

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-18

PROCEDURAL HISTORY

On February 2, 2024, 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 Bellevue 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 February 2, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent February 7, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 23, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on February 26, 2024. OSPI invited the Parent to reply.

On March 4, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on March 5, 2024.

On March 5 and 11, 2024, OSPI received additional information from the District. OSPI forwarded the additional information to the Parent on March 20, 2024.

On March 25, 2024, the Parent provided OSPI with additional, unrequested information. OSPI forwarded this information to the District on April 1, 2024.

OSPI considered the 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 September 5, 2023, per the allegations in the complaint. 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. Did the District follow proper procedures for implementing the Student's specially designed instruction in reading between September 5 and November 29, 2023?

LEGAL STANDARDS

IEP Implementation: A district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible

to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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).

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).

"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

1. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of other health impairment, was in the 12th grade, attended a District high school, and the Student's April 2023 individualized education program (IEP) was in effect.

In part, the April 2023 IEP provided the Student with the following specially designed instruction (SDI) in a special education setting from April 24 through December 5, 2023:

- 380 minutes a week of non-concurrent instruction in reading comprehension

In part, the April 2023 IEP provided the Student with the following SDI in a special education setting from April 24 through December 5, 2023:

- 240 minutes a week of concurrent instruction in written expression

The April 2023 IEP included two different reading comprehension goals – reading comprehension 1 and 2. Reading comprehension 1 related to the Student’s ability to independently utilize “reading strategies” to improve the Student’s “ability to comprehend challenging text from 33% accuracy to 66% accuracy.” Reading comprehension 2 related to the Student’s ability to “answer explicit and inference-based comprehension questions, improving ability from 20% accuracy to 60% accuracy.”

2. The District’s 2023–24 school year began on September 5, 2023.

3. The Parent’s complaint request read, in part:

The school was not able to provide a cogent response...when Parent asked how the 140 minutes of non-concurrent reading comprehension SDI [was to be] provided to Student [between] September 5, 2023 through November 29, 2023.

...

Parent requests that reading comprehension [compensatory education] be provided by [a specific provider], that [has worked with] Student...in the past.

4. The Student’s schedule between September 5, 2023 and January 26, 2024 was:

- Period 1: US Civics (*general education setting*)
- Period 2: Pre-Vocational Training (*special education setting*)
- Period 3: “Targeted English” (*special education setting*)
- Period 4: Spanish 1 (*general education setting*)
- Period 5: Retail Management (*general education setting*)
- Period 6: Culinary (*general education setting*)
- Period 7: “Targeted Math” (*special education setting*)

According to the Parent’s reply, “The Student’s Targeted English class is provided [for] a maximum of 240 minutes per week [and therefore] it is not possible that Student receives 380 minutes weekly” of SDI in reading comprehension.

In its response, the District stated it “implement[s] a block schedule, [and], as such, not all classes are offered every day.” According to the bell schedule included in the District’s response, period 3 (Targeted English) met for the following length of time on the following weekdays:

- Monday, Tuesday, and Friday: 50 minutes
- Wednesday: 0 minutes
- Thursday: 100 minutes

According to the block schedule, the Student’s civics class met for 240 minutes each week. According to the block schedule, the Student’s pre-vocational class met for 255 minutes each week.

In additional information (provided to OSPI on March 5, 2024), the District stated, “The Student is (and was) also in a co-taught Social Studies class where he has the opportunity to work on

his reading skills in the context of Civics with the support of both his dedicated paraeducator and a certificated special education teacher.”

5. The District’s response included two charts related to the Student’s progress in fall 2023 on reading comprehension 1–2 (reading progress charts). According to these charts:
 - Between late September and November 5, 2023, the Student’s performance on reading comprehension 1 was evaluated on 5 occasions. Said results were: 60%, 50%, 100%, 60%, and 60%. The chart described this progress as “positive.”
 - Between late September and November 5, 2023, the Student’s performance on reading comprehension 2 was evaluated at least 4 occasions. Said results were: 60%, 50%, 100%, and 60%. The chart included the following narrative in relation to reading comprehension 2, “Data trend for this reporting period is positive for comprehension with Lexile showing a slight negative trend.”
6. An October 18, 2023 email from the District’s attorney—including in the Parent’s reply—read, in part, “Reading Comprehension and Writing will be served in a Special Education Targeted English class and PASS class...Student receives 140 minutes of specially designed instruction in reading comprehension in his Targeted English class per week. Samples of his work can be found in his Teams account.”¹
7. A November 4, 2023 Parent “Input Form” read, in part:

Reading progress decreased November 2022-June 2023...We are concerned with the validity and fidelity of the IEP goal progress data for Reading Comprehension. When Student understands what he read he can correctly answer open-ended questions to show his understanding rather than respond to multiple choice or yes/no or true/false questions (which perpetuates guessing) that are created based on low expectations. Suggested resolution: 480 minutes weekly intensity/frequency of Lindamood-Bell Reading Comprehension Instruction.
8. An IEP online progress report, dated November 10, 2023 ,included the following data related to the reading comprehension 1 and 2, “If maintained, current rate of progress is sufficient to achieve annual goal.”
9. On November 14, 2023, the Parent wrote the District’s attorney:

[Student] does not have a "PASS" class this school year. His IEP indicates "380" non-concurrent Reading Comprehension minutes per week. I understand that 240 of those minutes come in his Targeted LA class, although I still do not understand where the additional 140 minutes of Reading Comprehension minutes are provided to [Student].
10. September 5 through November 29, 2023 represents approximately 12 weeks of school.

