

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-03

PROCEDURAL HISTORY

On January 5, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the guardian/grandparent (Parent) of a student (Student) attending the Tacoma 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 January 5, 2024, 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 February 7, 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 February 15, 2024, the OSPI complaint investigator interviewed the Student's special education teacher at the online program.

On February 21, 2024, OSPI requested additional information from the District. On February 23, 2024, OSPI received the information and forwarded the information to the Parent on the same day. The Parent replied on the same day, and that information was forwarded to the District on the same day.

OSPI considered all information provided by the Parent 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 January 6, 2023. 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.

ISSUES

1. Did the District implement the special education services in conformity with the Student's individualized education program (IEP) according to WAC 392-172A-03105?
2. Did the District develop an IEP that met the unique needs of the Student according to WAC 392-172A-03110?
3. Did the District provide the Parent with special education progress reports according to WAC 392-172A-03090?

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.

"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).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's

progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

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, (9th 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 (9th 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 (9th 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 (9th 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 (1st Cir. 2003).

FINDINGS OF FACT

2022–23 School Year

1. At the start of the 2022–23 school year, the Student was a second grader who attended a District elementary school and eligible to receive special education services under the category of autism.
2. In November 2022, the Student transferred to a District online program. According to the District, instruction at the online program is both synchronous and asynchronous and the Student had synchronous and individual instruction in general education and special education classes.
3. On December 6, 2022, the Student's IEP team developed a new annual IEP for the Student. The IEP "Team Considerations" described the Student as sweet, kind, and hard-working. He was "responsible with his attendance and engagement online learning, and very interested in reviewing his progress." However, at home, the Parent reported that the Student has frequent meltdowns when frustrated, harms himself, breaks things, overturns tables, and throws chairs. He was impulsive and lacked focus. The IEP included annual goals in reading, written expression, adaptive behavior/self-help, social/emotional/behavioral, and communication, with progress reporting at the trimester. The behavior goals were respecting the learning environment, using calming strategies, and raising his hand to ask for help. The IEP included

11 accommodations, including reduced assignments, access to sensory supports and strategies, and use of concrete manipulatives. The Student's December 2022 IEP provided the Student with the following specially designed instruction (SDI):

- Adaptive/Self Help: 15 minutes, 1 time daily (to be provided by special education teacher in a general education setting)
- Social/Emotional/Behavioral: 15 minutes, 1 time daily (to be provided by special education staff in a special education setting)
- Reading: 30 minutes, 5 times weekly (to be provided by a special education teacher in a special education setting)
- Written Expression: 15 minutes, 5 times weekly (to be provided by a special education teacher in a special education setting)
- Social/Emotional/Behavioral: 5 minutes, 2 times daily (to be provided by special education staff in a general education setting)
- Communication: 120 minutes, 1 time monthly (provided by the speech/language pathologist or speech/language pathologist assistant in a special education setting)
- Social/Emotional/Behavioral: 30 minutes, 1 time weekly (to be provided by a special education teacher in a special education setting)

Supplementary aids and services, including occupational therapy (OT) for 20 minutes once a week to be provided by the occupational therapist or occupational therapist assistant in a special education setting.

4. The Student's special education teacher stated that the Student also received 1:1 SDI in reading by the general education teacher, which was confirmed by the "Teams" calendar. However, the Parent claimed that the Student did not receive any SDI on Wednesdays.
5. On January 6, 2023, the one-year timeline for the complaint began.
6. In March 2023, the special education progress report stated the Student made sufficient progress toward meeting the annual goals. The Student mastered the communication goal. In the general education report card, the general education teacher stated, in part, the Student completed all assignments "carefully and on time." The Student was reading at the mid-first grade level.
7. In May 2023, the general education report card stated, in part:
[Student] finishes all of this work carefully and on time. He is reading DRA (Developmental Reading Assessment) level 10 and is working on writing complete sentences. He recently began working with [learning assistant program teacher] and [learning resource teacher]...
8. In June 2023, the special education progress report stated the Student was making sufficient progress to meet the annual goals.
9. In the complaint, the Parent alleged the District did not provide the Parent with special education progress reports from January–December 2023. The special education teacher informed OSPI that the progress reports were emailed to the Parent. However, the District was unable to provide OSPI the emails that it stated were sent to the Parent.

