

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-023**

### **PROCEDURAL HISTORY**

On March 15, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle 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 March 16, 2021, 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 24, 2021, the District requested and OSPI granted the District's request for an extension of time for the submission of its response.

On April 12, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on April 19, 2021. OSPI invited the Parent to reply.

On April 28, 2021, an OSPI program improvement supervisor provided OSPI's investigator with several emails that related, in part, to the issue being investigated in this complaint.<sup>1</sup>

On April 28, 2021, the Parent provided OSPI with additional information. On May 3, 2021, OSPI forwarded this information to the District.

On May 3, 2021, the Parent provided OSPI with additional information. On May 4, 2021, OSPI forwarded this information to the District.

On May 3, 2021, OSPI requested the District provide it with additional information. OSPI received the additional information on May 6, 2021. On May 7, 2021, OSPI forwarded the additional information to the Parent.

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

### **ISSUE**

1. Since January 2021, has the District followed proper evaluation and individualized education program (IEP) development procedures? Specifically, has the District completed its reevaluation of the Student and developed a new IEP for the Student—on the basis of that reevaluation, in a timely manner?

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<sup>1</sup> The program improvement supervisor had previously exchanged emails, and/or been copied on communications, that related, in part, to the issue being investigated in this complaint.

## LEGAL STANDARDS

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

School Day: 'School day' means each day of the school year on which pupils enrolled in the common schools of a school district are engaged in academic and career and technical instruction planned by and under the direction of the school. RCW 28A.150.203(10). And 'school year' includes the minimum number of school days required under RCW 28A.150.220. RCW 28A.150.203(11). Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year. RCW 28A.150.220(5)(a).

## FINDINGS OF FACT

### 2019-2020 School Year

1. According to the District: the "Student is eligible for special education services under the disability category of Hearing Impairment due to a bilateral congenital sensorineural hearing loss. At school, Student uses a combination of spoken English and American Sign Language (ASL) to communicate."
2. On June 10, 2020, the Student's individualized education program (IEP) team developed an amended IEP for the Student (June 2020 Amended IEP).

The Student's June 2020 Amended IEP included the following annual goals: **audiology; communication 1 – 4;** and, **social-behavior 1 – 2.**

The Student's June 2020 Amended IEP provided the Student with the following specially designed instruction:

No	AUDIOLOGY (DHH-qualified only)	Deaf/Hard of Hearing Teacher	Audiologist	30 Minutes / Monthly	Special Education	07/06/2020	12/09/2020
No	COMMUNICATION	Special Education Staff	Deaf/Hard of Hearing Teacher	915 Minutes / Weekly	Special Education	07/06/2020	12/09/2020
No	SOCIAL/BEHAVIOR	Special Education Staff	Deaf/Hard of Hearing Teacher	360 Minutes / Weekly	Special Education	07/06/2020	12/09/2020
No	COMMUNICATION	SLP	SLP	90 Minutes / Monthly	Special Education	07/06/2020	12/09/2020

3. The prior written notice related to the Student's June 2020 Amended IEP<sup>2</sup> read, in part: "The team met proposed [sic] Student having his re-evaluation as soon as possible because he is behind in his math skills needed for the 4th grade level...we are proposed that Student is re-evaluated as soon as possible in his math skills."
4. The District's response included a "Reevaluation Notification/Consent" form that is signed by the Parent and dated June 18, 2020.
5. According to the District, June 19, 2020 was the last day of the District's 2019-2020 school year.

#### **2020-2021 School Year**

6. According to the District's 2020-2021 calendar, September 4, 2020 was the District's first day of school.
7. According to the District, at the start of the 2020-2021 school year, the Student was in the fourth grade, attended a District elementary school, continued to be eligible for special education under the category of hearing impairment, and the Student's June 2020 Amended IEP was in effect.
8. According to the District's response:
 

At the start of the school year, the school psychologist began the evaluation; however, it appears that Parent was concerned about the school psychologist conducting the full evaluation because the school psychologist did not have [a] specific background in deaf education. Thus, in lieu of a District evaluation, in November [2020], the parties agreed to have the Washington Center for Deaf and Hard of Hearing Youth (CDHY) conduct an independent education evaluation (IEE) that would serve as Student's triennial reevaluation.
9. According to the District's 2020-2021 calendar, the District did not have school on September 7, 2020.
10. On September 21, 2020, the Parent emailed the assistant principal, asking what the plan was to complete the Student's reevaluation.

