

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-11

PROCEDURAL HISTORY

On February 24, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Marysville 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 February 27, 2017, 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 March 10, 2017, OSPI received additional information from the Parent and forwarded it to the District that same day.

On March 17, 2017 and March 20, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on March 20, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On March 21, 29, and April 3 and 5, 2017, OSPI received additional information from the Parent and forwarded it to the District on March 21, April 4 and 5, 2017.

On March 21 and April 13, 2017, OSPI received additional information from the District and forwarded it to the Parent on the same day.

On March 27, 2017, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

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

OVERVIEW

On August 5, 2016, an administrative law judge (ALJ) issued due process decision 2015-SE-0058. The ALJ ordered the District to provide the Student with 25 hours of specially designed instruction in math in a 1:1 setting, and 225 hours of compensatory education in three other academic areas. Additionally, the ALJ ordered the District to immediately conduct a reevaluation of the Student and develop a new individualized education program (IEP) for the Student pursuant to applicable regulations. Lastly, the ALJ ordered the District to reimburse the Parents for the cost of the Student's private placement for the time period between November 2015, through the reevaluation of the Student and the development of a new IEP. The Parent alleged that the District failed to implement due process hearing order 2015-SE-0058, by failing to conduct a reevaluation of the Student which was sufficient to inform the development of her new IEP, and failed to reimburse the Parent for the Student's private placement as ordered by the ALJ. The District denied the allegations.

ISSUE

1. Did the District implement due process hearing order from 2015-SE-0058, as it pertains to:
 - a. Conducting the Student's reevaluation and developing an individualized education program (IEP) for the Student pursuant to special education regulations; and,
 - b. Reimbursing the Parent for the Student's private placement beginning with the Student's enrollment in November 2015 through the completion of the Student's reevaluation and the development of a new IEP?

LEGAL STANDARDS

Enforcement of Due Process Decisions: When an ALJ enters a decision in a due process hearing, and if that decision includes provisions ordering the school district to take corrective action, the district must implement the order consistent with the terms of that decision. If a parent believes that a district has failed to implement a due process decision, the parent may file a citizen complaint with OSPI. OSPI must resolve any complaint that alleges a school district's failure to implement a due process decision. 34 CFR §300.153; WAC 392-172A-05035.

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). A district is not required to obtain informed parental consent prior to reviewing existing data. 34 CFR §300.300(d)(1); WAC 392-172A-03000(4)(a)(i). A district is required to obtain consent when conducting a functional behavior assessment (FBA). *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. 34 CFR §300.304(b); WAC 392-172A-03020(2). No single test or measure of procedures may be used as the sole criteria criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. 34 CFR §300.304(b)(2); WAC 392-172A-03020(2)(b). School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical and or developmental factors. 34 CFR §300.304(b)(3); WAC 392-172A-03020(2)(c).

Evaluation – Specific Requirements: A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance,

communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

In conducting the evaluation, the group of qualified professionals selected by the school district must: Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, that may assist in determining: (i) Whether the student is eligible for special education as defined in WAC 392-172A-01175; and (ii) The content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities; not use any single measure or assessment as the sole criterion for determining whether a student's eligibility for special education and for determining an appropriate educational program for the student; and use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Each school district must ensure that: Assessments and other evaluation materials used to assess a student: (i) Are selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) Are provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures are valid and reliable. If properly validated tests are unavailable, each member of the group shall use professional judgment to determine eligibility based on other evidence of the existence of a disability and need for special education. Use of professional judgment shall be documented in the evaluation report; (iv) Are administered by trained and knowledgeable personnel; and (v) Are administered in accordance with any instructions provided by the producer of the assessments. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP;

and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments; (g) ESY services, if necessary for the student to receive FAPE; (h) behavioral intervention plan, if necessary for the student to receive FAPE; (i) emergency response protocols, if necessary for the student to receive FAPE and the parent provides consent as defined in WAC 392-172A-01040; (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications; (k) beginning no later than the first IEP to be in effect when the student turns 16, appropriate, measurable postsecondary goals related to training, education, employment, and independent living skills; and transition services including courses of study needed to assist the student in reaching those goals; (l) beginning no later than one year before the student reaches the age of majority (18), a statement that the student has been informed of the rights which will transfer to him or her on reaching the age of majority; and (m) the district's procedures for notifying a parent regarding the use of isolation, restraint, or a restraint device as required by RCW 28A.155.210. 34 CFR §300.320; WAC 392-172A-03090.

FINDINGS OF FACT

Background Facts

1. During the 2014-2015 school year, the Student attended a District middle school and was eligible to receive special education services under the category of other health impairment.
2. On September 24, 2014, the Parents requested the District provide an independent educational evaluation (IEE) at public expense. The District agreed, and provided the Parents a list of possible professionals who could conduct the IEE. A private evaluator was selected.¹
3. The private evaluator presented her completed report to the District and the Parents at an IEE meeting on January 12, 2015.

¹ Finding of Fact no. 2-9 were taken from the decision in due process hearing 2015-SE-0058.

