

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-29**

### **PROCEDURAL HISTORY**

On March 4, 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 Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 4, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on March 5, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On March 20, 2024, the District requested an extension to respond to the complaint. OSPI granted the extension to March 29, 2024.

On March 29, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on April 1, 2024. OSPI invited the Parent to reply.

On April 2 and 11, 2024, the OSPI complaint investigator interviewed the Parent.

On April 15, 2024, the OSPI complaint investigator interviewed the special education teacher, school principal, and District legal counsel.

OSPI considered all information provided by the Parent and the District as part of its investigation.

### **ISSUE**

1. Did the District implement the Student's special education services, including a 1:1 instructional assistant, in conformity with the individualized education program (IEP) according to WAC 392-172A-03105 during the 2023–24 school year?

### **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).

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. During the 2022–23 school year, the Student was a first grader who attended a District elementary school and was eligible to receive special education services under the category of autism.
2. On June 6, 2023, the Student’s IEP team developed a behavioral intervention plan (BIP). The BIP addressed the behaviors of wandering away, eloping, and getting into the personal space of others.
3. On June 28, 2023, the Student’s team reviewed the IEP. The strengths and weaknesses of the Student and the Parents’ concerns were listed as follows:
  - [Student] loves school and is a persistent communicator when he really wants something.
  - [Student] learns quickly when presented with activities that intrigue him, such as his current interest in international flags. His family feels since attending [school], he has been listening to instructions more carefully. He is detail-oriented and is determined and smart.
  - [Student’s] family would like for him to grow in more effectively and consistently communicating his wants and needs, in addition to improving his independent adaptive skills. Eating and self-care are also areas for potential growth.

The IEP identified communication needs, including an alternative augmentative communication device, and behavior that included crying, yelling, dropping on floor, and biting. Strategies include first/then boards, token economy boards, timers, and frequent breaks.

The IEP included goals in the areas of adaptive/life skills, reading, math, social/behavior, written language, and communication. The Student’s IEP provided 16 accommodations and modifications that included a 1:1 instructional assistant (IA) daily in all settings.

The IEP provided the following special education and related services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
Occupational Therapy	Occupational Therapist	Occupational Therapist	120 Minutes/Monthly	Special Education
Reading	Special Education Staff	Special Education Teacher	375 Minutes/Weekly	Special Education
Written Language	Special Education Staff	Special Education Teacher	185 Minutes/Weekly	Special Education
Math	Special Education Staff	Special Education Teacher	375 Minutes/Weekly	Special Education
Adaptive/Life Skills	Special Education Staff	Special Education Teacher	425 Minutes/Weekly	Special Education
Adaptive/Life Skills	Special Education Staff	Special Education Teacher	400 Minutes/Weekly	General Education
Social/Behavior	Special Education Staff	Special Education Teacher	210 Minutes/Weekly	Special Education
Social/Behavior	Special Education Staff	Special Education Teacher	30 Minutes/Weekly	General Education
Communication	Speech/Language Pathologist	Speech/Language Pathologist	30 Minutes/Weekly	Special Education

The IEP provided the following supplementary aids and services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)
1:1 IA	IA	Special Education Teacher	150 Minutes/Weekly	General Education
1:1 IA	IA	Special Education Teacher	1725 Minutes/Weekly	Special Education

Regarding the 1:1 IA, the District developed a plan to improve the Student's independence which would gradually fade the need for a 1:1 IA.

### **2023–24 School Year**

4. On September 6, 2023, the 2023–24 school year began in the District.
5. On September 27, 2023, the Student began attending school after being out of the country.
6. According to the District, the District posted employment positions when the Student began attending school for both a 1:1 substitute IA and a 1:1 IA for the Student.
7. From early September to November 2023, the Parent and school staff exchanged numerous emails about the hiring status of the 1:1 IA for the Student. According to the documentation, the District continued to attempt to hire an IA during this period.

