

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-14

PROCEDURAL HISTORY

On January 27, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Snoqualmie Valley 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 January 30, 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 16, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on February 17, 2023. OSPI invited the Parent to reply.

On March 2, 2023, OSPI received the Parent's reply. 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. Since November 3, 2022, did the District implement the Student's individualized education program (IEP) with respect to the "1:1 nurse or medically trained paraeducator."?

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. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

"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

1. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of multiple disabilities and attended school in the District. The Student had an individualized education program (IEP) and detailed health care plans.

2. On August 16, 2022, the District's associate director of student services (associate director) and Parent emailed regarding the support the Student needed during school, which the associate director confirmed was a "medical assistant."
3. The District's 2022–2023 school year began on August 30, 2022.
4. On September 7, 2022, the associate director and Parent emailed regarding the Student. The associate director shared information about the four staff members who were supporting the Student, including the special education teacher, two paraeducators, and the nurse. The associate director stated that, "Between these four staff members, two-people lifts are happening for changes – and [Student] typically has 3-4 changes a day...3-4 planned venting sessions spready out throughout the day; these are done by [special education teacher and nurse]."
5. On September 12, 2022, the Parent emailed the Student's teacher, following up to a September 6, 2022 email on the same topic, with questions about staffing the classroom, the ratio of students to staff, and whether the Student was receiving her services.

The teacher responded on September 13, 2022 with answers to the Parent's questions related to staffing and provided information that they were getting the schedules in place for the Student to access general education and other services. The teacher also stated she felt the Student was safe, that "someone is always with her or her small group," and noted they should discuss health needs and planning with the nurse.

6. On September 15, 2022, the Parent and associate director emailed about the status of the search for a nurse to work with the Student and whether the Student needed medical support during transportation to and from school.
7. On September 21, 2022, the nurse emailed the Parent and provided an update and information about the Student's health related services and the schedule of the services.
8. On September 23, 2022, the Parent and District emailed regarding updates on the search for a 1:1 support for the Student.
9. On September 27, 2022, the Parent's attorney provided the District with a letter. The attorney's letter reiterated the Parent's concerns that the Student's health needs were not being met at school during the first weeks of the school year. The attorney stated that the Student should have a "1:1 nurse or medically trained paraeducator to ensure her safety and ability to learn."

The letter stated:

Parents propose to amend the IEP to require a 1:1 nurse or medically trained paraeducator as recommended by [doctor]. If the district will agree to this change in writing, an IEP team meeting may not be necessary. Most importantly, the parents request a ramping up of the hiring process to ensure consistent and continuous support as soon as possible.

The note from the doctor included:

Please consider providing [the Student] with 1:1 support in the school setting to ensure her continued safety and access to the appropriate medical care for her various conditions. If

possible, the...office would like to advocate that her 1:1 staff be either a nurse or someone with medical training who can assess her throughout the day.

10. On October 4, 2022, according to a prior written notice, the District proposed amending the IEP without a meeting, per the Parent's permission to proceed without a meeting, to include 1:1 medical support in the Student's IEP.¹ The prior written notice stated that the Parent proposed amending the IEP "so that the 1:1 support [Student] requires throughout the day be provided by a medical professional or staff member with explicit medical training instead of the 1:1 support of a paraeducator." The notice indicated this proposal was accepted, stating "The district accepts the proposal to utilize a medical professional or staff member with explicit medical training because [Student] demonstrates the need for complex and high levels of medical and health support in order to access her educational program."

The amended IEP was dated November 3, 2022, and included 1:1 "health and development" support provided by a "medical professional" throughout the day as a related service and 215 minutes per week as a supplementary aid and service. The Student's IEP also included 15 minutes per week of nursing consultation as a supplementary aid and service. An accommodation regarding the bus was added.

11. On October 6 and 10, 2022, the Parent's and District's attorneys emailed regarding the 1:1 support that had been added to the October 4, 2022 IEP. The Parent's attorney indicated, "Regarding the medical professional, the parent would prefer a nurse or medical assistant, or anyone who can take vitals (e.g., blood oxygen levels, heart rate) and interpret them as needed for [Student's] health/safety. It sounds like that is the intent."

The District's attorney responded:

The District is attempting to staff the 1:1 as indicated previously. The 'medically trained' individual may be a licensed individual or a trained [instructional assistant] who can do whatever does not require a nursing license, including taking vitals. Anything that cannot be delegated will be done by a nurse, either the School Nurse, or a nurse hired by the District as the 1:1.

