

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-46**

### **PROCEDURAL HISTORY**

On May 14, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Marysville School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 14, 2018, 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 June 5, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on June 6, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 11, 2018, OSPI received the District's supplemental response to the complaint and forwarded it to the Parent on June 12, 2018.

On June 14, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on June 15, 2018. OSPI forwarded this information to the Parent on June 18, 2018.

On June 18, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 22, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on the same day. On June 22, 2018, OSPI forwarded this information to the Parent.

On June 25, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on June 25, 2018 and June 27, 2018. On June 26, 2018 and June 28, 2018, OSPI forwarded the information to the Parent.

On June 27, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on June 28, 2018. On June 29, 2018, OSPI forwarded the information to the Parent.

On July 3, 2018, OSPI requested that the District provide additional information, and the District provided the requested information on July 9, 2018. On July 10, 2018, OSPI forwarded the information to the Parent.

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

## **OVERVIEW**

In 2014, the Student was evaluated for special education and found eligible because of developmental delays in the following areas: cognitive, communication, fine motor, and gross motor. In August 2017, the Student was diagnosed with a mild form of cerebral palsy. In December 2017, the District completed the Student's triennial reevaluation, and his evaluation group determined that he continued to be eligible for special education under the category of developmental delay due to delays in the areas of communication and gross motor. The evaluation report recommended that the Student receive specially designed instruction in those areas. While the reevaluation also showed that the Student was below grade level in some academic areas, especially in the area of math, the District did not recommend specially designed instruction in math because the Student was making progress in this area. The reevaluation results also indicated behavioral concerns, but the evaluation group did not recommend the Student receive services in this area. Also in December 2017, the Student's individualized education program (IEP) team developed his annual IEP, which included goals in the areas of motor and communication. However, due to a clerical error, communication services were reflected on the IEP service matrix. Regardless of this omission, the District provided the Student with specially designed instruction in communication from December 2017 through March 2018, at which time his IEP was amended to include communication services. In May 2018, the District completed a reevaluation of the Student, due to concerns about the Student's progress in math, and to consider additional medical information about the Student. The evaluation group determined the Student was eligible under the category of other health impairment. The May 2018 reevaluation report recommended that the Student receive specially designed instruction in the areas of gross motor, communication, and math.

The Parent alleged that the Student's specially designed instruction in academic areas should not have been discontinued in December 2017. The Parent also alleged that IEP team meetings were not properly attended. The Parent further alleged that she did not receive a copy of the District's Procedural Safeguards Notice until May 7, 2018. The Parent also alleged that several prior written notices issued by the District were unclear. Finally, the Parent alleged that she was denied adequate participation in the March 28, 2018 IEP meeting. The District admitted in part, and denied in part, that the Student's specially designed instruction in academic areas should not have been discontinued in December 2017. The District denied that certain IEP team meetings were improperly attended. The District also denied that the Parent received a copy of the District's Procedural Safeguards Notice for the first time on May 7, 2018. The District admitted that several prior written notices were unclear. The District denied that the Parent was prevented from adequately participating in the March 28, 2018 IEP meeting.

## **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on May 15, 2017. 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 time period.

## ISSUES

1. Did the District follow procedures for conducting the Student's reevaluation?
2. Did the District follow procedures for developing the Student's individualized education program (IEP)?
3. Did the District ensure that each IEP team meeting was attended by a properly constituted IEP team, in accordance with WAC 392-172A-03095?
4. Did the District follow procedures for amending or revising the Student's IEP?
5. Did the District provide the Parent with notice of procedural safeguards in accordance with WAC 392-172-05015?

## LEGAL STANDARDS

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a reevaluation, or if the parent or teacher requests a reevaluation. 34 CFR §300.303(a); WAC 392-172A-03015(1). A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303(b); WAC 392-172A-03015(2). When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. 34 CFR §300.304; WAC 392-172A-03020(2)(a). The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020(3).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance

in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition, the student's social and cultural background, and adaptive behavior. 34 CFR §300.306; WAC 392-172A-03040(3). In completing the evaluation report, the school district must ensure that information from all of these sources is considered. 34 CFR §300.305; WAC 392-172A-03035. The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035. If the evaluation results in a determination that the student is eligible for special education and appropriate related services, the district must then conduct an IEP meeting to develop an appropriate IEP. A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through

education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A child with a disability may seek to qualify for special education benefits under more than one eligibility category. *E.M. by E.M. and E.M. v. Pajaro Valley Unified Sch. Dist.*, 114 LRP 31486 (9th Cir. 2014). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002).

IEP Development: In developing each student's IEP, the IEP team must consider: the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. WAC 392-172A-03110(1).

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student; (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE); (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

Provision of FAPE: An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102

S.Ct. 3034 (1982). For a district to meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress”, the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom, ” and the student should have the opportunity to meet challenging objectives. *Endrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017). A district must implement an IEP that is “reasonably calculated to remediate and, if appropriate, accommodate the child’s disabilities so that the child can ‘make progress in the general education curriculum,’ commensurate with his non-disabled peers, taking into account the child’s potential.” *M.C. v. Antelope Valley Union High School District*, 852 F.3d 840, 69 IDELR 203 (9<sup>th</sup> Cir. 2017).

If a school district fails to comply with the procedural elements set forth in the IDEA or fails to develop and offer an IEP that is reasonably calculated to enable a child to receive educational benefits, the district is not in compliance with the IDEA. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176 (1982). Procedural violations of the IDEA amount to a denial of FAPE if they: (1) impeded the child’s right to a FAPE; (2) significantly impeded the parents’ opportunity to participate in the decision making process regarding the provision of a FAPE; and (3) caused a deprivation of educational benefits. 20 USC §1415(f)(3)(E)(ii); see 34 CFR §300.513; WAC 392-172A-05105. *Endrew F. v. Douglas County Sch. Dist. RE-1*, further clarifies that to meet the IDEA’s substantive obligations, a district must offer an IEP reasonably calculated to enable the child to make progress appropriate in light of the child’s circumstances. 137 S. Ct. 988, 999-1000, 69 IDELR 174 (2017).

Definition of Developmental Delay: Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least: (A) Two standard deviations below the mean in one or more of the five developmental areas; or (B) One and one-half standard deviations below the mean in two or more of the five developmental areas. WAC 392-172A-01035(d)(i).

The five developmental areas for students with a developmental delay are: (A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence; (B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds; (C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing; (D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and (E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding,

toileting, personal hygiene and dressing skills. WAC 392-172A-01035(d)(ii). School districts using the category “developmentally delayed,” for students three through eight may also use any other eligibility category. WAC 392-172A-01035(d)(iv).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member’s participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member’s area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of the team member’s area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

Definition of Consent: Consent means that: the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. Furthermore, a general education teacher must participate in the revision of an IEP. 34 CFR §300.324; WAC 392-172A-03110.

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. WAC 392-172A-03100; *see also* WAC 392-172A-05001(1)(a)(b).

Notice of Procedural Safeguards: The notice of procedural safeguards must provide a full explanation of a student's rights related to: an independent educational evaluation (IEE); prior written notice; parental consent; access to education records; dispute resolution options and procedures; placement during a due process hearing; procedures for placement in an interim alternative setting; requirements for unilateral placement in private schools at public expense; civil actions; and attorney's fees. 34 CFR §300.504(c); WAC 392-172A-05015(3).

A copy of the procedural safeguards must be given to parents, at a minimum one time per school year and: (a) the first time the child is referred or the parent requests a special education evaluation; (b) the first time the parent files a citizen's complaint or due process complaint in a school year; (c) on the date the district decides to make a disciplinary change of placement; and (d) anytime the parent requests a copy. 34 CFR §300.504(a); WAC 392-172A-05015(1).

Notice of procedural safeguards must be in written language understandable to the general public and written in a parent's native language or, when appropriate translated orally so that the parent understands the notice. If the notice is provided orally to the parent, the district must maintain a written record of the translation. 34 CFR §300.504(d); WAC 392-172A-05015(4).

## **FINDINGS OF FACT**

### **Background Facts**

1. In the fall of 2014, the Student was initially evaluated for special education by another Washington school district. On December 12, 2014, the Student's evaluation group determined that the Student was eligible for special education because of developmental delays in the following areas: cognitive, communication, fine motor, and gross motor. The Student's individualized education program (IEP) team then developed his initial IEP and the Student received special education services in a developmental preschool program.
2. The Student transferred to the District on June 15, 2015.
3. During the 2015-2016 school year, the Student attended a District preschool program.



