

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-173

PROCEDURAL HISTORY

On December 5, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) regarding a student (Student) attending the Yakima School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On December 5, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 6, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 7, 2023, OSPI amended the case's sole issue and forwarded a copy of the amended issue to the parties.

On December 21, 2023, OSPI received the District's redacted response to the complaint and forwarded it to the Complainant on the same day. OSPI invited the Complainant to reply.

On January 3, 2024, the Complainant requested an extension of time to file a reply to the District's response. OSPI granted that extension until January 10, 2024.

On January 9, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On January 9, 2024, OSPI requested additional information from the Complainant and received it on the same day. On January 10, 2024, OSPI forwarded that information to the District.

On January 18, 2024, OSPI interviewed teacher 1 and teacher 2.

On January 18, 2024, the District provided OSPI with additional information. OSPI forwarded that information to the Complainant on January 19, 2024.

On January 19, 2024, OSPI requested additional information from the Complainant and received it on the same day. OSPI also forwarded that information to the District on the same day.

OSPI considered all information provided by the Complainant 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 December 6, 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. Since December 6, 2022, has the District improperly shortened the school day for Students with IEPs who attend Robertson Elementary School by releasing Students early to go home/get to transportation?

LEGAL STANDARD

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. "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 disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

Background and 2022–23 School Year

1. On August 24, 2022, the District held its first day of school for the 2022–23 school year. The Student was a third grader at a District elementary school and eligible for special education services under the category of multiple disabilities.
2. On November 14, 2022, the Student's IEP team met. The Student's IEP included specially designed instruction (SDI) provided by special education staff, primarily in a special education setting, from November 14, 2022 until November 13, 2023, as follows:
 - Reading: 375 minutes per week
 - Math: 300 per week
 - Writing: 180 minutes per week
 - Adaptive: 125 minutes per week
 - Social: 60 minutes per week
 - Social: 75 minutes per week (general education setting)

The Student received related services as follows:

- Gross Motor: 60 minutes per week (provided by a physical therapist (PT))
- Speech and Language Therapy: 40 minutes per week (provided by a speech and language pathologist (SLP), speech assistant)
- Fine Motor: 60 minutes per week (provided by an occupational therapist (OT))

The Student received the following supplementary aids and services:

- 1:1 Adult Support: 1,740 per week
- 1:1 para support on the bus

The Student received 1,740 minutes per week of building instructional time, with 1,200 minutes served in the special education setting. The percent of time in a general education setting was 31%. The Student's LRE was 0–39%.

3. OSPI reviewed the IEPs of the Student’s classmates as part of this investigation. The classmates, eligible for special education, received specially designed instruction that ranged in amount from 1,020 minutes to 1,340 minutes per week. The Complainant also alleged that other students were impacted by being released to go to transportation.
4. During the 2022–23 school year, the District’s schedule provided for dismissal at 2:15 pm on Monday, and 3:15 pm Tuesday through Friday.
5. Teacher 1 stated in her January 18, 2024 interview with OSPI that she was the Student’s teacher during the 2022–23 school year, and that the Student’s SDI minutes were provided as follows:

Reading: All the reading minutes took place in the morning, as follows:

Day	Minutes
Monday	60
Tuesday	75
Wednesday	90
Thursday	90
Friday	90
	Total 420

Math: Monday’s minutes were 9-9:15 am and 1:15-2:05 pm, and before 2:15 pm other days, as follows:

Day	Minutes
Monday	65
Tuesday	60
Wednesday	60
Thursday	60
Friday	60
	Total 305

Writing: These minutes were provided before 1:15 on Mondays and prior to 2:55 pm the other days.

Day	Minutes
Monday	30
Tuesday	40
Wednesday	55
Thursday	25
Friday	25
	Total 175

Adaptive: Adaptive minutes were as follows:

Day	Minutes
Monday	70
Tuesday	20
Wednesday	20
Thursday	50
Friday	50
	Total 210

The Student’s adaptive goal was to increase staying on task from four minutes with five redirections to seven minutes with only three redirections. In her interview, teacher 1 expressed that every day, the Student, in part, received adaptive SDI from 2:55–3:15 pm (in addition to receiving adaptive SDI at other times). During this time slot, teacher 1 would begin preparing the Student for the end of the day by letting him go to the bathroom, and after that, she would let him walk around campus and to the bus using his walker. The Student’s adaptive goal did not mention navigating the school with a walker, but the Student’s gross motor “Present Levels” section in his November 2022 IEP provided in part, “He has been working on improving his ability to navigate in his walker throughout his school campus and without bumping into peers.” The gross motor goal provided, “[Student] will improve from requiring 75% support to navigate his classroom and school campus, to navigating both classroom and school campus independently 100% of the time.”

