

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-45

PROCEDURAL HISTORY

On March 29, 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 the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 29, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 1, 2024. OSPI asked the District to respond to the allegations in the complaint.

On April 3, 2024, the District requested a one-week extension of the deadline to submit its response. On the same day, OSPI granted the extension from April 18 to April 25, 2025.

On April 18, 2024, OSPI received part 1 of the District's response. The response was forwarded to the Parent on the same day and the Parent was invited to respond.

On April 25, 2024, OSPI received part 2 of the District's response.¹ The response was forwarded to the Parent on April 26, 2024, and the Parent was invited to respond.

On April 26, 2024, OSPI received additional information from the Parent and sent it to the District on the same day.

On May 3, 2024, OSPI received the Parent's reply to the District's response and sent it to the District on May 7, 2024.

On May 9, 2024, OSPI received additional information from the Parent and sent it to the District on the same day.

On May 10, 2024, the OSPI investigator interviewed the Student.

On May 14, 2024, the OSPI investigator interviewed the teacher and an instructional assistant.

On May 15, 2024, OSPI requested additional information from the District. The information was provided on the same day, and forwarded by OSPI to the Parents on the same day.

¹ In the present case, some of the teacher's email messages, as provided in the District's response, were sent to an account shared by the Mother and Father, while other email messages were sent by the teacher only to the Mother's account. The Father sent emails to the District only from the shared email account, while the Mother sent emails to the District from her personal account and the shared account. For the purposes of this decision, any messages sent from or received by the shared email account will be referred to as being sent or received by the Parents.

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

ISSUES

1. Since March 30, 2023, per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly?
2. Since March 30, 2023, per WACs 392-172A-03110 and 392-172A-03100/05001, has the District ensured that the Parent has had the opportunity to provide input into the Student's IEP?
3. Since March 30, 2023, has the District developed appropriate IEPs for the Student including appropriate goals, least restrictive environment (LRE), and consideration of paraeducator support?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. "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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Parent Input: The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. WAC 392-172A-05001. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, concerns of the parents for enhancing the education of their child, results of the initial or most recent evaluation of the child, and academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Compensatory Education: 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); *See also, Letter to Lipsitt*, 181 LRP 17281 (2018). 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). "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

Background

1. On April 26, 2022, the Student's IEP team met for an annual review of the Student's IEP. The Student was eligible for special education services under the autism category. The Student's IEP provided specially designed instruction (SDI)², delivered by the special education staff, from May 2, 2022 until May 1, 2023, as follows:

- Reading: 30 minutes/weekly in a general education setting
- Written Language: 60 minutes/weekly in a special education setting
- Social/Behavior: 100 minutes/weekly in a special education setting
- Social/Behavior: 325 minutes/weekly in a general education setting

The Student received 1,775 minutes per week of building instructional time, with 160 minutes per week served in the special education setting. The percent of time in a general education setting was 90.99%. The Student's LRE was 80–100%.

2. On September 14, 2022, the District held its first day of instruction for the 2022–23 school year. The Student's April 26, 2022 IEP was in effect.

Complaint Timeline Began March 30, 2023

3. On March 30, March 31, April 14, and April 17, 2023, the Student's teacher emailed the Mother about an IEP meeting that was scheduled for April 17, 2023. These emails were not sent to the Parents' shared email account.
4. On April 17, 2023, the Student's IEP team met for an annual review of the Student's IEP. This meeting took place without the Father in attendance. The Student continued to be eligible for special education services. The Student's IEP provided SDI³, delivered by the special education staff, from April 18, 2023 until April 17, 2024, as follows:

- Reading: 50 minutes/weekly in a general education setting
- Written Language: 50 minutes/weekly in a special education setting
- Social/Behavior: 100 minutes/weekly in a special education setting
- Social/Behavior: 325 minutes/weekly in a general education setting

The Student received 1,825 minutes per week of building instructional time, with 150 minutes per week served in the special education setting. The percent of time in a general education setting was 91.78%. The Student's LRE was 80–100%.

5. On April 26, 2024, the District's submitted its response that stated, in part, regarding the 2022–23 school year:

² None of the SDI was to be provided concurrently.

³ None of the SDI was to be provided concurrently.