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<sup>2</sup> The prior written notice was actually dated June 9, 2020.

The school psychologist responded to the Parent on September 22, 2020, stating, in part:  
I do see the consent form that was received in July, and the due date for the reevaluation is October 26, 2020. The consent includes all of his current service areas (plus the new areas we are looking at), so this would replace his 3-year reevaluation, which is due on December 8, 2020. I am adding the speech language pathologist and the audiologist...If there is anyone else who should be included, let me know.

To get started, I'll email you some social/behavior and executive functioning rating scales today. For math, I will see what kind of data we have and if there is a need for additional testing. I'll let the other team members explain what their parts of the evaluation might entail.

11. The District's response included a "Behavior Assessment System for Children, Third Edition" (BASC-3), completed by the Parent, regarding the Student, and dated September 28, 2020.
12. According to the District's 2020-2021 calendar, the District did not have school on October 9, 2020.
13. On October 21, 2020, the Parent emailed the assistant principal, the student support supervisor, the school psychologist, and the teacher of the deaf, stating, in part: "I feel like a broken record asking weekly when will testing start for Student?"
14. On October 30, 2020, the Parent emailed the school psychologist and the assistant principal, stating, in part: "Does the school psychologist [have] any background in deaf education? I have questioned different testing tools used by District since it is designed for 'normal hearing' children."

On October 30, 2020, the assistant principal responded, stating, in part:  
The school psychologist does not have specific training in deaf education.

Would you prefer that the evaluation be conducted by CDHY?

Also, in terms of counseling in order to add counseling to the boys' IEPs, we need to have data supporting the need. As Student is currently undergoing an evaluation, we will add in rating scales (to be completed by both teachers and parents) that can help provide data to determine if counseling is a needed IEP service.

Later that day, the Parent responded, stating, in part: "Yes, I prefer to have testing done by CDHY. I hope that in some point, the District can hire a school psychologist with [a] deaf and hard of hearing background."

15. According to the District's 2020-2021 calendar, the District did not have school on November 11, 2020.
16. In several emails in late November 2020, the Parent expressed frustration with the speed at which the Student's reevaluation was progressing.

17. According to the District’s 2020-2021 calendar, the District was on Thanksgiving break from November 26–27, 2020.

18. According to the District’s response, “on December 9, 2020, Student’s IEP team convened to develop Student’s annual IEP, even though the CDHY evaluation had not yet been completed.”

The Student’s December 2020 IEP included the following annual goals: **audiology 1 – 2; communication 1 – 3;** and, **social-behavior 1 – 3.**<sup>3</sup>

The Student’s December 2020 IEP provided the Student with the following specially designed instruction and related services:

**Services 12/09/2020 - 12/08/2021**

Concurrent	Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (setting)	Start Date	End Date
<b>Related</b>							
No	Deaf and Hard-of-Hearing Services	Deaf/Hard of Hearing Teacher	Deaf/Hard of Hearing Teacher	150 Minutes / Weekly	Special Education	12/09/2020	12/08/2021
<b>Special Education</b>							
No	AUDIOLOGY (DHH-qualified only)	Audiologist	Audiologist	30 Minutes / Monthly	Special Education	12/09/2020	12/08/2021
No	COMMUNICATION	SLP	SLP	30 Minutes / Monthly	Special Education	12/09/2020	12/08/2021
No	SOCIAL/BEHAVIOR	Special Education Staff	Deaf/Hard of Hearing Teacher	300 Minutes / Weekly	Special Education	12/09/2020	12/08/2021
No	COMMUNICATION	Special Education Staff	Deaf/Hard of Hearing Teacher	300 Minutes / Weekly	Special Education	12/09/2020	12/08/2021

19. The prior written notice related to the Student’s December 9, 2020 IEP<sup>4</sup> read, in part: “The Student’s IEP team met and decided to continue the IEP document with updated goals...Once the [re]evaluation is completed, we will meet again to create a new IEP that reflects the [re]evaluation.”

