

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-87

PROCEDURAL HISTORY

On November 13, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Clover Park School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA).

On November 14, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On November 27, 2019, the District requested an extension of time for the submission of its response. OSPI granted the District's request and asked the District to respond no later than December 9, 2019.

On December 9, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on December 10, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On November 19, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on November 21, 2019.

On December 17, 2019, OSPI requested clarifying information from the Parent and spoke with the Parent on the phone.

On December 26, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District on December 31, 2019.

On January 3, 2020, OSPI requested clarifying information from the Parent and interviewed the Parent via phone.

On January 7, 2020, OSPI requested clarifying information from the District and interviewed the special education director (director) via phone. OSPI received the information on January 8, 2020 and forwarded to the Parent on January 9, 2020.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period which began on November 14, 2018. These references are included to add context to the issues under

investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Did the District follow procedures for developing and implementing the Student's individualized education program (IEP) during the 2019-2020 school year, including following transfer procedures and providing the Student with comparable services?

LEGAL STANDARDS

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).

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education transfers from a school district located in another state to a school district in Washington and has an individualized education program (IEP) in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with a free appropriate public education (FAPE) including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46,681 (August 14, 2006) (comment to 34 CFR §300.323).

Transfer of Educational Records: The new school district in which the student enrolled must take reasonable steps to promptly obtain the student's records, including any documents related to the provision of special education services, from the student's previous school district. The student's previous district must take reasonable steps to promptly respond to the request from

the new district. The district that previously served a student is required to transmit information about the student within two school days of receiving the request. If the records are not sent at the same time the information is transmitted, the records should be transmitted as soon as possible. 34 CFR §300.323(g)(2); WAC 392-172A-03105(6). RCW 28A.225.330.

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

The evaluation must comply with the IDEA's procedural requirements. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he or she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

District Procedures for Specific Learning Disabilities: In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of: (1) A severe discrepancy between intellectual ability and achievement; or (2) A process based on the student's response to scientific, research-based intervention; or (3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures. WAC 392-172A-03045.

Additional Members of the Evaluation Group: The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals which must include: (1) The student's general education classroom teacher; or (2) If the student does not have a general education

classroom teacher, a general education classroom teacher qualified to teach a student of his or her age; and (3) At least one individual qualified to conduct individual diagnostic examinations of students, such as school psychologist, speech language pathologist, or remedial reading teacher. WAC 392-172A-03050.

Specific Learning Disability-Determination: The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if: (1) The student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas: oral expression, listening comprehension, written expression, basic reading skill, reading fluency skills, reading comprehension, mathematics calculation, or mathematics problem solving. (2) The student does not make sufficient progress to meet age or state grade level standards in one or more of the areas identified above when using a process based on the student's response to scientific, research-based intervention or the group finds that the student has a severe discrepancy between achievement and intellectual ability in one or more of the areas above; and when considering eligibility under specific learning disability, the group may also consider whether the student exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, and through review of existing data. (3) The group determines that its findings are not primarily the result of: a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency. (4) To ensure that underachievement in a student suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider: data that demonstrate that prior to, or as a part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel; and data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents. WAC 392-172A-03055.

Use of Discrepancy Tables for Determining Severe Discrepancy: If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement. The tables are developed on the basis of a regressed standard score discrepancy method that includes: the reliability coefficient of the intellectual ability test; the reliability coefficient of the academic achievement test; and an appropriate correlation between the intellectual ability and the academic achievement tests. The regressed standard score discrepancy method is applied at a criterion level of 1.55. WAC 392-172A-03065.

Method for Documenting Severe Discrepancy: For the purposes of applying the severe discrepancy tables, the following scores shall be used: a total or full scale intellectual ability score; an academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the areas addressed in

WAC 392-172A-03055(1) shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the severe discrepancy tables. Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, reviewing of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment. WAC 392-172A-03070.

Observation of Students Suspected of Having a Specific Learning Disability: School districts must ensure a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The evaluation group must: use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained. WAC 392-172A-03075.

Specific Documentation for the Eligibility Determination of Students Suspected of Having Specific Learning Disabilities: In addition to the requirements for evaluation reports under WAC 392-172A-03035, for a student suspected of having a specific learning disability, the documentation of the determination of eligibility must contain a statement of: whether the student has a specific learning disability; the basis for making the determination, including an assurance that the determination has been made in accordance with WAC 392-172A-03040; the relevant behavior, if any, noted during the observation of the student and the relationship of that behavior to the student's academic functioning; any educationally relevant medical findings; whether: (i) The student does not achieve adequately for the student's age or meet state grade level standards in one or more of the areas described in WAC 392-172A-03055(1); and (ii)(A) The student does not make sufficient progress to meet age or state grade level standards when using a process based on the student's response to scientific research-based interventions consistent with WAC 392-172A-03060; or (B) The student meets eligibility through a severe discrepancy model consistent with WAC 392-172A-03070; and (C) If used as part of the eligibility determination under (A) or (B) of this subsection, a discussion of the student's pattern of strengths and weaknesses in performance, achievement or both, relative to age, state grade level standards, or intellectual development. The determination of the group concerning the effects of a visual, hearing, or motor disability; intellectual disability; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the student's achievement level; and if the student has participated in a process that assesses the student's response to scientific,

research-based intervention: (i) The instructional strategies used and the student-centered data collected in accordance with the district's response to intervention procedures; and (ii) The documentation that the student's parents were notified about: (A) State and school district policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided; (B) Strategies for increasing the student's rate of learning; and (C) The parents' right to request an evaluation. Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. WAC 392-172A-03080.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. 34 CFR §300.304; WAC 392-172A-03020.

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). 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.

Parent Participation in the IEP Process: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the district will provide to the child and in what setting. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. Parents must be part of the groups that determine what additional data is needed as part of an evaluation of their child, their child's eligibility, and educational placement. 34 CFR §§300.304, 300.306(1), 300.501; WAC 392-172A-03020(2), WAC 392-172A-03040, WAC 392-172A-05000. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b).

A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate

who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100.

If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR § 300.322; WAC 392-172A-03100.

Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting the rights of students with disabilities and providing each student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP...the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

IEP Team Meetings: Team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. 34 CFR §300.324; WAC 392-172A-03110. A student's parents and school personnel will develop, review, and revise an IEP for the student. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of FAPE to the student. 34 CFR §300.501; WAC 392-172A-050005.

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).

Initial IEP: For an initial IEP, a school district must ensure that: a) the school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. 34 CFR §300.323; WAC 392-172A-03105.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

Background

1. During the 2018-2019 school year, the Student was in second grade and attended an out-of-state elementary school.¹ At the Student's previous school, the Student qualified for special education services under the category of specific learning disability² based on an evaluation dated July 2018, which noted the Student required additions or modifications and direct special education to meet her annual goals and to participate in the general education curriculum, and that the Student had "significant processing deficits in the presence of comparable strengths, and that the Student failed to achieve adequately in math, reading, and writing."

The Student was reevaluated in September 2018 in the area of speech and language in preparation for her triennial reevaluation in October 2018. The Student received specific assessments in the area of articulation, language, academic, and processing skills. Based on the information obtained from those assessments, a plan was developed by the speech language pathologist for the Student in the area of specific learning disability and language, which was recommended to be included with the Student's triennial reevaluation in October 2018. In October 2018, the Student was reevaluated regarding whether she should remain eligible for special education under the category of specific learning disability ("2018 evaluation"). The 2018 evaluation included the speech and language evaluation as well as

¹ The Student previously attended a Department of Defense (DoDEA) school.

