly.

11. In May 2022, the District reevaluated the Student to determine if the Student continued to be eligible for special education. The evaluation report, dated May 11, 2022, recommended services in the areas of social/emotional, reading, math, and written language. Regarding OT, the evaluation report included data from the following:
 - Beery-Buktenica Developmental Test of Visual Motor Integration - 6th Edition (VMI) and Visual Perception and Motor Coordination subtests

- Decoste Writing Protocol
- Developmental Writing Scale (DWS)
- Clinical observation of select motor skills
- Teacher, parent, and student interview using the American Occupational Therapy Association (AOTA) Occupational Profile as a guide.
- File Review

Based on the results of these assessments regarding the need for OT, the report stated:

Based on the results of this assessment, motor speed, writing scale, observation, and professional judgment, [Student] does not demonstrate with delays in the area of fine motor. [Student] is currently performing at or above the expected level of his peers. [Student] does not meet eligibility criteria and no longer requires OT in the school environment as he does not demonstrate an adverse impact with access and participation in his educational environment. It is recommended for the IEP team to discuss whether the need for OT as supplementary aids and service short term is needed through consult and observation for him to access the least restrictive environment with anticipation of return to in person learning.

12. On June 3, 2022, the Parent emailed the occupational therapist, requesting writing samples from September 2021 to June 2022. On June 6, 2022, the occupational therapist replied that no paper samples were collected because the Student was a "remote student." Progress reports were based on observations of the Student during weekly sessions. Daily notes had been previously submitted to the Parent.
13. On June 9, 2022, the Parent filed this complaint with OSPI.
14. On June 16, 2022, the District convened the Student's IEP team to address the results of the reevaluation. As a result of the evaluation, the IEP provided fine motor as a supplementary aid and service to be provided 10 minutes, one time monthly. Also, the Student was referred for an assistive technology evaluation. According to the prior written notice, the District agreed to provide the Parent with the "raw data" on a weekly basis for the IEP goals.

Specific Parent Allegations and District Responses

15. The Parent alleged in the complaint that the District failed to do the following:
 - Occupational therapist was unable to provide written work samples to measure the Student's progress towards the goal.
 - District never provided daily notes as stated.
 - Occupational therapist did not follow IEP by using lined paper instead of unlined paper and measure horizontal handwriting.
 - Occupational therapist routinely played games with my son on digipuzzle.net and other digital resources rather than following IEP.
 - Occupational therapist routinely requested that my son agree to digipuzzle.net privacy statement and other Digital Resources without parental consent.
 - Occupational therapist utilized digital resources that are not part of the District.

16. The Parent stated the occupational therapist did not provide work samples based on the June 6, 2022 email from the occupational therapist, and an April 19, 2022 email from the occupational therapist to the Student's special education teacher asking for a writing sample.
17. The District stated that one or two work samples addressing the goal's criteria were taken monthly as showed by the screenshots during the OT therapy sessions where the Student showed his notetaking. No "written" samples were available because the Student was receiving services remotely.
18. The complaint stated the District failed to provide the Parent with daily notes. This was apparently based on the June 3, 2022 email from the occupational therapist to the Parent.
19. The occupational therapist stated notes were taken each session with the Student.
20. The Parent stated the occupational therapist did not provide the Student with three out of four opportunities using unlined paper. The occupational therapist also did not measure the Student's horizontal writing to the ¼ inch and did not "properly capture distinct height difference in tall, short and descending letters."
21. The Parent emphasized that the goal was "copying from far point."¹ The Parent stated that during the previous school year, the District used a white board at home that the Student copied from. The Parent also indicated that the Student could go to school to receive in-person OT, but in-person services were not offered.
22. The occupational therapist stated the therapy activities were incrementally designed to lead the Student towards meeting the goal and improving his visual discrimination. The occupational therapist pointed out that the goal was for notetaking from "dictation or far point." Given the Student received remote services and there was no indication that the Student would be transitioning to in-person instruction soon, there was little reason to emphasize notetaking from far point.
23. The Parent stated the occupational therapist "routinely" used puzzles from a "non-approved" website, which the Parent did not give permission for. The Parent provided a copy of the District's "Reviewed Digital Resources" that listed preferred digital learning programs for general education instruction. The list did not include "Digipuzzle." The Parent stated the occupational therapist asked the Student to agree to the website's privacy statement without the Parent's permission.
24. According to an interview with the occupational therapist, the therapist sometimes used puzzles on the "Digipuzzle" website with the Student as a resource when addressing the Student's need for visual/spatial discrimination. The website was not on the District's list of digital resources because the list did not include resources that were necessary for delivering

¹ "Far point" means from a distance, such as copying from a white board in a classroom, rather than copying from a book, for example.

more specialized remote services such as OT. The occupational therapist also explained the website used “cookies” to keep track of the Student’s use of the website.² The website’s privacy statement explained the procedures used to protect the privacy of users’ data.

CONCLUSIONS

Issue One: IEP Implementation – The complaint alleged the District failed to implement the Student’s IEP related to occupational therapy (OT) during the 2021–2022 school year. A district is required to implement a student’s special education services in conformity with their IEP.

Here, the Student received remote services during the 2021–2022 school year. The Student’s June 2021 and May 2022 IEPs included an OT goal for notetaking and provided OT for 30 minutes weekly. The documentation, including the therapy notes and screenshots from therapy sessions, showed that the Student received weekly OT sessions that addressed notetaking and visual discrimination skills. Progress reported showed the Student made progress towards the notetaking goal and eventually mastered it.

The Parent stated that the IEP was not implemented because there were no physical, written work samples. But the screenshots showed the Student’s notetaking samples. Physical, written samples were not available because the Student received remote instruction. In addition, the Parent stated the IEP was not implemented because the Parent did not receive daily notes. However, the IEP did not provide for or require daily notes to the Parents.

The Parent also alleged that the IEP was not implemented because the occupational therapist did not address notetaking from “far point.” However, the Student’s notetaking goal stated either dictation or far point. And since the Student received only remote services, there was less need to focus on copying from far point, it was reasonable that the occupational therapist focused on dictation rather than far point. The Parent further alleged that the occupational therapist failed to implement the IEP because the occupational therapist used lined paper rather than unlined paper when working with the Student. The occupational therapist’s services were incrementally designed to address the Student’s need to write on unlined paper. It was not inconsistent with the Student’s IEP to first use lined paper to accomplish the goal for eventually notetaking on unlined paper.

The Parent alleged the failure to implement was also due to the occupational therapist using the “digipuzzle” website and that the occupational therapist should have had the Parent’s consent to use the particular website. The occupational therapist had discretion in determining the therapy activities and methods, including puzzles, to address notetaking and visual discrimination. Parent consent was not required. Regarding the website not being listed on the District’s approved digital resources, the resources listed were for general education instruction, not necessarily for specially designed instruction or related services. Limiting the occupational therapist’s options to only those resources on the list would have significantly impeded individualizing services based on the Student’s needs. Furthermore, the occupational therapist’s methods and activities led to the Student making progress and achieving the goal.

² Cookies are text files with small pieces of data that used to identify the computer that is using the website.

Overall, based on the documentation that showed the District implemented the OT services in conformity with the IEP, no violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

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.)