4. During the 2016-2017 school year, the Student attended a District kindergarten program. On December 5, 2016, the Student's IEP team developed his annual IEP. The December 2016 IEP included annual goals in the areas of communication, math, fine motor, reading, and gross motor. The December 2016 IEP provided for the following specially designed instruction in a *special education setting* from December 5, 2016 through May 8, 2017:
- Gross motor – 30 minutes one time weekly (provided by a PT<sup>1</sup>)
  - Reading – 30 minutes five times weekly (provided by special education staff)
  - Communication – 30 minutes one time weekly (provided by an SLP<sup>2</sup>)
  - Fine motor – 30 minutes one time weekly (provided by an OT<sup>3</sup>)
  - Written language – 30 minutes five times weekly (provided by a special education teacher)
  - Math – 30 minutes five times weekly (provided by a special education teacher)
  - Social/emotional – 30 minutes five times weekly (provided by a special education teacher)
  - Cognitive – 30 minutes five times weekly (provided by special education staff)

The December 2016 IEP provided for the following specially designed instruction in a *special education setting* from May 9, 2017 through December 4, 2017:

- Gross motor – 30 minutes one time weekly (provided by a PT)
  - Reading – 30 minutes five times weekly (provided by special education staff)
  - Communication – 30 minutes one time weekly (provided by an SLP)
  - Fine motor – 30 minutes one time weekly (provided by an OT)
  - Reading – 30 minutes five times weekly (provided by special education staff)
  - Math – 30 minutes five times weekly (provided by a special education teacher)
  - Written language – 30 minutes five times weekly (provided by a special education teacher)
5. According to the Parent's complaint, on August 21, 2017, she spoke with the District's director of special education on the phone. According to the Parent's complaint, during this conversation, the Parent informed the director of special education that the Student had recently been diagnosed with "Cerebral Palsy 1" and that she was requesting a new evaluation of the Student.

### **2017-2018 School Year**

6. The District's 2017-2018 school year began on September 6, 2017. At that time, the Student continued to attend the same elementary school and his December 2016 IEP was in place.
7. The Student received thirty minutes of speech therapy on September 14, 21, and 28, 2017.

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<sup>1</sup> PT – stands for physical therapist

<sup>2</sup> SLP – stands for speech language pathologist

<sup>3</sup> OT – stands for occupational therapist

8. On September 6, 2017, the Parent communicated<sup>4</sup> with the Student's general education first grade teacher, stating, "He was just diagnosed with cerebral palsy<sup>5</sup> and so I think we have a better idea of what direction to point him in." The Student's general education teacher responded, "If there is any information you have learned in getting his diagnosis that you feel would be helpful for me to know, please let me know."
9. The District's documentation includes an undated "SST Agenda" from a staff meeting, which includes the following: (a) The Student is "currently classified as a student with a Developmental Delay; however, on August 16<sup>th</sup> she [*sic*] was diagnosed with Cerebral Palsy reevaluation is due soon;" (b) The Parent "expressed concerns about [the Student's] academic performance and uncertain about new services provided under this new category;" and (c) "Although her [*sic*] evaluation and IEP is due on December, based on parent's concern, we are going to start the reevaluation sooner." It is unclear when the staff meeting occurred, but based on other information from the agenda, it appears the meeting occurred in September or early October 2017.
10. The Student received thirty minutes of speech therapy on October 5, 12, 19, and 26, 2017.
11. On October 4, 2017, the Student's general education teacher told the Parent, "[Student] has a really hard time getting logged onto the computer. The other students will all be logged on and I will get [Student] started, and then when I come back to check on him he is back at the start."
12. The Student received thirty minutes of speech therapy on November 2, 9, 16, and 30, 2017.
13. Throughout the fall semester, the Student would occasionally have difficulty sitting on the floor during "circle time." As explained by the Student's private doctor, in a letter dated November 7, 2017:

[Student] has a history of a premature and very complicated delivery. He has a history of an abnormal brain MRI and a diagnosis of cerebral palsy. Although [Student's] cerebral palsy is mild, he does have tightness in his bilateral Achilles tendons and a tendency to be up on his toes. He frequently complains of discomfort in his feet to his family. Based on his physical exam, I am not surprised by this discomfort. [Student's] mom reports he is

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<sup>4</sup> The District elementary school that the Student attended utilized an internet communication system called "Class Dojo" that allowed parents to communicate with teachers. Unless otherwise specified, all communications between the Parent and the Student's general education teacher took place via the "Class Dojo" communication system.

damage that occurs to the immature, developing brain, most often before birth...In general, cerebral palsy causes impaired movement associated with abnormal reflexes, floppiness or rigidity of the limbs and trunk, abnormal posture, involuntary movements, unsteady walking, or some combination of these. People with cerebral palsy may have problems swallowing and commonly have eye muscle imbalance, in which the eyes don't focus on the same object. People with cerebral palsy also may suffer reduced range of motion at various joints of their bodies due to muscle stiffness. Cerebral palsy's effect on functional abilities varies greatly. Some affected people can walk while others can't. Some people show normal or near-normal intellectual capacity, but others may have intellectual disabilities." <https://www.mayoclinic.org/diseases-conditions/cerebral-palsy/symptoms-causes/syc-20353999>.

struggling to sit in circle time at school. It is quite possibly that some of his difficulty is related to the discomfort in his feet and ankles, which is directly related to his medical diagnosis. [Student] should be allowed to sit in a chair or other seating option that allows him greater comfort.

This letter was provided to the District on November 7, 2017.

14. In response to the doctor's letter, the District provided the Student with a chair during "circle time" and encouraged him to sit on it. However, the Student would occasionally sit on the ground when he was comfortable in that position.
15. According to the District's response to this complaint, on November 6, 2017, it invited the Parent to attend a reevaluation results meeting occurring on November 16, 2017. The District's documentation does not contain a 'Notice of Meeting' document with a date of November 6, 2017, but does contain a 'Notice of Meeting' document, dated December 4, 2017, that proposes a meeting for the purpose of "reevaluation consideration." As explained by the District, "the...dates [on the 'Notice of Meeting' dated December 4, 2017], were overridden by the District's computer system (IEP Online program) when the school psychologist entered the date of the reevaluation meeting. For this reason, the notice of meeting letter in the file is dated December 4, 2017, the date the reevaluation meeting occurred."
16. On November 16, 2017, the Parent and District staff met to discuss the Student's upcoming triennial reevaluation.
17. Also on November 16, 2017, the Parent provided written consent for a reevaluation of the Student. The consent form stated, "The reevaluation will address the following areas: behavior, academic, gross motor, medical-physical, general education, cognitive, communication, fine motor, observation." It also stated, "I have also been provided the *Notice of Procedural Safeguards for Special Education Students and Their Families* that summarize protections for students who may require special education."
18. The documentation in this complaint includes a prior written notice, dated November 16, 2017, which stated that the District was proposing to change the Student's eligibility category. However, the District was instead proposing that the Student be reevaluated. The District admits that "this prior notice was unclear in the description of what [we] were proposing."
19. The District was on break November 23-24, 2017.
20. The Parent communicated with the Student's general education teacher on November 27, 2017, stating:

The week before last [Student] came home saying that he can sit on the floor for 10 minutes [during circle time] before having to sit in the chair. I don't mind giving him the options but he needs to be encouraged to sit in the chair when he's uncomfortable.
21. The Student received thirty minutes of speech therapy on December 7 and 14, 2017.

