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Notice of Procedural Safeguards: The notice of procedural safeguards must provide a full explanation of a student's rights related to: an independent educational evaluation (IEE); prior written notice; parental consent; access to education records; dispute resolution options and procedures; placement during a due process hearing; procedures for placement in an interim alternative setting; requirements for unilateral placement in private schools at public expense; civil actions; and attorney's fees. 34 CFR §300.504(c); WAC 392-172A-05015(3).

A copy of the procedural safeguards must be given to parents, at a minimum one time per school year and: (a) the first time the child is referred or the parent requests a special education evaluation; (b) the first time the parent files a citizen's complaint or due process complaint in a school year; (c) on the date the district decides to make a disciplinary change of placement; and (d) anytime the parent requests a copy. 34 CFR §300.504(a); WAC 392-172A-05015(1).

Notice of procedural safeguards must be in written language understandable to the general public and written in a parent's native language or, when appropriate translated orally so that the parent understands the notice. If the notice is provided orally to the parent, the district must maintain a written record of the translation. 34 CFR §300.504(d); WAC 392-172A-05015(4).

## **FINDINGS OF FACT**

### **Background Facts**

1. In the fall of 2014, the Student was initially evaluated for special education by another Washington school district. On December 12, 2014, the Student's evaluation group determined that the Student was eligible for special education because of developmental delays in the following areas: cognitive, communication, fine motor, and gross motor. The Student's individualized education program (IEP) team then developed his initial IEP and the Student received special education services in a developmental preschool program.
2. The Student transferred to the District on June 15, 2015.
3. During the 2015-2016 school year, the Student attended a District preschool program.



























53. On March 22, 2018, the special education teacher emailed an educational specialist for the District, stating that, “[The Student] no longer qualifies for academics. He does check in/out with me as a Gen-ed intervention...[The SLP] is making the amendment and meeting with mom during conference.”
54. The documentation in this complaint contains a “Notice of Meeting”, dated March 22, 2018, proposing a meeting to occur on March 16, 2018 to “discuss assessment revision.”<sup>17</sup>
55. The District’s documentation in this complaint includes a prior written notice, dated March 22, 2018, which stated, “[Student] will receive [SDI] in the area of Gross Motor and Communication.” The prior written notice had an initiation date of March 22, 2018. The documentation also contains an “Assessment Revision Prior Written Notice,” dated March 22, 2018, which stated, “[The Student] qualified for Gross Motor and Communication in the area of Articulation, however, Communication was inadvertently omitted from the Decision section of the evaluation report.” The prior written notice stated that, to remedy this omission, the District will provide the Student with “Specially Designed instruction in the area of Gross Motor and Communication” beginning on March 22, 2018.
56. On March 23, 2018, the PT emailed the Parent, stating:  
After talking with some of the team about qualification areas I think I will need to dismiss [the Student] from gross motor services...I am happy to follow him through the rest of this school year to make sure he is comfortable with his stretching and then check up on him, but this would not be reflected in his paper work. Thoughts?
57. Also on March 23, 2018, the Student’s PT exchanged emails with the District’s educational specialist. These emails are summarized below.
- The PT emailed the educational specialist, asking, “Can a [student receive] supplementary aids and services without qualifying in that area? I ask because [the Student] may need a reevaluation to change to [specific language impairment] instead of the reevaluation to change the paper work areas. But this is only if I do indeed dismiss, but I want to stay as supplementary aids and services, if that makes sense. If I can’t be supplementary aids and services I guess [Student] can stay, but he doesn’t really have qualifying scores in the area of gross motor to qualify for the [developmentally delayed] category.”
  - The educational specialist responded, “In order to receive services, he has to meet the criterion determined. You can always consult with staff and be an accommodation of [sic] there are things linked to other services.”
  - The PT replied that, “[The Student’s] mom would like us to support a stretching program for him at school.”
  - The educational specialist responded, “That would be really hard to relate to communication deficits.”
  - The PT replied, “Yes. My predicament.”
  - The PT replied again, stating:

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<sup>17</sup> From the face of the document, it is obvious that the dates were entered incorrectly on this meeting notice. Furthermore, it does not appear that the parties actually met on either March 16, 2018 or March 22, 2018.

