

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-186**

### **PROCEDURAL HISTORY**

On December 19, 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 Marysville 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 December 19, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On January 12, 2024, 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 January 24, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on January 25, 2024.

On January 23, 2024, the OSPI complaint investigator interviewed the Parent.

On February 6, 2024, OSPI requested additional information from the District. The District provided the information to OSPI and OSPI forwarded it to the Parent on the same day.

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 interviews.

### **ISSUE**

1. Did the District implement the accommodations for a scribe, scribe training, and computer program 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, (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 (1<sup>st</sup> Cir. 2003).

### **FINDINGS OF FACT**

1. At the start of the 2023–24 school year, the Student was a seventh grader who attended a District program and was eligible for special education services under the category of health impairment. The Student's most current IEP was developed in June 2023.
2. The District's 2023–24 school year began on September 1, 2023.
3. The Student's June 2023 IEP described the adverse impact of the Student's disability on their education as follows, "[Student] has a health impairment, motor and speech apraxia, that adversely impacts his ability to fully participate and access materials and environments in the general education setting. He requires SDI (specially designed instruction) in fine motor and a 1:1 para for writing assignments."

The IEP identified the following "Team Considerations":

- Student Strengths and Parent Input – The Student's strengths included making friends and his sense of humor. The Parent's concerns are a lack of work stamina and motivation to work hard at school. At home, he refuses to do homework or chores. The Parent stated, "The most important goal for [Student] would be independence and ownership over homework or assignments and their completion as well as trying his best every time."
- Communication Needs – "[Student] has a history of receiving SLP services. At this time, [Student] communication abilities do not significantly impact his ability to participate or access his educational curriculum. Although he continues to present with articulation skills that are below the average range for his age, he has demonstrated strategies for recognizing and repairing communication breakdowns when they occur. It is recommended that speech services be discontinued at this time."
- Assistive Technology – "[Student utilizes predictive text and speech to text software for writing accommodations (Ex. Read&Write software). He also benefits from accessibility features including enlarged cursor, external mouse for school tablet, access to digital writing assignments, voice notes/audio notes, touchscreen chromebook, and access to school tablet to take home to complete assignments. Due to [Student's] apraxia, he also requires the use of a 1:1 para for scribing both digital and handwritten work."

The Student's IEP stated the following regarding written language performance:

Once [Student] has an idea of what he wants to write he can get it out with his scribe. He can't write on his own. Teacher reports concerns that it is very difficult for him to complete writing without support. Voice to text doesn't work for him. He can type, but he is very slow. He struggles with process.

The Student's June IEP provided an annual goal in the area of fine motor (editing digital work and typing). The editing goal stated:

By 12/13/23, when given a writing assignment and digitally dictated words, [Student] will use Read and Write software and digital editing features to compose written work improving digital language skills from edits a paragraph of transcribed work with moderate assistance (50%) to edits a paragraph of transcribed work with minimal assistance (less than 25%) as measured by OT and classroom data.

The IEP included 25 accommodations and modifications in different settings and included a scribe, "voice notes/audio recording of short answers for assignments (Ex. Voice note feature of Read&Write software)", Chromebook, and 1:1 scribe for writing assignments, among others. Modifications included a 1:1 paraeducator to scribe for writing assignments. Staff supports included staff training on assistive technology and paraeducator training on the use of digital platforms for scribing, both at the beginning of the school year or at staff request.

The Student's IEP provided the following special education services:

- Fine Motor: 20 minutes monthly (provided by the occupational therapist (OT) in a special education setting)
  - Fine Motor: 10 minutes/4 times weekly (provided by the general education teacher in a general education setting)
  - Individual Student Support: 180 minutes/5 times weekly (provided by a 1:1 paraeducator in the general education setting)
4. On October 5, 2023, according to the District, the previous scribe assigned to the Student had transferred to a different school. The District provided a substitute scribe. At the time, the Parent reported to the OT that the Student was doing "very well" in his classes.
  5. On October 19, 2023, the Parent emailed the OT and stated the Student had the scribe for only the first period, not for the second and third periods.
  6. On October 24, 2023, the Parent emailed the OT and other District staff, stating that the Student did not have a scribe the previous day and that the Student was frustrated with having seven scribes in the past ten school days. The Parent stated the Student needed a consistent scribe because the Student's speech was difficult to understand, and the scribe needed training. The Parent stated the Student was doing "very well in his classes currently" and did not want the Student to fall behind.
  7. On November 14, 2023, the school principal emailed the OT requesting scribe training to the paraeducator. The OT provided the training on November 28, 2023, according to an email from the OT and the paraeducator.

8. On November 30, 2023, the team met to review the Student's IEP. The Student's grades were as follows:

- Language Arts – A
- Social Studies – A
- Science – B+
- Math – B
- Beginning Band – B+
- Physical Education – A

The IEP continued to provide the same goals in the area of fine motor and amended the special education services as follows:

- Fine Motor: 20 minutes/2 times monthly (provided by the OT in a special education setting)
- Individual Student Support: 180 minutes/5 times weekly (provided by a 1:1 paraeducator in a general education setting)

Accommodations continued to include, in part, "video notes/audio records of short answers for assignments (Ex. Voice note feature of Read&Write software and 1:1 paraeducator for writing assignments)". Supports for staff included training on assistive technology and paraeducator training on the use of digital platforms for scribing.

