

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-08

PROCEDURAL HISTORY

On January 26, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from an individual¹ (Complainant) on behalf of the parent (Parent) of three students (Students A, B, and C) attending the Lake Chelan School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Students' education.

On January 27, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 9, 2022, OSPI received the District's response to the complaint and forwarded it to the Complainant on February 10, 2022. OSPI invited the Complainant to reply.

On February 14, 2022, OSPI received a call from the Complainant and spoke with the Complainant about issues in the complaint.

On February 28, 2022, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On March 10, 2022, OSPI interviewed the District's director of inclusion and student services.

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

SCOPE OF INVESTIGATION

This Complainant also made numerous allegations that are outside the OSPI Special Education Division's scope of authority to investigate through the special education community complaint process, including allegations that the District violated RCWs and engaged in retaliation and discrimination. OSPI provided the Complainant with information about other avenues to address these concerns in its opening letters. Any references to such allegations or events in this decision are only included if necessary for context or continuity and are not intended to identify additional issues or potential violations.

ISSUES

Student A

1. Whether the District followed procedures to ensure Parent participation and address the Parent's requests at Student A's November 3, 2021 individualized education program (IEP) meeting, including addressing requests around:

¹ The Complainant stated he is the Parent's advocate and included a release of information signed by the Parent, giving OSPI permission to share the Students' personally identifiable information with him.

- a. Transportation;
 - b. Paraeducator services;
 - c. Communication plan; and,
 - d. Applied behavior analysis (ABA) services?
2. Whether the District provided the Parent with a copy of the Student's IEP per WAC 392-172A-03110(d)?
 3. Whether the District followed procedures to respond to the Parent's December 3, 2021 request for an IEP meeting?
 4. Whether the District implemented the transportation provisions in the Student's IEP?

Students B and C

1. Whether the District followed procedures in determining Students B and C were not eligible for special education per WAC 392-172A-03040 on December 6, 2021?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Parent Participation in IEP Development: 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 agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, Question 9).

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. IDEA, 64

Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100.

Copy of IEP for Parents: A district must provide parents with a copy of their student's IEP, with any amendments, at no cost to the parents. 34 CFR §300.322(f); WAC 392-172A-03100(8).

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. 34 CFR §300.301; WAC 392-172A-03005. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

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) (see also WAC 392-172A-03020)(g) "In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.")

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, including information provided by the parents. 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. 34 CFR §300.304; WAC 392-172A-03020.

FINDINGS OF FACT: STUDENT A

2021–2022 School Year

1. At the start of the 2021–2022 school year, Student A was eligible for special education services under the category of autism and was in the first grade.
2. The District’s 2021–2022 school year began on August 31, 2021.
3. On September 20, 2021, the Student’s private psychiatrist wrote a letter regarding the Student. In the letter, she noted the Student had been diagnosed with “Unspecified Disruptive, impulse-control, and conduct disorder” with a secondary autism with accompanying language impairment diagnosis. The private psychiatrist requested to attend the Student’s upcoming individualized education program (IEP) meeting and requested “that transportation to and from school in a bus that can allow for proper supervision to be sure he had help to understand the social communications that go on in a bus” be provided, “so that he is able to feel comfortable in his ride to and from school so that there are not negative effects on his home life ability to feel positive about going to school each day.” The psychiatrist noted that the Student resisted going to school, displayed aggressive behaviors “as he prepares for school,” and “returns from school commonly frustration and aggression which is released in the home setting as soon as he comes home.” The psychiatrist requested there be a person on the bus other than the driver to support the Student.

Based on the complaint, it was unclear when this letter was provided to the District, although the Complainant stated the letter was sent to the District in late September 2021.

4. On October 6, 2021, the Parent and Student A’s reevaluation group met to discuss a recent reevaluation.
5. On November 3, 2021, the principal met with the Parent to complete a harassment, intimidation, and bullying (HIB) and safety plan to address an incident that occurred between Student A and another student in late October. In response to the incident, and at the Parent’s request, the District changed the Student’s general education classroom and developed a plan to keep Student A and the other student separated at lunch. Additionally, a paraeducator was assigned to provide support and supervision during lunch and recess to ensure Student A and the other student did not interact.
6. On November 3, 2021, the IEP team, including the Parent, Complainant, and the Student’s private psychiatrist, met to develop the Student’s annual IEP. The team discussed, according to the meeting notes, the safety plan, which included that a staff person would be designated to monitor the Student on the playground. The notes further indicated that the Parent was concerned about the Student’s ability to communicate “with others how he is feeling...about what happened throughout the day.” As a result, the team wanted to “try a self checkout report – focus on the good things and help us track the challenges academic and social)—if he doesn’t share anything, that is data as well.” The notes included that the Student did not

have behaviors that impede his learning or the learning of other students. The notes also indicated the Parent requested a copy of the Student's daily checkout report. Finally, the notes documented the team discussed an incident on the bus and the Parent's request for special transportation.

