

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-11**

### **PROCEDURAL HISTORY**

On January 23, 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 23, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 26, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 8, 2024, the District requested an extension of time to provide its response. OSPI approved the extension to February 20, 2024.

On February 20, 2024, OSPI received the District's response to the complaint and forwarded it to the Parents on the February 26, 2024. OSPI invited the Parents to reply.

On February 28, 2024, OSPI and the District received the Parents' reply.

On March 6, 2024, the OSPI complaint investigator interviewed the Student's mother.

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 24, 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), including an augmentative and alternative communication device according to WAC 392-172A-03105?
2. Did the District review and revise the Student's IEP to address any unexpected lack of progress towards the annual goals according to WAC 392-172A-03110?

### **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.

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).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9<sup>th</sup> Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9<sup>th</sup> Cir. 2006).

Appropriate relief in the form of compensatory education is "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9<sup>th</sup> Cir. 1994). Compensatory education is not an appropriate remedy for a purely procedural violation of the IDEA. *Maine School Administrative District No. 35 v. Mr. and Mrs. R. ex rel. S.R.*, 321 F.3d 9, 38 IDELR 151 (1<sup>st</sup> Cir. 2003).

"There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting." *In re: Mabton School District*, 2018-SE-0036.

## **FINDINGS OF FACT**

### **2022–23 School Year**

1. At the start of the 2022–23 school year, the Student was a ninth grader, attended a District high school, and was eligible for special education services under the category of autism.
2. After completing a reevaluation on October 21, 2022, the Student's IEP team developed a new annual IEP for the Student on October 27, 2022. The IEP included annual goals in adaptive/life skills (initiating, making requests, maintaining focus, and using an augmentative and alternative communication (AAC)), reading (identifying details to improve comprehension), math (using a calculator), social/behavior (self-advocacy, identifying emotions, and asking for items), and written language (typing an email), with progress reporting quarterly. The Student's October 2022 IEP provided the Student with the following specially designed instruction (SDI) and related services in a special education setting:
  - Adaptive/Life skills: 250 minutes a week (to be provided by special education staff)

- Adaptive/Life skills: 80 minutes a week (to be provided by a speech/language pathologist (SLP))
  - Adaptive/Life skills: 100 minutes a week (to be provided by special education staff)
  - Math: 250 minutes a week (to be provided by special education staff)
  - Reading: 250 minutes a week (to be provided by special education staff)
  - Written Language: 250 minutes a week (to be provided by special education staff)
  - Social/Behavior: 80 minutes a week (to be provided by an SLP)
  - Speech/Language: 180 minutes a month (to be provided by an SLP)
  - Occupational Therapy: 90 minutes a month (to be provided by an occupational therapist (OT))
3. On January 24, 2023, the one-year complaint investigation timeline began.
  4. Beginning February 10, 2023, the Student's second semester schedule included classes in personal fitness, concert choir, beginning theater, and life skills.
  5. In January and February 2023, the Student began exhibiting dysregulation and self-harm behaviors. On February 10, 2023, the OT sent an email to the Student's special education teacher and the SLP, requesting a meeting to discuss the Student's recent behavior. The OT also stated:
 

It is also important to consider that the strategies/supports listed in the IEP Accommodations and Modifications are consistently available to [Student]. He needs access to his AAC device (within reach/around his neck) because this is how he communicates (i.e. requesting a break, requesting a snack, telling a joke, etc.). He needs access to his noise cancelling headphones, and he can choose to take them on/off. He may especially benefit from this tool when he is with general education peers, where there is more stimulus (drama, lunchroom, etc.) For [Student], 'access' means within visual range and reach. When he escalated yesterday, he did not have his AAC or headphones.
  6. From January and June 2023, the District provided detailed logs, documenting SLP and OT services with the Student. The logs showed the Student received SLP and OT according to the IEP. Other than references to classroom activities in the logs, there was no documentation that other special education services were implemented.
  7. The District acknowledged that the Student did not receive daily SDI. The District stated:
 

...While at [school] it appears that [Student's] day was not clearly organized, and he did not receive much daily SDI targeted towards his goals, except for the goals supported by the SLP and OT. [OT] described [Student] as a skilled AAC user who would frequently use his device during SLP and OT sessions; however, it was not clear if he had consistent access to the rest of his school day. Further, [special education teacher] failed to consistently report [Student's] progress, making it difficult to determine whether he made progress on these goals despite the limited SDI.
  8. In February 2023, the special education progress reports stated that the Student made "some progress" in the area of making requests and typing emails. Progress toward the Student's other goals was not reported.
  9. On March 8, 2023, the OT emailed the Parent and the special education teacher that the Student was "slightly dysregulated" during the OT session, which could have been due to the

transition from winter break. The OT later proposed a meeting to discuss “how to best support [Student] when he has moments of increased dysregulation.”

10. On March 16, 2023, the Student’s IEP team met to address the Student’s increase in dysregulation and self-harm. According to the prior written notice that accompanied the meeting, the team developed strategies, such as using a visual schedule with breaks and sensory choice board as ways for the Student to self-regulate. The team also discussed the Student using headphones and the AAC at all times.
11. In April 2023, the Student’s progress reports stated the Student was making “some progress towards making requests.”
12. On April 27, 2023, the District informed the Parent that the Student was transferring to a different District high school for the 2023–24 school year.
13. In May 2023, the Student made little or no progress toward the email goal, according to the progress report.
14. In June 2023, the Student’s progress report stated the following:
  - Emails – Little to no progress
  - Identifying emotions – Some progress made
  - Maintaining focus – Some progress made
  - Using a calculator - Little to no progress made
  - Using an ACC - Little to no progress made
  - Making requests - Little to no progress made