4. In her written report, the private evaluator recommended providing the Student specially designed instruction (SDI) in all academic courses; social and emotional skills; executive functioning and organizational skills; and adaptive skills. She also provided an extensive and detailed list of teaching strategies and accommodations the Student needed to succeed. In terms of the Student's classroom needs, the private evaluator recommended placement in a small classroom with a "greater adult to student ratio" and the ability to have individualized academic instruction when needed. She also suggested providing the Student with accommodations to address the Student's sensory and anxiety needs.
5. The District hired an independent psychologist to review the private evaluator's report, supporting reports, and prior evaluations. The independent psychologist noted concerns with the methodologies used by the private evaluator and another evaluator in diagnosing the Student with autism spectrum disorder (ASD). However, the independent psychologist agreed that the Student's significant anxiety disorder made diagnosing her "tricky" because it is not always displayed in every setting. She stated:

"[A]nxiety is a really common factor in school refusal...it's not unusual for [a student] to hold it together...look good and functional in a school setting and then sort of have all their resources depleted by the time they get home and be exhausted."

The independent psychologist further stated that the Student's anxiety disorder in combination with her other medical issues made her a "very complex" situation when it came to diagnosis. In spite of the Student's high anxiety levels, learning challenges, and low average IQ, the independent psychologist opined that with substantial accommodations and modifications, [the Student] could participate in a general education classroom setting.

6. On February 5, 2015, the IEP team met and decided, in light of the private evaluator's report, that the Student would be evaluated in the area of communication.
7. On February 23, 2015, the Student's reevaluation group met, and based on the results of the Student's communication evaluation, agreed to find the Student eligible for SDI in social cognition.
8. On March 19, 2015, after the reevaluation meeting, the IEP team reconvened to address amending the Student's IEP. The Parents both appeared. The group agreed to continue the Student's SDI in math and the associated annual goals, but also include social pragmatic skills as a new area of SDI along with an accompanying annual goal of reading social cues. The IEP team did not include SDI in other academic areas. The IEP team also considered the information and recommendations as outlined in the private evaluator's IEE. At the request of the Parent, the Student's accommodations and modifications were revised as well. At the time, the Student's teachers reported the Student was doing "great" in her general education classes with appropriate modifications and accommodations.

However, her frequent absences continued impacting her work quality, and her ability to complete assignments and retain concepts.

9. Despite the amended IEP, dated March 2015, the Student continued intermittent refusal to attend school. Her medical professionals increased doses of her medications to address her anxiety and depression. The Parent re-engaged a private therapist for bi-weekly counseling sessions.
10. On June 15, 2015, the Parent filed special education due process hearing request 2015-SE-0058, alleging that the District failed to provide the Student with specially designed instruction in areas other than math during the time period between March 19 and October 2, 2015, failed to offer appropriate services in the Student's individualized education program (IEP) to address her anxiety, and failed to convene an IEP team meeting when the Student's placement was changed to home hospital instruction. The Parent also alleged that the District failed to consider or adopt most of the recommendations from the Student's December 11, 2014, independent educational evaluation (IEE) when amending the Student's IEP, and that since March 2015, the District failed to provide the Student with specially designed instruction in areas other than math and social cognition.

2015-2016 School Year

11. The 2015-2016 school year began on September 9, 2015. The District issued a prior written notice, confirming the Student's fall class schedule would include three general education electives (aerobics, design in interiors and fashion, and concert choir) in addition to her academic classes (pre-algebra, literacy, and social skills). Although the Student presented little to no anxiety at high school, at home the Student's demeanor drastically changed. The Student began refusing to attend high school. Her absences significantly affected her grades.²
12. On or about October 2, 2015, the Student stopped going to school. On October 4, 2015, the Student threatened to commit suicide. The Student told her Parents and medical professionals she was feeling overwhelmed at school. The Parents immediately sent the District a notice of their intent to remove the Student from the District and enroll her at a private school.
13. After the Student's suicide threats, the IEP team again reconvened to discuss amending the Student's IEP. Despite the Student's set back, the new amended IEP only provided 550 minutes per week of special education services out of a total of 1830 school minutes. The [Parent] was present for the IEP meeting but refused to sign the amended IEP. She indicated that she no longer trusted the District to provide an appropriate education for the Student.

² Finding of Fact no. 11-14 were taken from the decision in due process hearing 2015-SE-0058.

14. On or about November 1, 2015, the Parents enrolled the Student in a private school where she could reportedly receive 1:1 instruction.³
15. The due process hearing was held before an administrative law judge (ALJ) on February 1-5, 2016.
16. On August 5, 2016, the ALJ issued a decision based on the hearing. The decision (2015-SE-0058) included findings of fact, conclusions of law, and an order. The conclusions of law stated (in relevant part):
 - Beginning with the March 2015 IEP, the IEP team adopted the majority of the private evaluator's proposed accommodations and modifications but the team did not include SDI in all academic areas – only math and cognition. In consideration of the totality of the information available to the District by March 2015, it is concluded, beginning with the Student's March 2015 IEP, the District violated the IDEA and denied the Student FAPE by failing to provide the Student with SDI in areas other than math and social cognition. The Parents have proven the District committed a substantive violation of the IDEA.
 - The failure to develop an IEP which addressed the Student's educational challenges in all of her other academic classes more likely than not led to increased anxiety and school refusal. The District's failure to appropriately address the Student's emotional needs denied the Student a FAPE. The Parents have proven the District committed a substantive violation of the IDEA.