The Student’s SDI in social/emotional in special education was Monday through Thursday from 8:45–9 for a total of 60 minutes, and the Student’s SDI in social/emotional in general education was Monday through Friday from 10–10:15 for a total of 75 minutes.

2023–23 School Year

6. On August 22, 2023, the District held its first day of school for the 2023–24 school year. The Student was a fourth grader at a District elementary school and eligible for special education services under the category of multiple disabilities. The Student’s November 2022 IEP was in effect.
7. During the 2023–24 school year, the District’s schedule provided for dismissal at 2:15 pm on Monday, 3:15 pm Tuesday through Friday, and 12:15 pm on the last Wednesday of the month.
8. For the 2023–24 school year, the Student’s schedule showed that on Tuesday through Friday at 3 pm, the Student was taken to the bathroom in preparation for the bus, and then at 3:10 pm, was taken to the bus. Monday’s schedule does not provide a time for the bathroom and the Student was taken to the bus at 2:10 pm.
9. Teacher 2, the Student’s 2023–24 school year teacher, stated in her January 18, 2024 interview with OSPI that during September 2023,¹ the Student’s SDI minutes were provided as follows:
 Reading: These minutes occurred prior to 1:15 pm on Mondays, and before 2:15 on the other days.

Day	Minutes
Monday	60
Tuesday	75
Wednesday	115
Thursday	60
Friday	80
	Total 390

¹ The Student did not attend school from October 4, 2023–January 16, 2024, due in part, to a surgery.

Math: All these minutes were provided prior to 1:40 pm.

Day	Minutes
Monday	15
Tuesday	70
Wednesday	75
Thursday	95
Friday	75
	Total 330

Writing: All these minutes were provided prior to 1:40 pm.

Day	Minutes
Monday	25
Tuesday	40
Wednesday	40
Thursday	35
Friday	40
	Total 180

The Student's adaptive goal was to increase staying on task from four minutes with five redirections to seven minutes with only three redirections. According to teacher 2, she fit in her adaptive SDI minutes when she was working on the Student's other SDI and at recess.

The Student's SDI in social emotional in special education was every day for 15 minutes and 12:30 pm was the latest in the day it was provided. The Student's SDI in social emotional in general education was Monday through Friday from 8:45–9:15 for a total of 150 minutes.

10. On November 7, 2023, the Student's IEP team met. The Student's IEP included SDI, primarily provided by a special education teacher in a general education setting, from November 8, 2022 until January 2, 2024, as follows:

- Reading: 24 minutes per week
- Writing: 24 minutes per week
- Math: 24 per week
- Social: 24 minutes per week (general education teacher)
- Adaptive: 24 minutes per week

The Student received related services as follows:

- Speech and Language Therapy: 30 minutes per week (provided by an SLP)
- Speech and Language Therapy: 30 minutes per week (provided by a speech pro-tech)

The Student's LRE and placement was listed as "Homebound or Hospital Program".

The Student's IEP also included SDI, provided by a special education staff, in a special education setting from January 3 until November 6, 2024, as follows:

- Reading: 379 minutes per week
- Writing: 255 minutes per week
- Math: 382 per week
- Social: 162 minutes per week

- Adaptive: 112 minutes per week

The Student received related services as follows:

- Speech and Language Therapy: 30 minutes per week (provided by a SLP)
- Speech and Language Therapy: 30 minutes per week (provided by a speech pro-tech)
- Physical Therapy: 60 minutes per week (provided by a PT)
- Occupational Therapy: 30 minutes per week (provided by an OT)

The Student received the following supplementary aids and services:

- 1:1 para support on the bus

The Student received 1,740 minutes per week of building instructional time, with 1,440 minutes served in the special education setting. The percent of time in a general education setting was 17.2%. The Student's LRE was 0–39%.

