

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-136

PROCEDURAL HISTORY

On October 3, 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 October 3, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 5, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 16, 2023, OSPI investigators visited the School 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.

On October 20, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on October 23, 2023. OSPI invited the Parent to reply.

On October 23, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on October 24, 2023.

On October 30, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District the same day.

On October 31 and November 7, 2023, OSPI requested that the District provide clarifying/additional information. The District provided the requested information on November 7, 2023, and OSPI forwarded the information to the Parent the same day.

On November 1, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on November 2, 2023.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit and interviews.

ISSUE

1. Whether, during the 2023–24 school year, the District implemented the Student's 1:1 aide as outlined in his individualized education program (IEP)/prior written notice?¹

¹ OSPI notes this Student was also part of SECC 23-132; however, SECC 23-132 did *not* look at the provision of a 1:1 aide for this Student.

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. 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).

Staffing Discretion: Districts have discretion in personnel decisions, such as staffing assignments or hiring. *Gellerman v. Calaveras Unified Sch. Dist.*, 37 IDELR 125 (9th Cir. 2002); *see also, In the Matter of the Clover Park School District*, OSPI Cause No. 2004-SE-0072X (WA SEA 2004); *In re Los Altos Elementary School District*, 38 IDELR 111 (CA SEA 2002); *In re Freeport School District*, 34 IDELR 104 (IL SEA 2000).

1:1 Paraeducator: A 1:1 paraeducator means that one paraeducator is working with or supporting one student at a time—this describes a paraeducator to student ratio. Districts have the responsibility to determine the paraeducator assigned to the student, and the specific paraeducator providing support may change throughout the day, as long as the ratio identified in the IEP remains consistent. If a student receives 1:1 paraeducator support, this should be clearly noted on the student's IEP. *Paraeducators and Students Eligible to Receive Special Education services*, OSPI Technical Assistance Paper (TAP) No. 6 (November 2020).

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of autism, was in preschool in the District, and his June 16, 2023 individualized education program (IEP) was in effect.
2. The Student's June 2023 IEP included present levels, annual goals, and specially designed instruction in adaptive, social/emotional (social skills, emotional regulation), pre-academic skills (math, reading), and communication/language skills.

While the IEP did not include 1:1 support, the District stated in its response that the IEP team agree the Student "would receive 1:1 support for the first six to eight weeks of the 2023-2024 school year to support his social/emotional needs during his transition to a new classroom."

The prior written notice, documenting the development of the June 2023 IEP, stated:
IEP team discussed support for [Student] and it was decided that [Student] will be provided 1:1 support for the first 6-8 weeks of school to assist with his social/emotional needs to be successful in the classroom. After 6-8 weeks, the IEP team (including [Student's] parents)

will re-convene to assess the need for 1:1 support. At this time, the IEP team will also consider the need for a Behavior Intervention Plan (BIP) to ensure [Student's] continued success. The data for 1:1 support needed for the last 5 weeks of the 2022-2023 school year will be attached to the IEP for reference.

3. In its response, the District described and provided emails, documenting that in August 2023, District staff communicated with the Parent and with other staff regarding the status of the 1:1 support and the staffing/hiring process. District documentation also included internal staffing request documentation for the paraeducator support.
4. On September 15, 2023, the Student's case manager/special education teacher (case manager) notified the Parent that a paraeducator (paraeducator 1) was assigned to provide the Student's 1:1 support for the first three weeks of school.
5. Also, on September 15, 2023, District staff emailed regarding open positions and "what we will need for starting Monday." This included several 1:1 paraeducators, several classroom paraeducators, and other staff positions.
6. The District's 2023–24 school year began for preschool on September 18, 2023.
7. The Student attends an afternoon preschool class, Monday through Thursday, from approximately 1:20 to 4 pm.
8. On September 18, 2023, the Parent contacted the case manager and asked for confirmation, which the case manager provided, that the Student received his 1:1 support that day.
9. On September 21 and 25, 2023, the Parent emailed the case manager regarding the Student's 1:1 support. The case manager confirmed that the Student had received 1:1 support from paraeducator 1. The case manager agreed to let the Parent know if staff were absent or if there was a substitute.
10. On September 26, 2023, the Parent emailed the case manager and asked if paraeducator 1 was primarily assisting the Student. The case manager responded that paraeducator 1 primarily was with the Student but did help others when he was doing well because they wanted to the Student to "develop his independence, so when he was doing well, she will give him space, but always has her eyes on him to jump in when needed."
11. On September 28, 2023, the Parent asked the director of early learning programs (director) who would be providing the Student's 1:1 support beginning October 2, 2023. The director explained that paraeducator 1 had family issues she needed to address during the week of October 2 to 6, 2023, and potentially the following week. The director informed the Parent that the two classroom paraeducators had been and would continue to be consistent, and then explained that they were contacting substitutes regarding their availability on days when paraeducator 1 would not be available. She further explained that they often assigned paraeducators who were familiar with a student to provide a student's 1:1 support and had the substitute provide general classroom support.