20. On December 9, 2020, the student support supervisor asked CDHY for an update on when the Student’s evaluation would be completed.

<sup>3</sup> **Social/behavior 1** related to the Student’s ability to organize assignments in a binder, **social/behavior 2** related to the Student’s ability to use planning to increase task completion, and **social/behavior 3** related to the Student’s ability to use a graphic organizer to improve classroom participation.

<sup>4</sup> The prior written notice is actually dated December 8, 2020. The December 8, 2020 prior written notice also documented several of the Parent’s concerns regarding the Student’s education, including, in part: the Student was experiencing “high anxiety” in his current learning environment; the Student was experiencing eye fatigue during certain classes; the Student reported to the Parent that he was worried he was falling behind with his class work; the Student needed counseling; and, the Student needed to be more independent and self-reliant.

Later that day, a CDHY representative responded, stating, in part: "I have not received a 'green light' or any documents so I assumed we were not ready to schedule yet. Is a consent signed? What is the timeline?"

Later that day, the assistant principal responded to CDHY, stating, in part: "You should have [the relevant documents] now, let me know if they don't arrive."

21. According to emails included in the District's response, on December 14, 2020, CDHY representatives and District staff collaborated on determining the areas in which to evaluate the Student. Areas discussed included: communication; academics (including, at least in part, reading, writing, and math); social-behavior; and, study-organization (specifically, executive functioning).
22. According to the District's 2020-2021 calendar, the District was on winter break from December 21, 2020 through January 1, 2021.
23. According to the District's response: "In January 2021, CDHY was finally able to schedule the [evaluation]. The evaluation took place at [the Student's school] on January 6, 21, and 25, 2021 and was conducted by individuals with expertise in deaf education and fluency in ASL."
24. On January 7, 2021, the Parent emailed the student support supervisor, stating, in part: "I am checking to see what is happening with Student's evaluation process."

Later that day, the student support supervisor responded, stating, in part: "I will check with the teacher of the deaf to follow up on the assessment data."

25. According to emails included in the District's response, as of January 11, 2021: 1) a CDHY representative had met with the Student for a social-emotional evaluation; and, 2) the teacher of the deaf filled out a social-emotional survey in regard to the Student and provided it to the CDHY representative.
26. According to emails included in the District's response, on January 3, 4, and 18, 2021, CDHY representatives and District staff collaborated on scheduling assessments for the Student in the areas of cognitive and academics, and communication.
27. According to the District's 2020-2021 calendar, the District did not have school on January 18, 2021.
28. On January 18, 2021, the assistant principal emailed the Parent, asking if the Student could be evaluated in cognitive and academics on January 22, 2021, and communication on January 25, 2021.

Later that day, the Parent responded, stating, in part: "It should work!"

