

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-60

PROCEDURAL HISTORY

On May 11, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Clover Park School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 12, 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 May 19, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on May 19 and 20, 2022.

On May 24, 2022, the District requested an extension of time to respond to the complaint. OSPI granted the extension to June 3, 2022.

On June 3, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on June 6, 2022. OSPI invited the Parent to reply.

On June 17, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

On June 17, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 21, 2022.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 12, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. During the 2021–2022 school year, did the District follow proper procedures for responding to the Parent's concerns about the Student's needs resulting from the Student's disability in the area of reading?
2. During the 2021–2022 school year, did the District properly implement those portions of the Student's individualized education program (IEP) that pertained to either speech or reading?
3. Since late-January 2022, did the District follow proper reevaluation procedures, specifically, did the District properly respond to the Parent's requests for additional testing?

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. The initial IEP must be implemented as soon as possible after it is developed. 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 [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Reasonable Delays in Implementation: Reasonable delays in implementing an IEP while a school district conducts assessments and negotiates with parents are not material. *See J.S. v. Shoreline Sch. Dist.*, 220 F. Supp. 2d 1175, 1189 (W.D. Wash. 2002) (finding that implementation delay that occurred at "behest of the parents...was reasonable and was not...error"); *cf. Tracy N. v. Haw. Dep't of Educ.*, 715 F. Supp. 2d 1093, 1112 (D. Haw. 2010) (finding that delay in determining student's educational placement was reasonable because there were "ongoing discussions regarding placement in response to [the student's mother's] concerns, a reassessment of [the student's] cognitive and academic skills, and a reevaluation of [her] behavior").

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

FINDINGS OF FACT

Background

1. Based on documentation provided by the District in response to this complaint, the Student transferred to the District from another Washington state school district (district 2) on or around August 7, 2020 as a first grader. The District issued a prior written notice, proposing to continue eligibility for special education services under the category of autism. At the time of the transfer, the Student received specially designed instruction in the areas of communication, adaptive skills, academic, and social/emotional, and occupational therapy as a related service.
2. The Parent told the District that the April 2020 evaluation from district 2 was based on a file review, and requested the District complete a comprehensive evaluation for the Student. The Parent signed the consent for a reevaluation on October 26, 2020.
3. On November 20, 2020, the Student's evaluation team met to conduct his reevaluation meeting. The Student continued to be eligible for special education under the category of autism. The reevaluation recommended the Student receive specially designed instruction in the areas of communication, adaptive skills, reading, and writing, and occupational therapy as a related service.
4. On December 17, 2020, the Student's IEP team met to develop his IEP, which included several annual goals in the areas of adaptive skills, reading, written expression, and speech language therapy. Relevant to this complaint, the IEP included the following reading and speech goals:
 - Reading: By 12/16/2021, when given a list of pre-primer sight words, Student will correctly identify sight words improving reading foundation skills from 55% to 100% as measured by special education teacher data.
 - Speech: (Articulation) By 12/16/2021, when given structured therapy materials Student will decrease the phonological process error of 'stopping' by demonstrating /ch/, /j/, and /v/ independently in all word positions improving articulation from 0% to 50% accuracy as measured by SLP/SLPA data and observations.
 - Speech: (Articulation) By 12/16/2021, when given structured therapy materials Student will verbally demonstrate /s/, /sh/, and /s/ blends (/st/, /sw/, and /sp/) independently in all word positions improving articulation from 0% to 50% accuracy as measured by SLP/SLPA data and observations.

The Student's IEP provided the Student with the following specially designed instruction and related services:

- Speech Language Pathology: 30 minutes weekly (provided by a speech language pathologist (SLP) in special education setting)
- Adaptive Skills: 30 minutes 2 times weekly (provided by special education teacher in the special education setting)
- Reading: 120 minutes weekly (provided by special education teacher in the special education setting)
- Written Expression: 120 minutes weekly (provided by special education teacher in the special education setting)

- Occupational Therapy: 30 minutes monthly (provided by occupational therapist (OT) in the general education setting)

The Student's IEP provided the Student with the following accommodations:

- allowing breaks
- access to adaptive paper
- direction read verbatim
- extended testing time
- provision of lists
- modify/repeat/model directions
- separate setting for testing
- preferential seating
- shortened assignments

The Student's IEP indicated the Student would spend 81.03% of his time in the general education setting.

5. On March 7 and June 11, 2021, the District issued the Student's progress reporting. As it pertains to speech and reading, the report stated in relevant part:

- Reading Goal: By 12/16/2021, when given a list of pre-primer sight words, Student will correctly identify sight words improving reading foundation skills from 55% to 100% as measured by special education teacher data.

[March] Progress: Sufficient Progress. When given a list of Dolch Pre-Primer Sight words from list 1, Student is currently at 33/40 correct (82% accuracy). Student did not know: Find, For, Make, Run, Said, Up, Where.

[June] Progress: Sufficient Progress. Student is currently at (35/40) words, 88% accuracy.

- Speech Goal: (Articulation) By 12/16/2021, when given structured therapy materials Student will decrease the phonological process error of 'stopping' by demonstrating /ch/, /j/, and /v/ independently in all word positions improving articulation from 0% to 50% accuracy as measured by SLP/SLPA data and observations.

[March] Progress: Emerging Skill. Student requires modeling but is inconsistent with sounds. We are working on /ch, j, and v/ in isolation.

[June] Progress: Sufficient Progress. Student is at 70% accuracy with /ch/ in the initial and final positions in words with a model. /j/ and /v/ are at 60% accuracy. Student frequently moves making it difficult to see his mouth movement.