7. The November 3, 2021 IEP noted the Parent was "concerned about [Student's] inability to self advocate at school" and included information that the Student had "difficulty expressing his emotional needs in the classroom. Steps should be taken to help [Student] express how he is feeling;" however, the IEP stated the Student did not have behaviors that impeded his learning or the learning of other students.

The IEP included an annual goal and specially designed instruction in adaptive/self-help (to be provided in the general education setting, with progress reporting at the trimester), and several accommodations and modifications. The Student's adaptive/self-help goal related to functional communication focused on the Student completing a daily report form to communicate his needs.

The IEP included that the Student would receive special transportation and that the Student "will benefit from the the [sic] smaller bus with fewer students on it." The prior written notice documenting the IEP meeting noted the Student was "benefitting from inclusive setting and is making adequate gains towards goals."

8. Regarding the Student's IEP itself, the Complainant, in his reply to the District's response, stated the District "claims [the Student] has met his goals" but that the Student has not because the Student "can barely spell his name" or write the date on the daily check-in sheet and that the Student was not writing two sentences as outlined in the goal but instead the Student "has yet to write a single word other than his name."

Regarding the daily check-in sheet, the Complainant stated in his reply that the report was supposed to be sent to the Parent daily and that the IEP is "vague and does not mention anything to do with the mother." The Complainant stated it was "imperative for mom to receive prior to the child coming home for safety reasons. The mother had to know the emotional state of [Student]. This never really happened. When something happened at school she was not notified."

9. The District, in its response, stated that the Parent attended and participated in the November 3, 2021 IEP meeting.

Regarding the paraeducator, the District stated the Parent requested the paraeducator not as a special education support based on the Student's disability but instead because of a bullying incident. The District stated it agreed to provide increased supervision during lunch and recess as part of the safety plan.

Regarding a communication plan, the District stated:

As part of the general practice in the school building, since the beginning of the school year, Student A's teacher provided weekly updates² regarding the Student's progress to the Parent...following input received from the Parent at the November 3, 2021 IEP meeting for additional communication from Student A's teacher, beginning November 8th, Student A's teacher has completed daily check-ins of the student's mood at the end of the end of each day via dictation...Additionally...the Student's IEP Case Manager, has monthly checks in with the Parent.

Regarding ABA services, the District stated neither the Parent nor any other members of the IEP team raised the issue or requested ABA services at the IEP meeting. The director stated that she interviewed all school members of the IEP team in preparing the response to the complaint and none of them recall a request for ABA services. The District noted the Student does not have any behaviors that impede his learning or the learning of other students.

10. Regarding the IEP meeting, according to the Complainant, the District did not allow the Parent or her invitees to speak. The Complainant stated that at one point, the psychiatrist "became upset with this...and forced her opinion which was the only reason [Student] received the bussing change." The Complainant stated the Parent requested four changes to the Student's IEP, including:

- Special education transportation, which the Complainant stated the Parent had been asking for since the first week of school;
- Paraeducator support;
- Daily communication from the school about the Student's day, before the Student returns home; and,
- Applied behavior analysis (ABA) services.

The Complainant stated they left the meeting "pretty disgusted knowing the only thing [Student] received of any help was the change in bussing which [Parent] had been trying to get for over two months."

In a call with the Complainant, the Complainant shared that the Parent's concern was in part that they did not think the IEP developed at the meeting was finalized. The Parent believed they would meet again to continue discussing the IEP and that the District's director of inclusion and student services (director) was "very clear this was not the final document." Further, the Complainant stated and reiterated in his reply to the District's response that the notes from the meeting did not include everything the Parent raised for discussion, like ABA services and paraeducator support. The Complainant specifically noted that he was at the IEP meeting and witnessed the Parent requesting ABA services.

² The District's response included emails from the Student's teachers providing updates on his day, how the Student was doing and what he was working on, and areas of success and struggle. The emails included were sent weekly from September through the end of October 2021. The emails indicated no major behavior concerns beyond the Student needing some gentle reminders or redirects to follow directions.

The Complainant also disagreed with the District's position that the Student did not have concerning behaviors. The Complainant explained that the Student exhibited aggressive behaviors at home.

11. On November 4, 2021, the director contacted the District's director of transportation about transportation for the Student and discussed transportation with the Student's case manager.
12. On November 8, 2021, the District began providing the Student with special transportation. The District noted in its response that a paraeducator walks Student A from the classroom to the special education bus daily.
13. Regarding transportation, the Complainant stated that the concern was related to the fact that it took the District two months to add transportation to the IEP. The Complainant also stated:
 - "The bus doesn't stop if [Student] is not out at the curb."
 - "There is not always a second adult on this bus, and clearly there is no protection for [Student] case in point ([Student] ran in front of another school bus)."
14. Also, on November 8, 2021, after the Student switched classes to a new teacher, the teacher emailed an update and began sending a "daily update report" approximately daily. The report included a section to note how the Student's day was, "good things about today," what the Student was working on, "special things...to remember," and an additional section for notes.
15. On November 10, 2021, the Parent sent a handwritten note to the District, stating that because she was not allowed to record the November 3, 2021 IEP meeting, she was requesting a copy of the meeting notes and the IEP.
16. According to the District response, the District stated that the case manager mailed the Parent a copy of the IEP following the November 3, 2021 IEP meeting.