² The Student was first assessed for a specific learning disability in New York in 2018, but had been eligible for special education for a speech and language disability since entering preschool in 2014 in Hawaii. According to the evaluation conducted by the previous school district, the Student's individualized education program (IEP) team determined the Student met the criteria for a specific learning disability in the area of articulation and language, with "language being the greater need of focus," which "impact[ed] all academic areas" and required special education services.

information from updated cognitive and academic testing, and additional assessments which addressed specific memory functions in addition to teacher observation and information about the Student's performance in a variety of settings and with different levels of supports. The evaluation found a pattern of strengths and weaknesses, including weaknesses in specific memory functions, such as story recall and performance on delayed recall tasks, and strengths in nonverbal performance areas, including fluid reasoning.³ The Student was also found to have weaknesses in the area of speech and language, including weaknesses in articulation, verbal expression, and word order. The evaluation concluded, "these memory inconsistencies combined with the above mentioned language and articulation errors may be expected to negatively impact [Student's] classroom performance." The evaluation recommended the Student be found eligible for special education as a student with a specific learning disability to ensure the Student continued to make progress in the general education setting.

2. On November 18, 2018, the Student's individualized education program (IEP) team met to review the Student's updated evaluations and develop the Student's IEP. The IEP team determined the Student would receive the following amounts of "direct special education services:"
 - Speech and language services, 180 minutes monthly, to be provided by a speech and language pathologist in the therapy room;

³ The evaluation concluded: "[Student] is a seven year old second grade student who is struggling with language, articulation and academic tasks [. . .]. While not part of this direct testing, in addition to [Student's] word articulation difficulties, her verbal expression at times was unclear, particularly her word order [. . .]." The evaluation also addressed differences in the Student's academic performance depending on the size of the group in which the Student received instruction and discussed how the size of the group and delivery method of instruction (oral vs. written) impacted the Student's need for services in the general education setting.

- Special education services,⁴ 150 minutes weekly, to be provided by a Teacher (L1),⁵ in the resource room; and,

⁴ Although the Student's IEP did not specify what "direct special education services" meant, the Student's October 2018 evaluation included specific recommendations for how to meet the Student's needs based on its conclusion that the Student had a specific learning disability, which included the following:

- "Rehearsal is often an important factor in learning. Because knowledge accumulates over time, [Student] may benefit from shorter sessions at repeated interval [sic] rather than one long session. For example, when first learning, [Student] may benefit from multiple rehearsals each day, then each week, then each month and so on. This cycle of rehearsal and review reinforces knowledge and facilitates recall of information. Varying the learning tasks, incorporating novelty, and fostering creativity are good ways to enhance acquisition of knowledge. When rehearsal is combined with elaboration, it is more likely that the information will be successfully encoded, stored, and available for recall;"
- "Overlearning frequently improves storage and recall of information. Review and rehearsal of previously-acquired information, even one additional review, promotes overlearning;"
- "Provide frequent checks as working to ensure understanding before continuing on, particularly for orally presented information;"
- "Repeat and reword directions/information to ensure attention, understanding and recall;"
- "Break the information into parts and provide written references when possible; this enables [Student] to be more independent if she cannot recall the steps she is to take when completing multi-step assignments;"
- "Pre-teach information to allow for a preliminary understanding before the same material is presented in the classroom. This will also enable [Student] to be familiar with the vocabulary that is being used in the lesson;"
- "Provide models and samples to assist [Student] in understanding of concepts, particularly those involving language;"
- "[Student] has a number of strong skills, particularly in the abstract non-verbal area. Ensure this area is continuing to be developed by challenging [Student] with new activities. Upon completion have her verbalize her sequence of reasoning. This latter component may be more challenging given [Student's] language difficulties and assistance may be needed but her strength in fluid reasoning may assist her with initial success with the task to increase her confidence when asked to provide the additional information."

Although the Student's IEP from her time at the DoDEA school did not specify what direct instruction the Student was supposed to receive during the minutes allocated, the Parents in their response clarified the minutes of special education services were provided by a special education teacher for students with learning impairments (see fn. 5) in accordance the recommendations of the evaluation.

⁵ The District stated in its response that it was unclear from the Student's records to whom or what "Teacher, L1" referred. In the Parents' reply, the Parents responded that "LI" was an acronym for "Learning Impaired." The Parents noted no one had informed them that they were unaware what this term meant and questioned how comparable services were being provided if the District was unaware how to interpret the Student's IEP from the previous District. The Parents further explained these services were supposed to be provided as "push-in" services in the general education setting according to the recommendations contained in the Student's October 2018 evaluation and that the Student reported to them she had not received them in the District. The District maintains it was their understanding from a conversation with one of the Parents that

- Special education services, 450 minutes weekly, to be provided by a Teacher (L1), in the general education classroom.

The Student's IEP additionally provided for 15 minutes monthly of consultation by the speech and language provider to the teacher (LI) and 30 minutes monthly of consultation by the teacher (LI) to the general education teacher.

The Student's IEP contained eight annual goals in the following areas: communication skills, language arts, mathematics, and reading.

3. During the summer of 2019, the Student's family moved to Washington and into the Student's current district (District).
4. On June 11, 2019, the Student's father emailed the District to notify them the Student would be attending school in the District that fall. In his email, the father noted the Student had "issues in speech" and required "serious work in speech," but also explained the Student had recently qualified for "some gifted aspects." With his email, the father attached documentation to show the Student qualified for "Level 1" services in speech and some "gifted and talented services" in other academic areas. It was unclear from the documentation what Level 1 services in speech included.
5. On August 12, 2019, the Student enrolled in the District to attend third grade. The Parents signed an authorization for release of records. The District had not obtained the Student's evaluation qualifying the Student for special education in the previous district at the time of the Student's enrollment.
6. An initial transfer review summary, dated August 26, 2019, was included with the Student's file. The Student was reported as having no evaluation documenting an adverse impact of a disability and thus did not need specially designed instruction. The Student's least restrictive environment (LRE) placement was listed as "resource" and it was noted the Student received 180 minutes of speech services per month. The summary of review indicated the Student had an IEP under the "Military Compact," and stated:

The District was not able to determine eligibility for student in Washington, but student has a current IEP. The District will immediately initiate reevaluation of the student and the student must begin receiving comparable services, in consultation with the parent, pending development of a new IEP, until the District determines the student meets/does not meet eligibility after the reevaluation. The Prior Written Notice⁶ regarding the Records Review Summary is completed by the evaluation case manager noting that comparable services

the Teacher LI was a general education provider who provided interventionalist services in the general education setting.

⁶ According to a statement by the school psychologist included with the District's response, whenever he receives a transferring student summary indicating a student has an IEP with no evaluation, his practice is to reach out to the parent to see if they can provide the missing evaluation.

will be provided upon enrollment in alignment with the IEP based on the Interstate Military Compact (RCW 26A.705.010).

7. On August 26, 2019, the District sent out notice to the Parents that a meeting had been scheduled the same day at 10:00 am to discuss the Student's transfer review. According to the District, the Parents did not respond or attend. At the transfer review meeting, the District agreed to continue with the LRE placement stated in the Student's prior IEP (80%-100% in regular class) and referred the matter to the eligibility committee, as the District determined it did not have an evaluation establishing eligibility at that time.

2019-2020 School Year

8. August 28, 2019 was the first day of school for the District for the 2019-2020 school year.
9. On August 29, 2019, the school psychologist emailed the speech therapist, stating he was going to contact the Parents in an effort to locate evaluation reports. He added the Student had a speech and language disability and received speech services. Later that day, the Parent "brought tons of notebooks full of records" into school, which, according to the District's response to this complaint, were copied and distributed to the team.
10. Also, on August 29, 2019, the psychologist requested the missing evaluation from the Parent. The Parent brought the missing evaluation to school and provided it to the psychologist, who then emailed it to other members of the IEP team.
11. On August 30, 2019, the District fully accepted the Student's transfer into the District. A new transfer review summary was completed by the District to confirm receipt of the evaluation provided by the Parents and the documentation of an adverse educational impact of disability and need for specially designed instruction. The transfer review stated the District "was not able to determine eligibility for student in Washington, but [S]tudent has a current IEP." The summary went on to say the District would immediately initiate a reevaluation and comparable services would be provided in consultation with the Parent, pending development of a new IEP until the District "determines the student meets/does not meet eligibility after the reevaluation." The summary further stated the District would provide prior written notice (PWN), noting that upon enrollment, the District would provide comparable services in alignment with the IEP based on the Interstate Military Compact (RCW 28A.705.010).
12. According to the District's response, on September 3, 2019, the Parent was asked by a District staff member how services were provided to the Student at her previous school in order to clarify how the 450 minutes of services in the general education setting were served. According to the District's response, the Parent told a staff member the "Student received pull-out services" and that the general education teacher provided the minutes of instruction during that time. Thus, the District concluded the Student "received the 450 minutes of instruction by the general education teacher," and used this assumption to develop comparable services. In the Parent's reply and in an interview with the OSPI complaint investigator, the Parent responded, "There has never been confusion on our end what services the Student received

at [previous district], nor an inability to describe it in detail.” The Parent explained that when enrolled in the previous district, the Student received “pull-out resources and push in resources coming from a trained special education provider/s,” which was provided to the Student in the general education setting as specially designed instruction. The Parent confirmed the instruction was not provided by a general education teacher and stated she never told this to the school. The Parent provided documentation of volunteer hours she served in the Student’s classroom in the previous district to show she frequently witnessed the Student receiving these services and said she never would have described the services otherwise.