The remedies stated (in relevant part):

- Consultation with Education Specialist: The District, at public expense, shall immediately conduct a re-evaluation of the Student and develop a new and appropriate IEP for the Student. The reevaluation and development of a new IEP shall be conducted pursuant to the applicable regulations. The reevaluation will be completed within 35 school days after the Parents provide written consent.
- Reimbursement for Private Education at [Private School]: The District denied the Student FAPE after she returned to school in March 2015 because the District did not provide SDI in areas other than math and social cognition. The Parents are entitled to reimbursement for the private placement beginning with the Student's enrollment at the private placement in November 2015 through the re-evaluation of the Student and the development of a new IEP, as ordered herein. The District will reimburse the Parents for up to 180 minutes per week of 1:1 instruction at the private school. The Parents must provide the District with written confirmation of the educational costs for the Student's tutoring at the private school prior to payment by the District.

The ALJ ordered (in relevant part):

- For failing to provide the Student SDI during HHI, the District shall provide the Student 25 hours of SDI in math in a 1:1 setting.
- For failing to provide the Student SDI beginning since March 2015, the District shall provide an additional 225 hours of compensatory education as outlined herein.

³ [At the time the due process order was issued] the Student attended 1:1 instruction at the private school two times per week for 90 minutes per session. Since being enrolled, the Student had shown less anxiety. Additionally, she had made progress with her reading and math skills.

- At public expense, the District shall immediately conduct a reevaluation of the Student and develop a new IEP for the Student.
- The Parents are entitled to reimbursement for the private placement beginning with the Student's enrollment at the private placement in November 2015 through the reevaluation of the Student and the development of a new IEP, as ordered herein.

17. On August 21, 2016, the Parent emailed the District executive director of special education, stating she had received a copy of the due process decision for 2015-SE-0058 and asked who would conduct the Student's reevaluation, and when the Student's new IEP would be implemented.

18. On August 23, 2016, the District sent the Parent a prior written notice, proposing to initiate the remedies and actions from due process decision 2015-SE-0058, which included the following:

- Provide 25 hours of specially designed math instruction in a 1:1 setting,
- Provide 225 hours of additional compensatory education (social skills, literacy, and pre-algebra),
- Conduct a reevaluation to inform a new IEP,
- Confirm and reimburse the cost of Student's attendance at the NPA from November 2015 until the end of her reevaluation⁴.

The notice also stated that the Student's public school multidisciplinary team would contact the Parent with a consent to evaluate form, and recommendations for areas of needed reevaluation. An IEP would be developed as informed by that reevaluation. Further, the notice stated the reevaluation would likely require access to the Student for assessment and observation at her current education setting would likely be requested, as it had been almost a year since any school staff had seen the Student work in an educational setting. Lastly, the notice asked the Parent to provide written confirmation of the cost associated with the private placement so the District could reimburse her at the end of the reevaluation period and creation of a new IEP.

19. On August 28 and 31, 2016, the Parent and the District exchanged emails regarding arranging for the Student's compensatory education.

20. On September 11, 2016, the Parent emailed the District and requested it resend the August 23, 2016 prior written notice.

21. On September 13, 2016, the Parent emailed the District high school principal and vice principal, and the District executive director of special education (executive director), director of secondary special education, and the Student's IEP case manager and stated:

As you know, we went to due process. The verdict came out August 1, 2016. In the verdict, it says that my daughter is to be reevaluated and given an appropriate IEP

⁴ The order stated the Parents were entitled to reimbursement from November 2015 through the reevaluation of the Student and the development of a new IEP.

immediately. Since then I have received a prior written notice from the executive director of special education saying that the school would be in contact with me to set this up. It has been 1.5 months since this verdict came out, and I have not heard from the high school at all to set any of this up. One and a half months is not considered immediately. Please let me know what is happening.

22. On September 14, 2016, the principal emailed the executive and the director of secondary special education and stated, "I assume you understand what [Parent] is addressing?"
23. On September 27, 2016, the District sent the Parent a prior written notice and a meeting invitation, proposing to initiate a reevaluation meeting with the Parent and District on October 18, 2016, where the parties would review prior records and independent evaluation reports, new assessment data, state proficiency data, and graduation and transition status. The District's consent form stated that it would conduct assessments in the following areas: review of existing data, social/emotional, academic, age appropriate transition assessment, medical-physical, general education, and IEP goals. That same day, the Parent signed and returned the consent for a reevaluation.
24. Also on September 27, 2016, the Parent emailed the District, stating that she would like all communication with the District to occur via email. The Parent also stated concern about scheduling the Student's compensatory services prior to the District completing the reevaluation and determining the Student's educational needs. Over the next several days, the Parent and the District exchanged additional correspondence regarding the Student's compensatory services.
25. On October 11, 2016, the executive director emailed the Parent, and copied the director of secondary special education and the principal, to set a time for the reevaluation meeting and suggested October 17 or 18.
26. On October 12, 2016, the District sent the Parent a prior written notice, proposing to initiate the Student's reevaluation on October 18, 2016.
27. On October 18, 2016, the District completed the Student's reevaluation. The Student's evaluation report stated:

As pointed out at hearing, "...[G]iven the length of the Student's absence from the public school setting, it is not possible to know her current educational needs." On [9]/27/2016 consent was signed and this reevaluation was initiated to complete an updated assessment of the Student's current reading, writing and math skill sets. In other areas, a brief review of the extensive prior assessment data will be provided to help guide the team decision making process.

