

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-92

PROCEDURAL HISTORY

On December 2, 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 Seattle School District (District). The Parent alleged the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On December 2, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint by December 20, 2019.

On December 4, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On December 19, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on December 20, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 27, 2019, OSPI requested clarifying information from the Parent and received the information on the same day. On December 30, 2019, the information was forwarded to the District.

On January 3, 2020, OSPI received the Parent's reply to the District's response.

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

ISSUE

1. Did the District follow the evaluation procedures during the November 2019 evaluation of the Student, including considering the Parent's private evaluations?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

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. 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. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 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. In completing the evaluation report, the school district must ensure that information from all of these sources is carefully considered. 34 CFR §300.305; WAC 392-172A-03040. Included in these sources of information to be documented and carefully considered may be private service augmentation such as private tutoring. This information may have "bearing on the whether a student has a severe discrepancy between achievement and ability that is not correctable without special education and related services." *Letter to Lillie/Felton*, 23 IDELR 714 (OSEP 1995).

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).

Specific Learning Disability: Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's

educational performance. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage. 34 CFR §300.8(c)(10); WAC 392-172A-01035(k).

Consideration of Non-District Data: There are various situation in which a District may need to consider information provided by parents, information from outside sources, or information from a student's private providers—in other words, non-district data. The IEP meeting serves as a communication vehicle between parents and school personnel, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

If the parent obtains an independent educational evaluation (IEE) at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the student. 34 CFR §300.502(c); WAC 392-172A-05005(5). An evaluation must be sufficiently comprehensive and must document and carefully consider information from a variety of sources. WAC 392-172A-03020; WAC 392-172A-03040. Included in these sources may be private service augmentation such as private tutoring. Generally, it would be appropriate for an evaluation team to consider information about outside or extra learning support, "as such information may indicate that the child's current educational achievement reflects the service augmentation, not what the child's achievement would be without such help." This information may have "bearing on the whether a student has a severe discrepancy between achievement and ability that is not correctable without special education and related services." *Letter to Lillie/Felton*, 23 IDELR 714 (OSEP 1995).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education citizen complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). The award of compensatory education is a form of equitable relief and the IDEA does not require services to be awarded directly to the student. *Park ex rel. Park v. Anaheim Union School District*, 464 F.3d 1025, 46 IDELR 151 (9th Cir. 2006).

FINDINGS OF FACT

2018-2019 School Year

1. During the 2018-2019 school year, the Student attended an elementary school in the District, and was not eligible for special education services.

2. On January 16, 2019, the Student was privately evaluated by a speech/language pathologist in the areas of language, reading, written language, and math. The Student was given selective subtests from the following assessments:

- Woodcock Johnson – Fourth Edition
- Comprehensive Test of Phonological Processing – Second Edition
- Lindamood Auditory Conceptualization Test – Third Edition

The results were as follows:

Woodcock Johnson – Language

- Picture Vocabulary: Standard Score (SS) 97 (42nd percentile) Average range¹
- Oral Comprehension: SS 113 (81st percentile) High average range
- Understanding Directions: SS 99 (49th percentile) Average range
- Retrieval Fluency: SS 107 (67th percentile) Average range
- Broad Oral Language Cluster: SS 104 (60th percentile) Average range

Woodcock Johnson – Reading

- Letter-Word Identification: SS 109 (73rd percentile) Average range
- Passage Comprehension: SS 102 (56th percentile) Average range
- Word Attack: SS 101 (52nd percentile) Average range
- Oral Reading: SS 97 (42nd percentile) Average range
- Sentence Reading Fluency: SS 106 (66th percentile) Average range
- Broad Reading Cluster: SS 107 (68th percentile) Average range
- Phoneme Grapheme Knowledge Cluster: SS 93 (31st percentile) Average range

Woodcock Johnson – Math

- Calculation: SS 99 (47th percentile) Average range
- Math Facts Fluency: SS 108 (70th percentile) Average range
- Math Calculation Skills Cluster: SS 105 (62nd percentile) Average range

