

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-17

PROCEDURAL HISTORY

On February 1, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an attorney (Complainant) representing the Parents of a student (Student) attending the Seattle School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 6, 2023, 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 February 23, 2023, OSPI received the District's response to the complaint and forwarded it to the Complainant on February 24, 2023. OSPI invited the Complainant to reply.

On March 9, 2023, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on March 22, 2023.

On March 15, 2023, OSPI received additional information from the District. OSPI forwarded the additional information to the Complainant on March 22, 2023.

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

ISSUE

1. Did the District implement the due process hearing decision in Cause No. 2022-SE-0058 regarding the services of a 1:1 paraeducator for the Student?

LEGAL STANDARDS

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).

IEP Must State Amount of Services: An individualized education program (IEP) must include a statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student. An IEP must also include a statement of the program modifications or supports for school personnel that will be provided to enable the student: to advance

appropriately toward attaining the annual IEP goals; to be involved and progress in the general curriculum in accordance with present levels of educational performance and to participate in extracurricular and other nonacademic activities; and to be educated and participate with other children with disabilities and nondisabled children in the above activities. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d). "The amount of services to be provided must be stated in the IEP, so that the level of [the district's] commitment of resources will be clear to parents and other IEP team members. The amount of time to be committed to each of the various services to be provided must be (1) appropriate to the specific service, and (2) stated in the IEP in a manner that is clear to all who are involved in both the development and implementation of the IEP." Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (34 CFR Part 300, Question 35). The IEP team is not required to include information under one component of a student's IEP that is already contained under another component of the student's IEP. WAC 392-172A-03090(2)(a).

FINDINGS OF FACT

1. On April 28, 2022, the Parent filed for a due process hearing (Cause No. 2022-SE-0058) regarding the Student's special education program.
2. On January 12, 2023, the presiding administrative law judge rendered a decision. The decision stated, in part:

In the present case, the evidence overwhelmingly demonstrates the placement of the Student at [residential treatment facility] is appropriate and proper. [Residential school] is an NPA (nonpublic agency) recognized by OSPI that specializes in serving students on the autism spectrum. The instruction and services provided to the Student include: a BIP (behavior intervention plan) targeting physical aggression, refusal behaviors, and elopement; occupational and speech therapies; one-to-one paraprofessional support for behavior during educational and residential hours; and consistent programming around the clock. These services are reasonably calculated to meet the Student's needs and will allow him to benefit from his instruction. It is concluded that [residential school] is a proper placement for the Student, and tuition reimbursement is appropriate.

The decision's "Order" stated, in part:

The District is ORDERED to develop a new IEP for the Student that places him at [residential school] for at least one year commencing on the effective date of the new IEP. The District is ORDERED to convene an IEP team meeting within fifteen days of the date of this order for the purpose of developing the new IEP.

3. On January 25, 2023, the Student's IEP team met to revise the IEP in response to the decision. The IEP provided the following special education and related services:

Services 01/27/2023–02/06/2023

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							

No	Speech Language Pathology	SLP	SLP	30 Minutes /6 Times Monthly	Special Education	01/27/23	02/06/23
No	Occupational Therapy	OT	OT	60 Minutes / Monthly	Special Education	01/27/23	02/06/23
Special Education							
No	Reading	Special Education Staff	Special Education Teacher	112 Minutes / Weekly	Special Education	01/27/23	02/06/23
No	Math	Special Education Staff	Special Education Teacher	225 Minutes / Weekly	Special Education	01/27/23	02/06/23
No	Written Language	Special Education Staff	Special Education Teacher	112 Minutes / Weekly	Special Education	01/27/23	02/06/23
No	Social/Behavior	Special Education Staff	Special Education Teacher	750 Minutes / Weekly	Special Education	01/27/23	02/06/23
No	Adaptive/Life Skills	Special Education Staff	Special Education Teacher	316 Minutes / Weekly	Special Education	01/27/23	02/06/23

