

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-69

PROCEDURAL HISTORY

On September 23, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Renton School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 26, 2019, 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 by October 18, 2019.

On October 30, 2019, the District requested an extension of time to respond to the complaint.

On October 30, 2019, OSPI informed the District that the District was required to provide specific information by October 30, 2019. The remaining documentation could be sent by November 1, 2019. The District provided no further documentation per the request.

On October 30, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on October 31, 2019. OSPI invited the Parent to reply with any information he had that was inconsistent with the District's information. The Parent did not reply.

On November 8, 2019, OSPI requested clarifying information from the District. On November 15, 2019, the District provided the additional information, in part. No further information was provided. On November 18, 2019, OSPI forwarded the information that was received by OSPI to the Parent.

OSPI considered all of the 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) regarding the services of a one-to-one paraeducator during the 2018-2019 and 2019-2020 school years?

LEGAL STANDARDS

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 who is eligible to receive special education services. A school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F.3d 811 (9th Cir. 2007).

IEP Must State Amount of Services: An 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).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen 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). "Generally, services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed." *In re: Mabton School District*, 2018-SE-0036.District Response to a Complaint: The school district or other agency shall respond in writing to the OSPI with documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint. The response to the OSPI shall clearly state whether: the allegations contained in the complaint are denied and the basis for such denial; or the allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation. OSPI will provide the complainant a copy of the school district's response to the complaint and provide the complainant an opportunity to reply. WAC 392-172A-05030.

Responding to a Special Education Citizen Complaint: State special education regulations require a school district to investigate allegations and respond in writing to OSPI following the opening of a special education citizen complaint (SECC). The District shall respond with documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint. The response to OSPI shall clearly state whether: a) the allegations contained in the complaint are

denied and the basis for such denial; or b) the allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation. WAC 392-172A-05030.

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of autism.
2. The District's 2018-2019 school year began on August 29, 2018.
3. On October 9, 2018, the District convened the Student's individualized education program (IEP) team, including the Parent, to review the IEP. The IEP (effective from October 10, 2018 to October 9, 2019) stated the Student could participate in conversations and activities with his peers, but did not always follow directions. The IEP stated, "The Parents are concerned that [Student] doesn't have one para assigned to him throughout his day according to his IEP." Under the "adverse impact summary," the IEP included the following statement regarding the paraeducator:

[Student] requires one-on-one assistance and frequent monitoring during assigned tasks to be successful. [Student] requires a para-educator throughout the day to help him stay with the group, to stay focused, to complete daily activities and to help guide him during transitions. Most importantly however, [Student] requires constant supervision due to his Autism and non-compliance behavior.

The Student's IEP included annual goals and accompanying benchmarks/short term objectives in the areas of reading, math, paragraph writing, social/emotional, adaptive behavior, and communication/receptive language. The IEP included the following accommodations to be provided to the Student:

- Longer testing time
- Multiplication table
- Modify/repeat/model directions
- Provide individualized/small group instruction

The IEP provided the following specially designed instruction in the special education setting:

- Adaptive behavior: 56 minutes, 5 times per week (provided by a special education teacher)
- Math: 60 minutes, 5 times per week (provided by a special education teacher)
- Reading: 60 minutes, 5 times per week (provided by a special education teacher)
- Social/Emotional: 50 minutes, 5 times per week (provided by a special education teacher)
- Written language: 60 minutes, 5 times per week (provided by a special education teacher)
- Communication: 30 minutes, 1 time per week (provided by a speech/language pathologist)

The IEP also included the following supplemental aid and service:

- 1:1 Paraeducator: 390 minutes/5 times per week (provided by a special education paraeducator)

The IEP team also reviewed the results of a functional behavioral assessment (FBA). The results stated the Student could follow the classroom routine one time out of ten attempts. The

Student yelled out inappropriate words, threw his papers on the floor, colored his journal rather than writing in it, kicked objects, threw pencils, and bit himself. Based on the FBA, the IEP team developed a behavioral intervention plan (BIP). The target behavior was defined as “non-compliance/defiance with managing his behavior across school settings which includes his elective in the general education setting” and included a number of intervention strategies to mitigate his behavior. The response plan that determined what the staff would do if the target behavior occurred stated:

[Student’s] para-educator will be provided by the classroom teacher a behavior tracking sheet and instructions on how to collect data and how to implement his BIP. When the para-educator is absent or on a break, the other para-educators in the classroom will also be trained to collect data and provide support.¹

Data collection procedures for the plan stated the data collected would be discussed at the end of each week.

