

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-127

PROCEDURAL HISTORY

On October 14, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Shoreline School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On October 19, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 4, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on November 8, 2022. OSPI invited the Parent to reply.

On November 14, 2022, OSPI received additional information from the District. OSPI forwarded the information to the Parent on the same day.

On November 21, 2022, OSPI received the Parent's reply. OSPI forwarded the Parent's reply to District on November 28, 2022.

On November 28, 2022, OSPI received additional information from the District and forwarded the information to the Parent on November 29, 2022.

On November 28, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on November 30, 2022.

On November 30, 2022, OSPI received additional information from the District. OSPI forwarded the information to the Parent on December 2, 2022.

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

ISSUE

1. Did the District implement the Student's individualized education program (IEP) during the 2022–2023 school year regarding the following:
 - Inservice to staff by the teacher of the deaf;
 - Consultation with staff by the teacher of the deaf; and,
 - Specially designed instruction by the teacher of the deaf?

LEGAL STANDARDS

Purposes: The purposes of the regulations under 34 CFR Part 300 and Chapter 392-172A are to:
1) Implement chapter 28A.155 RCW consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.; 2) Ensure that all students eligible for special education services have

available to them a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living; 3) Ensure that the rights of students eligible for special education services and their parents are protected; 4) Assist school districts, educational service agencies and federal and state agencies to provide for the education of all students eligible for special education services; and 5) Assess and ensure the effectiveness of efforts to educate students eligible for special education services. 34 CFR §300.1; WAC 392-172A-01005.

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. 34 CFR §300.323(a); WAC 392-172A-03105(1). 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.

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).

FINDINGS OF FACT

2021–2022 School Year

1. In December 2021, the District evaluated the Student and continued to find the Student eligible for special education services. The evaluation described the effects of the Student's disability on learning and progressing in the general education curriculum as follows:
[Student's] diagnosed hearing impairments has significant, adverse impact on her ability to learn and progress in a general education curriculum without the support of specially designed instruction and assistive technology to support her access and progress in a general education curriculum for her age.
2. On December 2, 2021, the Student's team met to develop an individualized education program (IEP) for the Student. The disability was identified as hearing impairment. The Student's IEP provided annual goals in the areas of auditory skills, language, and self-advocacy. The IEP included 14 accommodations that included an in-service on the Student's hearing needs (beginning of the year and as needed), the location being in the classroom and

designated staff; teacher of the deaf (TOD) consultation with classroom staff (as needed); and audiologist consultation with classroom staff (as needed). The IEP also provided the following special education services to the Student:

- Deaf/Hard of hearing (HH) services: Auditory skills – 20 minutes, one time weekly (provided by TOD/HH in a special education setting)
- Deaf/HH Services: Language – 20 minutes, one time weekly (provided by a TOD/HH in a general education setting)
- Self-advocacy: 15 minutes, one time weekly (provided by a TOD/HH in a special education setting)

2022–2023 School Year

3. At the beginning of the 2022–2023 school year, the Student was a third grader and attended a District elementary school. The Student continued to be eligible for special education services under the category of hearing impairment.
4. On September 7, 2022, the 2022–2023 school year began in the District.
5. According to the District, efforts to find a TOD/HH began in spring 2022. But the District was not able to hire a TOD/HH from the beginning of the school year until October 31, 2022, when the TOD/HH was hired. The TOD/HH hired could only provide remote services through a computer. The Student’s special education services began on November 7, 2022. The TOD/HH provided services remotely, while the audiologist assisted the Student in person.
6. On September 12, 2022, the District’s student services coordinator and Student’s case manager emailed the Parent regarding the staff in-service accommodation, stating the following, in part:

...[Audiologist] will continue to support the Accommodations and Supports for School Personnel as per the IEP, as most of these are usually completed by the audiologist. She also supported these last year, though [former TOD/HH] also supported them when she was in the classroom. So far this year, [audiologist] met with [Student’s general education teacher] (teacher) every day last week and will meet with her at least twice this week. Starting next week, she will meet [teacher] weekly. The only Support for School Personnel not being met is the consult from the Teacher of the Deaf.

The SLP (speech/language pathologist) will not be providing any services or supports at This time. [Student] does not have any communication services, which is where (for other students) there can be overlap between SLP/Teacher of the Deaf.

