

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-60**

### **PROCEDURAL HISTORY**

On July 19, 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, regarding the Student's education.

On July 20, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District. OSPI asked the District to respond to the allegations made in the complaint.

On July 26 and 28, 2021, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on July 29, 2021.

On July 29, 2021, the District requested an extension of time to respond to the complaint. OSPI granted the extension to August 17, 2021.

On August 3, 2021, the Parent emailed OSPI and the District a clarification to part of her additional information sent the week of July 26, 2021.

On August 10, 2021, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on August 11, 2021.

On August 17 and 18, 2021, OSPI received the District's response to the complaint<sup>1</sup> and forwarded it to the Parent on August 18, 2021. OSPI invited the Parent to reply.

On August 18 and 19, 2021, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on August 19 and September 1, 2021.

On August 25, 2021, OSPI received additional information from the Parent as part of her reply to the District's response. OSPI forwarded the additional information to the District the same day.

On August 30 and September 1, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on September 1, 2021.

On September 7 and 8, 2021, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on September 8 and 9, 2021.

The OSPI investigator spoke to the Parent on the phone on several dates in July, August, and September 2021. Phone calls primarily related to questions about the complaint process and how

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<sup>1</sup> OSPI notes the District emailed the response on August 17, 2021, due to technical difficulties with OSPI's secure email, OSPI requested the District resend several responsive attachments on August 18, 2021.

to submit information as part of the complaint; however, during calls, the Parent also shared background information and context related to the concerns raised in the complaint.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during interviews.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on July 20, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

### **ISSUES**

1. Did the District follow procedures in conducting a March 2021 reevaluation in communication, including conducting a sufficiently comprehensive evaluation to “identify all of the student’s special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified” per WAC 392-172A-03020(g)?
2. Did the District follow proper individualized education program (IEP) development procedures to address all of the Student’s disability related needs—regardless of her eligibility category—including potential needs in self-advocacy and speech language pathology in May and June 2021?

### **LEGAL STANDARDS**

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group—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. 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 individualized education program (IEP), including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student’s eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with

impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. 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. 34 CFR §300.304; WAC 392-172A-03020(3).

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; how the student's disability affects his or her involvement and progress in the general education curriculum; 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.

An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's social and cultural background, and adaptive behavior. In completing the evaluation report, the school district must ensure that information from all sources is carefully considered. 34 CFR §300.305; WAC 392-172A-03040. The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035.

Definition & Provision of a Free Appropriate Public Education (FAPE): A "free appropriate public education" (FAPE) consists of instruction that is specifically designed to meet the needs of the child with a disability, along with whatever support services are necessary to permit him to benefit from that instruction. They must meet the State's educational standards, approximate the grade levels used in the State's regular education system, and comport with the child's IEP. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 186-188, (1982).

An IEP is required to be "reasonably calculated to enable the child to receive educational benefit." It does not require the absolute best or potential-maximizing education for that child. Rather, the district is obliged to provide a basic floor of opportunity through a program that is individually designed to provide educational benefit to a child with a disability. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982). For a district to

meet its substantive obligation under IDEA, a school must “offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” An IEP must “aim to enable the child to make progress”, the educational program must be “appropriately ambitious in light of [the student’s] circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom,” and the student should have the opportunity to meet challenging objectives. *Andrew F. v. Douglas County School District RE-1* 137 S.Ct. 988, 69 IDELR 174 (2017).

Adding or Removing a Service: If a provider believes the services being delivered to a student are no longer appropriate, the provider may not independently alter those services. The IEP team should meet to determine whether it needs to revise the IEP. If the changes materially alter the student’s educational program, the IEP team, with other appropriate qualified professionals should review existing data and determine whether additional data is needed to complete a reevaluation, or whether there is enough information from the prior evaluation report and data collected as part of the IEP to revise the IEP. OSPI Special Education, *Technical Assistance Paper No. 5 Evaluation Procedures Under the IDEA* (OSPI, 2012). Unlike specially designed instruction and related services, which are the responsibility of the evaluation group to determine, supplementary aids and services are the decision of the IEP team. There would therefore be no requirement to conduct a reevaluation when adding or discontinuing supplementary aids and services. Any decision that is made with regard to services should be made by a team, not an individual, and should be based on current, relevant data. *Monthly Update Tip: Reevaluations when Adding or Discontinuing Services* (OSPI, March 2018); WAC 392-172A-01185; WAC 392-172A-03110.

