

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-71**

### **PROCEDURAL HISTORY**

On May 18, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On May 18, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 22, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 8, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on June 9, 2023. OSPI invited the Parent to reply.

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 19, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUE**

1. Did the District follow procedures, including making a decision based on Student specific need and considering whether a reevaluation was needed, for removing services from the Student's January 2023 individualized education program (IEP), including specially designed instruction in math and the supplementary aids and services: 1:1 paraeducator and "ELA small group or 1:1 general education instruction"?

### **LEGAL STANDARDS**

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 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 describes 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.

IEP Development: The Washington state legal requirements for an individualized education program (IEP) can be found in WAC 392-172A-01100; WAC 392-172A-03090 through WAC 392-172A-03115. When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3). When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

Parent Participation in IEP Meetings: Parents of a child with a disability will participate with school personnel, in developing, reviewing, and revising the student's IEP. This is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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. IDEA, 64 Fed. Reg. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IDEA specifically provides that parents of children with disabilities have an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to their child. Parents must be part of the groups that determine what additional data is needed as part of an evaluation of their child, their child's eligibility, and educational placement. 34 CFR §300.304, 300.306(1), 300.501; WAC 392-172A-03020(2), WAC 392-172A-03040, WAC 392-172A-05000(3)(c). IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. 34 CFR §300.324; WAC 392-172A-03110(1)(b).

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

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

## **FINDINGS OF FACT**

### **Background**

1. Prior to the 2022–2023 school year, the Student was eligible for special education services and enrolled in another Washington state school district. Their annual IEP was developed on December 21, 2021.
2. The December 2021 IEP included goals addressing executive functioning, social/emotional skills, and math skills, with related services in counseling. The Student also received supplementary aids and services: a 1:1 paraeducator and English language arts (ELA) small group or 1:1 general education instruction.

## 2022–2023 School Year

3. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of autism, was in the 12th grade, and attended a District high school. The Student's December 2021 IEP was in effect.
4. The District's first day of the 2022–2023 school year was September 6, 2022.
5. On September 12, 2022, following a meeting with the Parent discussing the transfer of the Student from another Washington state school district, the District sent a prior written notice (PWN) to the Parent, indicating the District reviewed and accepted the Student's transfer evaluation and IEP.

The District also indicated that the Student's three-year reevaluation was due November 26, 2022, and that consent forms were sent to the Parent via email on September 12, 2022. The District noted two schedule changes that were proposed in order to be in compliance with the Student's current IEP. Those changes were: 1) 7th period would be with the Student's case manager for academic support, and 2) the Student's math class was changed to concepts of algebra.

6. On November 14, 2022, the Parent signed consent for the three-year reevaluation and the reevaluation team began assessments in the areas of review of existing data, general education teacher input, social/emotional, organization, age-appropriate transition, medical-physical, adaptive, behavior, academic, and student observation.

At the time of consent, the Parent requested that the Student be tested in the area of cognitive.

7. On November 21, 2022, the reevaluation group, including the Parent, met to review the results of the reevaluation, and determined that the Student continued to meet the eligibility criteria for autism. The evaluation report documented recommendations that the Student receive services in behavior, social/emotional, and adaptive. Specifically, the report detailed the Student's present levels of performance and educational needs, and considered whether any additions or modifications to the special education and related services were needed to enable the Student to meet the measurable annual goals in the IEP and to participate as appropriate in the general curriculum.

The evaluation report included notations, documenting difficulty in completing the full assessment in two areas. Both the case manager and school psychologist were unable to complete assessments in math and cognitive due to significant Student absences prior to the reevaluation meeting. Due to this difficulty, the team agreed there would be a reevaluation amendment with updated information in math and cognitive.