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Board Certified Behavior Analyst (BCBA) Direct service to student	BCBA	Special Education Teacher	30 Minutes / 2 Times Weekly	Special Education	01/27/23	02/06/23
No	1:1 Instructional Assistant	Instructional Assistant	Special Education Teacher	1575 Minutes / Weekly	Special Education	01/27/23	02/06/23

4. In the description of the Student's placement in the least restrictive environment (LRE), the January 2023 IEP stated:

An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education classroom, and in nonacademic and extracurricular activities:

Pursuant to a court order in 2022-SE-0058, [District was ordered to place [Student] at [residential school], as the Administrative Law Judge determined this residential setting was his LRE. [Student] will not participate in the general education setting with non-disabled peers during any academic, nonacademic, or extra-curricular activities or while receiving SDI in the areas of Adaptive Life skills, Math, reading, writing and social behavior and related services of SLP and OT. He will participate in a modified PE at his residential school.

Neighborhood School Explanation:

Pursuant to the court order, [residential school] will provide [Student] all special education and related services, as well as non-medical care and room and board.

5. The prior written notice, dated January 24, 2023, stated the proposed IEP was developed in response to the due process hearing decision to “update the service matrix to reflect his educational services at [residential school]...”¹ However, the District lacked the present level data from the residential school. The District stated it would reconvene the IEP team once the data was received.

According to the notice, the Complainant requested that the Student’s IEP provide 16 hours of board-certified behavior analysis (BCBA). The District rejected the request because “the matrix captures the educational portion of the student’s day.” Moreover, the District rejected developing the “full IEP” because of the lack of present-level data to develop annual goals.

6. On February 1, 2023, the Complainant filed this complaint with OSPI.
7. On February 9, 2023, the District director of special education (director) emailed the residential school’s education coordinator, requesting information about the Student’s program. The director asked the following:

In advance of the February 15th IEP meeting, I would like to get clarity on the behavior services [Student] is receiving at [residential school] so that we can ensure they are accurately reflected in his IEP. Can you provide me with the specific details of the 1:1 and other behavior support he receives? For example, is he served by one specific staff member in a 1:1 capacity? If so, what is that staff member’s title (e.g., paraeducator, behavior technician, etc.) and schedule with [Student]? If there are multiple staff members who provide him with 1:1 behavior support, please provide their titles and schedules with [Student].

Similarly, please identify if/when [Student] receives behavior support that is not 1:1 in nature. For example, while in the residential setting, does he have a dedicated 1:1 or is there a staff member assigned who is responsible for [Student] and other students? If that is the case, please provide the details of that staff member’s credentials, schedule and student ratio. The District defines 1:1 as meaning the staff member has no responsibilities except to the assigned student.

I want to make clear that we are obligated to pay [Student’s] complete tuition and are complying with that obligation. The information I am seeking is not related to cost, but is necessary to ensure [Student’s] IEP appropriately reflects his services and needs.

8. On February 13, 2023, the residential school education coordinator replied and provided the following:
During the education day, [Student] has one staff member who provides him with 1:1 support/instruction from 7:45–3:30, M–F. His title is 1:1 Paraprofessional. He provides [Student] with academic, behavioral, social, emotional instruction (examples teaching self-regulation techniques, social pragmatics strategies, etc.) in support of our transdisciplinary

¹ The January 24, 2023 notice date may have been a typographical mistake since the meeting took place on January 25, 2023.

program. During the school day, [Student] does not have rotating staff, however the other members in the classroom (other 1:1 staff and the classroom teacher) also support and instruct [Student] additionally as needed.

During his time after school and on the weekends, [Student] receives support/instruction from a Direct Support Professional in his residential program. Because of the number of shifts needed to be covered M–F after school (beginning at 3:30) and full days Sat.–Sun., there are three main staff who rotate in his residential programming, each assigned 1:1 and directly to [Student]. They provide instruction (i.e., teaching life skills, self-regulation techniques, social pragmatics strategies) in support of our transdisciplinary program.