4. In response to the complaint, the District provided the Student’s 2018-2019 and 2019-2020 schedule, which described the responsibilities of a 1:1 paraeducator assigned to the Student.²
5. The District provided a prior written notice, dated October 9, 2018, which stated the purpose of the meeting was to conduct an IEP meeting. Other options included the IEP team reconvening in the spring of 2019 “to discuss [Student’s] continued need for 1:1 para-educator support for a full day.” The District provided another prior written notice, also dated October 9, 2019, regarding the FBA and the implementation of the BIP.³
6. On December 5, 2018, OSPI issued a decision in another special education citizen complaint (SECC) filed related to special education services in the District. SECC 18-93 investigated the implementation of services from 1:1 paraeducators at another District elementary school (a different school than the elementary school the Student attended in the instant complaint). As part of the corrective actions in SECC 18-93, the District was required to do the following at the school identified in that complaint:
 - “Provide training to all staff in the...classroom, the principal, and the assistant principal regarding the procedures for reviewing and amending the IEPs.”
 - “Develop and implement a plan to monitor the implementation of the IEPs for students in the ...classroom.”
7. The documentation provided by the District in response to this complaint included a January 16, 2019 special education progress report for the Student. The report stated the following progress:

¹ In the District’s response to the complaint, the District was unable to produce the behavior tracking sheets or verify that any of the paraeducators kept data or provided support.

² See Attachment A.

³ The District provided a prior written notice, dated September 26, 2018, that was exactly the same as the October 9, 2018 notice. It is unclear which notice might be miss-dated.

- Reading: "Emerging Skill demonstrated but may not achieve annual goal within duration of IEP."
 - Math: "Emerging Skill demonstrated but may not achieve annual goal within duration of IEP."
 - Writing: "Emerging Skill demonstrated but may not achieve annual goal within duration of IEP."
 - Social/Emotional: "Emerging Skill demonstrated but may not achieve annual goal within duration of IEP."
 - Adaptive behavior: "Emerging Skill demonstrated but may not achieve annual goal within duration of IEP."
 - Communication: "Sufficient Progress being made to achieve goal within duration of IEP."
8. On April 12, 2019, the District reported the following progress by the Student:
- Reading: Emerging Skill
 - Math: Emerging Skill
 - Writing: Emerging Skill
 - Social/Emotional: "Insufficient Progress demonstrated to meet this annual goal and may not achieve annual goal with duration of IEP."
 - Adaptive behavior: Emerging Skill
 - Communication: Sufficient Progress
9. On June 12, 2019, the District reported the following progress by the Student:
- Reading: Emerging Skill
 - Math: Emerging Skill
 - Writing: Emerging Skill
 - Social/Emotional: Emerging Skill
 - Adaptive behavior: Emerging Skill
 - Communication: Sufficient Progress
10. The District's 2018-2019 school year ended on June 20, 2019.
11. In response to this complaint, the District provided the 2018-2019 classroom staffing schedule. For each period of the school day, the schedule provided information regarding which paraeducator was assigned to different groups of students, including the Student. According to the schedule, the Student moved through small groups with different paraeducators to assist them with the activities. There was no documentation of 1:1 paraeducator services provided to the Student.

2019-2020 School Year

12. During the 2019-2020 school year, the Student continued to attend school in the District and was eligible to receive special education services under the category of autism. At the start of the school year, the Student's October 2018 remained in place.
13. The District's 2019-2020 school year began on August 28, 2019.
14. On September 23, 2019, the Parent filed this complaint.
15. Sometime prior to October 3, 2019, the Student was reevaluated. The results indicated the Student performed in the "Lower Extreme" in the cognitive area and academic scores ranged

from average to low. Adaptive behavior was in the low to extremely low range and social/emotional scores were “well-below” his same-age peers. The Student demonstrated significant weaknesses in communication.