I emailed [teacher] today. She, [audiologist], and I will meet to review [Student’s] IEP goals and set up data systems. This will allow [teacher] to understand the skills that [Student] will be working on and collect data on the goals as appropriate...
7. Regarding the accommodation for TOD/HH consultation with the staff, the District’s response acknowledged that there was no TOD/HH to provide consultation until November 2022, but the audiologist implemented the consultation accommodation prior to November 2022. Regarding the in-service, the District response stated, “This provision of the IEP has been implemented by the District’s audiologist, who met with the Student’s classroom teacher on

multiple occasions to provide staff support." The audiologist had also provided "supports for school personnel during the previous school year as well."

8. According to an email on September 19, 2022 from the case manager to the Parent, the Student's general education teacher, audiologist, and case manager met on September 14, 2022 and "reviewed [Student's] needs and services...She has some data she will be tracking for the goals. [Audiologist] will meet with her once a week support accommodations and supports..."
9. On October 14, 2022, the Parent filed this complaint with OSPI.
10. On November 1, 2022, the director of student services (director) emailed the Parent that the TOD/HH was hired and on November 7, 2022, would begin services. The email, in part, stated, "...She will be supporting students who require the services of a teacher of the deaf, these services and supports will be delivered remotely. [Case manager] and [audiologist] are supporting [TOD/HH] as she gets started in her new role."
11. On November 3, 2022, the director emailed the Parent what appeared to be a form letter, stating that while the District was actively recruiting a TOD/HH, "students have received services on their IEP this time" by the audiologist and case manager. The District offered nine weeks of compensatory education to the Student because of the missed services at the beginning of the school year. The District asked the Parent to contact the director.
12. On November 16, 2022, the Student's case manager emailed the Parent about scheduling a meeting to discuss compensatory services. The meeting would discuss "current progress on the goals and what impact the lack of services up until this point has had. That is what will be used to determine the appropriate amount of and what compensatory education will meet [Student's] needs."
13. On November 17, 2022, the Parent emailed the TOD/HH, asking for a meeting about compensatory education services and how remote services would be provided to the Student.
14. The Parent later stated to OSPI regarding the compensatory education services, "Remote services become restrictive when we look at SID [sic] (specially designed instruction) in the general education setting where my daughter has IEP goals and minutes assigned..."
15. In response to the complaint, the Student's TOD/HH provided a detailed explanation of the strategies the teacher used with the Student and how the IEP was implemented with the teacher working remotely with the Student. The teacher explained, in part:

At this time, [Student] works with me in two 25-30 min. sessions per week, and we work together on all 3 of these areas. We specifically work together on Auditory Skills and Language using Boom Cards, which are interactive game "cards", which I plan in advance to specifically target the areas where [Student] needs support. [Student] LOVES working on Boom cards, because she gets to listen to the prompt and answer the questions and she gets instant feedback on whether or not she's correct. She receives rewards for paying attention, trying her best, and remembering to watch & listen for information. She loves earning stickers and erasers for trying her best, and she's very motivated by them, along

with verbal praise. When we work on Self-Advocacy, I'm specifically teaching her ways to deal with Communication Breakdowns, using Karen Anderson's "Success for Kids with Hearing Loss" curriculum. <https://successforkidswithhearingloss.com/>

[Student] stays engaged and interested in our sessions, with the help of a reward system (stickers/erasers) and by the fact that I plan interactive games for us to play together that target her specific skill areas.

Of the students I have worked with in my 20 years of teaching children with hearing loss, [Student] is in the top 25% of students her age, in terms of how well she attends, and how responsive she is to our sessions together. I have no concerns about her ability to access me, even though I am coming to her through a computer screen. The fact that there is an adult there in person (our audiologist) to help [Student] get from her classroom to our 1-on-1 session, help her with any computer problems, make sure she is connected via her DM system to the computer, and also to make any safety decisions, should there be an emergency, means that I don't have any reservations about this model being an appropriate mode of service delivery for [Student].

16. On December 6, 2022, the District met with the Parent to determine the amount of compensatory education services to be provided to the Student. The team determined the Student would receive 200 minutes of language services and 200 auditory services to be provided during the remaining school year. The team determined the Student did not need compensatory education services for self-advocacy skills because the Student had made progress in this area.

CONCLUSIONS

Issue One: IEP Implementation – The complaint alleged the District failed to implement the Student's IEP regarding specially designed instruction from the TOD/HH and accommodations for a staff in-service and staff consultation with a TOD/HH. A district is required to implement special education services in conformity with the student's IEP.