- Speech Goal: (Articulation) By 12/16/2021, when given structured therapy materials Student will verbally demonstrate /s/, /sh/, and /s/ blends (/st/, /sw/, and /sp/) independently in all word positions improving articulation from 0% to 50% accuracy as measured by SLP/SLPA data and observations.

[March] Progress: Emerging Skill. Student is working on sounds in isolation with modeling.

[June] Progress: Sufficient Progress. Student is at 30% of this goal. Sound quality due to poor audio connection and/or frequent movements often made it difficult to hear the sounds clearly.

2021–2022 School Year

6. The District's 2021–2022 school year began on September 1, 2021.

7. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services under the category of autism, was in the second grade and his December 16, 2020 IEP was in effect.

8. On December 3, 2021, the District issued the Student's progress reporting. As it pertains to speech and reading, the report stated in relevant part:

- Reading Goal: By 12/16/2021, when given a list of pre-primer sight words, Student will correctly identify sight words improving reading foundation skills from 55% to 100% as measured by special education teacher data.

Progress: Sufficient Progress. Student is currently reading 35/40 (87%) words correctly. He is a meticulous reader, sounding out words carefully.

- Speech Goal: (Articulation) By 12/16/2021, when given structured therapy materials Student will decrease the phonological process error of 'stopping' by demonstrating /ch/, /j/, and /v/ independently in all word positions improving articulation from 0% to 50% accuracy as measured by SLP/SLPA data and observations.

Progress: Sufficient Progress. /ch/ at the single word level: 93% accuracy across word positions /j/ at the single word level: 92% accuracy across word positions. /v/ not yet formally targeted/tracked. In conversation, it appears Student has improved his articulation of /v/. In regards to /ch/ and /j/, Student has demonstrated greater than target accuracy at the single word level. It is recommended that these sounds be targeted in simple and complex sentences during the next IEP season.

- Speech Goal: (Articulation) By 12/16/2021, when given structured therapy materials Student will verbally demonstrate /s/, /sh/, and /s/ blends (/st/, /sw/, and /sp/) independently in all word positions improving articulation from 0% to 50% accuracy as measured by SLP/SLPA data and observations.

Progress: Sufficient Progress. /sh/ at the single word level: Student produced the /sh/ sound with 95% accuracy across word placements with minimal prompting. Student has greatly improved his articulation of the /sh/ sound in single words and this sound should be targeted in simple and complex sentences during the next IEP season. /s/ and /s/ blends: Student continues to have difficulty producing /s/ and /s/ blends accurately in single words. It was observed that Student continues to mix up productions of /sh/ and /s/. Given direct instruction of the /s/ sound, Student demonstrated understanding in correct tongue placement and airflow and demonstrated emerging skills producing /s/ at the beginning of words. In 30% of opportunities, Student produced /s/ in the word initial position with correct tongue placement and airflow. Student would continue to benefit from targeting /s/ and /s/ blends at the single word level.

9. In documentation provided by the District in response to this complaint, case manager stated:

Many of the general education second graders use text to speech software. The range of 'normal' reading abilities in second grade is broad and many students require assistance with reading comprehension questions. Therefore it is normal and usual for both standardized reading tests and in-class tests to have a component where a reader reads the question out loud. The reader is either the computer software or the teacher. Without the text to speech software, Student's reading comprehension is at a mid-first grade level.

However, the drop in ability would be consistent with all second graders. Requiring emerging and beginning readers to read the questions testing their reading comprehension is also an inaccurate method of testing reading comprehension. Children often understand the meaning of a word before they are able to read those words. Children can understand the questions and what the questions are asking when they are verbally presented. When children are required to independently read the questions, they get caught up on reading the individual words and will often miss the question itself.

10. On December 15, 2021, the Student's IEP team met to develop his annual IEP. The team developed a new reading goal that required the Student to read at grade level. The case manager recommended a reading comprehension goal to improve his reading, and proposed the Student be able to use text to speech software and pre-taught strategies to answer questions on reading passages to improve reading skills for 20% accuracy to 80% accuracy. The Parent was dissatisfied with the Student's progress and indicated the Student's progress reporting did not accurately reflect his ability in light of his ability to utilize a "text to speech" accommodation in reading.

The Student's IEP provided the Student with the following specially designed instruction and related services:

- Speech Language Pathology: 30 minutes weekly (provided by SLP in special education setting)
- Adaptive Skills: 40 minutes weekly (provided by special education teacher in the special education setting)
- Reading: 120 minutes weekly (provided by special education teacher in the special education setting)
- Written Expression: 120 minutes weekly (provided by special education teacher in the special education setting)
- Occupational Therapy: 30 minutes monthly (provided by an OT in the general education setting)

The Student's IEP provided the Student with the following accommodations:

- allowing breaks
- access to adaptive paper
- extended testing time
- provision of lists
- modify/repeat/model directions
- separate setting for testing
- preferential seating
- shortened assignments
- text to speech

The Student's IEP indicated the Student would spend 82.18% of his time in the general education setting.

11. The District was on winter break from December 20–31, 2021 and closed in observation of Martin Luther King Jr. day on January 17, 2022.
12. On January 26, 2022, per the Parent's allegation, the Parent called the general education teacher to "[D]iscuss her concerns regarding Student's reading, and that at this time she requested reassessment for a reading/learning disability (Dyslexia)." The Parent also alleged the general education teacher told her that the case manager would perform the testing, but could not do it until after February 7, 2022, because he was conducting District testing.

