

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-191

PROCEDURAL HISTORY

On December 23, 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 Seattle 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 27, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On January 2, 2024, the District requested an extension of time to respond to the complaint. OSPI granted the extension in part to January 19, 2024.

On January 19, 2024, OSPI placed issue two in abeyance pending the outcome of due process 2024-SE-0003.

On January 12, 2024, OSPI received the District's response, part 1 to the complaint and forwarded it to the Parents on January 16, 2024. OSPI invited the Parents to reply.

On January 19, 2024, OSPI received the District's response, part 2 to the complaint and forwarded it to the Parents on January 23, 2024. OSPI invited the Parent to reply.

On February 15, 2024, the Parents requested an accommodation of extended time to submit their reply. OSPI granted this request and asked the Parents to submit their reply on March 1, 2024, which created an exceptional circumstance that required an extension of the 60-day timeline for completing this complaint investigation.

On March 1, 2024, the Parents requested an extension of time to submit their reply. OSPI granted this request and asked the Parents to submit their reply on March 4, 2024.

On March 4, 2024, the Parents requested an accommodation of extended time to submit their reply. OSPI granted this request and asked the Parents to submit their reply on March 11, 2024, which created an exceptional circumstance that required an extension of the 60-day timeline for completing this complaint investigation.

On March 4, 12, and 13, 2024, OSPI received the Parents' reply and additional documentation related to the Parents' reply. OSPI forwarded that reply to the District on March 13, 2024.

OSPI considered all information provided by the Parents 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 24, 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.

In addition, in the Parents' reply to the District's response to their complaint, the Parents raised new concerns such as concerns related to an IEP under development that the District proposed to implement in January or February 2024. OSPI notes that these new concerns were not included in the original complaint and are outside the scope of this complaint investigation. Any references to such concerns are included for context and are not intended to identify additional issues or potential violations.

ISSUE

1. Whether, since December 24, 2022, the District implemented the Student's individualized education program (IEP), specifically counseling, occupational therapy, assistive technology, and a visual schedule?¹

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. 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).

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 the 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. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

¹ When the complaint was opened, a second issue was identified, "Whether the District conducted a timely triennial reevaluation in December 2023 per WAC 392-172A-03015, including obtaining written, informed consent per WAC 392-172A-03000 and ensured parent participation?" The second issue is currently in abeyance pending the outcome of due process 2024-SE-0003.

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child's right to a FAPE; (2) significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105.

FINDINGS OF FACT

Background: January 2022 IEP

1. During the 2021–22 school year, the Student was eligible for special education services under the category of multiple disabilities and was in fifth grade.
2. The Student's IEP was amended on January 21, 2022. The IEP indicated the Student needed assistive technology (AT), including "an AT device for word processing, including word prediction, visual organization tools, text to speech (so he can hear his own writing), speech to text, training to use AT supports. He also needs Timer for breaks and reminders from AT device to take breaks."

The January 2022 IEP included goals in social/behavior (perspective taking, listening skills, and flexible thinking), study/organizational skills (task initiation/self-advocacy), and written language (planning/pre-writing tool, on-topic writing, and editing), with progress reporting at the trimester. The IEP included speech-to-text, text-to-speech, and a visual schedule.

The IEP provided the Student with the following related services and specially designed instruction:

- Speech language pathology (related service): 120 minutes per month (provided by a speech language pathologist (SLP) in the general education setting)
- Occupational therapy (related service): 300 minutes per year (provided by an occupational therapist (OT) in the general education setting)
- Social/behavior: 30 minutes per week (provided by special education staff in the general education setting)
- Written language: 20 minutes, twice per week (provided by special education staff in the special education setting)
- Study/organization: 10 minutes, twice per week (provided by special education staff in the special education setting)

In a prior written notice, dated February 2, 2022, the District noted the following regarding occupational therapy:

...A portion of the team met again on 1/31/22 and discussed OT service location and duration. Team agrees [occupational therapy services will be provided in the classroom. The parents requested increased services; the team considered this. The [OT] will discuss with student and staff but does not currently see a need impacting academics for increasing OT services. However, the OT agrees with parents and recommends a counselor to address the social/behavioral concerns for underlying issues.

3. In May 2022, the District agreed that the Student would receive counseling services. A May 5, 2022 prior written notice documented that the "team agreed to pursue having [Student] receive counseling at school" and noted the District would "look into finding a qualified mental health professional." The prior written notice also indicated the team discussed changing the Student's occupational therapy services but did not reach consensus and thus kept the services as written in the current IEP.

2022–23 School Year

4. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of multiple disabilities, was in the sixth grade, and his January 2022 IEP was in effect.
5. The District's 2022–23 school year began on September 14, 2022.

