

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-81**

### **PROCEDURAL HISTORY**

On June 1, 2023, 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 Clover Park 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 1, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 2, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 6, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to June 27, 2023.

On June 27, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On June 29, 2023, OSPI requested additional information from the Parent. On July 4, 2023, OSPI received the Parent's answer as part of their reply. OSPI forwarded that answer to the District on same day.

On June 30, 2023, OSPI requested additional information from the District. On June 30, 2023, OSPI received that information and forwarded it to the Parent on the same day.

On July 3, 2023, OSPI requested additional information from the District. On July 3, 2023, OSPI received that information from the District and forwarded it to the Parent on the same day.

On July 4, 2023, OSPI received the Parent's reply to the District's response and forwarded it to the District on the same day.

On July 4, 2023, OSPI requested additional information from the Parent. On July 7, 2023, OSPI received that information and forwarded it to the District on the same day.

On July 5, 2023, OSPI requested additional information from the District. On July 5 and 17, 2023, OSPI received that information and forwarded it to the Parent on July 6 and 18, 2023.

On July 5, 2023, OSPI requested additional information from the Parent. On July 7, 2023, OSPI received that information from the Parent and forwarded it to the District on the same day.

On July 21, 2023, OSPI received additional information from the District. On July 24, 2023, OSPI forwarded that information to the Parent.

On July 26, 2023, OSPI received additional information from the Parent and forwarded it to the District on the same day.

On July 28, 2023, OSPI received additional information from the District and forwarded it to the Parent on the same day.

OSPI considered all 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 on June 2, 2022. 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. Per WAC 392-172A-05035(3), did the District satisfy its corrective action responsibilities under OSPI Cause No. 2022-SE-0013?

### **LEGAL STANDARD**

Enforcement of Due Process Decisions: Once a decision is entered in a due process proceeding, and if that decision includes provisions ordering the school district to take corrective action, the district must implement the order consistent with the terms of that decision. If a parent believes a district has failed to implement a due process decision they may file a community complaint with OSPI. OSPI must resolve any complaint that alleges a school district's failure to implement a due process decision. 34 CFR §300.152(c)(3); WAC 392-172A-05035(3); OSEP Memorandum 00-20 (July 17, 2000) (Question 5).

### **FINDINGS OF FACT**

1. On February 9, 2022, the Parent filed a special education due process hearing request with the Office of Administrative Hearings (OAH) under OSPI Cause No. 2022-SE-0013. At that time, the Student was a fifth grader at a District elementary school.
2. The issues in the due process included, but were not limited to, whether the District violated the Individuals with Disabilities Education Act (IDEA) and denied the Student a free appropriate public education (FAPE) beginning March 5, 2021 regarding:
  - Developing and implementing the Student's individualized education program (IEP).
  - Implementing related services.
  - Providing periodic progress reports and prior written notices (PWN).
  - Meeting the requirements for parental participation at IEP meetings.
3. On August 26, 2022, an administrative law judge (ALJ) issued a decision for OSPI Cause No. 2022-SE-0013, which established, in part:

## FINDINGS OF FACT

- ...
1. The Student has a complex medical history...[and] is also G-tube, wheelchair, and tracheostomy dependent.
  2. The Student experiences an average of 12 to 40 seizures per day, and...Since March 5, 2021, through the date of the hearing the Student has been hospitalized over 20 times and has been for a period of many days on each occasion.
- ...
36. The Mother also emailed...Equity and Civil Rights Office (ECRO), at OSPI and sought clarification on whether the District was required to deliver the Student's SDI in person in the home...
  37. [ECRO] also stated in the email response to the Mother and [the District's director of special services (director)]:
    - **Districts are not required to have outside personnel (individuals not hired by the district) provide services to a student.** [Emphasis in original].
- ...
- You asked that [supervisor] provide you with the district's policy regarding in-home (home hospital) instruction...There will be no policy specific to home instruction. It is the IEP team's responsibility to determine a student's LRE ...You will find this information at WAC 392-172A-02050 (least restrictive environment).

The conclusions in the decision indicated the ALJ found that the Parents had shown the District failed to implement the Student's IEPs in the areas of cognitive development, adaptive skills, gross motor skills, fine motor, vision, and communication. The ALJ's decision further stated, in part:

- ...
88. Essentially, the Parents request a specific instructional model and/or service delivery location because in the past the Student temporarily received in person in the home instruction as per the 'Hospital' designation of WAC 392-172A-02100. The Parents desire the same opportunity as long as the Student is medically fragile and susceptible to complications if she contracts Covid-19. By going to the Student's home in July 2021, [teacher 1], [teacher of the visually impaired (TVI)], [the occupational therapist], and [physical therapist] reinforced the Parents' expectations that they were entitled to a specific instructional model and/or services delivery location.
- ...
94. The Parents' desire to obtain the best instruction for the Student given the circumstances is understandable, but the District is not required to meet the Parents' specific demands for a particular instructional model and/or service delivery location when three other options (on-line remote access to the Life Skills classroom platform, on-line remote instruction individual sessions, and "drive-in" services at the District) are available.
  95. ...there is no statute, rule, or policy that requires the District to send District employees or contracted personnel into the Student's home to provide in person SDI.
- ...

