

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-35

PROCEDURAL HISTORY

On March 13, 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 Kent 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 13, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District's superintendent on March 14, 2024. OSPI asked the District to respond to the allegations made in the complaint.

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 5, 2024, OSPI received the Parent's reply. On April 8, 2024, OSPI forwarded the Parent's reply to the District.

On April 25, 2024, the OSPI complaint investigator spoke with the Parent regarding the complaint allegations.

On April 29, 2024, the OSPI complaint investigator interviewed two District staff, including a special education teacher and a paraeducator who worked with the Student during the 2023–24 school year.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interview.

ISSUE

1. Beginning September 22, 2023, did the District follow proper procedures for implementing the following portions of the Student's individualized education program (IEP):
 - a. A 1:1 paraeducator; and,
 - b. An accommodation related to a visual schedule?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also 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).

Provider Responsibility for Implementation: 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(d)(1); WAC 392-172A-03105(3)(a).

FINDINGS OF FACT

1. The Student attended first grade at a District elementary school and was eligible for special education services under the disability category of autism.
2. The Student received special education and services in a special education classroom referred to by the District as the "Adaptive Support Center" classroom. Documentation indicated the Student is non-verbal. During the week, the Student received "specials", including library and music (which are provided in the classroom two days a week) and physical education (PE) (provided once a week for the Student, outside of the classroom). The Student's lunches occurred in the classroom each day.
3. The Student's individualized education programs (IEPs), as amended on May 24 and again on October 23, 2023, both required the provision of "access to a 1:1 paraprofessional from arrival to departure each day." The IEP noted the paraeducator support was, in part, provided "due to ongoing behavioral concerns, [the Student] will have access to a 1:1 paraprofessional from arrival to departure each day." The Student's IEPs also included the following program accommodations, "Post visual or picture/schedule" and "Access to Augmentative & Alternative Communication (AAC) devices."
4. The Parent, in the complaint, made allegations related to three incidents during which the District failed to appropriately provide a 1:1 paraeducator.

First, on September 22, 2023, when the 1:1 paraeducator working with the Student left the classroom to assist with the removal from the classroom of another student due to a behavior incident, the paraeducator left the Student unattended, resulting in the Student pulling "things from [the Student's] pull-up." This required the Student to be rinsed off and the school office called the Parent to inform the Parent of the incident.

District staff reported to the OSPI complaint investigator that the Student's 1:1 paraeducator became involved because the other student came into the Student's space and the other student required physical intervention to remove the other student from the classroom. District staff reported that this triggered an escalation by the Student. District staff reported

that the teacher was also out of the classroom at the time of this incident. District staff reported this as the only time a 1:1 paraeducator left the room while working with the Student.

5. The second incident alleged in the complaint involving the provision of a 1:1 paraeducator occurred on November 22, 2023, when the Parent reported receiving a voicemail message from District staff that "only one [paraeducator] showed up and it may not be a good idea for [the Student] to come [to school]."

District staff confirmed to the OSPI complaint investigator that this occurred as alleged by the Parent.

6. The third incident alleged in the complaint involving the provision of a 1:1 paraeducator occurred on February 1, 2024, when the Parent observed the Student in the classroom for a period of 45 to 50 minutes. The complaint alleged that the Student's "'assigned' 1:1 was not working with [the Student]. [The paraeducator] was not comfortable helping [the Student] through [the] day. The teacher stepped in to help and then was pulled away for another student."

District staff reported to the OSPI complaint investigator that indeed the paraeducator assigned to work with the Student on February 1, 2024, had only recently begun working with the District and was not used to the behaviors of the Student. The new paraeducator had not yet been fully trained in de-escalation strategies specific to when the Student would repeatedly engage in behavior, including biting, scratching, and pulling the hair of staff and sometimes other students. District staff used protective gear when working with the Student, to protect District staff from injury by the Student. The special education teacher in the classroom provided some hands-on training for the paraeducator in the classroom, and the paraeducator working with the Student eventually, on March 12 and 14, 2024, completed a two-day training in de-escalation and physical responses to physically harmful behavior known as "Right Response". This training helped the 1:1 paraeducator interact with the Student and provided training in how to de-escalate the Student's behavior.

7. In an interview with OSPI, the paraeducator working with the Student on February 1, 2024, reported that they began working in the District on January 19, 2024, and began working with the Student around that time. The paraeducator also reported that they were not told until mid-February of 2024 that they were supposed to be the Student's 1:1 paraeducator; and that during that time, the teacher primarily provided 1:1 support for the Student.
8. The Parent expressed concerns to the OSPI complaint investigator regarding the training received by the paraeducators who work with the Student, and regarding the times that a 1:1 paraeducator was not provided due to staffing issues, during breaks and lunches of the paraeducators and teacher, and during the teacher's "prep time". The Parent also expressed concern that the 1:1 paraeducator working with the Student changed due to staffing needs.
9. District staff reported that the "Right Response" training, a two-day training, is required of all special education teachers and paraeducators and that the training must be repeated annually.