The Complainant stated the Parent never received an IEP in the mail and that sending IEPs in the mail was not the District's usual practice.

17. On November 16, 2021, the District's special programs secretary emailed the Parent a copy of the IEP meeting notes and stated "his IEP should come in another email. Please let me know if you didn't receive it."

In a separate email, the District emailed a copy of the Student's IEP. According to the complaint, the Parent was unable to download the attached IEP.

In the District superintendent's later letter (dated December 1, 2021), the superintendent noted the Parent did not respond to the email with the IEP and notify them that she could not open the attachment. Thus, the District assumed as of around November 16, 2021, that the Parent had been able to access the IEP.

In a subsequent email from the special program secretary to the superintendent and director, the secretary stated she discovered that the IEP likely did not go through because she failed to check a box in the District's online program to give access.

18. On December 1, 2021, the Complainant called the District superintendent and the Parent and Complainant met with the superintendent. Later in the day, the superintendent provided the Parent a letter, and according to the complaint, "a copy of an incomplete IEP." The letter indicated the Parent had shared concerns and that the District was responding, as follows, summarized:

- The Parent requested that the November 3, 2021 IEP meeting be recorded and this was denied. The District noted they were researching the issue because the District did not have a policy allowing the recording of meetings.
- The Parent requested a copy of the updated IEP, meeting notes, and safety plan. The District responded that the meetings notes were emailed on November 16, 2021 and the IEP was emailed the same day in a separate email. The District later determined the IEP had not attached properly to the email. The District also stated the safety plan had been emailed on November 17, 2021.
- Address concerns regarding the Student being "assaulted" on the playground.

The superintendent also attached copies of the IEP, IEP meeting notes, and safety plan to the letter.

The Complainant noted in his reply to the District's response that in the version of the IEP provided by the superintendent, the signature page was unsigned.³ The Complainant stated the District refused to give the Parent a copy of the IEP.

19. In comparing the IEP provided by the District in its response to this complaint and the IEP provided by the Complainant in his reply to the District's response, which the Complainant stated was the version provided by the superintendent, OSPI notes:

- The version provided by the Complainant did not contain signatures of the IEP team.
- OSPI could identify no other differences between the two IEPs.

20. On December 2, 2021, the Complainant called the superintendent regarding the IEP and stated the IEP was incomplete because it was missing the signature page.

21. On December 3, 2021, the Parent contacted the director and requested an IEP meeting. The director responded and included the IEP case manager so that they could get a meeting scheduled.

22. On December 15, 2021, the case manager and Parent communicated and agreed to schedule the meeting for January 12, 2022. Subsequently, the case manager mailed home a meeting invitation for the January 2022 IEP meeting.

³ The Complainant further noted that they only received a version of the IEP with the signature page on February 11, 2022 after the complaint was filed.

23. On December 16, 2021, according to the complaint, the Parent "received a phone call [that Student] had intentionally run in front of a moving school bus." The complaint indicated the District was reevaluating a safety plan for the Student following this incident.
24. The District investigated the transportation concern and notes from the bus driver indicated "the family has a somewhat sloped hillside and on 12/16/21 [Student] had started to run down the hill toward the bus." The bus driver told the Student "he needed to walk to the bus so he didn't accidentally slip and fall on the icy hill or accidentally run in front of the bus." The bus driver stated the Student complied, walked the remainder of the way to the bus, and did not run in front of the bus. The driver noted that the Student "is a lovely child and a pleasure to have on his bus. NO incidents of different behavior reported."
25. The District was on break from December 20, 2021 through January 3, 2022.
26. On January 10, 2022, due to concerns about COVID-19 public safety, the District moved all IEP and evaluation meetings from in-person to Zoom.
27. On January 11, 2022, the Student's case manager emailed the Parent and stated that they would need to hold the IEP meeting via Zoom due to the number of COVID-19 cases in the area.
28. On January 12, 2022, the principal sent the Parent a text message, encouraging her to join the Zoom IEP meeting that day.
29. Also, on January 12, 2022, the director sent the Parent a text message that they could not hold IEP meetings in-person due to the rising COVID-19 case numbers and that the meeting would need to be held via Zoom. The Parent responded that she would not attend the IEP meeting via Zoom as she wanted to meet in person. The director stated, "If this doesn't work for you, we can reschedule the iep for a later date." The Parent texted, "Ok fine I'm sure it will take another six weeks like this one. I'm going to go ahead and file a complaint with the state."
30. On January 12, 2022, the District members of the IEP meeting arrived for the IEP meeting in case the Parent decided to attend via Zoom. The District stated the team waited 15 minutes and when the Parent did not join, asked the case manager to reschedule the meeting.
31. On January 26 and February 4, 2022, the case manager contacted the Parent to reschedule the IEP meeting. The Parent responded that she wanted an in-person meeting and that subsequently once the complaint was filed with OSPI, she wanted to wait until that process was complete.
32. In an interview with the District, the director emphasized that they do not see the behavior concerns raised by the Complainant in the school setting. The District stated that the family reports behavior concerns related to the Student hitting the Parent at home, but the District did not see this behavior at school. Regardless, the director stated that they have been having

their board-certified behavior analyst (BCBA) observe the Student in various settings during the school day and collect data.