Specifically, the District asserted the Student received the following services as comparable services:

- 50 minutes weekly of services by a speech and language pathologist (SLP);⁷
- 110 minutes weekly of special education services in reading using the Leveled Literacy Instruction Curriculum, provided in the special education setting;⁸
- 90 minutes weekly of small group writing services in Reasoning and Writing curriculum, provided in the special education setting.

In addition to the above special education services, the District stated the Student also received 300 minutes of whole group math, receiving core math instruction, as well as 150 minutes of small group math, which the District clarified was “differentiated math instruction based on skill level, provided in the general education setting.”⁹

In the Parents’ reply, the Parents asserted their belief that the math instruction received was not comparable to the direct special education support the Student received in the general education setting in the Student’s previous district because it was not pull out or push in specially designed instruction from special education staff.¹⁰ The Parents additionally stated

⁷ The number of minutes of speech and language services exceeded the amount in the Student’s November 2018 IEP by five minutes per week.

⁸ Leveled Literacy Intervention is an intensive, small-group, supplementary literacy intervention for students who are not reading at grade-level.

⁹ The District clarified to the OSPI investigator that small group math is provided as a tier II intervention. According to the District, “[s]tudents receive instruction from the general education teacher, but there is [sic] frequent check-ins to ensure understanding, re-teaching based on exit ticket performance, pre-testing for the next set of standards, and regrouping based on the exit tickets.” The District further explained, “Groups are flexible, not based on [measure of academic performance (MAP)] tests, but on daily performance. In other words, the instruction is delivered based on the Student’s individual needs at the time, and constantly adjusted and adapted based on [Student’s] understanding and ability.”

¹⁰ The Parent told the OSPI investigator that she believed the Student was not receiving as many minutes of specially designed instruction during the transfer period as the Student should have been receiving in the general education setting because in the previous district, the Student was receiving specially designed instruction by the Teacher LI in the general education setting. The director told OSPI the Parent told the District during the transfer review process that these minutes were provided by an interventionalist, who

in their reply that the Student reported not receiving the support she had been receiving and self-reported an increase in anxiety, especially during math, and an increase in physical and somatic symptoms during school.

13. From September 9-20, 2019, the Student was assessed by her resource room teacher to ensure proper grouping in academic subjects, including math and reading. The Student tested into the 3rd grade, 3rd month skill level in reading. Her Lexile reading score was 405-555 with a Flesch-Kincaid Grade level score of 2.9-3.5. Of the possible range of 189-195, the Student scored a 192. The Student's projected growth over time exceeded the average anticipated achievement. In mathematics, she scored 1 point below the 3rd grade fall math benchmarks but was within the average range at the 46th percentile.
14. On September 24, 2019, the school psychologist sent PWN to the Parents, noting "[Student's] most recent evaluation did not meet Washington State standards for qualifying a student as [having a specific learning disability]. [Student] would receive the services listed on her current IEP, but the new evaluation would determine continued eligibility for services." The psychologist included a consent to evaluate form with the PWN.
15. On September 25, 2019, the school psychologist requested and received the Student's score on the Measure of Academic Progress (MAP) assessment in math and reading from her assigned special education teacher. The Student's math MAP score was in the high second grade range and her reading MAP score was in the low third grade range. The psychologist also administered the Woodcock-Johnson Tests of Achievement-IV. All cluster scores were within the average range, with intellectual ability estimated to be in the "below average to superior range."
16. On September 30, 2019, the psychologist observed the Student in the library and the general education setting for about 30 minutes. During the observation period, the Student participated in independent reading, snack time, and math.
17. On October 1, 2019, the District sent a notice of meeting form to the Parents to inform them an IEP meeting was scheduled for October 15, 2019, to review the results of the reevaluation. The school psychologist also emailed the Parents to inquire if they could meet on that date. The Parent responded to the psychologist's email the same day that the scheduled date and time worked with her schedule.
18. On October 8, 2019, the school psychologist emailed other members of the Student's IEP team that he would be recommending services for the Student in the area of speech and language impairment. He attached a draft IEP to the email.
19. On October 15, 2019, the District completed its reevaluation. The evaluation summary recommended the Student be found eligible for special education under the category

was a general education teacher, and that the District actually provided more specially designed instruction during the transfer period than provided for in the Student's incoming IEP.

speech/language impairment but noted the Student did “not meet the eligibility criteria in the state of Washington for specific learning disability.”

20. According to the District’s response, the District’s evaluation took into consideration statements from the Student’s teachers, observations, an informal language sample, data from the Woodcock Johnson-IV, the Comprehensive Assessment of Spoken Language, the Goldman-Fristoe Test of Articulation, and the Clinical Evaluation of Language Fundamentals.¹¹

The evaluation summary stated:

As a result of this psycho-educational evaluation, it is recommended by the evaluation team that [Student] meets the eligibility criteria for Speech/Language impairment, but does not meet the eligibility category of the state of Washington for specific learning disability. The Standard Score Discrepancy Method is the primary means for determining the existence of a specific learning disability in the state of Washington. The official Criterion Discrepancy Scores are provided by the state and lists the academic cut-off scores for a range of IQ scores. To be severely discrepant from an IQ test score of 100, which was [Student’s] score on Cognitive Processing Speed and close to the average of all her composite scores, her achievement test scores have to be equal or less than 82. If her overall IQ was 110, her achievement test scores would have to be equal or less than 89. Her lowest academic cluster score was 99 in math calculation, which means that [Student] would need to have an overall IQ score of 125. A severe discrepancy is NOT evident between ability and achievement in any academic area that was assessed.

¹¹ The District asserted in its response that the results of the academic and cognitive testing it conducted were consistent with the results of the testing conducted by the Student’s previous school and stated only its conclusion was different. While the Student’s performance on tests and academic performance resulted in similar score outcomes, the October 2018 evaluation from the Student’s previous school was different in that it contained a narrative utilizing professional judgement to emphasize how the Student’s communication and language difficulties impacted the Student’s ability to make academic progress in the following areas, when not provided instruction in a small group setting—i.e., when in a large group setting: reading (the Student “exhibited poor comprehension of written material,” “was unable to recall facts or details from text,” and “had difficulty making inferences”); organization (the Student “cannot explain multi-step class routine, fails to demonstrate logical thinking, [has] difficulty completing assignments in class and/or homework,” “[has] difficulty with note-taking, difficulty mastering new concepts, and does poorly on multi-step quizzes”); math (the Student has difficulty understanding and expressing quantity,” and “needs manipulatives to solve math problems”); and written language (the Student’s “errors in writing reflect errors in oral language, poor grammar—orally or in writing,” and it was documented that the Student has “difficulty formulating written sentences, limited amount of writing in journal, and creative writing is difficult”). The 2018 evaluation additionally noted the Student had difficulties in both large and small group settings in the areas of classroom communication (regardless of setting, the Student “speaks in incomplete sentences, uses nonspecific vocabulary, pauses or has difficulty thinking of words, talks ‘around’ words and difficulty paraphrasing or summarizing”), and strategies (e.g. “verbal production and retention improves when visuals are provided or generated, must have concrete examples to solve abstract problems, and does better on multiple-choice tests than essay type”). The evaluation included multiple recommendations, including small group instruction as needed, pre-teaching new concepts/spelling words, repeating/reread/clarify all directions, reteaching concepts and using modified vocabulary, extra time to complete assignments across all subjects, use of word banks and visuals, use of graphics, etc.