“Looks like...the assessment revision [was already done] (but the test I used doesn’t meet the test/retest reliability standards for [the developmentally delayed] qualification), but if we just let it slide, I don’t know if we can do that, I will just change my service time and goals on the IEP and get through that;” and “I am thinking we need to dismiss but am a little concerned about how [the Parent] may take it.”

58. On March 28, 2018, the Parent met with the Student’s general education teacher for their scheduled parent-teacher conference.
59. After the conference, District personnel met with the Parent to review an amendment to the Student’s December 2017 IEP, which reflected the Student’s need for specially designed instruction in the area of communication on the IEP service matrix. The following individuals attended the March 28, 2018 meeting and signed the IEP amendment: the Parent, general education teacher, SLP, PT, and a special education teacher. According to the District, the special education teacher attended as the District representative. The Parent asserts that she was not aware the special education teacher attended the meeting as the District representative. The Parent also stated in her complaint that “the speech therapist excused himself [from the March 28, 2018, meeting] after he spoke with us about our son’s progress in speech to attend another meeting.”
60. According to the Parent, at the meeting, the Parent was handed the March 19 “Review Individualized Education Program (IEP) Invitation (Amendment),’ the signature page was turned to and we were asked to sign while being explained that the communication section wasn’t added in [the Student’s] IEP back in December and that they had just fixed it, we signed and carried on about his conference.” The Parent alleged that it was never her understanding that the March 28, 2018 meeting was an IEP meeting.
61. The documentation in this complaint includes a March 28, 2018 amendment to the Student’s December 2017 IEP. The March 2018 IEP amendment included the following changes to the December 2017 IEP:
- Both of the motor goals from the December 2017 IEP were removed.
  - A new motor goal addressing “hopping” was added.
  - The service matrix was updated to include the following specially designed instruction in a special education setting beginning on March 28, 2018:
    - Gross motor – 15 minutes 1 time monthly (provided by a PT)
    - Communication – 30 minutes 1 time weekly (provided by an SLP)
62. The Parent received a copy of the Student’s updated IEP at the March 28, 2018 meeting.
63. The documentation in this complaint contains a prior written notice, dated March 28, 2018, that stated the following:
- Description of Proposed Action: “[Student’s] previous IEP incorrectly omitted the provision of SLP direct intervention minutes. This was due to multiple people working on the IEP at the same time. A meeting is needed to correct this error.”

- Reason for Proposed Action: “Based upon [Student’s] most recent evaluation, he continues to qualify for SLP and PT services. However, an error on the previous IEP omitted SLP direct service minutes.”
- Description of options rejected: “Conducting an IEP revision was necessary to list correct IEP service minutes. It was not needed to do any updated on the last evaluation.”

The March 28, 2018 prior written notice stated that “this action will be initiated on” March 28, 2018.

64. According to the SLP, on March 29, 2018, the Student did not receive thirty minutes of speech services because the Student was “unavailable.”

65. The District was on break April 2-6, 2018.

66. The Student received thirty minutes of speech therapy on April 12, 19, and 26, 2018.

67. The Student received thirty minutes of speech therapy on May 3, 10, 17, 24, and 31, 2018.

68. On May 1, 2018, in a response to a request from the Parent for a meeting, the school’s special education teacher emailed the Parent, stating, “[The speech language pathologist] is [Student’s] Case Manager now (since he did not qualify for academics).” Later that same day, the Parent responded, “I have some concerns about [the Student’s] academics, progress and about his IEP now and for the next school year. Please let me know when a good time for everyone to meet up would be.”

69. On May 7, 2018, the Parent visited the special education director to make an appointment to discuss her concerns with the Student’s education. The Parent stated that the secretary for the director of special education provided her with a copy of the *Special Education Procedural Safeguards for Students and Their Families* pamphlet on this date. The Parent alleged that this was the first time she received this pamphlet. In the Parent’s reply to the District’s response to this complaint, the Parent stated:

We wouldn’t have had waited as long as we did to if we had known our rights as parents or that [Student] had rights as a student, as well as having the option to file a complaint. If we knew we had rights and there were other options we could have taken those avenues would most definitely been taken into consideration before it got the point of involving OSPI.