¹ In her reply to the District's response, the Parent stated that they did not have an IEP meeting in October, and she did not agree to the amendment until November, when "we agreed on a new accommodation for [Student] to be in the bus driver's line of sight (a compromise instead of putting the medical professional on the bus.)"

Emails provided in the Parent's reply indicated that on October 4, 2022, a revised IEP was provided to the Parent via her attorney. The revised IEP included, per the District's attorney, "The full-time, medically trained 1:1 is specified in the supports section as 'Health and Development' minutes. If the District can staff it with a medical professional, they will." Emails further indicate that between October 6 and early November 2022, the Parent's and District's attorneys emailed about support on the bus. Ultimately, the Parent agreed to an accommodation for the Student being in the bus driver's line of sight (via the bus mirrors) and the attorney agreed that an IEP meeting was not needed to add the accommodation to the IEP.

12. The District also stated in its response, and provided documentation supporting, that it made on-going efforts to staff a “1:1 medical professional or staff member with explicit training.”

The District provided documentation and communications with potential providers between May 2022 and February 2023, documenting efforts to hire someone for the position, including working with multiple staffing agencies, scheduling interviews (several candidates did not show up for the interview), and consideration of several candidates that did not fit the requirements of the position. The District’s documentation also included internal emails discussing filling the position, recruiting staff, and how to utilize existing staff.

The District’s documentation included communications with one staffing agency that showed a candidate for the 1:1 position was interviewed and accepted the position on October 11, 2022. Subsequently, the candidate rescinded their acceptance and then later was available again, accepted the position, and was scheduled to start on November 28, 2022. On November 28, 2022, the candidate began working with the Student and worked with the Student until January 4, 2023, when she resigned without notice.

13. On November 14 and December 7, 2022, the Student’s IEP team met to discuss the Student’s health needs and protocols and schedules in place to address those needs. The Student’s IEP was not amended.

14. On November 28, 2022, a 1:1 medical professional began working with the Student and worked with the Student until January 4, 2023, when she resigned without notice.

The Parent, in her reply, stated that the medical professional “was gone most of the time from her start date Nov. 28 to her end date Jan. 4.”

15. The District was on winter break from December 19, 2022 through January 2, 2023.

16. On January 25, 2023, the District reported on the Student’s progress toward her goals as follows:

- Sight Words: Sufficient progress
- Numeric Symbols: Limited progress
- Conveying Ideas: Mastered
- Voice Volume: Sufficient progress
- Requests/Greetings/Comments: Sufficient progress
- Self-Advocacy: Mastered

The progress report noted that a few goals showed less progress as the Student appeared less motivated in some subjects like math. And the progress report indicated the goals that were supported by occupational and speech therapy, and the therapists provided additional feedback on the goal.

17. On February 7, 2023, the Student’s IEP team met to develop her annual IEP.

The prior written notice and IEP indicated the Student’s IEP continue to include a provision for “1:1 medically trained professional” as the Student required “the support of a designated and trained staff member” for a variety of health needs—this support was provided throughout the day as a related service and 295 minutes per week as a supplementary aid and service,

provided by a "1:1 medically trained professional." The Student's IEP also included a detailed individualized health care plan and 160 minutes per week of nursing as a related service and 180 minutes per year of nursing consultation as a supplementary aid and service. The IEP indicated the Student required extended school year (ESY) services.

18. In her complaint, the Parent stated that the Student "has gone without the 1:1 health support she needs" and that while "We appreciate the teacher and paraeducators...they are not medically trained, and [Student] sometimes misses activities while waiting for the school nurse to keep running over."
19. The District stated that, "despite difficulties in contracting a medically trained staff member, the Student's 1:1 services have been provided by the school nurse, case manager, and trained programmatic paraeducators." The District also stated that the Student's health plans have been fully implemented and that "all staff that work 1:1 with Student have been trained by the school nurse and/or Student's physical therapist."

The District provided documentation of the Student's schedule, which included her specially designed instruction and health services. The District also provided a log, detailing notes and the services provided by the nurse between August 30, 2022 and February 6, 2023.