Regarding communication, the evaluation concluded:

[Student] exhibits delays in the area of language skills. Specially designed instruction in the area of communication skills appears to be warranted to address [Student's] delays which adversely impact her ability to successfully participate in classroom activities and/or discussions, socialize with peers, and fulfill Common Core State ELA Standards at grade level.

The October 2019 evaluation did not include a review of the previous district's assessment of the Student's memory and processing abilities or comment on the previous district's conclusions regarding these areas, nor did it do its own assessment of the Student's general and specific memory functions and their current impact on the Student's learning or ability to make progress in the general education setting. The evaluation also did not differentiate how the Student's needs or achievement differed in large versus small group settings.

21. Also, on October 15, 2019, an initial evaluation meeting was held to review the results of the initial evaluation and to determine the Student's eligibility for special education. A District representative, general education teacher, and speech language pathologist attended the meeting. According to the contact attempt notes, the District "attempted [in person] to schedule the IEP meeting with [Parent] today [October 15, 2019]. She requested to take a copy of the draft IEP and schedule the IEP meeting at a later date. A draft copy was provided to her."¹² At the meeting, the evaluation group members present determined the Student did not qualify for eligibility as a student with a specific learning disability, but determined she "still qualified for speech and language services to be provided by a speech and language pathologist under the category of speech/language impairment." The IEP team recommended the Student receive specially designed instruction in speech and language/communication.
22. On October 15, 2019, according to the District's response, the District began contacting the Parents to schedule an IEP meeting—which eventually occurred on November 12, 2019. According to the District's contact log, the Parents and District spoke six times before a meeting occurred to find an agreeable time for both parties. According to the Parents' reply, the Parents asked for the meeting to be postponed until after November 7, 2019 so they could meet with their advocate because they wanted support understanding the special education laws and regulations in Washington.

¹² According to the Parent, the Parent requested the IEP meeting be rescheduled so she could have time to speak with a disability rights advocate and become better acquainted with Washington state laws and regulations regarding special education. When interviewed by the OSPI investigator on January 3, 2020, the Parent told the investigator the District asked her to review and sign the draft IEP on October 15, 2019, but she refused. The District's response also indicated the Parent refused to sign the IEP. During an interview with the director on January 7, 2020, the director said District staff at the IEP meeting wanted to discuss moving from specially designed instruction to tier II supports with the Parent, including increasing the use of small group, differentiated instruction and accommodations and modifications, but that the IEP team struggled to communicate with the Parent at the meeting as necessary to have a discussion about adding these supports because the Parent left the meeting.

23. On October 16, 2019, the District issued PWN to the Parents, stating it was proposing to change the Student's educational placement, eligibility category, and IEP. The PWN indicated the evaluation demonstrated the Student "no longer has a specific learning disability as defined by Washington State Rules and Regulations, but is eligible for special education placement and services until [sic] a different eligibility category." The PWN additionally stated the Student was "no longer in need of specially designed academic instruction. Her academic skills are in the average range. However, she has speech and language deficits that make her eligible for special education placement and services as a student with a Speech/Language Impairment."¹³ The following were listed on the PWN as the basis for the action taken by the District: "Review of prior records, test scores, special education reports, and other relevant information from the previous school(s) attended, student observation, teacher report of behavior and academic performance, and an examination of student performance on class assignments and tests, as well as grade if available. [. . .]"
24. Starting on October 16, 2019, the Student's schedule changed to no longer include special education services in reading or writing. The Student continued to receive 50 minutes per week of speech services.
25. On October 21, 2019, the Parents emailed the superintendent, resource teacher, general education teacher, special education teacher, and school psychologist, noting their concerns that the District was not in compliance with the Student's IEP. The Parents encouraged the "team to review [Student's] current IEP and go over the minutes again and provide the push in to her general education classroom assistance."
26. On October 23, 2019, the District sent the Parents PWN that the District was proposing to continue speech language pathology services according to the November 2018 IEP until a new IEP meeting could be held (on November 12, 2019 or earlier). The PWN noted the Parents' disagreement with the evaluation meeting held on October 15, 2019, at which the IEP team determined the Student "no longer met eligibility criteria for Specific Learning Disability (SLD) as defined by Washington State Rules and Regulations), but was eligible for special education services under eligibility criteria for Speech/Language Impairment (S/LI)." The PWN additionally noted that per a conversation with the Parent on October 23, 2019, the Parent declined an offer for a re-evaluation until she had met with her advocate on November 4, 2019.
27. On October 25, 2019, the special education teacher emailed the Parent to remind her that the District had offered to conduct a reevaluation, which would be completed by another psychologist in the District. The same date, an IEP invitation was sent by letter and email to the Parent for an IEP meeting scheduled for November 5, 2019. The same day, the Parent replied that she could not attend on that date and asked for a later date because she had

¹³ From September 9-20, 2019, the Student had been receiving 110 minutes weekly of specially designed instruction in reading and 90 minutes of small group writing services—both provided in the special education setting.

arranged to meet with a disability rights advocate for support in learning about special education laws in Washington.

28. On October 28, 2019, the District emailed the Parent with additional dates to meet for the IEP meeting.
29. According to the District's response, on November 1, 2019, the Parent stated she could meet on November 7, 2019 for an IEP meeting. The same day, the District emailed the Parent to notify her it sent a formal invitation home with the Student.
30. On November 7, 2019, the Parent attended an IEP meeting. The general education teacher, principal, and speech language pathologist were also in attendance. A special education teacher was not invited because the Student was not found eligible for specially designed instruction in academics according to the new evaluation. According to the District's response, the Parents stated they did not want to discuss the IEP and were declining to sign. The Parents explained in their reply that they told the District at that time, they were filing a complaint with OSPI, were considering requesting an independent educational evaluation (IEE) and were unsure of the next steps and wanted to table the meeting. The Parents also told the OSPI investigator they had expressed to the District that they were still trying to schedule a time to meet with an advocate from a disability rights organization before having an IEP meeting because Washington state special education laws were unfamiliar to them.
31. At 3:56 pm on Friday, November 8, 2019, the speech language pathologist emailed the Parents, saying she was attaching an invitation for an IEP meeting. The date on the attached meeting invitation was the following Tuesday, November 12, 2019—which, as noted by the Parents in their reply, was also the first day back to school after a three-day weekend. The email itself did not note the date of the proposed meeting, but said the District recognized the Parents had stated an intention to initiate an IEE, but was still "required to complete the IEP review." According to an email from the Parent to the speech language pathologist, dated November 12, 2019, when the Parent opened the attachment on November 12, 2019 and realized the IEP meeting was scheduled for that day, she asked to reschedule. The speech language pathologist responded that she would "love to sit down and go over [Student's] IEP with you," and then provided the Parent with several dates to choose from. The Parent responded she was available November 21, 2019.

32. On November 12, 2019, the District proceeded with the IEP meeting despite the Parent's request to reschedule.¹⁴ A District representative, general education teacher,¹⁵ and the speech language pathologist were present. Under "Team Considerations," the IEP stated, "Parent concerns: Parents did not attend today's meeting; however, at the meeting on 11/7/19, parents mentioned concerns in the area of math skills." According to the District's response, at the meeting, the team members present reviewed the evaluation and did not "identify or offer services or specially designed instruction in academics because they did not find the Student eligible." The team reviewed services for the Student in the area of speech-language impairment and developed goals and services in that area. The District's response noted the Student had "generally met or exceeded the goals" identified her 2018 IEP.