Complaint Investigation Timeline Began December 24, 2022

6. In their complaint, the Parents alleged the District failed to implement the Student's IEP and specifically provided information in the complaint related to mental health counseling services; occupational therapy, including interventions for sensory processing needs; assistive technology (AT); and a visual schedule. According to the Parents' complaint, the OT "prefers observations of [Student] over providing intervention that would teach him skills."

Related to the visual schedule, the Parents stated that, "According to our private providers [previously and] currently evaluating [Student] as part of the granted IEE, what the school staff considers visual schedule does not qualify as visual schedule"; and that, "The schedule provided to [Student] does not accurately reflect his actual schedule - when occupational therapy and SLP are being provided. The purpose of the visual schedule is predictability to decrease [Student's] anxiety and sensory dysregulation."

Related to AT, the Parents, throughout their reply to the District's response, indicated that AT was not implemented because the Student refuses to use AT and is triggered by things like the use of timers.

7. In January 2023, the Student began receiving one hour of counseling per week with a private psychologist contracted by the District. The Parents stated the Student received counseling services on January 2, 12, 19, and February 2, 2023.
8. On January 14 and 26, 2023, the District emailed the Parents regarding setting up a premeeting for the occupational therapy section of the Student's IEP and asked to excuse the OT from a scheduled IEP meeting.
9. Also, on January 14, 2023, the Parent emailed the Student's case manager and shared in part concerns that the OT was "not actually delivering services, she does observations."

- 10. On January 19, 2023, the OT sent the Parent and members of the IEP team a copy of the updated IEP with an updated occupational therapy section and present levels.
- 11. January 24 and 25, 2023 emails indicated the AT specialist supported with questions around a band practice log. Emails indicated the Student had an electronic and paper option for the practice log, and the band teacher offered other options for this class requirement.
- 12. On January 27, 2023, the Parents emailed District staff, stating that they were "disappointed" by the AT specialist's initial response regarding the Student's band practice logs and the AT recommendations offered. The Parents shared resources for training staff.

In subsequent emails throughout spring 2023, the Parents raised question and concerns about AT and completing observations for the "AT – Task/Tool Analysis."

- 13. On January 31, 2023, according to written notes, the AT specialist observed the Student. In part, the specialist noted the Student needed some prompting and clarification and had adequate handwriting. The specialist noted the classrooms had visuals posted: tools needed and a countdown timer for tasks.
- 14. Between February 10 and 13, 2023, the OT and band teacher discussed via email whether there were any concerns about the Student's behaviors and sensory sensitivities, or sensory seeking tendencies related to band. The band teacher noted that the Student sometimes struggled with the limited space in the classroom but did not seem to struggle with the noise. The band teacher noted that the Student "does know about the noise cancelling headphones I have available like the whole class does, but doesn't use them." The OT noted she had discussed the noise in band with the Student directly and indicated she would come observe the Student in band.
- 15. According to the Parents' reply, there were concerns about the Student's sensory processing impacting his access to band, in particular rehearsal and around concert attire. The Parents stated they spoke with the band teacher and that the band teacher stated that "that the OT joined his class once and only observed. No services were delivered to [Student] and he spoke with her very briefly to greet her only. He said he received no consultation from the OT."

In general, the Parents stated, "the focus of OT should have been to support [Student's] sensory modulation/sensitivities and help him regulate his sensory system." The Parents also stated that in a meeting in February 2023 to discuss occupational therapy, they agreed to "direct services" and that the OT would support the Student's "sensory needs to allow him to build up skills and ability to ride the school bus."

- 16. On March 22, 2023, the special education teacher emailed the Parents an updated visual schedule for the Student, with occupational and speech therapy added and electives updated. The schedule was as follows, with teacher names in original but removed below:

Monday, Tuesday, Thursday, and Friday

Period 1 – 8:55 to 9:45	Beginning Band
Homeroom – 9:50 to 10:20	Homeroom with

Period 2 – 10:20 to 11:10	Science
Period 3 – 11:15 to 12:05	History
Lunch – 12:05 to 12:45	Lunch
Period 4 – 12:45 to 1:35	Math
Period 5 – 1:40 to 2:30	ELA
Period 6 – 2:35 to 3:25	PE

Wednesday Early Dismissal

Period 1 – 8:55 to 9:35	Beginning Band
Homeroom – 9:40 to 9:55	Homeroom
Period 2 – 9:55 to 10:35	Science
Period 3 – 10:40 to 11:20	History
Period 4 – 11:25 to 12:05	Math
Lunch – 12:05 to 12:45	Lunch
Period 5 – 12:45 to 1:25	ELA SLP, sees Student between 12pm–1pm for 120 mins/month (30 minutes weekly) OT, sees Student between 12:25–1:25pm for 60 mins/month (15 minutes weekly)
Period 6 – 1:30 to 2:10	PE

The Parent responded, “Thank you for sending!”