16. On October 3, 2019, the District convened the IEP team to review the reevaluation and Student’s IEP. The IEP (effective from October 4, 2019 to October 2, 2020) continued to provide annual goals in the areas of reading, math, writing, social/emotional, adaptive behavior, and communication. The IEP provided the same accommodations as the October 2018 IEP. All specially designed instruction remained the same, but the services of a 1:1 paraeducator was reduced from 390 minutes, five times a week to 138 minutes, five times a week.
17. The documentation from the District included a notice, dated October 3, 2019, that stated the District was proposing to reduce the 1:1 paraeducator minutes provided to the Student, among other things. However, the decision to reduce the paraeducator minutes was not finalized at the meeting.
18. The District provided another prior written notice, dated October 4, 2019, that stated the evaluation team discussed the results of the evaluation. The Student continued to meet eligibility requirements under the category of autism.
19. On October 22, 2019, the Student’s IEP team met again and continued the discussion regarding the 1:1 paraeducator minutes. The District finalized the decision to reduce 1:1 paraeducator minutes to 138 minutes, five times a week.
20. On December 5, 2018, OSPI issued its decision in SECC 19-56 regarding the implementation of services from 1:1 paraeducators. SECC 19-56 concerned the same school and classroom as SECC 18-93. As part of the corrective actions in SECC 19-56, the District was required to provide training to school staff regarding the following topics:
 - The different types of paraeducator support that are available to students with IEPs;
 - How to clearly specify which type of paraeducator support any particular student with an IEP requires; and,
 - For students requiring 1:1 paraeducator support—meaning a student-to-staff ratio wherein each student works with one paraeducator, how to ensure that, on days when there are staffing changes due to absences, the proper student-to-paraeducator ratio is maintained.
21. Regarding the implementation of the Student’s 1:1 paraeducator, the District’s response to the complaint stated, “[District] does not have current documentation that identification of a specific 1:1 individual can be identified within programming records for these years.”
22. Attachment B compiled the various sources of data, including progress reports and present levels, to empirically show the Student’s progress in each area.

CONCLUSIONS

Implementation of 1:1 Paraeducator Services – The Parent alleged the District failed to implement the Student’s individualized education program (IEP), specifically the provision of a 1:1 paraeducator. A school district must ensure it provides all services in a student’s IEP, consistent

with the student's needs as described in that IEP. 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 child with a disability and those required by the IEP.

Here, during the time period investigated in this complaint (2018-2019 and 2019-2020 school years through September 23, 2019 when the complaint was filed), the October 2018 IEP stated the Student needed "constant" 1:1 paraeducator assistance to stay focused and complete activities. The Student's IEP provided for the Student to receive specially designed instruction in the areas of reading, math, writing, adaptive behavior, and social emotional behavior from a special education teacher and 1:1 paraeducator services for 390 minutes or 6.5 hours—that is, from bell-to-bell during the school day. The Student also received communication services, which was provided by the speech/language pathologist. The District describe the Student's program as small groups of students in the classroom moving through different stations that paraeducators assisted with. But the District acknowledged it did not provide a 1:1 paraeducator to the Student throughout the school day as stated in the IEP. OSPI finds the District in violation for failing to implement the Student's IEP as written.

The absence of a 1:1 paraeducator for the Student had a detrimental effect on the Student's ability to benefit from his educational program. Despite the Student receiving specially designed instruction from a special education teacher, the Student's special education progress reports stated the Student displayed mostly "emerging skills" from October 2018 to September 2019, which meant that the Student demonstrated some progress but that progress was insufficient for the Student to meet his annual goals. Communication was an exception; the Student made sufficient progress to meet the annual goal. While the Student's progress was listed as emerging skills in all of his goal areas (except communication), an analysis of his present levels, goals statements, and other data indicate the Student made limited progress in other areas, but virtually no progress in math according to the data itself. Therefore, OSPI concludes that the lack of a 1:1 paraeducator had impact on the Student's behavior and academic progress.