Also, at the November 12, 2019 IEP meeting, the IEP team members present reduced the Student's minutes from 50 to 30 minutes of service weekly.¹⁶

¹⁴ In their reply, the Parents explained they had an IEP meeting for their other child earlier in the day on November 12, 2019, and it was their recollection that the District raised the issue of the IEP meeting for the Student at the end of the previous meeting for their other child. The Parents stated in their reply that they notified the District at the start of the meeting that they were considering obtaining legal representation for the Student and were unsure how to proceed because they had filed a citizen complaint. The Parent additionally expressed concerns that not all requested members, including the Student's general education teacher and a special education teacher, which the Parents said they wanted to be present to help interpret some of the Student's assessments, were able to attend due to the short notice. The Parents asserted in their reply it was their understanding that the agreement to postpone the meeting was mutually agreed upon by the District and Parent, until they could all have more time to figure out how to proceed. During an interview with the director on January 7, 2020, the director explained to the OSPI complaint investigator that the speech language pathologist had communicated with her that several calls were made by the District to the Parent prior to November 12, 2019 to try and schedule an IEP meeting that week because prior to that date, the Parent had refused to meet regarding the IEP, even though the District did not have an updated evaluation qualifying the Student for academic specially designed instruction. The director explained there was frustration by the IEP team that the Parent continued to reschedule that week. A review of email documentation included with the District's response and with the Parent's reply showed the Parent was attempting to secure advocate support and had notified the District earlier in the month that she had been working to schedule a meeting with a disability rights group to discuss her rights in a new state. During OSPI's conversation with the District on January 7, 2020, the director acknowledged there had been a breakdown in communication between the Parent and District staff and that the District was attempting to resolve the issue.

¹⁵ The general education teacher who attended the meeting was not the Student's general education teacher, who was unable to attend the meeting, but rather a different general education teacher who was not familiar with the Student.

¹⁶ While the District's response states the Student's IEP was changed to provide the Student with 20 minutes of speech twice weekly, the IEP indicates the Student's speech language therapy was reduced to 30 minutes weekly.

The Student's IEP included the following new speech language therapy goals:

- By 11/11/2020, when given targeted vocabulary, [Student] will increase her ability to name a synonym for a given vocabulary word, improving communication skills from 45% accuracy to 80% accuracy as measured by SLP/SLPA data based on oral performance;
- By 11/11/2020, when given structured language activities, [Student] will increase her ability to use grammatically correct, complete sentences to comment and answer questions improving communication skills from 40% accuracy to 80% accuracy as measured by SLP/SLPA data based on oral performance; and,
- By 11/11/2020, when given a paragraph to read aloud, [Student] will increase her ability to answer "who," "what," "where," "when," questions improving communication skills from 35% accuracy to 80% accuracy as measured by SLP/SLPA data based on oral performance.

The IEP indicated the Student required no accommodations or modifications to achieve her annual goals or make progress in the general education setting.

33. Also, on November 12, 2019, the IEP team issued a PWN, proposing a change to the Student's IEP, noting "an IEP was developed to align with the results of the reevaluation report dated 10/15/19; as well as to complete the annual review." The PWN listed the evaluation report and teacher input as support for the action. The PWN noted the Student's classroom teacher was out and a different third grade teacher attended the meeting instead to serve as the general education teacher, but noted the Student's teacher would review the IEP upon her return. The PWN also noted the Parents did not attend the meeting, stating the Parents were "present at the beginning of the meeting," but "did not want to discuss the IEP and declined to sign it. They further stated that they intend to request an IEE."
34. On November 13, 2019, the Student's schedule changed to reflect implementation of the proposed IEP. According to the District's response and schedule included with the response, the Student began receiving speech for 20 minutes twice a week. However, the November 12, 2019 IEP indicates the Student's speech language therapy services were reduced to 30 minutes weekly.
35. On November 21, 2019, the District issued a PWN, stating the speech language pathologist proposed to review the Student's IEP, dated November 12, 2019, with the Student's Parents on November 21, 2019, but noted the Parents were not in attendance at the IEP meeting. The PWN also stated the Parents "were in attendance on 11/21/19 but declined to review the IEP. The IEP was reviewed with [Student's] classroom teacher [...] on 11/13/19 since she was absent the day of the meeting." The Student's teacher was provided a copy of the IEP and a copy was sent home with the Student on November 14, 2019, along with a copy of the procedural safeguards.
36. As of November 22, 2019, the Student received grades of "satisfactory or outstanding" in all academic areas, as reported in an email from the District to the Parents regarding the Student's first semester grades. The same emailed noted the Student scored slightly below the national average (46th percentile) on the MAP math test and slightly above the national average (59th percentile) on the reading test. The email stated the Student was working at grade level in math, reading, and writing, but "struggles in math with word problems at the same rate as her

peers." The Student was described as "reading with grade-level at small group reading time and making adequate progress," and in writing, the Student was "working on keeping on topic, sentence structure and generating topics to write about."

37. On December 16, 2019, the Parent spoke with the OSPI investigator to ask if it was okay to proceed with an IEP meeting even though a complaint had been filed with OSPI. The OSPI investigator informed the Parent all parties should continue with IEP meetings as scheduled and were encouraged to continue trying to resolve any disputes themselves throughout the duration of the investigation.
38. On December 17, 2019, the Parent emailed the District and requested times to meet for the Student's IEP meeting.
39. On January 3, 2020, the OSPI complaint investigator interviewed the Parent by phone regarding the November 12, 2019 IEP meeting. The Parent clarified she did not initially receive the invite because it was included in an attachment, but she did open it in time to attend the meeting. However, she told the investigator that when she attended the meeting and explained she did not agree with the draft IEP, expressed concern that the Student's general education teacher was not present, and stated she did not want to sign it that she felt "stonewalled," and no one was talking. She said they expressed they could "table the meeting" and all parties expressed possibly contacting an attorney. She said it was her understanding the meeting would not continue after she left and was under the impression it would be rescheduled. She explained she was not made aware the meeting continued after she left or that the IEP team continued to make recommendations to change the IEP until she received the PWN.
40. On January 7, 2020, the OSPI complaint investigator interviewed the special education director (director) for the District. She reported the District staff had told her they made multiple phone calls during weeks IEP meetings were scheduled in an attempt to encourage the Parents to come, but expressed frustration that the Parents often refused to participate. However, the director also acknowledged there were times where more notice could have been given. She explained that while the school psychologist and other members of the IEP team believed the Student may no longer qualify for specially designed instruction in academics, the IEP team still wanted to discuss the Student's need for tier two interventions, including smaller class sizes, differentiated instruction, and accommodations and modifications. While recommendations for these tier two interventions were not included in the District's evaluation, the director explained the intention was to discuss them at an IEP meeting but said the IEP team had not been able to because the Parents had not participated.

Regarding comparable services, the director maintained it was the District's understanding that the Student's previous IEP provided for the Student to receive interventionalist services by a general education teacher ("Teacher, LI") in the general education setting. The director acknowledged there had been a communication breakdown between the Parent and District and recommended moving forward, the Parent and District consider utilizing mediation and/or facilitated IEP meetings.

CONCLUSIONS

IEP Development and Implementation – The Parents alleged the District did not follow procedures for developing and implementing the Student’s individualized education program (IEP) during the 2019-2020 school year, including following transfer procedures and providing comparable services.

Under the 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 a qualifying category—which in Washington includes categories such as a specific learning disability and a speech or language impairment—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. A child with a disability may seek to qualify for special education benefits under more than one eligibility category. A student’s eligibility category does not determine services.

When a student transfers to a new school district, the new district in which the student enrolls must take reasonable steps to promptly obtain the student’s records, including those related to the provision of special education services, from the previous district. If a student eligible for special education transfers from a district located in another state to a district in Washington state and has an IEP in effect for the current school year, the new district, in consultation with the student’s parents, must provide the student with a free appropriate public education (FAPE), including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state—if the district believes an evaluation is necessary to determine eligibility under Washington state standards—and, develops, adopts, and implements a new IEP. Washington state regulations governing the transfer of educational records and provision of comparable services comply with the terms of the Interstate Compact on Educational Opportunity for Military Children.