13. On February 8, 2022, per the Parent's allegation, the Parent called the general education teacher for an update on testing. The Parent alleged, "General education teacher asked me the name of the testing I was requesting...I told him the name and emailed him the paperwork from the Student's pediatrician." The Parent alleged the general education teacher told her the case manager did not want to conduct any dyslexia testing because he didn't feel the Student was dyslexic and did not "want to do the testing/feel it was necessary."
14. Between February 14–15, 2022, the case manager and school psychologist had the following email exchange:
- Case manager to school psychologist: "Does [Student] (2nd grader) fall under you if testing needed to be done?"
 - School psychologist to case manager: "Yep, I actually did his file review during COVID. Are you wanting actual testing done?"
 - Case manager to school psychologist: "Student's development pediatrician is recommending a psychoeducational assessment. It's to the point that the pediatrician wanted to talk to Student's teacher about testing. So, I am reaching out to you to see if you could talk to [Parent] about this."
 - School psychologist to case manager: Okay, I'll talk to his mom. I'm aware of his history and have no issue doing more.
15. The District was closed for President's Day weekend Friday, February 18, and Monday, February 21, 2022.
16. On February 25, 2022, per the Parent's allegation, the Parent called the case manager for an update on the Student's testing. The Parent alleged the case manager stated the school psychologist would need to perform the testing the Parent had been requesting. The Parent alleged the case manager told the Parent he had spoken with the school psychologist, who stated she had worked with the Student before, and relayed that she would talk to the Parent about the requested testing. The Parent alleged that she called the school psychologist after her call with the case manager and left a voicemail, but never received an email or call back from the school psychologist.
17. On February 28, 2022, per the Parent's allegation, the Parent emailed the general education teacher and stated, "Here is an image I took of the testing the Developmental pediatrician recommendation I am requesting for Student. I hope this helps." The Parent attached a photo of the corner of a document from the Student's pediatrician's office, which had a handwritten note in the top right corner that stated, "Psychological testing, re-assessment for a reading learning disability."
18. On March 4, 2022, the District issued the Student's progress reporting. As it pertains to speech and reading, the report stated in relevant part:
- Speech Goal: By 12/14/2022, when given moderate verbal and visual prompts Student will produce the phonemes /ch/, /j/, and /sh/ across word positions in simple sentences (i.e., "I like sharks") improving articulation skills from 25% accuracy to 70% accuracy across two data points per target phoneme as measured by SLP/SLPA data and observations.

Progress: Sufficient Progress being made to achieve annual goal within duration of IEP. Student has maintained his accuracy for producing /ch/, /j/, and /sh/ across word positions in simple sentences. Student continues to benefit from moderate prompting to produce target sounds in simple sentences.

- Speech Goal: By 12/14/2022, when given moderate verbal and visual prompts Student will produce /s/, /s/ blends, and /z/ with correct tongue placement and airflow at the single word level improving articulation skills from 20% accuracy to 70% accuracy across two data points per phoneme as measured by SLP/SLPA data and observations.

Progress: Emerging Skill demonstrated but may not achieve annual goal within duration of IEP. Student has demonstrated emerging skills in producing /s/, /s/ blends, and /z/ accurately at the single word level. He continues to get production of /sh/ and /s/ confused and has benefited from verbal prompting to create 'noisy air' for the /sh/ sound and 'quiet air' for the /s/ sound. In early February 2022, it was observed that Student was missing one or more of his incisors, which greatly contribute to placement cues and production of the /s/ and /z/ sounds. Therefore, targeting of /s/ and /z/ had been paused until Student's new incisors come in.

- Speech Goal: By 12/14/2022, when given maximal models and prompt, Student will produce prevocalic /r/ (i.e., red), vocalic /r/ (i.e., chair), and /r/ blends (i.e., bread) at the single word level improving articulation skills from 0% accuracy to 50% accuracy across two data points as measured by SLP/SLPA data collection and student observation.

Progress: Sufficient Progress. Given minimal direct instruction and modeling of /r/ productions, Student has demonstrated quick progress producing different types of /r/ at the single word level. His accuracies are as follows:

- Prevocalic /r/ (i.e., red): an average of 80% accuracy across sessions
- Vocalic /r/ (i.e., chair): an average of 60% accuracy across sessions
- Blends (i.e., green): an average of 70% accuracy across sessions

These accuracies were combined to reflect an accuracy of 70% producing /r/ at the single word level. Student requires one more additional data point to mark this goal as achieved and move onto producing /r/ in simple sentences.

- Reading Goal: (Sight word recognition) By 12/14/2022, when given daily activities and opportunities to practice, Student will master basic sight words at the 2nd grade level improving sight word recognition from recognizing 0/12 random words given to recognizing 29/42 (70%) words given on 3/4 consecutive formal assessments as measured by curriculum based measures.

Progress: Sufficient Progress. Student can read 17 out of 40 words. Words he struggled with were - always, around, because, been, before, both, buy, call, does, don't, found, gave, goes, made, many, pull, right, these, those, us, very, wash, why, would and write.

- Reading Goal: (Comprehension) By 12/14/2022, when given a selected grade level academic-based passage Student will independently read using text-to-speech software, and use pre-taught strategies to answer questions based on these passages improving his reading comprehension skills from an accuracy of 20% to 80% accuracy on 4 out of 5 consecutive reading assignments as measured by curriculum based measures.