8. On November 29, 2022, the Parent was sent a PWN, indicating that the Student continued to be eligible for services under the category of autism and would receive specially designed instruction in behavior skills, adaptive skills, and social-emotional skills. In addition, it was

stated that the team and Parent agreed to update testing in academic (math) and cognitive as the Student had been consistently absent since consent for the reevaluation was signed by the Parent. The PWN also noted that the Parent wanted to discuss the Student's 1:1 time for working on assignments and the team agreed to invite District personnel to the IEP meeting for this discussion. In addition, the PWN included that it was shared with the Parent that the Student was currently working with the case manager, counselor, and psychologist for more time than the amount of services outline in the IEP.

9. Prior to January 6, 2023, the Student's reevaluation group completed the math assessment, as part of the additional reevaluation assessments agreed upon. However, the cognitive assessment, as requested by the Parent, was not able to be completed at that time due to the Student's absences.
10. On January 6, 2023, the Student's IEP team, including the Parent, met and developed a new annual IEP for the Student. In addition to the Parent, the meeting was attended by relevant special education staff, a general education teacher, as well as District representative. The adverse impact statement indicated the Student was eligible for services under the category of autism and had needs in the areas of adaptive, social/emotional, behavior, and math skills, requiring specially designed instruction (SDI).

The IEP included annual goals in adaptive skills (self-advocacy), social-emotional (coping skills and communication with peers), and behavior (executive functioning-planning, organization, and time management). Progress reporting would be provided quarterly, and the IEP present levels of performance were updated during the IEP meeting.

The Student's January 6, 2023 IEP provided the Student with the following SDI in a special education setting:

- Behavior: 75 minutes/1 time weekly (to be provided by special education staff)
- Adaptive: 75 minutes/1 time weekly (to be provided by special education staff)
- Social-emotional: 75 minutes/1 time weekly (to be provided by special education staff)

The IEP also included counseling as a related service for 20 minutes/1 time weekly, provided in a general education setting.

11. On January 11, 2023, the Parent was sent a PWN, noting that the District was proposing to implement the Student's new IEP developed on January 6, 2023. The PWN indicated that the IEP team, including the Parent, discussed the option to continue individual support services based on the Student's previous IEP of December 21, 2021. This option was rejected because the team believed there was adequate support in place at this time. This decision was based on standardized and observational data, teacher reports, parent report, student report, psychologist report, and a review of all available data. Therefore, the team removed the Student's previous supplementary aids and services, which included the Student's 1:1 paraeducator and ELA small group or 1:1 general education instruction.

12. At some point after the January 6, 2023 IEP meeting, the team recognized the error of not including a math goal on the IEP, as the adverse impact statement in the IEP continued to include that the Student had the need for SDI in math.
13. Documents in the record provided in the complaint investigation indicate the Student continued to receive SDI in math for 228 minutes/week per the previous IEP, despite the exclusion of math SDI in the January 2023 IEP.
14. On February 6, 2023, the IEP team provided progress reports on all the Student's January 2023 IEP goals using the copy of goal page per the IEP:
  - Adaptive (self-advocacy) – goal rated as emerging skill (ES)
  - Social-emotional (coping, communication with peers) – both goals rated as “other”
  - Behavior (executive functioning-planning, organization, time management) – all goals rated as “other”
15. On March 27, 2023, a meeting was held to discuss the Student's math assessment results and need for SDI in that area.
16. Also, on March 27, 2023, the Parent was provided a PWN following the meeting. The team determined it would continue to provide the Student SDI in math (228 minutes/week provided by special education staff) based on academic testing results, observations, and teacher reports. Two other factors were noted on the PWN: 1) the Student continued to receive SDI in math since September 2022 per the previous IEP, and 2) the evaluation team was working to remedy the error of not including a recommendation for SDI in math in the current evaluation report (which lead to the error of not including math in the January 2023 IEP), and would schedule a meeting to develop a new IEP that would include updated present levels of performance in math, goals, and SDI.
17. On April 14, 2023, the District provided progress reports on the Student's January 2023 IEP goals using the copy of goal page per the IEP:
  - Adaptive (self-advocacy)- goal rated as “other”
  - Social-emotional (coping, communication with peers)- both goals rated as “other”
  - Behavior (executive functioning-planning, organization, time management) – all goals rated as “other”

The comment included in the progress report for April 14, 2023 indicated that the Student had increased absences in the 3rd quarter and the IEP team was thus unable to collect data to accurately assess progress.