A state educational agency is authorized to order compensatory education through the special education citizen complaint process. 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. In this case, the District failed to provide almost 1700 hours of 1:1 paraeducator service from October 2018 to September 2019, the date of the complaint. Because the Student did not receive the services of a 1:1 paraeducator, the Student made limited progress in his goals. As a result, the District is required to provide the Student with thirty (30) hours of compensatory services in math and an additional 15 hours in reading, writing, adaptive, and social emotional, for a total of 45 hours.

Regarding the complaint itself, the District was required to investigate and respond to the complaint within twenty days. The District was required to provide its response by October 18, 2019. OSPI did not receive the response on October 18, 2019. On October 30, 2019, the District

requested an extension. OSPI required at least part of the documentation be submitted on November 1, 2019. On November 1, 2019, fourteen days after the response was initially due, the District provided its response. The District's response was very brief and lacking in detail, and the documentation was minimal. OSPI needed to request additional information to which the District responded only in part. OSPI reminds the District that it has an obligation to investigate and respond to SECCs with "cogent and responsive explanations" within the timelines, which includes providing OSPI with all *relevant* documentation as part of the investigation. OSPI strongly recommends that the District's special education leadership, including the District's attorney if applicable, meet and review procedures and processes for responding to SECCs.

CORRECTIVE ACTIONS

By or before **December 13, 2019, December 20, 2019, January 20, 2020, March 1, 2020, March 20, 2020, April 10, 2020, April 20, 2020,** and **July 9, 2020,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **December 13, 2019,** the District and the Student's Parent will develop a schedule for a total of 45 hours of compensatory services (30 in math, and 15 in reading, writing, adaptive, and social emotional). Services will occur in a one-on-one setting and be provided by a certificated special education teacher, except for adaptive and social emotional services, which may be provided with peers and other certificated staff. The instruction will occur outside of the District's school day. The District will provide OSPI with documentation of the schedule for services by **December 20, 2019.**

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 with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later than **June 25, 2020, including those needing to be rescheduled.** The District will provide regular updates to OSPI regarding the implementation of the compensatory services by use of the attached form by the following dates: **January 20, 2020, March 20, 2020,** and **April 20, 2020.**

By or before **July 9, 2020,** the District must provide OSPI with documentation that it has completed the compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these compensatory services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburse the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation related to transportation or reimbursement by **July 9, 2020.**

DISTRICT SPECIFIC:

In consideration of the present violation along with the two previous citizen complaints (SECC 18-93 and SECC 19-56) that found violations in the District regarding the implementation of 1:1 paraeducators, this complaint requires systemic corrective action on the part of the District.

By or before **December 13, 2019**, the District, in collaboration with ESD 121, will develop a training and monitoring plan for each school in the District to ensure that special education staff and administrators in each school are appropriately trained in determining the need for 1:1 paraeducator services in the students' IEPs, documenting the services in the IEP, and monitoring implementation of the services. The District must provide a rationale for each school's training and monitoring requirements, which might include previous corrective action training or District training, or the lack thereof, regarding 1:1 paraeducator services. The service monitoring plan for each school must include a listing of all students receiving 1:1 paraeducator services according to their IEPs and a plan for reporting to OSPI that services are being received.

By **December 13, 2019**, the District will submit the training and monitoring plan(s) to OSPI for review. The plans must be approved by OSPI and at that time, OSPI will set further reporting deadlines.

By or before **January 10, 2020**, the District will begin the training and all schools will begin to monitor the implementation of 1:1 paraeducator services. The District monitoring of services for each school must continue until OSPI determines compliance is achieved and maintained for a reasonable period of time for each school.

By or before **March 31, 2020**, training to the schools must be completed and the District shall provide documentation of attendance by required staff by **April 10, 2020**.

The District will provide quarterly reports on monitoring activities and results by school and the District summary to OSPI, until OSPI determines compliance is achieved and maintained for a reasonable period of time for each school. The first report will be due by **March 1, 2020**.

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.

RECOMMENDATION

OSPI strongly recommends that the District's special education leadership, including the District's attorney if applicable, meet and review procedures and processes for responding to SECCs and implement a more responsive practice.

Dated this ____ day of November, 2019

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)