The medical-physical section of the report included information from 2011-2013, but did not include any current information about the Student. The social/emotional section of the report included information from 2014, but did not show that any new assessments had been conducted and did not include any current information. Additionally, the cognitive section of the report included information from 2010-2014,

but did not include any current information about the Student. The academic section of the report included a review of academic testing from 2014, and included new information from academic assessments conducted in October 2016. The report stated:

In the areas of reading and writing, updated assessment data show that [Student] has continued to make academic progress, with standard scores continuing to fall in the average or expected to slightly below average range. Note: When [Student's] overall standard score for essay composition was suppressed by her lower word count, here theme development and organization score fell squarely in the average range. In the area of math, [Student] continues to struggle. Her standard score for math reasoning continues to fall in the low range, well below grade level expectation. And, her numerical operations standard score, while higher, still remains below grade level expectation. In general, [Student's] basic math operations skills include addition, subtraction, and multiplication but she continues to struggle with division and fractions.

The age appropriate transition section of the report included some information about the Student's strengths, preferences, and interests, but it is unclear if any transition assessments were conducted, or how the information was obtained. The evaluation report recommended the Student receive specially designed instruction in the areas of math, reading, writing, social/emotional, and learning strategies/organizational skills.

28. On October 24, 2016, the Parent emailed the executive director and stated that she had the private evaluator who conducted the Student's January 2015 IEE review the District's reevaluation report, and based on the private evaluator's opinion, the Parent was requesting that the District pay for a new IEE. The Parent included part of the private evaluator's email, which stated:

This evaluation is sparse, I agree with you there is not a lot of information on which to build an IEP. There isn't a mention of her recent diagnosis from my evaluation or a statement of educational implications of her diagnosis and disabilities. There is some new achievement testing but no information from her current teachers about her present functioning, such as a narrative, day to day classroom performance, curriculum-based measures, other testing, nor response to intervention. Updated information about her cognitive functioning would be very helpful to inform educational planning, particularly related to her reasoning and executive functioning. There also is an absence of any information about her current health or data from her other people in her life (e.g. Parents, teachers) about her social, emotional, and adaptive functioning related to age peers.

By law, we cannot make decisions based on a single test score. If the school is opting to remove IEP services in reading and writing⁵, they would need much more for data than the WIAT – III Scores as evidence. Even if reading and writing continue to be included as IEP goal areas, simply stating test scores provide little direction for individualized educational plan related to curriculum, materials, and instructional strategies. The educational program she is receiving currently needs to

⁵ The evaluator misread the evaluation to remove services in reading and writing when in fact the evaluation added services in reading and writing.

be understood in the evaluation along with her response to the interventions. In addition, more permission is needed about her cognitive and executive functioning to understand her educational needs and truly design a program that is appropriately matched.

29. On October 26, 2016, the executive director emailed the Parent, stating the Parent's request had been noted, and would be documented in a prior written notice within 15 days of the request. The executive director also stated that the District evaluation qualified the Student in reading and writing, and did not aim to remove those services. The District asked if this misunderstanding was what caused the Parent to request an IEE. The Parent responded that same day that she wanted the IEE because she was concerned the Student would not understand the material without her work being modified. The Parent also attached the Student's latest evaluation from an outside speech therapist who stated the Student had expressive/receptive language problems. The Parent specifically requested the District look at the Student's diagnosis codes, which explained her problems with language. The Parent then sent a second email, asking how the District would develop a proper IEP using just the WIAT-III test scores.
30. On November 3, 2016, the District sent the Parent a prior written notice, proposing to initiate an IEP development meeting, and clarified that the October 18, 2016 reevaluation added reading and writing services for the first time. The notice stated the Student's evaluation meeting took place on October 18, and resulted in the Student's continued qualification in special education and added additional areas of SDI. The notice also stated the District approved the Parent's October 24 request for an IEE, but that the District believed the October 18 evaluation (which cited and included previous evaluation information, both IEE and district evaluations) was appropriate and could properly inform the Student's IEP. Included with the prior written notice was a list of potential evaluators to conduct the IEE.
31. On November 4, 2016, the Parent emailed the District and requested that the private evaluator who had performed the Student's January 2015 IEE once again perform the IEE. Additionally, the Parent asked when the compensatory education would start. The Parent then sent a follow-up email on November 8.
32. On November 9, 2016, the executive director emailed the Parent a prior written notice, proposing to initiate the Student's IEE and compensatory services, and a release for exchange of information.
33. On November 14, 2016, the Parent returned the release for exchange of information form via email, and asked when the IEE would take place.
34. On November 17, 2016, the executive director emailed the Parent, stating that the private evaluator had agreed to conduct the IEE, and that a prior written notice to that effect would be sent out the next day. Later that afternoon, the Parent responded, stating the private evaluator had called her and said there was no contract in place with the District to evaluate the Student. The Parent asked for a timeline in which she could expect this to happen.