70. On May 9, 2018, the Student’s general education teacher told the Parent:

During the STAR math test today. [sic] [Student] was not trying, he was just clicking and guessing. The first time I had him take it he got 100 points lower than in January. I had him retake it and watched him with parts of it. There were problems like  $1+8=$  and he would put 6. I prompted him multiple times to draw pictures, use his fingers, etc. but he wasn’t. He did score about 40 points higher the second time, but still was lower than his January score.

The Parent responded, “That to me is an indicator he needs to be put back into special Ed for math. We’ll all discuss this whenever we have a team meeting.”

71. On May 11, 2018, the special education teacher emailed multiple District personnel, stating, “[The Parent] would like to meet to discuss [the Student’s] struggle in math. [The general education teacher] feels it is a gen-ed problem, but mom wants him back on an IEP.”
72. On May 14, 2018, the District invited the Parent to attend a meeting on May 16, 2018, in order to review the Student’s educational progress and to consider a reevaluation of the Student.
73. Also on May 14, 2018, the Parent filed this citizen complaint.
74. During the May 16, 2018 meeting, the “team determined a reevaluation was warranted in the areas of medical/physical, general education, and a review of existing information in the areas of communication, gross motor, cognition and academics.”
75. Also on May 16, 2018, the Parent signed consent for a reevaluation of the Student. The consent form stated that “the reevaluation will address the following areas: review of existing data, medical-physical, general education.” The consent form also stated, “I have also been provided the *Notice of Procedural Safeguards for Special Education Students and Their Families* that summarize protections for students who may require special education.”
76. The District alleged that it provided the Parent with a copy of the *Notice of Procedural Safeguards for Special Education Students and Their Families* at the May 16, 2018 meeting.
77. On May 21, 2018, the director of elementary special education (elementary director) emailed the Student’s general education teacher, asking that she gather pertinent information on the Student’s progress in math class. The general education teacher provided this information in an attachment to an email, dated May 22, 2018. This feedback included the following: “[Student] can solve simple, 1 step addition word problems. He struggles when answering subtraction word problems as he will add instead of subtract. When given 2 step word problems where he has to both add and subtract, [Student] added only.”
78. The Parent and the District met on May 29, 2018, to review the reevaluation results and discuss the development of a new IEP for the Student. The following staff members participated in the meeting: school psychologist, special education teacher, general education teacher, SLP, PT, school principal, and the elementary director. The principal had to leave the meeting early and the Parent signed an excusal form. The evaluation group determined that the Student “is most appropriately identified as a student with a Health Impairment. The category of developmental delay was considered, however team deliberations identified the diagnoses of Cerebral Palsy and Attention Deficit Hyperactivity to be primary conditions impacting [the Student’s] performance in the general curriculum.” The May 2018 evaluation report recommended that the Student receive specially designed instruction in the following areas: math, gross motor, and communication.
79. The Student’s May 29, 2018 evaluation report included the following information in the area of Medical-Physical:

- Medical documentation provided by the Parent
  - Report from Seattle Children’s Hospital, dated February 9, 2018, noting, “[Student has] a history of Gross Motor Function Classification System level I cerebral palsy. He has a recent diagnosis of ADHD...through his primary care provider and has had an excellent response to stimulant medication.”
  - Report from Compass Health, dated December 4, 2017, indicating “the following diagnoses: Attention-Deficit/Hyperactivity Disorder, Combined Presentation; Adjustment Disorder with disturbance of conduct; Cerebral Palsy.”

The evaluation report included the following information in the area of General Education:

- General education teacher report
  - Reading: “[I]n March...[Student] was 1 level below the expectation, he answers question [sic] during class discussions and showed good growth on the STAR.”
  - Writing: Student “is able to write sentences independently, but sometimes needs reminders to stay focused and write on topic. [Student] spells most words correct and has good spacing, [Student] is currently working on consistent use of punctuation and upper/lower case.”
  - Math: Student “is performing at the beginning of 1st grade level. [Student] demonstrates difficulty in the area of math in comparison to his same age peers...the main factors that seem to be interfering with [Student’s] educational performance are: trouble focusing during lessons, when he is emotional or stressed he has a hard time staying focused and his effort goes down, guessing instead of putting in effort.”

The evaluation report also included information about the following assessment in the area of communication, which were administered on May 22, 2018:

- Results from the Comprehensive Assessment of Spoken Language (CASL)<sup>18</sup>
  - Core Composite Overall Test Score—Standard Score of 96 (39th percentile/average range)
- Results from the Goldman-Fristoe Test of Articulation
  - The Student “demonstrated growth since he was tested in December...[though he needs to work on ensuring] that he generalizes his speech skills at the conversational level across educational settings.”