17. On April 4, 2023, the District was notified by the Parent via email that the psychologist providing counseling services to the Student had passed away.
18. Emails between April 5 and 18, 2023, show the District began reaching out to find a new counseling provider for the Student.
19. On April 26, 2023, the AT specialist sent the special education teacher and Parents documentation (notes) from his observation of the Student on January 31, 2023.
20. A May 6, 2023 email from the OT explained more about the services she provided and how she worked with the Student, as follows:

OT typically supports [Student] Wednesdays between 12:25-1:25 for 60 minutes/month (15 minutes weekly) typically during recess, transitions and ELA. I have observed [Student] working with partners in [teacher’s] class (once or twice earlier this year) and there were no noted issues. OT services are currently supporting [Student] with self-regulation, written language skills, and executive functioning skills in real time during lunch, recess, transitions and ELA. The majority of the time during OT, [Student] requires little to no support or prompting in these areas. I work collaboratively at the table groups as [Student] feels more comfortable doing things alongside his peers (not separately). Please see service logs for details...
21. On May 11, 2023, a meeting was held with members of the IEP team, including the Parents and AT specialist. In part, at the meeting, they discussed the AT specialist’s observations. The District noted that during this meeting, they discussed “additional tools, such as Co:Writer, a word prediction Chrome extension.”

Prior to the meeting, the District emailed out the "Modified [Student Environment Tasks Tools Framework] SETT Draft" from November 7, 2022. This document included columns for each class to list tasks required, tools currently available, tools the Student has used and level of success, what changes might be needed to tools or supports required, who will support, and whether training was needed.

22. Also, on May 11, 2023, the OT emailed one of the Student's teachers regarding the Student's participation in typing club, noting the Student typed "32 WPM (96-100% accuracy)...a great improvement from 16 WPM in November." The teacher responded and sent the May 2023 typing club report.
23. On June 12, 2023, the special education teacher emailed District staff a copy of the modified AT document and asked staff to update if changes were needed, as the special education teacher was scheduling a meeting with the Parents to discuss AT.
24. The AT specialist's notes indicated there was a meeting on June 28, 2023, and that the "SETT form" was updated. The notes indicated they would meet on September 14, 2023 to go over the AT tools.
25. Emails from June 2023 indicated the Parents disagreed with how the District was assessing the Student's need for and needs around AT. Further emails indicated the District proposed to have the AT specialist trial AT tools in September 2023.
26. The District's response included occupational therapy logs. The OT's logs indicated that since December 22, 2022, the OT worked with the Student for 390 minutes. The OT primarily observed the Student during classes, lunch, recess, and transitions and noted whether there were sensory concerns (generally there were not), peer interactions and reciprocal conversations, transitions, ability to work independently, the Student's engagement in writing processes and assignments. For example, in June 2023, the OT noted the Student was proficient in copying and pasting, typing, and navigating a power point, and that the Student "used a pre-writing strategies [sic] to plan and prepare his work." The OT also documented working with the Student's teachers. At times, the OT provided more direct services, discussing sensory concerns with the Student and modeling drawings. Overall, the OT noted the Student generally did not need occupational therapy support.
27. The District, in its response, acknowledged that the Student did not receive counseling from April through June 21, 2023, despite efforts to secure another counselor.
28. According to the Parent's complaint:

District promised to provide compensatory counseling services and then demanded that we release the district of its responsibility for [Student's] mental health in exchange for compensating [Student] for denied access to FAPE related to counseling services. We were unable to consent to this proposal due to too many unknowns as his IEE at public expense in the area of behavior (including FBA) by [IEE provider] was (and still is) underway. We could not agree to the district's proposal without [IEE providers] evaluation.

29. On June 22, 2023, the District notified the Parent that it had located another counselor, who could begin providing services during the summer as compensatory services. The District stated the Student received 4.5 hours of compensatory counseling during the summer on June 30, July 24, July 31, and August 31, 2023. The Student was scheduled for a session on August 14, 2023, but did not attend.
30. The District offered compensatory education for the missed counseling services, "Relevant to the time period in this complaint, the offer included compensatory education for the twelve missed sessions between April and June 2023, as well as for delayed services in fall 2022^[2], in exchange for the parent agreeing not to sue to District for 'missed counseling services during the 2022-2023 school year.'"

The District further stated in its response that now that it understood the Parent disagreed with signing a release of liability, "to avoid the potential of duplicative remedies, the District has issued a [prior written notice] revoking its July 11, 2023 offer and agreeing to provide 20 hours of compensatory counseling services." The District stated that this offer "reflects the twelve hours owed for the time period of April through June 2022, plus the twelve hours owed for September through December 2022, but is reduced by four hours to reflect the counseling services the Student received this summer."

