

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-99

PROCEDURAL HISTORY

On July 9, 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 Seattle Public Schools (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 July 9, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on July 10, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On July 25 and 26, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on July 29, 2024. OSPI invited the Parent to reply.

On August 1, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on August 8, 2024. OSPI forwarded the information to the Parent on August 30, 2024.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began with the 2023–24 school year, per the allegations in the complaint. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. During the 2023–24 school year, did the District follow proper individualized education program (IEP) implementation procedures?

LEGAL STANDARDS

IEP Implementation: A district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 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).

Evidentiary Weight: According to the Office of Special Education and Rehabilitative Services, "it would not be inconsistent with the IDEA...for a State to use a 'preponderance of the evidence' standard in making independent determinations as to whether a public agency violated a requirement of Part B of the IDEA." *Letter to Reilly*, 64 IDELR 219 (OSERS 2014). Merriam-Webster's Dictionary of Law defines the phrase "preponderance of the evidence" as "the standard of proof...in which [a] party [wishing to establish a factual premise] must present evidence which is more credible and convincing than that presented by the other party or which shows that the fact to be proven is more probable than not." MERRIAM-WEBSTER'S DICTIONARY OF LAW 377 (1996).

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, (9th 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 (9th 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 (9th Cir. 2006). "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. The Student was eligible for special education services under the category of emotional/behavioral disability.
2. The Student's IEP team met and developed the annual IEP on May 30, 2023.

The May 2023 IEP included the following goals: social/behavior (awareness); social/behavior (selecting, using, and reflecting on self-regulation tools); and social/behavior (selecting comfort indicators).

The May 2023 IEP included the following accommodations: access to digital keyboard that depicts ten finger method and quantifies his time and skill performed; access to speech-to-text for handwriting assignments greater than a few sentences; frequent checks for understanding; access to noise-cancelling headphones; check-in/check-out with trusted adult; preferential seating; adult-sized desk and chairs; quiet space available for lunch upon Student request; reduced daily schedule; staggered passing period; Student-selected break available; and use of a graphic organizer.

The May 2023 IEP included the following support for school personnel: occupational therapy consultation: 120 minutes a year – *general and special education settings*.

The May 2023 IEP included the following specially designed instruction (SDI): 225 minutes a week of social behavior – in a *special education setting*. The foregoing was to be provided by “special education staff.”

3. According to the District, “At Parent’s request, the team agreed the Student would start the school year with a reduced schedule, with the Student attending a first-period special education social/behavior class in the fall, with additional classes being added when the Student was ready.”

2023–24 School Year

4. The District’s 2023–24 school year began on September 6, 2023.
5. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of emotional/behavioral disability, was in the eighth grade, attended a District middle school, and the Student’s May 2023 IEP was in effect.
6. At the start of the 2023–24 school year, the Student attended a life skills class, wherein the Student received SDI in social/behavior, for a total of 239 minutes a week.¹

The District stated, “Life Skills is a special education course taught by special education teacher...The class is small, with a total of four students...The special education teacher provided 1:1 SDI to the Student in social/behavior.”

7. The Parent’s complaint request read, in part, “There is no evidence the special education teacher provided or tracked the specially designed instruction minutes required [by] Student’s IEP. This...raises serious concerns about whether Student’s [SDI and] accommodations were...properly implemented.”
8. According to the Student’s attendance profile, the Student had an overall attendance rate of 89% during the 2023–24 school year.
9. On September 6, 2023, a District staff person emailed the occupational therapist (OT) an emotional regulation-related worksheet, suggesting the same might be a helpful tool for the Student.

A separate email, dated September 6, 2023, authored by an OT, stated a different OT was “developing supports for Student’s first days returning [to] the school environment.”

¹ On Mondays, Tuesdays, Thursdays, and Fridays, the class met from 8:55–9:46 am. On Wednesdays, the class met from 8:55–9:30 am.

10. On September 18, 2023, the OT emailed the case manager, stating, "I've been able to observe the class Student takes with the special education teacher and [I] understand his needs a bit more."
11. An email, dated September 20, 2023, showed the Student worked on a self-advocacy-related worksheet that day.
12. On October 20, 2023, the Parent emailed several District staff, requesting that it be arranged that the Student have an "appropriately-sized desk/chair" when he began attending the math empowerment class.

On October 31, 2023, the assistant principal responded to the Parent, stating the Student would have "a full table to himself" and that "the tables and chairs are all adult-sized" and that "Student [had] identified the table he preferred."

13. Between September 21 and November 1, 2023, the Student's IEP team discussed the Student attending a second class. Ultimately, on or about November 1, 2023, the Student began attending a second class: math empowerment.