29. District staff and CDHY staff exchanged several emails between January 21 and 25, 2021. According to these emails:

- The school psychologist emailed the assistant principal, stating, in part: "Here are the two rating scales [regarding Student] Parent completed (Behavior Rating Inventory of Executive Function (BRIEF) and BASC) [earlier in the school year]." The assistant principal responded, stating: "Thank you!"
  - According to the school psychologist: she had scheduled math testing to take place in early November 2020, "but was told on October 30, 2020 that someone else was going to take over the evaluation."
    - The assistant principal emailed CDHY, stating, in part: "I believe that the school psychologist started getting ready to do the evaluation, but then Parent requested that it be done by someone with deaf and hard of hearing training/experience, so she stopped."
  - No communication evaluations of the Student had taken place earlier in the 2020-2021 school year.
  - As of late January 2021, District staff and CDHY staff were collaborating on which areas to evaluate the Student in. According to the referenced emails, dated January 21 through 25, 2021, it appeared the group determined the Student needed to be further evaluated, in part, in the following areas: math; communication; receptive and expressive language skills; articulation skills; functional listening evaluation; and, Listening Inventory for Education – Revised (LIFE-R).
30. On January 21, 2021, the assistant principal emailed CDHY personnel, as well as District staff, stating, in part: "Parent...requested counseling as an IEP service, so part of what we are looking for is if Student needs counseling as an IEP service...In addition, we are looking for any input into how we can tweak his IEP to best support him."
31. On January 26, 2021, the speech language pathologist (SLP) emailed a CDHY representative, stating, in part:
- These scores [for communication in the draft CDHY reevaluation report] look very consistent with what I have observed with him. I am thinking it is time to move him to consult. At this point, I think he has really mastered his one-one-one time with me but in other areas that he may be struggling I could offer support/consult/materials etc.
32. According to the District's 2020-2021 calendar, the District did not have school on January 28, 2021, and was on mid-winter break February 15–29, 2021.
33. On February 17, 2021, a school psychologist for CDHY emailed the assistant principal, District's teacher of the deaf, the student support supervisor, stating, in part: "Please see attached for the final report for Student, we apologize this took longer to finalize than expected."
34. The CDHY reevaluation report included, in part, the following recommendations:
- The Student continues to demonstrate a need for support from a trained Teacher of the Deaf (TOD), to support learning through direct communication via ASL. He benefits from a learning environment that supports his sign language use and from having direct access to learning opportunities through sign alongside deaf and hard of hearing peers and staff to support development of his social, academic, linguistic, cognitive, and emotional potential.
  - The Student has the right to a sign language interpreter to ensure fair and equal access along with involvement in school activities and social interactions outside of the [deaf/hard of hearing] classroom.
  - Results from this assessment indicate that the Student demonstrate a need for specially designed instruction in the area of mathematics (problem-solving and calculations).

- The Student has standing counseling services with CDHY. It is recommended to continue these counseling services.<sup>5</sup>
- Executive functioning skills could be addressed in the area of social/behavior [specially designed instruction]. Focus for goals could include, but is not limited to: developing structure (written out to-do lists for tasks); goal-setting; planning a routine (e.g., complete a sheet of math problems, clean his room) by asking the Student to indicate what steps or items are needed and the order in which events will proceed; organization asking him to select and use a system to organize his assignments and other school work; organize a complex task on paper, including the materials needed, the steps to accomplish the task, and a time frame for completion; prepare an organized outline before proceeding with writing projects.
- Communication: the Student's speech and spoken English skills are within age expectancy and he no longer qualifies for specially designed instruction in communication; however, as academic demands increase as the Student progresses through grade levels, he and his IEP team would benefit from consultation with [an SLP] to ensure that the Student continues to make growth in speech-language development and has appropriate accommodations to support his learning, as well as supporting his knowledge and use of communication repair strategies.
  - Student presents with speech, receptive and expressive spoken English skills that are within age expectancy. Because of his hearing levels, he continues to have difficulty hearing and comprehending spoken language(s) in background noise, when the speaker is at distance greater than 3 feet, and when he does not have access to the speaker's face for lip-reading cues.
- General teaching strategies...for students with hearing loss, including, in part: visual aids, captioning technology, and reducing environmental distractions.

35. On February 26, 2021, the assistant principal emailed CDHY, stating, in part: "We would like to set up a feedback meeting. Is there a particular time (generally, Wednesdays, Thursdays, or Fridays at 3:30 p.m.) that would work for your team?"

36. In an email to District staff, dated March 15, 2021, the Parent expressed frustration that the evaluation results meeting was not scheduled to take place until April 2021.

37. According to the District's response, the Student's IEP team, including relevant CDHY personnel, were "finally able to convene for an evaluation feedback meeting on March 29, 2021 [but] unfortunately, the team was not able to complete the review on March 29, 2021."

The District's response does include an email meeting invite for a 'Student Independent Educational Evaluation Meeting' scheduled for March 29, 2021.

