

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-66

PROCEDURAL HISTORY

On May 5, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parents (Parents) of a student (Student) attending the Seattle 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 May 8, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District's superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On May 24, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to June 1, 2023.

On June 1, 2023, OSPI received the District's response to the complaint, forwarded it to the Parents on June 5, 2023, and OSPI invited the Parents to reply.

On June 14, 2023, the OSPI complaint investigator interviewed the Parent.

On June 16 and 19, 2023, the Parents provided additional information to the complaint investigator regarding possible corrective actions. OSPI forwarded the information to the District on June 3, 2023.

OSPI considered all information provided by the Parents and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interview.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 6, 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.

ISSUES

1. Whether, since May 6, 2022, the District implemented the Student's individualized education program (IEP), including but not limited to, physical, occupational, and speech therapy, modifications, and transportation?
2. Whether, since May 6, 2022, the District conducted progress monitoring and provided progress reports.

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special

education services. It must 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. "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).

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). A student's IEP must 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; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning

or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. IDEA, 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP Team has decided that a BIP is appropriate, the IEP Team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

FINDINGS OF FACT

Background: 2021–22 School Year

1. At the start of the 2021–22 school year, the Student was eligible for special education services under the category of autism and was in the 5th grade. The Student was enrolled in the District's virtual school program (virtual school), a parent-choice option, which is a fully remote program.
2. The Student's IEP in effect at the beginning of this investigation's timeframe was developed on October 19, 2021, and included annual goals in adaptive/life skills (initiating a task), math (addition and subtraction story problems and computation skills), reading (fluency, comprehension, and phonics), social/behavior (problem-solving, on-task behavior, and play skills), and written language (lower case letters, and spelling).

The October 2021 IEP also included modifications/accommodations: access to sensory tools; access to visual daily schedule; break larger assignments into smaller parts; peer or adult modeling of new tasks; assistive technology (AT)-speech generating device; and choices in tasks offered visually.

Special transportation was to be provided per the IEP, though given that virtual program was an online program, the Parent did not utilize the special transportation service for the Student during the 2021–22 school year.

The specially designed instruction (SDI) offered in the IEP of October 2021, were all provided in a special education setting and included:

- Adaptive/life skills: 120 minutes per week
- Math: 225 minutes per week
- Writing: 200 minutes per week
- Reading: 300 minutes per week
- Behavior: 225 minutes per week

The IEP also offered 30 minutes per month of physical therapy, 180 minutes per month of speech language therapy, and 80 minutes per month of occupational therapy.

Complaint Investigation Timeline Began May 6, 2022

3. Since May 6, 2022, the record indicates that progress reporting for the Student's annual IEP, developed in October 2021, and implemented through the District's virtual program through

June 2022, was to be reported on a trimester basis. The progress reporting dates are reflected below, as completed by the staff serving the Student at the virtual program for each IEP goal.

Progress Reporting/Goal Area	Reporting Dates
Adaptive/life skills-initiation	Dec. 2021; June 2022
Social/behavior-on task behavior	Dec. 2021; June 2022
Math-computation skills	Dec. 2021; June 2022
Reading-fluency	Dec. 2021; June 2022
Reading-comprehension	Dec. 2021; March 2022; June 2022
Social/behavior-problem-solving	Dec. 2021; March 2022; June 2022
Written language-lower case letters	Dec. 2021; March 2022; June 2022
Written language-spelling	Dec. 2021; June 2022

2022–23 School Year

4. The first day of school for the 2022–23 school year was September 14, 2022.

Prior to that date, some team members had communicated via email with the Parents, welcoming the Student to school and introducing themselves. IEP team members began organizing for the Student’s reevaluation that was due October 24, 2022, and for the annual IEP due by October 19, 2022.

5. On October 18, 2022, the District completed a reevaluation of the Student and determined continued eligibility under the category of autism with SDI recommended in math, reading, written language, adaptive/life skills, and social/behavior. The team also recommended occupational therapy, speech language pathology, and physical therapy as related services.
6. On October 18, 2022, the IEP team also met to develop the Student’s new annual IEP that included nine goals in written language, reading, math, social/behavior, speech language, and adaptive/life skills. The IEP included the following minutes of SDI for each service area, to be provided in a special education setting. None of the services were to be provided concurrently.

Service Area	Goal(s)	Minutes of Service	Provider
Occupational Therapy	Copy text using a typing program (see written language)	80 min/month	Occupational therapist
Physical therapy	Play skills (balance, coordination) through social activity with peers (social/behavior)	90 min/month	Physical therapist
Speech therapy	Given a scenario or demonstration, answer questions regarding others’ perspectives, motivations, actions	180 min/month	Speech therapist
Adaptive/life	Independently write name, address, phone number	100 min/week	Special education teacher
Math	(1) Add and subtract sums up to 100 (2) When given a story problem, identify correct operation (addition, subtraction) to use to solve the problem and solve problem	270 min/week	Special education teacher

Reading	When given written passages, answer 'who', 'what', 'where', and 'when' questions	200 min/week	Special education teacher
Social/behavior	(1) Use signal to request a break (2) See physical therapy goal	230 min/week	Special education teacher
Written language	(1) See occupational therapy goal (2) When given electronic device and sentence stem, develop and type a novel sentence	70 min/week	Special education teacher

All goals specified progress reporting on a quarterly basis, except for the physical therapy goal (adaptive/life skills), for which progress was to be reported on a trimester basis.