Transfer of records

The Student’s family transferred from an out-of-state district to the current district (“District”) during the summer of 2019. The Parent notified the District in June 2019 that the Student would be attending school in the District the following fall and on August 12, 2019, enrolled the Student in the District. The Parent signed a release of records the same day. A transfer review was completed by the District on August 26, 2019. Only the Student’s IEP was reviewed at that time. The transfer review documents stated the Student did not have an evaluation and consequently stated there was no evaluation documenting an adverse educational impact of disability or a need for specially designed instruction. It indicated only that the Student had an IEP and received 180 minutes per month of speech and language services. It noted the Student did not have an evaluation qualifying the Student for special education in Washington and would need a new

evaluation. It also stated that under the Interstate Military Compact, the Student was entitled to comparable services in the interim.¹⁷

The school psychologist stated it was his practice when receiving transferring student record reviews documenting a student has a current IEP but no evaluation to ask the parent to provide the school with the missing evaluation, which the psychologist did on August 29, 2019. On August 30, 2019, a second transfer review occurred. At that time, the District completed an updated transfer review summary for the Student, noting the Student's November 2018 evaluation, which found the Student eligible under the category of a speech and language disability. The updated transfer review noted existence of the Student's evaluation documents, which documented the Student's disability had an adverse educational impact and resulted in a need for specially designed instruction. It further noted that while the Student had an IEP, she did not have an evaluation establishing eligibility¹⁸ in Washington and stated the District would immediately initiate a reevaluation of the Student and begin providing comparable services.

Although the District was notified of the Student's future transfer into the District in June 2019 and the records were not fully obtained and reviewed until August 30, 2019, and even though the District relied on the Parent to obtain missing records of reaching out first to the District, OSPI finds the District was able to obtain and review the Student's educational records within a reasonable amount of time (within the first week of school) and no violation is found.

Comparable services in consultation with the parents

In consultation with the student's parents, a district must provide a student with a FAPE, including comparable services, until the district conducts an evaluation to determine eligibility, if necessary, and then develops, adopts, and implements a new IEP. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Consultation with parents is important because parents often have valuable insight into what the services included on an IEP from the previous district mean. This helps ensure the services provided to a student are, in fact, similar or equivalent to those described in a student's incoming IEP, as required by the IDEA.

As stated above, an initial transfer review meeting was held on August 26, 2019 after the school psychologist received notice of the Student's completed initial transfer review. Notice of this meeting was sent to the Parents the day of the meeting. Consequently, neither Parent was able to attend. At the meeting, the team members present agreed to continue with the Student's least restrictive environment (LRE) placement on the Student's incoming IEP and to refer the Student

¹⁷ Federal and state regulations, which comply with the requirements of Compact, also require the District to provide FAPE and comparable services to the Student while the District completes its initial evaluation of the Student. 34 CFR §300.323(f); WAC 392-172A-03105(5).

¹⁸ The documents, including a statement from the school psychologist included with the District's response, noted the District's belief that the incoming evaluation did not establish eligibility in Washington because the test scores included in the evaluation did not show evidence of a severe discrepancy.

to the eligibility committee to determine if the Student was eligible for special education in Washington. The committee additionally agreed to provide comparable services.

If a transfer review meeting is going to be held to discuss developing comparable services, it is best practice to provide parents sufficient notice to afford them an opportunity to participate. If parents are not afforded an opportunity to participate, districts must still consult with parents to ensure the interim services being provided are similar or equivalent to the ones the student had been receiving. This is required regardless of whether the district believes the student will be found eligible for services following an initial evaluation in Washington. Here, because the Parents did not receive sufficient notice of the transfer review meeting, they were unable to attend and participate and were unable to provide input regarding comparable services based on the Student's incoming IEP. Further, the District acknowledged it did not have the Student's evaluation at the time of the first transfer review meeting and did not know how to interpret some of the services on the Student's IEP, which were based on the missing evaluation (e.g., "There was no key as to the meaning of 'LI' on the IEP evaluation. The IEP also did not specify how the resource service minutes would be provided or how the minutes in the general classroom were utilized").

In their reply, the Parents explained "Teacher, LI" was an acronym for "Teacher, learning impaired," and that "Teacher, LI" was a special education teacher/provider who provided specially designed instruction to the Student in the general education setting as a push-in or pull-out service, not a general education teacher. During an interview with the Parent on January 3, 2020, the Parent was able to provide much clarity about the specially designed instruction the Student received from the Teacher, LI, which aligned with the Student's previous evaluation and IEP, which listed this service under "direct special education services" on the IEP. However, as the documents showed, there was great confusion regarding how the 450 minutes of services of direct special education services on the Student's IEP, which were to be provided by "Teacher, LI" in the general education setting, was interpreted. Most notably, as stated in the District's response, the mother told a District staff member (the resource teacher) on September 3, 2019 that the "the Student received the general education service minutes with the general education classroom teacher, and not a special education teacher." During an interview with the director on January 7, 2020, the director said it was the father, not the mother, who she recalled explaining what services were provided to the District, and that the Student received services from an interventionist who was a general education teacher. In the Parent's reply, the Parent said the District's understanding was a "massive miscommunication, or a case of hearing what they wanted to hear to make things easier administratively and logistically..."

Because of this misunderstanding, from August 30, 2019 until October 16, 2019, the day after the results meeting to review the results of the initial evaluation, the District provided the Student with 50 minutes weekly of speech and language pathology services, 200 minutes weekly of specially designed instruction in reading and writing, and 450 minutes of general education math, with 150 of the 450 minutes being differentiated, small group instruction based on skill level provided by a general education teacher in the general education setting. This was in contrast to the Student's IEP from the previous district which most likely provided for 180 minutes monthly of speech, 150 minutes weekly of special education minutes to be provided by "Teacher LI" in the

resource room setting, and 450 minutes weekly of direct special education services to be provided by “Teacher LI” in the general education setting. Differentiated instruction provided by a general education teacher in the general education setting is not similar or equivalent to specially designed instruction provided by a special education provider to a student with a disability who is being pushed into or pulled out of a general education classroom. Had the District included the Parents in the transfer process and consulted with them in the development of comparable services, this miscommunication may have been avoided through discussion, and either clearly comparable services provided or the need for an IEP meeting identified.

OSPI finds the District in violation for not providing comparable services to the Student in consultation with the Parents. Because the Student continued to make academic progress with the small group, differentiated instruction in math she received during the transfer period in addition to the special education services she received in reading, writing and speech, no compensatory instruction is ordered. However, as discussed in more detail below under “IEP Meeting Procedures,” the District will be required to complete training on parent participation in the IEP process, including consulting with the parents during the provision of comparable services during transfer procedures.

Determination of eligibility for a specific learning disability

The Parents alleged the District did not follow procedures in its evaluation of the Student for a specific learning disability.

When a student transfers into a school district from an out-of-state school district, the district may conduct an initial evaluation if it believes an evaluation is necessary to determine eligibility for special education under Washington state standards. If an evaluation team holds a meeting for the purpose of reviewing an initial evaluation, the Parent must be afforded an opportunity to participate. A school district must assess a student in all areas related to her suspected disability. The evaluation must comply with the IDEA’s procedural requirements, including that it must be sufficiently comprehensive to identify all of the student’s special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. In conducting the evaluation, the evaluation team—which includes qualified professionals selected by the district, and when evaluating for a specific learning disability must also include the parent and an expert qualified to conduct assessments—must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student including information provided by the parent. The evaluation team will then use this information to determine if the student is eligible for special education and to develop the content of the student’s IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. A student will not receive special education and related services unless she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification

of students with specific learning disabilities.¹⁹ If a District adopts a severe discrepancy method, it must follow certain methods for documenting the severe discrepancy, including that it must ensure the student who is suspected of having a specific learning disability is observed in the student's learning environment, including in the general education classroom setting to document the student's academic performance and behavior in areas of difficulty.