¹ A November 14, 2023 email from the District’s attorney—also included in the Parent’s reply—read, in part, “[Student] has received all the specially designed instruction in reading called for in his IEP this school year, to include reading comprehension. Specifically, [Student] receives 140 minutes of specially designed instruction in reading comprehension in his Targeted English class per week. This previously addressed with you. Please see attached email from Wednesday, October 18, 2023.”

11. The District's first academic quarter ended on November 9, 2023. According to the Student's report card, the Student's first quarter grade in Targeted English 12 was an "A."

12. A November 2023 reevaluation report read, in part:

Reading...Student was observed to read initial items quickly and with enthusiasm but struggled to fluently and automatically decode more complex words. On more challenging items, Student appeared to guess the word, based on the onset sound of the printed word.

On the Passage Comprehension subtest, Student's ability to understand written text was assessed. Student was asked to match a short phrase to the appropriate picture when given three choices and was then asked to supply a missing word to sentences and paragraphs of increasing complexity. On this subtest, Student obtained a standard score of 57, at the 0.2 percentile, and in the Very Low range when compared to same-age peers. Student was observed to read the sentences slowly and with careful effort. On initial items, Student was able to demonstrate understanding of the concepts based on relations to things in his own life (e.g., "I like playing the drums!").

On the Oral Reading subtest, Student was asked to read printed sentences fluently and accurately with increasing complexity. Together, the sentences make up a short story that becomes progressively more challenging to fluently read. It should be noted that the topic of the story is a highly preferred topic for Student, for which he has prior background knowledge. On this subtest, Student obtained a standard score of 64, at the 1st percentile, in the Very Low range when compared to same-age peers. Student was observed to read initial sentences fluently and automatically. As the items became progressively more challenging, Student was observed to omit, insert, and substitute words. Student required multiple gestural prompts from the examiner to locate the appropriate item to read. However, Student appeared to enjoy reading each of the sentences as they related to an area of interest for him, despite making multiple errors on more challenging items.

On the Sentence Reading Fluency subtest, Student was asked to read simple sentences quickly. Student was given a 3- minute time limit to read a series of simple sentences in a printed booklet and indicate if each sentence is true or false by circling 'Yes' or 'No.' On this subtest, Student obtained a standard score of <40, at the <0.1 percentile, and in the Very Low range when compared to same-age peers. While completing this subtest, Student was observed to smile and audibly laugh at some of the sentences that he found amusing. Student was observed to read each sentence slowly and without automaticity.

...

Reading Comprehension 1: [Student finished the 22-23 school year] at 36.6%...Reading Comprehension 2: [Student finished the 22-23 school year] at 40%.

13. According to the District, the Student's IEP team developed a new IEP for the Student on November 14, 2023, but it was not implemented until November 30, 2023.²

² The November 14, 2023 IEP does, though, state the following non-concurrent SDI in reading was to be provided starting November 21, 2023: 240 minutes a week in a *special education setting* (to be provided by a special education teacher).

November 14, 2023 meeting notes read, in part:

Reading (2): Answering explicit/inference-based comprehension questions (4th grade-level texts), use of independent reading strategies.

...

Student is not achieving the overall goal because of the higher-level reading skill component of inference-based questions. Focusing on the area of weakness from the prior goal and moving on from the areas in the prior goal where he has demonstrated the skills that were being asked for under the prior goal. More targeted goal – aimed at the area of greatest challenge.

14. Power point slides related to a November 14, 2023 “Re-Evaluation Meeting” read, in part, “Current Grade: Targeted English 12 = A (95.8%) – special education class.”

15. A November 14, 2023 “Assistive Technology Planning Document” read, in part:

Reading:

Current Strengths:

- o Demonstrates understanding of print concepts
- o Student reports he enjoys reading
- o Able to fluently read familiar words
- o Able to use Immersive Reader when prompted verbally by an adult
- o Enjoys listening to audiobooks
- o Able to demonstrate comprehension of facts and details from a text read aloud to him
- o Able to use a word bank and context clues to support reading skills in class

Current Barriers:

- o Requires additional time to recognize printed words (non-automatic word identification skills)
- o Struggles to answer higher level comprehension questions (i.e., why, how, etc.)
- o When reading to himself, he struggles to answer comprehension questions based on sentences and paragraphs

16. On December 1, 2023, the District’s attorney emailed the Parent, stating, in part:

As you are aware, the Reading Comprehension and Written Expression services were provided currently, which is something that you disagreed with when the IEP was amended in April of 2023...Rather than a PASS class, he is enrolled in a Pre-Vocational Training special education class and a co-taught United States Civics/Contemporary World Problems course...Student also received support in reading and writing during his United States Civics/Contemporary World Problems.