District staff reported that during the relevant time period, beginning September 22, 2023, the Student has primarily worked with two 1:1 paraeducators; the first one from September 22, 2023, until the second 1:1 paraeducator arrived at the District on January 19, 2024.

10. During the Parent interview with the OSPI investigator, the Parent stated they were not concerned at this time with the allegation regarding the provision of a visual schedule to the Student.
11. District staff reported to the OSPI complaint investigator that one visual schedule is located on the other side of the classroom from the Student, and that District staff use a "token board" with pictures representing activities attached with velcro, and that those pictures are pointed at by the District staff person (the teacher or the paraeducator) to indicate new activities to the Student. District staff also reported that the Student's visual schedule is on a tablet (an AAC device) to which the Student has access.
12. The complaint in this case included the following proposed remedy for the alleged violations of the IDEA:

I would like a qualified 1:1/Para educator, who is trained to work with my Autistic non-verbal [child]. It can't be a rotating door of people who don't know her needs or understands her actions. I would like to request that when the 1:1 Para is on lunch or break/vacation, the 1:1 Para educator that steps in to cover them is familiar and qualified to be there. This cannot be someone from the front office or a teacher from another class, who stands in, unless they have worked with my [child] prior. Regarding future years, there needs to be a better transition in place, the beginning of the school year was met with many disruptions of staff leaving/staff getting let go. An understanding of a visual schedule for a child needs to be utilized as well.

CONCLUSIONS

Issue: IEP Implementation – The Parent alleged that the Student's IEP, specifically the Student's 1:1 paraeducator and visual schedule, were not implemented.

A school district must 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.

1:1 Paraeducator Provision of IEP

The first allegation being investigated in this case is whether the District failed to follow proper procedures for implementing the portion of the Student's IEP requiring a 1:1 paraeducator.

Here, the Student's IEPs in place between September 22, 2023 and March 13, 2024, included that "due to ongoing behavioral concerns, [the Student] will have access to a 1:1 paraprofessional from arrival to departure each day." OSPI finds that the District did not fail to implement this provision

of the Student's IEPs in effect during the relevant time period. Although on September 22, 2023, the 1:1 paraeducator left the Student unattended during a serious behavioral incident with another student, this was an unusual situation, and this is the only time the 1:1 paraeducator or the teacher were not present in the classroom with the Student.

Additionally, OSPI finds that the District's staffing challenges, resulting in only one of the paraeducators scheduled to work in the Student's classroom available for work on November 22, 2023, does not constitute a material violation of the provision in the Student's IEP. OSPI notes that the District should not ask students to stay home and if students are missing instruction due to a lack of staff, the District should consider proactively making up missed services. However, here, because this was a single day during the 2023–24 school year, OSPI does not find a material failure to implement the IEP.

Finally, concerning the Parent's observations of the classroom on February 1, 2024, OSPI finds that the facts do not demonstrate that the Student did not receive 1:1 assistance on that day. As noted in the complaint, the teacher stepped in to work with the Student when the paraeducator did not work with the Student. Although the paraeducator did not understand their assignment as a 1:1 paraeducator for the Student that day, the paraeducator and the teacher both worked with the Student. A brief period of time when the teacher worked with another student in the same classroom, with the paraeducator also present in the classroom, does not constitute a failure to implement the provision of the Student's IEP requiring 1:1 assistance during the Student's school day.

Overall, OSPI finds that despite a few, rare situations where the Student was briefly not provided 1:1 support, the District did materially implement the IEP. OSPI finds no violation.

Visual Schedule Provision of IEP

The second allegation being investigated in this case is whether the District failed to follow proper procedures for implementing the portion of the Student's IEP requiring an accommodation related to a visual schedule. Here, the Student's IEPs in place between September 22, 2023 and March 13, 2024, included the following accommodations, "Post visual or picture/schedule" and "Access to Augmentative & Alternative Communication (AAC) devices."

OSPI finds that the District provided visual schedules to the Student, prominently displayed on in the classroom and on a token board used by District staff to communicate activities by pointing to pictures. Additionally, the District provided the visual schedule to the Student on a tablet to which the Student had access. OSPI thus finds that the District did not fail to implement the provision of the Student's IEP requiring a visual schedule. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 6th day of May, 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.)