Determining whether a reevaluation would be needed when adding or discontinuing services is a decision made by the IEP team on a case-by-case basis. The IEP team should consider the results of the student’s most recent evaluation to determine what areas of specially designed instruction and related services have been recommended by the evaluation group. If the IEP team wants to add a service that is not recommended on the evaluation, could that be considered a significant change of placement, requiring a reevaluation, for this particular student? *Monthly Update Tip: Reevaluations when Adding or Discontinuing Services* (OSPI, March 2018). A reevaluation can be completed using existing, current data; it does not always require standardized testing. WAC 392-172A-03025.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which parents (1) provide critical information regarding the strengths of their child and express concerns for enhancing the education of their child; (2) participate in discussions about the child’s need for special education services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum, and what services will be provided to the child and in what setting. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5, Question 9).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority “vote”

and no one team member has “veto power” over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district’s proposals or refusals, or both, regarding the student’s educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. IDEA, 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9<sup>th</sup> Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9<sup>th</sup> Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Measurable Annual Goals & Specially Designed Instruction: IEPs must include a statement of the student’s measurable annual goals, including academic and functional goals. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b). Goals are addressed through specially designed instruction, which means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student’s disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the district that apply to all students. 34 CFR §300.39(b)(3); WAC 392-172A-01175(3)(c).

Related Services: Related services means developmental, corrective, and other supportive services as are required to assist a student eligible for special education to benefit from special education, and includes speech-language pathology and counseling services, among others. 34 CFR §300.34(a); WAC 392-172A-01155(1). Related services are recommended by the evaluation. 34 CFR §300.305; WAC 392-172A-03035.

Supplementary Aids and Services: Supplementary aids and services means aids, services, and other supports provided in general education classes or other education-related settings to enable students eligible for special education to be educated with nondisabled students to the maximum extent appropriate. 34 CFR §300.42; WAC 392-172A-01185. The IEP team must, to the extent appropriate, determine whether supplementary aids and services, program modifications, and support for school personnel consistent with WAC 392-172A-01185 are needed. WAC 392-172A-03110(2)(b)(ii).

Program Modifications: An IEP must include a statement of the program modifications that will be provided to enable the student to: advance appropriately toward attaining annual IEP goals; be educated and participate with other students; and participate, if appropriate, in the general education classroom. 34 CFR §300.320(a)(4); WAC 392-172A-03090(1)(d).

## **FINDINGS OF FACT**

### **Background**

1. The Student is eligible for special education services under the category specific learning disability. Her most recent, 2019 comprehensive triennial reevaluation noted the Student’s

disability “makes it difficult for her to gain information from spoken or written material and apply it in the general education classroom...specifically, her disability and subsequent processing deficits in fluid reasoning adversely affect her capacity for performing higher level math reasoning...” and recommended specially designed instruction in math. The evaluation incorporated information from a private neuropsychological evaluation, which indicated the Student’s fluid reasoning challenges are impacted by her language disorder: “Due to [Student’s] language disorder, these characteristics may be especially pronounced when information or instruction has been provided verbally or involves higher-order language.”