35. On November 18, 2016, the executive director emailed the Parent, stating “Attached confirms our contact with [the private evaluator], and our request to have an IEP meeting.” The Parent responded and asked if the District had a contract in place with the private evaluator. Also on November 18, the District sent the Parent a prior written notice, documenting the District’s agreement to pay for the IEE and that it would contact the private evaluator to set up a contract. The notice also stated that on October 18, 2016, the Student’s evaluation determination meeting was held. The meeting resulted in continued qualification in special education, and additional areas of SDI instruction. The notice also stated that based on the District’s evaluation, which contained new information and the detailed evaluation history of the Student, the District believed an IEP could be formulated.
36. On November 19, 2016, the Parent emailed the executive director, stating that she disagreed with the District’s plan to hold the IEP meeting prior to the IEE. She stated the law required the District to consider the IEE; thus, she could not see how the IEP could be developed without the IEE being completed.
37. On November 21, 2016, the Parent emailed the executive director again, asking when the private evaluator would have a contract with the District so they could proceed with the IEE. The Parent then sent a second email, asking for dates for a possible IEP meeting.
38. On November 22, 2016, the executive director emailed the Parent and copied the school psychologist, special education teacher, and director of secondary special education, stating that answers to the Parent’s recent questions were addressed in an attached prior written notice, and that the Student’s IEP case manager would be sending IEP meeting date options. The prior written notice also stated that the District would consider the IEE, consistent with a previous prior written notice, but it believed the October 18 evaluation was appropriate to inform an IEP reasonably calculated to help the Student make meaningful progress. As such, the District was seeking IEP dates. Further, the notice stated days/times of the Parent’s availability were sought, but since none were provided, the IEP case manager would propose days/times. Regarding the IEE, the private evaluator had agreed to conduct the evaluation, but the contract had not yet been finalized, so the District expected the contract would be delivered to the private evaluator the following week.
39. On November 23, 2016, the Parent again emailed the executive director, stating that she had requested the IEE because there was not enough information in the District’s evaluation regarding the Student’s disability, or how the disability was going to affect her learning. The Parent stated that the Student had complex learning needs, and that putting her in a general education class with a paraeducator to explain the work, was not appropriate for her learning needs. She stated the District had tried this before, and the Student’s anxiety had reached a level of needing to be hospitalized. The Parent did not want this to reoccur. The Parent stated she was given two options at the evaluation meeting, placing the Student in general education with a paraeducator, or placing her in a life skills program, neither of which the Parent found appropriate. The Parent then stated that her concern with the

District's evaluation was that the Student's level of understanding was low, and the classes in which the District wanted to place her were too advanced for the Student to understand the work. The Parent also stated she was concerned that the District was not including the Parents as part of the IEP team, but were instead developing an IEP without parental consent or input, even though they disagree with the District about the sufficiency of the evaluation, and that those concerns were not being heard, or considered.

40. The District was on break November 24 and 25, 2016.
41. On November 28, 2016, the District sent the Parent a prior written notice, proposing to hold an IEP meeting on December 12, 2016, and stated that it prepared a draft IEP based on the Student's October 18 reevaluation. The notice stated that the Parents had "voiced" feeling like they were not involved in the team process, but there had never been a time when the Parents were not included in the education planning for the Student. Also on November 28, the Parent emailed the executive director to share dates the private evaluator would be available to attend an IEP meeting.
42. On November 29, 2016, the Parent emailed the executive director and asked for a copy of the proposed IEP for the Student.
43. On November 30, 2016, the Parent emailed the executive director and stated she could not attend the IEP meeting on December 12, but could attend a 5th, 13th, 16th, or 19th meeting after school. The Parent later sent a second email, stating she could no longer attend a meeting on December 5, 2016.
44. On December 8, 2016, the executive director emailed the Parent a draft IEP for the December 19 IEP meeting. After reviewing the draft, the Parent responded, "Regarding the repeated requests for a progress report from the Student's private placement, we were asked once, and told by the school psychologist that he wasn't going to use it anyway and did not need it. Please change your wording."
45. On December 11, 2016, The Parent emailed the District to notify it of [three] new diagnoses for the Student: fibromyalgia, a mixed/receptive/expressive language disorder, and a literacy disorder, and stated that the fibromyalgia may have played a part in her absences from school.
46. On December 19, 2016, the Student's IEP team, including the Parents, met to develop the Student's annual IEP. The IEP included annual goals in the areas of math, social/emotional, reading, and written language. The reading goal stated:
Skill: work completion -when given a reading assignment that becomes overwhelming due to workload or anxiety [Student] will use pre-taught strategies "completing assignments" and/or "answering chapter questions" improving ability to self monitor workload and plan accordingly from 0 of 3 trials daily to 2 of 3 trials daily as measured by student rating sheet, observations, and monitoring missing work.

The writing goal stated:

Skill: coursework completion - when given a writing assignment that becomes overwhelming due to workload or anxiety [Student] will use pre-taught strategies “completing assignments” and/or “answering chapter questions” improving ability to self monitor workload and plan accordingly from 0 of 3 trials daily to 2 of 3 trials daily as measured by student rating sheet, observations, and monitoring missing work.

