

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-57

PROCEDURAL HISTORY

On April 18, 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 April 18, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 22, 2024. OSPI asked the District to respond to the complaint's allegations.

On April 22, 2024, OSPI received the District's response and forwarded it to the Parent on April 24, 2024. OSPI invited the Parent to reply.

On April 23, 2024, OSPI received additional information from the District, and forwarded that information to the Parent April 24, 2024.

On April 24, 2024, OSPI received additional information from the Parent, and forwarded that information to the District on April 25, 2024.

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

ISSUE

1. During the 2023-24 school year, per WAC 392-172A-03105, has the Student's individualized education program (IEP) been implemented properly, including paraeducator support for Student's mandatory volunteer hours and his accommodation of lined writing paper?

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. 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).

Transition Requirements for IEPs: Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, or younger if determined appropriate by the IEP team, the student's IEP must include appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and the transition services including courses of study needed to assist the student in reaching those goals. 34 CFR §300.320; WAC 392-172A-03090.

FINDINGS OF FACT

Background

1. On February 6, 2023, the Student's IEP team met to draft the Student's IEP. The Student was a ninth grader at a District high school and was eligible for special education services under the category of autism.

The Student's IEP included specially designed instruction (SDI), to be provided from February 5, 2023 until February 5, 2024, primarily by a special education teacher in a special education setting, as follows:

- Math: 240 minutes/weekly
- Reading: 240 minutes/weekly
- Written Expression: 240 minutes/weekly
- Social Emotional: 240 minutes/weekly
- Adaptive: 240 minutes/weekly (by a paraeducator in a general education setting)
- Speech Language Pathology: 30 minutes/weekly (by a speech language pathologist (SLP))

The IEP also included the following supplementary aids and services:

- Additional Adult Support: 960 minutes/weekly (by a paraeducator in a general education setting)¹

The IEP had 33 accommodations, including lines on open space worksheets and wide-ruled paper for assignments.

2023–24 School Year

2. On September 5, 2023, the District held its first day of instruction for the 2023–24 school year.
3. The Student was a tenth grader at a District high school and his February 6, 2023 IEP was in effect. Chemistry was one of the classes in which the Student is enrolled for this school year.
4. The Student is currently fifteen years old and will turn sixteen during the summer of 2024.
5. On December 1, 2023, the IEP team met to amend the Student's IEP. This IEP included the same SDI and paraeducator support, for the same number of minutes as provided in the

¹ On April 3, 2024, an email from the District explained, as follows, "The primary purpose of [Student] having this additional adult support in general education classes is to ensure that he is receiving all of the accommodations and modifications he needs in those classes."

February 6, 2023 IEP. The IEP included 34 accommodations, including lines on open space worksheets.

6. On February 1 and 8, 2024, the Student’s IEP team met to begin drafting and then complete the Student’s annual IEP. This IEP included the same SDI and paraeducator support from February 5, 2024 until February 3, 2025, for the same number of minutes as was provided in the February 6, 2023 and December 1, 2023 IEPs. This IEP had 31 accommodations, including lines on open space worksheets.
7. On March 12, 2024, the Parent filed a complaint with OSPI, which was opened as SECC 24-34. In the previous complaint, the Parent alleged, in part, that the Student was not receiving occupational therapy services despite illegible handwriting.
8. On April 18, 2024, the Parent filed this complaint with OSPI, alleging the Student did not receive paraeducator support for his mandatory volunteer hours needed for graduation, nor his accommodation of lined writing paper, which is needed in chemistry class.
9. On April 22, 2024, the District submitted its response to the complaint, denying the Parent’s allegations. That response stated in part:

At the outset, the District wishes to identify that its graduation requirement of 40 hours community service is not mandatory...Given that this Student is 15, the District believes that any issue related to meeting graduation requirements and/or the delivery of transition services during the 2023-2024 school year is premature. That would include a discussion as to if the Student needs any form of support to engage in community service, including paraeducator support.

...

None of the IEPs that have been in place for the Student during the 2023-2024 school year have included an accommodation of ‘lined writing paper.’

10. The Student’s grades for the 2023–24 school year were as follows:

Class	First Quarter	Second Quarter	Third Quarter
Computer Graphics 1	A	A	A
Target Pre-Algebra	A	A	A
Chemistry	A	B	B
Target English 10	A	A	B
Adpt. Living Skills	A	B	A
Spanish 2	B	B	B
Modern World Hist	B	B	A

CONCLUSIONS

Issue 1: IEP Implementation – In the present case, the Parent filed a complaint, alleging the Student did not receive paraeducator support for his mandatory volunteer hours needed for graduation, nor his accommodation of lined writing paper, which is needed in chemistry class according to the Parent. The District responded, “[I]ts graduation requirement of 40 hours

community service is not mandatory...Given that this Student is 15, the District believes that any issue related to meeting graduation requirements and/or the delivery of transition services during the 2023-2024 school year is premature." Regarding the lined-paper accommodation, the District responded, "None of the IEPs that have been in place for the Student during the 2023-2024 school year have included an accommodation of 'lined writing paper.'"

Beginning not later than with the first IEP to be in effect when a student eligible for special education turns 16, the student's IEP must include appropriate measurable postsecondary goals based upon age-appropriate transition assessments, including courses of study needed to assist the student in reaching those goals.

Regarding not providing the Student's paraeducator support so that the Student can fulfill his graduation requirement of volunteering, the Student is currently a tenth grader and has not reached the age of sixteen. This is important because sixteen is the age when the District is required to consider issues related to graduation and transition services when it renews the Student's annual IEP. Thus, the issue concerning the graduation requirement of volunteering is premature at this time. Further, the current IEP does not include this type of paraeducator support, and thus, the District has not failed to implement paraeducator support while volunteering. But, during the next IEP meeting, the parties should discuss the Parent's concern about the volunteer hours and whether any special education supports are needed.

At the start of the school year, a district must have in effect an IEP for every student in 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 disabled child and those required by the IEP.

Regarding the Parent's allegation about lined-paper accommodation, the present case is in some ways a continuation of SECC 24-34, in which the Parent alleged that the Student was not receiving occupational therapy services despite illegible handwriting.² In the present case, the accommodations in the Student's current IEP include lines on open space worksheets.

The applicable case law states that to establish a violation under IEP implementation, it must be shown that the District has materially failed to provide the Student his services. In the present case, the Student's grade in chemistry is a "B" and all his grades in his general education classes are "As" and "Bs". Based on this fact, it cannot be said that the District has materially failed to implement the Student's IEP because the District has not provided the Student lines on open

² In SECC 24-34, OSPI found that the Student's February 2023 IEP did not include occupational therapy services for handwriting, and as such, there was no IEP implementation violation for not providing a service not included in an IEP. However, at the time SECC 24-34's decision, the Student was being reevaluated for OT services.

space worksheets. Despite this, OSPI would like to remind the District that it has the responsibility to provide the Student the lined-paper for worksheets with open spaces for writing.

For the reasons provided above, OSPI does not find a violation in the present case.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 11th day of June, 2024

Dr. Tania May
Assistant Superintendent of Special Education
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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.)