22. In an email, dated December 1, 2017, the Student's special education teacher told the director of special education, "It looks like [Student] is not qualifying for academics. [The Parent] says that the psychologist has diagnosed him with [attention deficit hyperactivity disorder] ADHD, but can't get the paper work here by Monday. Do we do the IEP and only have OT/PT/SLP goals, then amend later when we get the paper work?" On the same day, the director of special education replied, "If [Student] does not need academics then it is better to let him stay in gen ed instruction. Even with ADHD we don't serve without a need."
23. By December 4, 2017, the Parent had been told by the Student's private counselor that the Student had ADHD. The Parent, however, had not received written confirmation of this diagnosis.
24. On the morning of December 4, 2017, the special education teacher emailed the director of elementary special education, "[Student] no longer qualifies for academics and I want to be clear on what we can and can't provide for him legally."
25. Later, on December 4, 2017, the Student's evaluation group, including the Parent, met to review the reevaluation results. According to the Parent, during the December 4, 2017 meeting, the Parent stated that the Student's counselor agreed to a conference call to confirm there was a positive ADHD diagnosis, but the team would not accept that offer. The evaluation group then determined that the Student continued to be eligible for special education under the category of developmental delay. In one section of the evaluation report, it recommended that the Student receive specially designed instruction in the areas of communication and gross motor. The communication portion of the evaluation report stated that the Student was demonstrating delayed articulation skills and that voice and fluency were judged to not be an area of concern. The gross motor portion of the evaluation report included the following finding:
- It is recommended that [Student] receive [specially designed instruction] in the area of gross motor. He has made good progress in his motor skills and as indicated on the TGMD-2 where his standardized score was in the average range, yet on the bilateral coordination and balance subtest of the BOT-2 he demonstrated below average ability. The GOAL although not standardized for his age also demonstrated some continued delays in his gross motor ability. Yet overall [Student] has made good progress with his gross motor abilities. [Student] may not need [specially designed instruction SDI] for the entire duration of this reevaluation time period, but it is recommended to continued [*sic*] gross motor services at this time.]
- However, in the "Recommendations to IEP committee: Special Education services including specially designed instruction" section of the report, only the following was listed: SDI (Gross Motor) – Area Assessed (Gross Motor) – Description (gross motor development) and discuss the development of a new IEP for the Student.
26. Additionally, the December 4, 2017 evaluation report included the following information regarding the area of Medical-Physical:

- Information provided by Parent - Student “has a diagnosis of ADHD and recently received a diagnosis for Traumatic Brain Injury.”<sup>6</sup>

The evaluation report included the following information regarding the Student’s participation in General Education:

- Observations from the Student’s general education teacher
  - Student “is a very happy and social boy. He enjoys participating in whole group glass activities and he also has a positive attitude.”
  - “In the area of Reading [sic]...[Student] does pretty well with Comprehension, in Math she reported that his functioning is at about Kinder/Early 1<sup>st</sup> grade. In the Writing domain, [Student] misses whole group writing instruction, when asked to write in Gen. Ed., he usually just draws or writes a few isolated words, not sentences.”

The evaluation report included information from the following assessment in the area of Behavior:

- Results from the Behavior Assessment System for Children 3 (BASC-3)<sup>7</sup>
  - In the area of School Problems, the Student’s resource room teacher “reported major concerns regarding School Problems, specifically in the area of School Problem (T-score 90). This score fell within the Clinically [sic] significant range, which means that...at school [Student] tends to behave in ways that are considered odd (often engaging in repetitive movements, often acting confused, often seems odd, etc).”
  - The Student’s resource room teacher and the Parent both “expressed concerns about [Student’s] hyperactivity and attention problems.”
  - Teaching Rating Form
    - Externalizing Problems T-score 65
    - Internalizing Problems T-score 63
    - School Problems T-score 67
    - Behavioral Symptoms Index T-score 72
    - Adaptive Skills T-score 37
  - Parent Rating Form
    - Externalizing Problems T-score 73
    - Internalizing Problems T-score 48
    - Behavioral Symptoms Index T-score 61
    - Adaptive Skills T-score 46

The evaluation report also included information about the following assessment in the area of Cognitive:

- Results from the Woodcock-Johnson IV Tests of Cognitive Abilities (WJ IV COG)<sup>8</sup>:

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<sup>6</sup> In response to a request for clarification from OSPI, the Parent explained that she believes the District is referring to the Student’s Cerebral Palsy diagnosis when it refers to the ‘Traumatic Brain Injury.’

<sup>7</sup> The BASC-3 “is a dynamic behavior evaluation system which can be completed by parents, teachers and older students in a self-report. It provides primary composite scores for Adaptive Skills, Internalizing Problems, Externalizing Problems, and an overall Behavioral Symptoms Index.”

<sup>8</sup> The Woodcock Johnson IV Tests of Cognitive Abilities “is an individually administered cognitive assessment that is based on the Catell-Horn-Carroll (CHC) theory of intelligence and can be administered to individuals between the

- General Intellectual Ability – Standard Score (SS) of 78 (1.46 standard deviations below the mean).<sup>9</sup>
- Comprehension – SS of 88 (0.80 standard deviations below the mean)
- Fluid Reasoning – SS of 94 (0.40 standard deviations below the mean)
- Short-Term Working Memory – SS of 79 (1.40 standard deviations below the mean)
- Cognitive Processing Speed – SS of 76 (1.60 standard deviations below the mean)
- Auditory Processing – SS of 77 (1.53 standard deviations below the mean)
- Long-Term Retrieval – SS of 103 (0.20 standard deviations above the mean)
- Visual Processing – SS of 75 (1.66 standard deviations below the mean)

In regard to the Student’s cognitive scores, the evaluation stated, “These scores may be a minimal estimate of [Student’s] true cognitive abilities and therefore must be interpreted with caution.”

27. The Cognitive portion of the December 4, 2017 evaluation included the following recommendations in the following areas:

- Auditory Processing – Providing phonological awareness activities (i.e. rhyming alliteration, imitation, etc) and provide specific training in sound discrimination.
- Processing Speed – Additional time to complete in class assignments and tests, reduce the quantity of work in favor of focusing on the quality, limit/structure coping activities (this might include note taking which could be supported through provision of a lecture outline or a copy of a peer’s or teacher’s notes as a supplement) and provide activities to increase rate and fluency (i.e. flash cards, speed drills, etc.). It may also be beneficial when calling on a student to give a response to a question in front of the class, provide a cue that the next question will be directed to that individual so they have enough time to formulate a response.
- Short-Term Memory – Keeping oral directions short and simple, ensure that directions are understood (could have him or her paraphrase the directions back to the adult), provide visual supports such as writing multiple step directions on the white board or an overhead so he or she can refer back to them, provide some note taking support such as a teacher outline for a lecture or a copy of peer or teacher notes so when he or she studies for a test he or she has the appropriate information from class lessons and teach memory strategies such as chunking, mnemonics, etc.

28. The evaluation also included the following assessment in the area of Academics:

- Results from the Woodcock-Johnson IV Tests of Achievement Form A and Extended (WJ IV ACH)<sup>10</sup>

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ages of 2 to over 90. It focuses on important broad and narrow abilities as described in the CHC theory of intelligence.”

<sup>9</sup> The WJ IV COG has “a mean score of 100 with a standard deviation of 15.” For General Intellectual Ability, the Student received a standard score of 78, which is 22 points below the mean score of 100. To calculate how many standard deviations below the mean score this represents, you divide 22 by 15, to get 1.46. See WAC 392-172A-01035(2)(d)(i).

<sup>10</sup> The WJ IV ACH is a “battery” of tests “for accurately screening, diagnosing, and monitoring progress in reading, writing, and mathematics achievement areas.” <https://www.hmhco.com/programs/woodcock-johnson-iv/overview>.

- Broad Reading Skills – SS of 81 (1.26 standard deviations below the mean)<sup>11</sup>
- Basic Reading Skills – SS of 94 (0.40 standard deviations below the mean)
- Reading Comprehension – SS of 84 (1.06 standard deviations below the mean)
- Reading Fluency Skills – SS of 79 (1.40 standard deviations below the mean)
- Broad Math – SS of 79 (1.40 standard deviations below the mean)
- Math Calculation Skills – SS of 81 (1.26 standard deviations below the mean)
- Math Problem Solving – SS of 77 (1.53 standard deviations below the mean)
- Broad Written Language – SS of 89 (0.73 standard deviations below the mean)
- Written Expression – SS of 89 (0.73 standard deviations below the mean)

The Academic portion of the evaluation also included the following assessment summary for math:

Math calculations: [Student] scored at the beginning to mid kindergarten level in math skills. He writes his numbers. [Student] solves plus 0 & 1 problems without math manipulatives. He solves minus 0 problems. It is difficult to determine what errors [Student] makes as it appears that he wrote numbers beneath the problem. For example, 2+3=2. When solving math facts for fluency, he answered plus 0 & 1 problems correctly. It was not clear what strategies he used to solve the problems. Math problem solving: He knows the time to the hour.

The Academic portion of the evaluation concluded that the Student “does not need [SDI] in academics.”