The evaluation noted the Student previously received specially designed instruction in math problem solving, reading, writing, and communication, but no longer needed specially designed instruction in the areas other than math, as her scores fell in the average range or no longer indicated a concern. With respect to communication, the evaluation report indicated the team reported the Student’s communication skills to be at or above the average range—“language skills...solidly in the average to high average range compared to same-age peers” and thus, she did not demonstrate a need for specially designed instruction in communication. Comparatively, the evaluation report did note that the Student’s expressive language skills were lower than her receptive language skills<sup>2</sup>, but that “cumulative test results still indicate expressive language skills that are within the average range.”<sup>3</sup>

The associated prior written notice documented that the Student’s:

performance in...communication...will be carefully monitored to assure that she continues to progress well in the general education curriculum and setting. The team discussed and agreed that, should certain challenges/deficits become more impactful in the future, such as in expressive language, written expression, or reading comprehension, the team could consider reevaluating [Student’s] need for additional support as appropriate.

2. The Parent’s complaint alleged that the members of the Student’s individualized education program (IEP) team were advised by the District that the IEP team “cannot consider our student’s need for a self-advocacy goal or consultative [speech language pathologist] SLP support within the IEP as a related service, supplementary aid/service, or Support for School Personnel because the student’s ‘qualifying area’ is currently in Math only.” The Parent alleged the District stated the Student’s self-advocacy and communication needs cannot be considered as part of the IEP unless the Student’s “evaluation includes Social/Emotional and Communication ‘qualifying areas.’”

The Parent also alleged that the communication reassessment was not comprehensive due to: data collection, summarization or restriction of input due to an artificial word count limit or other factors, the inability of parents and other IEP team members to meaningfully

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<sup>2</sup> Receptive language is the ability to understand and comprehend spoken language and expressive language is the ability to communicate and express oneself using language.

<sup>3</sup> This finding was echoed in the 2019 private neuropsychological evaluation, which noted the Student’s “language skills are generally age appropriate,” while noting areas of struggle and that the Student’s “language progress over time has been variable.”

participate in the process, and predetermination of eligibility based on criteria that seems to have relied predominately on standardized measures, the standard deviation model, LRE (without discussing continuum placement), and the assurance that existing accommodations would be sufficient to 'mitigate challenges' in gen-ed (without data to prove this).

3. The District, in response to the Parent's complaint, stated that the District—based on evaluation results and the Student's performance in class—does not see a need for communication related changes to the Student's IEP, including a goal or SLP services/supports.

The District acknowledged that some District communications did not "clearly [respond] in writing that they did not agree the goal was appropriate for [Student]." The District's response noted that when District communications used the phrase "qualify for services," it meant: "does not need those services to benefit from their special education program." The District stated that in IEP meetings, the District team members "did articulate that communication and self-advocacy were not areas of concern" for the Student and noted that when the Parent requested a self-advocacy goal and communication supports,

the issue was not that the team believed that because she was eligible under the category [specific learning disability] she could not receive social/behavior [specially designed instruction] or communication services if her evaluation demonstrated she required those services to benefit from her special education program; rather, it was the team's opinion that the services and goal were not necessary.

While the District maintained the Student's IEP was developed appropriately and ensures the Student receives a free appropriate public education (FAPE) in the least restrictive environment, the District also stated that because the Student was new to the school, the IEP team thought additional data would be beneficial and agreed to revisit the Parent's requests early in the 2021–2022 school year, as well as addressing concerns about the Student's anxiety through general education supports.

The District acknowledged that there was "clearly some confusion among staff about how to communicate around concerns that may arise in areas in which a student does not necessarily qualify (e.g., through accommodations or modifications)." While noting it was not admitting a violation, the District stated it could provide special education supervisors and program specialists guidance to better assist teams around this general concern.

### **2020–2021 School Year**

4. The District's school year began on September 4, 2020. The Student continued to be eligible for special education services under the category specific learning disability and was part-time enrolled in a District middle school to access special education services, while also attending a private placement.
5. On December 1, 2020, the District received consent to evaluate the Student's communication skills. Per a November 3, 2020 prior written notice, the District decided to initiate an

assessment revision to evaluate the area of communication and stated that "review of evaluations through 2019 do not support a strong possibility of eligibility; however, the January 2020 evaluation from the...Clinic...indicates a number of concerns, including narrative expressive language." The prior written notice indicated that there were "some areas that should be assessed before [ruling] out eligibility in the area of communication."