The District's position with respect to compensatory counseling following this complaint was documented in a later, January 19, 2024 prior written notice:

...On July 11, 2023 the district offered compensatory education, this offer was monetized so the parent could utilize the total of 24 hours in a more flexible way...During the summer of 2023 the district provided 4.5 hours of counseling services as compensatory education. On December 24, 2023, the parent filed SECC 23-191 alleging the District did not implement counseling services due to the gaps in service. The parent asked for compensatory ed. as a remedy. The district is again offering compensatory education, but revoking its prior July 11th, 2023 offer and instead is proposing a remedy that would be ordered by OSPI for the time period of April through June 2022, plus including a remedy for September to December 2022. To remedy missed services from September 2022 through June 2023, the district is offering a total of 20 hours...In the complaint for SECC 23-191, the parent indicated that the District's prior offer was not acceptable. The District will instead offer owed hours, which is the standard remedy for missed services and the likely remedy that would be ordered by OSPI. The District also wants to avoid the potential of duplicative compensatory ed. for the same time period...**The compensatory counseling will be provided by a qualified counselor of the District's choosing and will be available until January 1, 2025. The District's prior offer of July 11, 2023 is no longer agreeable to the District and is being withdrawn.

² The District noted in its response that "The District's compensatory education offer for September 2022 through December 2022 is for a time period not being investigated by OSPI in SECC 22-191. Because the Parent had requested the compensatory education to be in the form of services not called for in the IEP (music therapy), the District monetized the offer to allow for reimbursement, but the offer covered 24 hours in total." The monetary compensatory education offer was sent to the Parents on July 11, 2023.

31. The District’s school year ended on June 30, 2023.
32. A July 11, 2023 prior written notice documented that the District was working on “an AT tool” for the Student and that the “tool trial will be implemented in the fall,” with the IEP updated following that. Specifically, the notice indicated:
 Additionally, the IEP team is working on a AT task/tool analysis that includes meeting with [Student] to discuss the technology tools and trialing them. The team has been working on the AT tool throughout the school year, and will complete it in the fall. The results will be added to the IEP as needed. Once the...AT task/tool analysis is completed, the remaining sections of the IEP will be discussed and the IEP will be closed.

2023–24 School Year

33. At the start of the 2023–24 school year, the Student continued to be eligible for special education services, was in the seventh grade, and his January 2022 IEP continued to be in effect.
34. The District’s 2023–24 school year began on September 6, 2023.
35. On September 6, 2023, the special education teacher emailed the Parent a copy of the Student’s visual schedule, updated with his elective choices. The special education teacher stated the Student “wants to use the schedule he has but I’m offering this one to him as well.” The visual schedule included the following, with teacher and room numbers in original but removed below:

Monday, Tuesday, Thursday, and Friday

Homeroom – 8:55 to 9:25	Homeroom
Period 1 – 9:30-10:15	Language Arts
Period 2 – 10:20 to 11:10	Advanced Band
Period 3 – 11:15 to 12:05	Psychology
Period 4 – 12:10 to 1:00	Science
Lunch – 1:00 to 1:40	Cafeteria/playground break
Period 5 – 1:40 to 2:30	Math
Period 6 – 2:35 to 3:25	Washington State History

Wednesday Early Dismissal

HR – 8:55 to 9:10	Homeroom
Period 1 – 9:10 to 9:50	Language Arts
Period 2 – 9:55 to 10:35	Advanced Band
Period 3 – 10:40 to 11:20	Psychology
Period 4 – 11:25 to 12:05	Science
Period 5 – 12:10 to 12:50	Math
Lunch – 12:50 to 1:30	Cafeteria/playground
Period 6 – 1:30 to 2:10	Washington State History

In a subsequent email, the special education teacher explained regarding the schedule the Student was using that “he likes to use the print out schedule that the office gives out to use, that is the one of choice he is using now.”

36. In the Parents' reply to the District response, the Parents stated that the Student's schedule "does not include the visual of the length of time for each item on the schedule, and does not visually reflect activities" and that the schedule did not include when services would be provide by the SLP and OT. The Parent further stated:

The purpose of the visual schedule is predictability to decrease [Student's] anxiety and sensory dysregulation and to assist him based on his individual needs. This is not just a list of classes with starting and end time.

At this point, [Student's] developmental level, [Student] does not need a big bright picture but he does need the length of time of each activity to be to scale. Simple picture, or a simplified representation of the scheduled activity would be appropriate to not draw attention of [Student's] peers, causing him to refuse to use it.

37. The District stated in its response and provided invoices reflecting that the Student received an hour a week of counseling services throughout the 2023–24 school year. The counselor also met with the Parent and provided consultation.

