

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-162

PROCEDURAL HISTORY

On November 9, 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 North Thurston 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 9, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 15, 2023. OSPI asked the District to respond to the allegations made in the complaint by November 30, 2023.

On November 16, 2023, OSPI received additional information from the Parent and forwarded this information to the District on November 17, 2023.

On December 5, 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 by December 18, 2023.

On December 17, 2023, OSPI received the Parent's reply. OSPI forwarded the reply to the District on December 18, 2023.

On December 21, 2023, the OSPI complaint investigator conducted an interview with the Parents.

On December 26, 2023, the OSPI complaint investigator requested a copy of the Student's report card from the Parent. The document was received on December 27, 2023, and forwarded to the District on January 2, 2024.

On January 2, 2024, the OSPI complaint investigator consulted with the OSPI assistant director for dispute resolution.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received by the complaint investigator during the interview.

ISSUE

1. Beginning with the 2023–24 school year, did the District follow proper procedures for implementing the Student's individualized education program (IEP) accommodations?

LEGAL STANDARDS

Definition of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. The instruction and support services must be provided at public expense and under

public supervision. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. WAC 392-172A-01080.

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must "offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." An IEP must "aim to enable the child to make progress", the educational program must be "appropriately ambitious in light of [the student's] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom," and the student should have the opportunity to meet challenging objectives. *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

Program Accommodations and Modifications: An IEP must include a statement of the program modifications and/or accommodations that will be provided to enable the student to: advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities. 34 CFR §300.320(4); WAC 392-172A-03090(1)(d).

Accommodations means the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instruction level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations shall not alter the content of the curriculum or a test or provide inappropriate assistance to the student within the context of the test. Modifications means substantial changes in what a student is expected to learn and to demonstrate. Changes may be made in the instructional level, the content or the performance criteria. Such changes are made to provide a student with meaningful and productive learning experiences, environments, and assessments based on individual needs and abilities. OSPI, Evaluation and IEP Technical Assistance Module (April 2008).

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 (OHI), was in the 3rd grade, and attended a District elementary school. The Student's May 18, 2023 individualized education program (IEP) was in effect.
2. The District's 2023–24 school year began on September 6, 2023.

3. The May 18, 2023 IEP included two annual goals in social skills (self-management when upset or frustrated and social awareness when interacting with peers), with progress reports to be provided quarterly. The IEP provided the Student with the following specially designed instruction in a *special education setting*:

- Social skills (self-management): 10 minutes 1x/daily (to be provided by special education staff)
- Social skills (social awareness): 30 minutes 1x/daily (to be provided by special education staff)

The Student’s IEP included this description of services, “The Student will receive 30 minutes of social skills specially designed instruction (SDI) daily with an additional 10 minutes social skills check-in after lunch recess for real time coaching and skills building reinforcement centered around his self-management goal.”

The Student’s May 2023 IEP included the following twelve accommodations:

Accommodations	Frequency	Location
Access to break spot or space to down-regulate	Quiet/dark/small hiding spots and/or sensory tools to utilize when beginning to escalate. Pre-teach a break procedure.	General and special education
Additional time for assignments	Time and a half	General and special education
Allow access to examples of finished projects/assignments	As appropriate to help Student visualize what the end product will look like	General and special education
Allow access to snacks, should the family provide them, throughout the school day	When requested; when appropriate (for example, not at recess, not at lunchtime)	General and special education
Allow breaks	Schedule frequent breaks ahead of time; additionally, Student may exhibit behaviors when over-stimulated by sensory inputs, a break is recommended	General and special education
Allow Student to contact his caregivers should it seem like contacting his caregivers may ease his anxiety	When visibly anxious, agitated, or beginning to show signs of escalation	General and special education
Assistance with organization strategies for belongings and academic work	For desk area, help with managing supplies, only give a few items needed for project at a time	General and special education
Chunking assignments into smaller parts	All longer assignments	General and special education
Place with a trusted recess supervisor (i.e., recess para in classroom assigned area, resource para, teacher). May change based on area of classroom assignment and paraeducators available	Recess	Playground/outside
Preferential seating	At all times	General and special education
SBA-non-embedded-separate setting/small group	All testing locations	General and special education

