

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-08**

### **PROCEDURAL HISTORY**

On January 8, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parents (Parents) of a student (Student) attending the Seattle School District (District). The Parents 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 8, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 9, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 2, 2024, OSPI received the District's response to the complaint and forwarded it to the Parents on February 5, 2024. OSPI invited the Parents to reply.

On February 20, 2024, OSPI requested additional information from the Parents. The Parents provided that information on February 22, 2024, and OSPI forwarded to the District on the same day.

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 January 9, 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.

### **ISSUE**

1. Per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly since January 9, 2023, including the Student's availability to her assistive technology?

### **LEGAL STANDARDS**

IEP Implementation: "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

## FINDINGS OF FACT

### 2022–23 School Year

1. On September 14, 2022, the District held its first day of instruction for the 2022–23 school year. The Student was a ninth grader in a District high school and the Student's December 2, 2021 IEP was in effect. The Student was eligible for specially designed instruction under the category of autism.
2. On November 22, 2022, the Student's IEP team met to develop her annual IEP. The Student's IEP provided specially designed instruction (SDI), provided primarily by a special education teacher, from November 30, 2022 until November 29, 2023, in a special education setting, as follows:
  - Functional Written Language: 300 minutes/weekly
  - Social/Behavior: 400 minutes/weekly
  - Adaptive/Life Skills: 400 minutes/weekly
  - Functional Math: 300 minutes/weekly
  - Functional Reading: 300 minutes/weekly

The Student received the following related services:

- Speech and Language Pathology: 180 minutes/monthly (by a speech and language pathologist (SLP))
- Occupational Therapy: 90 minutes/monthly (by an occupational therapist (OT))

The Student received 1,825 minutes per week of building instructional time, with 1,767.5 minutes served in the special education setting. The percent of time in a general education setting was 3.15%. The Student's LRE was 0–39%.

The IEP's accommodations section stated, "Access to ACC 9 (Speech Generating Device); daily access in all school settings (general and special education)."

Progress reports were to be provided quarterly.

3. On January 9, 2023, the investigation period for the present case began.
4. From February 27 through March 15, 2023, and from June 1 through June 30, 2023 (last day of school), the Student was absent from school.<sup>1</sup>

### 2023–24 School Year

5. On September 6, 2023, the District held its first day of instruction for the 2023–24 school year. At the start of the 2023–24 school year, the Student was a tenth grader in a District high school.

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<sup>1</sup> The Student was absent from February 27 through March 15, 2023, and from June 1 through June 30, 2023, due to family medical emergency.

The Student continued to be eligible for special education and the Student's November 2022 IEP was in effect.

6. On September 20, 2023, teacher 1 (special education teacher) was placed on administrative leave following allegations that teacher 1 used an inappropriate physical intervention with the Student.<sup>2</sup>
7. On October 2, 2023, teacher 2 started as a long-term substitute teacher for teacher 1.
8. The Student's progress reports for her functional math, functional reading, and one of her two adaptive/life skills goals include only quantitative information and only for June 2023. The second adaptive/life skills goals only provided information for June 2023, and that information recorded as "N/A".

The Student's progress reports for her two social/behavior goals, which the SLP worked on, include qualitative and quantitative information for February and April 2023, and only qualitative information June and November 2023.

And, the Student's progress reports for her functional writing goal, which the OT worked on, include qualitative and quantitative information for February, May, and June 2023, and only qualitative information November 2023.

9. On December 8, 2023, the Student's IEP team met to develop her annual IEP. The Student's IEP provided SDI provided primarily by a special education teacher, from December 8, 2023 until December 6, 2024, in a special education setting, as follows:
  - Adaptive/Life Skills: 400 minutes/weekly
  - Functional Math: 300 minutes/weekly
  - Functional Reading: 300 minutes/weekly
  - Functional Written Language: 300 minutes/weekly
  - Social/Behavior: 300 minutes/weekly

The Student received the following related services:

- Occupational Therapy: 90 minutes/monthly (by an OT)
- Speech and Language Pathology: 180 minutes/monthly (by an SLP)

The Student received 1,825 minutes per week of building instructional time, with 1,667.5 minutes served in the special education setting. The percent of time in a general education setting was 8.63%. The Student's LRE was 0–39%.

Under the IEP's modification section, the IEP stated, "Access to ACC."

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<sup>2</sup> The District's response stated, "This matter has been investigated by the District and will not be addressed in this response. ..., [teacher 1] continues to be on leave. This also means that [teacher 1] was not available to assist in responding to the issue in this complaint."

10. On January 8, 2024, OSPI received the present special education complaint. The Parents alleged, in part, that the Student was denied her SDI and denied access to her AAC.

11. On February 2, 2024, the District submitted its response. The response included OT logs from January 2023 through January 2024, and SLP logs from January 2023 through January 2024.

Regarding the alleged failure to implement the Student's IEP, the District responded, in part:

... During the 2022-2023 school year, [Student] had access to her iPad speech generating device but was not frequently encouraged to use it outside of her SLP and OT sessions.

...