CONCLUSIONS: STUDENT A

Issue One: Parent Participation – The Complainant alleged the Parent made requests related to transportation, paraeducator services, a communication plan, and applied behavior analysis (ABA) services at the November 3, 2021 individualized education program (IEP) meeting and that the District improperly denied the Parents requests or failed to allow the Parent and her invitees to discuss the requests.

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 agency will provide to the child and in what setting.

Transportation: The Complainant stated his primary concern was that the Parent had been asking for special transportation since the beginning of the school year and that it had taken two months to get the transportation in place. The Student's private psychiatrist wrote a letter, which was provided to the District in late September 2021, and which included a request for "transportation to and from school in a bus that can allow for proper supervision to be sure he had help to understand the social communications that go on in a bus," and that there be a person on the bus other than the driver to support the Student. However, the District stated and the communication logs indicated that no earlier request for special transportation was made—at least not until the end of September with the psychiatrist's letter. At the November 3, 2021 IEP meeting, the team agreed to provide special transportation and the special transportation was implemented shortly thereafter. OSPI finds that there was not a clear record that the Parent had been requesting special transportation since the first week of school. Additionally, while the psychiatrist's letter did mention transportation, such a request would need to be considered by the Student's IEP team—which is what occurred here. OSPI finds the District followed procedures to consider the Parent's request and OSPI finds no violation.

Paraeducator: On November 3, 2021, prior to the IEP meeting, the Parent met with the principal to discuss an incident that occurred between Student A and another student in late October. The Parent and principal developed a safety plan, which included, in part, additional supervision provided by a paraeducator at lunch and recess. At the IEP meeting the same day, the IEP team discussed the safety plan and that a staff person would be designated to provide additional supervision. There is no documentation that the Parent requested additional paraeducator support or a different paraeducator support arrangement than in place with the safety plan. The District stated that the paraeducator support was not a special education support. OSPI notes that this may have been confusing to the Parent as the safety plan was also discussed at the IEP

meeting. Regardless, while the Complainant alleged that the Parent was not allowed to speak at the meeting and that her requests were not addressed, the documentation in the complaint indicates that the paraeducator was discussed at the IEP meeting. OSPI finds no violation.

Communication Plan: The Complainant alleged that the District failed to provide the Parent with daily communication about the Student's day before the Student returned home from school. The Complainant stated that the report was supposed to be sent to the Parent daily and that it was "imperative for mom to receive prior to the child coming home for safety reasons. The mother had to know the emotional state of [Student]."

In the IEP developed on November 3, 2021, the Student had a goal related to functional communication, which focused on the Student completing a daily report form to communicate his needs. The IEP also noted the Parent was concerned about the Student's ability to communicate "with others how he is feeling...about what happened throughout the day." OSPI finds the Parent's concern helped lead to the development of the goal. While the notes from the meeting indicated the Parent requested a copy of the Student's daily check out report, nothing in the IEP specified that the report needed to be sent to the Parent each day *prior* to the Student getting home. Despite this lack of specificity, it is clear the Parent had to opportunity to share her concern with the IEP team, that the team discussed the concerns, and that the team amended the Student's IEP to address his needs and be responsive to the Parent's concern.

The Complainant also made allegations that the communication plan was not being implemented and that the Student had not met his goal. Again, the IEP does not specify that the report is to be sent to the Parent daily prior to the end of school, thus a failure to do this is not a failure to implement the IEP. Overall, the documentation indicates that the District made efforts to regularly communicate with the Parent, including sending copies of the Student's report, the Student's teachers sending weekly updates, and the case manager checking in with the Parent. OSPI finds that the IEP considered the Parent's concerns and requests regarding communication, updated the Student's IEP to begin addressing the need, and was responsive in its communication with the Parent. OSPI finds no violation.

ABA Services: The Complainant alleged that the Parent requested ABA services at the meeting and that the District refused the request and failed to document the request in the IEP meeting notes. The Complainant alleged the Student received ABA services in the past and that without these services at school, he had regressed. The District stated in its response and the director confirmed that none of the school members of the IEP team recall the Parent requesting ABA services at the IEP meeting. The District also stated that the Student does not have any behaviors that impede his learning and do not see the aggressive behaviors as described by the Parent at school.