Progress: Sufficient Progress. Student demonstrates his comprehension improvement by scoring a 100% on two given grade level reading comprehension assessments.

19. On March 16, 2022, per the Parent's allegation, during a parent teacher conference with the general education teacher, the case manager joined for a portion of the meeting and the two teachers told her they had each sent at least two emails to the school psychologist regarding the Parent's request for evaluation and had not received a response.
20. The school psychologist stated in her response to this complaint that she became aware that the Parent had concerns regarding the Student's reading abilities in mid-February 2022. She further stated it was her understanding that the Parent was notifying the school she was seeking an outside diagnosis. The school psychologist stated she does not conduct testing for purposes of identifying a diagnosis.
21. On March 25, 2022, the Parent emailed the principal, copying the school psychologist, general education teacher, and case manager and stated:

I am the parent of [Student], who is currently a second-grade student in general education teacher's class. I feel that my child is not making progress in his special education program in regard to specific areas. I am particularly concerned about reading including, but not limited to, areas of reading such as basic reading skills, reading fluency skills, and some areas of reading comprehension skills. In order to better understand the problem and determine the type and amount of services that may be needed, I am requesting that my child be reevaluated.

Specifically, I am requesting psychoeducational testing and re-assessment for a reading/learning disability {Dyslexia testing}. I am also open to any additional testing that may be suggested or deemed necessary to help evaluate Student.

Over the last two months (since the end of January) I have been in contact with general education teacher and case manager discussing my concerns and requesting the psychoeducational testing and re-assessment for a reading/learning disability however assistance has taken much longer than anticipated and is difficult. It wasn't until two to three weeks ago I was informed that neither general education teacher or case manager can complete the testing because it has to be given by a psychologist and was then given the contact information for school psychologist. I left her a message on Friday February 25th to discuss the testing but have not received a call back.

During Student's school conference I was also told that the general education teacher and case manager have also tried to reach out to her multiple times over email but didn't receive a response until this week when someone from the district came by the school.

I would like to participate with the rest of the IEP Team in the review to determine what data and testing is needed. I'd also like to know when the testing (if any) will be held and whether any meetings will be scheduled so that I can attend. I understand that the re-evaluation must be completed within 35 school days of your receipt of this letter. Please send me, as soon as possible, a 'permission to evaluate' form. I am hoping this email will help everyone get and stay connected in order to help us come up with a plan and move forward with helping Student become the best version of himself he can be.

22. The school psychologist reported she first became aware of the Parent's request for a new evaluation by the District on March 25, 2022, after the Parent emailed principal.
23. On March 26, 2022, the school psychologist emailed the Parent and stated, "I am currently on maternity leave! But I will be back next fall. If you have any concerns or questions please contact [special education supervisor]. She will be able to direct you to the appropriate psychologist that is taking over for me while I am on leave."
24. On March 28, 2022, the principal responded to the Parent's email, copying the general education teacher and case manager, and stated, "I reviewed the note from the doctor and the IEP accommodations and see that they are aligned - case manager will be reaching out to you to set up an evaluation meeting with [school psychologist] to review concerns, data on progress and next steps."
25. On March 29, 2022, the case manager emailed the Parent, proposing dates for the Student's evaluation team to meet and discuss areas for evaluation after Spring Break.
26. On April 1, 2022, the case manager emailed the Parent and asked if she was available to attend the evaluation team meeting to discuss further assessments for the Student on April 13, 2022.
27. The District was on spring break from April 4–8, 2022.
28. On April 9, 2022, the case manager emailed the Parent and stated, "We are still looking at Wednesday 12:35 meeting time for our evaluation meeting. I still have not heard from the psychologist. Keep in mind others may attend virtually (like the school psychologist). I plan on sending out the invite to the team tomorrow."
29. On April 11, 2022, the Parent responded to the case manager via email and stated in relevant part:

Sorry it took me so long to reply. I was waiting to hear if my husband would be able to help with the other little so I could attend the meeting in person. Unfortunately he has a schedule conflict so I can attend on Wednesday but at this time it will have to be over video conference.
30. Also, on April 11, 2022, the case manager sent a meeting notice to the principal, SLP, OT, general education teacher, school psychologist, and the Parent, notifying them the evaluation team meeting would be in the conference room and that those who cannot attend in person would attend virtually.
31. On April 13, 2022, the case manager emailed the Parent and stated:

I am not sure if [school psychologist] is working this week. There is some confusion that she may be out again. There is an auto reply that she is but that could be the old one that was never removed. I have not heard back from her via email or phone. I am supposed to have a meeting with her at 10:30am. She has not canceled that meeting yet. She did cancel a meeting yesterday. I will keep you posted. Just want you to be prepared that we may have to reschedule this meeting.

32. On April 13, 2022, the Student's evaluation team met to determine whether a new assessment was needed or whether the Student would benefit from other intervention strategies. The team agreed to increase the Student's service minutes in reading and writing prior to the reevaluation. The District stated in its response to this complaint that the team agreed to increase the Student's service minutes during the April 13 meeting, but did not decide to proceed with the reevaluation at that time. The District stated in its response that only when the Parent emailed after the meeting and insisted, that the team agreed to proceed with the reevaluation.

33. Also, on April 13, 2022, the Parent emailed the case manager, general education teacher, principal, and school psychologist and stated:

Thank you all for the meeting today. I really appreciated you all taking the time to discuss Student and what we all can do to help him succeed. I did want to add that I know you all mentioned that the school psychologist was busy, but I would still like to move forward with the testing that I had previously requested (the psychoeducational analysis and re-assessment for a reading/learning disability). I also wanted to let you all know that I have an email sent to me on March 26th from [school psychologist] saying 'I am currently on maternity leave! But I will be back next fall. If you have any concerns or questions please contact [special education supervisor]. She will be able to direct you to the appropriate psychologist that is taking over for me while I am on leave.'