- Shortly after the start of the 2022–23 school year, the District enrolled the Student in one special education period (Study Skills; approximately 50 minutes/5 days per week), in addition to his special education advisory (30 minutes/4 days per week). Both of these were with the teacher.
- In November 2022, the District complied with the Parents’ request to drop study skills.
- From March 30 through June 30, 2023, the Student was enrolled in all general education classes, except for special education advisory for 120 minutes per week.
- During advisory, the Student received social/behavior and written language SDI.

2023–24 School Year

6. September 6, 2023 was the District first day of instruction for the 2023–24 school year. The Student’s April 17, 2023 IEP was in effect.
7. On November 1, 2023, the teacher sent an email to the Parents and internally to the District, stating, in part, “As I have no advisory or study skills classes with [Student] (at parent request so that he could have a gen ed advisory and an elective), I don’t have any access to offer any academic support to [Student].”
8. On November 19, 2023, the teacher emailed the Student, in part, “I will no longer be available to support you in your gen ed classes.”
9. On December 8, 2023, January 2, and January 4, 2024, the teacher sent emails whose recipients included the Student, Parents, and the District internally, that stated, in part, “we will only have you (Student) on Monday and Tuesday Advisories...We only have two 30 min class periods to support you.”
10. On January 5, 2024, the Parents emailed teacher, in part, “Can you clarify what it means that ‘Our sped team does not have any access to [Student] to give him academic support.’”

The teacher responded, “[Sped team] (does not) have access to [Student] to give academic support, neither in a sped study skills class or sped advisory...Per his writing minutes, he does have access to sped support in his co-taught lang[uage] arts class.”

11. On February 14, 2024, the Student’s IEP team met to review and accept the Student’s recently conducted reevaluation and functional behavioral assessment (FBA). The Student continued to be eligible for special education services under the category of autism. A prior written notice (PWN), dated February 15, 2024, stated, in part, “Reevaluation establishes need and eligibility under the Autism category in the areas of study/organizational skills, social/ behavior, written language, and reading.”
12. On March 14, 2024, the Student’s IEP team met for an annual review of the Student’s IEP. The Student’s IEP provided SDI⁴ from March 18, 2024 until March 17, 2025, as follows:
 - Reading: 50 minutes/weekly by special education staff in general education setting

⁴ The social/behavior and study/organization SDI in the general education setting were to be provided concurrently.

- Written Language: 50 minutes/weekly by special education staff in general education setting
- Social/Behavior: 50 minutes/weekly by general education teacher in general education setting
- Study/Organization Skills: 50 minutes/weekly by general education teacher in general education setting
- Study/Organization Skills: 250 minutes/weekly by special education staff in special education setting
- Social/Behavior: 250 minutes/weekly by special education staff in a special education setting

The Student received 1,825 minutes per week of building instructional time, with 250 minutes per week served in the special education setting. The percent of time in a general education setting was 86.3%. The Student’s LRE was 80–100%.

13. The Student’s progress reports were provided quarterly, and all the progress reports for the reading, written language⁵, and two social/behavior goals were identical and stated:

Date	Progress
05/02/23	NA
06/30/23	Some Progress Made
11/08/2023	Some Progress Made
02/01/2024	Some Progress Made

Comments: 4/18/2023 New IEP

14. On March 29, 2024, the Parent filed a complaint with OSPI, alleging, in part:

- The Student did not receive his SDI in general education as the IEP required, and annual goals have not been worked on since spring of 2023.
- The Father was not invited, nor provided input, to the IEP meeting on April 17, 2023.
- The Student’s IEP goals were not aligned to the Student’s current performance data and grade-level curricula, and requests for paraeducator support were ignored.

15. On April 26, 2024, the District submitted its response that stated, in part, regarding the 2023–24 school year:

- Instructional Assistant (IA) pushed into the Student’s fourth period World History class to provide support and SDI in social/behavior, reading, and writing.
- At the start of the 2023–24 school year, the Student was not enrolled in any special education classes, including not being enrolled in an advisory period, and was enrolled in a third-period general education Language Arts class, which was co-taught by a special education teacher.
- The Student received no SDI in the special education setting as called for in his IEP.
- The Student did not receive the full 325 minutes per week of social/behavior SDI in a general education setting.
- Despite the Student’s March 2024 IEP, the parties agreed to keep the Student’s schedule for SDI as it was for the remainder of the 2023–24 school year and start the 2024–25 school year with time in a special education setting. A double matrix was not used to reflect this agreement and distinguish between this spring and next school year.