11. On December 5, 2023, the Complainant filed this complaint with OSPI that alleged, in part, that the "Student's class has had its school day shortened by...10-15 minutes per day [because they] are dismissed early from school in order to put them on the school bus or be picked up by private transportation...This results in a loss of educational time for the Student."

12. On December 7, 2023, teacher 1 sent the following internal District email:

This [was] our generalized schedule for 22/23. We started class jobs/clean up around 3:05 to be ready to walk to buses a few minutes before 3:15. We would leave a few minutes early to beat the rush of the students otherwise my students would get lost in the crowd. We would have special considerations for certain students if needed for example students with mobility issues would leave a couple of minutes before the rest of the class (not everyday though) or aggressive elopers who did not do well with crowds (picked up by mom as our students walked out).

... The only dismissal considerations we have this year is that we leave 3-5 minutes early to avoid the crowds of students since we have really slow distracted walkers who easily get lost in the big crowds after school. Also, since our way out to the bus is everyone's entry into the school for pickup and it gets really congested and difficult to walk through the crowd going the opposite way.

13. On December 7, 2023, teacher 2 sent the following internal District email:

Here is my general schedule 23-24. End of the day routine, my students are in 3 different specialists so we leave specialists @ 2:10/3:10. A para or I gather one of the groups of students to get to the bus area before the entire school is out.

This has been especially important these last 2 years after getting fencing. It gets extremely congested when most of the students and families are in one area. We try to get on the other side of that area before 2:15/3:15, usually approximately 2:13/3:13. My kids are very distractible and our class line would be broken in several places with the rest of the school if I am not past this area by this time, even with paras to help support everyone.

We often talk about our day...what was the best part? What are we going to do better tomorrow? We play "I Spy..." , sometimes we count our steps walking to the bus (by 1s, by 5s, by 10s) waiting to load buses or until they arrive: 2:15-2:35/3:15-3:35.

14. On December 21, 2023, the District submitted its response and it "den[ie]d that the student has been denied educational time due to early release for bus pick-up."
15. On December 31, 2023, OSPI sent the Complainant the following question, "What special education services were not provided because of the early dismissal?"
16. On January 9, 2024, the Complainant's reply to the District's response provided in part:
...The focus of this Complaint is that the District releases the Student and his classmates in his special education class early each day, resulting in missed special education time.
...
The District actually admits [Student] is dismissed from class to leave for the bus at least as early as 5 minutes before school ends each day...For instance, on 10/17/2022 the log shows the bus leaving at 2:16:52 and getting [Student] home at 2:24:26. [Student] could not be dismissed at 2:15, get to the bus and be safely loaded and have his seat belt buckled with the other children safely loaded, and then arrive home eight minutes later. The only way [Student] could arrive home at 2:24:26, assuming he is the first stop, is if the bus left at 2:16:52 but [Student] would have been dismissed earlier than 2:16 in order for the bus to be able to leave at that time. There are multiple examples of this in looking at the bus logs.

Then, the District provided emails from [Student's] special education teacher who stated she has the students in her class leave class five minutes before school ends and arrive at the bus before the ending-time for school...This means, not even looking at the bus logs, [Student] missed at a minimum five minutes of school time each day.
...
[Student's] Parents do believe safety is important and the District does need to find a safe way for [Student] and his classmates to leave class and be boarded on the school bus. However, special education students have the right to attend school for the full school day and clearly the District admitted [Student] and his classmates were dismissed from class at least five minutes every day, regardless of when the bus logs said the bus left school. While five or ten minutes does not seem like much, in just one average month of school containing 22 school days, this means [Student] missed between 110 and 220 minutes of special education time for that month.

The Parents are requesting compensatory services for the missed school time for every school day from December 6, 2022 through October 4, 2023 when [Student] stopped attending due to his surgery. Moving forward when [Student] resumes school, in looking at [Student's] schedule, Parents are requesting OSPI order the District to adjust [Student's] schedule so that [Student] is receiving special education services for this additional time, and then is packed and prepared for the bus ride home, leaving class when the entire school is dismissed.

In a subsequent email, the Complainant responded, "The Parents believe the Student missed special education time working on his math goals which is the last academic area of work of the day."