2023–24 School Year

10. At the start of the 2023–24 school year, the Student was a third grader who continued to attend the District online program and remained eligible for special education services under the category of autism.
11. On November 6, 2023, the IEP team met to review the Student’s IEP. Under the “Team Considerations” section in the IEP, the following areas were addressed, in part:
 - Student strengths and parent concerns: “The Student was responsible with attendance and engaged on-line.”
 - State and district-wide assessments: The iReady results for reading ranged from kindergarten (phonics) to grade 2 (high-frequency words) Math results were at the second grade level.
 - Behavior: the Parent reported the Student had difficulties with “meltdowns,” self-harm, breaking things, overturning tables, and throwing chairs. The Student also had challenges with impulsivity and emotional regulation.

According to the general education teacher report, the Student spent the majority of his time in the general education setting. He attended classes and “his 1:1 regularly; he was eager to participate.” Staying focused on topic was difficult and he often interrupted the teacher and other students, instead of raising hand. He was very good at completing assignments and had completed all his assignments in English language arts (ELA) and math. The camera was always on, and the Student was engaged, on time, and recalled details of the work.

The IEP also stated:

When in the general education environment, it should be remembered that [Student] has Autism and ADHD which may impact his attention, compliance, affect, motivation, and emotional responses. This may in turn impact his performance on academic work, participation in class, and willingness to comply with adult requests. In addition, he has significant communication difficulties that may impact his ability to be understood when he speaks and to understand social language skills (such as facial expressions, body language, and listening behaviors).

The IEP continued to provide goals in the areas of reading, written expression, social/emotional/behavioral, and communication and progress would be reported at the trimester. The behavior goal was related to improving self-regulation. The IEP provided the following SDI and related services:

- Adaptive/Self Help: 15 minutes, 5 times weekly (to be provided by special education teacher in a general education setting)
- Adaptive/Self Help: 60 minutes, 1 time weekly (provided by a special education teacher in a special education setting)
- Social/Emotional/Behavioral: 15 minutes, 5 times weekly (to be provided by the general education teacher in a general education setting)
- Reading: 150 minutes, 1 time weekly (to be provided by a special education teacher in a special education setting)
- Written Expression: 45 minutes, 1 time weekly (to be provided by a special education teacher in a special education setting)

- Communication: 120 minutes, 1 time monthly (provided by the speech/language pathologist or speech/language pathologist assistant in a special education setting)
- Social/Emotional/Behavioral: 60 minutes, 1 time weekly (to be provided by a special education teacher in a special education setting)
- Social/Emotional/Behavioral: 15 minutes, 5 times a week (to be provided by a general education teacher in a general education setting)
- Occupational Therapy: 20 minutes, 1 time weekly (provided by an occupational therapist or certified occupational therapist assistant in a special education setting)

12. The District provided the following school schedule for the Student, including the SDI in the learning resource center (LRC):

Schedule	Monday	Tuesday	Wednesday	Thursday	Friday
9:00	Morning Meeting	Morning Meeting	Morning Meeting	Morning Meeting	Morning Meeting
9:30	LRC Writing 1	LRC Writing 1			
10:00	Whole Group ELA		Whole Group Writing		
10:30	LRC Math ¹	LRC Math		LRC Math	LRC Math
11:00	Whole Group Math		Whole Group Math		
11:45	Lunch	Lunch	Lunch	Lunch	Lunch
12:15	Science/SS		Specialist	Library	Specialist
12:45			Science/SS		
1:15	LRC Reading	LRC Reading		LRC Reading	LRC Reading
1:45				Social Group	Social Group

13. According to the special education teacher, the Student received adaptive/self-help SDI concurrent during general education instruction, as well as social/emotional/behavioral SDI. Social/emotional/behavioral goals were also addressed in the social group.

14. The Parent’s complaint alleged the District failed to provide a significant amount of the special education services to the Student from January–December 2023 when the Student began attending a District in-person elementary school.

The District acknowledged that services were not provided but did not indicate how many hours of services were not provided. The Parent and District provided the Student’s “Teams” calendar that documented when services were canceled. However, the special education teacher reported that when the actual implementation time would temporarily change, the schedule showed the services canceled. The District did not provide any indication when the service schedule temporarily changed. In addition, the calendar did not identify holidays and other days that there was no school, but the District provided a list of holidays and no school days. The calendar also showed days when services were provided, although it was a holiday.

¹ The Student did not receive SDI in math. The “specialist” was the speech/language pathologist and occupational therapist.