34. On April 14, 2022, the District issued a prior written notice, proposing to reevaluate the Student. The reason for the proposed action was "The family received a medical statement recommending that Student's be re-evaluated outside his triennial evaluation. There are concerns that additional testing needs to be done focusing on Student's reading abilities." The notice stated the team recommended that the Student's reading and writing minutes be increased prior to the completion of his requested evaluation because the Student needs additional reading and writing support to help him engage in the general education curriculum. The notice further stated the IEP team would reconvene to discuss the Student's proposed new service matrix. And permission to reevaluate would move forward with getting Parent permission and starting the timeline. The notice stated the action would be initiated on April 18, 2021.

35. Also, on April 14, 2022, the following email exchange occurred:

- Principal emailed the Parent: "After communicating with the team supporting Student, [SLP] was the staff member who has been working with Student on Friday's. It is her scheduled pull-out time. I believe general education teacher has communicated that to you as well in a phone conversation. Also update on [school psychologist] - she is out ill this week with hopes she can return next week. I communicated with [special education supervisor] (her supervisor) for support so we can get the process started for Student (re-evaluation) and for IEP revision that is the campus team so that can get done quickly."
- Parent responded to principal: "Thank you for following up. As soon as I get the permission form from case manager I will sign it so they can get started on the testing soon."
- Principal responded to Parent and stated that the consent form would come from the School Psychologist.

- Special education supervisor emailed principal and stated: "School psychologist returned to work today, we should be back on track."

36. On April 18, 2022, the case manager emailed the Parent, copied the general education teacher, and stated:

Here is the [prior written notice] from our [reevaluation meeting]. I am working on his new service matrix. I was told that consent for his evaluation should be coming soon if not already. The district is working on who will be the Psychologist. Please let me know when you get the consent form.

37. On April 19, 2022, the school psychologist emailed the Parent and stated:

I am sorry about the confusion when I was out sick. Since I am in 3 buildings, principals often can't track me down as easily. I have attached the procedural safeguards to this email. If you would like a paper copy, please let me know. I just gave [Student] an envelope with the consent form inside. Once you return it, I'll start evaluating and go ahead and schedule a time for the meeting.

38. On April 20, 2022, the District issued an invitation for an April 22, 2022 IEP meeting to the Parent, case manager, assistant principal, District representative, general education teacher, SLP, and OT to discuss annual goal progress and review the current IEP.

39. Also, on April 20, 2022, the school psychologist emailed the Parent and stated:

I was informed yesterday after school and again this afternoon that you had questions regarding [Student's] evaluation and the process. I will not have time to call today but I am happy to set aside time tomorrow to chat and answer any questions you may have.

The Parent responded to the school psychologist's email that same day:

Yes, it would be helpful for...you call me tomorrow to help answer my questions/concerns. I do have the consent form from you here but had some questions about that first before I signed it...It would also be helpful to me if you can email me...the exact date(s) you will be doing the testing with [Student] at school. Another thing I would like to add is that I would like [Student's] whole team to be a part of the meeting when we discuss the results from his evaluation. I feel it will be beneficial to have everyone involved on the same page with a plan that can be used in all areas of his team. Please let me know as soon as you are able to when that meeting (about the results) will be also so I can make any necessary arrangements in order to fully participate in the meeting.

The case manager emailed the Parent that same day and stated:

I have attached the new suggested service matrix for Student. I am recommending increasing total minutes from 310 to 490. We are adding 5 additional sessions of reading and 1 for writing. This change will move Student down one LRE tier. He will be in the Gen Ed classroom environment 72% of the time with this change. Please review and let me know your thoughts. We can move forward with the change without the need of a meeting if that is what you want.

40. On April 22, 2022, the District issued a prior written notice, proposing to increase the Student's reading and writing service minutes. The reason for the proposed action was that the Student was making satisfactory growth working on his IEP goals, but the family was concerned that

he was struggling with accessing the general education curriculum. The notice stated the team discussed and rejected the option to wait for the reevaluation results before increasing the minutes because the Student needed the additional support now and did not recommend he wait until the reevaluation is completed. The notice further stated the team considered the Student's IEP, present levels reports, progress reports, input from staff and family as the basis for this decision. Lastly, the notice stated that the family gave permission in an email, dated April 22, 2022, to amend the IEP without reconvening the IEP to increase the Student's weekly reading minutes from 120 to 270 and his writing from 120 to 150. The notice stated the action would be initiated on April 25, 2021.

41. Also, on April 22, 2022, the school psychologist emailed Parent and stated:

Thanks for taking the time to speak with me today. I heard your concerns regarding the evaluation process, when Student would be tested, as well as wanting further information on his Reading skills. From what I am seeing, case manager has increased Student's Reading time to 270 minutes/weekly and his writing time to 150 minutes/weekly. I would like to schedule the results meeting for the second week of May. Please reach out to [parent advocate] and see what days/times she's available from May 9th to 13th. Typically the team prefers meeting during the day. I am unavailable May 9th and May 11th after school, but am free otherwise.