38. Regarding their allegations related to AT, the Parents alleged that AT was not provided because the District "did not appear to be using the Student Environment Task Tool analysis (SETT) evaluation measure they chose as intended by its publisher" and that the District "promised in June 2023 that once we return to school in September, the AT trial of tools would begin. We have not heard the outcome of these SETT trials."

The Parents also stated that just having the "District-issued laptop for word processing, word prediction, visual organization tools, text-to-speech, speech-to text, and timers is not sufficient and it is not appropriate to just have these tools available but not to work with the student to teach him and practice how to use them." The Parents noted the Student has anxiety around being "perceived as being different" and will not use the tools on his devices if other students are not using those tools. The Parents stated the Student is not using any of the "listed AT tools, including coWriter" and that, "instead of being taught how to use the technology, [Student] was merely shown the standard tools provided to all students with disabilities. This lack of personalized instruction is the reason he hasn't accepted any AT tools and strategies."

39. AT specialist's notes indicated that on September 14, 2023, an extension was installed on the Student's computer.

40. On September 28, 2023, the AT specialist met with the case manager and the Student and installed and demonstrated various AT tools.

In a subsequent email, the AT specialist noted that the IEP team would need to trial other AT tools or programs with the Student as they work with him daily. The special education teacher noted that they used "OneNote currently for ELA writing" and that the Student had access to "office 365 word to use as option with co-writer implementation. The teacher noted the Student was "very content using OneNote" and that he "has options to use co-writer, yet he feels comfortable with the tools given."

41. On October 26, 2023, based on notes in the District's response, the AT specialist discussed AT with the Student and documented the following:
- 1) How are your classes going?
Good good at computer
 - 2) What are you using to do your written assignments (tools)?
 - a. Word, PPT for some assignments, presentation
 - 3) What are you using to keep track of your assignments and when they are due?
Remember decent memory no outlook for assignments
 - 4) Are you having difficulty completing your assignments? No.
 - 5) Have you had a chance to use Co:Writer since I installed the extension?
 - a. What did you think of it? No need to use Co:Writer maybe use if struggling
 - 6) Is it useful or not? Why? Have not need to use it.
 - 7) Are there any areas of school that you want to explore tech to help you with? No.

The AT specialist provided training and reviewed AT features with the Student and case manager. The District noted the specialist also consulted with the Student's general education teachers.

42. Also, on October 26, 2023, the OT emailed the Student's teachers and requested writing samples for the Student so that she could review for occupational therapy needs.
43. On November 9, 2023, the Parents met with a District special education supervisor. According to the Parents, the supervisor stated she would check in with the special education teacher regarding the Student's use of AT.
44. On December 13, 2023, the Parent emailed the special education teacher and in part shared concerns that the SLP and OT were mainly observing the Student. The Parent stated that was not what the IEP team agreed on when they put services on his IEP. The Parent also stated the OT's logs were inaccurate and incomplete, and that the OT did not appear to be addressing the Student's sensory needs.

In response, a District special education supervisor and the special education responded, stating in part that "through related services, providers have the option to perform director or indirect services, including observations" and that the Student's "progress report has been updated with their data from working with [Student]."

45. The District's response included occupational therapy logs. The OT's logs indicated that during the 2023–24 school year, the OT worked with the Student for 270 minutes. The OT primarily observed the Student during classes, lunch, recess, and transitions and noted whether there were sensory concerns (there were none), peer interactions and reciprocal conversations, transitions, ability to work independently, the Student's engagement in writing processes and assignments. The OT also provided consultation to the Student's team on Wednesdays for 15 minutes in various class periods, although primarily during unstructured times like lunch or recess. The OT noted that generally, there was no need for occupational therapy support.
46. In its response the District stated that:

The focus of [occupational therapy] has been to support any sensory modulation/sensitivities that may interfere with the Student's social participation, written language, and executive functioning, as well as support the Student with self-regulation. [OT] also provides consultation with the Student's IEP team members to ensure any sensory sensitivities were being managed in all school settings. [OT] has supported goals in study/organization skills ('task initiation/self advocacy'...), written language ('use of pre-writing tool'...), and social/behavior ('flexible thinking'...).

While the Parent has voiced concerns about the services, expressing concern that [OT] is not providing enough direct intervention to the Student regarding sensory issues, given that the Student receives [occupational therapy] as a related service, the Student receives a combination of both direct and indirect services, which may include 1:1, small group, whole class intervention, collaboration with the educational team, implementation and recommendations for accommodations and modifications, skilled observation and consultation, or any other necessary services needed for the Student to benefit from special education.

As reflected in the logs and email correspondence, the Student has received [occupational therapy] directed at addressing any sensory needs, with [OT] consulting with the Student's teacher, observing the Student during times with high sensory demands (e.g. lunch, band), and working directly with the Student to evaluate sensory needs...If the Student demonstrated that sensory issues were interfering with his access to academics or social participation, [OT] would work with the Student's school team to further adjust the environment as needed. However, this has not been necessary.