In the following evaluation areas, the team utilized “a review of existing information:” academic, cognitive, gross motor.

80. Also on May 29, 2018, the Student’s IEP team developed a new IEP for the Student based on the results of the May 2018 reevaluation. The Student’s May 2018 IEP included a section entitled, ‘Team Considerations,’ the May 2018 IEP included the Student’s score on the District’s springtime assessment in math: “STAR Math: Intervention 275.” The IEP included annual goals in the areas of communication, gross motor, and math. The May 2018 IEP provided for the following specially designed instruction to be delivered in a *special education setting*:

- Gross motor – 15 minutes one time monthly (provided by a PT)

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<sup>18</sup> CASL evaluates a student’s “receptive and expressive language skills along with pragmatic language (social use of language).”



- Communication – 30 minutes one time weekly (provided by an SLP)
- Math – 30 minutes 4 times weekly (provided by a special education teacher)

The May 2018 IEP included the following accommodations:

Accommodations	Frequency	Location
Alternative Seating	daily	all school settings
Break material into chunks	for all work	all school settings
Check for understanding	daily	all school settings
Extra time to respond	when testing	all testing settings
Preferential Seating	when testing	all testing settings
Present information visually	when presenting information	all school settings
Reinforcement	when needing to stay on task	all school settings
Repeat directions as needed	when giving directions	all school settings
Tools - Math	daily for math	all classrooms accessing math
Using separate space	when testing	all testing settings

81. The District alleged that it provided the Parent with a copy of the *Notice of Procedural Safeguards for Special Education Students and Their Families* at the May 29, 2018 IEP meeting.
82. The documentation in this complaint includes a prior written notice, dated May 30, 2018, proposing to initiate an IEP. The notice stated that the IEP “develop[ed] math goals” because the Student “is in need of specially designed instruction in math.”
83. In its response to this complaint, dated June 3, 2018, the District stated:  
 The district has offered compensatory services to [Student], in the area of math, to occur July 2018—10th, 11th, 12th, 17th, 18th, 19th, 24th, 25th, 26th, for three hours each of these days. This corrective action is proposed to remedy the procedural issues caused by the unclear meeting notice, unclear prior notice, and result of the discontinuation of the cognitive goal during the 12/04/17 meeting.
84. The Student received thirty minutes of speech therapy on June 7, 2018.
85. On June 15, 2018, the District’s speech language pathologist created the following 2017-2018 report regarding the Student:
- Goal: When given cues and prompts, Ezra will produce /s/ and /r/, improving overall intelligibility to 95% accuracy.
  - On May 29<sup>th</sup>, new IEP with new communication goals: produce all speech sounds in conversations to 99%.
  - Progress: By the time of the May new IEP, the Student was very close to being ready to exit from SLP services due to the strong progress he made. The Student is now monitoring his speech consistently, as well. This is essential for generalization of articulation skills to develop. The Parent stated that the Student had a noticeable leap in speech development in the last few months. This was because Student learned to pay attention to his speech.

- At the beginning of the school year, Ezra used to produce /s/ with frontal distortion (tongue protrusion). He was capable of producing /r/, but was inconsistent at even the word level.

86. On June 22, 2018, OSPI requested that the District provide a fuller explanation of why it decided that the Student needed specially designed instruction in math in the May 2018 IEP.

Later that same day, the District's executive director for special education responded, stating:

The team discussed each area of academics and how [Student] continued to have difficulty focusing in math. After reviewing the WJ-IV academic scores from the fall assessment in addition to the district assessments from fall, then spring, the team discussed how [Student] continued to progress in reading and writing, but was slow to progress in his math...The anecdotal description of the STAR is in the general education section and the scores can be found in the team consideration section of the IEPs. I think the scores looked at together will provide better context for the team's discussion.

87. In its response to this complaint, the District explained its policy concerning the provision of the procedural safeguards notice as follows:

The school district will provide a copy of the procedural safeguards notice to the parents and adult students one time a year and: upon initial referral or parent request for evaluation; upon receipt of the parent's first state complaint and first request for due process hearing in a school year; upon a disciplinary action that will result in a disciplinary change of placement, and upon request by the parent.