OSPI finds that there is insufficient evidence to find that the Parent requested ABA services and the District denied that request. However, OSPI recognizes that there are differing recollections of the IEP meeting, which is why meeting notes can be a very important tool and why it is important to have a detailed prior written notice that documents all parent requests, including those agreed upon to implement and those denied. While OSPI finds no violation, OSPI recommends the District

connect with the family and see if the Student's family wants to discuss whether ABA services are needed in the educational environment with the IEP team and respond appropriately.

Overall, OSPI finds that the Parent and her invitees had an opportunity to participate in the IEP meeting as evidenced by the changes made that were responsive to the Parent's requests and Student's needs, including adding special transportation, developing a goal around the Student's functional communication, and discussing the paraeducator in the context of the safety plan. While the Parent may not agree with every outcome of the meeting, a lack of agreement does not necessarily mean participation was limited. OSPI finds no violation with respect to the Parent's participation in the November 3, 2021 IEP meeting.

Issue Two: Copy of IEP – The Complainant alleged the District failed to provide the Parent with a copy of the finalized IEP per WAC 392-172A-03110(d). Upon investigation, it appears the Complainant was largely concerned that the Parent did not receive a copy of the IEP with the signature page until the filing of this complaint. A district must provide parents with a copy of their student's IEP, with any amendments, at no cost to the parents.

On November 3, 2021, the Student's IEP team met and developed his annual IEP. On November 10, 2021, the Parent requested a copy of the IEP and meeting notes. Following this, the District emailed a copy of the IEP to the Parent; however, the attached IEP was incorrectly attached and was not accessible to the Parent, although notably, the email with the IEP prompted the Parent to respond if she could not access the attachment and the Parent did not email the District. The District stated it mailed a copy of the IEP as well and the Complainant stated the Parent did not receive anything in the mail.

Subsequently, after the Parent and Complainant raised concerns with the District superintendent, the superintendent provided the Parent a copy of the IEP. According to the Complainant, the IEP provided by the superintendent was "incomplete." Upon review, OSPI could find no difference between the IEP provided by the superintendent and the IEP provided by the District in response to this complaint, except that the IEP provided by the superintendent was missing the signature page. OSPI notes though, that the signature page is not a required component of the IEP⁴—signatures on an IEP denote attendance at/participation in the IEP meeting as there is no requirement in Washington to sign an IEP nor is there a requirement that a parent consent to each individual IEP—and as such, the missing signature does not render the IEP provided by the superintendent substantively incomplete. Thus, while there was a delay in getting the Parent a copy of the IEP following the meeting, OSPI finds that the IEP provided to the Parent by the superintendent meets the requirement in the state special education regulations. OSPI finds no violation. OSPI does recommend the District review this requirement with staff and ensure copies are accessible if emailed.

Issue Three: IEP Meeting Scheduling – The Complainant alleged that the District failed to timely schedule an IEP meeting following the Parent's December 3, 2021 request. When a parent or

⁴ See WAC 392-172A-03090, which contains the definition of an IEP and lists the required components, which do not include signatures of meeting participants.

district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting.

On December 3, 2021, the Parent requested an IEP meeting. The director responded and included the case manager to get a meeting scheduled. On December 15, 2021, the case manager communicated and agreed to schedule the IEP meeting on January 12, 2022 (the District was on winter break December 20, 2021 through January 3, 2022). Around January 10, 2022, due to concerns about the increase in COVID-19 cases, the District moved all IEP and evaluations from in-person to Zoom and contacted the Parent, notifying her of this change. Despite encouragement from the District, the Parent declined to join the January 12, 2022 Zoom IEP meeting and instead stated she wanted to meet in person. The District contacted the Parent on January 12, January 26, and February 4, 2022 and attempted to reschedule the IEP meeting. The Parent indicated she wanted an in-person meeting and then indicated she wanted to wait until this complaint process was complete.

While both the Parent and Complainant communicated frustration with the length of time between the request for a meeting on December 3, 2021, and the scheduled meeting on January 12, 2022, OSPI notes that factoring in winter break, the meeting was scheduled approximately 17 school days after the request, and based on the documentation, on a date that was mutually agreed to by the Parent. Ideally, IEP meetings should be scheduled as soon as possible following a request, but the schedule here was not unreasonable. Further, OSPI notes there is no specific right to an "in-person" IEP meeting and defers to the District's judgement regarding holding IEP meetings via Zoom as the District has to be responsive to the local health and safety conditions created by the ongoing COVID-19 pandemic. Switching the IEP meeting to Zoom is not in and of itself a violation, and when the Parent indicated she preferred to meet in person, the District made several attempts to reschedule the meeting. OSPI finds the District was responsive to the Parent and made reasonable IEP scheduling decisions both in terms of timing and health/safety conditions. OSPI finds no violation. OSPI does recommend the District continue communicating with the Student's family and schedule an IEP meeting if one is still requested by the family. OSPI also recommends the District and family consider holding a facilitated IEP meeting.