38. On March 30, 2021, the assistant principal emailed several CDHY representatives, the school psychologist, the student support supervisor, the SLP, teacher coordinator, the general education teacher, the Parent, and the Student, stating, in part:

[The meeting we are trying to schedule] is to: 1) discuss whether Student continues to qualify for specially designed instruction in speech; and 2) amend Student's IEP to include

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<sup>5</sup> According to the District's response, the CDHY counseling services "are school-based counseling services, not special education-related services."



math services and goals, and update goals in social/behavior. Please [fill out the doodle poll below and] let me know which dates will work for you.

39. On April 7, 2021, doodle sent an automated email to the assistant principal, stating, in part: "Parent and Student just participated in the doodle poll 'Student speech discussion/IEP amendment (adding math, goals)."

According to the District's response, by April 7, 2021, "there were no common dates available."

40. On April 8, 2021, the assistant principal emailed a CDHY representative, the SLP, the Parent, the teacher of the deaf, student support supervisor, and the general education teacher, stating, in part: "here [is another doodle poll with] some more dates for Student's meeting. We didn't have any dates in common on the last poll."

41. On April 12, 2021, OSPI received the District's response to the complaint. The District's response read, in part:

While the District maintains the evaluation that was eventually completed did meet the requirements of WAC 392-172A-03020(3), the District acknowledges that the required time lines in WAC 392-172A-039015 were not followed.

...

Though technically an IEE, the District did agree the CDHY evaluation would serve as Student's triennial evaluation; thus, arguably, the IEE was subject to the timelines in WAC 392-172A-0315. The District did not ensure that the evaluation was completed within 35 school days after the date written consent was provided by Parent; nor was an extension of the timeline formally agreed to by the Parties.

Thus, the District proposes that Student's IEP team convene to amend his IEP to reflect the new evaluation results, as well as to develop an offer of compensatory education services in math (the new area in which Student qualifies) to remedy the effect of the delay.

42. According to the District's 2020-2021 calendar, the District was on spring break from April 12-16, 2021.

43. On April 28, 2021, the Parent provided OSPI with additional information. According to that information, another IEP meeting took place on or about April 28, 2021, and, at that meeting, the District offered the Parent 20 hours of compensatory education in academics for not completing the reevaluation in a timely manner. In an email to OSPI, the Parent stated she "did not accept [this offer of compensatory education] because we know the process issue will not be addressed for my Student or other students."

The Parent did not indicate whether a new IEP for the Student was created at the April 28, 2021 IEP meeting.

OSPI's investigator asked the District whether a new IEP for the Student was created at the April 28, 2021 meeting and the District stated, in part:

The 4/28 meeting in order to continue the discussion of whether or not the student would qualify for SDI in speech with both the independent educational evaluation SLP and the

district SLP present. This meeting was also intended to be an IEP amendment meeting. At this meeting, the agreement was reached to maintain speech SDI for the student.

We also discussed additional goals in social/behavior and study/org that were recommended by the independent educational evaluation – the teacher just sent out the goals that were discussed at the meeting to the IEP team to be sure that we are all on the same page before locking the amendment.

44. On May 3, 2021, the Parent provided OSPI with an email thread, wherein a District staff member proposed, to the Parent, that the Student be provided with 20 hours of compensatory education in math.

## **CONCLUSIONS**

**Issue 1: Timeliness of Student’s Reevaluation** – The Parent alleged the District did not complete the Student’s reevaluation and develop a new individualized education program (IEP) for the Student, based on that reevaluation, in a timely manner.

A school district must complete a reevaluation of a student within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. A reevaluation must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. ‘School day’ means each day of the school year on which pupils enrolled in the common schools of a school district are engaged in academic and career and technical instruction planned by and under the direction of the school. A ‘school year’ includes the minimum number of school days required under RCW 28A.150.220. Each school district’s kindergarten through twelfth grade basic educational program shall consist of a minimum of 180 school days per school year. Generally speaking, then, days of ‘summer school’ and/or extended school year (ESY) services provided during the summer do not count towards the tabulation of ‘school days’ in the evaluation timeline.