8. On or about November 9, 2023, a 1:1 IA was hired and began providing services to the Student. However, the IA's attendance was sporadic, missing 14 full days and three partial days until the IA resigned on January 26, 2024. The District posted the position again in late January 2024.
9. On November 14, 2023, the IEP team developed the Student's annual IEP. The IEP continued to have goals in the areas of adaptive/life skills, reading, math, social/behavior, written language, and communication. The Student's IEP provided a similar amount of special education services from the previous June 2023 IEP, including the services of a 1:1 IA in the special education and general education settings.
10. In late February 2024, the Student began receiving 1:1 IA services from a substitute. At the time of this complaint, the substitute 1:1 IA was in the process of becoming the regular 1:1 IA for the Student, according to the District.
11. On March 4, 2024, OSPI received this complaint.
12. The Student's March 2024 progress report based on the November 2023 IEP goals showed "some progress made" in all the Student's goals except for safety, which showed no progress.
13. In an interview with the Parent, the Parent stated that the impact of not receiving the services of an IA was that, first, the communication device was not used as much as it should have been and that resulted in the Student making no progress using it. For example, the Parent stated the Student did not learn new words. Second, the 1:1 IA was not present to prompt the Student to pay attention while the teacher instructed the class. Third, the BIP and safety plan were not implemented, which resulted in the Student not making progress regarding addressing behaviors in the BIP and safety plan. For example, the Student would run around the lunchroom if no adult was with the Student. To address the lunchroom problem specifically, the Parent volunteered to sit with the Student at lunch.
14. In an interview with the Student's special education teacher (teacher), school principal, and District legal counsel, the teacher described how special education services were provided without the 1:1 IA support. The teacher provided direct assistance to the Student at times and the classroom had two IAs who assisted the Student as needed. The teacher stated the lack of a 1:1 IA impacted the Student in terms of socializing with general education peers during lunch, for example, and safety behavior. There was also an impact on the Student using the AAC device. Without the 1:1 IA, the Student was not motivated to use the device. The teacher stated that despite not having the 1:1 IA support, the Student made some progress, except on the safety goal. Once the Student began receiving the 1:1 IA support, the Student made noticeably more progress.

The teacher also added that the Student's attendance also negatively affected the Student's progress. The number of times the Student was tardy increased significantly as the school year progressed. Recently, the Student had been consistently missing school on Fridays, apparently due to receiving private services. School started at 7:55 am and the Parent would routinely

bring the Student to school at approximately 9 am on the days the Student attended school.<sup>1</sup> The teacher stated that structure was very important to the Student and the classroom and missing the first period made the Student out of sync with the rest of the class.

15. The Student attended school the following percentages of time during the 2023–24 school year:

- September 2023 – 5.6%
- October 2023 – 85%
- November 2023 – 100%
- December 2023 – 90%
- January 2024 – 76%
- February 2024 – 81%
- March 2024 – 60%

16. The District acknowledged that the services of a 1:1 IA were not provided consistently from September 27, 2023 to February 6, 2024, when the substitute IA was began. The District's response to the complaint stated, in part, "...While [school] staff worked diligently to ensure [Student's] access to his special education program, the team admitted that he would have made more progress on his goals, particularly his social/behavior, had he been provided with a consistent 1:1 IA."

17. As a result of not having the 1:1 IA support consistently, the District proposed meeting with the Parent to determine the compensatory education services needed to address the Student's lack of progress.

## CONCLUSIONS

**Issue One: IEP Implementation** – The complaint alleged the District did not provide the services of a 1:1 IA to the Student. A district is required to provide special education services in conformity with the IEP. The District acknowledged the violation.

The Student's June and November 2023 IEPs provided a 1:1 IA for the Student in the special education and general education settings throughout the school day. The Student began attending school on September 27, 2023, without a 1:1 IA. The District made efforts to hire a 1:1 IA, but it was not until November that 1:1 IA services began to be provided to the Student. However, the IA services were provided sporadically and eventually stopped when the IA resigned and did not resume until February 6, 2024, when a substitute IA was hired.

The District made efforts to implement the other special education services with the existing staff that included the special education teacher and two classroom IAs. While the Student made some progress on the annual goals, both the Parent and District agreed that the Student did not make the amount of progress regarding safety behavior and the use of AAC device that the Student would have made, had the Student received the 1:1 IA services to begin with. Based on the Student not receiving the 1:1 IA services according to the IEP, a violation is found.

---

<sup>1</sup> The Parent explained that she wanted the Student to miss the other students arriving at school which might upset him. OSPI recommends the IEP team address the attendance issues with the Parent and the implications for the Student's progress.

The District proposed meeting with the Parent to determine what compensatory education services the Student needs due to the absence of the 1:1 IA. OSPI approves the proposed plan to provide compensatory education services with the stipulation that the services must address the Student's safety behavior and communication. The plan must also take into consideration the Student's absences and tardies and their impact on the Student's lack of progress.

### **CORRECTIVE ACTION**

By or before **May 17, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

##### **Compensatory Education**

By or before **May 10, 2024**, the District and Parent will develop a plan to provide the Student with compensatory education services. The plan must include, at a minimum, services that address the Student's social/behavior and communication needs, and a schedule to provide the services along with a rationale plan based on the Student's needs. The plan must also include regular updates to OSPI on the implementation of the plan.

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 the plan, the rationale for the plan, and schedule for services by or before **May 17, 2024**.

OSPI will review and approve the plan, and add additional documentation deadlines as needed.

#### **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 May, 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.)