29. The evaluation report included the following assessments in the area of Fine Motor:

- Results from the Bruninks-Oseretsky Test of Motor Proficiency-2 Fine Motor (BOT-2)<sup>12</sup>
  - Fine Motor Control – Average
  - Fine Motor Precision – Below Average
  - Fine Motor Integration – Average
  - Fine Motor Coordination – Average
  - Manual Dexterity – Below Average
  - Upper limb coordination – Average
  - Total Fine Motor Score – Below Average
- Results from the Developmental Test of Visual Perception-3<sup>13</sup>
  - Eye-hand coordination – Below Average
  - Copying – Poor
  - Figure-ground – Above Average

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<sup>11</sup> The WJ IV ACH also has a mean score of 100 with a standard deviation of 15. To calculate how many standard deviations a particular score is from the mean, the same process is utilized as that outlined in Footnote 5 above.

<sup>12</sup> The BOT-2 “is a standardized assessment of motor skills in individuals from 4 through 21 years of age.”

<sup>13</sup> The DTVP-3 measures the following: eye-hand coordination, copying, figure ground (children are shown stimulus figures and asked to find as many of the figures as they can on a page where the figures are hidden in a complex, confusing background), visual closure (children are shown a stimulus figure and asked to select the exact figure from a series of figures that have been incompletely drawn), and form constancy (children are shown a stimulus figure and asked to find it in a series of figures. The targeted figure will have a different size, position, and/or shade and it may be hidden in a distracting background).

- Visual Closure – Average
- Form Constancy – Poor
- Visual Motor Integration – Poor
- Motor Reduced Visual Perception – Average
- General Visual Perception – Below Average

The Fine Motor portion of the evaluation also included the following finding regarding the BOT-2 test results:

[Student's] performance indicates his visual perceptual skills to be in the 'below average' range when compared to children of the same age. However, students who score in the 'below average' range and above, typically don't qualify for services on this assessment. If a student scores in the 'very poor' range, this typically qualifies for [specially designed instruction] to remediate the above skills.

The Fine Motor portion of the evaluation also included the following finding regarding the DTVP-3 test results:

[Student] has demonstrated improvement in the area of fine motor skills since his initial evaluation in 2014. Based on [Student's] scored [sic] on the above standardized tests, OT as [SDI] is not recommended at this time.

30. The following individuals signed the December 4, 2017 evaluation: the Parent, school psychologist, special education teacher, general education teacher, SLP, OT, the school principal, and the PT. The December 4, 2017 evaluation also contained the signature of an individual whose role in the process is unknown.<sup>14</sup>

31. Also on December 4, 2017, the Student's IEP team developed a new IEP for the Student. The IEP team included the following people: the Parent, special education teacher, general education teacher, the school principal, SLP, OT, PT, and school psychologist. According to the Parent's complaint, the general education teacher left the IEP meeting early because she had to pick up her child.

32. The Student's December 2017 IEP included the following statements regarding the Student's behavior:

- "[Student] requires lots of prompts to stay on task."
- "[Student] has trouble focusing his attention and staying on topic for more than 30 seconds."
- "[Student] has difficulty focusing in the general education classroom...[Student] needs frequent reminders to focus and not disrupt the learning of himself and others."

In the section entitled, 'Team Considerations,' the December 2017 IEP included the Student's score on the District's springtime assessment in math: "STAR math Intervention /164 [sic]."<sup>15</sup> The December 2017 IEP included annual goals in the areas of communication and gross

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<sup>14</sup> It is possible that the unknown signature is that of the physical therapist, as the physical therapist signed the December 4, 2017 IEP but did not have a specially designated signature block on the December 4, 2017 evaluation.

<sup>15</sup> According to the District's website, the STAR Math Assessment is "a benchmark screening and progress monitoring system for assessing growth in mathematics achievement."



motor. However, the December 2017 IEP only provided for services in the area of gross motor. The IEP service matrix stated that the Student would receive the following specially designed instruction in a *special education setting*:

- Gross Motor – 20 minutes one time weekly (provided by a PT)

The Student’s December 2017 IEP included the following accommodations:

| <b>Accommodations</b>        | <b>Frequency</b>             | <b>Location</b>      |
|------------------------------|------------------------------|----------------------|
| Break material into chunks   | for all work                 | all school settings  |
| Check for understanding      | daily                        | all school settings  |
| Extra time to respond        | when testing                 | all testing settings |
| Preferential Seating         | when testing                 | all testing settings |
| Present information visually | when presenting information  | all school settings  |
| Reinforcement                | when needing to stay on task | all school settings  |
| Repeat directions as needed  | when giving directions       | all school settings  |
| Using separate space         | when testing                 | all testing settings |

33. The documentation in this complaint contains a prior written notice, dated December 4, 2017, proposing to change the Student’s IEP. Under “Description of the proposed or refused action,” this prior written notice reads, “Initiate new IEP goals and services.” This prior written notice has an initiation date of December 5, 2017.

34. In its response to this complaint, the District stated the following in regards to the December 4, 2017 meeting:

[Student] scored below grade level in some academic areas, especially in the area of math. The team expressed they wanted to give him a chance to try general education without the specialized cognitive/academic support, because they recognized so much growth.

35. In her reply to the District’s response, the Parent alleged the following in regards to the December 4, 2017 meeting and prior written notice:

This was extremely unclear to us, as the invitation doesn’t clearly state what the district was purposing [*sic*] as well as during the meeting it was sold to us that [Student] had in fact scored just high enough to graduate from his IEP and would be in general education for math, writing, and reading. I even stopped during the meeting and got [Student’s] attention and told him he was graduating and told him how proud of his I was. No one corrected me or told me otherwise, nor was it discussed that we were going to ‘see’ how well he would do in the general education setting. We walked away from that meeting thinking he had made leaps and bounds and got out of IEP math, writing, and reading, when in fact this is where we feel the ball was dropped.

36. The District received written confirmation of the Student’s ADHD diagnosis sometime between December 15 and December 18, 2017.

37. The District was on break December 20, 2017 through January 2, 2018.

38. The Student received thirty minutes of speech therapy on January 4, 11, 18, and 25, 2018.

39. January 3, 2018 was the Student's first day to attend school while on ADHD medication. While the Student's general education teacher said it was difficult to get a good reading on his behavior, she did believe that "he was more calm and focused."

40. On or about January 16, 2018, the Student's private doctor increased his ADHD medication to twice daily.

41. On January 19, 2018, the Parent communicated with the Student's general education teacher:

I thought the whole purpose of getting the ADHD diagnosis...was to put him back in [academic] services because he doesn't qualify under [cerebral palsy], or am I missing something?"

Later that day, the Student's general education responded, "Whether we get him in [academic] services or not, the diagnosis can help us better understand [the Student's] needs in order to help him be successful. By getting it, it was a way for us to possibly justify services in academic areas. Also, I wasn't saying I thought he shouldn't go back to having any academic services, just possibly not as much time. He actually is doing better than I had anticipated in the general education classroom."

42. The Student received thirty minutes of speech therapy on February 1, 8, 15, and 22, 2018.

43. In February of 2018, the Parent grew concerned with the Student's performance in math. At this time, the Student was in a general education "math intervention group." As explained by the Student's general education teacher, when the "math intervention group" met, they would "do the homework that goes with in class lessons, so basically it is pre-teaching the lesson."

44. In regards to the Student's performance in math, on February 6, 2018, the Student's general education teacher wrote:

There are somethings that are a little harder simply because he didn't have some of the lessons earlier in the year that the other kids had. Also, sometimes he seems to still be just writing down numbers. Whether this is a lazy thing, or his brain is having trouble focusing I don't know. For example today during our sprint, he was on 10+1 and was saying 2. I know he either knows or can figure out that problem. His STAR math score did go up quite a bit also."

Also that day, the Student's general education teacher also said, "[Student's] been noticing differences with him and his classmates lately."

45. On or about February 20, 2018, the Student was transitioned to an "extended release ADHD" medication.

46. On February 22, 2018, the Student's general education teacher explained to the Parent that the Student sometimes "has a hard time focusing [in math class] and following all of the directions so sometimes he misses the point even though he can do the math."