Here, the Student’s triennial reevaluation was due in December 2020. However, in spring 2020, the Student’s IEP team, including the Parent, decided to complete the Student’s reevaluation before December 2020. The Parent signed consent for the reevaluation on June 18, 2020.

According to the District’s 2019-2020 and 2020-2021 calendars, 35 school days after June 18, 2020 would have been October 23, 2020.<sup>6</sup>

The District, though, did not complete the Student’s reevaluation by October 23, 2020. By that time, only one portion of the Student’s reevaluation had been completed: on or about September 28, 2020, the Parent completed a “Behavior Assessment System for Children, Third Edition (BASC-3)” for the Student and provided it to the school psychologist. But the June 18, 2020 Reevaluation Notification/Consent forms states the Student was to be evaluated in the following areas: general

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<sup>6</sup> June 19, 2020 was the last day of school for the 2019-2020 school year; September 4, 2020 was the first day of school for the 2020-2021 school year; and, the District did not have school on September 7 and October 9, 2020.

background; audiology; reading; social/behavior; ASL; cognitive; communication; math; review of existing data; and, written language.

On October 30, 2020, the Parent requested that the rest of the reevaluation be completed by the Center for the Deaf and Hard of Hearing Youth (CDHY)<sup>7</sup>, and the District agreed with this proposal.

On December 9, 2020, the Student's IEP team convened to develop a new annual IEP for the Student, despite the fact that the Student's reevaluation had not yet been completed.

According to emails included in the District's response, despite the fact that the District and Parent agreed on October 30, 2020 that CDHY would complete the reevaluation of the Student, as of December 9, 2020, CDHY was still not clear of the details of the reevaluation—for example, whether the District had received consent for the reevaluation from the Parent, when it needed to be completed by, etc. It appears that CDHY needed certain documents to proceed with the reevaluation, and on December 9, 2020, the assistant principal emailed a CDHY staff member, stating, in part: "You should have [the relevant documents] now, let me know if they don't arrive."

According to documentation provided by both the Parent and the District, through January 2021: (1) the District, CDHY personnel, and the Parent collaborated on scheduling the Student's various reevaluation assessments; and, (2) the Student underwent several reevaluation assessments. On February 17, 2021, CDHY provided the District with a final reevaluation report for the Student.

Here, it is clear that the District did not complete the Student's reevaluation in a timely manner; the Student's reevaluation was completed significantly after October 23, 2020.

The Student's reevaluation group, including the Parent, met on March 29, 2021 to review the evaluation report, but development of a new IEP was not completed at that time. According to emails dated March 30, 2021, it appears, though, that at the March 29, 2021 IEP meeting, it was determined that: (1) the Student continued to need specially designed instruction in social/behavior; and, (2) the Student needed to receive specially designed instruction in a new area—math. It appears, though, that the following determinations had not yet been made as of March 29, 2021: (1) whether the Student continued to need services in communication; (2) the exact nature of the Student's social/behavior goal (or goals); and, (3) how much specially designed instruction in math the Student required.

According to the Parent, a follow-up IEP meeting took place on April 28, 2021. The Parent did not indicate whether a new IEP for the Student was created at the April 28, 2021 IEP meeting. OSPI's investigator asked the District whether a new IEP for the Student was created at the April 28, 2021 IEP meeting and the District stated:

The 4/28 meeting in order to continue the discussion of whether or not the student would qualify for SDI in speech with both the independent educational evaluation SLP and the

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<sup>7</sup> The Parent was concerned that the school psychologist did not have a sufficient "deaf and hard of hearing background."

district SLP present. This meeting was also intended to be an IEP amendment meeting. At this meeting, the agreement was reached to maintain speech SDI for the student.

We also discussed additional goals in social/behavior and study/org that were recommended by the independent educational evaluation—the teacher just sent out the goals that were discussed at the meeting to the IEP team to be sure that we are all on the same page before locking the amendment.