[Student] maintains a 1:1 ratio at [residential placement] and the staff member assigned is responsible for only [Student]. [Student’s] dedicated 1:1 staff members received training from teaching staff, speech and language therapists, BCBA’s and other clinicians about how to teach [Student] skills in-the-moment in the milieu.

- On February 15, 2023, the Student’s team met after receiving current present-level data and other information from the residential school. The team determined the IEP should include the following special education and related services:

Services 2/20/2023–2/14/2024

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
Related							
No	Speech Language Pathology	SLP	SLP	30 Minutes / 2 Times Weekly	Special Education	02/20/23	02/14/24
No	Occupational Therapy	OT	OT	30 Minutes / 2 Times Weekly	Special Education	02/20/23	02/14/24
Special Education							
No	Math	Special Education Staff	Special Education Teacher	45 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Adaptive/Life Skills	Special Education Staff	Special Education Teacher	44 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Reading	Special Education Staff	Special Education Teacher	22 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Written Language	Special Education Staff	Special Education Teacher	22 Minutes / Weekly	Special Education	02/20/23	02/14/24
No	Social/Behavior	Special Education Staff	Special Education Teacher	45 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Adaptive/Life Skills	Special Education Staff	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24

No	Social/Behavior	Special Education Staff	Special Education Teacher	30 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Adaptive/Life Skills	Special Education Staff	Special Education Teacher	22 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Social/Behavior	Special Education Staff	Special Education Teacher	22 Minutes / Weekly	Special Education	02/20/23	02/14/24
No	Math	Special Education Staff	Special Education Teacher	22 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
No	Social/Behavior	Special Education Staff	Special Education Teacher	22 Minutes / 5 Times Weekly	Special Education	02/20/23	02/14/24
Yes	Social/Behavior	Special Education Staff	Special Education Teacher	1000 Minutes / Weekly	Special Education	02/20/23	02/14/24
Yes	Adaptive/Life Skills	Special Education Staff	Special Education Teacher	1000 Minutes / Weekly	Special Education	02/20/23	02/14/24

Supplementary Aids and Services:

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
No	1:1 Instructional Assistant	Instructional Assistant	Special Education Teacher	1575 Minutes / Weekly	Special Education	02/20/23	02/14/24
No	1:1 Board Certified Behavior Analyst (BCBA) Direct service to student	BCBA	Special Education Teacher	60 Minutes / Weekly	Special Education	02/20/23	02/14/24

The LRE statement addressed the residential services that were provided after the school day. The LRE statement stated:

Pursuant to a court order in 2022-SE-0058 [District] was ordered to place [Student] at [residential school] as the Administrative Law Judge determined this residential setting was his LRE. [Student] will not participate in the general education setting with non-disabled peers during any academic, nonacademic, or extra-curricular activities or while receiving SDI in the areas of Adaptive Life skills, Math, reading, writing and social behavior and related services of SLP and OT. He will participate in a modified PE at his residential school. In the residential environment (3:30 pm to 7:45 am) – which is also funded fully by the District - [Student] receives behavioral and social/emotional support and adaptive life skills support. During his time after school and on the weekends, [Student] receives support/instruction from a Direct Support Professional in his residential program. Because of the number of shifts needed to be covered M–F after school (beginning at 3:30) and full days

Sat.-Sun., there are three main staff who rotate in his residential programming, each assigned 1:1 and directly to [Student].

Neighborhood School Explanation:

Pursuant to the court order, [residential school] will provide [Student] all special education and related services, as well as non-medical care and room and board.

10. The Complainant argued that the District refused to amend the Student’s IEP, specifically the service matrix, to the 1:1 services for the after school hours as ordered by the administrative law judge. The District listed the 1:1 services outside the services matrix, “in an imprecise and anecdotal manner,” in the LRE section of the Student’s IEP. In addition, the Complainant argued that developing an IEP for the Student in such a manner would “prejudice” the Parents and Student regarding stay put. All special education and related services should be precisely listed in the Student’s service matrix.

CONCLUSIONS

Issue One: Implementation of Decision – The Complainant alleged the District failed to implement the due process decision, specifically that the District failed to adequately document the 1:1 services provided after the school day in the residential placement on the Student’s IEP.

