

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-149

PROCEDURAL HISTORY

On October 25, 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 Washougal School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA.

On October 25, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 26, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 6, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on November 7, 2023. OSPI invited the Parent to reply.

On December 8, 2023, OSPI requested that the District provide additional information, and the District provided the requested additional information on December 8, 2023. OSPI forwarded the information to the Parent on December 11, 2023.

On December 7, 8, and 11, 2023, the OSPI complaint investigator conducted interviews with the Parent and the following District staff: the special education teacher, general education teacher, and special education director.

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 interviews.

ISSUES

1. Whether the District appropriately responded to the Parent's request for additional paraeducator support during the 2023–24 School year.
2. Whether the District implemented the Student's individualized education program (IEP), including the individualized medical plan and/or safety plan on or around September 11, 2023.

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. 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).

Health Plans: A district is required to include the provisions of a student's health plan into their IEP. An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his/her participation in his/her education and to support his/her teachers. Any nursing or health services that a qualified school nurse or other qualified person provides to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service. The IEP team is also not required to include information under one component of a student's IEP that is already contained under another component of the student's IEP. 34 CFR §300.320; WAC 392-172A-03090.

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

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 other health impairment, was in the sixth grade, attended a District middle school, and their June 21, 2023 IEP was in effect.
2. The Student's June 21, 2023 IEP included annual goals in reading fluency; math problem solving; paragraph writing, speech communication and articulation; occupational therapy; and goals in the area of social/emotional/behavioral, with progress reporting at the trimester. The Student's June 21, 2023 IEP provided the Student with the following specially designed instruction:

- Math: 80 minutes a week (to be provided by special education staff)
 - Reading: 80 minutes a week (to be provided by special education staff)
 - Writing: 40 minutes a week (to be provided by general education staff)
 - Social/Emotional/Behavioral: 25 minutes a week (to be provided by general education staff)
 - Speech Language Pathologist: 25 minutes a week (to be provided by speech language pathologist)
 - Occupational Therapy: 30 minutes a week (to be provided by occupational therapist)
 - Math: 40 minutes a week (to be provided by general education staff)
 - Reading: 40 minutes a week (to be provided by general education staff)
 - Writing: 40 minutes a week (to be provided by special education staff)
 - Social/Emotional/Behavioral: 20 minutes a week (to be provided by general education staff)
3. The Student's June 21, 2023 IEP also included an individual health plan (health plan). The health plan outlined an individualized care plan in case of a head injury or seizures. The plan guided staff in recognizing signs and symptoms of a seizure and provided actions to follow in the case of a seizure or if the Student sustained a blow to the head.

Actions listed to support the Student's June 21, 2023 health plan include contacting the Parent and nurse immediately in case of head injury to complete "Head injury protocol/procedure" and to observe in the health room and contact Parent and nurse for back injury. "For severe signs and symptoms, Call 911 and notify parent and nurse. Begin CPR if necessary."

4. On August 30, 2023, the Parent requested an IEP meeting to discuss paraeducator support for the Student to support academic, behavior, and health needs.
5. The District's 2023–24 school year began on September 5, 2023.
6. On or around September 11 and 12, 2023, the District scheduled the IEP meeting for September 21, 2023, and issued a prior written notice related to the meeting, which was dated the same date. Additionally, the records show that the District sent an email communication on September 12, 2023, to the Parent, to confirm the IEP meeting date.
7. District email and interviews with the Parent and District staff corroborate that on the afternoon of September 11, 2023, the Student sustained a head injury in the classroom, and the Student was specifically observed "banging his head against the wall" by District staff during this incident.
8. Later, on September 11, 2023, the District emailed the Parent and informed the Parent of the incident, not in accordance with the individual health plan protocol to "...contact nurse and parent immediately and initiate head injury protocol/procedure."
9. On September 21, 2023, an IEP meeting was held to discuss the September 11, 2023 incident, and the team determined to start with a trial period of paraeducator support during the Student's core classes, three periods, each 55 minutes. The IEP meeting notes also reflected that a follow up IEP meeting was scheduled for November 14, 2023, to discuss results of this trial period with paraeducator support, and to determine next steps.

10. On October 23, 2023, the Parent filed this complaint with OSPI. As part of the complaint, the Parent reported that the Student was denied the paraeducator support in the areas of academic, behavior, and health for the 2023–24 school year and that she had requested a permanent paraeducator be assigned to the Student. Specifically, the Parent alleged that the District disregarded IEP team input and data when the District decided not to provide a paraeducator for the Student throughout the full school day.
11. During the interview, the Parent referenced the June 2023 IEP, to cover the 2023–24 school year, which did not reflect paraeducator support. The Parent also reported that the Student experienced a head injury on or around September 11, 2023, and that the District did not follow the health plan procedure and protocol in response to the Student’s head injury.
12. Parent and District interviews during this investigation indicated that paraeducator support was initiated for three periods a day, per the September 21, 2023 IEP meeting decision.

The Parent shared that the Student’s teachers indicated the paraeducator support was effective, corroborated by interview data from District staff. The Parent reported that the Student’s grades and behaviors in the classes without paraeducator support, in addition to the incident on or around September 11, 2023, demonstrated a need for full time paraeducator support, specifically citing that art class was difficult for the Student.

School level District staff indicated the paraeducator support was necessary and effective, and expressed concerns around supporting the Student during the periods he did not have paraeducator support.