The District's response read, "The Student continued to receive all of his social/behavior SDI in the special education teacher's first-period class...Needed accommodations were provided in [math empowerment]. From the District's perspective, the Student was successful and doing well in both [classes]."

14. On November 9, 2023, the Parent asked the special education teacher for an update on the Student's progress on the goal of selecting comfort indicators in the Student's May 2023 IEP.

The special education teacher responded, "I have not [had] him demonstrate this [skillset] in my setting, as Student gets along well with everyone in [this class]."

15. Progress reporting, dated November 2023, related to the Student's May 2023 IEP noted the following for social behavior:

- Awareness: some progress made;
- Selecting comfort indicators: some progress made²; and,
- Selecting, using, and reflecting on self-regulation tools: some progress made.³

16. On January 23, 2024, the special education teacher emailed the Parent, stating the goals of selecting comfort indicators and selecting, using, and reflecting on self-regulation tools were not "goal[s] we work on in my setting."

² The narrative portion of the progress report for this goal read, "Student did not need to employ this strategy this quarter."

³ The narrative portion of the progress report for this goal read, "As Student attended only first period this quarter, and did not feel uncomfortable in the class, he did not need to utilize this strategy."

In relation to the May 2023 goal related to awareness, the special education teacher wrote:
Student's response to overstimulating environments is dependent on who is present. He can need multiple reminders to focus and stop talking to peers. He will sometimes respond negatively instead of accepting responsibility when redirected. He does not take a break away from the group, but he does respond to redirection after 1-2 reminders.

17. On January 25, 2024, the special education teacher emailed the case manager, stating, "I asked Student if he ever needs to take a break in my class or use his coping skills and he said no."

The case manager responded, "I conferenced with Student yesterday [and] he told me he is doing fine and does not use the strategies outlined in his goals."

18. Progress reporting, dated late January 2024, related to the Student's May 2023 IEP noted the following for social behavior:

- Awareness: some progress made;
- Selecting comfort indicators: "Student self-advocated in his transition to 2nd period math empowerment in the general education setting. He informed his teachers about his need for an appropriate size chair and desk along with the location of his seat. During his monthly check-in, he expressed that the class is going well and he has not faced circumstances of discomfort due to sensory or social factors since transferring into the class,"; and,
- Selecting, using, and reflecting on self-regulation tools: "Since transferring into the 2nd period math empowerment class, [Student] has not felt the need to use any tools to fix circumstances identified as uncomfortable or sensory/social factors."

In relation to the late January 2024 progress report entries, the District's response read, in part: Because the Student was not demonstrating discomfort in the special education teacher's class, the special education teacher indicated he was not working on the two goals related to the Student handling discomfort in his setting. He provided updated information regarding the Student handling overstimulation. Additional data was not gathered regarding the goals, as the school was not witnessing the Student experience discomfort during his shortened day.

The foregoing progress report was provided to the Parent on February 7, 2024.

19. On or about March 4, 2024, the Student began attending a third class: a general education English language arts class.

According to the District, "The Student continued to receive all of his social/behavior SDI in [the] first-period class and his accommodations in his general education classes. The Student continued to be successful."

20. On April 2, 2024, the special education teacher provided the Parent with progress reporting information related to the May 2023 IEP goal of awareness, "Student can be brought off-task easily and need redirecting to get refocused and lower his volume. He does not take breaks, but comes to my classroom early before [class] because it is calm in my space."

21. Progress reporting, dated early April 2024, related to the Student's May 2023 IEP noted the following for social behavior:

- Awareness: some progress made;
- Selecting comfort indicators: significant progress made; and,
- Selecting, using, and reflecting on self-regulation tools: some progress made.⁴

Based on emails, it appears the foregoing progress reporting was provided to the Parent on April 24, 2024.

22. On May 3, 2024, the case manager emailed the special education teacher, stating, "Any ideas for social emotional for Student? I talked with his gen ed teachers and we could not think of any needs that require SDI [but] I don't think [Parent] would agree to switching to a 504."

The special education teacher responded, suggesting a goal regarding "entering conversations with peers" might be a good goal for the Student.

23. On May 16, 2024, the special education teacher emailed the Student's IEP team a draft IEP, stating, "After talking with his teachers, I really struggled to come up with a goal."

24. On May 20, 2024, the Student's IEP team developed a new IEP for the Student. The IEP was to be implemented beginning May 21, 2024.