88. In its response to this complaint, the District stated, "[The school psychologist is adamant he provided the [notice of procedural safeguards]" to the Parent.<sup>19</sup>

89. Each of the prior written notices in this case included the following:

Your child has procedural protections under the IDEA. These protections are explained in the Notice of Procedural Safeguards for Special Education Students and Their Families. If this prior written notice is given to you (1) as part of your child's initial referral for evaluation, (2) as part of a request for reevaluation or (3) notice to you regarding disciplinary action that constitutes a change of placement the procedural safeguards accompanies this notice. If a copy of the Notice of Procedural Safeguards for Special Education Students and Their Families is not enclosed and you would like a copy or you would like help in understanding the content, please contact \_\_\_\_\_ at \_\_\_\_\_.<sup>20</sup>

90. Each of the meeting notices in this case included the following: "*Notice of Procedural Safeguards for Special Education Students and Their Families* has been provided to parents."

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<sup>19</sup> The District does not specify what date the school psychologist believes he provided a copy of the procedural safeguards notice to the Parent. It is believed that the District is referring to November or December of 2017.

<sup>20</sup> In this case, the following individuals are listed as the appropriate contact person for questions concerning the information pamphlet on the various prior written notices: special education teacher, speech language pathologist.

## CONCLUSIONS

### **Issue 1: Reevaluation Procedures –**

**Timeliness:** A school district must ensure that a reevaluation conducted when the 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 district agree otherwise, and must occur at least once every three years, unless the parent and district agree that a reevaluation is unnecessary. In this case, the Student's initial evaluation for special education eligibility was completed on December 12, 2014. Therefore, at the latest, the Student needed to be reevaluated by December 13, 2017. The Parent alleged that she requested a reevaluation on August 21, 2017, when she spoke with the director of special education. If this is true, then the District should have obtained the Parent's consent for a reevaluation as soon as possible after this conversation on August 21, 2017. After obtaining the Parent's consent, the District would then have had thirty-five (35) days to conduct the reevaluation. Without conclusive evidence that the Parent did request a reevaluation on August 21, 2017, OSPI cannot determine that the District should have begun the reevaluation process soon after August 21, 2017.

However, it is possible that the Student's educational and related services needs warranted a reevaluation prior to December 4, 2017 – when the District actually did complete the Student's triennial reevaluation. In order to determine if the circumstances warranted an earlier reevaluation, it is necessary to determine if the Student suffered an academic, behavioral, or functional regression during the first half of the fall semester of 2017. The record reveals that this did not occur. The Student was diagnosed with a mild form of cerebral palsy in the summer of 2017. As explained by the Student's private doctor on November 7, 2017, the Student's mild cerebral palsy resulted in him having "tightness in his bilateral Achilles tendons and a tendency to be up on his toes." From the record, it appears that the only time the mild cerebral palsy was causing difficulties for the Student was during "circle time," when the students were required to sit on the floor. In response, the District provided the Student with a chair for "circle time."<sup>21</sup> Even then, the Student would often choose to sit or lay on the floor with the other students. Importantly, the Student was still receiving services in the areas of gross and fine motor from September 6, 2017 through December 3, 2017. Finally, the December 2017 reevaluation and subsequent IEP demonstrate that the Student did not suffer a significant decline from previous benchmarks in academic, behavioral, or functional performance at the start of the 2017-2018 school year. For example, the District observed that the Student had made improvement in the areas of fine motor and academics: math. Therefore, if the Parent did not actually request a reevaluation on August 21, 2017, any delay in completing the reevaluation prior to December 4, 2017, did not materially affect the Student's access to services.

**Prior Written Notice:** A prior written notice must include a description of the action proposed by the agency. A prior written notice, dated November 16, 2017, stated that the District is proposing to change the Student's eligibility category. In actuality, the District was proposing

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<sup>21</sup> The Parent was apparently satisfied with this response.

that the Student be reevaluated. The District admits that “this prior notice was unclear in the description of what [we] were proposing.” This is a violation of the IDEA.

#### **Behavior –**

**December 2017 Reevaluation:** An evaluation report must contain: a discussion of the assessments and review of data that supports the conclusion regarding eligibility, how the student’s disability affects the student’s involvement and progress in the general education curriculum, and the recommended special education and related services needed by the student. Furthermore, it is important to note that a student’s eligibility category for special education does not determine services.