### **2023–24 School Year**

15. At the beginning of the 2023–24 school year, the Student attended a different District high school and continued to be eligible for special education services under the category of autism.
16. The Student’s schedule was as follows:

<ul style="list-style-type: none"><li>• IEP work</li><li>• Exercise, morning announcements (Mondays – SLP)</li><li>• Baking (Thursday – OT)</li><li>• Lunch</li></ul>	<ul style="list-style-type: none"><li>• Physical Education</li><li>• Computer Work</li><li>• Choice: IEP/computer work, music, classroom jobs</li></ul>
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17. On October 23, 2023, the Student’s team met to conduct an annual review of the IEP. The IEP provided annual goals in adaptive/life skills (following written directions and task completion), math (math problems using a calculator and pricing items), reading (identifying key details), social/behavior (self-advocating for needs, social communication), and writing (emails). The IEP provided the following services:
  - Adaptive/Life skills: 279 minutes a week (to be provided by special education staff)
  - Math: 279 minutes a week (to be provided by special education staff)
  - Reading: 279 minutes a week (to be provided by special education staff)

- Written Language: 279 minutes a week (to be provided by special education staff)
- Social/Behavior: 279 minutes a week (to be provided by an SLP)
- Speech/Language: 90 minutes a month (to be provided by an SLP)
- Occupational Therapy: 90 minutes a month (to be provided by an OT)

18. In October 2023, the Student's progress report stated the Student made "some progress" towards the requesting goal and little or no progress towards using the AAC.

19. The November 2023 progress report based on the October 2023 IEP provided the following:

- Self-advocating – Some progress made
- Social communication – Some progress made
- Following written directions – Little or no progress made
- Emails – Little or no progress made
- Math problems using a calculator – Some progress made
- Task completion - Little or no progress made
- Pricing items - Little or no progress made
- Identifying key details – Little or no progress made

20. According to the District, the lack of progress in some goals was due to the recency of the IEP, which did not give enough time to show progress towards the new goals.

21. On January 23, 2024, the Parents filed this complaint with OSPI.

22. Regarding the implementation of the IEP from September 2023 to January 2024, the District stated the Student's services were implemented as written in the IEP. In addition, the Parents did not dispute the implementation of services during the 2023–24 school year.

23. In response to the District's failure to provide services (except for SLP and OT) from January to June 2023, the District proposed an IEP meeting with the Parents to offer compensatory education.

## CONCLUSIONS

**Issue One: IEP Implementation** – The complaint alleged the District failed to provide the Student's special education services. A district is required to implement the special education services in conformity with the IEP. The District acknowledged the allegation.

Here, the Student's October 2022 IEP provided services in the areas of adaptive/life skills, social/behavior, math, reading, and written language along with SLP and OT services. The Student also used an ACC device for communication. During the relevant period of time between January and June 2023, the documentation showed that SLP and OT services were consistently provided according to the Student's IEP. However, the District acknowledged that the other service areas were not consistently provided during this period of time, including the use of the AAC device. Thus, a violation is found.

For the corrective action, the District proposed holding an IEP meeting with the Parents to determine the appropriate compensatory education to provide the Student. Given there have not

been IEP implementation issues this year and that the Student has a different IEP team, OSPI accepts the District's proposed corrective action for compensatory education. OSPI must approve the plan. There was sufficient evidence that the Student did not receive a substantial amount of the SDI the IEP outlined from January to June 2023, although the exact amount missed could not be precisely determine. As a result, the IEP team should initially focus on the Student's specific educational deficits that resulted from the missing SDI and determine the specific compensatory measures. The violation does not require compensatory education in the areas the SLP and OT served as instruction was provided in these areas.

**Issue Two: Review and Revise the IEP** – The Parents alleged the District failed to address the Student's lack of progress towards the IEP goals. The IEP team is required to address any unexpected lack of progress towards the IEP goals and in the general education curriculum.

Here, the Student's progress reports based on the October 2022 IEP goals ranged from some progress to little or none, although with some goals, there were no progress reports. Progress reports are indicators of whether a student's program is working as it should. The lack of progress should have been an indicator to the IEP team that the special education services were not being provided or that the Student needed additional services. The team met on March 16, 2023, to address the Student's increasing dysregulation and self-harm and appropriately proposed additional strategies for the Student. However, the team did not consider the possibility (then and after) that the reason for the behavior was that the Student was not receiving their SDI. While it is easy in hindsight to say that the team should have considered the possibility, the District likely knew that SDI was not being implemented and should have taken appropriate steps to intervene with the service provider. At minimum, the IEP team should have discussed the Student's lack of progress. A violation is found. The District is required to develop a plan that includes training to ensure that the Student's IEP team and service providers at the Student's former school are aware of the requirement to review and revise IEP if there is a lack of progress, especially if it is due to services not being provided.

### **CORRECTIVE ACTIONS**

By or before **April 5, 2024, April 12, 2024, and May 3, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By **April 5, 2024**, the District is required hold an IEP meeting and develop a compensatory education plan. By **April 12, 2024**, the District will provide OSPI with the plan and a copy of the prior written notice that explains the rationale for the plan. OSPI must approve the plan and will provide feedback as needed. Further timelines may be later established based on the plan.

#### **DISTRICT SPECIFIC:**

By **April 26, 2024**, the District must provide training to the Student's former IEP team and service providers regarding reviewing and revising the IEP due to a lack of progress. The trainer may either be from the District, educational service district, or private contractor.

By or before **April 5, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

The training will also include post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. By or before **April 12, 2024**, the District will provide OSPI with the training plan and post-training activities for review, input, and approval. OSPI will approve the materials or provide comments by April 19, 2024.

By **April 26, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **May 3, 2024**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the Corrective Action Plan (CAP) matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 22nd 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.)