The IEP provided for the following specially designed instruction in a special education setting:

- Math – 55 minutes/5 times weekly
- Learning Strategies/Organization Skills – 15 minutes/5 times weekly
- Reading – 10 minutes/5 times weekly
- Writing – 10 minutes/5 times weekly
- Social Emotional – 10 minutes/5 times weekly

The IEP provided for the following secondary transition:

- Post secondary goals/outcomes: Upon leaving public school [Student] will identify possible areas of post-secondary education or training.
- Employment: Upon leaving public school, [Student] will identify potential employment opportunities in the cosmetology field, especially custom nails and hair design.
- Independent Living: Upon leaving public school, [Student] will be able to advocate for herself including asking for help and stating what she needs from others. Additionally, [Student] will need to know the following self sufficiency skills of cleaning, cooking, obtaining transportation to and from work and/or school, banking and paying bills.

47. Later on December 19, 2016, the Parent emailed the executive director and the director of secondary special education and recapped her understanding of the IEP meeting. The Parent asked how many classes the Student would start with when she returned to a District school program. The Parent also stated again that she had been given only one day to obtain a progress report from the Student’s private placement, and that the District school psychologist had said he did not need it and that he was not going to use it anyway. As a result, the Parent stopped requesting a copy of the private school progress report. The Parent stated the District could have requested the progress reports directly from the Student’s private placement and not the Parent. That same day, the District sent the Parent a prior written notice, proposing to initiate the Student’s IEP and compensatory services. The notice stated that the District had designed an IEP based on the October 18 reevaluation to allow the Student to attend school again. The final draft of this IEP had been completed on December 19, at which time the District proposed to initiate after winter break.

48. On December 20, 2016, the executive director emailed the Parent and asked her to sign and return an attached request for educational records from the Student’s private placement. In response, the Parent asked if the form placed the Student back into the District. The executive director replied that it was a standard form used to request educational records.

49. The District was on break from December 21, 2016 through January 3, 2017.

50. On December 22, 2016, the District executive director emailed the Parent and the director of secondary special education, school psychologist, special education teacher, and IEP case manager a prior written notice, dated December 21, 2016, proposing to initiate the Student's IEP and a reentry plan. The notice further stated (in relevant part):

- The Student had been diagnosed with a speech language disorder. This information was considered by the group, but per her most recent evaluation process speech-language was not an area of suspected disability as she was not found to qualify for speech-language services, a determination that was upheld by the due process decision.
- The District would honor the Parent's request that the Student return to the District high school to attend only 6^h period three days a week, but disagreed that this was a suitable amount of school as the Student qualifies for five specific service areas and the Parent's proposed schedule could impede her progress.

51. Also on December 22, 2016, The Parent responded to the executive director's email, stating that she did not trust the District to provide the services discussed in the IEP meeting because the Student's evaluation report did not state where the Student was functioning academically. The Parent also stated she would be looking at other school districts in which to place the Student, and asked the District to develop a clear IEP addressing the Student's needs.

52. On January 2, 2017, the Parent emailed the District special education teacher, stating that she would not be putting the Student back in the District, and that she wanted the IEP to be transferable to another school. The Parent asked the special education teacher to read the report from the private evaluator, and to write the IEP for transfer. The special education teacher forwarded the Parent's email to the executive director and the director of secondary special education, and asked how/if they would like her to respond. The Parent then emailed the executive director later that afternoon, asking how they would proceed with compensatory education since the Student would not be attending school in the District.

53. On January 11, 2017, the executive director emailed the Parent and copied the school psychologist, director of secondary special education, special education teacher, the principal, and the teacher who provide the Student's compensatory services. The executive director attached a prior written notice in response to the Parent's January 2 emails. The notice, in relevant part, referred to the December 19 IEP meeting, and acknowledged the Student's current enrollment in the private school. The District stated that when the Parent was ready for the Student to be served under the proposed IEP, she should inform the District, and register the Student at the District high school.

54. On January 11, 2017, the Parent emailed the executive director and asked for a copy of the finalized IEP. The executive director provided a copy on the IEP on January 13.

55. On January 18, 2017, the Parent again emailed the executive director and copied her attorney, the director of secondary special education, and the District superintendent, stating:

Due to the inadequacy of the October 2016 evaluation, which led to an insufficient IEP, we have no other choice than to not allow [Student] to attend [a District high school]. We will be looking at private schools and/or other options that can meet her needs. The IEP team admitted that they do not know [Student's] current educational needs which is because the evaluation that was done was so poor, there was no way to determine her educational needs. No attempt was made to get her records from the private school to incorporate the information into the evaluation. A single test was used for the evaluation, and that was it. The IEP goals for reading and writing are not reading and writing goals, and she is not being provided SDI as ordered by the ALJ. The IEP that was made with 10/15 minutes a day of learning strategies/organizational skills in reading/writing and social skills will not meet her educational which the District hasn't even determined. If you would like to wait until [the private evaluator's] evaluation is complete and incorporate her findings into your evaluation instead of properly reevaluating her yourselves, so that an accurate and adequate IEP can be developed, we will do that. However, we feel that [the District] will continue to ignore her needs and exclude her from receiving FAPE. If we have to go back to litigation to ensure [Student] receives FAPE, we will.

56. On January 19, 2017, the executive director emailed the Parent, and copied the school psychologist and director of secondary special education and attached a copy of the Student's October 2016 evaluation report. Later that day, the Parent emailed the executive director invoices regarding the Student's private school tuition in the amount of \$12,375.00. The Parent also stated that she did not consider the Student's December 2016 IEP finished, and would continue to gather invoices until the IEP was adequate to meet the Student's needs.