## REQUEST FOR RELIEF

...

98. As concluded above, the District violated WAC 392-172A-02020 for the period of June 21, 2021 through July 29, 2021...the Parents are awarded compensatory education in the form of SDI as follows: 45 minutes of fine motor (OT), 45 minutes of gross motor (PT) 2.5 hours of vision/TVI, and 2.5 hours of communication (SLP).

99. As concluded above, the District violated WAC 392-172A-02020 for the period of September 1, 2021 through February 17, 2022...The Parents are awarded compensatory education in the form of SDI as follows 30 minutes of cognitive development (special education teacher); 30 minutes of adaptive skills (special education teacher); and 45 minutes of gross motor (PT).

100. The Parents included in their request for relief that the compensatory education be provided by sending personnel, contracted providers or District employees, into the home. As concluded above, the Parents' request to require the District employees into the home to provide compensatory education services is neither possible nor realistic, and therefore denied.

101. Therefore, it is ordered that the compensatory education awarded above may be provided by the District's employees via on-line remote instruction, or by contracted providers in person in the Student's home. Additionally, the Student may receive compensatory education awarded above via "drive-in" services at the District.

4. On September 13, 2022, the parties held a meeting to discuss the compensatory education ordered in the due process and detailed the discussion in a PWN, dated September 19, 2022.

The PWN stated as follows:

...The...District is prepared to work with the family to complete the triennial educational evaluation and present a proposed compensatory education schedule.

...

The...District is rejecting providing services in the home which the guardians are requesting.

...

5. The...District attempted to propose a compensatory education schedule for the hours identified from a recent due process findings of fact. [Parent] said he was uninterested in this services (sic) unless the delivery of instruction was provided in-home with face-to-face instruction.

5. The Student's "Services Log" shows the District signed onto the virtual classroom to offer the Student instructional services on 51 days from September 8, 2022 through June 9, 2023. The log shows the Student only attended two sessions on September 8 and 9, 2022. Each session was 30 minutes.
6. Four PWNs, dated September 15, 20, 27, and October 12, 2022, mention the parties' disagreement about the delivery of services in regard to the Student's IEP. These PWNs do not mention compensatory education specifically.

On July 17, 2023, in an email responding to OSPI's questions, the District stated:

The District tried multiple times to discuss and deliver compensatory education with him [Parent]. The District reached out in August, September, again in October, and it was on the agenda for the December meeting. The December meeting was to extent (sic) to the following year after break, but the family declined.

...

Compensatory education was again on the agenda for discussion on December 15, 2022, but for the duration of the 8 hours of the mediated IEP, [Parent] refused to discuss anything other than service delivery model.

7. The Parent filed a complaint on June 1, 2023, alleging, in part, "the District has not provided any of the compensatory minutes awarded in OSPI Cause No. 2022-SE-0013."

8. The complaint stated in part:

[Student] is visually impaired. She is not able to successfully access academic instruction and related services via on-line, remote instruction. It makes no sense to require [the Student] to access services via a computer screen that she cannot see.

...During the due process hearing, the District did not dispute that [Student's] Least Restrict Environment is 'Homebound/Hospital'. Her medical providers are happy to provide that the safest environment for her to access compensatory services is her home.

9. On June 27, 2023, OSPI received the District's response, which stated, in part:

The District has made a good faith effort to try...[to] provide the Student with the compensatory services minutes ordered by Judge...

...

The Parents then provided an August 30, 2022 note<sup>1</sup> from [a doctor] and relied on this note to continue to assert that the Student cannot be instructed outside the home...However, as the District had explained during previous IEP meetings and during the due process hearing...[the] District is a 'Compassionate Care Assignment' location by the US Military, and is one of the few locations throughout the country that can provide education to even the most medically fragile students.

While the District takes outside input into consideration, that consideration is taken in the context of the totality of the continuum of services available.

...

A district is not obligated to agree to a parent's desire for a more restrictive placement for a medically fragile child...

The August 30, 2022 doctor's note [provided by the Parents], by itself, amounted to the generalized, nonspecific, and blanket prohibition against LRE.

...

The Parents provided the District with October 21, 2022 medical records from the Neuromuscular Team at...Medical Center...The physician recommended in-person services; however, did not limit the environment to the home setting.

...