Regarding the complaint’s first issue, the District’s response stated, in part:

District concedes that the Student’s IEP has not been fully implemented properly.

⁵ Only the written language progress reports had the following additional information, “5/02/23 Some work done in [teacher’s] study skills class.”

...

To remedy these issues, the District proposes the following corrective actions:

- a. Training of [school's] special education teachers and administrators from PSESD regarding IEP development, LRE, and IEP implementation, including implementation of the service matrix.
- b. Following training, but before the 2024-2025 school year, convening the IEP team to review and amend, if necessary, [Student's] goals and the [IEP's] service matrix. The team will discuss the Student's LRE and consider how SDI can be provided in the general education setting, including whether paraeducator support is needed. The District proposes that a Regional Supervisor and/or Program Specialist attend this meeting.
- c. Compensatory education. The District proposes the Student receive a total of 25 hours of compensatory education in social/behavior and/or study/organization skills. As many of the minutes not implemented were for social/behavior SDI/support in the general education classroom and the team agreed for the Student *not* to receive SDI in the special education setting, this proposal is focused on SDI that would have helped the Student better access general education. The District reduced the amount to reflect the intensity of 1:1 tutoring that would be provided through compensatory education.

Regarding the complaint's second issue, District's response stated, in part:

Although [Father] did not attend the April 2023 IEP meeting – which was due to confusion surrounding the parents' email addresses – the Mother attended, in compliance with WAC 392-172A-0311 ('A school district must ensure that one or both of the parents of a student eligible for special education services are present at each IEP team meeting or are afforded the opportunity to participate.')

From the email correspondence, it is evident that the Mother and [Father] are in close contact regarding the Student's education, often utilizing a shared email account and/or communicating jointly regarding the Student's education.

Regarding the complaint's third issue, District's response stated, in part, "The District concedes that the IEP team did not sufficiently discuss the Student's LRE and service matrix and make needed amendments to reflect the team's decisions. The District believes this is remedied by the corrective actions proposed above [for the first issue]."

16. On May 10, 2024, the Student was interviewed. He expressed the following:

2022–23 School Year

- The special education teacher was the Student's advisory teacher.
- On Thursdays, beginning at about spring break, there would be a social-emotional learning (SEL) lesson in advisory.
- In advisory, the IA would help with homework, but otherwise not much was done.
- There was no writing SDI done in advisory.
- In the Student's general education classes, the IA only attended history.
- The Student did not receive any SDI in reading or SEL in his general education classes.

2023–24 School Year

- Currently he attends special education advisory on Mondays and Tuesdays, and general education advisory on Thursdays and Fridays.
- General education and special education advisory seem the same.

- In advisory on Fridays, there is an SEL lesson. Every advisory does it.
- He does not receive any SDI in SEL during special education advisory.
- He has not received any SDI during his general education classes.
- He has not received study skills SDI.
- His language arts instruction/assignments are the same as what other students in the class receive.
- He does not remember at any point when data has been taken for his IEP goals.

17. On May 14, 2024, the teacher and the IA were interviewed. The teacher and IA shared information about how SDI was provided in study skills class (which the Student was in until November 2022), advisory, and Language Arts.

18. On May 15, 2024, OSPI sent the following question to the District, "How did the Student receive his reading SDI in a general education setting from the March 30–June 30, 2023?"

The same day, the District responded:

My understanding is that during spring 2023, [IA] pushed into the student's 4th period World History class to provide support (including with related reading and writing components of the history class and staying on task (social/behavior), but I wasn't able to determine the number of minutes of SDI (reading vs. writing vs. social/behavior) that occurred during this period. The IEP did not provide for concurrent minutes, but I believe services were being delivered in a concurrent manner.⁶

CONCLUSIONS

Issue One: IEP Implementation – Regarding the first issue, the Parent's complaint alleged, in part, that the Student did not receive his SDI in the general education setting as the Student's IEP required, and that annual goals have not been worked on since spring of 2023. The District responded, in part, "District concedes that the Student's IEP has not been fully implemented properly. Moreover, it appears the IEP service matrixes often failed to reflect the agreement of the IEP team. Thus, at times...the IEP was not being implemented as written."