Issue Four: Transportation Implementation – The Complainant alleged that the District's special transportation was not implemented consistently, specifically the Complainant stated the bus does not always stop if the Student is not at the curb and that there was not a second adult on the bus, which resulted in unsafe situations, including the Student running in front of a bus. A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP.

On November 3, 2021, the Student's IEP team met and developed his annual IEP, and the team agreed to add special transportation to the IEP, noting the Student "will benefit from the the [sic] smaller bus with fewer students on it." On November 4, 2021, the director contacted the District's transportation office and discussed transportation with the Student's case manager. On November 8, 2021, the District began providing special transportation for the Student and noted a paraeducator walks the Student from the classroom to the special education bus daily. The IEP does not specify that a paraeducator or second adult be on the bus with the Student; therefore, failing to provide a second adult on the bus is not a failure to implement the IEP. If this is a support the family believes the Student needs, the family should request an IEP meeting to discuss. There is no indication the Student's transportation was not materially provided after it began on November 8, 2021.

Finally, the Complainant alleged the Student was unsafe with respect to transportation. According to the complaint, on December 16, 2021, the Parent was told the Student ran in front of a bus. According to the documentation provided by the District, the District investigated and discussed with the Student's driver. On the date in question, the Student was running toward the bus and the driver told the Student to walk so that he did not slip and fall, or accidentally run in front of a bus. The driver stated the Student walked the remainder of the way and that there was no instance of him running in front of the bus, and that no behavior incidents had occurred on other dates. OSPI finds that the documentation is insufficient to show the Student was in danger with respect to transportation or that there was a failure to provide special education transportation. OSPI finds no violation.

FINDINGS OF FACT: STUDENT B

2021–2022 School Year

33. At the start of the 2021–2022 school year, Student B was not eligible for special education services.
34. On November 4, 2021, the District received a special education referral for Student B from a children's hospital. The referral included academic and physical/behavioral concerns: putting thoughts into spoken words, attention and concentration, complying with adult directives, frustration, mood weeks, social/peer interactions, and physical/motor concerns. In the referral, a nurse practitioner stated the Student "has difficulty with fine motor skills," poor social skills, and a "history of developmental delays and early intervention services. She has muscle weakness and endurance concerns."
35. On November 10, 2021, the Parent also made a special education referral for Student B.
36. On November 30, 2021, the District's "Student Intervention Team" (SIT) met to discuss the referral for Student B and reviewed data (school, medical, and other records). The Parent did not attend the SIT meeting. The SIT found that "the data demonstrated no impact academically or behaviorally to warrant a special education evaluation of Student B."

37. The District stated that in general, SIT meetings do not always include parents. Many SIT meetings are the result of a teacher asking for support or help with a student who may need interventions. However, the District stated that if there is a parent referral for special education, then a parent should be invited to the SIT meeting where the referral is first discussed.
38. On December 1, 2021, the District sent the Parent a notice of special education referral and invited the Parent to a meeting scheduled for December 6, 2021. The District also stated in its response that, "as a means to gather additional information...[the District] collected and examined additional school, medical, and other records in possession of the Parent and District," which included a report from the children's hospital, classroom data, and i-Ready assessment results. The i-Ready diagnostic results indicated the Student ranged from kindergarten grade level to mid/late first grade level, but on average was at the kindergarten level.
39. On December 6, 2021, the SIT met again and reviewed additional records and data for Student B. The Parent was invited to and participated in the meeting. The team reviewed data, including results from a behavior/social emotional/adaptive screener given in October 2021 to all students kindergarten through second grade, i-Ready data, and classroom report card data. The behavior data indicated the Student was in the "normal"/"normal risk" to acceptable range. The Student's first grade report card included the following comments:
[Student] is a kind and respectful student. I am proud of how she gives 100% effort in all areas. [Student] is a role model for peers. She is a conscientious and self-motivated student.
[Student] works well in a large group, small group, partner or one-on-one setting. She readily grasps new concepts and ideas. She also takes an active role in class discussions. She is making great academic growth in all areas.
- The team determined a special education evaluation was not appropriate and the special education referral document indicated the recommendation was "no further action needed."
40. Also, on December 6, 2021, the District sent the Parent prior written notice, documenting the SIT meeting and referral decision. The prior written notice stated that the SIT "determined that a special education evaluation was not necessary" at the November 30, 2021 meeting and that the December 6, 2021 meeting was to discuss the decision with the Parent. The notice summarized that "the team does not have data to support a need for special education evaluation at this time."
41. Based on the District's calendar, December 6, 2021 was 18 school days after the November 4, 2021 referral.
42. The Complainant characterized the December 6, 2021 meeting as an "IEP meeting to discuss the placement of [Student B] and [Student C]." Regarding Student B, the complaint stated the Student should be eligible for special education because she receives occupational therapy and is suicidal. According to the complaint, the District told them to consider a 504 plan. The complaint alleged the District only looked at the Student's test scores when considering whether she was eligible for special education.