47. On February 22, 2018, the Student's general education teacher explained to the Parent that she felt "[Student] has not been himself the last few days" and that he looked upset at various points throughout the school day. The Parent explained that this was "a side effect of his new ADHD medication" and possibly because the Student's dad, who had been expected home from a business trip, was delayed in his return because of bad weather.
48. The Student received thirty minutes of speech therapy on March 1, 15, and 22, 2018. On March 8, 2018, the Student did not receive thirty minutes of speech therapy services because the SLP was unavailable.
49. In an email, dated March 15, 2018, the District educational specialist told other District personnel:
- There were some errors noted in the paperwork for [Student] that will need to be corrected. On the PWN for the evaluation, it stated that he qualified for both gross motor and communication, however, communication was omitted from the decision tab...On the IEP, there is a communication goal, but no minutes of service on the matrix.
- District personnel then exchanged additional emails, discussing the fact that the Student's December 4, 2017 IEP did not include communication as an area on the service matrix despite the fact that the corresponding reevaluation recommended this as an area of specially designed instruction. To remedy this omission, the District would set up a meeting to occur immediately after an upcoming parent teacher conference. In the internal email thread, dated March 15, 2018, the speech language pathologist referred to this as an "IEP amendment meeting."
50. On March 16, 2018, the Student's District PT recommended to the Parent that the Student's services in gross motor be discontinued, as he "has made excellent progress" in that area. The Parent countered with a request for the implementation of a stretching routine, which the physical therapist believed was a good idea. Also that day, the PT emailed the Parent, stating that "We will be having to make some changes in our paperwork, some clerical things that need to be fixed."
51. On or about March 16, 2018, the school psychologist completed an "Assessment Revision," noting that, "[Student] qualified for Gross Motor and Communication in the area of Articulation, however, Communication was inadvertently omitted from the Decision section."
52. The documentation in this complaint contains a March 19, 2018 invitation for an IEP amendment meeting scheduled for March 28, 2018. The meeting invitation stated, "An IEP amendment is needed to [correct] several clerical errors on the previous IEP." The Parent stated that she never received this document prior to the meeting on March 28, 2018, and was only aware that a parent/teacher conference had been scheduled for March 28.<sup>16</sup>

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<sup>16</sup> The District's 2017-2018 calendar shows that all District elementary school had parent/teacher conferences during the week of March 26-30, 2018.

53. On March 22, 2018, the special education teacher emailed an educational specialist for the District, stating that, “[The Student] no longer qualifies for academics. He does check in/out with me as a Gen-ed intervention...[The SLP] is making the amendment and meeting with mom during conference.”
54. The documentation in this complaint contains a “Notice of Meeting”, dated March 22, 2018, proposing a meeting to occur on March 16, 2018 to “discuss assessment revision.”<sup>17</sup>
55. The District’s documentation in this complaint includes a prior written notice, dated March 22, 2018, which stated, “[Student] will receive [SDI] in the area of Gross Motor and Communication.” The prior written notice had an initiation date of March 22, 2018. The documentation also contains an “Assessment Revision Prior Written Notice,” dated March 22, 2018, which stated, “[The Student] qualified for Gross Motor and Communication in the area of Articulation, however, Communication was inadvertently omitted from the Decision section of the evaluation report.” The prior written notice stated that, to remedy this omission, the District will provide the Student with “Specially Designed instruction in the area of Gross Motor and Communication” beginning on March 22, 2018.
56. On March 23, 2018, the PT emailed the Parent, stating:  
After talking with some of the team about qualification areas I think I will need to dismiss [the Student] from gross motor services...I am happy to follow him through the rest of this school year to make sure he is comfortable with his stretching and then check up on him, but this would not be reflected in his paper work. Thoughts?
57. Also on March 23, 2018, the Student’s PT exchanged emails with the District’s educational specialist. These emails are summarized below.
- The PT emailed the educational specialist, asking, “Can a [student receive] supplementary aids and services without qualifying in that area? I ask because [the Student] may need a reevaluation to change to [specific language impairment] instead of the reevaluation to change the paper work areas. But this is only if I do indeed dismiss, but I want to stay as supplementary aids and services, if that makes sense. If I can’t be supplementary aids and services I guess [Student] can stay, but he doesn’t really have qualifying scores in the area of gross motor to qualify for the [developmentally delayed] category.”
  - The educational specialist responded, “In order to receive services, he has to meet the criterion determined. You can always consult with staff and be an accommodation of [sic] there are things linked to other services.”
  - The PT replied that, “[The Student’s] mom would like us to support a stretching program for him at school.”
  - The educational specialist responded, “That would be really hard to relate to communication deficits.”
  - The PT replied, “Yes. My predicament.”
  - The PT replied again, stating:

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<sup>17</sup> From the face of the document, it is obvious that the dates were entered incorrectly on this meeting notice. Furthermore, it does not appear that the parties actually met on either March 16, 2018 or March 22, 2018.

“Looks like...the assessment revision [was already done] (but the test I used doesn’t meet the test/retest reliability standards for [the developmentally delayed] qualification), but if we just let it slide, I don’t know if we can do that, I will just change my service time and goals on the IEP and get through that;” and “I am thinking we need to dismiss but am a little concerned about how [the Parent] may take it.”

58. On March 28, 2018, the Parent met with the Student’s general education teacher for their scheduled parent-teacher conference.
59. After the conference, District personnel met with the Parent to review an amendment to the Student’s December 2017 IEP, which reflected the Student’s need for specially designed instruction in the area of communication on the IEP service matrix. The following individuals attended the March 28, 2018 meeting and signed the IEP amendment: the Parent, general education teacher, SLP, PT, and a special education teacher. According to the District, the special education teacher attended as the District representative. The Parent asserts that she was not aware the special education teacher attended the meeting as the District representative. The Parent also stated in her complaint that “the speech therapist excused himself [from the March 28, 2018, meeting] after he spoke with us about our son’s progress in speech to attend another meeting.”
60. According to the Parent, at the meeting, the Parent was handed the March 19 “Review Individualized Education Program (IEP) Invitation (Amendment),’ the signature page was turned to and we were asked to sign while being explained that the communication section wasn’t added in [the Student’s] IEP back in December and that they had just fixed it, we signed and carried on about his conference.” The Parent alleged that it was never her understanding that the March 28, 2018 meeting was an IEP meeting.
61. The documentation in this complaint includes a March 28, 2018 amendment to the Student’s December 2017 IEP. The March 2018 IEP amendment included the following changes to the December 2017 IEP:
- Both of the motor goals from the December 2017 IEP were removed.
  - A new motor goal addressing “hopping” was added.
  - The service matrix was updated to include the following specially designed instruction in a special education setting beginning on March 28, 2018:
    - Gross motor – 15 minutes 1 time monthly (provided by a PT)
    - Communication – 30 minutes 1 time weekly (provided by an SLP)
62. The Parent received a copy of the Student’s updated IEP at the March 28, 2018 meeting.
63. The documentation in this complaint contains a prior written notice, dated March 28, 2018, that stated the following:
- Description of Proposed Action: “[Student’s] previous IEP incorrectly omitted the provision of SLP direct intervention minutes. This was due to multiple people working on the IEP at the same time. A meeting is needed to correct this error.”

- Reason for Proposed Action: “Based upon [Student’s] most recent evaluation, he continues to qualify for SLP and PT services. However, an error on the previous IEP omitted SLP direct service minutes.”
- Description of options rejected: “Conducting an IEP revision was necessary to list correct IEP service minutes. It was not needed to do any updated on the last evaluation.”

The March 28, 2018 prior written notice stated that “this action will be initiated on” March 28, 2018.

64. According to the SLP, on March 29, 2018, the Student did not receive thirty minutes of speech services because the Student was “unavailable.”

65. The District was on break April 2-6, 2018.

66. The Student received thirty minutes of speech therapy on April 12, 19, and 26, 2018.

67. The Student received thirty minutes of speech therapy on May 3, 10, 17, 24, and 31, 2018.

68. On May 1, 2018, in a response to a request from the Parent for a meeting, the school’s special education teacher emailed the Parent, stating, “[The speech language pathologist] is [Student’s] Case Manager now (since he did not qualify for academics).” Later that same day, the Parent responded, “I have some concerns about [the Student’s] academics, progress and about his IEP now and for the next school year. Please let me know when a good time for everyone to meet up would be.”

69. On May 7, 2018, the Parent visited the special education director to make an appointment to discuss her concerns with the Student’s education. The Parent stated that the secretary for the director of special education provided her with a copy of the *Special Education Procedural Safeguards for Students and Their Families* pamphlet on this date. The Parent alleged that this was the first time she received this pamphlet. In the Parent’s reply to the District’s response to this complaint, the Parent stated:

We wouldn’t have had waited as long as we did to if we had known our rights as parents or that [Student] had rights as a student, as well as having the option to file a complaint. If we knew we had rights and there were other options we could have taken those avenues would most definitely been taken into consideration before it got the point of involving OSPI.