The Parent replied and asked if there was a plan for having the Student's 1:1 support provided by a District staff member, rather than a substitute. The Parent stated that consistency was key for the Student.

The director responded and explained that the positions were posted, and they would interview and hire as soon as possible. She also explained that the Student's temporary 1:1 support was being provided for six to eight weeks while the team collected data regarding the level of support he would need moving forward, per the IEP meeting in June 2023.

12. On September 29, 2023, the Parent emailed the director, stating that the Student's 1:1 support should be and have been provided by the same person for the full six to eight weeks.

The director replied and explained that the posting for a paraeducator position would close on October 10, 2023, and that the District would hire multiple candidates from the pool as quickly as possible.

13. On October 2, 2023, emails indicated that there was no substitute to provide the Student's 1:1 support.

In an email to the Parent that day, the director explained that while they did not have a substitute for the Student's 1:1, the Student's support was provided by classroom staff. The Parent replied that having a classroom staff member provide the Student's 1:1 support was not consistent with his IEP. The Parent stated that it was "not a plan I am okay with."

In response, the director reiterated that the Student had received the 1:1 support in accordance with the June 2023 IEP every day that he had been in attendance and stated the classroom, that day, had a "lead teacher substitute, 2 paraeducators, and the special education teacher in the room until 2:30. At 2:30, another member of the staff came in, to support."

14. In her complaint, the Parent stated that the Student was entitled to a 1:1 aide for the first six to eight weeks of the school year, and that on "10/2/23, I learned my child no longer had a 1:1 aide at school." The Parent alleged that there is "no plan in place that I know of to provide him with a 1:1 aide for the remaining time stipulated in his IEP."

15. Also, on October 2, 2023, in the evening, the Parent emailed the case manager regarding her disagreement with the use of classroom staff to provide the Student's 1:1 support. The Parent asked if any classroom staff "received special instructions to provide [Student's] 1:1 support?"

The case manager replied and explained that the paraeducators had been given training on how to work with the Student, including "they know about the social stories and are great about giving choices." Case manager further stated that they were "definitely capable of supporting [Student] and his unique needs."

16. On October 4, 2023, in emails between the Parent and case manager, the case manager stated, "Just so you [know] we haven't had a 1:1 yesterday or today." The Parent replied, in part, "Yea, I will just assume there is no 1:1 from now on unless you tell me otherwise."

17. On October 6, 2023, the Student's IEP team met and discussed the Student's need for 1:1 support and the Student's behavior as he adjusted to the new classroom and teachers.

The prior written notice documented that the team agreed to "continue the temporary para for an additional 4 weeks." The notice included:

The first week of school was a honeymoon period for [Student]. He was very compliant with few extra needs. As he became more comfortable with teachers and new classroom, he has demonstrated additional behaviors, including throwing toys and impulse control when he walks by another student's structure and when sitting at circle. He has needed lots of additional support from his teachers to address his impulse control?. [sic] [Case manager] will write a social story around throwing toys and what he can do when he is overwhelmed, finished playing, or wants space. We took the pictures with [Student] for the story. [Student] needs additional support to stay in his space at circle. [Student] continues to need help pulling his pants up, otherwise he is able to follow the bathroom routine mostly independently with the regular classroom staff.