The following list is the number of days that SDI was missed, either partial or all day from the beginning of January through the beginning of December 2023:

- Days SDI was Missed: 85 days
- Teacher Leave: 14 days
- Holiday and Snow Days: 16 days
- Release Days: 4 days

According to the District, release days were time away from the classroom and a substitute teacher would be provided. The District was unable to verify that a substitute teacher provided services when the special education teacher was either on leave or released. The Parent stated no substitute teacher was provided.

15. In November 2023, the Parent and the teacher on special assignment exchanged emails regarding the Parent's concern that the general education curriculum was too difficult for the Student and should be modified or changed. The Parent stated the Student had not achieved the IEP goals for reading, writing, and adaptive self-help in prior years. The Parent insisted on the District using the "Sonday" curriculum for SDI, which the District eventually purchased.
16. On December 7, 2023, the Student transferred from the online program to an in-person elementary school.
17. On January 1, 2024, the Parent emailed the director of student services regarding the "extensive compensatory services" the Student was due because the special education teacher or service provider was not available.
18. The Parent also alleged that the District failed to address, develop, or implement a behavior support plan and "exclud[ed] my child from online school discussions for behaviors related to his disabilities." According to the Parent, the general education teachers "frequently" muted the Student when the Student was impulsive or "had a meltdown." The Parent cited a January 2024 email that describe an incident when the Student became upset and turned over a table while attending school in-person. The Parent also cited two emails that described incidents in 2022.
19. In an interview with the Student's special education teacher at the online program, the teacher stated that the Student attended well, but sometimes needed prompting or redirection. There were no significant behavior concerns attending online.
20. On January 10, 2024, the District administered the iReady assessment for reading and math. The Student's results in reading ranged from grade one (phonics and comprehension) to mid or above grade level (high frequency words). The results indicated that the Student was making greater than "typical growth" as a result of instruction, but lower than "stretch growth" that would put the Student at grade level.

CONCLUSIONS

Issue One: IEP Implementation – The Parent alleged that the District failed to provide the Student with the special education services in the IEP. A district is required to provide special education services in conformity with the Student’s IEP. The District acknowledged that special educations were not provided according to the Student’s IEP.

Here, the Student’s November 2022 IEP provided SDI in the areas of adaptive self-help, social/emotional/behavioral, reading, written expression, and communication. At the beginning of the 2023–24 school year, the Parent enrolled the Student in a District online program. In November 2023, the IEP team reviewed and revised the IEP to reconfigure the same services, some of which would now be provided by the general education teacher in the general education setting.

The District acknowledged that some SDI was not fully provided to the Student, although the District did not indicate how much instruction was not provided. OSPI reviewed the documentation and found some inconsistencies between the Student’s IEPs, the “Teams” calendar, and the Student’s schedule. The Student’s schedule prior to the November 2023 IEP was not provided. The following are examples of the inconsistency between the IEPs, the calendar, and the Student’s schedule:

- The 2022 IEP provided reading services 30 minutes, 5 times a week. The 2023 IEP provided reading one time weekly for 150 minutes, but the schedule indicated the Student received reading SDI 4 days a week for 30 minutes.
- The schedule showed the Student received SDI in math, but there was no goal or math services on either the 2022 IEP or 2023 IEP service matrix.
- According to the Student’s 2023 IEP, social/emotional/behavior services were provided concurrently in the classroom 15 minutes, 5 times a week and 60 minutes once a week. The social group that addressed the social/emotional/behavioral needs met twice a week for 30 minutes.
- The 2022 IEP provided nonconcurrent SDI in reading 30 minutes, 5 times week. The 2022 IEP also provided concurrent SDI for writing 15 minutes, 5 times a week. The Teams calendar showed that the Student received instruction in both reading and writing instruction at the same session for what appeared to be 30 minutes, 4 days a week.

While the frequency may not be necessarily important, the inconsistency between the documentation made calculating the total amount of missed SDI near impossible. The “Teams” calendar showed that the social group was canceled approximately 26 times, reading SDI approximately 60 sessions, and writing SDI approximately 36 sessions. In addition, the calendar showed that 16 speech sessions and 8 occupational therapy sessions were canceled. However, the District provided that some sessions labeled as canceled were actually not canceled but had the time adjusted, and it was unclear whether other sessions made up for lost instructional or therapy time. Overall, though, based on all the documentation, a violation is found.