70. On May 9, 2018, the Student’s general education teacher told the Parent:

During the STAR math test today. [sic] [Student] was not trying, he was just clicking and guessing. The first time I had him take it he got 100 points lower than in January. I had him retake it and watched him with parts of it. There were problems like  $1+8=$  and he would put 6. I prompted him multiple times to draw pictures, use his fingers, etc. but he wasn’t. He did score about 40 points higher the second time, but still was lower than his January score.

The Parent responded, “That to me is an indicator he needs to be put back into special Ed for math. We’ll all discuss this whenever we have a team meeting.”

71. On May 11, 2018, the special education teacher emailed multiple District personnel, stating, “[The Parent] would like to meet to discuss [the Student’s] struggle in math. [The general education teacher] feels it is a gen-ed problem, but mom wants him back on an IEP.”
72. On May 14, 2018, the District invited the Parent to attend a meeting on May 16, 2018, in order to review the Student’s educational progress and to consider a reevaluation of the Student.
73. Also on May 14, 2018, the Parent filed this citizen complaint.
74. During the May 16, 2018 meeting, the “team determined a reevaluation was warranted in the areas of medical/physical, general education, and a review of existing information in the areas of communication, gross motor, cognition and academics.”
75. Also on May 16, 2018, the Parent signed consent for a reevaluation of the Student. The consent form stated that “the reevaluation will address the following areas: review of existing data, medical-physical, general education.” The consent form also stated, “I have also been provided the *Notice of Procedural Safeguards for Special Education Students and Their Families* that summarize protections for students who may require special education.”
76. The District alleged that it provided the Parent with a copy of the *Notice of Procedural Safeguards for Special Education Students and Their Families* at the May 16, 2018 meeting.
77. On May 21, 2018, the director of elementary special education (elementary director) emailed the Student’s general education teacher, asking that she gather pertinent information on the Student’s progress in math class. The general education teacher provided this information in an attachment to an email, dated May 22, 2018. This feedback included the following: “[Student] can solve simple, 1 step addition word problems. He struggles when answering subtraction word problems as he will add instead of subtract. When given 2 step word problems where he has to both add and subtract, [Student] added only.”
78. The Parent and the District met on May 29, 2018, to review the reevaluation results and discuss the development of a new IEP for the Student. The following staff members participated in the meeting: school psychologist, special education teacher, general education teacher, SLP, PT, school principal, and the elementary director. The principal had to leave the meeting early and the Parent signed an excusal form. The evaluation group determined that the Student “is most appropriately identified as a student with a Health Impairment. The category of developmental delay was considered, however team deliberations identified the diagnoses of Cerebral Palsy and Attention Deficit Hyperactivity to be primary conditions impacting [the Student’s] performance in the general curriculum.” The May 2018 evaluation report recommended that the Student receive specially designed instruction in the following areas: math, gross motor, and communication.
79. The Student’s May 29, 2018 evaluation report included the following information in the area of Medical-Physical:

- Medical documentation provided by the Parent
  - Report from Seattle Children’s Hospital, dated February 9, 2018, noting, “[Student has] a history of Gross Motor Function Classification System level I cerebral palsy. He has a recent diagnosis of ADHD...through his primary care provider and has had an excellent response to stimulant medication.”
  - Report from Compass Health, dated December 4, 2017, indicating “the following diagnoses: Attention-Deficit/Hyperactivity Disorder, Combined Presentation; Adjustment Disorder with disturbance of conduct; Cerebral Palsy.”

The evaluation report included the following information in the area of General Education:

- General education teacher report
  - Reading: “[I]n March...[Student] was 1 level below the expectation, he answers question [*sic*] during class discussions and showed good growth on the STAR.”
  - Writing: Student “is able to write sentences independently, but sometimes needs reminders to stay focused and write on topic. [Student] spells most words correct and has good spacing, [Student] is currently working on consistent use of punctuation and upper/lower case.”
  - Math: Student “is performing at the beginning of 1st grade level. [Student] demonstrates difficulty in the area of math in comparison to his same age peers...the main factors that seem to be interfering with [Student’s] educational performance are: trouble focusing during lessons, when he is emotional or stressed he has a hard time staying focused and his effort goes down, guessing instead of putting in effort.”

The evaluation report also included information about the following assessment in the area of communication, which were administered on May 22, 2018:

- Results from the Comprehensive Assessment of Spoken Language (CASL)<sup>18</sup>
  - Core Composite Overall Test Score—Standard Score of 96 (39th percentile/average range)
- Results from the Goldman-Fristoe Test of Articulation
  - The Student “demonstrated growth since he was tested in December...[though he needs to work on ensuring] that he generalizes his speech skills at the conversational level across educational settings.”

In the following evaluation areas, the team utilized “a review of existing information:” academic, cognitive, gross motor.

80. Also on May 29, 2018, the Student’s IEP team developed a new IEP for the Student based on the results of the May 2018 reevaluation. The Student’s May 2018 IEP included a section entitled, ‘Team Considerations,’ the May 2018 IEP included the Student’s score on the District’s springtime assessment in math: “STAR Math: Intervention 275.” The IEP included annual goals in the areas of communication, gross motor, and math. The May 2018 IEP provided for the following specially designed instruction to be delivered in a *special education setting*:

- Gross motor – 15 minutes one time monthly (provided by a PT)

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<sup>18</sup> CASL evaluates a student’s “receptive and expressive language skills along with pragmatic language (social use of language).”



- Communication – 30 minutes one time weekly (provided by an SLP)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)

The May 2018 IEP included the following accommodations:

| Accommodations               | Frequency                    | Location                      |
|------------------------------|------------------------------|-------------------------------|
| Alternative Seating          | daily                        | all school settings           |
| Break material into chunks   | for all work                 | all school settings           |
| Check for understanding      | daily                        | all school settings           |
| Extra time to respond        | when testing                 | all testing settings          |
| Preferential Seating         | when testing                 | all testing settings          |
| Present information visually | when presenting information  | all school settings           |
| Reinforcement                | when needing to stay on task | all school settings           |
| Repeat directions as needed  | when giving directions       | all school settings           |
| Tools - Math                 | daily for math               | all classrooms accessing math |
| Using separate space         | when testing                 | all testing settings          |

81. The District alleged that it provided the Parent with a copy of the *Notice of Procedural Safeguards for Special Education Students and Their Families* at the May 29, 2018 IEP meeting.
82. The documentation in this complaint includes a prior written notice, dated May 30, 2018, proposing to initiate an IEP. The notice stated that the IEP “develop[ed] math goals” because the Student “is in need of specially designed instruction in math.”
83. In its response to this complaint, dated June 3, 2018, the District stated:  
 The district has offered compensatory services to [Student], in the area of math, to occur July 2018—10th, 11th, 12th, 17th, 18th, 19th, 24th, 25th, 26th, for three hours each of these days. This corrective action is proposed to remedy the procedural issues caused by the unclear meeting notice, unclear prior notice, and result of the discontinuation of the cognitive goal during the 12/04/17 meeting.
84. The Student received thirty minutes of speech therapy on June 7, 2018.
85. On June 15, 2018, the District’s speech language pathologist created the following 2017-2018 report regarding the Student:
- Goal: When given cues and prompts, Ezra will produce /s/ and /r/, improving overall intelligibility to 95% accuracy.
  - On May 29<sup>th</sup>, new IEP with new communication goals: produce all speech sounds in conversations to 99%.
  - Progress: By the time of the May new IEP, the Student was very close to being ready to exit from SLP services due to the strong progress he made. The Student is now monitoring his speech consistently, as well. This is essential for generalization of articulation skills to develop. The Parent stated that the Student had a noticeable leap in speech development in the last few months. This was because Student learned to pay attention to his speech.

- At the beginning of the school year, Ezra used to produce /s/ with frontal distortion (tongue protrusion). He was capable of producing /r/, but was inconsistent at even the word level.

86. On June 22, 2018, OSPI requested that the District provide a fuller explanation of why it decided that the Student needed specially designed instruction in math in the May 2018 IEP.

Later that same day, the District's executive director for special education responded, stating:

The team discussed each area of academics and how [Student] continued to have difficulty focusing in math. After reviewing the WJ-IV academic scores from the fall assessment in addition to the district assessments from fall, then spring, the team discussed how [Student] continued to progress in reading and writing, but was slow to progress in his math...The anecdotal description of the STAR is in the general education section and the scores can be found in the team consideration section of the IEPs. I think the scores looked at together will provide better context for the team's discussion.