In other words, it appears the Student's IEP team is close to agreement on a new IEP for the Student—or, alternatively, in the final stages of drafting the agreed-upon IEP.

Washington state special education regulations do not include a specific time period for when an IEP must be developed following the completion of a reevaluation. However, 30 days is a reasonable benchmark for school districts to aim for. For example, WAC 392-172A-03105(2)(a) states, for an initial IEP, a school district must ensure that a student's initial IEP is developed within 30 days of a determination that the student is eligible for special education and related services. Here, if the District had timely completed the reevaluation of the Student, a new IEP would have been developed for the Student on or about November 22, 2020. And the Student would have begun receiving services under that new IEP on or about that date.

The District acknowledged it failed to complete the Student's reevaluation, and to develop a new IEP on the basis of that reevaluation, in a timely manner. OSPI agrees and finds the District in violation. To remedy this error, the District proposed providing the Student with 20 hours of compensatory education in math—the new area of specially designed instruction that was recommended by the DCHY reevaluation report.

This appears to be a reasonable remedy. From the documentation provided to OSPI during the course of this investigation, it appears specially designed instruction in math is the only new service area recommended by the CDHY reevaluation report.<sup>8</sup>

Additionally, the Student's IEP team must provide OSPI with a copy of the agreed-upon IEP for the Student when it is completed. And, District staff will be required to receive written guidance on reevaluation timelines.

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<sup>8</sup> The CDHY reevaluation report also recommended the Student receive executive functioning support through the Student's social/behavior goals, but the social/behavior goals in the Student's December 2020 IEP already related to executive functioning—in other words, in the eventual IEP that is created, it does not appear specially designed instruction in executive functioning will be a new area of service provided to the Student. Similarly, from the documentation provided to OSPI, it appears, in relation to communication, the outstanding question is: whether the Student will continue to receive specially designed instruction in communication, and, if so, how much—in other words, it does not appear the eventual IEP that is to be created will include more communication services than in the previous IEPs (June 2020 Amended IEP and December 2020 IEP).

## CORRECTIVE ACTIONS

By or before **May 14, 2021, May 21, 2021, May 26, 2021,** and **September 24, 2021,** the District will provide documentation to OSPI that it has completed the following corrective actions.

### STUDENT SPECIFIC:

#### Compensatory Education

By or before **May 21, 2021,** the District and the Parent will develop a schedule for providing the following compensatory education to the Student: 20 hours of specially designed instruction in math.

The District will provide OSPI with documentation of the schedule for services by or before **May 21, 2021.**

The compensatory education will occur outside of the District's school day and may occur on weekends or during District breaks.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. *The services must be completed no later than **September 24, 2021,** including those needing to be rescheduled.*

No later than **September 24, 2021,** the District shall provide OSPI with documentation that all of the compensatory education has been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **September 24, 2021.**

#### Provide OSPI with Copy of New Annual IEP

By **May 26, 2021,** the District will provide OSPI a copy of: 1) the Student's new annual IEP; 2) any prior written notice (or notices) related to the finalization of the Student's new annual IEP; and, 3) any other relevant documentation.

If an additional IEP meeting needs to take place for agreement to be reached on the new annual IEP, that meeting must be held by **May 21, 2021.** If an additional IEP meeting needs to be held, then the District must also provide OSPI with any relevant meeting invitations and a list of people, including their roles, who attended the meeting—in addition to the documentation listed above.

## **DISTRICT SPECIFIC:**

### **Dissemination of Written Guidance**

By **May 21, 2021**, the District will ensure that the following individuals receive written guidance on reevaluation timelines (WAC 392-172A-03015): special education administrators, the principal, the assistant principal, and special education certified staff, including educational staff associates (ESAs)<sup>9</sup>, at the school that the Student was enrolled in during the 2020-2021 school year. The guidance will include examples and best practices for contracting with outside providers to complete District evaluations.

By **May 14, 2021**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by May 16, 2021.

By **May 21, 2021**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

Dated this \_\_\_ day of May, 2021

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

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<sup>9</sup> ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

**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.)