In this case, the Student’s December 2017 reevaluation report showed that the Student had substantial difficulties in the area of behavior. For example, the Student’s general education teacher reported “major concerns” regarding the Student’s behavior at school. The Student tended “to behave in ways that are considered odd (often engaging in repetitive movements, often acting confused, often seems odd, etc).” Additionally, two of the Student’s scores on the BASC-3 were more than two standard deviations from the mean. Despite this, though, the December 2017 reevaluation does not include a discussion of why the District did not provide the Student with specially designed instruction in Behavior. The December 2017 reevaluation also does not include a discussion of why the District did not determine the Student to have a developmental delay in Behavior. Finally, the December 2017 reevaluation does not include a discussion of whether to qualify the Student as having a behavioral disability. In conclusion, given the results of the behavior portion of the reevaluation, it was a violation of the IDEA to omit a discussion of the potential educational and functional impact of these results on the Student’s ability to progress in the general education curriculum.

**May 2018 Reevaluation:** An evaluation must be sufficiently comprehensive to cover all areas of suspected disability. In this case, the December 2017 evaluation of the Student uncovered serious challenges in the area of behavior. Additionally, from the record, it appears that the Student’s behavior only got worse as the spring semester progressed. For example, on February 22, 2018, the Student’s general education teacher explained to the Parent that she felt “[Student] has not been himself the last few days” and that he looked upset at various points throughout the day. The Parent replied that this was “a side effect of his new ADHD medication.” A medication the Student was presumably taking to address his behavioral needs. The May 2018 evaluation also noted that the Student had a new diagnosis of “adjustment disorder with disturbance of conduct.” Despite this, the May 2018 evaluation did not evaluate the Student in the area of behavior. This is a violation of the IDEA. The District will hold a meeting to review the Student’s December 2017 and May 2018 evaluation reports, along with any other available information regarding the Student’s behavior, and determine if the Student is in need of behavior services.

#### **Issue 2: IEP Development Procedures –**

**Failure to Include Communication in December 2017 IEP:** An evaluation report must be sufficiently comprehensive to identify all of the student’s special education and related services

needs. An IEP must include a statement of the special education and related services to be provided to a student. In this case, the December 2017 evaluation recommended that the Student receive “specially designed instruction services in Communication and Gross Motor.” The December 2017 evaluation, however, only listed “Gross Motor” in the section of the report entitled, “Recommendations to IEP Committee.” As a result, the Student’s December 2017 IEP only provided for specially designed instruction in the area of gross motor, and failed to include services in the area of communication. However, the December 2017 IEP did include an annual communication goal, and the District provided documentation that, in spite of the omission, the Student continued to receive services in communication following the December 4, 2017 IEP meeting, and that the services were provided for the remainder of the school year. Additionally, the evaluation team met on March 28, 2018, to amend the Student’s IEP to add specially designed instruction in communication. Although it was a violation of the IDEA for the District to omit the specially designed instruction in communication from the Student’s December 2017 IEP, this violation did not affect the Student’s ability to access his communication services.

**Decision to Discontinue Math Services in December 2017:** The Parent alleged that the District should have provided the Student with specially designed instruction in math before May 2018, because he demonstrated a need for services in the area of math.

An IEP must include a statement of measurable annual academic goals designed to meet the student’s needs resulting from their disability to enable the student to be involved in and make progress in the general education curriculum. The IEP must also include a statement of the special education and related services to be provided to the student so that he can advance appropriately toward attaining those annual goals. In developing each student’s IEP, the IEP team must consider the strengths of the student, the concerns of the parents, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student.

In this case, the Student received specially designed instruction in math through December 4, 2017. In determining whether the Student continued to need specially designed instruction in math after this date, the evaluation team considered the Student’s math scores on the WJ IV ACH. The evaluation team also considered the observations of the Student’s special education teacher during the administrator of the WJ IV ACH. The subsequent IEP team also considered the Student’s latest results on a district-wide, regularly scheduled math assessment.<sup>22</sup> Importantly, this math assessment was specifically designed to “assess...growth in mathematics achievement.” In its response to this complaint, the District noted:

[While the Student] scored below grade level in some academic areas, especially in the area of math. The team expressed they wanted to give him a change to try general education without the specialized cognitive/academic support, because they recognized so much growth.