Visual schedule	Have schedule posted in classroom	General and special education
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4. On September 18, 2023, the Parent engaged in a phone call and email exchange with the school’s assistant principal regarding a behavior incident the Student had with a peer involving poking the peer with a pencil. The assistant principal reviewed the school’s restorative practices model that focuses on teaching empathy, problem solving, and social skills. The Parent provided a copy of the Student’s IEP goals to the assistant principal, reiterating their belief that the Student’s challenges are related to his disability and that the Student needed proper support and instruction. The assistant principal confirmed that the Student would continue to receive support and individualized instruction for his social skills goals.
5. Also, on September 18, 2023, the special education teacher emailed the Parents to share how the Student’s first week of school had been and where the Student had been struggling, including re-establishing classroom and small group routines. It was mentioned that the Student had been using the break space appropriately. The special education teacher stated that the Student had been asking the general education teacher for things to bite on and the special education teacher wondered if the Parents wanted to provide chewies for the Student this year, though the Student had not used them last school year. Subsequently, the Parent did send a shark tooth chewy with the Student to school.
6. Later, on September 18, 2023, the general education teacher emailed the principal and special education teacher, updating them about the Student’s day and requesting that someone observe the Student “very soon.” The general education teacher was concerned about things the Student was putting in his mouth, pulling out leg hair, as well as comments made (e.g., “I am not trying to kill myself”, “don’t kill yourself”), and that she was unable to teach most of the day. The principal responded that she would observe the Student in the classroom and that the Parent had mentioned that it might be a good idea to put the behavior chart program back in place. District records indicate that the principal observed the Student several times over the next few days after September 18, 2023.
7. Email communications between the Parents and school staff from September 19 to October 4, 2023, highlight discussions concerning behaviors, ideas for reward systems, and seeking to gain understanding of the Student’s behaviors. The Parents specifically asked about the supports the Student was receiving in the classroom and on the playground.
8. District documents indicated that the District shared the Student’s daily behavior chart with the Parents beginning on October 4, 2023, and at least through November 9, 2023. The charts were shared with the Parents via email, which was not always a reliable system for the Parent to receive the behavior charts, as the Parent stated she did not always receive the emails with the charts. The District then used an app called ‘Remind’ that was more successful for sharing documents with the Parent. The behavior chart focused on three behaviors—(“I did my work”, “I was safe”, and “I took a break”)—utilizing a 4-level rubric (1=beginning, 2=developing, 3=nearing proficient, 4=proficient).

9. On October 9, 2023, the school psychologist sent a reevaluation notification and consent form to the Parent. The notification indicated that the reevaluation would address medical-physical, general education, cognitive, social/emotional, behavior, academic, review of existing data, and a functional behavioral assessment (FBA). The form further stated that this request was made by the Student's IEP team to create updated goals and to conduct an FBA.
10. On October 11, 2023, the Parent provided consent for the reevaluation.
11. On October 17, 2023, the school psychologist sent an invitation notice to the Parents for a reevaluation meeting scheduled for November 30, 2023.
12. On October 26, 2023, the Student was assigned an in-school suspension due to an incident with a peer, wherein the Student hit the peer in the face, following a verbal interaction. The incident took place during an unstructured activity outside the Student's classroom after lunch. The in-school suspension was served the same day as the incident (0.5 days). The District's documentation stated that the Student would be provided with assigned work, from all the Student's classes, and the Student would have access to school personnel who could offer support to keep the Student current with assignments.
13. On October 27, 2023, the Parents participated in a re-entry meeting, following the Student's in-school suspension the previous day, with the principal and a District representative (special education specialist). The Student's special education teacher also attended the meeting for a short time. The Parents shared their concern that the Student's accommodations were not being provided appropriately and asked the special education teacher what was different this school year from last school year. The Parents reported that the special education teacher shared that she had not been to the Student's general education classroom yet this school year.

This re-entry meeting also included discussion of possible solutions regarding an increase in supervision of the Student by escort through the building during unstructured activities (e.g., restroom, lunch tray removal, going to the den to calm). The plan that was agreed to at the end of the re-entry meeting was for the Student to use a pass to go to the nurses' office or for when the Student was ready to dump his lunch tray with assistance from the general education teacher. In addition, the special education specialist agreed to observe the Student in the classroom, and to connect a behavioral intervention plan (BIP) to the FBA that was in development as part of the reevaluation process.

14. On October 31, 2023, the school psychologist planned with the general education teacher that she would observe the Student on November 2, 2023.
15. On November 1, 2023, the Parents attended a parent-teacher conference at the school. In attendance, including the Parents, were the general education teacher, the principal, the special education teacher, and the Student (for a short time). During this meeting, the general education teacher stated that she was not providing the accommodation in the IEP to only give to the Student the materials needed for an individual assignment at a time. The general

education teacher indicated she felt it would make the Student stand out from peers, and that the bound workbook would get damaged by pulling individual pages out. However, the general education teacher shared that the Student was able to successfully complete work when it was presented as a single assignment on the smart board, though not as successfully with workbook assignments. The general education teacher also shared that the Student's report card scores were below average because work was not being completed, though she indicated the Student's work that was completed was of a higher quality, which would produce a higher report card rating. The group discussed that the accommodation for single assignment presentation would be implemented as written in the IEP.