20. Additionally, the District stated it contracted with an outside agency to provide programmatic staffing under the agency's "District Helper Model" to "ensure the classroom in which Student is served is fully staffed, so that Student gets the 1:1 medical support she needs." The District stated that through the contract, "certified behavioral technicians (CBTs) are provided by [agency] and serve as paraeducators in [teacher's] classroom in light of multiple vacancies of Paraeducator III positions." The District noted, "This contract was, in part, secured to ensure Student's 1:1 needs are met. The contract has been amended and extended twice...as internal hiring for the Paraeducator III vacancies continues."
21. In her reply to the District's response, the Parent stated that existing District educational staff could not implement the IEP as the "point of the IEP amendment was to shift health services to a medical professional because the existing staff was not meeting Paisley's needs" and referred to the doctor's letter from September 2022. The Parent stated the IEP specified the term "medical professional" and that "Before I agreed to the IEP amendment, the district's lawyer assured my lawyer that the term means 'anyone with nursing or other applicable medical training, e.g., RN, LPN, ARNP, MA,^[2] perhaps some types of therapists.'"

CONCLUSIONS

Issue: IEP Implementation – The Parent alleged the District failed to implement the Student's IEP with respect to the provision of a "1:1 nurse or medically trained paraeducator" since November 3, 2022.

² From the Parent's reply, "These are acronyms for Registered Nurse, Licensed Practical Nurse, Advanced Registered Nurse Practitioner and Medical Assistant."

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.

Here, during the fall of 2022, the Student's IEP was amended, with an implementation date of November 3, 2022, to include a 1:1 "health and development" support for the Student provided by a "medical professional" throughout the day. The prior written notice indicated that the Parent requested this support due to concerns about the Student's needs and following a recommendation from the Student's doctor. The prior written notice documented that, "The district accepts the proposal to utilize a medical professional or staff member with explicit medical training because [Student] demonstrates the need for complex and high levels of medical and health support in order to access her educational program."

Following the amendment of the IEP, the District was unable to specifically staff at 1:1 position. While the District provided documentation of diligent attempts to find a qualified applicant for the position, the District has not been able to hire or contract with a "1:1 medical professional or staff member with explicit training" for the Student's 1:1 position. The District did have one candidate, who ultimately accepted the position and began working with the Student on November 28, 2022. However, this person resigned with no notice on January 4, 2023, and the Parent stated the person was frequently absent during the period between November 28, 2022 and January 4, 2023. The District stated and provided documentation supporting that in the interim, existing District staff, including the school nurse, special education teacher, and paraeducators, provided the necessary support for the Student.

OSPI finds that the IEP has not been implemented entirely *as written* since November 3, 2022, as the IEP specifies a "medical professional." The question thus becomes whether there was material impact on the Student's access to a free appropriate public education (FAPE), which would inform what corrective action is needed.

The District provided documentation that it contracted with an outside agency to provide programmatic staffing under the agency's "District Helper Model" to "ensure the classroom in which Student is served is fully staffed, so that Student gets the 1:1 medical support she needs." Through this contract, the District stated that certified behavioral technicians (CBTs) and paraeducators have worked in the Student's classroom to help ensure there was enough staff so that the Student would have 1:1 support. The District's documentation, including emails, staff logs, and schedules, support that the school nurse, case manager/special education teacher, and paraeducators have worked together to provide the Student's 1:1 support and health related services. The District noted the Student's health plans have been implemented and "all staff that work 1:1 with Student have been trained by the school nurse and/or Student's physical therapist." During this time period, at least some of the 1:1 support was provided by a medical professional—the school nurse—even if the nurse did not provide the support 100% of the time. Progress reporting from January 2023 indicates the Student made sufficient progress on several goals,

mastered two goals, and only made limited progress on one math goal. The progress reporting also indicated the Student's occupational and speech therapy services were provided.

While OSPI understands the Parent's position that the IEP was specifically amended to include a "medical professional"; here, taken together, it appears the Student's access to FAPE was not negatively impacted despite the IEP not being implemented as written. The Student was largely able to access her specially designed instruction and related services, received services from the nurse, and made progress. Given this, OSPI finds no denial of FAPE and that no Student specific corrective actions are warranted. The District will be required to continue its efforts to hire for the position and provide OSPI a monthly update documenting its diligent efforts to hire.

CORRECTIVE ACTION

By or before **April 28, 2023, May 31, 2023, and June 16, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Hiring

By or before **April 28, 2023 and May 31, 2023**, the District will provide OSPI with an update on its hiring efforts. The update can be in a summary format, and should include staffing agencies worked with; information on any candidates identified and interviewed; whether someone has been hired; and any other creative efforts to hire.

By or before **June 16, 2023**, the District will provide OSPI with an update on whether the 1:1 support was hired for the 2022–2023 school year, and if not, what the plan is to ensure the Student has support during the 2023–2024 school year.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 22nd day of March, 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.)