17. On January 19, 2024, OSPI emailed the Complainant a question and she responded:
...the Student stopped attending starting October 4th after his surgery. He went back to school starting January 16th. Whether the Student received the Home Hospital and special education services he was owed while he was out for his surgery was not an issue included in this complaint as the Parents are trying to resolve that issue without filing a new complaint.

CONCLUSIONS

Issue 1: IEP Implementation – The Complainant filed this complaint with OSPI that alleged, in part, that the “Student’s class has had its school day shortened by...10-15 minutes per day [because they] are dismissed early from school in order to put them on the school bus or be picked up by private transportation...This results in a loss of educational time for the Student.” The District in its response “den[ie]d that the [S]tudent has been denied educational time due to early release for bus pick-up.”

A 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 disabled child and those required by the IEP.

The present case’s main question is whether the District materially failed to implement the students’ IEP services. While there is no requirement that every minute of the school day be devoted to the provision of SDI, students should not be dismissed early for the administrative convenience of staff. Importantly here, none of the students’ IEPs included SDI 100% of the instructional minutes of the day. Students’ IEP services must be provided and teachers must have the latitude to make reasonable transitions, and other non-academic decisions, based on their students’ circumstances in a particular moment and on a daily basis. Here, the District’s documentation and information from teachers showed that at times, instruction was provided during the transition to transportation, and for some students, there were mobility and safety concerns related to navigating the hallways.

A review of the present case’s record shows that during the 2022–23 school year, based on teacher 1’s schedule, the Student’s SDI minutes in reading, writing, and social emotional were completed well before the end of the school day. As for math, only on Mondays was it scheduled to be finished ten minutes before the end of the school day. Despite this, the documentation and information from the District indicates that all the Student’s SDI minutes in math were provided. As for the Student’s adaptive SDI, the Student received more minutes than called for in his November 2022 IEP, but some of those extra minutes were used to help with the Student’s gross motor goal, and this occurred in part when the Student was released early by 5–10 minutes from class at the end of the school day to navigate the campus with his walker and go to the bus.

In the present case, writing is the only area of SDI for which the Student did not receive his full minutes during the 2022–23 school year. Based on the information provided by teacher 1, the

Student received 175 minutes of writing SDI per week instead of 180 minutes as provided for in the Student's November 2022 IEP. This five-minute difference appears to have occurred because of a miscalculation by teacher 1 and not because of the Student's early releases.

Regarding the five minute per week of SDI the Student missed in writing during the 2022–23 school year, these five minutes per week add up to about 2.5 hours of writing instruction from mid-November 2022, when the IEP went into effect, through the end of the school year in June 2023. Although 2.5 hours is a quantifiable amount, it does not represent that the District materially failed to implement the Student IEP. The missing five minutes per week is a minor deviation from the IEP—about 3% of the Student's total writing minutes per week—and thus based on this case's overall record, it cannot be said that the District materially failed to implement this Student's IEP. Although, OSPI does remind the District that it should carefully plan schedules to ensure student IEPs are implemented.

As for the 2023–24 school year, based on information provided by teacher 2, the Student's SDI minutes in reading, writing, math and SEL were delivered before the last 15 minutes of the day, and the Student's adaptive minutes were delivered throughout the school day. Additionally, as provided in the facts above, according to the Complainant, the Student's November 2023 IEP is not at issue in the present case. While there may have been a few occasions that the bus left early, overall, the Student's IEP was materially implemented and the transition to the bus does not represent a failure to implement his IEP.

Finally, as for the Student's classmates, based on a review of the classmates' IEPs, which ranged in SDI minutes from 1,020 to 1,340 and their teachers' schedules, there was sufficient time during the school day during both the 2022–23 and 2023–24 school years to provide these students their SDI instruction. This is even assuming that these students left class ten minutes before the final bell to go to their after-school transportation. Further, as discussed above, the teachers shared information that at times, instructional activities were part of the transition to transportation, and that there were various student-specific considerations that were addressed during the transition, such as students with mobility considerations and elopement concerns. OSPI recommends the District review schedules to look at students' transitions to end-of-day transportation to determine if there is a different way to transition students along with everyone else.

While OSPI reminds the District that students with IEPs are entitled to a full school day and should not be released early for purely administrative reasons, in this case, OSPI finds that IEPs were fully implemented and the transition to the bus was not unreasonable under the circumstances. Thus, OSPI does not find a violation in this case.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 31st day of January, 2024

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.)