The District has continued to make services available for the Student since reinitiating services despite the Parents' protest in January 2023 following winter break. District team members have faithfully logged in during every single service session and waited for the

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<sup>1</sup> The note stated, "[The Student] is homebound and requires 1:1 nursing care. Due to [the Student's] medical needs throughout the day, it is recommended [the Student] receives in home school services with face to face teacher instructions."

Student to attend...The Student has only appeared for a total of one hour during the entirety of the 2022–23 school year.

10. On July 4, 2023, OSPI received the Parent’s reply to the District’s response. It stated, in part: [We (the Parents)] were surprised to read that the District is insisting the compensatory services awarded in the administrative decision were delivered to [the Student] on September 8 and 9, 2022. That is simply not true.

We understand that compensatory services do not take the place of a regular school program and cannot be scheduled to conflict or interfere with delivery of a child’s regular school program..

...

[We] can state categorically that the District did not collaborate with us on the scheduling or delivery of compensatory services. If a schedule had ever been proposed, we would have insisted that it not take the place of regular IEP services.

...

The allegation that I refused compensatory services is false. My interactions with [the director] and [supervisor] have been intentionally limited because they are typically very tense; we have never engaged in a targeted discussion about compensatory services.

## CONCLUSIONS

**Issue: Due Process Decision** – The Parent alleged that the District has not provided any of the compensatory minutes awarded in OSPI Cause No. 2022-SE-0013.

Once a decision is entered in a due process proceeding, and if that decision includes provisions ordering the school district to take corrective action, the district must implement the order consistent with the terms of that decision. If a parent believes a district has failed to implement a due process decision, they may file a community complaint with OSPI. OSPI must resolve any complaint that alleges a school district’s failure to implement a due process decision.

In the relevant due process, the ALJ stated, as follows, “Therefore, it is ordered that the compensatory education awarded above may be provided by the District’s employees via on-line remote instruction, or by contracted providers in person in the Student home. Additionally, the Student may receive compensatory education awarded above via ‘drive-in’ services at the District.”

In the present case, the parties disagree over how the Student will receive the compensatory education. The Parent wants the compensatory education to take place in the home because of the Student’s serious medical conditions. The District’s position is that it can provide services to medically fragile students, given its “Compassionate Care Assignment” location. The District further stated:

While the District takes outside input into consideration, that consideration is taken in the context of the totality of the continuum of services available...The District also provided alternative options, including drive-in services in a sanitized and isolated environment, and continued virtual service.

...

The Parents provided the District with October 21, 2022 medical records from the Neuromuscular Team at [Medical Center]...The physician recommended in-person services; however, did not limit the environment to the home setting.

The District did make good faith efforts to try to schedule compensatory education services, discussing the compensatory education in the September 2022 meeting, putting the topic on agenda for other meetings that were declined by the Parents, and offering services. Additionally, OSPI notes that the District's offer of compensatory education services at school was in line with the ALJ's "drive-in services" option. Despite this, the parties' lack of agreement regarding how the Student's compensatory education is going to be delivered has resulted in the Student not receiving her compensatory education. The Parents maintain there has been limited discussion of a compensatory education schedule. To some degree, it appears the IEP team discussions got stuck in disagreement about the implementation of the Student's regular IEP services, thus limiting time to discuss compensatory education.

On September 8 and 9, 2022, the District provided the Student with 30-minute sessions of SDI services. The Parent has stated that these sessions took place during the school day and cannot be considered part of the compensatory education award. The Parent is correct. Thus, OSPI finds a violation as to the present issue since the Student has yet to receive her compensatory education award as issued in Cause No. 2022-SE-0013 on August 26, 2022, despite efforts to schedule these services.

The ALJ in the due process proceeding provided three options for delivering the compensatory education. Each party rejected one of those options, and thus, OSPI will order that the compensatory education will be provided using the third option, "by contracted providers in person in the Student's home."

### **CORRECTIVE ACTIONS**

By or before **September 29, 2023** and **January 12, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

By or before **September 15, 2023**, the District will meet with the Parent to establish a schedule for the compensatory education. The compensatory education is awarded as follows:

- 30 minutes cognitive development (special education teacher).
- 30 minutes adaptive skills (special education teacher).
- 1.5 minutes of gross motor (PT).
- 45 minutes of fine motor (OT).
- 2 hours of vision/TVI.
- 2.5 hours of communication (SLP).

Unless otherwise agreed to by the District and Parent, services will be provided by contract providers, in person, in the Student's home. Services will be provided outside the District's school day and can be scheduled on weekends, over District breaks, or before or after school. The District

will provide OSPI with documentation of the schedule for services by or before **September 29, 2023**.

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 **December 15, 2023**, the compensatory education must be completed. By or before **January 12, 2024**, the District will provide documentation to OSPI that it has completed the corrective actions.

**DISTRICT SPECIFIC:**

None.

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 28th day of July, 2023

Dr. Tania May  
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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.)