The IEP also stated that special transportation would be provided the Student to and from school.

- Following the development of the IEP in October 2022, the record shows that partial progress reporting occurred in November 2022, December 2022, January 2023, February 2023, April 2023, and May 2023. Specifically, progress information was provided by the physical therapist, the occupational therapist, and the speech therapist. There was one instance of progress reported by the special education teacher, for the reading goals. The other five goals did not have any Student progress updates.

Staff Reporting Progress/Goal Area	Reporting Dates
Physical therapist/social behavior	Dec. 2022; Jan. 2023; May 2023
Occupational therapist/written language	Nov. 2022; Feb. 2022; April 2022
Speech therapist/speech	Nov. 2022; Feb. 2022; April 2022
Special education teacher/reading	Jan. 2023

- On October 27, 2022, the Parent signed consent for an FBA.

After the Parent signed consent for the FBA, a District program specialist began working with the IEP team to support the assessment process and the development of a behavior plan.

- On November 16, 2022, the Student's IEP team met to discuss the Student's increased challenging behaviors and proposed that the Student would be placed in a special education classroom, on a trial basis, for the last two periods of the day and for lunch. The team committed to at least one instructional assistant in the room to keep the Student safe. This proposed change of placement was to begin on November 28, 2022. During the meeting, the IEP team also agreed to conduct an FBA and develop an appropriate behavioral intervention plan (BIP).
- The record indicated that the Parents provided their consent for the FBA on October 27, 2022, though the record does not address why the team did not initiate conducting the FBA or provide a prior written notice (PWN) until after November 28, 2022.
- The record shows that during the months of December 2022 and January 2023, the Student engaged in school refusal behaviors at home, and while at school, demonstrated behaviors such as spitting, kicking, screaming, and eloping. At this time, the Parent began attending

school with the Student when the Student attended. The Student's attendance record also indicated frequent absences from school during this timeframe.

12. On January 31, 2023, the Student's IEP was amended to include AT to better access education, including a touch screen, electronic text, and word prediction software.
13. On March 2, 2023, the Student's IEP team met to review the results of the FBA and identified a target behavior. The FBA stated, in part:
When given a non-desired task or activity (i.e., undesired music choice, unstructured class with unknown expectations/schedule or agenda, changes in routine, loud environments), the Student is attempting to escape the undesired environment or activity by trying to elope from the classroom or building, falling on the floor, screaming or destroying property.

The team recommended that a BIP be developed to address the target behavior.

14. The record indicated that the team met again on April 4, 2023, to develop a BIP for the Student to address the target behavior and identified specific antecedent strategies. A behavior chart would be developed for the Student for rewards and staff would give frequent positive verbal reinforcement. In tandem with the BIP, the team determined that the Student would be taught to ask for a break instead of eloping, screaming, or destroying property/materials.
15. At this same meeting on April 4, 2023, the Parents shared that they would be opting the Student out of school on Mondays, Wednesdays, and Fridays for in-home applied behavior analysis (ABA) therapy.
16. On May 5, 2023, OSPI received and opened the Parents' request for a special education community complaint investigation. The Parents alleged that the District failed to implement the Student's IEP and failed to provide progress reporting.
17. On June 1, 2023, OSPI received the District's written response to SECC No. 23-66, whereby the District conceded that it does not contest the Parents' allegation that it had not implemented the Student's IEP with fidelity, since May 6, 2022, including but not limited to, physical, occupational, and speech therapy, modifications, and transportation. The District also conceded that it had not conducted progress monitoring nor provided progress reports as described in the IEP.

The District's written response stated that staff could not confirm, when interviewed by District counsel, that the Student's IEP had been implemented as written, including that modifications or SDI was provided. The record does not include any documentation of modifications implementation or SDI provision.

18. The District's written response to SECC No. 23-66 offered proposed corrective actions, including the following compensatory services:

Service Area	Hours
Academic tutoring provided by a District contractor during summer 2023	80 hours

Physical therapy during the 2023–24 school year	2.5 hours
Occupational therapy during the 2023–24 school year	9 hours
Speech therapy during the 2023–24 school year	12 hours

The District’s response also proposed training for the special education teachers and administrators at a District middle school on IEP implementation and progress reporting requirements, though the District believed that the related service providers should not attend the training as they tried to implement the Student’s IEP and did monitor progress.