16. The Student's report card, shared with the Parents at the conference on November 1, 2023, included the following:

Academics

- Reading--(2) Working toward Washington state and District standards
- Writing--(1) Not meeting Washington state and District standards
- Math--(2) Working toward Washington state and District standards
- Science--(3) Meeting Washington state and District standards

Social and Emotional Learning

- Respects and organizes school materials--(1) Not in place
- Demonstrates compassion and kindness towards others--(2) Partially in place
- Exercises self-control, manages behavior, respects the learning environment--(1) Not in place
- Acts safely by following school, class and playground expectations--(1) Not in place
- Persists on assigned tasks, engages in learning and completes work--(2) partially in place
- Cooperates and contributes to group work--(1) Not in place
- Communicates needs appropriately when necessary--(1) Not in place

17. On November 2, 2023, the Parents emailed the principal their concerns about the statements the general education teacher made at the parent-teacher conference regarding the lack of implementation of the Student's IEP accommodations. In addition, the Parent shared the general education teacher had asked the Parent if she could withhold snacks from the Student prior to lunch. The Student has an accommodation on his IEP, allowing access to snacks throughout the day. This made the Parent wonder if the general education teacher viewed accommodations as suggestions, and not as necessary supports for the Student. The Parents followed up with a second email to the principal on November 6, 2023, as they had not received a response.

18. The principal responded to the Parents on November 7, 2023, and assured them that the Student's accommodations were being provided, as they had been all year. She went on to share modifications as to how the school team would be providing the accommodations based on the conversations at the parent-teacher conference. Her email outlined the following specifics:

- Chunking assignments into smaller parts: "This is happening daily and has been all year. The worksheet was staying affixed into the journal; however, the general education teacher is conferring with him daily about which part of the assignment he needs to complete. After the conference it was agreed that removing the assignment from the journal was the preferred

method and method in which we believe will help the Student be most successful and this started this week.”

- Assistance with organization strategies for belongings and academic work: “The Student, with the support from the general education teacher, organizes their desk at the beginning of every day and has been all year. The special education teacher will also start checking in twice a week to support this accommodation and did so yesterday. When she visited yesterday, she focused on creating a system and providing explicit instruction for why each component of the organizational system was important, and on her next visit she will check in to see how it works. She will continue to follow this bi-weekly plan for support around instruction.”
- Allow access to snack throughout the school day: “When the general education teacher reached out to you last week, she was expressing her concern for the time he was accessing his snacks, not the fact he was accessing this accommodation. She noticed when he had chips 30 minutes before lunch that he was not eating lunch, and she wondered your preference on this. She has provided the Student access to snacks all year and will continue to do so.”

19. On November 10, 2023, the District provided the Parents with a quarterly progress report of the Student’s performance on the two social skills goals. The Student’s progress on goal 1 (self-management when upset or frustrated) was rated as sufficient progress, and the special education teacher’s comments were as follows:

Since returning to school from summer break, when given a situation where he becomes upset or frustrated during an unstructured activity (i.e., morning line up, recess, or lunch) and in the absence of his preferred adult, the Student will stop, take a breath, think about his choices, and seek out a trusted adult for help in 77% of observed instances according to behavior chart data. The Student’s charts show they are struggling more during the structured times of the day. The Student has utilized the special education classroom and the...den for breaks when they are upset or needing a break outside of the general education classroom.

The November 10, 2023, progress report of the second social skills goal (social awareness when interacting with peers) rated the Student’s progress in this area as sufficient. The special education teacher’s comment about the progress is as follows:

Since returning to school from summer break, when given an opportunity to interact with peers, and the Student does not agree with their thought or opinion, the Student is able to accept that the peer’s thoughts and/or opinion differ from his own and not argue, requiring adult assistance to accept a peer’s thoughts and/or opinion is different from his own and not argue in 14 out of 15 observed instances (93% of instances).

20. On November 15, 2023, the District special education specialist observed the Student in his classroom. This observation was offered by the specialist during the re-entry meeting held on October 27, 2023, following the Student’s in-school suspension on October 26, 2023. The Parent’s reply to the District’s response stated that the special education specialist never followed up with them regarding her findings from the observation.