[Student's] IEP was not properly implemented between January 9, 2023 and October 1, 2023. While investigating this complaint, it came to light that [Student] was not receiving all the SDI in her IEP; though, the District maintains she did receive all of her SLP and OT services. Prior to [teacher 2] taking over, it appears that [Student's] day was not clearly organized, and she did not receive much SDI daily targeted toward her goals, except for the goals supported by the SLP and OT. Further, [teacher 1] failed to consistently report [Student's] progress, thus it is difficult to determine whether she made progress on these goals despite the limited SDI.

The District does believe that [Student's] IEP has been implemented since October 2, 2023. The District admits that a couple of her goals were not worked on for a few weeks, but the underlying skills continued to be addressed and her progress monitored. Since taking over as the long-term substitute, [teacher 2] has revamped how the class is run and how SDI is delivered to students.

The District agrees that [Student] is owed compensatory education services for the District's failure to properly implement her IEP between January 9, 2023 and October 1, 2023, the District proposes that [Student's] IEP team meet to determine an appropriate offer of compensatory education services. The District would like to explore partnering with community organizations to provide [Student] with services that could include camps (e.g., Outdoors for All) or other activities that are tailored to students with needs similar to [Student's]. The District believes that Parents and those working with [Student] on a regular basis are best equipped to develop a plan that will work for [Student].

## CONCLUSIONS

**Issue 1: IEP Implementation** – Regarding the present case's issue, IEP implementation, the Parents alleged that since January 9, 2023, the Student did not receive her SDI and was denied access to her ACC. The District, in its response, admitted that the Student's IEP was not properly implemented from January 9 to October 1, 2023.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

Based on the District's admission and the present case's facts, OSPI finds that the District materially failed to implement the Student's November 2022 IEP. The District acknowledged that the Student's IEP was not implemented fully and noted that a new teacher (long-term substitute)

started in the Student's class, the teacher has revamped how the class is run, and how SDI is delivered to students. Thus, OSPI finds a violation regarding the present case issue and will order compensatory education for functional math, functional reading, and adaptive/life skills. OSPI also reminds the District that based on the Student's December 2023 IEP, she is to have access to her ACC device in all settings. Additionally, as the District indicated in its response that this may have impacted other students in the class, the District will be required to conduct a review/audit of the IEPs of the classmates of the Student to review whether these students received their service minutes during this period and if any compensatory education is needed.

Regarding compensatory education, between January 9 and October 1, 2023, the Student missed up to the following:

- Functional Math: 7,500 minutes.
- Functional Reading: 7,500 minutes.
- Adaptive/Life Skills: 10,000 minutes.

Compensatory education will not be ordered for the Student's functional writing goal, worked on by the OT, and two social/emotional goals, worked on by the SLP, because the District's response included OT and SLP logs from January 2023 through January 2024 that showed the Student received her SDI for these three goals and provided progress information in these areas.

However, the progress reports provided very little information on the Student's progress in math, reading, and adaptive/life skills or noted "N/A" on the progress report, indicating that the missed SDI had a greater impact in these areas. OSPI also notes that while the District acknowledged the IEP was not fully implemented, it is likely that the Student was provided some amount of SDI, and thus OSPI finds that the District and Parent will come up with a compensatory education plan that provides the Student approximately a third of the missed time in the areas of math, reading, and adaptive/life skills:

- Functional Math: 40 hours
- Functional Reading: 40 hours
- Adaptive/Life Skills: 55 hours

### **CORRECTIVE ACTIONS**

By or before **March 29, 2024, April 26, 2024, August 30, 2024, November 29, 2024, and February 14, 2025**, the District will provide documentation to OSPI that it has completed the following corrective actions.

### **STUDENT SPECIFIC:**

#### **Compensatory Education**

By or before **April 19, 2024**, the District will meet with the Parents to establish a schedule for the following compensatory education:

- Functional Math: 40 hours
- Functional Reading: 40 hours
- Adaptive/Life Skills: 55 hours

Unless otherwise agreed to by the District and Parents, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, as appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program if that program will provide specially designed instruction in the Student's areas of service, including, as the District suggested, partnering with community organizations to provide Student with services that could include camps (e.g., Outdoors for All) or other activities that are tailored to the Student's needs.

By or before **April 26, 2024**, the District will provide OSPI with a prior written notice (PWN) or other documentation of the schedule for services.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. By or before **January 31, 2025**, the compensatory education must be completed.

By or before **August 30, 2024** and **November 29, 2024**, the District will provide OSPI with a PWN or other documentation updating what services have been provided. By or before **February 14, 2025**, the District must provide OSPI with documentation of completion of this compensatory education award.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. By or before **February 14, 2025**, the District will provide OSPI with a PWN or other documentation of compliance.

#### **DISTRICT SPECIFIC:**

##### **Classroom Review**

By or before **March 22, 2024**, the District will review/audit the IEPs of the classmates of the Student between January 9 and October 1, 2023 to ensure that these students received the services minutes that were allocated in their IEPs from January 9 to October 1, 2023.

By or before **March 29, 2024**, the District will provide documentation to OSPI that it has completed the review/audit. The documentation should include a list of the students and whether each student has received their IEP service minutes. For those students who the District determines have not received their required IEP service minutes, the District will propose corrective action.

By **May 1, 2024**, OSPI will review the District's documentation and inform the District whether any additional corrective action is needed.

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 7th 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.)