The District is required to provide the Student with compensatory education. A compensatory education remedy is not necessarily required to make up missed services minute-for-minute; rather, it is based on the impact on the Student. Despite the SDI that was not provided to the Student, the documentation from special education progress reports, iReady, and teacher reports

showed the Student still made some progress toward the annual goals and in the general curriculum, although the Student may have made better progress if the SDI was provided in conformity with the IEP. The Parent may not have been aware of the progress because the Parent did not receive special education progress reports. In light of some progress being made, the IEP team is required to meet and determine the amount of compensatory education to provide the educational benefits that likely would have accrued from the special education services the District should have implemented in the first place, taking into account the progress that the Student has been made.

Issue Two: IEP Development – The complaint alleged the District failed to provide a curriculum that met the Student’s needs and provided necessary behavior supports. A district is required to develop an IEP to meet the unique disability related needs of the student, including behavior. The District denied the allegation.

Behavior: In the complaint, the Parent stated that the District “frequently” muted the Student because of impulsivity and meltdowns, and that the District should have developed a behavior support plan to address the Student’s impulsivity. In the Student’s IEP, the Parent also expressed concern about the Student’s behavior at home that included meltdowns, self-harm, breaking things, and overturning chairs in tables. The Parent also cited a January 2024 incident at school in which the Student overturned a desk at school as reason for behavior plan. But the District indicated that these types of behaviors were very infrequent during online instruction. The Student’s teachers reported that the Student sometimes needed prompting and redirection to stay focused. The Student also sometimes interrupted the teacher and other students without raising his hand. To address the Student’s behavior, the December 2022 and November 2023 IEP goals were for the Student to improve raising his hand and asking for help, respecting the learning environment, and improving self-regulation, among others. The special education progress reports and teacher reports indicated the Student made progress in these areas. Because the 2022 and 2023 IEPs addressed the Student’s behavior and the Student made progress with his behavior issues during instruction, no violation is found.

Curriculum: The complaint alleged that the curriculum used in the online program was too difficult for the Student and did not meet his needs. Here, the Parent appears to have conflated curriculum with SDI. SDI is how the content, methodology, or delivery of instruction is adapted to meet the Student’s disability-related unique needs and access the general curriculum. The District was required to provide SDI that was reasonably calculated to provide the Student with meaningful benefit. And if the Student did not make adequate progress in the annual goals and general curriculum, the District was required to review and revise as appropriate to address the unexpected lack of progress. While it may have been the Parent’s belief that a different curriculum would provide the best education to the Student, the District was required to ensure that the Student made meaningful progress toward the IEP goals and the general curriculum. In this case, whatever progress was lacking was not necessarily due to the SDI or curriculum; any lack of progress was more likely due to the District’s failure to provide services according to the IEP as described in issue one. No violation is found.

Issue Three: Progress Reports – The complaint alleged the District did not provide the Parent with special education progress reports. IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. The District denied the allegation.

The Student’s December 2022 and November 2023 IEPs stated progress reports would be provided each trimester. The documentation showed progress reports for March and June 2023 for the relevant time period between January 2023 and December 2023. The special education teacher stated the progress reports were emailed to the Parent, but the Parent stated she did not receive the reports. The District was unable to provide the emails showing the progress reports were emailed. Because the District was unable to verify the reports were sent to the Parent, a violation is found. The corrective action requires the District to provide the Parent with the progress report and develop a procedure to document that progress reports are sent to parents.

CORRECTIVE ACTIONS

By or before **March 15, 2024, March 22, 2024, March 29, 2024,** and **April 5, 2024,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Progress Reports

By **March 8, 2024,** the District will provide the Parent the progress reports to ensure the Parent has information about the Student’s progress for the November 2023 IEP. OSPI must be copied if the District emails the Parent. Otherwise, the District must send documentation that the progress was sent to the Parent by **March 15, 2024.**

Compensatory Education

By **March 22, 2024,** the District must conduct an IEP meeting to determine the areas of SDI and amount of compensation education to be provided to the Student. By **March 29, 2024,** the District must provide OSPI with a copy of the meeting notice, the IEP, and prior written notice that explains the decision. If the IEP team is unable to reach consensus regarding the compensatory education, OSPI will make the final decision on the amount of compensatory education.

Depending on the services and amount, OSPI will set additional timelines as needed.

DISTRICT SPECIFIC:

By **March 29, 2024,** the District must develop procedures as to how the District will document that special education services are provided according to the IEPs attending the online program and that progress reports are sent to parents. The procedures will be sent to all special education staff and administrators at the District online program.

By **March 22, 2024**, the District will submit a draft of the procedure for OSPI's approval. OSPI will provide feedback as necessary.

By **April 5, 2024**, the District will provide documentation that all special education staff and administrators at the online program have received the procedure.

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 4th day of March, 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.)