6. In emails between District staff, the Parent, and the Parent's advocate in November and December 2020, the District and Parent clarified issues around consent for the evaluation. In a December 4, 2020 email from the Parent's advocate, the advocate wrote, "[Parent] has not consented to an early reevaluation, but is seeking to have an evaluation amendment so the team can look at [Student's] communication needs. Specifically, [Student's] receptive/expressive language..." This was due to the fact that the Parent identified other areas of concern on the consent form and in emails (including oral expression, written expression, reading, and listening comprehension).<sup>4</sup>
7. On December 4, 2020, the Parent shared information from the Student's language/math tutor with the District to be reviewed as part of the communication reassessment, and on December 7, 2020, the case manager forwarded the information to the SLP.
8. The District was on winter break from December 21, 2020 through January 1, 2021.
9. On January 25, 2021 (and later around February 14, 2021 as follow up), the District SLP conducting the reassessment emailed the Student's teachers at the private school and District case manager, asking for their impression of the Student's strengths, difficulties, and whether the Student had any language difficulties, "understanding or expressing herself," that were impeding the Student's access to education. The teachers responded, providing input that was incorporated into the communication reassessment report.
10. On January 29, 2021, the SLP emailed the Parent and her advocate and stated she was not recommending eligibility for communication services, noting she "kept a fully open mind until reviewing all the evidence including teacher reports" and stated they would "discuss the rationale and recommendations in more depth" at the meeting.

The Parent and advocate responded, requesting that additional information be included in the report. The SLP replied that she understood the result was disappointing, stating, in part:

- She "carefully reviewed and considered each of the reports I was sent."
- Samples indicate there are "some concerns" for the Student, "but also a number of strengths."

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<sup>4</sup> The Parent, in her reply to the District's response, noted there was a "misunderstanding about categorization headings on the consent form and associated assessments. The parent only checked the Communication box on the consent form." The Parent stated that at a meeting to discuss the reassessment, they were told only expressive language would be tested, "since receptive language scores were in the normal range." The Parent stated she later realized this could impact the comprehensiveness of the evaluation and shared the concern with the District. The Parent stated that they "remain unclear if receptive language only was tested for the reassessment."



- "I did take to heart the recommendations at the end of the 2020 report, with a thorough assessment of metalinguistics that we did on January 15<sup>th</sup>."

11. The Parent stated, in additional information provided during the complaint, that the SLP's January 29, 2021 email indicated the SLP predetermined the outcome of the communication reassessment, as the SLP made a recommendation prior to the evaluation meeting.<sup>5</sup>

12. On February 1, 2021, the District held an evaluation feedback meeting to review the "assessment revision" for the Student. As part of the reevaluation, the SLP reviewed prior District and outside provider evaluations; reviewed reports from the Student's private tutor; and considered input from the Parent, special education teacher and case manager (case manager), special education instructional assistant (IA), and teachers at the private school. The report included the following information, in part:

- 2019 District reevaluation noted the Student had a language disorder and that fluid reasoning was previously identified as an area of weakness.
- Educator Input:
  - Case manager reported strengths, including self-awareness and improving self-advocacy skills; challenges, including applying skills/knowledge without prompting or re-teaching and learning new skills without visuals; and noted no language difficulties, but that the Student "becomes nervous and has a hard time learning when she cannot see the math being done in front of her, especially when having to do with an abstract concept that can be explained with visuals."
  - Special education IA reported the Student is self-aware, confident, and engaged; sometimes struggles to demonstrate comprehension; noted no language difficulties. The IA reported the Student has difficulty with the visual/spatial aspects sometimes and that it is "helpful for her to draw or lay out her thought process on paper." The IA also noticed stress and anxiety.
  - Private school teachers noted no communication difficulties, although there were times the Student misinterpreted a question and responded in a way that was not appropriate based on the question asked, and that at times, the Student needed questions repeated or rephrased. The teachers did state they did not have a clear or full picture of the Student given remote learning.
- Private Services: Tutor noted some difficulty combining ideas when composing sentences and that the Student responded to prompting to expand ideas.
- Parent Input: Concerns include expressive language, nonfiction comprehension, communicating knowledge when responding to questions using higher-level or abstract language, word problems in math. The Parent requested "more information on how data showing significant discrepancies between receptive and expressive language" impact the Student.