18. On April 27, 2023, an IEP meeting was held, including the Parent, to discuss the full IEP as well as concerns regarding the Student's excessive absences from school. The IEP team added math goals and services back into the IEP.
19. Also, on April 27, 2023, the Parent was provided a PWN following the IEP meeting, noting that the District was prepared to implement the Student's IEP, in its entirety, when the Student returned to school. The Student had not been attending since mid-March 2023.

Concerns regarding the Student's emotional and attendance challenges were discussed, and the IEP team developed plans to address those concerns, including involvement of a county "Engagement Board" and an autism center. The PWN also noted that cognitive testing was scheduled for May 1 and 3, 2023, to address the Parent's request for an updated assessment in that area.

## CONCLUSIONS

**Issue 1: IEP Development** – The Parent alleged that the District did not follow procedures, including making a decision based on Student specific need and considering whether a reevaluation was needed, before removing services from the Student's IEP.

A school district must consider initiating a reevaluation if contemplating any changes in special education services for a student, as a reevaluation determines whether the student continues to be eligible for special education services and informs the content of the student's IEP. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describes all the evaluation procedures that the district intends to conduct and obtain parent consent. In addition, a district must provide parents the opportunity to participate in meetings where decisions are made regarding the identification, evaluation, educational placement, and provision of a free appropriate public education (FAPE) to their child, and address concerns shared by parents. And finally, the district must provide parents with prior written notice to ensure that the parent is aware of the decisions made.

In this case, the District held a meeting with the Parent on September 12, 2022, to discuss the transfer paperwork and to initiate a reevaluation of the Student as her triennial reevaluation was due in fall of 2022. The Parent provided written consent for the reevaluation and requested additional testing in the cognitive area. The District then held a reevaluation results meeting with the Parent at the end of November 2022, to review the reevaluation and share the information gathered regarding the Student's performance. The evaluation team determined that the Student continued to be eligible for special education services and offered recommendations for the IEP team. The PWN provided to the Parent following the reevaluation results meeting highlighted the eligibility decision. The PWN also noted that the Parent wanted to discuss the Student's 1:1 time for working on assignments—a provision included in the Student's transfer IEP—and the team agreed to invite District personnel to the IEP meeting for this discussion.

The IEP meeting, held January 6, 2023, following the reevaluation, included the Parent, relevant special education staff, a general education teacher, as well as District representative. The PWN provided to the Parent following the IEP meeting specifically stated that the option to continue individual support services based on the Student's previous IEP of December 21, 2021, was discussed and rejected, based on the team's belief there was adequate support in place at that time. The team considered standardized and observational data, teacher reports, parent report, student report, psychologist report, and a review of all available data.

OSPI finds that the District conducted a reevaluation and developed an IEP based on the information in that reevaluation. The IEP team both considered the Parent's requests and based

its decision on Student specific information. While the team acknowledged there were some challenges with the evaluation—math and cognitive could not be assessed due to the Student’s absences—the team agreed to do subsequent assessments in these areas, and importantly, these areas did not impact the IEP team’s decision making around the individual support. Thus, OSPI finds no violation with respect to the IEP development related to the individual support.

The District acknowledged that SDI in math was inadvertently and improperly omitted from the January 2023 IEP, though the team did state within the IEP that the Student needed math services. This error was shared with the Parent and subsequently the service was added back into the Student’s IEP following the formal IEP meeting and team decision, including the Parent, on March 27, 2023. The District stated and provided documentation, showing it never stopped providing math services to the Student despite the error in the IEP. Thus, OSPI finds there was a violation as the January 2023 IEP did not include math. However, there was no negative impact on the Student as the District continued to provide math SDI and the error was subsequently remedied; thus, OSPI finds that no further corrective actions are warranted.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this 13th day of July, 2023

Dr. Tania May  
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#### **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.)