The OT also monitored and supported skills, as needed, in written language and executive functioning, including consulting with the Student's general education teachers. The Student has been consistently able to utilize pre-writing tools and transition between tasks independently...Similarly, the Student has demonstrated strong self-regulation and social participation...

47. The Parents, in their reply, reiterated concerns with occupational therapy during the 2023–24 school year, stating in part:

- The Student has challenges in band due to anxiety and "sensory integration functioning" and that the band teacher did not know the Student had occupational services on his IEP.
- The OT suggested the Student receive private occupational therapy services when the Parent shared with the OT that the Student was coming home from school exhausted and anxious.
- That the Student has not made progress in self-regulation and sensory processing challenges, and is not able to ride the school bus which has been a "long-discussed annual goal."
- That the discussion of the occupational therapy independent educational evaluation (IEE) has been a lengthy process and that the District has ignored IEE recommendations that both consultation and direct services be provided.
- The District has been "reluctant to update" the occupational therapy section of the Student's IEP and "[claim] that they cannot deliver the services that an OT in a medical setting can."
- The District does not recognize that "most of [Student's] needs are invisible" and that he masks his challenges "until he can't, such as at the end of the day and/or week."
- The Student stated he does not receive any direct services from the OT.

48. The District, in its response to the complaint, provided progress reports related to the Student's January 2022 IEP goals, with the most recent reporting date in December 2023. The progress report indicated the Student had met/mastered all goals.
49. The District was on winter break from December 18, 2023 through January 1, 2024.
50. A January 19, 2024 "therapeutic summary" from the Student's counselor shared observations about the Student. In part, the summary noted the Student was "initially unaware of his...[IEP] accommodations" but "actively engaged in a review of their specifics." The Student's "proactive approach reflects [a] newly developed commitment to understanding and utilizing the available resources to enhance his learning experience and overall well-being." The counselor noted that while the Student "has demonstrated increased receptiveness to suggestions and guidance, [he] continues to grapple with the concept of taking breaks, believing in the efficiency of pushing through tasks for a swifter resolution," which "often results in heightened fatigue and an increased likelihood of dysregulation or a subsequent crash."
51. The District noted in its response to the complaint that the Student's school team reports the Student is doing well in school, academically and socially, and that the Student has made "strong progress in his IEP goals and has a 4.0 grade average."

The District noted that the Parents receive a weekly communication each Friday that includes: "(1) what worked well for the Student; (2) what did not work well for the Student, and (3) whether there were issues with peers." The District stated the communication report was co-created with the Parent and includes weekly summaries from the Student's general education teachers and service providers.

52. The Parent, in additional documentation, noted that the weekly communication log "don't always have accurate observations, so they are purely anecdotal" and that the Student "often makes statements that show how things went down and it doesn't match up with the report. He gets to clarify things for us." The Parent provided copies of the weekly log with her comments added and emails from the Parents to the District providing input for the communication log. OSPI notes that some of the Parent's comments in the log were requests for more detail, some were the Student providing different information than the log, some comments indicated challenges the Student was having at home, there were statements that there were no notes about sensory processing on some of the logs, and a few comments were the Parent noting that the log information represented positive (e.g., "This is positive! Considering that it is January, this is how long it takes [Student] to warm up to new teachers and environment. Mid-school year.")

Additionally, in their reply, the Parents stated the District's "claim of progress is incorrect," stating that grades were not indicative of progress on IEP goals, that the Student was not receiving highly capable services, because the Student needed new IEP goals, and because the Parents stated they had not seen the Student's "progress monitoring data."

53. Regarding AT, the District stated the Student has “received support from the District’s AT Specialists.” The Student had access to a District-issued laptop for word processing, word prediction, visual organization tools, text-to-speech, speech-to text, and timers. The District also stated that the team also had various meetings throughout the school years to work on the “SETT AT framework”, aimed at ensuring the Student has the proper tools in each environment to complete his school tasks.

The District stated the school team reports that the Student accesses AT on his laptop and is “proficient at using the agreed-upon resources,” which was also documented “in the most recent draft of the SETT Task Tool Analysis, in which all teachers documented the tools utilized in their classes and summarized the Student’s success.”

54. Regarding the visual schedule, the District stated, “There has been no indication from the documentation or Student that he is unable to access or understand the schedule or that he has had difficulty transitioning to his classes.”

CONCLUSIONS

Issue: IEP Implementation – The Parents alleged the District failed to implement the Student’s IEP and provided information about several specific areas of concern, addressed below.

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 student with a disability and those required by the IEP.