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<sup>5</sup> The Parent also stated she was confused about whether "there could have been an opportunity for the IEP team to discuss eligibility considerations alongside educational needs before the evaluator's determination was made, or if it is standard practice for the evaluator to communicate to parents and others on the IEP team a unilateral eligibility determination after reviewing input and data during the earlier reevaluation process."

- Comprehensive Assessment of Spoken Language 2 (CASL-2):<sup>6</sup> Assessed expressive language and high-level language processing and found the Student scored in the average range on all subtests (expressive vocabulary, sentence expression, nonliteral language, meaning from context, inference, and double meaning) except one subtest (grammatical morphemes<sup>7</sup>).
- Test of Narrative Language – 2 (TNL-2):<sup>8</sup> Assessed functional, holistic language skills and found the Student scored in average to high average range.

The assessment report summarized that the Student’s “current formal testing indicates that her expressive language skills are in the solidly average range” with the exception of one subtest, and that her “higher-level language processing skills are clustered in the low average range.” The report stated that “previous testing has shown receptive language skills are a relative strength, generally falling in the high average range with some variability.” The report stated the Student’s teachers “did confirm her difficulties in math but did not indicate needs in the area of language comprehension or expression,” although “some difficulties may not be apparent during remote learning.” The report indicated that, per Parent and outside provider reports, the Student “has functional struggles processing directions and understanding factual text.”

The assessment revision did not recommend specially designed instruction in communication and noted the Student “did not meet eligibility criteria.” The report stated the building based SLP would be available to assist with the implementation of accommodations if needed.

13. The prior written notice, dated February 1, 2021, included the following:

Refuse to initiate services in...communication...Recent evaluation data do not support eligibility in communication.

...

Making [Student] eligible in communication was considered, but rejected due to the fact that [Student] does not meet eligibility criteria in this area. Speech therapy as a related service to support academic goals was also considered, but rejected for the same reason.

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A careful review of outside testing, current testing and educator input does not support specially designed instruction in communication as the least restrictive environment. It was concluded that [Student’s language skills can be leveraged, and challenges managed with classroom-based differentiation and IEP accommodations.

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<sup>6</sup> The CASL-2 is a standardized “measure of expressive language and higher-level language processing.”

<sup>7</sup> According to the report, this subtest “measures the knowledge, retrieval and oral expression of inflections and function words.” The report further noted the Student “had difficulty adhering to the lengthy instruction” and that the Student’s “creativity was a hinderance in this test; she was prone to adding interesting details that went beyond the stimuli given, making it more likely that she would not produce the specific response required by the test.”

<sup>8</sup> The TNL-2 is a standardized “measure of a student’s ability to understand stories, retell stories, and create their own stories with visual support.”

14. According to the Parent's complaint, the communication reassessment "denied student eligibility in Communication as a 'qualifying area' due to the severe discrepancy model, LRE, and District assurance...that her 'language skills can be leveraged, and challenges managed with classroom-based differentiation and IEP accommodations.'" The Parent clarified in additional information that she was concerned that the communication reassessment improperly used a "-1.5 standard deviation eligibility criterion...to determine their student...did not qualify for...services in Communication." The Parent stated that she remains unclear how, "assessments and data based on text with images, such as the Sentence Expression subtest, as well as story-based/narrative text with or without images, can fully speak to receptive/expressive language challenges experienced by the student in gen-ed settings when the curriculum includes higher-order or conceptually complex nonfiction, non-image text."

