

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-109

PROCEDURAL HISTORY

On September 9, 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 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 September 13, 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 September 14, 2022, the District requested an extension of time to respond to the complaint. OSPI granted the extension to October 7, 2022.

On October 7, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On October 21, 2022, OSPI received additional information from the Parent. OSPI forwarded that reply to the District the same day.

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 2021–2022 school year?

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 served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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 [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of autism, and attended the District’s virtual school.
2. The Student’s February 23, 2021 individualized education program (IEP) was in effect at the start of the 2021–2022 school year. The IEP included goals in adaptive/life skills (toileting routine, pick-up/drop-off), communication (listening comprehension), and social/behavior (task initiation, sustained engagement, transitions, self-regulation, and conversation skills). The IEP included several accommodations and the following related services, specially designed instruction, and supplementary aids and services (SAS):
 - Communication (related service): 60 minutes per month (provided by a speech language pathologist (SLP) in a special education setting)
 - Communication (related service): 30 minutes per month (provided by an SLP in a general education setting)
 - Social/behavior: 60 minutes per week (provided by special education staff in a special education setting)
 - Social/behavior: 300 minutes per week (provided by special education staff in a general education setting)
 - Listening Comprehension: 30 minutes per week (provided by special education staff in a special education setting)
 - Adaptive/life skills: 60 minutes per week (provided by special education staff in a special education setting)
 - Occupational Therapy (SAS): 300 minutes per year (provided by an occupational therapist (OT) in a general education setting)

The IEP indicated the Student would spend 90.7% of his time in the general education setting.

3. The District’s 2021-2022 school year began on September 1, 2021.
4. The Parent alleged in the complaint that the District/virtual school did not “hire adequate staff to provide the special education support due to [Student] in his IEP.” Further, the Parent stated that once staff was hired, they were “stretched thin” and “could only provide extremely minimal support.”
5. The District acknowledged in its response that there were multiple issues with staffing the virtual program as it was a new program. At the start of the school year, the District stated a special education teacher had not yet been hired and related service providers had not yet been assigned to work with students.
6. Emails from early September 2021 indicated the Parent attempted to arrange for the Student’s general education teacher to meet with the Student’s former special education teacher, so that the previous teacher could share information about how to support the Student.

7. On September 17, 2021, the special education teacher (special education teacher 1) emailed a general introduction email to parents.
8. On September 22, 2021, the Parent emailed special education teacher 1, and in part, requested the Student's IEP team meet.
9. Also, on September 22, 2021, based on emails, an instructional assistant (IA) was scheduled to start supporting the Student and other students in their general education classes, the IA planned to work with the Student in a small group. Additionally, the Student would be scheduled for a social emotional learning (SEL) skills small group.
10. On September 23, 2021, the OT who had previously worked with the Student was asked to reach out to the Parent to schedule in-person occupational therapy services as the District was not providing remote occupational or speech therapy. The OT responded and noted that the Student's services had previously been provided in the general education setting through collaboration and observation to support the Student's sensory needs, and that he did not require direct services. Thus, the OT's team lead proposed she work with the Student's general education teacher to provide the occupational therapy minutes.

Further emails indicated the OT consulted with the Student's general education teacher, but that there was some concern this would not fulfill all the Student's minutes. Other emails indicated the OT also consulted with the Parent.

11. The week of September 27, 2021 was the first week the Student received special education services. The Student was scheduled to receive 30 minutes of reading and 30 minutes of social emotional learning and skill building on Tuesdays and Thursdays.

The District noted that special education teacher 1 "quickly realized that [Student] was an excellent reader and moved to switch his reading to listening comprehension services, which better aligned with his IEP."

12. In October 2021, the Student's schedule was as follows:

Monday, Tuesday, Thursday, Friday	
7:55–8:25 am	Morning meeting
8:25–9:05 am	PE/Music
9:10–9:30 am	General Education Math
9:30–9:50 am	Advanced Math
9:55–11:30 am	Recess and Lunch
11:30–12:10 pm	Reading
12:20–12:50 pm	Writing/Social Studies
1–1:30 pm	Science
1:30–2:10 pm	Office Hours

2-2:25 pm	General Education Closing Meeting (Mon, Fri) SEL Specially Designed Instruction (Tues, Thurs)
Wednesday	
7:55-8:25 am	Morning meeting
8:25-8:55 am	Specialist (Asynchronous)
9:00-9:20 am	FUN Wednesdays
9:25-9:55 am	General Education Math (Advanced math from 9:30-9:55am)
9:55-11:30 am	Recess and Lunch
11:30 am-12 pm	Social Studies
12-12:30 pm	Listening Comprehension Specially Designed Instruction
12:30-12:55 pm	Office Hours/Small Groups
12:55-1:10pm	Closing Meeting

13. On October 4, 2021, the Student's IEP team met to discuss the Student's needs and current services.

14. In November 2021, according to the Parent's complaint, another special education teacher (special education teacher 2) was hired.