Counseling: In May 2022, the District agreed the Student would receive counseling and documented this in a May 5, 2022 prior written notice. The Student began receiving counseling services, provided by a private provider the District contracted with in January 2023. Sadly, in April 2023, the District was notified that the counseling provider had passed away and despite District efforts to find another provider, the Student did not begin receiving counseling services again until the end of June 2023. The District acknowledged that there was a gap in the counseling services and offered the Parents compensatory counseling services in summer 2023 in the form of a monetary compensatory education offer. The Parents did not accept this offer. Subsequent to this complaint being filed, the District retracted its first offer of compensatory education and offered “a total of 20 hours since 4 hours of compensatory education were already provided to the student during summer 2023.” OSPI finds this an appropriate remedy for the identified violation, and the District will provide OSPI documentation of the schedule for the compensatory counseling.

Occupational Therapy: The Parents’ allegation regarding occupational therapy related to the fact that the OT was primarily observing the Student rather than providing direct services. According to the Parent, the OT “prefers observations of [Student] over providing intervention that would teach him skills.”

The Student's IEP in place during the period investigated included 300 minutes per year of occupational therapy as a related service provided by an OT in a general education setting. As of January 2024, the OT had provided approximately 270 minutes of services. The documentation showed that the OT primarily observed the Student and provided consultation to the Student's team, during classes, lunch, recess, and transitions. The OT noted whether there were sensory concerns (there were none), peer interactions, reciprocal conversations, transitions, ability to work independently, and the Student's engagement in writing processes and assignments. The District stated that the focus of occupational therapy was to support any sensory needs that may interfere with social participation, written language, and executive functioning. The District noted that the Student's occupational therapy is a related service, and thus can be provided as a "combination of both direct and indirect services, which may include 1:1, small group, whole class intervention, collaboration with the educational team, implementation and recommendations for accommodations and modifications, skilled observation and consultation, or any other necessary services needed for the Student to benefit from special education." The District stated that if the Student had "demonstrated that sensory issues were interfering with his access to academics or social participation, [OT] would work with the Student's school team to further adjust the environment as needed"; however, "this has not been necessary."

While OSPI is not a member of the IEP team and the investigation indicated there was continued disagreement regarding the amount and nature of the occupational therapy services, all of the information from District staff indicated there is little need for occupational therapy support at school. The Parents wanted to increase the amount of occupational therapy and the school District members of the IEP team did not agree or reach consensus that additional occupational therapy was needed; in fact, a February 2022 prior written notice indicated the OT did not "see a need impacting academics for increasing OT services." The Parents provided information that the Student masks needs at school and stated that the lack of appropriate occupational support means the Student cannot ride the bus and comes home from school exhausted and anxious. OSPI notes that while the IEP team needs to consider the Parents' input regarding needs that are more readily apparent outside the school day, the investigation shows that the District is supporting the needs that are showing up for the Student at school. Regardless, this appears to be an ongoing topic of discussion and one that the IEP team needs to address, both the amount of occupational therapy services and whether the IEP needs to include more specifics about the nature of the occupational therapy services. Overall, OSPI finds that the OT provided support and the District materially implemented the occupational therapy portion of the Student's IEP. OSPI finds no violation.

Assistive Technology: The Parents alleged that AT was not provided because the District "did not appear to be using the Student Environment Task Tool analysis (SETT) evaluation measure they chose as intended by its publisher" ("task/tool analysis") and that the District "promised in June 2023 that once we return to school in September, the AT trial of tools would begin. We have not heard the outcome of these SETT trials." The Parents also stated that the District having AT available for the Student was not sufficient as the Student refuses to use the AT and because they alleged the District has not taught the Student how to use these tools.

The Student's IEP in place during the period investigated indicated the Student needed AT, including "an AT device for word processing, including word prediction, visual organization tools, text to speech (so he can hear his own writing), speech to text, training to use AT supports. He also needs Timer for breaks and reminders from AT device to take breaks."

This investigation shows that the Student's IEP, with respect to AT, was materially implemented, although the Parents disagreed with how AT support was being provided and with how the District was conducting an AT "task/tool analysis". In spring 2023, emails and documentation show the AT specialist provided support and problem solving around AT, the AT specialist observed the Student and what tools were available in classes, and the AT specialist, along with other staff, provided input into the "task/tool analysis" document. This document included columns for each class to list tasks required, tools currently available, tools the Student has used and level of success, what changes might be needed to tools or supports required, who will support, and whether training was needed. In May and June 2023, members of the IEP team discussed the AT specialist's observations of the Student and discussed "additional tools, such as Co:Writer, a word prediction Chrome extension."

In fall 2023, the AT specialist worked with the Student and the special education teacher/case manager to install AT on the Student's computer, including "Co:Writer" and demonstrated/provided training on various AT tools. The specialist indicated that the IEP team could trial other AT tools with the Student as those staff work with the Student daily. The special education teacher noted that they used "OneNote currently for ELA writing" and that the Student had access to "office 365 word to use as option with co-writer implementation. The teacher noted the Student was "using OneNote" and that he "has options to use co-writer, yet he feels comfortable with the tools given." Generally, the Student had access to a District-issued laptop for word processing, word prediction, visual organization tools, text-to-speech, speech-to text, and timers.