The Parent stated it was problematic that neither the Student's case manager nor any general education teachers attended the "meeting determining eligibility in the 'qualifying area.'" The Parent expressed concern that general education input into the evaluation was minimal, due in part to the remote/hybrid instructional model. The Parent noted that emails from educators show that they did observe communication difficulties at times, but the Parent stated, "these observations were not included for context in 'summaries' of input."

Further, in her reply, the Parent noted:

Assessments administered by the District that may have used short, straightforward, fictional/story-based text and images would not necessarily be an applicable representation of how [Student] could 'manage any communication challenges' when navigating language that's communicated in a 7th grade gen-ed science class. [Neuropsychological] 2019 report spoke at length about how this variability in Communication could manifest at school.

The Parent, in her reply to the District's response, stated she "did not feel that [the Parents] had the ability to genuinely contribute to discussions about the evaluation process of the predetermined eligibility outcome" and raised concerns about whether Parent input and private reports were considered as part of the evaluation. The Parent emphasized that "quantitative and qualitative data have shown for years that the [Student] has language disabilities that impact her experiences and progress in school, and this is the reality despite the District's predetermination that she is ineligible for services according to the standard deviation model."

15. The Parent later provided the District a document, dated March 4, 2021, with her clarifications to the communication reassessment, which included in part:

- "Educators, specialists (including [doctor's] 2017, 2019 reports), and parent have shared that [Student] needs language clarified to learn in the classroom."
- Rephrasing, repeating questions, and being allowed a second attempt to answer after clarification are crucial for the Student. Student needs scaffolding, question-based prompting, and visuals (among other strategies and supports listed).
- Student is using dictation for written homework.
- Concerns with data collected for the assessment revision as teachers stated that, due to remote learning, "they did not have a clear picture of [Student] as a student." Parent noted that the

Student's "unique language challenges can be nuanced and not immediately evidenced due to variability and compensatory strengths."

- During remote learning, the Parent estimated she spent "most of the school day as a 'translator' of text" for the Student, "with 50% scribing, verbal prompting" to support the Student's "efforts to engage with her learning and process/communicate content."
- Concerns about how the data in the assessment revision showing average or high-average scores compare with the previous evaluations low- or below-average scores (per the 2019 private evaluation).
- The 2019 District reevaluation showed "significant language discrepancy," which was noted as an area of concern to be monitored over time.
- "We continue to observe academic and emotional impacts due to a discrepancy between receptive and expressive language in school, such as the ease and confidence [Student] shows when answering multiple-choice questions with notes...compared to open short answer responses."
- "Educators, including [District] SPED math teachers, have acknowledged [Student] experiences challenges with the language component of math, such as found in word problems and abstract math concepts taught using spoken language."
- "Not all educators or specialists who have worked with [Student] or outside test results would align with the following statement in the report: '*Educator report corroborates test results indicating that [Student's] language skills are within the expected range for general education students.*' This includes 2017, 2019 reports [2019 private evaluation], [District] Communication Section of IEP Re-Eval (2019), [clinic] reports from 2019-2020, and other reports that have described variable language skills and progress over time and recommended specific intervention." (Emphasis in original.)

16. On or about February 8, 2021, the Student transitioned to full-time enrollment at a District middle school.

17. On February 11, 2021, the Parent emailed the case manager, asking for guidance on how to support the Student when she was reluctant to ask for accommodations in class. The Parent noted the Student "has been practicing advocacy with teachers when she doesn't understand directions or has a question about a question, but it's more difficult to ask for help with expressive language challenges when answering open-ended questions."

18. On February 12 and 22-24, 2021<sup>9</sup>, the Parent and case manager emailed regarding further questions and clarifications about accommodations and how the Student could access accommodations. The emails also noted the case manager and IA would plan to review

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<sup>9</sup> Similar email exchanges occurred throughout the spring related to accommodations, times when the Student was struggling to request or access accommodations, and discussion of how to normalize accommodations. Further email exchanges occurred between the Parent, case manager, and teachers, requesting accommodations—in particular, accommodations when the Student appeared to be struggling with or was confused by questions ("confused by the language in multistep questions" and challenges with word problems/problem solving) and did not reach out to teachers to clarify. In general, the Parent connected this to the Student's challenges with receptive/expressive language and need for language-based support in the context of other areas, like math or science. The Parent also emailed regarding accommodations she was providing the Student when the Student was learning at home/remote, such as question-based prompting, graphic organizers, reminders to reread, clarified questions or words, etc.

accommodations with the Student so that the Student was familiar with how accommodations looked in a remote setting, how to advocate for them, and how to do things like initiate a chat with a teacher.

