

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-83

PROCEDURAL HISTORY

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

On June 21, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on June 24, 2024. OSPI invited the Parent to reply.

On July 10 and 12, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on July 12, 2024.

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

ISSUE

1. Whether the District included the required individualized education program (IEP) team members at the Student's 2023–24 annual IEP meeting, including, per WAC 392-172A-03095(1)(f), "At the discretion of the parent or the school district, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate"?

LEGAL STANDARDS

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

Provision of Specially Designed Instruction: A paraeducator can deliver specially designed instruction, so long as the provision is "under the supervision of a certificated teacher with a

special education endorsement” and “student progress must be monitored and evaluated by special education certified staff.” WAC 392-172A-02090(1)(h)–(i).

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 fourth grade, and attended a District elementary school. The Student’s June 2023 amended individualized education program (IEP) was in effect.
2. The District’s 2023–24 school year began on September 5, 2023.
3. The June 2023 amended IEP included specially designed instruction in adaptive/self-help, social/emotional, math, reading, written expression, and communication. The IEP included related services in audiology, occupational therapy, and 1:1 paraeducator support. Two individuals served as the Student’s paraeducator (paraeducator 1 and 2). Specially designed instruction was primarily delivered by “educational staff/paraeducator” and monitored by the “learning specialist” (special education teacher).
4. On September 29, 2023, the Student’s IEP was amended to fix an error in one of the Student’s goals. The Parent gave permission to amend the IEP without a team meeting.
5. On February 9, 2024, the IEP was amended without a meeting, per the Parent’s permission. The amendment broke communication goals into separate goal areas.
6. The District stated in its response that prior to the Student’s annual IEP meeting in June 2024, the Parent requested the Student’s 1:1 paraeducator attend the meeting. On May 29, 2024, the District’s director of special education called the Parent and left a message. The director stated she wanted to understand why the Parent wanted the paraeducator to attend.
7. On June 3, 2024, the director and executive director called and spoke with the Parent. According to the District’s notes from the call, the Parent shared that she did not want the teacher to speak for the paraeducator and wanted the paraeducator to attend as the paraeducator knows the Student best. The Parent shared a concern that the Student was in the fourth grade but was not at grade level.¹
8. On June 24, 2024, the Student’s IEP team developed a new annual IEP for the Student. The meeting was attended by the classroom teacher, District representative, learning specialist/special education teacher, occupational therapist (OT), speech language pathologist (SLP), Parent, Student, special education TOSA (teacher on special assignment), and nurse. The Parent signed an excusal form, agreeing to excuse the Student’s audiologist.

¹ The District noted the “Student is in general education classes 86.52% of the day and “alternative core” is utilized for modified assignments while in inclusive classes.”

The IEP included goals and special education services in social/emotional, adaptive/self-help, math, reading, written expression, communication, and occupational therapy. Services were primarily delivered by "educational staff/paraeducator" or related service provider and monitored by the learning specialist/special education teacher or related service provider.

Among other topics, the prior written notice documenting the IEP meeting noted that the team "discussed how the learning specialist/special education teacher closely works and regularly collaborates with paraeducators who work with [Student] to collect and discuss the collected data to support the learning specialist/special education teacher with planning and adjusting instruction for [Student]."

9. The Parent, in her complaint, stated she requested the Student's 1:1 paraeducator attend the annual IEP meeting as the paraeducator works with the Student daily and had valuable insight to provide. The Parent stated the District denied her request and that she believed this was a violation of the special education that states, regarding IEP team membership, "other individuals, at the discretion of the parent or district, who have knowledge or special expertise regarding your student, including related services personnel, if appropriate."

10. The District, in its response to the complaint, stated that:

The Special Education Teacher and Paraeducators that serve the Student have scheduled time...to collaborate on a regular basis to ensure communication about the [S]tudent's IEP goals, data, implementation, etc. This process supports the timely formative growth of the student and allows for adjustments based on data on a variety of academic, social or health concerns for the [Student]. The input of the paraeducator and the teacher on a consistent basis (weekly) improves the common goal they share, successful student outcomes. In addition, our District TOSA has worked with the [Student], para[educator], and teachers to...support to the team in the implementation of the IEP. With this scheduled collaboration time, not only does the paraeducator have time to relay information, ask questions, or learn new interventions from the certificated staff, the Special Education Teacher/Case Manager receives feedback from the para[educator] regarding the Student in order to monitor progress, but also to adjust strategies on academic or behavioral support to the Student as needed in a timely fashion. The Special Education Teacher, as the Case Manager, interprets the data and is the required IEP Team member.

The District stated paraeducators work under the direction of a certified special education teacher and the special education teacher and case manager maintains "the role and responsibility, as the licensed professional providing, designing, supervising, monitoring or evaluating the provision of special education services." The District noted that its paraeducators, in line with state regulations and OSPI guidance, are "not directly responsible for the provision of special education and related services to children with disabilities; rather, these aides provide special education and related services to children with disabilities only under the supervision of special education and related services personnel."