On November 4, 2021, special education teacher 2 sent a general introduction email to parents.

15. The District stated that special education 2 became the Student's case manager and the Student had a new schedule:

Monday, Tuesday, Thursday, Friday	
7:55-8:25 am	Morning meeting
8:25-9:05 am	PE/Music (Specialist)
9:10-9:50 am	General Education Math
9:55-10:30 am	Recess
10:30-11 am	Specially Designed Instruction with Teacher 2
11-11:30 am	Recess/lunch
11:30-12:10 pm	Reading
12:20-12:50 pm	Writing/Social Studies
12:50-1 pm	Check in with Teacher 2
1-1:30 pm	Science
1:30-1:55 pm	Office Hours (General Education Teacher)
1:55-2:25 pm	General Education Closing Meeting (Mon., Fri.) SEL Specially Designed Instruction (Tues., Thurs.)

Wednesday	
7:55–8:25 am	Morning meeting
8:25–8:55 am	Specialist (Asynchronous)
9–9:20 am	FUN Wednesdays
9:25–9:55 am	General Education Math
9:55–10:30 am	Recess and Lunch
10:30–11 am	Specially Designed Instruction with Teacher 2
11–12 pm	Social Studies
12–12:55 pm	Office Hours/Small Groups
12:55–1:10 pm	Closing Meeting

16. The District was closed for Thanksgiving break from November 25–26, 2021.
17. On December 16, 2021, the District emailed the Parents the Student’s progress reports. The progress reports indicated the Student had made little progress on most of his goals. Although the progress report noted that in a virtual setting, the Student had mastered his transition goal and had made some progress on the listening comprehension goal. The Student’s toileting routine and pick-up/drop-off goals were marked as “not applicable.”
18. The District was closed for winter break from December 20, 2021 through January 2, 2022.
19. In February 2022, according to the Parent’s complaint, an SLP and OT were hired. The Parent stated that the Student only received a “handful of sessions before school ended, many of which had to be cancelled, as the [SLP] had to cover for other teachers as well.”
- The Parent stated the SLP sent an introductory email on February 2, and did not start services until February 11, 2022. The SLP’s service log indicated that speech services began on February 11, 2022 and after that, the SLP met with the Student for 30 minutes roughly weekly.¹
- The Parent also stated the OT contacted her on the phone around that time, but was “only...able to provide brief phone calls monthly.”
20. On February 2, 2022, an OT and special education teacher 2 emailed. The OT asked if “any OT provide [sic] services for [the Student] this past year...I haven’t met any of these students yet.” Special education teacher 2 responded that he had checked in with the Student’s previous OT a few times.
21. The District noted in its response that the Student was receiving some of his yearly occupational therapy minutes on a consultation basis, but that it is not clear he received any services from an SLP between September 2021 and February 2022.

¹ OSPI notes that there were at least six speech sessions that were not held due to school breaks or the SLP being absent (illness or otherwise unavailable); only one “make-up session” was scheduled and held.

22. On February 8, 2022, the Student's IEP team met and developed the Student's annual IEP. The February 2022 IEP included present levels and goals in adaptive/life skills (toileting routine, pick-up/drop-off), communication (active listening), and social/behavior (task initiation, sustained engagement, transition, self-regulation, conversation skills, social language).

Some of the present levels indicated that the IEP team had not or was unable to provide instruction on some of the goals, and therefore there was no progress and the goals "will be maintained as student transitions back to in-person learning for the 2022–2023 school year."

The IEP included the following related services, specially designed instruction, and supplementary aids and services (SAS):

- Speech Language Pathology (Related): 90 minutes monthly (provided by an SLP in the special education setting)
- Adaptive/Life Skills: 60 minutes weekly (provided by special education staff in the special education setting)
- Listening Comprehension: 30 minutes weekly (provided by special education staff in the special education setting)
- Social/Behavior: 60 minutes weekly (provided by special education staff in the special education setting)
- Social/Behavior: 300 minutes weekly (provided by special education staff in the general education setting)
- Occupational Therapy (SAS): 300 minutes yearly (provided by an OT in the general education setting)

The IEP indicated the Student would spend 93.6% of his time in the general education setting.

23. On February 18, 2022, the OT emailed the Parent regarding setting up a time to connect and the OT noted that the February monthly consultation minutes were met through the IEP meeting.

24. The District was closed for mid-winter break from February 21–25, 2022.

25. On March 1, 2022, the OT emailed the Parent, indicating they had connected that day and provided recommendations about a yoga ball, fidget toys, a sensory chart, and incorporating movement breaks.

26. The District was closed for spring break between April 11 and 15, 2022.

27. On April 28, 2022, the OT emailed the Parent some sensory activities for the Student and recommended some sensory fidgets.

28. On May 11, 2022, the OT emailed the Parent regarding the yoga ball the District had ordered for the Student to ensure it was received, which the Parent confirmed it was.

