

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-146

PROCEDURAL HISTORY

On October 23, 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 Kent 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 23, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 25, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 9, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on November 22, 2023. OSPI invited the Parent to reply.

On December 6, 2023, the OSPI complaint investigator interviewed the Parent.

OSPI considered all 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 October 24, 2022. 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 implement the special education services in conformity with the Student's individualized education program (IEP) according to WAC 392-172A-03105?

LEGAL STANDARDS

IEP Implementation: A 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.

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community 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, (9th 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 (9th Cir. 1994). The award of compensatory

education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9th Cir. 2006).

Appropriate relief in the form of compensatory education is "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). Compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA. *Maine School Administrative District No. 35 v. Mr. and Mrs. R. ex rel. S.R.*, 321 F.3d 9, 38 IDELR 151 (1st Cir. 2003).

"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." *In re: Mabton School District*, 2018-SE-0036.

FINDINGS OF FACT

2022–23 School Year

1. During the 2022–23 school year, the Student was a second grader who attended a District elementary school. The Student was eligible for special education services under the category of autism.
2. On November 10, 2022, the District held a meeting to amend the Student’s previous June 2022 IEP. The District proposed changing the Student’s placement to a nonpublic agency (NPA) day school. The IEP provided the following special education services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Adaptive-SDI	Paraprofessional	Special Education Teacher	120 Minutes/5 times Weekly	Special Education
Social/Emotional SDI	Paraprofessional	Special Education Teacher	120 Minutes/5 times Weekly	Special Education
Speech/Language SDI	Speech/Language Pathologist	Speech/Language Pathologist	30 Minutes/6 times Monthly	Special Education
Classified Staff-Related	1:1 Paraeducator	Special Education Teacher	390 Minutes/5 times Weekly	Special Education
Occupational Therapy	Occupational Therapist or COTA ¹	Occupational Therapist	30 Minutes/3 times Monthly	Special Education
Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Board Certified Behavior Analyst Consultation	BCBA	BCBA	6 Hours/1 time Monthly	Special Education

¹ Certified Occupational Therapy Assistant.

The Student's IEP included 38 accommodations that included, in part, text-to-speech, token-visual reinforcement, and preferential seating.

3. The prior written notice that documented the November 2022 meeting stated the District proposed a placement change to an NPA school that "can keep him and others safe." The District also proposed changing the services of 1:1 paraeducator to a 1:1 behavior specialist.
4. According to the District, the Student was unable to start attending the NPA because of "staffing and placement issues."
5. On December 16, 2022, the District conducted an IEP meeting to amend the Student's behavioral intervention plan (BIP) and add the following behavior services to the Student's IEP:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Classified Staff-Related	Behavior Technician	Special Education Teacher	390 Minutes/5 times Weekly	Special Education

6. The prior written notice that documented the December 2022 IEP meeting stated that some accommodations were in the IEP were changed from "as needed" to "daily."
7. According to a prior written notice, dated February 24, 2023, the District proposed changing the Student service minutes and his placement to an interim alternative education setting (IAES) at home from March 7 to April 4, 2023, which was the tentative start date at the NPA.
8. On February 28, 2023, according to the District, the District developed a "service plan" that provided "interim alternative education services" until the Student could attend the NPA. From March 7 to April 4, 2023, the Student received instruction from the special education teacher for 40 minutes twice a week. The Student also received occupational therapy and speech/language services for 30 minutes once a week.
9. On April 24, 2023, the team met to update the Student's services to include a second behavior technician for the first 90 days at the NPA and BCBA consultation services increased to 12 hours a week. The IEP provided the following services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Adaptive-SDI	Special Education Teacher	Special Education Teacher	192 Minutes/5 times Weekly	Special Education
Social/Emotional SDI	Paraprofessional	Special Education Teacher	192 Minutes/5 times Weekly	Special Education
Speech/Language SDI	Speech/Language Pathologist	Speech/Language Pathologist	45 Minutes/Weekly	Special Education
Classified Staff-Related	Behavior Technician	Special Education Teacher	390 Minutes/5 times Weekly	Special Education
Classified Staff-Related	Behavior Technician	Special Education Teacher	390 Minutes/5 times Weekly	Special Education

Occupational Therapy	Occupational Therapist and/or COTA ²	Occupational Therapist	30 Minutes/Weekly	Special Education
Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Board Certified Behavior Analyst Consultation	BCBA	BCBA	12 Hours/Weekly	Special Education

10. On May 3, 2023, according to the District, the Student began receiving services at the NPA. No staffing issues were reported at the time.
11. On July 15, 2023, according to the District, the team met to review the Student’s IEP, which was dated June 15, 2023 (the original meeting date). The team added a 1:1 paraeducator during the Student’s bus ride to and from home. The speech/language services were increased to 60 minutes per week and the BCBA hours were reduced from 12 hours to 8 hours per week. Behavior technician services were also reduced from 2:1 to 1:1.
12. According to the District, the Student received extended school year services from July 2023 through August 2023.