On September 24, 2019, the Parents provided consent for the District to evaluate the Student for eligibility for special education, including whether the Student had a specific learning disability. On September 25, 2019, the school psychologist requested and reviewed the Student's previous scores on cognitive, academic and communication evaluations, as obtained in a previous district. The Student's math measure of academic progress (MAP) assessment score was in the high second grade range and her reading MAP score was in the low third grade range. The psychologist also administered the Woodcock-Johnson Tests of Achievement-IV, which showed all academic testing cluster scores to be within the average range—although it was noted that subset scores ranged from below average to superior. The evaluation included an observation of the Student during library, reading, and general education math class. Using a severe discrepancy model in addition to the above data, the psychologist did not find a severe discrepancy and concluded the Student did not meet the standard for a specific learning disability. The District additionally evaluated the Student in the area of speech and communication and found the Student to exhibit delays in the area of language skills. The evaluation recommended the Student be found eligible for special education under the category of speech and language impairment and that she be provided specially designed instruction in communication.

When viewing the same data and applying professional judgement, districts may arrive at different conclusions regarding whether a student has a specific learning disability or whether a student requires specially designed instruction for a particular disability. There are also times where the conclusion regarding classification differs depending on what method is used to analyze the data. However, regardless of what method is used to evaluate a student for presence of a specific learning disability or what disability category a district determines is most appropriate for a student, all evaluations for eligibility must use a variety of assessment tools to gather functional development and academic information, be sufficiently comprehensive to determine special education and related service needs and must evaluate students in all areas of suspected disability. The services provided must also meet all of the identified needs regardless of disability classification. Further, while a student must require specially designed instruction and not just related services in order to be eligible for special education, once a student is eligible for special education, she may receive services in any area which she has a demonstrated need regardless of eligibility category.

In addition to evaluating the Student's cognitive, academic, and speech and language abilities, which the District also evaluated in its current evaluation, the previous district used professional

¹⁹ As a general note, at several points throughout the District's response, the District stated the standard in Washington for determining whether a student may qualify for special education for a specific learning disability is the severe discrepancy model. Washington does not have one model for determining specific learning disability. Rather, districts may choose to use discrepancy method as one of three available models.

judgement to evaluate and interpret the Student's processing and memory functioning, and its impact on the Student's speech and language functions as it related to the Student's learning.²⁰ The previous district's evaluation concluded that "These memory inconsistencies, combined with the above mentioned language and articulation errors may be expected to negatively impact [Student's] classroom performance." The Student was found eligible for special education under the category of specific learning disability with a speech and language impairment. In addition to recommending speech and language services, the Student's previous evaluation recommended specially designed instruction focused on providing the Student with opportunities for re-learning, pre-teaching, re-teaching, modeling of new concepts (particularly of those involving language), and learning new ways to store information so that overtime, the Student would retain information necessary to progress in the general education setting. The previous district's IEP team then recommended the Student receive the specially designed instruction in the areas of math, reading, and writing and communication in addition to speech and language services.

Despite the District's access to this information, as included in the Student's previous evaluation made available by the Parent, the District's current evaluation did not include a review of the Student's deficits in memory and processing as identified or described by the previous evaluation or how it was believed to currently impact or not impact the Student's ability to learn and make progress in the general education setting, especially in light of the Student's speech and language weaknesses, or assess whether the Student continued to require special education support for weaknesses in these areas. Further, the District's evaluation did not address the recommendations of the previous evaluation, how the Student's history of receiving specially designed instruction was believed to have impacted her ability to make progress over the last year, or the Parents' input, which included concern about removing the specially designed instruction due to their belief that the Student's current progress in the general education setting was the result of the specially designed instruction she had been receiving.

The District's evaluation reviewed or retested the Student in cognitive and academic areas and provided a communication evaluation focusing on the Student's speech and language abilities. It also included an observation of the Student during library and silent work times and commented on the Student's academic progress.

While the District is permitted to apply a severe discrepancy model to the same data, conduct its own assessments, and may arrive at different conclusions regarding eligibility and disability classification—which the District did, it must at minimum ensure its evaluation is sufficiently comprehensive and evaluates the Student in all areas of known and suspected disability. While

²⁰ More specifically, the Student's previous district identified inconsistencies in the Student's processing and memory skills on her performance on subsets of cognitive assessments, including the WJIV Test of Cognitive Abilities, and on oral language assessments. This information prompted further assessment, including use of the "Test of Memory and Learning 2 (TOMAL-2), as well as consideration of how the information obtained from the results of this assessment should be interpreted in light of information obtained from teacher observation and Student performance in different classes, including variance in the Student's performance based on class size and level of support needed when in the general education setting because of the Student's unique pattern of identified strengths and weaknesses.

the District is not in violation for using a severe discrepancy model, determining the Student does not meet the eligibility criteria for a student with a specific learning disability, or for determining the Student is eligible under the category of speech and language impairment instead of specific learning disability, the District is in violation for not evaluating the Student in all areas of suspected disability and for not providing the Student with a sufficiently comprehensive evaluation to assess the Student's need for special education, including her need for related services, and IEP accommodations and modifications. The District's evaluation did not consider all available and relevant information about the Student's processing and memory functioning as identified and described in previous evaluation and did not include relevant information from the Parent.

Additionally, the District is reminded that a student's need for special education services is not determined by the student's eligibility category, but rather by the student's needs. A student may be found eligible for special education under the category of speech and language impairment, for example, and still receive specially designed instruction or accommodations in another academic area if it is necessary for the Student to make progress and receive a FAPE. Thus, the District was in error when it concluded or stated that the Student was not eligible for specially designed instruction in any academic area *because* she was classified as a student with a speech and language impairment and no longer classified as a student with a learning disability. While the IEP team may still determine the Student's *needs* no longer require the Student to receive specially designed instruction in order to receive FAPE, or that the Student's needs may be more appropriately met with other supports, including small group instruction, accommodations or modifications, etc., the determination should be based on needs, not eligibility category.

OSPI finds the District's evaluation was not sufficiently comprehensive, and the District will be required to do a reevaluation. The reevaluation must assess the Student in all areas of suspected disability, including processing and memory functioning as identified in the previous evaluation, and assess the Student's needs for special education and related services, as well as accommodations and modifications, regardless of her eligibility category. Parents retain the right to request an IEE in the event that there is disagreement with the District's reevaluation.

OSPI additionally finds the District in violation for not including the Parent in the evaluation review meeting. As discussed in more detail below under "IEP Meeting procedures," for the "October 15, 2019, Evaluation Review Meeting" the parent is part of the evaluation group when making determinations about eligibility for specific learning disabilities. Accordingly, the District will be required to complete training on parent participation during the IEP process, including during evaluation procedures.

IEP Meeting Procedures

IEP meeting procedures are part of IEP development and implementation. IEP team meetings must be held periodically, but not less than annually to develop the IEP, and to revise or review it as necessary. Parents must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of FAPE to the student. This includes notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. For an initial evaluation, if the evaluation

team meets, the parent must also be afforded an opportunity to participate. If the evaluation is to review a determination involving a specific learning disability, additional procedures must be followed, as discussed in the section above, including that the parent, a general education teacher, and an individual qualified to conduct individual diagnostic examinations of students must be included as members of the evaluation team. While the IEP team is not required to adopt all of the views of parents, IEP teams must consider the parents' input regarding their child in developing and reviewing their child's IEP. Following an IEP meeting, a district must provide parents with sufficient prior written notice.

Additionally, when a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA—such as parental participation and timely annual review of the IEP—the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit.