The prior written notice documented the Parent's concerns around staffing in the classroom. And the notice included that the team discussed staffing supports in the classroom and that the school teams "determine the most appropriate staff to provide the 1:1 para support based on student needs." The District stated it "has provided the 1:1 support for [Student] consistent with the [prior written notice] issued in June."

18. Emails indicated there was no specific 1:1 paraeducator as of October 12, 2023.
19. In its response, the District provided documentation—including staff and teacher logs—documenting that special education services were provided to the Student and that he worked on various goals in his IEP.

The logs did include notations on some days that there was "No 1:1", including between October 2 and 16, 2023.

20. In her reply to the District's response, the Parent reiterated that her complaint was that when paraeducator 1 left on October 2, 2023, the District "did not place an additional person in my son's classroom to support him" and instead "presumably relied on existing classroom staff," such as the classroom paraeducators, "who are there to serve *all* the students" (emphasis in original). The Parent stated there was no evidence that anyone filled paraeducator 1's position after she left.

The Parent stated that the classroom paraeducators are listed as "general classroom" paraeducators and that she "did not consent to a change that would involve my son's 1:1 aide being switched to a general classroom support person who is there to serve everyone" and that "If one of the general paraprofessional's roles is to be switched to provide 1:1 support to my son, then the classroom needs another general paraprofessional." The Parent reiterated that the Student's 1:1 paraeducator was supposed to be, per the June 2023 IEP meeting and communications with staff, a staff person in addition to the other classroom staff and that she does not feel the 1:1 paraeducator has been provided as outlined in the June 2023 PWN.

The Parent also stated that the Student's challenging behaviors increased only when paraeducator 1 left and therefore, the inconsistent staffing and lack of 1:1 support negatively impacted the Student.

21. The District provided additional information that it "has posted for the position, but has been unable to hire a paraeducator specifically to serve as a 1:1 for the student. The District has continued to provide the 1:1 support through substitutes or other District staff members."
22. The Parent also forwarded OSPI the text of several emails from a staff member at the school. The emails included concerns from the staff person about staffing at the school, including general concerns around overall staffing shortages. The emails also included more specific information about 1:1 paraeducators, in part:
 - "There is one parent who has been calling concerning not having a regular 1:1 for her child. Each day there is a sub request for 1:1s to be provided...Her child requires a 1:1 for his safety and this 1:1 was not provided yesterday among other days."
 - "1:1s are still not being provided..."
 - "Presently, there is a classroom with NO para support and has a student with 1:1 aid written into the IEP."
 - "There is one classroom where there are 2 paras, 1 lead and no extra para designated as a 1:1. In a classroom with 2 para-eds, when 1 para is tasked to be the 1:1 for the day, that leaves the other para to handle the rest of the classroom duties and look after the children."
 - "One day last week, [assistant superintendent], our assistant superintendent, actually filled-in as a para-ed for one session into a classroom with no assigned para-eds."

CONCLUSIONS

The Parent stated that on "10/2/23, I learned my child no longer had a 1:1 aide at school" and alleged that there is "no plan in place that I know of to provide him with a 1:1 aide for the remaining time stipulated in his IEP."

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. 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.

Here, the Student's IEP team agreed in June 2023, that the Student "would receive 1:1 support for the first six to eight weeks of the 2023-2024 school year." This was documented in a prior written notice, which stated, "...[Student] will be provided 1:1 support for the first 6-8 weeks of school to assist with his social/emotional needs to be successful in the classroom. After 6-8 weeks, the IEP team (including [Student's] parents) will re-convene to assess the need for 1:1 support."

Documentation reviewed in the complaint indicated that a temporary 1:1 paraeducator was hired and provided the Student 1:1 support the first two weeks of school. The paraeducator primarily supported the Student, although did help others when he was doing well because they wanted the Student to "develop his independence, so when he was doing well, she will give him space,

but always has her eyes on him to jump in when needed.” OSPI finds this is appropriate given the fact that support was temporary, and the team was trialing the support to collect data to better determine the Student’s needs in this area.