43. On January 5, 2022, the Parent gave the District a copy of a letter from Student B's audiologist. The letter from the audiologist indicated the Student demonstrated "a moderately severe to severe hearing loss" that would qualify her for "special services under the category of Hearing Impaired." The letter recommended the Student be placed in a classroom with "an overhead listening system" and summarized that students with hearing loss can experience behaviors as a result of auditory fatigue.
44. Also, on January 5, 2022, the District invited the Parent to a meeting scheduled for January 10, 2022, to review the audiologist report as a referral for a special education evaluation.
45. On January 10, 2022, a SIT meeting was held regarding Student B to review the new information from the audiologist. The meeting was attended by the Parent, Complainant, school psychologist, principal, and the director. The team determined it would refer the Student for a Section 504 plan. The prior written notice documenting the meeting indicated the Student would be provided accommodations, such as seating in the front of the class and that an FM system would be ordered and installed in her classroom. The prior written notice further stated that the Student was "not demonstrating a need for specially designed instruction at this time."
46. According to the Complainant, at the January 10, 2022 meeting, the District stated that Student B was not eligible for special education services "due to her test scores."
47. On January 14, 2022, the SIT met again to review the audiologist report. The special education referral document indicated that "upon further discussion, the team determined that we will move forward with the special education evaluation."
48. On January 20, 2022, the District documented the referral decision in a prior written notice, stating the team "has determined that an evaluation is necessary in order to determine whether [Student] is eligible for special education services." The notice further included the reasoning for the decision, as follows:

On 1/10/2022, the team reviewed the audiologist report submitted by [Parent]. The team determined that a 504 plan would be most appropriate for [Student] at this time since she is not demonstrating a need for specially designed instruction...Upon receiving a request for an [independent educational evaluation] from [Parent] on 1/12/2022, the team decided to move forward with a special education evaluation to determine whether or not special education services are appropriate for [Student] at this time.
49. Also, on January 20, 2022, the Parent provided consent for a special education evaluation in the areas of medical/physical, general education, audiology, age-appropriate transition, adaptive, fine motor, vision, and communication. The projected date of completion for the evaluation was March 11, 2022.
50. In its response, the District stated it "did not follow procedures in determining Student B's eligibility" because it "did not notify the Parent of the SIT meeting scheduled for November 30th, 2021." The District proposed and provided information that it conducted a training for

building administrators, school psychologists, and guidance counselors on special education referral processes, including timelines and parent participation.

CONCLUSIONS: STUDENT B

Issue: Special Education Eligibility Procedures – The Complainant alleged the District failed to follow eligibility procedures when it only looked at test scores to determine whether Student B’s was eligible for special education services.

When considering a student’s eligibility for special education services, districts must follow referral and initial evaluation procedures. When a student is referred for a special education evaluation, the district must document that referral and provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student and then provide the parent with written notice of its decision. Here, the Student was referred for an initial special education multiple times.

November 4, 2021: On November 4, 2021, the District received a referral for an initial special education evaluation for Student B from a children’s hospital; and, on November 10, 2021, the Parent also referred the Student for a special education evaluation.

On November 30, 2021, the District’s “Student Intervention Team” (SIT) met and discussed the referral and effectively decided not to initiate a special education evaluation for the Student. The referral documentation noted the SIT found that “the data demonstrated no impact academically or behaviorally to warrant a special education evaluation of Student B.” The District stated that while SIT meetings don’t always include parents, if there has been a referral for special education services, the parent should be involved in the SIT meeting where the referral is first discussed. Here, the District admitted the Parent was not invited to the first meeting and proposed—and subsequently conducted—a training for building administrators, school psychologists, and guidance counselors on special education referral processes including timelines and parent participation. Given that the decision to not evaluate was made on November 30, 2021 and the Parent was not involved, OSPI finds a violation. However, no further corrective actions are warranted because the District corrected the error through training and also had an additional SIT meeting on December 6, 2021 where the Parent attended.

On December 6, 2021, the SIT, including the Parent, met again and reviewed the special education referral. They reviewed medical records, information provided by the Parent, classroom data, i-Ready diagnostic tests, and social emotional screener data. The documentation indicated the Parent and Complainant attended the December 6, 2021 meeting and participated. The team determined a special education evaluation was not necessary as the team did not have “data to support a need for special education services.” The Complainant argued that the Student should be eligible for special education services because she receives occupational therapy and has suicidal ideations, and that the District only looked at the Student’s test scores. However, just

because a student receives a therapy outside school does not necessarily mean the student has a disability that requires special education services to address. Further, the documentation indicates the District reviewed a variety of information, including information from the Parent, medical records, and classroom data—more than just test scores—to make a determination. OSPI finds no flaw with the District’s consideration and referral decision, and thus finds no violation.