Here, the Student's December 2021 IEP included special education services in the areas of auditory skills, language, and self-advocacy provided by a TOD/HH. The relevant accommodations were an in-service to staff on the Student's hearing needs and TOD/HH consultation with staff as needed.

The District acknowledged no TOD/HH was available to provide services to the Student or accommodations until November 2022. However, the District attempted to mitigate the TOD/HH's absence by having the audiologist assist the Student during instruction and provide regular consultation to the Student's teachers. Regarding the staff in-service at the beginning of the school year, the IEP did not specifically require any one individual to provide it. The Parent may have assumed the IEP required the TOD/HH to conduct it, but the IEP did not. The District stated the audiologist provided the "in-service." However, in-service generally implies some kind of training rather than on-going consultation as indicated by the other accommodations involving consultation. Based on the documentation reviewed, it appears that the audiologist was providing what would be considered consultation services rather than an in-service; however, it was clear the audiologist was supporting staff in meeting the Student's needs. Although this does not rise

to a violation as the audiologist was providing supports, as the IEP team will be required to meet (see below), the IEP team will be required to address any further need for an in-service on the Student's hearing needs and clarify what is meant by an in-service.

Overall, a violation is found based on the District not implementing the Student's IEP regarding services provided by the TOD/HH. On December 6, 2022, the team met and determined the amount of compensatory education services that would be provided to the Student. OSPI accepts the proposed compensatory education services. The District will provide documentation that the compensatory education services are provided to the Student.

Additionally, although the Student's IEP did not expressly state whether instruction would be provided remotely or in person, the reasonable assumption was that the IEP called for services to be provided in person. When the TOD/HH began providing services to the Student in November 2022, the services were provided remotely by the TOD/HH, while the audiologist provided in-person assistance to the Student. Thus, the Student was being provided more support from the audiologist than what was in her IEP. Similarly, the Student's IEP stated the Student's specially designed instruction would be provided both in a special education and general education setting. Based on the information from the TOD/HH, it seems as though the Student is currently being provided all of her specially designed instruction in a 1:1 pull-out session, which would likely be a special education setting for all services.

The District did not first conduct an IEP meeting to discuss the potential impact of remote instruction from the TOD/HH on the Student or assistance needed by the audiologist. A change from in-person to remote is potentially significant enough to warrant an IEP meeting to get input from the IEP team. Providing the services through a remote teacher with assistance from the audiologist is not necessarily inappropriate, but it should be an IEP team decision. Further, the services the District is currently providing do not align with the IEP as written. Again, while the current services may be appropriate, the IEP team should have met and the IEP likely needs to be amended. A violation is found based on the District's failure to convene the Student's IEP team to address the TOD/HH method of service and amend the IEP as needed. The District is required to conduct an IEP meeting to determine if the remote TOD/HH services are appropriate for the Student and document how services are provided on the Student's IEP, including the assistance of the audiologist if needed. In addition, the IEP team needs to address the Student's need for 1:1 instruction and the setting of services, and amend the IEP as appropriate.

CORRECTIVE ACTIONS

By or before **January 13, 2023, January 20, 2023, and June 30, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

In response to the violation regarding the implementation of TOD/HH services, the District proposed to provide to the Student with 200 minutes of compensatory education services in each

area of language and auditory skills. OSPI accepts the District's proposal for compensatory education services.

By **January 13, 2023**, the District must provide OSPI with a copy of the compensatory education services schedule. The services will be provided by the TOD/HH. Services may be provided in a 1:1 setting or a group setting, as appropriate. 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. The services must be completed no later than **June 30, 2023**.

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. The District must provide OSPI with documentation of compliance with this requirement by **June 30, 2023**.

IEP Meeting

By **January 13, 2023**, the District is required to conduct an IEP meeting for the Student to discuss how TOD/HH services should be delivered based on the Student's unique needs, including the need for 1:1 instruction, the setting of services, and the level/amount of audiologist support in the IEP. The team must also clarify the accommodation for an in-service on the Student's hearing needs and determine if conducting an in-service is necessary this school year. The team should amend the Student's IEP as needed and as appropriate. The prior written notice should provide a detailed explanation of the team's decision.

By **January 20, 2023**, the District must provide OSPI with a copy of the meeting invitation, Student's amended IEP, prior written notice, and meeting notes if taken.

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 12 day of December, 2022

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.)