Beginning around October 2, 2023, the Student’s 1:1 support was not provided by a consistent person as paraeducator 1 had family issues that necessitated stepping away from the position. However, the District’s documentation indicated that the Student was provided 1:1 support via substitutes while the District continued to post and attempt to hire for paraeducator positions. Documentation showed that after October 2, 2023, if there was not a specific substitute for the Student’s 1:1, the support was provided by classroom staff or other District staff that came to fill in. The director of early learning explained in an email that they often assigned paraeducators who were familiar with a student to provide a student’s 1:1 support and had the substitute provide general classroom support. Documentation also supported that even if there was not a single individual providing the 1:1 support, the Student was provided instruction and worked on his various IEP goals. The case manager, in communications, shared with the Parent that all staff working with the Student were “definitely capable of supporting [Student] and his unique needs.”

The Parent raised concern that the lack of consistency 1:1 negatively impacted the Student. The Parent indicated in her communications that the Student’s 1:1 support should have been provided by the same person, and that by not doing this or by having other classroom staff provide the support, the District failed to implement the support agreed upon in June 2023. The Parent, in her reply to the District’s response, indicated that the classroom paraeducators who were in the classroom to serve all students could not also provide 1:1 support and that the Student’s 1:1 paraeducator was supposed to be, per the June 2023 IEP meeting and communications with staff, a staff person in addition to the other classroom staff.

However, OSPI notes the PWN does not say that the 1:1 paraeducator will be in addition to general classroom paraeducators; the PWN stated the Student would be “provided 1:1 support for the first 6-8 weeks of school” without specifying who would provide this support. OSPI also notes that a 1:1 paraeducator means that one paraeducator is working with or supporting one student at a time—this describes a paraeducator to student ratio. Districts have the responsibility to determine the paraeducator assigned to the student, and the specific paraeducator providing support may change throughout the day, as long as the ratio identified in the IEP remains consistent. While ideally the person providing the 1:1 support would have been more consistently the same person or same couple of individuals, the documentation overall supports that the support was provided by substitute and District staff, aligned with the June 2023 PWN. And again, while perhaps not how the Parent would have preferred the support be provided, there is no indication the District materially failed to implement the Student’s IEP with respect to the temporary trial of paraeducator support.

Regarding the impact on the Student, the Parent stated that the Student’s challenging behaviors increased only when paraeducator 1 left and therefore, the inconsistent staffing and lack of 1:1 support negatively impacted the Student. However, the Student’s IEP team met on October 6, 2023, and discussed the Student’s need for 1:1 support, noting the “first week of school was a honeymoon period for [Student]. He was very compliant with few extra needs,” but as the Student

“became more comfortable with teachers and new classroom, he has demonstrated additional behaviors, including throwing toys and impulse control when he walks by another student's structure and when sitting at circle.” The IEP team noted that it was trying a variety of supports, including using social stories, in addition to agreeing to continue the temporary paraeducator support for an additional four weeks. Even if the Student's challenging behaviors did increase after the first few weeks of school, this was information and data for the team to consider in terms of the overall services and supports the Student needed and alone does not indicate the paraeducator support was not provided.

Overall, OSPI finds the Student's paraeducator support was materially provided and finds no violation.

OSPI does note that information was also shared about other 1:1 paraeducator supports that were potentially not provided; however, some of this information—the text of emails from unidentified staff—seem to be referencing the Parent's situation. Thus, it is not clear there is a systemic issue. At the same time, it is clear the District experienced staffing challenges at the start of the school year. But, based on the investigation here, the District filled in using substitutes and other District staff. OSPI does recommend that the District review the IEPs of students in the preschool with 1:1 paraeducators on their IEPs and ensure those supports are being provided, including communicating with parents as to how those supports are being provided as necessary.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 29th day of November, 2023

Dr. Tania May
Assistant Superintendent of Special Education
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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.)