9. The prior written notice that accompanied the IEP meeting indicated that the District agreed to, in relevant part, increasing OT services, collaborating with the previous scribe for training, and extended school year (ESY) for compensatory services "for the lack of Scribe during transition time this year."

10. On December 19, 2023, the Parent filed this complaint with OSPI.

The complaint alleged that the Student did not have a trained scribe from October 9 to November 28, 2023, and the Student had difficulty in English language arts classes because he did not have a scribe. In addition, the Parent stated the Student's written work during this period appeared to be beyond his ability, which indicated the untrained scribes were doing too much of the work for the Student. The complaint also alleged the District failed to provide the Read&Write on the Student's computer. The delay had restricted "his growth towards independent learning in school academics and at home."

11. In the complaint, the Parent stated that the Read&Write software was necessary because other speech-to-text software did not understand the Student's speech patterns as well and it was recommended by a previous OT. The District appeared to use "Google Docs speech".

12. The District acknowledged it did not implement the accommodations and modifications that included a scribe, scribe training, and computer program in the Student's IEP. The District reported that the Read&Write software had been discontinued for the Student during this year, but other speech-to-text software was available. For corrective action, the District proposed staff training addressing the implementation of the IEP and compensatory education during summer 2024.

13. Regarding the proposed compensatory education during the summer, the Parent disagreed with the District's proposal. The Parent stated that summer services was "not an option for our family." The Parent did not elaborate why summer was not an option. The Parent proposed

before or after school tutoring when the Student could work on homework, assignments, and typing skills.

14. On January 17, 2024, the District issued the special education report on the Student's progress towards the annual goals. The report stated that the Student was demonstrating sufficient progress to achieve the goal within the duration of the IEP.

## CONCLUSIONS

**Issue One: IEP Implementation** – The complaint alleged the District did not implement the special education services in conformity with the Student's IEP. According to the complaint, the District did not provide a 1:1 paraeducator scribe, training to the number of scribes who worked with the Student, and the computer software for text-to-speech. A district is required to implement the special education services and accommodations in conformity with the Student's IEP.

Here, the Student's June and November 2023 IEPs included a 1:1 paraeducator for a scribe, scribe training, and computer speech-to-text, such as "Read&Write." The Parent asserted that the paraeducators who worked with the Student from October through November 2023 were not trained and there was no designated 1:1 paraeducator for the Student during that period. In October 2023, the previous 1:1 paraeducator scribe for the Student transferred to a different building. The District assigned a number of other paraeducators to assist the Student. It was unclear whether the paraeducators that assisted the Student received scribe training prior to November 2023 when a paraeducator was trained to be the Student's scribe. The District acknowledged it did not implement the accommodations and modifications at the beginning of the 2023–24 school year, including the 1:1 scribe. While the Student's IEPs did not specify there was necessarily one paraeducator that would be assigned to the Student to scribe, it appeared to be the District's and Parent's interpretation of the IEP. Thus, OSPI finds a violation with respect to different staff serving as the scribe in October through November 2023. Regarding the scribe training, the District acknowledged that scribe training was delayed as the new scribes started working with the Student in October and training did not take place until the end of November 2023. Thus, OSPI finds that the IEP was not implemented with respect to the staff training.

Regarding the Read&Write software, both IEPs included an accommodation that provided "video notes/audio records of short answers for assignments (Ex. Voice note feature of Read&Write software" ...)." The reference to Read&Write software in the accommodation appeared to be used as an example of a voice note feature rather than specifically requiring the software. However, the Student's June and November IEP goal referenced the Read&Write software specifically. The District stated it discontinued the Read&Write software during the 2023–24 school year. Reading the Student's IEP in context, the IEP called for the Read&Write software to be used with the Student, which the District failed to implement. A violation is found. For corrective action, the District is required to procure the Read&Write software as soon as possible.

In response to the complaint, the District proposed providing the Student compensatory education over the summer and training to staff regarding implementation of the IEP. The Parent

disagreed with providing compensatory education over the summer because it was not an option for their family. It was the District's prerogative to offer compensatory education to the Student. However, for OSPI to order compensatory education, there must have been some evidence that the violation resulted in the Student not receiving educational benefit. Here, the Student was advancing grade-to-grade, received A's and B's on his report card, and the progress reports stated the Student was making sufficient progress to meet the annual IEP goals. In addition, the Parent acknowledged that the Student was doing well. The District was not required to provide the very best, potential-maximizing education for the Student. Rather, the District must provide specialized instruction and related services that are individually designed to provide educational benefit to the Student, which the documentation in this case showed. Therefore, OSPI finds no basis to order the District to provide compensatory education to the Student. But OSPI accepts the District's proposed training regarding implementation of special education services.

### **CORRECTIVE ACTIONS**

By or before **February 22, 2024, March 8, 2024, and April 5, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Software**

By or before **March 1, 2024**, the District is required to procure the Read&Write software and implement it with the Student.

By **March 8, 2024**, the District must provide documentation that the District is providing the Read&Write software to the Student.

#### **DISTRICT SPECIFIC:**

##### **Training**

On or before **March 29, 2024**, the District must provide training to the Student's IEP team regarding the requirement to implement special education services in conformity with the IEP.

By or before **February 22, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **March 8, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments as needed.

By **April 5, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 February, 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.)