57. On January 26, 2017, the Parent emailed the executive director and copied her attorney and the District superintendent. The Parent stated she had received no response to her last email regarding reimbursement for the private school tuition.

58. On February 2, 2017, the Parent again emailed the District and stated she had not received a response regarding reimbursement for the private school.

59. On February 3, 2017, the executive director sent the Parent a prior written notice, proposing to initiate the Student's IEP, and to relay information regarding the Parent's recent questions. The notice stated:

- [The Student's] evaluation was completed on October 18, 2016, and resulted in additional areas of qualification.
- An appropriate IEP was developed and proposed to the team (including Parent) on December 19, 2016. This included goals and minutes for the additional areas of qualification.

- The number of minutes on an IEP matrix are a function of [Student's] time at school. If [Student's] schedule at school is restricted by parent request, or the IEP team, these reduced minutes are then reflected on the IEP. Her restricted schedule upon return was in part due to parent request.

The prior written notice also stated that a request to the Parent for written documentation and statements from the private school were made on August 23, 2016, and the Parent first responded on January 19, 2017. The District stated it would submit the private school invoices for reimbursement to the District budgeting office and reimburse the Parent for costs up through December 19, 2016, when the Student's IEP was developed. The notice further stated the Student was currently enrolled in an online program in another Washington school district, and the Parent had indicated she was also researching private school options. The District had forwarded the Student's IEP and latest evaluation report to the online high school in the other District on January 31, 2017. Lastly, the notice stated that the Parent's attorney had, under threat of litigation, asked for the District to pay for three years of private placement for the Student. The District stated it believed the December 19 IEP was appropriate, was denying the request, and was not being given a chance to carry out the plan to prove efficacy through the IEP which was designed to provide the Student benefit.

60. On February 6, 2017, the Parent emailed the District and asked when the invoices for private school would be paid.
61. On February 9, 2017, the District sent the Parent another prior written notice in response to her emails on January 27, February 1, and 8. The prior written notice stated, in relevant part: "Invoices from the private school had been provided to the District finance office for processing and the District anticipated less than two weeks for reimbursement."
62. Also on February 9, 2017, the District executive director sent a letter to the District finance office along with the invoices the Parent supplied on January 19, 2017, and asked the finance office to issue the appropriate payment to the Parent.
63. On February 20, 2017, the Parent emailed the executive director and stated that the private evaluator had completed the Student's IEE, and provided dates she could meet with the IEP team: March 6, 7, 10, 13, 17, or 21, 2017. The Parent stated she hoped the team would be open to the IEE, and adjust the Student's IEP accordingly. The Parent also asked about the status of her reimbursement for the private school.
64. On February 23, 2017, the District sent the Parent another prior written notice in response to her February 20 email. The prior written notice stated, in relevant part:
 - In response to the Parent's request for information regarding when the approved private school reimbursement would arrive, the District stated it was approved and submitted the invoices to the District finance office on February 9, and as such the Parent should receive the reimbursement soon, if not by the time she received this prior written notice.

- Additionally, in response to the Parent's statement that the Student is currently enrolled in an online program, the District stated all special education services were now the responsibility of that school. The District has already provided the online program with the Student's IEP and evaluation and so it recommends the Parent contact the online program so the IEE recommendations can be considered by their team.

65. On February 24, 2017, the Parent filed this citizen complaint.

66. On February 28, 2017, the Parent emailed the executive director again, asking when she would be reimbursed for the invoices from the private school, which she had provided on January 23, 2017. In response, the executive director stated that the invoices were approved for payment on February 15, 2017. He stated that there had been an issue about how to properly account for the payment, but that issue had since been resolved and the invoices were scheduled to be paid on the next payment cycle, March 15.

67. On March 1, 2017, the Parent emailed the executive director, stating that the Student now wanted to attend school at the District high school. The Parent requested an IEP team meeting to go over the IEE, and have the recommendations incorporated into the Student's December 2016 IEP, and asked the District to provide potential meeting dates and times.

68. On March 15, 2017, the Parent emailed the executive director to ask if the tuition reimbursement went out, and to confirm the amount. The executive director responded that a \$12,000 check was mailed out on March 15, 2017.⁶

CONCLUSIONS

In her complaint, the Parent alleged that the District failed to implement due process order 2015-SE-0058 by: a) failing to conduct a sufficient reevaluation and develop an appropriate IEP to meet the Student's needs; and, b) failing to reimburse her for costs associated with the Student's private placement from November 2015 through the District's reevaluation of the Student and the development of a new IEP.

Reevaluation – Due process order 2015-SE-0058, which was issued on August 5, 2016, required the District to “immediately” conduct a reevaluation of the Student and develop a new IEP for the Student. However, despite the ALJ's instructions for expediency, the District's documentation in this complaint shows that the District failed to send the Parent a prior written notice, proposing to conduct the reevaluation and a consent form until September 27, which was more than seven weeks after the ALJ issued the order.

