

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-127**

### **PROCEDURAL HISTORY**

On September 20, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Edmonds 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 September 20, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on September 22, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 6, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on October 10, 2023. OSPI invited the Parent to reply.

On October 16, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On October 16, 2023, OSPI investigators visited the School the Student attended and interviewed the assistant superintendent, director of student services, and director of early learning. OSPI investigators also visited and observed classrooms.

On October 19, 2023, OSPI investigators consulted with OSPI's ECSE SEC 619 coordinator.

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

### **ISSUE**

1. Beginning with the start of the 2023-2024 school year, did the District follow proper procedures for implementing the following portions of the Student's individualized education program (IEP), including:
  - a. Specially designed instruction in adaptive behavior and social skills; and,
  - b. Ensuring the Student's services – including specially designed instruction in language skills – were provided in a general education setting?

### **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. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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. The initial IEP must be

implemented as soon as possible after it is developed. 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).

Regular Early Childhood Program: Regular early childhood program means a program that includes fifty percent or more children who do not have an IEP. Programs may include, but are not limited to, the following: Head start; early childhood education and assistance program (ECEAP); transitional kindergarten; kindergarten; preschool classes offered to an eligible prekindergarten population by the public school system; private kindergartens or preschools; group child development centers; or child care. WAC 392-172A-01152.

## **FINDINGS OF FACT**

1. At the start of the 2023–24 school year, the Student attended a District preschool and was eligible to receive special education services under the category of autism. The Student's December 2022 IEP was current at the time. The Student's IEP provided for annual goals in the areas of adaptive behavior, social skills, and language skills. The IEP provided the following special education services to the Student:
  - Language skills: 30 minutes, weekly (provided by a speech/language pathologist (SLP) in the general education setting)
  - Adaptive behavior: 15 minutes, 4 times weekly (provided by the special education teacher or special education staff in the general education setting)
  - Social skills: 30 minutes, 4 times weekly (provided by the special education teacher or special education staff in the general education setting)
2. The District's 2023–24 school year began on Monday, September 18, 2023.
3. According to the District, the Student attended the preschool class Monday through Thursday from 1:20 to 4 pm. The special education teacher provided instruction to the Student on Tuesdays and Thursdays, while paraeducators provided the instruction on Mondays and Wednesdays. The special education teacher "designs and supervises the provision of SDI (specially designed instruction), and monitors his progress." The SLP provided therapy on Wednesdays. The District provided documentation that speech services were provided to the Student on September 20, 27, and October 4, 2023. There were five students with IEPs and five students without IEPs in the Student's classroom.
4. The District stated that the Student's class had a substitute teacher who was a certified teacher for the first two days of the Student's class. The regular lead teacher started after the first two days.

5. On September 20, 2023, the Parent filed this complaint.

6. The complaint stated, in part:

My son's classroom does not have a teacher. School began on 9/18/23 with a substitute teacher who had been given no sub plans. The next day, there was no teacher at all and my son was with the paras all day...

Furthermore, I contend that [the preschool] is a special education setting because they do not meet the legal definition of a 'general education setting.'<sup>1</sup>

## CONCLUSIONS

### Issue One: IEP Implementation

Specially Designed Instruction: The complaint alleged that the District failed to implement the Student's IEP because there was no general education teacher for the first two days of school. A district is required to implement special education services in conformity with the IEP. Paraeducators may assist in the provision of special education services under the supervision of a special education teacher.

Here, the Student's December 2022 IEP provided for specially designed instruction to be implemented by the special education teacher and paraeducators. The Parent argued that the District failed to implement the Student's services because there was substitute general education teacher with no "sub plans" on the first day of school and the Student did not have a general education teacher the second day of second. The Parent stated that paraeducators provided the instruction to the Student.

The Student's IEP called for the special education services to be delivered by the special education teacher or special education staff, which included the paraeducators. Implementation of the Student's IEP did not depend on there was a substitute general education teacher or no general education teacher. The District provided documentation that services were provided by the special education teacher, paraeducators, and SLP. Because there are insufficient facts to support the conclusion that the Student's IEP was not implemented, no violation is found. But it should be noted that the District stated the Student's class had a certified substitute teacher for the first two days of the Student's class. And secondly, even if services were not provided in conformity with the IEP, failing to implement the IEP for the first two days of school would not have constituted a material failure to implement the IEP. A material violation is more than minor discrepancy between the IEP and its implementation. OSPI finds no violation.

General Education Classroom: The complaint alleged that the Student's placement was not implemented in conformity with the IEP. The Parent alleged that the Student's classroom was a

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<sup>1</sup> Later, the Parent expressed concerns to OSPI and asked questions about how the paraeducators would implement the specially designed instruction and whether the paraeducators were supervised. Since the questions were not allegations, the Parent is advised to seek clarifications from the District.

special education setting. A regular early childhood program means a program that includes fifty percent or more children who do not have an IEP.

Here, the Student's IEP provided special education services in the general education setting. According to the District, the Student's class consisted of five students with IEPs and five students without IEPs. Therefore, the classroom was a general education classroom which is in conformity with the Student's IEP. No violation is found.

### **CORRECTIVE ACTION**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this 15th day of November, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
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**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.)