Then, in May 2018, the IEP team considered the Student’s math scores on the latest district-wide assessment. At this time, the IEP team also considered observations from the Student’s general education teacher on his performance in math class during the spring semester. The team then

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<sup>22</sup> The STAR math assessment.

concluded that, while the Student “continued to progress in reading and writing [he] was slow to progress...in math.” Therefore, the team decided to provide specially designed instruction in math. Under the IDEA, this was a permissible decision, and reflects the IEP team’s decision based upon current data, and its willingness to reconvene to address needs as they arose. Despite this finding, though, OSPI commends the District’s efforts to be proactive, maintain a good relationship with the Parent, and its offer of additional math instruction for the Student this summer.

**Prior Written Notice:** A prior written notice must include an explanation of why the agency proposes to take a certain action. A prior written notice, dated May 30, 2018, and proposing to initiate an IEP, stated that the IEP “develop[ed] math goals” because the Student “is in need of specially designed instruction in math.” This is an insufficient explanation, and thus, a violation of the IDEA.

**Issue 3: Proper Attendance at IEP Meetings** – The Parent alleged it was improper for IEP team members to leave meetings early. At a minimum, an IEP team must include the parents, a general education teacher, a special education teacher, a representative of the district who is qualified to provide, or supervise the provision of, specially designed instruction and who is knowledgeable about the availability of district resources, and an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative. Parents and districts can agree in writing that an IEP team member’s participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member’s area of curriculum or related services is not being modified or discussed in the meeting.

In this case, the Parent alleged that different members of the IEP team left early each time the group met. For example, the Parent alleged that, on December 4, 2017, the general education teacher left early because she had to pick up her child. The Parent also alleged that, on March 28, 2018, “the speech therapist excused himself...after he spoke about our son’s progress in speech to attend another meeting.” On May 29, 2018, the school principal left the meeting early because she “needed to [attend] another meeting.” The record contains written documentation that the Parent agreed to let the principal leave the May 2018 IEP meeting early because the principal’s “area of the curriculum or related services [was] not being modified or discussed.” The record does not, however, contain written documentation that the Parent agreed to permit IEP team members to leave the December 2017 and March 2018 meetings early. If the Parent’s recollection of these meetings is accurate, this would represent a violation of the IDEA.

The Parent also stated that she was “not aware that [the special education teacher] was standing in as the district representative” during the March 2018 IEP meeting. A district can designate a special education teacher to serve as the district representative in an IEP meeting if that special education teacher meets the following criteria: (i) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education; (ii) is knowledgeable about the general education curriculum; and (iii) is knowledgeable about the availability of resources of the school district. Nothing in the record

suggests that the special education teacher did not meet these criteria. However, a district is also required to inform parents who will be in attendance at an IEP meeting (discussed further below in issue no. 4) and therefore, should have informed the Parent that the special education teacher would act as the District representative, prior to the March 28 meeting.<sup>23</sup>

**Issue 4: IEP Amendment Procedures** – The Parent alleged that she did not understand that the March 28, 2018 IEP amendment meeting was an IEP meeting. After an annual IEP meeting, a parent and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student’s current IEP. The documentation in this complaint shows that the District chose to amend the Student’s December 2017 IEP by convening an IEP team meeting.

In order to ensure parental participation at IEP meetings, a district must ensure that the parents are present at each IEP meeting or are afforded the opportunity to participate. To accomplish this, a district must notify the parents of the meeting early enough to ensure that they will have an opportunity to attend and to “indicate the purpose, time, and location of the meeting and who will be in attendance.” Additionally, IEP meetings must be scheduled at a mutually agreed upon time.

In this case, the documentation is not clear if the Parent was told about the March 28, 2018 meeting in a timely fashion. The documentation does contain an “IEP Amendment Invitation”, dated March 19, 2018, inviting the Parent to attend “an IEP meeting” scheduled for March 28, 2018. The Parent, however, alleged that she did not receive this invitation, and other than this invitation, there is no documentation to show District staff informed the Parent that there would be an IEP meeting on March 28, following the previously scheduled parent/teacher conference. This is a failure to follow procedures for scheduling the IEP meeting to amend the Student’s IEP. The District is also reminded that IEP meetings must be scheduled at a mutually agreed upon time.