January 5, 2022: On January 5, 2022, the Parent provided the District with a copy of a letter from the Student’s audiologist, indicating the Student had “moderately severe to severe hearing loss.” The District treated this as another referral for a special education evaluation, scheduled an SIT meeting, and held the meeting with the Parent on January 10, 2022. The team reviewed the information from the audiologist and initially referred the Student for a 504 plan, as the team determined the data did not support a need for special education services. The Complainant again alleged the District stated the Student was not eligible for special education services “due to her test scores.” Following the meeting, the team reconsidered and decided to move forward with a special education evaluation. On January 20, 2022, the District provided the Parent with prior written notice that it had “determined that an evaluation is necessary in order to determine whether [Student] is eligible for special education services” and the Parent signed consent for the evaluation the same day. As of the filing of the complaint on January 26, 2022, the initial evaluation was underway. Despite the District’s decision and then change of mind, the District followed referral procedures and initiated an initial evaluation. OSPI finds no violation.

FINDINGS OF FACT: STUDENT C

51. At the start of the 2021–2022 school year, Student C was not eligible for special education services.
52. On November 8, 2021, at the Parent’s request, Student C participated in the District’s child find activities. According to the District, as part of its child find protocol, the school psychologist screened Student C in the areas of social emotional and cognitive. The Parent also completed a questionnaire, indicating her concerns. The screening and Parent questionnaire indicated there were concerns around the Student’s social/emotional skills.
53. On December 6, 2021, the District sent the Parent a notice of special education referral and the Parent attended the SIT meeting to review the results of the screening, discuss the referral, and discuss the Parent’s concerns. The team agreed to conduct a special education evaluation of Student C.
54. Also, on December 6, 2021, the Parent signed consent for the initial evaluation.
55. The Complainant characterized the December 6, 2021 meeting as an “IEP meeting to discuss the placement of [Student B] and [Student C].” Regarding Student C, the complaint alleged the District only looked at the Student’s test scores when considering whether he was eligible for special education. The Complainant stated that the Parent brought up the Student’s behavior during the meeting and that his teacher agreed that further testing should be done.

56. On January 31, 2022, the Parent met with the evaluation group to review the results of the initial evaluation. The evaluation report noted the group did not find the Student eligible for special education services and that the Student was “functioning at an age-appropriate level.” The evaluation report documented that the Student does not have a diagnosed disability and did not show an adverse educational impact or need for specially designed instruction. The evaluation report included information that the Student was performing at an age-appropriate level, making age-appropriate growth, and his teachers reported average social/emotional skills on the behavior/social emotional assessments conducted. The evaluation identified no academic concerns.

The evaluation report also indicated the Parent was given an opportunity to provide a health history form, which she did not return but did provide information at the evaluation meeting, including that the Student had no diagnosed disability. The Parent was also provided an opportunity to fill out the Parent rating forms for the behavior/social emotional assessment and did not return the forms.

CONCLUSIONS: STUDENT C

Issue: Special Education Eligibility Procedures – The Complainant alleged the District “only looked at the Student’s test scores when considering whether [Student C] was eligible for special education” at a December 6, 2021 meeting.

When considering eligibility for special education services, districts must follow referral and initial evaluation procedures. A student who is eligible for special education is a student who has been evaluated and determined to need special education services because he has a disability in one of the enumerated eligibility categories, the disability causes an adverse educational impact, and the adverse impact results in unique needs that cannot be addressed exclusively through general education with or without accommodations—in other words—the student needs specially designed instruction. The evaluation should be sufficiently comprehensive to identify the student’s special education needs, use a variety of assessment tools and strategies, and no single test or measure may be used as the sole criterion for determining the student’s eligibility.

Here, the Student was not eligible for special education services when the 2021–2022 school year began, but participated, at the Parent’s request, in the District’s child find activities. Based on this, the District referred the Student for an initial special education evaluation. On December 6, 2021, the Parent signed consent for the evaluation following the referral meeting. The Complainant stated the District “only looked at the Student’s test scores when considering whether he was eligible for special education” at the December 6, 2021 meeting. However, this is inaccurate as the December 6 meeting was not an eligibility meeting and the District did, as a result of the meeting, initiate an evaluation. On January 31, 2022, the Parent met with the evaluation group to review the evaluation and the group found that the Student was not eligible for special education services as the Student does not have a disability or show an adverse impact or need for specially designed instruction. The evaluation report indicated a variety of assessments and information was considered in the evaluation and that the decision was not based solely on “test scores.” OSPI

finds the District followed procedures in determining the Student was not eligible for special education services. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI recommends the District review the requirement to ensure that copies of IEPs are provided to parents in a timely and accessible manner with staff.

OSPI also recommends the District continue communicating with the Student's family and schedule an IEP meeting if one is requested by the family to address any remaining concerns or any potential changes in the Student's needs or situation. OSPI also recommends the District and family consider holding a facilitated IEP meeting.

Dated this ____ day of March, 2022

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.)