⁶ Additional emails between the District and the Parent reflect that the parties had agreed the total amount due was \$12,000, not \$12,375, and the District paid the Parent \$12,000 on March 15, 2017. The Parent also provided additional invoices on March 17 and 20, which totaled \$1,950. The District's documentation in this complaint shows that the Parent received the payment on April 3, 2017.

A 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. Here, the District's consent form stated that the Student would be assessed in the areas of social/emotional, academics, age appropriate transition, medical-physical, general education, and IEP goals, and review of existing data. However, the District's reevaluation only included one academic assessment, and a review of existing data that was not current at the time of the reevaluation. While the District stated that it requested records from the Student's private school, the District provided no documentation to substantiate it made any effort to obtain the Student's current educational records, or to verify her current academic progress and educational needs. The District also did not conduct any assessments in the area of social/emotional, despite the Student's issues with anxiety, depression, and difficulty attending school. Additionally, the Student's evaluation report by the District does not specify whether any age appropriate transition assessments were completed. Despite the fact that the Student had received several new diagnoses, and had other changes to her medical -physical status since 2014, the October 2016 evaluation report did not include any new information about the Student's current medical status.

An evaluation report must also be sufficient in scope to develop the student's IEP, and must include a statement of how the student's disability currently affects her involvement and progress in the general education curriculum, the recommended special education and related services needed by the student, and other information needed to adequately develop the IEP. While the District's evaluation report recommended that the Student receive specially designed instruction in reading, writing, math, learning strategies, and social skills, the report did not include sufficient information to adequately develop the Student's IEP. As such, the District failed to complete a reevaluation sufficient to comply with due process order 2015-SE-0058. It is also noted that when the Parent expressed concerns about the sufficiency of the Student's reevaluation, the District did not take steps to review and address the issues with the reevaluation, even though it could have conducted additional assessments and obtained additional information within the 35-school day timeline for the reevaluation, which ended on November 17, 2017. Instead, the District continuously stated that the Student's October 2016 reevaluation was sufficient, but also agreed to pay for an independent educational evaluation (IEE) at public expense.

IEP – An IEP must contain a statement of the student's present levels of academic achievement and functional performance, a statement of measurable annual academic and functional goals designed to meet the student's needs resulting from their disability, and also include measurable postsecondary goals related to training, education, employment, and independent living skills. Here, the Student's December 19, 2016 IEP does not include complete information about the Student's present levels of performance, because as discussed above, her October 2016 reevaluation failed to include current assessments in several areas, as well as information from her current medical records. While the December 19, 2016 IEP does include annual goals, the goals in the areas of reading and writing do not address any reading and writing skills for which the Student will be provided specially designed instruction. Instead, the goals are aimed at work completion and would more appropriately be categorized as learning

strategy or organizational/study skills goals. Further, under the secondary transition section of the Student's IEP, the postsecondary goals are not measurable, and only address what the Student can achieve while she is still in high school.

Tuition Reimbursement – In her complaint, the Parent also alleged that the District failed to implement due process order 2015-SE-0058 by failing to reimburse her for costs associated with the Student's private placement from November 2015 through the District's reevaluation of the Student and the development of a new IEP. To date, the District has reimbursed the parent for \$13,950.00, the cost of the Student's private school tuition from November 2015 through December 19, 2016, the date the District developed the Student's current IEP. However, as discussed above, the Student's reevaluation was not conducted pursuant to state regulations and therefore, the Student's December 2016 IEP is not compliant with state regulations. Thus, the District's October 2016 reevaluation and her December 2016 IEP are insufficient to comply with the ALJ's order in 2015-SE-0058. OSPI orders that the Parents continue to be entitled to reimbursement for the Student's private placement until the District conducts a comprehensive reevaluation, and develops a new IEP based on the results of the reevaluation, which must include consideration of the agreed upon independent educational evaluation (IEE) results. OSPI does not have the authority to order the District to pay additional tuition costs; such a matter must be decided by an ALJ.

CORRECTIVE ACTIONS

By or before **May 23, 2017, June 22, 2017, June 23, 2017, and September 15, 2017**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

The District will immediately seek the Parent's consent to conduct a reevaluation of the Student, which addresses all areas of suspected disability. The reevaluation will, at a minimum, include a review of the Student's records from her private school and the online program, her current medical records, and the March 2016 IEE report. The District will then hold an IEP meeting by **June 15, 2017**, to review the results of the Student's reevaluation and develop a new IEP for the Student. By **June 22, 2017**, the District will provide OSPI with a copy of: 1) the meeting invitation; 2) the Student's evaluation report; 3) the Student's new IEP; 4) a prior written notice documenting the IEP team's decision; and, 5) any other related documentation.

DISTRICT SPECIFIC:

1. By **September 6, 2017**, the District will provide training for all special education certificated staff and the school principal at the Student's former high school regarding reevaluation procedures and the development and implementation of IEPs. The trainer will not be an employee of the District. The training will also include examples.
 - By **May 23, 2017**, the District will notify OSPI of the name of the outside trainer, and provide the trainer with a copy of this decision for use in preparing training materials.

- By **June 23, 2017**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by July 12, 2017 and add additional dates for review, if needed.
- By **September 15, 2017**, the District will submit documentation that staff participated in the training. This will include a sign-in sheet and a roster of who should have attended so OSPI can verify that staff participated.

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 April, 2017

Douglas H. Gill, Ed. D.
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.)