Woodcock Johnson – Writing

- Spelling: SS 88 (21st percentile) Low average range
- Writing Samples: SS 107 (68th percentile) Average range
- Editing: SS 87 (19th percentile) Low average range
- Written Language Cluster: SS 96 (39th percentile) Average range
- Basic Writing Skills Cluster: SS 97 (19th percentile) Low average range

Comprehensive Test of Phonological Processing

- Elision: Scaled Score 8 (25th percentile) Average range
- Blending Words: Scaled Score 7 (16th percentile) Low average range
- Phoneme Isolation: Scaled Score 8 (25th percentile) Average range
- Memory for Digits: Scaled Score 8 (25th percentile) Average range
- Nonword Repetition: Scaled Score 7 (16th percentile) Low average range
- Rapid Digit Naming: Scaled Score 12 (16th percentile) Low average range
- Rapid Letter Naming: Scaled Score 11 (63rd percentile) Average range
- Phonological Awareness Composite: SS 86 (18th percentile) Borderline/Mild concerns
- Phonological Memory Composite: SS 86 (18th percentile) Borderline/Mild concerns
- Rapid Symbolic Naming Composite: SS 110 (75th percentile) Average range
- Phonological Awareness Index: SS 98 (45th percentile)

Lindamood Auditory Conceptualization Test

¹ Standard scores are based on the average score being 100. Scaled scores are based on the average score being 10.

- Isolated Phoneme Patterns: Raw Score 16 of 16
- Tracking Phonemes (Monosyllables): Raw Score 8 of 18
- Tracking Syllables: Raw Score 5 of 10
- Tracking Phonemes (Multisyllables): Raw Score 5 of 10
- Tracking Syllables and Phonemes: Raw Score 1 of 12

6+1 Trait Writing Model²

- Ideas: 3
- Organization: 3
- Voice: 3
- Word Choice: 3
- Sentence Fluency: 3
- Conventions: 1-2
- Presentation: 3

Writing Sample

- "Presents a series of related ideas with some detail."
- "Frequent run-on sentences are used."
- "Spelling is a problem."

Regarding the Student's reading performance, the evaluation stated the Student "demonstrated many average reading skills during today's evaluation" and a "combination of average performance and borderline/mild concerns related to phonological skills..." While average reading skills were demonstrated on some subtests, "mild concerns were sometimes observed during reading assessment despite average scores." The evaluation stated, "Overall, [Student's] learning profile raises red flags for a possible diagnosis of mild dyslexia. She is not necessarily struggling with reading but her phonological and spelling skills both indicate mild concerns..." The evaluation report made numerous recommendations including targeting phonological/phonemic development and reading comprehension strategies.

3. Beginning March 18, 2019 to June 24, 2019, the Student received private tutoring for one hour a week in reading and writing at a private school that specialized in students with dyslexia.
4. During Summer 2019, the Student participated in a three-week summer school, totaling 16 days for three hours a day at a private school, which employed the "Slingerland" reading method.³
5. On August 28, 2019, the Parent emailed the District's advanced learning specialist, requesting that the District evaluate the Student for special education services.

2019-2020 School Year

6. During the 2019-2020 school year, the Student attended a District elementary school. The Student was not eligible for special education services.

² The 6+1 Trait Writing Model is a methodology to assess and teach students writing skills. The assessment is scored on a six-point scale. One is "beginning" and six is "exceptional." Three is "developing."

³ The Slingerland method is a classroom adaptation of the Orton-Gillingham method that uses multisensory strategies to remediate reading problems.

7. On September 4, 2019, the 2019-2020 school year began in the District.
8. On August 22 and September 5, 2019, the Student was privately evaluated by a clinical psychologist. The following assessments were administered:
 - Wechsler Intelligence Scale for Children – Fifth Edition
 - Wechsler Individual Achievement Test – Third Edition
 - Grey Oral Reading Test – Fifth Edition
 - Delis-Kaplan Executive Function System⁴

The evaluation results were reported as follows:

Wechsler Intelligence Scale for Children

- Full scale score: SS 127 (96th percentile)

Wechsler Individual Achievement Test - Reading

- Basic Reading Composite: SS 99
- Word Reading: SS 102
- Pseudoword Reading: SS 99