87. In its response to this complaint, the District explained its policy concerning the provision of the procedural safeguards notice as follows:

The school district will provide a copy of the procedural safeguards notice to the parents and adult students one time a year and: upon initial referral or parent request for evaluation; upon receipt of the parent's first state complaint and first request for due process hearing in a school year; upon a disciplinary action that will result in a disciplinary change of placement, and upon request by the parent.

88. In its response to this complaint, the District stated, "[The school psychologist is adamant he provided the [notice of procedural safeguards]" to the Parent.<sup>19</sup>

89. Each of the prior written notices in this case included the following:

Your child has procedural protections under the IDEA. These protections are explained in the Notice of Procedural Safeguards for Special Education Students and Their Families. If this prior written notice is given to you (1) as part of your child's initial referral for evaluation, (2) as part of a request for reevaluation or (3) notice to you regarding disciplinary action that constitutes a change of placement the procedural safeguards accompanies this notice. If a copy of the Notice of Procedural Safeguards for Special Education Students and Their Families is not enclosed and you would like a copy or you would like help in understanding the content, please contact \_\_\_\_\_ at \_\_\_\_\_.<sup>20</sup>

90. Each of the meeting notices in this case included the following: "*Notice of Procedural Safeguards for Special Education Students and Their Families* has been provided to parents."

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<sup>19</sup> The District does not specify what date the school psychologist believes he provided a copy of the procedural safeguards notice to the Parent. It is believed that the District is referring to November or December of 2017.

<sup>20</sup> In this case, the following individuals are listed as the appropriate contact person for questions concerning the information pamphlet on the various prior written notices: special education teacher, speech language pathologist.

## CONCLUSIONS

### **Issue 1: Reevaluation Procedures –**

**Timeliness:** A school district must ensure that a reevaluation conducted when the district determines that the educational or related services needs, including improved academic achievement and functional performance of the student, warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and district agree otherwise, and must occur at least once every three years, unless the parent and district agree that a reevaluation is unnecessary. In this case, the Student's initial evaluation for special education eligibility was completed on December 12, 2014. Therefore, at the latest, the Student needed to be reevaluated by December 13, 2017. The Parent alleged that she requested a reevaluation on August 21, 2017, when she spoke with the director of special education. If this is true, then the District should have obtained the Parent's consent for a reevaluation as soon as possible after this conversation on August 21, 2017. After obtaining the Parent's consent, the District would then have had thirty-five (35) days to conduct the reevaluation. Without conclusive evidence that the Parent did request a reevaluation on August 21, 2017, OSPI cannot determine that the District should have begun the reevaluation process soon after August 21, 2017.

However, it is possible that the Student's educational and related services needs warranted a reevaluation prior to December 4, 2017 – when the District actually did complete the Student's triennial reevaluation. In order to determine if the circumstances warranted an earlier reevaluation, it is necessary to determine if the Student suffered an academic, behavioral, or functional regression during the first half of the fall semester of 2017. The record reveals that this did not occur. The Student was diagnosed with a mild form of cerebral palsy in the summer of 2017. As explained by the Student's private doctor on November 7, 2017, the Student's mild cerebral palsy resulted in him having "tightness in his bilateral Achilles tendons and a tendency to be up on his toes." From the record, it appears that the only time the mild cerebral palsy was causing difficulties for the Student was during "circle time," when the students were required to sit on the floor. In response, the District provided the Student with a chair for "circle time."<sup>21</sup> Even then, the Student would often choose to sit or lay on the floor with the other students. Importantly, the Student was still receiving services in the areas of gross and fine motor from September 6, 2017 through December 3, 2017. Finally, the December 2017 reevaluation and subsequent IEP demonstrate that the Student did not suffer a significant decline from previous benchmarks in academic, behavioral, or functional performance at the start of the 2017-2018 school year. For example, the District observed that the Student had made improvement in the areas of fine motor and academics: math. Therefore, if the Parent did not actually request a reevaluation on August 21, 2017, any delay in completing the reevaluation prior to December 4, 2017, did not materially affect the Student's access to services.

**Prior Written Notice:** A prior written notice must include a description of the action proposed by the agency. A prior written notice, dated November 16, 2017, stated that the District is proposing to change the Student's eligibility category. In actuality, the District was proposing

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<sup>21</sup> The Parent was apparently satisfied with this response.

that the Student be reevaluated. The District admits that “this prior notice was unclear in the description of what [we] were proposing.” This is a violation of the IDEA.

#### **Behavior –**

**December 2017 Reevaluation:** An evaluation report must contain: a discussion of the assessments and review of data that supports the conclusion regarding eligibility, how the student’s disability affects the student’s involvement and progress in the general education curriculum, and the recommended special education and related services needed by the student. Furthermore, it is important to note that a student’s eligibility category for special education does not determine services.

In this case, the Student’s December 2017 reevaluation report showed that the Student had substantial difficulties in the area of behavior. For example, the Student’s general education teacher reported “major concerns” regarding the Student’s behavior at school. The Student tended “to behave in ways that are considered odd (often engaging in repetitive movements, often acting confused, often seems odd, etc).” Additionally, two of the Student’s scores on the BASC-3 were more than two standard deviations from the mean. Despite this, though, the December 2017 reevaluation does not include a discussion of why the District did not provide the Student with specially designed instruction in Behavior. The December 2017 reevaluation also does not include a discussion of why the District did not determine the Student to have a developmental delay in Behavior. Finally, the December 2017 reevaluation does not include a discussion of whether to qualify the Student as having a behavioral disability. In conclusion, given the results of the behavior portion of the reevaluation, it was a violation of the IDEA to omit a discussion of the potential educational and functional impact of these results on the Student’s ability to progress in the general education curriculum.

**May 2018 Reevaluation:** An evaluation must be sufficiently comprehensive to cover all areas of suspected disability. In this case, the December 2017 evaluation of the Student uncovered serious challenges in the area of behavior. Additionally, from the record, it appears that the Student’s behavior only got worse as the spring semester progressed. For example, on February 22, 2018, the Student’s general education teacher explained to the Parent that she felt “[Student] has not been himself the last few days” and that he looked upset at various points throughout the day. The Parent replied that this was “a side effect of his new ADHD medication.” A medication the Student was presumably taking to address his behavioral needs. The May 2018 evaluation also noted that the Student had a new diagnosis of “adjustment disorder with disturbance of conduct.” Despite this, the May 2018 evaluation did not evaluate the Student in the area of behavior. This is a violation of the IDEA. The District will hold a meeting to review the Student’s December 2017 and May 2018 evaluation reports, along with any other available information regarding the Student’s behavior, and determine if the Student is in need of behavior services.

#### **Issue 2: IEP Development Procedures –**

**Failure to Include Communication in December 2017 IEP:** An evaluation report must be sufficiently comprehensive to identify all of the student’s special education and related services

needs. An IEP must include a statement of the special education and related services to be provided to a student. In this case, the December 2017 evaluation recommended that the Student receive “specially designed instruction services in Communication and Gross Motor.” The December 2017 evaluation, however, only listed “Gross Motor” in the section of the report entitled, “Recommendations to IEP Committee.” As a result, the Student’s December 2017 IEP only provided for specially designed instruction in the area of gross motor, and failed to include services in the area of communication. However, the December 2017 IEP did include an annual communication goal, and the District provided documentation that, in spite of the omission, the Student continued to receive services in communication following the December 4, 2017 IEP meeting, and that the services were provided for the remainder of the school year. Additionally, the evaluation team met on March 28, 2018, to amend the Student’s IEP to add specially designed instruction in communication. Although it was a violation of the IDEA for the District to omit the specially designed instruction in communication from the Student’s December 2017 IEP, this violation did not affect the Student’s ability to access his communication services.

**Decision to Discontinue Math Services in December 2017:** The Parent alleged that the District should have provided the Student with specially designed instruction in math before May 2018, because he demonstrated a need for services in the area of math.

An IEP must include a statement of measurable annual academic goals designed to meet the student’s needs resulting from their disability to enable the student to be involved in and make progress in the general education curriculum. The IEP must also include a statement of the special education and related services to be provided to the student so that he can advance appropriately toward attaining those annual goals. In developing each student’s IEP, the IEP team must consider the strengths of the student, the concerns of the parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student.

In this case, the Student received specially designed instruction in math through December 4, 2017. In determining whether the Student continued to need specially designed instruction in math after this date, the evaluation team considered the Student’s math scores on the WJ IV ACH. The evaluation team also considered the observations of the Student’s special education teacher during the administrator of the WJ IV ACH. The subsequent IEP team also considered the Student’s latest results on a district-wide, regularly scheduled math assessment.<sup>22</sup> Importantly, this math assessment was specifically designed to “assess...growth in mathematics achievement.” In its response to this complaint, the District noted:

[While the Student] scored below grade level in some academic areas, especially in the area of math. The team expressed they wanted to give him a change to try general education without the specialized cognitive/academic support, because they recognized so much growth.