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 concession and the present case's record, the District has materially failed to implement the Student's IEP; thus, OSPI finds a violation as to the first issue. As part of this case's corrective action plan, the Student is entitled to compensatory education as described in the corrective action section in reading, written language, social/behavior, and study/organization skills, and OSPI also accepts the District's proposed remedy of training on IEP implementation and other topics.

⁶ The IEPs from April 2022 and April 2023 in effect at this time did not state that the Student was to receive any of his SDI concurrently.

Issue Two: Parent Input – Regarding the second issue, the Parent’s complaint alleged the Father was not invited to the April 17, 2023 IEP meeting and had no input. The District response stated, in part, “Although [Father] did not attend the April 2023 IEP meeting – which was due to confusion surrounding the parents’ email addresses – the Mother attended.”

The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student. IEP teams must consider the parents’ concerns and the information that parents provide regarding their child in developing and reviewing their child’s IEP.

The facts establish that the Father was not invited to the April 17, 2023 IEP meeting; thus, OSPI finds a violation as to the second issue. However, this violation did not lead to a negative impact on the Student as one of the Student’s Parents attended and participated in the meeting; therefore, the Student specific corrective actions are not required. As a corrective action, the District will conduct a training on the topic of IEP meeting participants and meeting invitation procedures.

Issue Three: IEP Development – Regarding the third issue, the Parent’s complaint alleged, in part, that the IEP goals were not aligned to the Student’s current performance data and grade-level curricula, and requests for paraeducator support were ignored. The District has proposed, “before the 2024-2025 school year, convening the IEP team to review and amend, if necessary, goals and the service matrix. The team will discuss the Student’s LRE and consider how SDI can be provided in the general education setting, including whether paraeducator support is needed.”

OSPI finds a violation regarding the third issue based on: (1) District’s concession; and (2) The progress reports from May 2, 2023 until February 1, 2024. These progress reports did not provide current performance data; they were identical with no qualitative, nor quantitative detail describing what progress, if any, the Student was making on his goals. OSPI accepts the District’s proposed corrective action of an IEP meeting before the 2024–25 school year.

CORRECTIVE ACTIONS

By or before **June 21, 2024, July 12, 2024, July 26, 2024, September 19, 2024, September 25, 2024,** and **March 14, 2025,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education⁷

By or before **June 14, 2024,** the District will meet with the Parents to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

⁷ Compensatory education is an equitable remedy that does not need to be awarded on a one-to-one ratio with the missed educational time because it is often provided on a one-to-one basis instead of a classroom setting that may have multiple students.

- Reading: 480 minutes
- Written Language: 480 minutes
- Social/Behavior: 1200 minutes
- Study/Organization Skills: 480 minutes

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, 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. By or before **June 21, 2024**, the District will provide OSPI with 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 **February 28, 2025**, the compensatory education must be completed. By or before **March 14, 2025**, the District will provide documentation to OSPI that it has completed the compensatory education.

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 **March 14, 2025**, the District must provide OSPI with documentation of compliance with this requirement.

IEP Meeting

By or before **September 5, 2024**, the Student's IEP team, including a regional supervisor and/or program specialist will meet. At the meeting or meetings, the IEP team will:

- Draft IEP goals aligned to current performance data and grade-level curricula.
- Consider how SDI can be provided in the general education setting, including whether paraeducator support is needed.

By or before **September 19, 2024**, the District will provide OSPI documentation of the parties' decisions, including a copy of the IEP and prior written notice.

DISTRICT SPECIFIC:

Training

The District will develop and conduct a training for the school the Student attends on IEP development, progress reports, parent notice of meetings, LRE, and IEP implementation, including service matrix implementation. The training will be provided to the school's special education staff and administrators. The District will provide the trainer with a copy of SECC 24-45's decision.

By or before **July 12, 2024**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainers with a copy of this decision for use in preparing the training materials.

By or before **July 26, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 2, 2024.

By or before **September 11, 2024**, the District will conduct the training mentioned above.

By or before **September 25, 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 24th 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.)