According to the District:

The intent of the IEP team was to change the matrix for the Student's transition to high school at the start of the 2024-2025 school year. The District acknowledges that there was not a dual matrix [in the May 2024 IEP] to account for the Student's remaining month of the 23-24 school year, where the Student would continue to receive all SDI in the special education setting.

The May 2024 IEP included the following social/behavior goals: task initiation; planning completion of tasks; time management; self-assessment of task completion; and emotional regulation.

The May 2023 IEP included the following accommodations: frequent checks for understanding; check-in/check-out with trusted adult; preferential seating; adult-sized desk and chairs; quiet space available for lunch upon Student request; reduced daily schedule; staggered passing period; Student-selected break available; use of a graphic organizer; explicit visuals for assignments and transitions; extra time to complete assignments; laptop computer to assist with writing assignments; and tangible reinforcement items for working toward goal completion.⁵

⁴ The narrative portion of the progress report for this goal read, "Student has not felt the need to use any tools to fix circumstance identified as uncomfortable or sensory/social factors."

⁵ The following accommodations were in the May 2023 IEP but were not in the May 2024 IEP: access to speech-to-text for handwriting assignments greater than a few sentences; access to noise-cancelling

The May 2024 IEP included the following support for school personnel: occupational therapy consultation: 25 minutes a month – *general* and *special education settings*.

The May 2024 IEP included the following special education: 40 minutes a week of social behavior – in a *special education setting*. The foregoing was to be provided by “special education staff.”

The May 2024 IEP included the following special education: 212 minutes a week of social behavior – in a *general education setting*. The foregoing was to be provided by “special education staff.”

In its response, the District stated, “[At the May 20, 2024 IEP meeting], the Parents and [their] advocate expressed frustration with [the] lack of data on Student’s social/behavior goals, as presented in the draft IEP, and failure by the school team to propose additional social/behavior goals.”

25. Between May 20 and June 20, 2024, the IEP team discussed whether the Student required specialized transportation, and whether a revision of the social/behavior goals in the May 20, 2024 IEP was warranted.
26. On June 6, 2024, the Student’s IEP team determined, in part, because there was a lack of data related to the Student’s transportation needs, the Student would be provided with a temporary transportation support plan for 60 school days. The Student would receive special transportation during that time, with the team implementing a transportation goal and reviewing the data in fall 2024 to inform the decision of whether continued transportation was needed. A June 7, 2024 prior written notice documented this.
27. Also, on June 6, 2024, the program specialist emailed several District staff, stating, in part, “Student’s IEP happened recently and there wasn’t any data collected besides [a] Student interview. [We need to] collect data...so we can have an IEP that fully reflects where Student is socially/behaviorally.”

Based on emails, following the foregoing email, District staff worked together to gather data on the Student’s social behavior performance in his three classes.

28. The District’s response included an OT service log. In relation to the 2023–24 school year, the OT service log contained a single entry, dated June 20, 2024. Said entry was labeled as “planning,” and the “duration of service” was documented as being one hour.
29. Progress reporting, dated June 20, 2024, related to the May 2024 IEP showed the following: social behavior:
 - Task initiation: goal met;
 - Planning completion of tasks: goal met; and,

headphones; and access to digital keyboard that depicts ten finger method and quantifies his time and skill performed.

- Time management: significant progress made.

The June 20, 2024 progress report did not include entries for the following social behavior goals in the May 2024 IEP: self-assessment of task completion, and emotional regulation.

30. June 21, 2024 was the final day of school.

31. On June 26, 2024, the Student's IEP team amended the May 2024 IEP.

The June 2024 amended IEP stated the Student would be provided with general transportation.

The June 2024 amended IEP included the following social/behavior goals: self-advocacy; use of a planner; use of a checklist and the ability to self-monitor staying on task; coping strategies for emotional regulation; and the ability to independently navigate potential public transportation problems.

The following portions of the June 2024 amended IEP were the same as that in the May 2024 IEP: accommodations; supports for school personnel; and specially designed instruction.

32. The District's response read, "The District does...acknowledge issues with data collection, partially due to the Student's reduced schedule and the team's inability to track certain goals, as the Student was not demonstrating discomfort. To remedy this issue...the District proposes training on data collection for special education teachers at the 2023-2024 middle school."

33. On August 1, 2024, OSPI's investigator emailed several questions to the English language arts (ELA) teacher (that the Student started working with in March 2024). On August 8, 2024, the ELA teacher provided the following responses:

When Student began attending your English language arts class on or March 4, 2024, were you provided a copy of the Student's May 2023 IEP?

Yes, Student's IEP was made available to me.

If you were not provided with a copy of the Student's May 2023 IEP, did you have any conversations with the special education teacher regarding the IEP accommodations that were to be provided to Student?