29. On May 19, 2022, the Student's IEP team met to discuss a plan to support the Student's return to in-person instruction in the fall of 2022. The prior written notice from the meeting indicated

that the remote setting did not give the Student “the opportunity to work on his adaptive and social needs” and that “this past year the remote support did take a while to get in place.”

The team also discussed the Student’s need for adult support, and the Student’s need for recovery services, including a plan to provide the services in the summer for “2 times per week for 1 hour each day” in adaptive and social/emotional.

30. On June 3, 2022, the Student’s general education teacher sent out the schedule for the last week of school, June 13–17, 2022. The schedule included:
 - Monday, June 13: “Regular class on Microsoft Teams”
 - Tuesday, June 14: “Regular class on Microsoft Teams” and assemblies, device return, and asynchronous packets
 - Wednesday, June 15: Device return, and asynchronous packets, “devices are all due by end of Wednesday”
 - Thursday and Friday, June 16 and 17: “Students work on asynchronous packets”
31. According to the Parent, on June 14, 2022, the virtual school had its last school day of the school year. The Parent noted this was three days earlier than the rest of the District because the “tech department claimed to need 3 days to process returns of iPads and computers.”
32. On June 15, 2022, the OT emailed the Parent with sensory activities to work on over the summer and areas to focus on.
33. The District’s last day of school for the 2021–2022 school year was June 17, 2022.
34. On June 22, 2022, special education teacher 2 emailed the Parents a copy of the Student’s progress report. The report indicated that the Student had made between some and significant progress on the goals from his February 2022 IEP.

The District noted that two of the Student’s goals—toileting routine and pick up/drop off—were not applicable during virtual learning.

Summer 2022

35. In July 2022, the Student attended recovery services. The Parent stated, in her complaint, that “these sessions were extremely limited and not very beneficial.”
36. On August 17, 2022, a District special education supervisor emailed the Parent, stating she had left the Parent a voicemail and wanted to discuss “Compensatory Education with you for the missed services.”
37. In its response, the District acknowledged that the Student’s special education services were not fully implemented during the 2021–2022 school year and that staffing issues led to a delay of approximately nine weeks. The District proposed compensatory education services as a remedy.

38. On October 14, 2022, the Parent signed a compensatory education offer proposed by the District to address the delay of services and missed instruction between September 1, 2021 and June 17, 2022. The District and Parent agreed to the following compensatory education services:

- Speech Language Pathology: 15 hours
- Occupational Therapy: 5 hours
- Listening Comprehension: 5.5 hours
- Adaptive/Life Skills: 11 hours
- Social/Behavior: 95.25 hours
- Total: 131.75 hours

CONCLUSIONS

Issue: IEP implementation – The Parent alleged the District did not fully implement the Student’s IEP during the 2021–2022 school year because the District’s virtual school, which the Student was enrolled in, was not adequately staffed.

A 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 student with a disability and those required by the IEP.

The District acknowledged there were issues with staffing in the virtual program, including that at the start of the year, a special education teacher had not been hired and related service providers had not been assigned. The District noted this meant that many of the Student’s services were not fully implemented. The documentation reviewed in the complaint supports this. For example, a special education teacher did not start until around September 17, 2021, an instructional assistant (IA) did not begin supporting the Student until the end of September 2021, the Student’s special education services were not scheduled until the end of September, and initially the special education teacher had the Student scheduled to receive specially designed instruction in reading instead of listening comprehension. It was not until the second special education teacher was hired and started working with the Student in November 2021, that the Student’s specially designed instruction appeared to be more consistently provided. Overall, this is reflected in the Student’s progress reports, which in December 2021, indicated the Student had made little progress, but by the end of the school year, the Student was making between some and significant progress on the majority of his goals (although the progress reports and 2022 annual IEP indicated that several goals were not worked on because they were “not applicable” in the virtual setting).

Regarding speech therapy, the documentation indicates that the Student did not start receiving speech until February 2022, after which the Student generally received weekly speech sessions between February and June 2022. Although, there were several speech sessions that were canceled because the therapist was absent that should have been made up and were not. Regarding occupational therapy, the documentation indicates was largely designed to be provided through the occupational therapist (OT) collaborating, observing, and working with the Student’s teachers to support the Student’s sensory needs rather than direct therapy with the Student. The documentation indicates the Student received some of this occupational therapy

support throughout the school year via the OT collaborating and consulting with the Student's teachers, consulting with the Parent (e.g., providing recommendations for fidget toys and movement breaks, providing a sensory chart and activities, and ordering a yoga ball for the Student), and attending the IEP meeting. However, the staff indicated they themselves were concerned that the consultation would not fulfill all the Student's IEP minutes.

Overall, OSPI finds that the Student's IEP was not materially implemented during periods of the 2021–2022 school year. OSPI finds a violation. As the Parent and District have signed a compensatory education agreement to settle the dispute, OSPI finds this an appropriate remedy and that no additional corrective actions are needed.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 1st day of November, 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.)