The District provided documentation, such as emails and "collaboration, intervention, and support" schedules, showing the direction provided by the special education teacher and the

collaboration with the paraeducators. Emails and data collection sheets also reflected the teacher and paraeducator discussing the Student's goals and data collection.

Further information about collaboration included:

The certificated staff such as classroom teacher, LS, SLP, and OT regularly collaborate with the paraeducators throughout the week. The collaboration takes place during SPED clerical on Mondays from 9:10-9:45 and on Tuesday-Friday from 7:55-8:10 and 8:40-9:10. It also occurs during the time [Student] is receiving his speech (Monday from 2:40-3:10) and OT services (Thursday from 12:30-1:00) and at other times throughout the day. The collaboration helps the staff with planning and adjusting instruction for [Student] to best support his academic and social/ emotional needs. During this collaboration, staff discuss [Student's] progress on his IEP goals, discuss the successful behavior strategies, discuss data collection tools, and review lessons in the grade level and alternate core curriculum and discuss the effective ways to deliver these lessons.

11. The District also noted that the Student was making progress or meeting all IEP goals, which was reflected in the progress reports provided in the District's response.

12. In her reply to the District's response, the Parent indicated that not having the paraeducator at the IEP meeting limited her ability to participate. The Parent also stated that:

In our particular situation the paraeducator plays a big role in my son's education. Having her attend the meeting would allow for real-time discussion of how the goals would work best for [Student]. Since we were not allowed to have her attend the meeting we were stuck with assumptions made by those who do not directly work with [Student] on a regular basis. The learning specialist and general education teacher work with [Student] but not on the same level as his para does.

...

While the school does provide opportunities for the general ed teacher and learning specialist to connect with a para it is not the same as speaking with the para...She is the one, day in and day out, who is doing the work with [the Student]. She knows how to best motivate him and what is going to discourage him. We wanted to have her included in the IEP so we could ask her, in real time, as we were making the goals and decisions for next year what she thought about how they would be received and achieved by our son. She would be able to help us set him up for success

...

I feel that when a parent is requesting a person be at the meeting and has support from the general education and the requested person wants to be there, they should be allowed to attend.

CONCLUSIONS

Issue: Paraeducator Attendance at the IEP Meeting – The Parent alleged the District improperly denied her request to have the paraeducator attend the Student's annual IEP meeting.

Paraeducators are not specifically listed in the regulation defining IEP team membership. However, the regulation does require the special education teacher to attend and includes "any individuals

who have knowledge or special expertise regarding the student, including related services personnel.”

Here, the Student’s IEPs included that specially designed instruction would be delivered by “educational staff/paraeducator” and monitored by the “learning specialist” (special education teacher) or related service provider. A paraeducator can deliver specially designed instruction, so long as the provision is “under the supervision of a certificated teacher with a special education endorsement” and “student progress must be monitored and evaluated by special education certified staff.” The Parent requested that the paraeducator working with the Student attend the annual IEP meeting in June 2024 because, according to the Parent, the paraeducator knew the Student best as the paraeducator was the staff person that worked most closely with the Student. The Parent explained that because the paraeducator works with the Student daily and the other staff “do not directly work with [Student] on a regular basis,” she felt that having the paraeducator at the meeting would “allow for real-time discussion of how the goals would work best.” The Parent stated she felt that when a parent is requesting a person be at the meeting and the requested person wants to be there, they should be allowed to attend.”

The paraeducator did not attend the annual IEP meeting held on June 24, 2024.

The District explained that because paraeducators work under the direction of a certified special education teacher and the special education teacher and case manager maintains “the role and responsibility, as the licensed professional providing, designing, supervising, monitoring or evaluating the provision of special education services,” the special education teacher attends the IEP meeting, not the paraeducator as a matter of practice. The District provided information and documentation regarding how the Student’s special education teacher and paraeducators collaborate on instruction, monitoring, and data collection. The District also noted the TOSA has worked with the Student, and his special education teacher and paraeducators. Both the special education teacher and TOSA attended the annual IEP meeting.

OSPI notes that the IEP team membership does include “any individuals who have knowledge or special expertise regarding the student, including related services personnel” at the parents or district’s discretion; however, generally, when the requested staff person is a district staff member not otherwise required to be at the IEP meeting, then it is at the district’s discretion whether to have that staff person attend. As it is the District’s responsibility to ensure the proper composition of the IEP team, the district also has the discretion to decline inviting certain district staff if the staff are not necessary members of the team and the existing team had the necessary expertise. A paraeducator is not a required member of an IEP team. And, as the District explained and supported in regulation, it is the special education teacher who should and did speak to specially designed instruction, goals, progress, and monitoring. While not discounting the contribution of the paraeducator as the staff person delivering instruction, here the paraeducator was doing so under the supervision of the special education teacher. Both the special education teacher and a TOSA working with the Student attended the IEP meeting and were able to speak to the Student’s instruction and progress. Thus, here, the existing team had the expertise necessary to develop a sufficient IEP for the Student. While the District had an obligation to consider the Parent’s request

to have the paraeducator attend, the District was not required to have the paraeducator attend the IEP meetings. Thus, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 25th day of July, 2024

Dr. Cassie Martin
Executive Director 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.)