Then, in May 2018, the IEP team considered the Student’s math scores on the latest district-wide assessment. At this time, the IEP team also considered observations from the Student’s general education teacher on his performance in math class during the spring semester. The team then

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<sup>22</sup> The STAR math assessment.

concluded that, while the Student “continued to progress in reading and writing [he] was slow to progress...in math.” Therefore, the team decided to provide specially designed instruction in math. Under the IDEA, this was a permissible decision, and reflects the IEP team’s decision based upon current data, and its willingness to reconvene to address needs as they arose. Despite this finding, though, OSPI commends the District’s efforts to be proactive, maintain a good relationship with the Parent, and its offer of additional math instruction for the Student this summer.

**Prior Written Notice:** A prior written notice must include an explanation of why the agency proposes to take a certain action. A prior written notice, dated May 30, 2018, and proposing to initiate an IEP, stated that the IEP “develop[ed] math goals” because the Student “is in need of specially designed instruction in math.” This is an insufficient explanation, and thus, a violation of the IDEA.

**Issue 3: Proper Attendance at IEP Meetings** – The Parent alleged it was improper for IEP team members to leave meetings early. At a minimum, an IEP team must include the parents, a general education teacher, a special education teacher, a representative of the district who is qualified to provide, or supervise the provision of, specially designed instruction and who is knowledgeable about the availability of district resources, and an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative. Parents and districts can agree in writing that an IEP team member’s participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member’s area of curriculum or related services is not being modified or discussed in the meeting.

In this case, the Parent alleged that different members of the IEP team left early each time the group met. For example, the Parent alleged that, on December 4, 2017, the general education teacher left early because she had to pick up her child. The Parent also alleged that, on March 28, 2018, “the speech therapist excused himself...after he spoke about our son’s progress in speech to attend another meeting.” On May 29, 2018, the school principal left the meeting early because she “needed to [attend] another meeting.” The record contains written documentation that the Parent agreed to let the principal leave the May 2018 IEP meeting early because the principal’s “area of the curriculum or related services [was] not being modified or discussed.” The record does not, however, contain written documentation that the Parent agreed to permit IEP team members to leave the December 2017 and March 2018 meetings early. If the Parent’s recollection of these meetings is accurate, this would represent a violation of the IDEA.

The Parent also stated that she was “not aware that [the special education teacher] was standing in as the district representative” during the March 2018 IEP meeting. A district can designate a special education teacher to serve as the district representative in an IEP meeting if that special education teacher meets the following criteria: (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education; (ii) is knowledgeable about the general education curriculum; and (iii) is knowledgeable about the availability of resources of the school district. Nothing in the record

suggests that the special education teacher did not meet these criteria. However, a district is also required to inform parents who will be in attendance at an IEP meeting (discussed further below in issue no. 4) and therefore, should have informed the Parent that the special education teacher would act as the District representative, prior to the March 28 meeting.<sup>23</sup>

**Issue 4: IEP Amendment Procedures** – The Parent alleged that she did not understand that the March 28, 2018 IEP amendment meeting was an IEP meeting. After an annual IEP meeting, a parent and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student’s current IEP. The documentation in this complaint shows that the District chose to amend the Student’s December 2017 IEP by convening an IEP team meeting.

In order to ensure parental participation at IEP meetings, a district must ensure that the parents are present at each IEP meeting or are afforded the opportunity to participate. To accomplish this, a district must notify the parents of the meeting early enough to ensure that they will have an opportunity to attend and to “indicate the purpose, time, and location of the meeting and who will be in attendance.” Additionally, IEP meetings must be scheduled at a mutually agreed upon time.

In this case, the documentation is not clear if the Parent was told about the March 28, 2018 meeting in a timely fashion. The documentation does contain an “IEP Amendment Invitation”, dated March 19, 2018, inviting the Parent to attend “an IEP meeting” scheduled for March 28, 2018. The Parent, however, alleged that she did not receive this invitation, and other than this invitation, there is no documentation to show District staff informed the Parent that there would be an IEP meeting on March 28, following the previously scheduled parent/teacher conference. This is a failure to follow procedures for scheduling the IEP meeting to amend the Student’s IEP. The District is also reminded that IEP meetings must be scheduled at a mutually agreed upon time.

The Parent also alleged that at the March 28 meeting, that she was presented with an IEP amendment and asked to sign it. The District is required to allow parents to provide input when developing and amending an IEP. Here, given the Parent’s assertion, coupled with a lack of notice that the meeting would occur and the purpose of the meeting, this is a failure to ensure the Parent had the opportunity to meaningfully participate in amending the Student’s IEP. Additionally, it is noted that the IEP amendment removed the Student’s motor goals, and added a new goal, but there is no documentation that this was discussed with the Parent, and the District’s March 28, 2018 prior written notice does not address the changes to the goals. This is a failure to provide the Parent with accurate prior written notice. The District failed to follow procedures for amending the Student’s IEP.

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<sup>23</sup> WAC 392-172A-03095 does not require a district to obtain a parent’s consent before designating a certain individual as the district representative at an IEP meeting.

**Issue 5: Procedural Safeguards** – The Parent alleged that she received the procedural safeguards notice for the first time on May 7, 2018. The District disputes her allegation, stating that she was provided a copy of the safeguards prior to this date.

A district is required to provide a copy of the procedural safeguards notice to the parents of a student eligible for special education at least one time a school year and upon initial referral, a parental request for evaluation, or a parental request for reevaluation.<sup>24</sup> In this case, it is difficult to determine if the Parent actually received a copy of the notice of procedural safeguards prior to May 7, 2018. The documentation in this complaint does not contain any communications that refer to the Parent having been provided a copy of the procedural safeguards notice. Furthermore, while the District’s meeting notices and consent forms included boilerplate language, asserting that the Parent was provided a copy of the procedural safeguards notice, without more, this does not prove that this actually occurred. A review of the record reveals that the District should have provided the Parent with a copy of the procedural safeguards notice on or about: August 21, 2017 (when the Parent alleged she spoke with the special education director on the phone and requested a reevaluation), and May 16, 2018 (when the Parent requested a reevaluation of the Student after conferring with the reevaluation team). The parties do not appear to contest the fact that the Parent received a copy of the procedural safeguards notice on May 16, 2018. The record is not clear as to whether the Parent was provided a copy on or about August 21, 2017, but given that the District did not actively take steps to begin a reevaluation of the Student for several weeks, this is unlikely. OSPI reminds the District that it must provide a copy of the procedural safeguards notice to parents at least one time a school year and upon initial referral, a parental request for evaluation, or a parental request for reevaluation.

### **CORRECTIVE ACTIONS**

By or before **August 10, 2018, September 17, 2018, and October 2, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. **Before the beginning of the 2018-2019 school year**, the District will hold a meeting to review the Student’s December 2017 and May 2018 evaluation reports, along with any other available information regarding the Student’s behavior, and determine if the Student is in need of behavior services. By **September 17, 2018**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of any related prior written notices; and, 3) any other related documentation.

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<sup>24</sup> WAC 392-172A-05015(1)(a) requires a district to provide a copy of the procedural safeguards notice to parents “upon initial referral or parent request for evaluation.” Since the regulatory definition of “evaluation” specifically includes the regulations pertaining to reevaluations, WAC 392-172A-05015(1)(a) must necessarily require a district to provide a copy of the procedural safeguards notice when a parent requests a reevaluation. See WAC 392-172A-01070.



**DISTRICT SPECIFIC:**

By **September 30, 2018**, the District will ensure that special education administrators, the principal, and certified staff, including educational staff associates (ESAs), at the Student's elementary school receive written guidance regarding the requirements of WAC 392-172A-03100 (Parent Participation), WAC 392-172A-03095 (IEP Team Membership), WAC 392-172A-05010 (Prior Notice and Contents), and WAC 392-172A-05015 (Procedural Safeguards Notice). ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The guidance will include examples.

By **August 10, 2018**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 24, 2018.

By **October 2, 2018**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's elementary school: special education administrators, the principal, and certified staff, including educational staff associates (ESAs). (This roster will allow OSPI to verify that all required staff members received the guidance.)

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 \_\_\_ day of July, 2018

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.)