

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-160

PROCEDURAL HISTORY

On November 8, 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 Highline 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 November 8, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District's superintendent on November 13, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 30, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On December 4, 2023, an OSPI investigator spoke with the Parent regarding her complaint allegations.

On December 22, 2023, the OSPI complaint investigator interviewed the Parent and the Parent provided further information to the OSPI complaint investigator via email that same day. OSPI forwarded the additional information to the District on December 28, 2023.

On December 26, 2023, the OSPI complaint investigator interviewed the District's special education director (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 interview.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on November 9, 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. Whether, from November 2022 to March 2023, the District implemented the Student's speech services set forth in the Student's individualized education program (IEP)?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an 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).

Provider Responsibility for Implementation: 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(d)(1); WAC 392-172A-03105(3)(a).

FINDINGS OF FACT

1. The Student was eligible for special education services and attended a District elementary school.
2. The Student's individualized education program (IEP), developed on September 26, 2022, required the provision of communication services to the Student. The communication services were to be provided by a speech and language pathologist (SLP) for "30 minutes/3 times monthly" in the "special education" setting, with communication services to begin September 27, 2022 and end on September 25, 2023.
3. The SLP responsible for providing communication services to the Student was out on medical leave from November 29, 2022 through January 11, 2023. The SLP planned to begin providing compensatory communication services to the Student upon the SLP's return on January 11, 2023.
4. The District noted it had four SLPs who were on leave at this time and that the District attempted but was unable to hire additional SLP staff at that time.
5. On January 17, 2023, the District received notice that the SLP's medical leave would be extended to February 16, 2023; and on February 23, 2023, the District received notice that the SLP's medical leave would be extended until March 13, 2023. The SLP returned to the District the week of March 13, 2023.
6. On March 2, 2023, in an email to the Parent, the District offered to provide communication services to the Student through outside contractors, and on March 21, 2023, the District provided a list of outside providers to the Parent; but the District did not receive any communication requesting the District contract with any of the outside providers.

7. The District's response to this complaint stated that "[t]he District agrees that communication services were not provided to the student between November 2022 until March of 2023". The District's director acknowledged during a telephone interview on December 26, 2023, that the District conceded the allegation that the District failed to provide communication services to the Student from November 2022 to March of 2023.
8. The parties agreed that the District SLP assigned to the Student, due to the SLP's medical leave, failed to provided communication services to the Student during the SLP's absence from November 2022 to the SLP's return to the District the week of March 13, 2023. The parties also agreed that the SLP began providing compensatory communication services to the Student on March 27, 2023.

The parties further agreed, and a November 9, 2023 prior written notice documents, that the Student missed a total of 308 minutes of communication services during the absence of the District's SLP; and that as of November 30, 2023, the District had provided 198 minutes of compensatory communication services, leaving 110 minutes of compensatory communication services to be provided.

9. The District's director, during a telephone interview on December 26, 2023, stated that following the District's response on November 30, 2023, the District has provided additional minutes of compensatory communication services to the Student.
10. The District's response to the complaint also stated that another "...SLP began providing and documenting Compensatory services for students requiring additional Compensatory services the week of November 27, 2023."

The director also confirmed during the telephone interview that several other students—"at least 20"—assigned to the absent SLP also did not receive communication services during the particular SLP's absence from November 2022 to March 2023. The director noted during the telephone interview that a plan is now in place to provide compensatory communication services to all the students, with the implementation of these plans having begun during the week of November 27, 2023.

11. The Parent relayed that they are disappointed that the District failed to provide compensatory communication services to the Student until, as the Parent alleged, November 27, 2023, despite the Parent requesting compensatory communication services for the Student as early as January 29, 2023, when the Parent sent an email to the District. The Parent stated that this is especially disappointing to the Parent in light of the Parent's observation that the Student benefitted significantly from the communication services provided by the SLP previously.

Concerning the findings and conclusions in this case, the Parent requested a finding that the District violated the IDEA when it "ignored the Parent for months regarding the need for compensatory communication services to the Student." Regarding specific corrective action suggestions, the Parent is satisfied with the District's current schedule for the provision of compensatory communication services to the Student.

CONCLUSIONS

The Parent alleged that the District failed to provide the Student's speech services and failed to provide timely compensatory education services to make up for the missed speech services.

At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

Here, the Student's IEP in place between November 2022 and March 2023 included 30 minutes, three times a month of speech services provided by an SLP. The parties agreed that between November 2022 and March 2023, the District did not implement the provisions of the Student's IEP requiring communication services.

In March 2023, the District offered to provide services through the use of a private provider/outside contractor and provided a list of SLPs to the Parent; however, the Parent did not request services with any of these providers. Ultimately in March 2023, the District SLP began providing compensatory communication services and as of November 30, 2023, had provided the Student 198 minutes of compensatory education. The parties agreed that the Student missed 308 minutes of services total. Thus, OSPI finds a violation as speech services were not provided and the District will be required to provide the remaining minutes of compensatory education—approximately 110 minutes, less any minutes provided after November 30, 2023.

In addition, OSPI notes that this issue also impacted other students receiving speech services from the SLP that was out on medical leave. The District acknowledged this and stated that a plan is now in place to provide compensatory communication services to all the students, with the implementation of these plans having begun during the week of November 27, 2023. As the compensatory education services are in progress for the other students, OSPI will require no further corrective actions.

CORRECTIVE ACTION

By or before **January 19, 2024** and **March 29, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By **January 12, 2024**, the District will offer and plan for the provision of the remaining 110 minutes of compensatory communication services to the Student by a District SLP, less the number of minutes of compensatory communication services the parties agreed have already been provided between November 30, 2023 and the date of this decision.

By **January 19, 2024**, the District will provide OSPI documentation, confirming how many minutes of compensatory speech are remaining for the Student and documentation of the schedule for services.

By **March 29, 2024**, the District will provide OSPI documentation that the compensatory speech services have been completed.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the correction 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 2nd day of January, 2024

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.)