The Parents, at times, stated they were "disappointed" in the AT specialist's support and expressed ongoing disagreement that the District was not assessing the Student's AT needs properly. While the Parents may disagree with the methodology of implementation and specifically how the District was assessing the Student's needs, the Student was being provided with AT. Overall, the complaint investigation showed the Student had mastered the goals in his IEP, was doing well in school both socially and academically, and as of January 2024, had a 4.0 grade average. The AT specialist and other staff working with the Student gave no indication that the Student was struggling due to a lack of AT. The District stated the school team reports that the Student accesses AT on his laptop and is "proficient at using the agreed-upon resources," which was also documented "in the most recent draft of the SETT Task Tool Analysis, in which all teachers documented the tools utilized in their classes and summarized the Student's success."

Exploring and using AT is and should be an ongoing process as the Student's needs change and develop over time. While recognizing the Parents' disagreement, the Student by all District accounts is successfully using technology and different AT tools in classes. OSPI finds the IEP has

been materially implemented and finds no violation. However, the Student's IEP team should continue to revisit AT needs as appropriate.

Visual Schedule: Related to the visual schedule, the Parents stated that, "According to our private providers [previously and] currently evaluating [Student] as part of the granted IEE, what the school staff considers visual schedule does not qualify as visual schedule" and that, "The schedule provided to [Student] does not accurately reflect his actual schedule - when occupational therapy and SLP are being provided. The purpose of the visual schedule is predictability to decrease [Student's] anxiety and sensory dysregulation."

The Student's IEP in place during the period investigated included an accommodation for a visual schedule. The investigation shows the Student was provided a basic visual schedule in a table format with the Student's periods, times of the class, class name, teacher, and for the 2023–24 school year, the classroom. During the 2023–24 school year, the Student's special education teacher noted that the Student preferred to "use the print out schedule that the office gives out to use, that is the one of choice he is using now."

OSPI finds that the visual schedule, while basic, was sufficient and met the Student's needs. While from a best practice standpoint, a visual schedule generally includes pictures or icons as it orients the eye and makes referencing easier; importantly, there is no regulatory definition of a visual schedule that dictates exactly what needs to be included. Guidance provides that a "visual schedule is a sequence of photographs, videos, line drawings, symbols, *text*, or other visual format that is used to show its user what he or she is expected to do" and are an intervention that can "help individuals follow a routine, transition between activities, develop new skills, and reduce dependence on caretakers when completing daily activities"³ (emphasis added). Regarding occupational and speech therapy, these services did not appear to have a set weekly time as the services, in part, helped address needs around transition and sensory across settings; and therefore, the OT would observe or work with the Student in different classes. If the IEP team feels the OT and SLP should work with the Student at a set, regular time, this should be added to the Student's schedule.

The District stated, "There has been no indication from the documentation or Student that he is unable to access or understand the schedule or that he has had difficulty transitioning to his classes." Importantly, the investigation and documentation, including the OT logs, show that there were no concerns among teachers and school staff regarding the Student's ability to transition independently, nor were there concerns around sensory regulation at school. The Student's schedule format did not negatively impact his ability to access or transition between classes.

OSPI finds that while a simple visual schedule, the District materially implemented the accommodation. OSPI finds no violation. If concerns continue, OSPI recommends the IEP team

³ See e.g., <https://ed-psych.utah.edu/school-psych/resources/documents/grants/autism-training-grant/Visual-Schedules-Practical-Guide-for-Families.pdf>

discuss whether the Student needs a visual schedule and if he does, what the specific need is and purpose of the visual schedule to inform the visual schedule formatting.

CORRECTIVE ACTION

By or before **April 5, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

Compensatory Counseling

By or before **April 5, 2024**, the District will provide OSPI with documentation of the schedule for the compensatory counseling hours. OSPI will review and determine at that time if further review or documentation deadlines are necessary.

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

RECOMMENDATIONS

OSPI notes that there were several areas where, although there was no IEP implementation violation, it is clear that there is ongoing disagreement and thus the potential need for ongoing IEP team discussions. OSPI recommends the IEP team continue these discussions at the next scheduled IEP meeting, including the following topics:

- Occupational Therapy: the amount and nature of the services, including considering the Parents' input regarding needs that are more readily apparent outside the school day.
- AT: Revisit the Student's AT needs as appropriate and needed.
- Visual Schedule: If concerns continue, whether the Student needs a visual schedule, the purpose of the schedule, and formatting.

Dated this 19th day of March, 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.)