October 15, 2019 Evaluation Review Meeting

On October 15, 2019, an evaluation meeting occurred to review the results of the Student's initial evaluation and to determine if the Student was eligible for special education and related services in Washington. The Parent was provided notice the day of the meeting in person. When the Parent received notice the meeting was going to occur, she asked for the meeting to be rescheduled to enable her time to meet with an advocate to help her better understand the Washington special education laws and regulations so she could participate in the evaluation meeting. She was provided a draft IEP to take with her. The evaluation team then met without the Parent and provided the Parent with prior written notice (PWN) of their decision after the meeting. Because the District was reviewing the Student for eligibility for classification for a specific learning disability, the Parent was a required member of the evaluation group. Accordingly, if the rest of the evaluation group held a meeting for purposes of reviewing the evaluation, the Parent should have been afforded an opportunity to participate in the meeting. In order to afford the Parent an opportunity to participate, the District should have provided the Parent with sufficient notice and should have rescheduled the meeting. OSPI finds the District to be in violation and, following completion of the new evaluation the District has been ordered to complete, the District will be required to hold a meeting to review the Student's eligibility following proper procedures, with all required members—including the Parent—present.

November 7, 2019 IEP Meeting

On November 7, 2019, an IEP meeting was held to develop the Student's new District IEP. The meeting was attended by a Parent, the principal, the speech language pathologist, and the general education teacher. Notice was provided to the Parent via email on November 1, 2019. The Parents raised concerns that a special education teacher was not present; however, because the Student was not eligible for special education services other than speech services at that time, the IEP team contained all required members. While the Parent could have requested the special education teacher be present, there was no documentation to show this occurred, and during a conversation

between the complaint investigator and the Parent, the Parent acknowledged she did not know she was able to make this request, but stated in her reply that she would have liked a special education teacher to be present in the future. While the Parent raised concerns at this meeting regarding changes in the Student's physical health (including an increase in daily somatic symptoms), which she felt was directly related to a reduction in services and an increase in anxiety, no proposed changes were made to the Student's IEP. The Parent notified the District she had filed a citizen complaint and it was agreed the parties would come together at a future date to continue the conversation. Accordingly, no prior written notice was required. OSPI finds no violation.

November 12, 2019 IEP Meeting

On November 12, 2019, an IEP meeting was held after the District sent a meeting invitation to the Parents the afternoon of November 8, 2019 in an email attachment to follow up on the email regarding the November 7, 2019 meeting. Although the Parents received the attachment and showed up at the meeting, email documentation showed the Parents initially missed the email and requested the meeting be rescheduled, which the District did not do. The Parents were able to ultimately attend the meeting despite the short notice because they were already at school that day. According to the Parents, when they arrived, they told the IEP team they did not agree with the draft IEP and would not sign it. According to the Parents' reply and a conversation with the OSPI investigator on January 3, 2019, the Parents also expressed a desire to contact an attorney because they were not sure how to reply because they had filed a citizen complaint and stated in their reply that they believed from their communication with the IEP team that the meeting was "tabled." The Parents stated they were not notified until they received the PWN that additional decisions were made at the meeting, including a decision to reduce the Student's weekly minutes of specially designed instruction in speech. While the Parents may have been able to attend the meeting despite the short notice, the District did not sufficiently inform the Parents they were going to continue the meeting after the Parents expressed their concerns and stated they would not sign the IEP, and left—making it so the Parents were not able to meaningfully participate in the development of the Student's IEP at the November 12, 2019 meeting.

In addition, the District provided PWN the same day of the changes the IEP team recommended (noting "an IEP was developed to align with the results of the reevaluation report dated 10/15/19; as well as to complete the annual review," which included a reduction in the number of minutes of speech the Student received each week.) The members of the IEP team present also removed all of the Student's IEP goals from the Student's November 2018 IEP, which it determined the Student had met, and added new goals only in the area of speech and language. The changes were then implemented in the Student's schedule the next day—November 13, 2019, before the Parent received the PWN. Thus, the District did not provide the Parent with PWN of the changes within a reasonable amount of time before the District implemented the change.

An IEP team may make recommendations when, after repeated attempts to engage parents, parents refuse to participate in the IEP development process, and conflict and disagreement is often a natural part of the IEP development process. Here, the IEP team should have either made

the recommendations while the Parent were present and then expressed any disagreements in the PWN or rescheduled the meeting.

Accordingly, OSPI finds the District in violation for not enabling parent participation in the IEP development process during the November 12, 2019 IEP meeting. The District will be required to complete training on parent participation. OSPI further finds the District to be in violation for not providing the Parents with PWN of the recommended changes to the IEP within a reasonable amount of time prior to implementing the changes. The District will additionally be required to complete training on PWN.

CORRECTIVE ACTIONS

By or before **January 17, 2020, February 7, 2020, February 14, 2020, February 28, 2020, and April 17, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Reevaluation:

By **March 2, 2019**, the District will be required to complete a reevaluation for the Student to evaluate the Student for eligibility for her special education and related service needs. The evaluation must assess the Student in all areas of suspected disability, including whether the Student has a specific learning disability. At minimum, the reevaluation will include a review of existing data, including the evaluation reports from the Student's previous district and all assessments contained in those evaluation reports—including assessment of the Student's memory functions and processing abilities, and any other information provided by Parents. The evaluation must also include an observation of the Student in the general education classroom setting during a time of routine classroom instruction. The evaluation report should include recommendations regarding eligibility and for any special education and related services, as well as accommodations and modifications the evaluator believes are needed to develop a comprehensive IEP, including needed supports or training for the Student's providers.

Evaluation Group Meeting:

By **April 10, 2020**, the evaluation group, including the Parents, will meet to discuss the results of the reevaluation. The District will ensure the evaluator participates in the meeting in person or by phone. If the evaluation group, with participation from the Parents, determines the Student is eligible for special education, the Student's IEP team will immediately develop a new IEP for the Student. The IEP will clearly state the Student's disability and include information on how the Student's disability affects her involvement and progress in the general education curriculum. The IEP will also clearly identify who will provide the Student's services and designate the educational setting where the services will be provided.

By **April 17, 2020**, the District will submit documentation to OSPI of the results of the evaluation group's determination, including a copy of the evaluation report and prior written notice. If applicable, the District will also submit a copy of the remedial services plan. If the IEP team

develops a new IEP, the District will also provide a copy of the Student's IEP and any related documentation.

DISTRICT SPECIFIC:

Training

Parent Participation: The District will ensure all District special education certificated staff, including educational staff associates (ESAs), and principals at the school involved in this complaint, receive training on parent participation during the IEP process, including parent participation during the transfer, evaluation process and during IEP meetings. ESAs include school psychologists and speech language pathologists. School nurses and other service providers not otherwise mentioned are not required to receive training. The trainer will not be an employee of the District. The training will include examples. The District is encouraged to contact its Educational Service District for assistance identifying a trainer.

By **January 17, 2020**, the District will notify OSPI of the name of the outside trainer, and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing training materials. By **February 7, 2020**, the District will submit a draft of the outside trainer's training materials to OSPI for review. OSPI will approve the materials or provide comments by February 14, 2019 and additional dates for review, if needed. By **February 28, 2020**, the District will submit documentation that staff participated in the training. This will include: 1) a sign-in sheet, and 2) an official roster provided by human resources of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate in person the day of the training, the District will notify OSPI to determine alternative arrangements for training and documentation that training was provided.

Prior Written Notice: By or before **February 7, 2020**, District special education administrative staff, the principal, and the Student's case manager (the speech language pathologist) identified in this complaint will complete a training module on prior written notices. The training module has been developed by OSPI special education division and eLearning for Educators in Canvas, an online learning management system. Access to the training module in Canvas can be found here <https://www.evergreen.edu/elearningforeducators/>. By or before **February 14, 2020**, the District will submit documentation that required staff have completed the training module.

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.

RECOMMENDATIONS

Accommodations and Modifications: If the IEP team believes the Student requires accommodations and/or modifications to access or make progress in the general education setting, or to receive FAPE, they should be included in her IEP. While the Student's previous IEP from her DoDEA school did not have a place to document what, if any, accommodations or

modifications the Student was receiving because almost all support was being provided by the "Teacher, LI," the Student's current IEP also did not include any accommodations and modifications. However, when reviewing the new evaluation ordered by OSPI, the IEP team may want to consider if the Student may have any needs which might be appropriately met or supported by accommodations or modifications in the IEP.

Dated this ____ day of January, 2020

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.)