The Parent also alleged that at the March 28 meeting, that she was presented with an IEP amendment and asked to sign it. The District is required to allow parents to provide input when developing and amending an IEP. Here, given the Parent’s assertion, coupled with a lack of notice that the meeting would occur and the purpose of the meeting, this is a failure to ensure the Parent had the opportunity to meaningfully participate in amending the Student’s IEP. Additionally, it is noted that the IEP amendment removed the Student’s motor goals, and added a new goal, but there is no documentation that this was discussed with the Parent, and the District’s March 28, 2018 prior written notice does not address the changes to the goals. This is a failure to provide the Parent with accurate prior written notice. The District failed to follow procedures for amending the Student’s IEP.

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<sup>23</sup> WAC 392-172A-03095 does not require a district to obtain a parent’s consent before designating a certain individual as the district representative at an IEP meeting.

**Issue 5: Procedural Safeguards** – The Parent alleged that she received the procedural safeguards notice for the first time on May 7, 2018. The District disputes her allegation, stating that she was provided a copy of the safeguards prior to this date.

A district is required to provide a copy of the procedural safeguards notice to the parents of a student eligible for special education at least one time a school year and upon initial referral, a parental request for evaluation, or a parental request for reevaluation.<sup>24</sup> In this case, it is difficult to determine if the Parent actually received a copy of the notice of procedural safeguards prior to May 7, 2018. The documentation in this complaint does not contain any communications that refer to the Parent having been provided a copy of the procedural safeguards notice. Furthermore, while the District’s meeting notices and consent forms included boilerplate language, asserting that the Parent was provided a copy of the procedural safeguards notice, without more, this does not prove that this actually occurred. A review of the record reveals that the District should have provided the Parent with a copy of the procedural safeguards notice on or about: August 21, 2017 (when the Parent alleged she spoke with the special education director on the phone and requested a reevaluation), and May 16, 2018 (when the Parent requested a reevaluation of the Student after conferring with the reevaluation team). The parties do not appear to contest the fact that the Parent received a copy of the procedural safeguards notice on May 16, 2018. The record is not clear as to whether the Parent was provided a copy on or about August 21, 2017, but given that the District did not actively take steps to begin a reevaluation of the Student for several weeks, this is unlikely. OSPI reminds the District that it must provide a copy of the procedural safeguards notice to parents at least one time a school year and upon initial referral, a parental request for evaluation, or a parental request for reevaluation.

### **CORRECTIVE ACTIONS**

By or before **August 10, 2018, September 17, 2018, and October 2, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

1. **Before the beginning of the 2018-2019 school year**, the District will hold a meeting to review the Student’s December 2017 and May 2018 evaluation reports, along with any other available information regarding the Student’s behavior, and determine if the Student is in need of behavior services. By **September 17, 2018**, the District will submit: 1) a copy of any meeting invitations; 2) a copy of any related prior written notices; and, 3) any other related documentation.

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<sup>24</sup> WAC 392-172A-05015(1)(a) requires a district to provide a copy of the procedural safeguards notice to parents “upon initial referral or parent request for evaluation.” Since the regulatory definition of “evaluation” specifically includes the regulations pertaining to reevaluations, WAC 392-172A-05015(1)(a) must necessarily require a district to provide a copy of the procedural safeguards notice when a parent requests a reevaluation. See WAC 392-172A-01070.



**DISTRICT SPECIFIC:**

By **September 30, 2018**, the District will ensure that special education administrators, the principal, and certified staff, including educational staff associates (ESAs), at the Student's elementary school receive written guidance regarding the requirements of WAC 392-172A-03100 (Parent Participation), WAC 392-172A-03095 (IEP Team Membership), WAC 392-172A-05010 (Prior Notice and Contents), and WAC 392-172A-05015 (Procedural Safeguards Notice). ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers. The guidance will include examples.

By **August 10, 2018**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by August 24, 2018.

By **October 2, 2018**, the District will submit documentation that all required staff received the guidance. This will include a roster of the following personnel at the Student's elementary school: special education administrators, the principal, and certified staff, including educational staff associates (ESAs). (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, 2018

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
Olympia, WA 98504-7200

**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)