19. The District’s response also included information regarding District discussions with the Parents about potential compensatory services. The District offered several options, including a social skills camp, extended school year (ESY) services, and home-based behavior support from a behavior technician and a board-certified behavior analyst. The District’s response indicated that the Parents rejected these offers.
20. The Parents proposed several ideas regarding possible corrective actions in this case. They believe a 1:1 assistant would help the Student focus on IEP goals and provide support and assistance when the Student becomes anxious and overwhelmed at school. The Parents suggested implementing accountability protocols at the school level and the development of a behavior program to help support students with behavior issues that impede their learning. The Parents also suggested that school teams should offer a meeting to parents at the beginning of each school year to review the student’s IEP goals to support a successful start to each new school year.

CONCLUSIONS

Issue 1: IEP Implementation – The Parents alleged the District did not implement the Student’s IEP, including physical, occupational, and speech therapy, modifications, and transportation.

A school district must ensure that it provides all services in a student’s IEP, consistent with the student’s needs as described in that IEP. In this case, the District conceded to this allegation and the District’s response further illustrated noncompliance in this area, including the lack of documentation regarding IEP implementation and Student performance, as well as team members’ inability to confirm implementation when interviewed by District counsel. Thus, OSPI finds a violation.

Here, the District proposed corrective action, including compensatory education. OSPI finds the compensatory education proposed appropriate and adopts that corrective action. In addition, the District will be required to schedule an IEP meeting prior to the start of the 2023–2024 school year, to review the current IEP and determine what behavioral supports the Student might require, ensuring a smooth transition back to school as the Student’s increased behavior challenges appeared to be a factor in the non-implementation of the IEP. Finally, the District also proposed training, which OSPI finds to be an appropriate corrective action.

Issue 2: Progress Reporting – The Parents alleged the District did not conduct progress monitoring nor provided progress reports as described in the Student’s IEP. IEPs must include a

statement, indicating how a student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards.

The District also conceded to this allegation and the review of records further corroborated noncompliance in this area, that the Student was not provided progress reporting as outlined in her IEP. During the 2022–2023 school year, only the related service providers consistently provided progress reporting. There was one instance of progress reported by the special education teacher, for reading. The other five goals did not have any Student progress updates. Thus, OSPI finds a violation.

The District proposed training for certain staff on progress monitoring and reporting, OSPI accepts the proposed corrective action and further will require the District to create a training implementation plan for staff to demonstrate their learning.

CORRECTIVE ACTIONS

By or before **July 21, 2023, August 18, 2023, September 7, 2023, September 15, 2023, October 6, 2023, January 12, 2024, and June 10, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **July 21, 2023**, the District and Parents will develop a schedule for the compensatory education, divided as follows:

- Math, Reading, Writing, Social/Emotional: 80 hours
- Speech: 12 hours
- Occupational Therapy: 9 hours
- Physical Therapy: 2.5 hours

Unless otherwise agreed to by the District and Parents, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **July 21, 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. The services must be completed no later than **June 3, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **September 15, 2023** and **January 12, 2024**, of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **June 10, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parents 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 10, 2024**.

IEP Meeting

By or before **September 8, 2023**, the Student's IEP team will meet. At the meeting, the IEP team must discuss implementation of the Student's IEP during the 2023–2024 school year. The team will review the Student's IEP and FBA and make any appropriate changes to address behavior and transition supports needed to achieve a successful start to the new school year.

By **September 15, 2023**, the District will provide OSPI with i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's IEP; iii) any relevant meeting invitations and prior written notices; and iv) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other OSPI approved trainer), will develop a training and training implementation plan on progress monitoring and reporting. The District will provide the trainer with a copy of this decision, SECC 23-66.

The following District staff will receive training: District special education administrators supporting the school in this complaint, and the following at the Student's 2022–23 school: principal, assistant principal, and special education certified staff (teachers).¹ The training will cover the following topics:

- IEP implementation
- Progress monitoring and progress reporting

¹ OSPI notes that the related service providers did consistently provide progress reports for the Student here and therefore will not be required to attend the training. However, OSPI encourages the District to involve the related service providers in the development of the training and implementation plan, as they may have best practices for conducting progress monitoring and completing progress reporting that would be valuable for peer learning.

The training will include examples.

By or before **July 21, 2023**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

The training will also include a training implementation plan: post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. The implementation support could include job embedded coaching, additional trainings or development of a training series, exploring policy and procedure revision, etc. By or before **August 18, 2023**, the District will provide OSPI with the training plan and post-training activities for review, input, and approval.

By or before **September 7, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 12, 2023.

By **September 29, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 6, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

The District will submit a completed copy of the correction 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.

RECOMMENDATION

OSPI notes that several of the corrective actions the Parents requested, such as 1:1 support and whether additional or different behavior supports are needed, are most appropriately considered by the Student's IEP team. OSPI recommends the Student's IEP team consider these requests at the IEP meeting ordered above or while developing the Student's next annual or amended IEP.

Dated this 30th day of June, 2023

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.)