The [OT] and [SLP] have not done formal testing, we need your consent to complete that. The assessments that were completed were just to progress monitor Student, in order to update his present levels in his IEP. As we discussed, I will be pulling Student to evaluate him on May 2nd and May 3rd. If I need an additional time segment, I'll be in touch with you first. This evaluation will contain new information and delve deeper into what building blocks Student is missing from Kinder/1st grade. This will assist the IEP team in creating his goals. I will also be conducting parts of...a neuropsychological test that looks specifically at Executive Functioning and other cognitive processes that may be impacting Student.

I am not able to diagnose Dyslexia. But, I am able to identify markers of Dyslexia and provide all the testing needed for you to gain a diagnosis from a Developmental Pediatrician. Thank you for taking the time to speak with me today. I look forward to working with Student again!

The Parent emailed the case manager that same day and requested the most up to date copy of the Student's IEP.

42. Documentation provided by the District stated the Parent's signed consent was received by the District on April 25, 2022.

43. On April 25, 2022, the case manager emailed the Parent a copy of the Student's amended service matrix and December 2021 IEP. He stated he was still working on the amendment. The service minutes and supplementary aids and services on the amended service matrix were to be provided April 25 through December 14, 2022 as follows:

- Speech Language Pathology: 30 minutes weekly (provided by SLP in special education setting)
- Adaptive Skills: 40 minutes weekly (provided by special education teacher in the special education setting)

- Reading: 270 minutes weekly (provided by special education teacher in the special education setting)
- Written Expression: 150 minutes weekly (provided by special education teacher in the special education setting)
- Occupational Therapy: 30 minutes monthly (provided by an OT in the general education setting)

44. Also, on April 25, 2022, the SLP emailed the Parent and stated, "I plan to evaluate Student's communication [April 29, 2022] at 1:10 pm."

45. On April 26, 2022, the Parent emailed the general education teacher and case manager and stated:

I just wanted to give you a heads up that I am going to send Student to school today and possibly tomorrow depending on if you need more time to assess him without his morning medication. I think it would be valuable information to put in his IEP and/or new assessment that we are currently working on. His medication does change his behavior and ability to focus so I think it would also be beneficial to see if he is able to work better / focus better without his medication also. He can still receive his after medicine at the school just to help keep him on the same schedule. I was hoping that one and/or both of you might be able to write up a small assessment/ statement of how he is without his medicine to put in either his IEP or reassessment.

That same day, the case manager responded, "Sure, I will do this."

46. Also on April 26, 2022, the District issued the Student's progress reporting in reading, the report stated in relevant part:

- Reading Goal: (Sight word recognition) By 12/14/2022, when given daily activities and opportunities to practice, Student will master basic sight words at the 2nd grade level improving sight word recognition from recognizing 0/12 random words given to recognizing 29/42 (70%) words given on 3/4 consecutive formal assessments as measured by curriculum based measures.

Progress: Sufficient Progress. Student read 29 out of 46 words (63%) He struggled with the following words - always, been, because, both, buy, call, does, don't, first, goes, made, pull, us, very, wash, why and would.

- Reading Goal: (Comprehension) By 12/14/2022, when given a selected grade level academic-based passage Student will independently read using text-to-speech software, and use pre-taught strategies to answer questions based on these passages improving his reading comprehension skills from an accuracy of 20% to 80% accuracy on 4 out of 5 consecutive reading assignments as measured by curriculum based measures.

Progress: Sufficient Progress. Student scored a 4/5 (80%) on a grade level story.

47. On April 27, 2022, the Parent emailed the school psychologist and stated, "I did reach out to [parent advocate] and she asked if you can send me options of a few dates and time that work for you so she can check her schedule." The school psychologist responded that same day and stated she would meet with the Student's team to coordinate some dates to send.

48. Between April 27 and 29, 2022, the Parent and SLP exchanged several emails:

- Parent emailed the SLP regarding Student's April 29 evaluation: "Can you also please send me a schedule of this school year when you've been working with Student?"
- SLP responded: "I started working with Student at the beginning of March. I work with him on Fridays from 1:10 to 1:40."
- Parent emailed the SLP: "Can you please send me notes from your sessions with Student since you started working with him?"
- The SLP emailed Parent and provided the following dates she provided services on Fridays between 1:10-1:40, or had been scheduled to provide Student speech services:
 - March 4, 2022 – Met, First day working together
 - March 11, 2022 – Met
 - March 18, 2022 – Did Not Meet, Early release for parent/teacher conferences
 - March 25, 2022 – Met
 - April 1, 2022 – Did Not Meet, Special class event before Spring Break
 - April 8, 2022 – Did Not Meet, Spring Break
 - April 15, 2022 – Did Not Meet, Student was not present in class when I arrived, plan to reschedule this time
 - April 22, 2022 – Met
 - April 29, 2022 – Met for testing, Worked for 45 minutes to complete re-evaluation testing

49. On May 1–3, 2022, the Parent and case manager exchanged the following emails regarding the Student's schedule changes:

- Parent emailed the case manager: "Student currently works with you for reading Monday through Friday in a small group setting from 1:30-2:00 PM, except on Wednesday [and that he has been working on this schedule] since March or before? The additional 30 minutes will be one on one time with you to work on reading? Also you are trying to do it 15 minutes before and 15 minutes after small group? Can you let me know if the 30 additional minutes change also? Just trying my best to keep track of Student's schedule to make sure I don't take him out of anything important for other things like speech therapy (outside of school) or doctors appts."
- Case manager responded with the following schedule:

Old Schedule	New schedule
Nov–Feb 9th M/T/TH/F <ul style="list-style-type: none"> ● 11:30–12:00 Writing ● 1:30–2:00 Reading 	M/T/TH/F <ul style="list-style-type: none"> ● 11:30–12:00 Reading (1:1) ● 12:00–12:30 Writing ● 1:30–2:00 Reading
Feb 9th–Mar 31st M/T/TH/F <ul style="list-style-type: none"> ● 1:30–2:30 Writing/Reading 	Wednesday's <ul style="list-style-type: none"> ● 11:30–12:00 Reading (1:1) ● 12:00–12:30 Writing (1:1)
Mar 31st–April 24th M/T/TH/F <ul style="list-style-type: none"> ● 12:00–12:30 Writing ● 1:30–2:00 Reading 	

- Parent responded: "Currently we do not have a scheduling conflict...The only other part of the last email that you didn't address was my question to have you confirm that during our last conversation you confirmed that [SLP] doesn't pull Student out of your class or bring him down late? (I just want to make sure he is getting is full session time in both areas)."
- Case manager responded: "She does drop him off around 1:40 on Fridays. By the time I pick up the other students and get them settled in, Student shows up in time for the lesson. I can hold

him over to 2:10 on Fridays and review what we've covered (usually word families). He likes the 1:1 time."

50. On May 5, 2022, the school psychologist emailed the Parent, principal, parent advocate, general education teacher, and case manager and stated:

I apologize for the inconvenience. But, I will be unable to return to work until May 16th. I will need to extend Student's evaluation meeting to the end of May. I will email you when I have exact testing dates. The due date for his re-evaluation is June 15th.¹

51. On May 11, 2022, the Parent filed this complaint.

52. Between May 13 and 19, 2022, the Parent and school psychologist exchanged the following emails:

- Parent to school psychologist, case manager, principal, special services supervisor, general education teacher, SLP, and OT: "Student will not be at school on Tuesday May 17th, 2022. He will be having dental [procedure]...and will be out all day. I have yet to be notified of what dates the reevaluation has been rescheduled for. So, I felt it would be best that all of Student's team members be aware of his absence on the 17th so that his reevaluation can be scheduled as soon as possible but on a different date other than May 17th. If you have any questions or concerns, please feel free to contact me."
- School psychologist to Parent: "Thank you for letting us know that Student will be out tomorrow. I have returned to work today. If he is up for it, I am planning to complete his evaluation on Thursday May 19th and Friday May 20th."
- Parent to school psychologist: "Thank you for letting me know the dates you have scheduled to finish his evaluation...Student returned to school the day after his dental appointment/surgery and seems to be back to his normal self so I believe that he will be fine to continue testing. If you please let me know how the testing is going I would greatly appreciate it. Also how soon can we schedule the follow up meeting to get the result from the reevaluation? I would also like to request now that the results be sent to me via email at least 48 hours prior so I have time to review them before our meeting."
- School psychologist to Parent: "I just completed the Cognitive portion of Student's evaluation this morning. I will be completing the Academic and Neuropsych portions tomorrow. I am happy to provide the report to you prior to the meeting. To make sure I have a complete picture of Student's abilities and needs, I would like to schedule the meeting after Memorial Day. Doing so allows me to do any additional testing that I may find is needed after tomorrow. Please let me know your availability for [May] 31st, [June] 1st, and 2nd after school (around 3:10pm)."

53. On May 17, 2022, the case manager emailed the special services supervisor and stated:

Here is the resource schedule for Student it covers Feb-May. There are a few Fridays that his schedule did overlap a bit with the [SLP]. This started around Feb 9th when I made a schedule change to accommodate new students and services. Student would not miss much as he would arrive right near the start of our lesson, missing the transition/warm up me. There are 6 times that he arrived late from a speech session (1:40) pm. I am not certain if I held him over for ten minutes on those Fridays. The schedule was fixed starting in May and is followed. I have highlighted the sessions that he had speech. I am ready to make up

¹ June 15, 2022 is 35 days from the date the District received the Parent's written consent and was also the last day of school for the District.

the 6 sessions (total 60 mins). I can work with him right away starting tomorrow for extra 30 minutes and then next Wednesday for another 30 minutes if that is feasible. I will also write up a memorandum for record documenting the compensatory time.

54. On June 13, 2022, the reevaluation team met.

CONCLUSIONS

Issues 1 and 3: Response to Concerns about Reading & Request for Reevaluation – This complaint was opened with issues one and three as two separate issues, but upon investigation, OSPI found that the concerns were intertwined and will address both as the issue of whether the District followed proper procedures for responding to the Parent’s concerns about reading and request for reevaluation resulting from the Student’s disability in the area of reading.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. There is no specific timeline in the regulations for responding to a parent’s request for a reevaluation, however, a district should respond in a reasonably timely manner.

Here, the Student was eligible for special education services, and in part, received specially designed instruction in reading. The District added a text to speech accommodation to the Student’s December 2021 IEP. Documentation provided in response to this complaint shows the Parent verbally expressed dissatisfaction with the Student’s progress at the December 2021 IEP meeting and indicated the Student’s progress reporting did not accurately reflect his ability in light of his ability to utilize a “text to speech” accommodation in reading. At this time, though, it does not appear the Parent requested a reevaluation in reading.