13. On November 6, 2023, the District submitted its response to the Parent’s complaint. The District did not contest the factual allegations contained in the Parent’s complaint as related to the failure to implement the health plan subsequent to the incident on September 11, 2023, and the related head injury. Regarding the incident, the District further indicated, through interview with the District special education director and review of email records between District staff and the Parent, that the school nurse emailed the existing plan to the Student’s team as re-training, to ensure future compliance with this plan and the related IEP requirements.

The District denied the first allegation and stated that it did appropriately respond to the Parent’s request for additional paraeducator support during the 2023–24 school year.

14. On November 14, 2023, the Student’s IEP team met. The IEP meeting notes and information from the interviews indicated that the paraeducator support was effective. Paraeducator support was added to the Student’s IEP as a supplementary aid and service for 55 minutes, 3 times daily, in the general education setting. The prior written notice documented that, “Based on a review of data and team discussion, [Student] benefits from having an adult support him in his content area classes during the second half of his day.”

The prior written notice documented the Parent’s request that paraeducator support be provided all day and the notice stated the Student, “has not demonstrated a significant need

for support during the first half of his day. Any need for support can be addressed through his new social/emotional/behavioral goal and by providing him with the opportunity to complete missed work.”

CONCLUSIONS

Issue One: Paraeducator Support – The Parent alleged that the District violated the IDEA when it failed to provide full time IEP paraeducator support to the Student for the 2023–24 school year. Specifically, the Parent alleged that the District disregarded IEP team input and data when the District decided not to provide a paraeducator for the Student throughout the full school day.

When developing each child’s IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. In determining whether to include paraeducator support in a student’s IEP, and whether the student needs to receive paraeducator support, the IEP team must consider how the student’s disability impacts the student’s need for support and other special factors in the IEP team meeting. If paraeducator support is included in the student’s IEP as a service or support, a school district must ensure that the paraeducator is provided at public expense and at no cost to the parents, and that the student’s IEP describes the paraeducator services and settings.

The Student’s IEP, dated June 21 2023, did not include paraeducator support. On August 30, 2023, the Parent emailed the District and requested an IEP meeting to discuss paraeducator support. Subsequent communications to the Parent from the District’s director of special education and members of the IEP team, indicate they scheduled an IEP meeting to discuss the Parent’s request for paraeducator support for the Student. This IEP meeting was held on September 21 2023, and resulted in the Student being assigned a paraeducator for three periods a day on a trial basis. The Parent and District both indicated that a paraeducator was present for three core classes, most days, per the September 21, 2023 IEP meeting decision, and both parties reported favorable results in the classes with paraeducator support.

An additional IEP meeting to review the Student’s progress and discuss the effectiveness of the paraeducator support was scheduled for and held November 14, 2023. The Parent indicated that the District initiated a trial with paraeducator for part time, and that staff teaching the Student indicated paraeducator support was effective. The IEP notes did not show that more paraeducator support was needed for the Student to receive a FAPE and the prior written notice documented that the paraeducator support was added to the IEP and noted that, “Based on a review of data and team discussion, [Student] benefits from having an adult support him in his content area classes during the second half of his day” and that the Student, “has not demonstrated a significant need for support during the first half of his day. Any need for support can be addressed through his new social/emotional/behavioral goal and by providing him with the opportunity to complete missed work.”

A parent is an integral part of the IEP development process. A district must consider the parent's concerns and any information they provide. A district is not required, however, to adopt all recommendations proposed by a parent. The IEP team should work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a FAPE in the least restrictive environment. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services in the amount that a parent requests. Here, the District appropriately responded to the Parent's request for paraeducator support as indicated by the IEP meeting on September 21 2023, subsequent the trial paraeducator support from the fall of 2023, and ultimately addition of paraeducator support to the Student's IEP in November 2023. OSPI finds no violation.

Issue Two: Individual Health Plan Implementation – The Parent alleged the District failed to follow the Student's health plan on September 11, 2023. The District did not contest the factual allegations regarding the health plan. Districts are required to implement IEP health plans and ensure all teachers and service providers are informed of the requirements for implementation. The Student's health plan described that the Student was at high risk of head injured, the precise injury sustained on September 11, 2023, for which the Student's Parent was emailed some days after the incident by District, not in accordance with the individual health plan protocol to contact nurse and Parent immediately and initiate "head injury protocol/procedure."

Typically, when a 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. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related services providers, and any other service provider who is responsible for its implementation.

The District's failure to address the Student's injury in accordance with the existing individualized health plan was a one-time failure, however, it resulted in the delayed initiation of the "head injury protocol/procedure." The results for this Student could be dire if the health plan is not followed for head injuries, so following the health plan is a necessary part of this Student's FAPE. The District acknowledged that staff did not follow the individual health plan in this instance and committed to follow the health plan in the future. The District further indicated that the school nurse emailed the existing plan to the Student's team as re-training. However, during interviews with District staff, the interviews did not sufficiently demonstrate that District staff had practical knowledge of the contents of the individualized health plan after the re-training. Thus, OSPI finds a violation and the nurse or other appropriate District staff will meet with all staff working with the Student and review the health plan with those staff.

CORRECTIVE ACTION

By or before **January 19, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By or before **January 12, 2024**, the nurse or other appropriate District staff will meet with all staff working with the Student and review the health plan with those staff. This review should include going over the specific portions of the plan that staff may need to implement, such as the "head injury protocol/procedure."

By or before **January 19, 2024**, the District will provide OSPI a sign-in sheet, indicating that District staff working with the Student have met and reviewed the Student's individual health plan.

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 19th day of December, 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.)