Wechsler Individual Achievement Test - Math

- Numerical Operations: SS 116
- Math Problem Solving: SS 110
- Math Fluency – Addition: SS 103
- Math Fluency – Subtraction: SS 103
- Math Fluency – Multiplication: SS 93
- Mathematics Composite: SS 114
- Math Fluency Composite: SS 114

Wechsler Individual Achievement Test – Written Expression

- Spelling: SS 89
- Sentence Composition: SS 82
- Sentence Combining: SS 85
- Sentence Building: SS 81
- Essay Composition: SS 92
- Written Expression Composite: SS 84

Gray Oral Reading Inventory

- Reading Rate: Scaled Score 11
- Reading Accuracy: Scaled Score 8
- Reading Fluency: Scaled Score 9
- Reading Comprehension: Scaled Score 7
- Oral Reading Index: SS 89 (23rd percentile)

Comprehensive Test of Phonological Processing

- Elision: Scaled Score 14
- Blending Words: Scaled Score 9
- Phoneme Isolation: Scaled Score 6
- Memory for Digits: Scaled Score 9
- Nonword Repetition: Scaled Score 6
- Rapid Digit Naming: Scaled Score 11
- Rapid Letter Naming: Scaled Score 11

⁴ The Delis-Kaplan Executive Function System is a neuropsychological test to measure verbal and nonverbal executive functions.

- Phonological Awareness Index: SS 98 (45th percentile)
- Phonological Memory Index: SS 86 (18th percentile)
- Rapid Symbolic Naming Composite: SS 107 (68th percentile)

Delis-Kaplan Executive Function System

- Color Naming: Scaled Score 12
- Word Reading: Scaled Score 13
- Inhibition: Scaled Score 10
- Inhibition/Switching: Scaled Score 8

Based on the results of this evaluation and the results from the January 2019 evaluation, the private psychologist recommended, among other things, specialized instruction targeting literacy and reading comprehension skills, 1:1 or small group instruction in spelling and writing, direct instruction in organizational and study skills, and additional accommodations.⁵

The Student was diagnosed as follows in the report:

- Attention deficit hyperactivity disorder; moderate severity
- Language based learning disability (dyslexia), specific learning disability in reading (with impairment in decoding, phonological memory, reading rate/accuracy, and reading comprehension; moderate severity)
- Specific Learning Disorder in written expression (with impairment in spelling, sentence formulation, paragraph/essay composition, and editing; moderate severity)
- Generalized anxiety disorder

9. On October 1, 2019, the District conducted a “Student Intervention Team” (SIT) meeting. According to the “[School] SIT Summary” form, school staff and the Parent met to discuss the Parent’s request for a special education evaluation. They reviewed the January 2019 private evaluation by the speech/language pathologist, the August/September 2019 private evaluation by the clinical psychologist, and a private evaluation conducted in 2015.⁶ The District also reviewed the results from the Student’s most recent Smarter Balanced Assessment (SBA) and Measurement of Academic Progress (MAP) assessment.⁷ The results were as follows:
 - SBA – English/Language Arts: Spring 2018 – Level 3, Passing; Spring 2019 – Level 2, Not Passing
 - MAP – Reading: Spring 2017 – 66th percentile; Fall 2018 – 55th percentile

Regarding reading, the SIT form stated, “[Student] is reading at grade level T, which is considered on grade level. Her teacher is not concerned about reading skills...”⁸ The Student was also receiving the following classroom accommodations:

- Preferential seating close to the teacher

⁵ There was no indication that the evaluator observed the Student in the classroom or talked with the Student’s teachers.

⁶ The 2015 evaluation assessed the Student’s cognitive capabilities. She scored in the “high average” range.

⁷ SBA is an assessment given statewide to measure student achievement and the MAP is an assessment that is aligned to the State learning standards.

⁸ Level T was based on the Fountas and Pinnell Benchmark Assessment, which is a progress monitoring assessment for reading in the classroom.

- Close to the board at the carpet
- More frequent 1:1 check-ins
- Allowing her to verbal process information before writing
- Squishy ball
- Can ask for and take a break

The form also stated the Student completed a three-week 2018-2019 summer school (16 days, three hours per day) of reading instruction using the Slingerland method. The Student also received 1:1 tutoring in reading at a private school for one hour, two days a week. Additional intervention strategies included private counseling, on the wait list for Read/Write/Learn, personal bathroom pass, test accommodations, teacher check-in, a planner, check-in from school counselor, and special education evaluation.