Documentation provided by the District supports the Parent’s allegation that she began verbally requesting the District conduct a reassessment for a reading/learning disability (Dyslexia) based on a recommendation from the Student’s developmental pediatrician in late February 2022. The Parent also sent an email, forwarding the pediatrician’s notes regarding a reassessment to the District. The case manager emailed the school psychologist in mid-February and asked generally if she would be the one to do testing for the Student if testing needed to be done, but the case manager did not appear to convey that the Parent had requested a reevaluation. This miscommunication led the school psychologist to believe she only needed to speak with the Parent regarding the developmental pediatrician’s recommendations, but not that the Parent had requested a reevaluation, triggering a need to respond to that request. Based on documentation provided, it does not appear the case manager sufficiently conveyed to the school psychologist in the February exchange that the Parent was in fact requesting a psychoeducational evaluation, even though it appears he understood that to be the purpose of her request when he reached out to the school psychologist. The situation was complicated as it appears that the case manager

and general education teacher were unaware of the dates the school psychologist was out on maternity leave, and then again due to illness.

However, the Parent's February 28, 2022 email constituted a written request for reevaluation as the Parent's email included "the testing the Developmental pediatrician" recommended and the Parent's statement at that was the "recommendation I am requesting for Student." Instead, the District did not recognize the Parent's written request for a reevaluation until she emailed the principal and school psychologist on March 25, 2022. The school psychologist responded promptly, stating she was on leave and directing the Parent to her supervisor. The case manager began proposing dates for a meeting as early as March 29, 2022 to discuss whether additional assessments were needed, and the Parent responded on April 11, 2022. The Student's team met on April 13, 2022 and the District issued a prior written notice on April 14, 2022, stating the team had decided to reevaluate the Student and increase the Student's reading minutes. The notice stated the Student needed additional reading and writing minutes to engage with the general education curriculum; however, the Student's March 4, 2022 progress reporting stated he was sufficiently progressing on his reading and writing goals. Documentation provided in response to this complaint showed the District received the Parent's signed consent on April 25, 2022, and based on the District's response to this complaint, all testing was completed and the meeting to review that data occurred on June 13, 2022—within 35 school days of receiving consent for the reevaluation.

Procedurally, OSPI finds the District erred when it failed to recognize the Parent's February 2022 written request for reevaluation and thereby delayed the process of considering the Parent's request for a reevaluation by approximately one month. Thus, OSPI finds a violation as the District did not timely address the Parent's request for a reevaluation. The District will provide staff with written guidance addressing requests for reevaluations and best practices for responding to parent requests.

While there was a delay in the District recognizing the Parent's written request, the District was able to complete the evaluation and hold the reevaluation meeting on June 13, 2022. And the District did, in the meantime, address some of the Parent's concerns, increasing the Student's reading and writing service minutes substantially during the April 13 meeting, changing his reading service minutes from 120 to 270 and his writing service minutes from 120 to 150. Based on this increase in service minutes while the District completed the evaluation, and the District's good faith efforts to conduct the reevaluation in a timely manner based on the March 2022 written request, OSPI finds no Student specific corrective actions are warranted.

Issue 2: IEP Implementation – The complaint was opened on the issue of whether the District properly implemented those portions of the Student's IEP that pertained to speech and reading. Under the Student's December 2020 IEP, in effect at the beginning of the 2021–2022 school year, the Student was entitled to 120 minutes a week of specially designed instruction in reading. Progress reporting shows this portion of the Student's IEP was materially implemented. For example, at the time of the December 2021 IEP meeting, the Student had mastered one of his speech goals and made sufficient progress on his other speech and reading goals. On December

1, 2020, he was reading 35% words correctly, by December 11, 2020, he was reading 55%, and he was reading 87% words by the December 2021 IEP meeting.

On December 17, 2021, the IEP team reduced the Student's reading service minutes from 120 weekly to 30 minutes weekly, refined his sight word goal to include mastery of basic sight words at the second grade level and added a reading comprehension goal that included the Student reading with the use of text to speech software. The Parent's concerns do not appear to be related to the reduction service minutes for reading in the December 2021 IEP, but rather the fact that, starting February 2022, the speech language pathologist (SLP) was pulling the Student out of class on Fridays from 1:10–1:40 pm. During this same time, the Student was supposed to be receiving reading service minutes with the case manager from 1:30–2:00. The Parent realized the Student's speech and reading minutes were overlapping and emailed the case manager, who replied that he would work with the Student until 2:10 to make up the time the Student spent transferring between speech and reading.

On May 17, 2022 the case manager reported to the special services supervisor that he was aware of six occasions where the Student arrived late from speech, and he could not be certain if he held him after an additional 10 minutes. Based on documentation provided in response to this complaint, it appears the Student missed part of six sessions, a total of one hour. 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 child with a disability and those required by the IEP. Here, the Student missed a nominal amount of reading minutes, which once discovered, was rectified. OSPI finds no material failure regarding implementation of the Student's IEP, as to his speech and reading minutes, and finds no violation.

OSPI notes that documentation from the District proposed offering the Student an hour of compensatory education services. While OSPI does not find a violation, OSPI encourages the District, though it is not required by this decision to, as stated by the staff member, provide the Student with one hour of reading services.

CORRECTIVE ACTIONS

By or before **August 12, 2022** and **September 9, 2022**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **September 2, 2022**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education certificated staff (teachers), and school psychologists, at the

school that the Student was enrolled in during the 2021–2022 school year. The guidance will include examples and discussion of best practices.

Topic 1: Reevaluation timelines and procedures. WAC 392-172A-03015 and -03020.

Topic 2: Responding to parent requests for reevaluation.

By **August 12, 2022**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 19, 2022.

By **September 9, 2022**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

Dated this ____ day of July, 2022

Dr. Tania May
Assistant Superintendent of 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.)