Yes, I did have a conversation with the special education teacher about accommodations for Student before he arrived in my ELA class.

If you were aware of the IEP accommodations to be provided to Student, can you provide a brief statement regarding implementation of the same? For example, were there particular accommodations the Student made greater use of? Were there certain accommodations the Student did not make much use of?

In ELA class, Student made the most use of preferential seating, frequent checks for understanding, extra time when needed, reduced daily schedule (and adjusted assignments according to this schedule), and graphic organizers. If I remember correctly, I believe he also used headphones (but it has been some time since we were in the classroom, so I can't say with exact certainty). He also used his laptop for most of the written assignments in

class. I do not think he used his break often in my class, although I am always accommodating to this request.

CONCLUSIONS

Issue: IEP Implementation – The Parent alleged the District did not follow proper procedures for implementing the Student’s individualized education program (IEP) during the 2023–24 school year.

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.

Here, the documentation showed the Student’s specially designed instruction (SDI) was materially implemented. For example, the May 2023 IEP provided the Student with 225 minutes of SDI in social behavior, in a *special education setting*. And, beginning with the start of the school year, the Student attended a small-group life skills class that met for a total of 239 minutes each week. Furthermore: a September 20, 2023 email showed the Student completed a worksheet related to self-advocacy, a skillset generally related to the social/behavior goals 2 and 3 in the May 2023 IEP—selecting self-regulation tools and comfort indicators—respectively; multiple documents, including November 2023, January 2024, and April 2024 progress reporting, showed the Student was provided with SDI related to social/behavior goal 1 in the May 2023 IEP—awareness; and the January 2024 progress reporting showed District staff had monthly “check-in[s]” with the Student regarding his needs in the area of social/behavior goals 2 and 3. The foregoing demonstrated the SDI in the Student’s May 2023 IEP was materially implemented, and OSPI does not find a violation.

The Parent accurately notes, though, the Student did not appear to require extensive SDI for social/behavior goals 2 and 3—selection of regulation tools and comfort indicators—respectively. For example, on November 9, 2023, the special education teacher stated the Student had not worked extensively on selecting comfort indicators as he got “along with well with everyone in [the class];” and January 2024 progress reporting showed, in part, the Student had “not felt the need to use any [self-regulation] tools to fix circumstances identified as uncomfortable.” OSPI notes this might show potential IEP development concerns. For example, an IEP should be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student’s anticipated needs. At the same time, the Student was attending school on a partial day schedule per the Parent’s request and therefore, it is possible that those goals may have been more applicable had the Student attended a full day. And the IEP team ultimately met in May and June 2024 and updated the Student’s IEP. Additionally, the fact that social/behavior 2 and 3 were not worked on extensively does not mean the Student did not receive 225 minutes of SDI in social/behavior, a reasonable understanding is simply that a disproportionate amount of the 239 minutes of weekly class was devoted to social/behavior 1 and instruction related to other social and life skills. Furthermore, as detailed above, the January 2024 progress reporting showed District

staff had monthly “check-in[s]” with the Student regarding his needs in the area of social/behavior goals 2 and 3. So, while OSPI acknowledges the accuracy of the Parent’s observation, this fact does not, in and of itself, indicate a material failure to implement the Student’s IEP.

Regarding the May 2023 school support of 120 minutes a year of occupational therapy consultation: on September 6, 2023, a District staff person emailed the OT an emotional regulation-related worksheet that said staff person believed would be helpful to the Student; separately on September 6, 2023, an OT authored an email, stating a separate OT was “developing supports for Student’s first days returning [to] the school environment;” on or about September 18, 2023, an OT observed the Student to better understand the Student’s needs, and to help the Student’s teachers regarding those needs; and on June 20, 2024, the OT worked on “planning” consultation services for an hour. The foregoing shows the Student’s OT services were materially implemented during the 2023–24 school year. OSPI does not find a violation.

Regarding the accommodations in the Student’s IEPs in effect during the 2023–24 school year: on October 31, 2023, the assistant principal stated the Student had an adult-sized desk and chair; January 2024 progress reporting detailed the Student was provided with monthly check-ins; an April 2, 2024 email from the special education teacher stated breaks were available to the Student, but that the Student chose not to access them because the Student was always “calm in [the classroom] space;” and the ELA teacher stated she was provided a copy of the Student’s IEP accommodations, a special education staff person discussed the same with her prior to her working with the Student, and that she provided the Student with the required accommodations. OSPI finds the IEP accommodations were materially implemented; OSPI does not find a violation.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 5th day of September, 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.)