17. The District’s first academic semester ended on January 26, 2024. According to the Student’s report card, the Student’s first semester grade in Targeted English was an “A.”

CONCLUSIONS

Issue 1: Implementation of SDI in Reading – The Parent alleged the District did not follow proper procedures for implementing the Student’s SDI in reading between September 5 and November 29, 2023.

A district must also 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.

Here, the April 2023 IEP provided the Student with the following specially designed instruction in a special education setting from April 24, 2023 through December 5, 2023: 380 minutes a week of non-concurrent instruction in reading comprehension.

It is clear the Student did receive some SDI in reading during the relevant time period, particularly in the Targeted English class. For example, in part: reading progress charts and IEP online progress reports both showed the Student made some progress on the reading goals in the April 2023 IEP; the November 2023 reevaluation report, November 14, 2023 meeting notes, and November 14, 2023 "Assistive Technology Planning Document" each included information related to the Student's performance on the reading goals in the April 2023 IEP; and the Student's first semester grade in Targeted English was an "A."

It does not, though, appear the Student received the number of weekly minutes of SDI in reading that were in the April 2023 IEP. For example, the April 2023 IEP provided the Student with 380 minutes a week of non-concurrent instruction in reading comprehension. But according to the bell schedule included in the District's response, period 3 (Targeted English) met for a total of 250 minutes each week. This represents a deficit of 130 minutes each week.

In relation to this finding, it is important to note on three separate occasions—on October 18, November 14, and November 29, 2023—in response to the Parent's concern that the Student was not being provided with the requisite number of weekly minutes of SDI in reading, a District staff person stated, "Student has received all the specially designed instruction in reading called for in his IEP this school year, to include reading comprehension. Specifically, [Student] receives 140 minutes of specially designed instruction in reading comprehension in his Targeted English class per week." OSPI notes though, as detailed above, this statement was incorrect: according to the block bell schedule included in the District's response, that class met for a total of 250 minutes each week, not 140 minutes each week. Further, the foregoing emails did not fully answer the Parent's questions or explain how the Student's full amount of SDI in reading was provided, as the Student was entitled to a total of 380 minutes of reading instruction a week. In a December 1, 2023 email, the District's attorney asserted the Student received some SDI in reading during his civics class and appeared to suggest the Student received some SDI in reading during his pre-vocational training class. And, in its March 5, 2024 response to the Parent's complaint, the District asserted the Student received some SDI in his civics class.

For two reasons, OSPI does not find the assertion that the Student received reading SDI in his pre-vocational class to be credible. First, the District's staff person's responsive explanations to the Parent's concern that the Student was not receiving the appropriate weekly minutes of SDI in reading—on October 18, November 14, and November 29, 2023—were contemporaneous and only mentioned the Targeted English class (in relation to SDI in reading). The December 1, 2023

email and the March 5, 2024 were after-the-fact, and for the first time mentioned pre-vocational (and civics) as being classes wherein the Student accessed SDI in reading. Second, during this investigation, OSPI was not provided documentation—such direct statements from relevant teachers—that concretely showed the Student was provided with reading SDI during the pre-vocational class.³

Given that the civics class was co-taught by a special education teacher, it is conceivable the Student received some SDI in reading during said class. In fact, it is best practice that reading SDI be provided across a variety of course content, including in classes such as civics. But OSPI was not provided with relevant, requested information on this topic. Therefore, OSPI finds any SDI in reading the Student did receive in civics was minimal.

Accordingly, OSPI finds between September 5, November 29, 2023, the Student missed up to approximately 130 minutes of SDI in reading each week. And, as this time period represents approximately 12 weeks of school, the Student missed an approximate total of 26 hours of SDI in reading. This represents a violation of the IDEA. Accordingly, some compensatory education is warranted.

A state educational agency is authorized to order compensatory education through the special education community complaint process. 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. There is no requirement to provide day-for-day compensation for time missed. 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.

Here, as detailed above, the Student did make some progress on his April 2023 reading goals. Accordingly, the Student will be provided with one-third of the approximate instruction missed – nine hours of SDI in reading. And said hours will be provided outside regular school hours and be provided in a 1:1 setting, meaning just the service provider and the Student.

CORRECTIVE ACTIONS

By or before **April 12, 2024, May 3, 2024, and May 24, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **May 24, 2024**, the District and Parent will develop a schedule for the following hours of compensatory education: nine hours of SDI in reading.

³ During this investigation, OSPI's investigator wanted to either (a) directly email or (b) interview the Targeted English teacher, the US Civics teacher, and the Pre-Vocational teacher. But neither of the foregoing avenues of procuring relevant information were made available to OSPI's investigator.

Unless otherwise agreed to by the District and Parent, 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, if 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. The District will provide OSPI with documentation of the schedule for services by or before **April 12, 2024**.

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. The services must be completed no later than **May 24, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **May 3, 2024** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **May 24, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

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. The District must provide OSPI with documentation of compliance with this requirement by **May 24, 2024**.

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.

Dated this 1st day of April, 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.)