10. On the same day, the District completed the "Guidance Team Record – Special Education Referral," which reflected the information on the SIT form. The prior written notice, dated October 1, 2019, stated the Student would be evaluated in areas of cognition, reading, writing, social behavior, study/organizational skills, and medical/physical (nurse screening).
11. On October 2, 2019, the Parent provided written consent for the evaluation.
12. On November 5, 2019, a group of qualified professionals and the Parent (eligibility group) met to review the evaluation report and determine if the Student was eligible for special education services. The eligibility group included the Student's general education teacher, a special education teacher, school psychologist, school administrator, and school counselor. The District conducted a behavior assessment. The eligibility group reviewed the existing data from the private evaluations, including the cognitive and academic assessments, and reviewed the new District behavior assessment results to determine the Student's eligibility for special education services. The November 2019 evaluation report included information regarding the following:
 - Review of Existing Data (interventions provided in the third, fourth, and fifth grades, including private tutoring and summer school after the fourth grade)
 - Cognitive (results from the Weschler Intelligence Scale for Children – 5th Edition)
 - Medical-Physical (family history, medical, and psychological information from Parent)
 - Academic (Weschler Individual Achievement Tests, Grey Oral Reading Test, SBA, and MAP)
 - Behaviors (District Behavior Assessment System for Children, Behavior Rating Inventory for Executive Function)

The evaluation report contained the following information:

Behavior: Regarding behavior, the report noted:

- The behavior observation stated the Student participated in class activities, followed along while the teacher read, and transitioned to independent reading. No significant behavior was observed.
- In assessing the Student's behavior, the District administered the Behavior Assessment System for Children – 3rd Edition to the Student's teacher, the Parent, and the Student. The Student was also interviewed by the school psychologist. The results indicated that the Student demonstrated greater than normal anxiety and had difficulty with paying attention.

- The Parent and the Student's teacher completed the Behavior Rating Inventory of Executive Function – 2nd Edition. The results indicated "some concerns with executive functioning and study/organizational," which were impacting her ability to focus in the classroom.

Written Language: In the area of written language, the evaluation report stated the Student displayed a "severe discrepancy in the area of written expression based on her reported Full Scale IQs and she does not meet eligibility criteria under Specific Learning Disability. However, based on her diagnoses of ADHD and anxiety, and the impact these conditions have on her writing, eligibility under Health Impaired is recommended."

Reading: Regarding reading, the report noted:

- The reading results stated the Student was "resistant" to reading chapter books at home, but reading at grade level according to the reading curriculum. The Student's general education teacher reported no concerns about her reading skills. The evaluation report cited the results of the Weschler Individual Achievement test and Grey Oral Reading Inventory, administered by private evaluators (see above for results). The evaluation report stated, "[Private evaluator] also administered the Gray Oral Reading Test – Fifth Edition (GORT-5), and these scores were also considered by [school psychologist], though it should be noted that this instrument is unfamiliar to this examiner, not available in the district, and not on the OSPI SLD Guide."⁹
- Regarding the input from the Student's teacher about the Student's reading, the evaluation stated:
[Student's] fifth grade teacher, [teacher], provided the following classroom data. From classroom observations and work with her reading, [Student] is at or above grade-level in comprehension and fluency. She is able to make strong personal connections and elaborate on her ideas when asked to discuss reading. She does struggle with participation during whole-class instruction and discussion (at reading time), but this will hopefully improve when her confidence and toolbox of strategies increase.

The eligibility report concluded that the Student was eligible for special education services under the category of other health impairment. The eligibility report recommended the Student receive specially designed instruction in written expression and study/organizational skills. However, she did not qualify under the category of specific learning disability in reading; although, the Student had demonstrated a severe discrepancy between her ability and her achievement in reading and was diagnosed with dyslexia, there was no adverse affect on her education and she did not demonstrate a need for specially designed instruction. The eligibility report stated there was no need for specially designed instruction in reading based on the evaluation results in the average range, her average performance in the classroom curriculum, MAP results, and the input from the Student's teacher. There were no dissenting opinions from the eligibility group, except the Parent.