21. Between November 15 and 30, 2023, the director of special education interviewed staff members as part of the District’s formal response regarding their knowledge of the Student’s IEP, accommodations included in the IEP, and implementation of the accommodations. The information from the director included:

- The general education teacher acknowledged that she received the Student's 'at a glance' IEP and the Student's complete IEP prior to school starting from the special education teacher. She also met with the Student's 2nd grade teacher and reading group teachers to learn more about the Student.
- The special education teacher is knowledgeable about the Student's IEP as she was a participant and case manager when the May 18, 2023 IEP was written and continues to serve the Student as the special education teacher and case manager. She provided copies of the 'IEP at a glance' document to the Student's teachers.
- The paraeducator who manages the den where students can take a break or reset indicated he was aware that the Student has an IEP and was in communication with the case manager.
- Two specialists (art teacher and music teacher) both indicated when interviewed by the director of special education that they had received copies of the Student's accommodations via the 'at a glance' IEP document.
- One specialist (physical education) indicated that he has seen the IEP accommodations sheet, but "have not been personally walked through it by the case manager." He also indicated that he knew if he had any questions, he knew "where to go."
- The librarian shared during her interview that she received a copy of the Student's IEP from the case manager.

CONCLUSIONS

Issue 1: Implementation of IEP Accommodations – The Parents alleged that the District has not been implementing the accommodations on the Student's IEP since the beginning of the 2023–24 school year.

A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. An IEP must include a statement of the program modifications and/or accommodations that will be provided to enable the student to advance appropriately toward attaining his or her annual IEP goals; be educated and participate with other students, including nondisabled students in educational activities; and participate, if appropriate, in general education classroom, extracurricular, and nonacademic activities.

In this case, the special education teacher did provide copies of the Student's IEP goals and accommodations to the Student's teachers, and the paraeducator who supervises the den (a break/calm down space), though not all teachers and specialists were provided specific information on how the accommodations were to be implemented.

The District did not provide any documentation, beyond statements that all accommodations were being provided daily, confirming the implementation of the 12 accommodations. The daily behavior charts, sent regularly to the Parents, did not address or note the implementation of the Student's accommodations, and focused on the Student's behavior throughout the school day.

The Student's report card provided to the Parents during the November 1, 2023 parent-teacher conference highlighted two areas where, based on the rating the Student received, accommodations were provided irregularly or were not provided at all. The social and emotional item titled 'respects and organizes school materials' was rated as 'not in place', a rating which

could not have occurred had the accommodation of 'assistance with organization strategies for belongings and academic work' been provided to the Student. In addition, the social and emotional item titled 'organizes and respects school materials' was also rated 'not in place', and similarly could not have been rated as such if the accommodation of support in that area was provided.

Two instances exist specifically indicating that IEP accommodations were not implemented: 1) the general education teacher stated during the parent-teacher conference that she had not been providing the accommodation related to individual assignment materials to be presented to the Student, as she felt it would make the Student look different (e.g., other) from peers, and 2) the special education teacher had not observed the Student in the general education classroom regarding help with managing desk supplies and materials. It was only after the parent-teacher conference occurred that the principal indicated that the special education teacher would start checking in twice a week to specifically address this accommodation.

On the basis of the foregoing, OSPI finds the District did not materially implement the Student's IEP accommodations. This, then, represents a violation of the IDEA. To remedy this violation, the Student's IEP team will be required to meet to discuss the impact of this violation on the Student's ability to progress on the Student's IEP goals, and whether compensatory education is warranted. If the IEP team determines compensatory education is warranted, the District will provide OSPI with the related prior written notice, documenting this specific determination, meaning how many hours in which service areas. The prior written notice will also detail the data the IEP reviewed when making its decision. OSPI will then review this documentation and determine additional corrective actions and deadlines for the same, as appropriate.

CORRECTIVE ACTIONS

By or before **January 24, 2024** and **January 26, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEP Meeting

By or before **January 24, 2024**, the Student's IEP team will meet to discuss the impact of the identified violation on the Student's ability to progress on the Student's IEP goals, and whether compensatory education is warranted. If the IEP team determines compensatory education is warranted, the District will provide OSPI with the related prior written notice, documenting this specific determination, meaning how many hours in which service areas. The prior written notice will also detail the data the IEP reviewed when making its decision. OSPI will then review this documentation and determine additional corrective actions and deadlines for the same, as appropriate.

Service Provider Meeting

By or before **January 24, 2024**, each service provider responsible for implementing any of the Student's IEP services must meet to review the IEP accommodations that are to be provided to the Student.

By **January 26, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

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 violation and will attach any other supporting documents or required information.

RECOMMENDATION

It is recommended that if the results of the FBA have not yet been shared with the Parent, that the IEP team review the FBA and if the data relating to the Student's needs supports the same, developing a BIP.

Dated this 5th day of January, 2024

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.)