2023–24 School Year

13. At the start of the 2023–24 school year, the Student’s IEP provided for placement in an NPA. The Student continued to be eligible for special education under the category of autism.
14. On September 5, 2023, the 2023–24 school year began in the District.
15. According to the District, the Student did not attend the NPA at the start of the school year because the District was unable to hire a 1:1 behavior technician to accompany the Student on the bus. The Parent “periodically” transported the Student to and from school, but the Student did not otherwise attend school from September 5 through November 7, 2023.
16. On October 23, 2023, the Parent filed this complaint with OSPI.
17. The District acknowledged the Student missed 130 days of instruction. The District proposed the following corrective action:
The District proposes providing Student with compensatory education for the 130 days that Student was out of school during the 2022-2023 and 2023-2024 school years. The District proposes providing 550 hours, or 33,000 minutes, which is more than one-third of the 130 days missed. Such compensatory education would be provided by appropriately qualified staff or contractors at a mutually agreed upon schedule between Parent and the District prior to the start of the 2025-2026 school year.

[Footnote in District’s response]: The minutes are calculated based on Student’s June 2023 IEP service matrix, which best reflects his present needs.

² Certified Occupational Therapy Assistant

18. The OSPI complaint investigator interviewed the Parent who stated that she concurred with the proposed number of hours of compensatory services.

CONCLUSIONS

Issue One: IEP Implementation – The complaint alleged the District did not implement the Student’s special education services. A district is required to implement special education services in conformity with the student’s IEP.

Here, in November 2022, the Student’s team developed an IEP that placed the Student at an NPA. Because of staffing and placement issues, the Student did not attend from November 7, 2022 to May 3, 2023, although the Student did receive partial services at home from March 7 through April 4, 2023. At the beginning of the 2023–24 school year, the Student again was not able to attend the NPA because of staffing problems with transportation. Although the Student attended school periodically when the Parent transported him, the Student did not regularly attend school until November 7, 2023. The District acknowledged that the Student did not receive services for 130 days and proposed 550 hours of compensatory education services, which was approximately one-third of the total number of hours missed. The Parent, in an interview, stated she agreed with the amount of compensatory education proposed. A violation is found.

OSPI accepts the District’s proposed 550 hours of services. Given the considerable number of hours, the District and Parent must develop a service implementation plan as a first step. Taking into account the Student’s level of tolerance and other factors, the District and Parent may consider other ways to provide services, such as summer services (beyond ESY services), staff training, parent training, reimbursement for private services, etc., in addition to direct instruction. The instruction should focus on the areas of need that have the most impact on the Student’s progress, which must be monitored. The implementation plan may need to be adjusted based on the Student’s progress, or lack thereof.

CORRECTIVE ACTION

By or before **January 12, 2024, January 26, 2024, March 1, 2024, June 3, 2024, October 4, 2024,** and **December 20, 2024,** the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By **January 26, 2024,** the District and the Parent will provide OSPI with a plan to implement the 550 hours of compensatory education to the Student. OSPI will provide feedback as necessary. OSPI must approve the plan.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, as appropriate. Services will be provided outside the District’s school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially

designed instruction in the Student's areas of service. The District will provide OSPI with the proposed plan, including the schedule for services, by or before **January 12, 2024**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **December 13, 2024**. OSPI notes that it will review the amount of compensatory education provided as of December 2024, and will consider an extension to the corrective action timeline given the substantial amount of compensatory education ordered.³

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **March 1, 2024, June 3, 2024, and October 4, 2024** and of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **December 20, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

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 13th day of December, 2023

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³ The IDEA requires districts to address noncompliance as soon as possible, and in no case later than one year of OSPI's identification of the noncompliance. However, the U.S. Department of Education Office of Special Education Programs (OSEP) has noted that the one-year timeline for correction of noncompliance is not intended to limit OSPI's authority or flexibility to determine an appropriate remedy and recognizes that in some circumstances, providing the remedy ordered could take more than one year to complete. OSEP notes that if circumstances surrounding the implementation of the decision require more than one year to carry out, OSPI must, consistent with its general supervisory authority, continue to follow-up to ensure implementation of the decision, even after the one-year timeline ends. *Letter to Zirkel*, 68 IDELR 142, OSEP (August 2016).

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.)