13. The prior written notice, dated November 5, 2019, addressed the Student's eligibility under the category of other health impairment, and noted specially designed instruction was

⁹ According to the *Identification of Students with Specific Learning Disabilities*, OSPI, Revised 2014, Appendix C states, referring to the accepted assessment for the identification of a specific learning disability, "...However, this is not an exhaustive list of instruments that may be used to determine SLD eligibility."

recommended in the areas of written expression and study/organizational skills. Regarding eligibility and the need for specially designed instruction in the area of reading, the notice stated, “[Student’s] mother is concerned about her reading skills. [Student] was determined not eligible for specially designed instruction in the area of reading.” No rationale was given regarding the decision in the prior written notice.

14. On November 12, 2019, the Parent emailed the school psychologist, stating that her email constituted her dissenting opinion regarding the eligibility decision in the area of reading. The Parent stated the District failed to consider the results from the Grey Oral Reading Test and Comprehensive Test of Phonological Processing, which substantiated an adverse impact on the Student’s performance and the need for specially designed instruction for the Student. The Parent stated that the results from the MAP, SBA, and data from the Fountas and Pinnell assessment are not “valid and appropriate measures by which to assess [Student’s] reading skills, fluidity, and comprehension...” The Parent stated the data demonstrated the Student had a “need for specially designed instruction to remediate her reading deficits *and* address her high IQ, dyslexia, and co-morbid diagnoses of general anxiety disorder (GAD) and ADHD inattentive type...”
15. On December 2, 2019, the Parent filed this complaint with OSPI.
16. On December 4, 2019, the District convened an individualized education program (IEP) team meeting. The IEP team developed an IEP that provided for annual goals and specially designed instruction in the areas of study/organizational skills and written language.

School Psychologist Interview

17. In an interview with the school psychologist, the psychologist stated she was a certified school psychologist with ten years of experience. The school psychologist stated the Student demonstrated a severe discrepancy between her ability and achievement based on the full-scale score from the Wechsler Intelligence Scale for Children and the Student’s basic reading score on the Wechsler Individual Achievement Test. The school psychologist stated the Student’s reading disability did not adversely affect the Student’s educational performance and did not require specially designed instruction. The eligibility group based its decision on the private psychologist’s evaluation results, the Fountas and Pinnell assessment, MAP scores, SBA scores, and input from the classroom teacher. When asked about the possible impact of tutoring and summer school on the Student’s performance, the school psychologist stated she did not ask the Parent for information about the extra services, but the Student’s scores in previous grades were average.

CONCLUSIONS

Issue One: Evaluation Procedures – The Parent alleged the District failed to follow evaluation procedures by not considering the private evaluations from the Parent in determining the Student’s eligibility under specific learning disability in reading. The District denied the allegation.

In interpreting evaluation data for the purpose of determining eligibility for special education services, a school district must draw upon information from a variety of sources and ensure that information obtained from all these sources is documented and carefully considered.

Evaluations

Here, the Parent had private evaluations conducted in January and September 2019 that, in part, addressed the Student's reading. The private evaluation results indicated the Student was average in a number of reading areas, but also showed some weaknesses. In November 2019, the District evaluated the Student for special education eligibility. The Student was found eligible under the category of other health impairment. Regarding reading, the subject of the Parent's concerns and of this dispute, the District's evaluation included a variety of sources of data, including some of the results from the private evaluations, teacher input, classroom progress, and results from statewide testing. Based on this data, the Student exhibited a severe discrepancy between ability and achievement, but the District stated there was no documentation of the disability adversely impacting the Student's educational performance that required specially designed instruction. The data used by the evaluation report to determine eligibility supported the decision that the Student was not eligible under the category of specific learning disability (the Student was found eligible for special education services under the category other health impairment).