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.

Interpretation of the Decision: The due process decision, issued on January 12, 2023, stated that the residential school placement and services that were provided in that placement were appropriate for the Student’s program, including the following:

- A BIP targeting physical aggression, refusal behaviors, and elopement;
- Occupational therapy;
- Speech therapy;
- 1:1 paraprofessional support during educational hours;
- 1:1 paraprofessional support during residential hours; and,
- “Consistent programming around the clock.

The decision also stated that tuition reimbursement to the Parents was appropriate and ordered the District to conduct an IEP meeting within 15 days of the decision. The decision did not specify exactly how the IEP needed to be written, however. And it is not uncommon for a hearing decision to defer some of the details of the IEP, such as documenting present levels, developing annual goals, or frequency of services, to the IEP team.

1:1 Paraprofessional Services: On January 25, 2023, within 15 days of the decision, the District convened the IEP team to amend the IEP in light of the due process hearing decision. The implied duty of the IEP team was to determine the Student’s present levels, annual goals, and details of the services ordered by the decision to meet the Student’s needs, as the decision found that the residential placement was appropriate. However, the District did not have updated information

on the Student's present levels from the residential school to determine the annual goals and the specific amount of services the Student needed. The Complainant requested the Student's IEP provide 16 hours of BCBA services at the meeting. The District reasonably rejected the proposal based on the lack of data to finish developing the full IEP. As of January 25, 2023, the services matrix represented the educational part of the Student's day. The IEP team subsequently met again and although the IEP's completion went past the 15 days from the decision, the result was an IEP based on Student-specific data. Given that the IEP team did meet within 15 days and then reasonably determined a second meeting was needed, OSPI finds no violation on this point.

After receiving the present level information from the residential school, the District again convened the IEP team on February 15, 2023, to amend the Student's IEP. The completed IEP included the updated present levels, annual goals, and a description of the 1:1 services after the Student's school day and on weekends. Notably, the gap between the two IEP meetings does not seem to have impacted the Student's receipt of services in his placement.

Based on the residential school's description of the 1:1 services provided, the District proposed the following in the LRP section of the IEP:

Pursuant to a court order in 2022-SE-0058 [District] was ordered to place [Student] at [residential school] as the Administrative Law Judge determined this residential setting was his LRE. [Student] will not participate in the general education setting with non-disabled peers during any academic, nonacademic, or extra-curricular activities or while receiving SDI in the areas of Adaptive Life skills, Math, reading, writing and social behavior and related services of SLP (speech-language pathologist) and OT (occupational therapy). He will participate in a modified PE (physical education) at his residential school. In the residential environment (3:30 pm to 7:45 am) – which is also funded fully by the District – [Student] receives behavioral and social/emotional support and adaptive life skills support. During his time after school and on the weekends, [Student] receives support/instruction from a Direct Support Professional in his residential program. Because of the number of shifts needed to be covered M–F after school (beginning at 3:30) and full days Sat.–Sun., there are three main staff who rotate in his residential programming, each assigned 1:1 and directly to [Student].

The Complainant stated the proposed description of the 1:1 services after school was not sufficiently clear and the services should have been documented in the IEP service matrix. The IEP must include sufficient information about the amount of services that will be provided so the District's level of commitment to the Student will be clear. The Student's IEP described the services of the direct support professional (or 1:1 paraeducator) to be provided during school in the service matrix and after school and on the weekends in the LRE and placement description. Regardless of the location of the services on the IEP, the IEP showed a clear level of commitment to the 1:1 services after school and on the weekends. The District is not required to include services under one component of the Student's IEP that is already contained under another component of the Student's IEP. WAC 392-172A-03090(2)(a). Thus, the District was not required to document the 1:1 services after school and on the weekends specifically in the service matrix.

Based on the District's IEP being consistent with the hearing decision, no violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 31st day of March, 2023

Dr. Tania May
Assistant Superintendent 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.)