However, the IDEA and State regulations required the evaluation report to carefully consider all the available data, not just the data that ultimately supported their decision. In this case, there was no explanation as to why some portions of the below average results from the Comprehensive Test of Phonological Processing and the Gray Oral Reading Test were not given little or no consideration in relation to other evaluation findings. The evaluation report stated the Gray Oral Reading Test results were "considered," but it was unclear how the eligibility group carefully considered the Gray Oral Reading Test results if they were not familiar with the assessment. The report stated the "instrument is unfamiliar to this examiner, not available in the district, and not on the OSPI SLD Guide." The evaluation and eligibility group had an affirmative duty to ensure that the Gray Oral Reading Test was validated for purpose for which it was being used before accepting or dismissing the Gray Oral Reading Test results, in particular, or for any assessment. Further, the evaluation report did not explain the Student's "Level 2, not passing" performance on the English/language arts SBA, and her decline from the previous year's score, for example.

When there is conflicting data about a student's performance and ability, such as was the case here, the evaluation report is expected to reconcile its decision in light of all the data. Assessment results may be given more or less weight based on their reliability, validity, time of administration, input from the school, and other factors, but in order for a variety of sources of data being "documented and carefully considered," these factors must be documented. Thus, OSPI finds that the District's evaluation was insufficient in that it considered some portions of the private evaluations, but failed to address portions of the private evaluations that did not support the eligibility decision (although, potentially supported a need for services in reading regardless of the eligibility category).

Summer School and Tutoring

The evaluation report must consider a variety of sources when determining eligibility and the needs of a student. A variety of sources can include service augmentation, such as private summer school and tutoring. As with all information about a student, this information must be documented and carefully considered. Here, the evaluation report documented the Student's participation in the summer remedial reading program during Summer 2019 and the tutoring in remedial reading since March 2019. However, the November 2019 evaluation report documented, but did not carefully consider the possible effect of the summer school and tutoring on whether the Student's disability adversely affected her reading performance in the general education classroom, thereby, requiring specially designed instruction.

Beyond the eligibility question, an eligible student is not necessarily required to be eligible under a specific learning disability in reading to receive special education services in reading. Services are based on the individual student's needs, not eligibility category. Even if the Student was eligible under the other health impairment category, and not a specific learning disability in reading, the District is required to consider if the disability is having a negative impact on the Student's reading that required specially designed instruction. Regardless of eligibility category, the Student's needs may indicate a need for reading services, which some of the private evaluations indicate in their recommendations. Thus, OSPI finds the District in violation for failing to consider the Student's potential need for reading beyond her eligibility category.

CORRECTIVE ACTIONS

By or before **February 21, 2020** and **March 13, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **February 21, 2020**, the District is required to reevaluate the Student and determine the Student's eligibility for a specific learning disability in reading. The District must first conduct a review of existing data to determine if additional data is needed to determine if the Student is eligible under the category of a specific learning disability in reading. If additional data is needed, the District will expedite the evaluation and convene the eligibility group, including the Parent, to determine the Student's eligibility.

If Eligible – by **February 28, 2020**, the District must convene the IEP team to review and revise the Student's IEP, reflecting the need for reading services.

If Not Eligible - By **February 28, 2020**, the District must convene the IEP team. The IEP team must still consider whether the Student has a need for reading services that is related to the Student's disability. If the Student demonstrates no need for reading services, the District must provide the Parent with prior written notice regarding its decision. If there is a need for reading services, the IEP team must review and revise the Student's IEP to reflect the need for reading services.

By **March 13, 2020**, the District will provide OSPI with a copy of the reevaluation and new IEP, if needed. At that time, OSPI will determine the amount of compensatory services, if any, that are required to be provided to the Student and the next steps in the corrective action plan.

DISTRICT SPECIFIC:

By **March 6, 2020**, the District will issue written guidance to all District school psychologists regarding the need to document and carefully consider all evaluation data in making eligibility determinations. In addition, eligibility groups are required to document and carefully consider any pertinent private service augmentation as necessary in determining eligibility and the need for specially designed instruction. The written guidance must be approved by OSPI.

By **February 21, 2020**, the District will provide OSPI with a draft of the written guidance. OSPI will provide feedback by February 28, 2020 regarding any necessary revisions.

By, **March 13, 2020**, the District will provide OSPI with documentation that the written guidance has been received by all school psychologists in the District.

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

Dated this ____ day of 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.)