19. On March 18, 2021, the Parent emailed the case manager about an assignment in the Student's tech class and the Student asking for clarification, with prompting, from the teacher. The Parent noted, the Student's "frequent need to clarify assessment/assignment questions in all of her classes is one of the most time-intensive, challenging, and fatiguing aspects of [Student's] school day." The Parent further noted the Student often does not realize when she needs clarification, "so if often takes a teacher or parent to notice when a response doesn't match the question."<sup>10</sup>
20. On April 19, 2021, the Student began attending school in-person two days a week per the District's hybrid schedule.
21. On April 29, 2021, the Parent emailed the case manager, school counselor, and IA, sharing that the Student was "continuing to encounter some challenges asking for/receiving support to understand concepts, engage with instruction, and complete assignments in Science." The Parent also shared that it can "feel frustrating to not be able to turn in assignments due to not understanding directions or higher-level expressive language struggles." The Parent stated the Student "has no problem asking clarification questions in class that are straightforward/factual in nature, but when asking for help due to her struggles with processing or communicating instruction due to language-based or fluid reasoning challenges, this can feel emotionally harder."<sup>11</sup>
22. Emails in early May from the Parent to District staff summarized the challenges the hybrid/remote learning model presented for the Student, including that accommodations were challenging to access in a remote model, such as guided prompting by the teacher, repeat/clarify directions, frequent checks for understanding, utilize oral response to assignments/tests, and provide individual/small group instruction. The Parent noted the accommodations that were challenging to implement all supported communication "such as the discrepancy between receptive and expressive language, and fluid reasoning."
23. On May 11, 2021, the Parent emailed the case manager regarding modifying science assignments, requesting that the building SLP collaborate with the case manager and general

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<sup>10</sup> In her reply to the District's response, the Parent emphasized the amount of time and energy the Parent and case manager spent providing accommodations to the Student and modifying assignments for the Student during spring of 2021, particularly in the Student's science class.

<sup>11</sup> In subsequent emails, the Parent continued to share information about the Student's struggle with science, including challenges understanding and completing assignments, and accessing accommodations. In emails from the science teacher, the teacher stated the Student was putting in effort, was an "exceptional thinker, and self-advocate," noted the focus of the class is "thinking and effort, not work completion or grades," and stated the Student was not behind in class. Later emails from the science teacher also clarified how she was providing accommodations.

education teacher to modify assignments, and requesting a communication plan or process to engage the SLP.

24. On May 11 and 12, 2021, the case manager and SLP emailed regarding modifications in science. The SLP emailed a list of strategies, modifications, and accommodations for the Student, noting "80% of them are already listed in her IEP...couldn't really ask for clearer accommodations and modifications." These included the following:

- Help Student paraphrase directions and information in her own words (listed strategies);
- Strategies for understanding questions;
- Strategies for defining key vocabulary, including the accommodation "pre-teach/Review unit specific and word problem vocabulary;"
- Prompt for elaboration and understanding with "wh-" questions, including the accommodations "guided prompting by teacher" and "prompting with 'W' Questions;"
- Provide multimodal opportunities to demonstrate knowledge, include the accommodations "utilize oral responses to assignments/tests" and "give choices with alternate ways to communicate knowledge for long written assignments to incorporate strengths;"
- Check in to ensure understanding of concepts and vocabulary, including accommodation "repeat/clarify directions and frequent checks for understanding;"
- Use of open book and notes for assessments; and,
- Repetitive instructions.

25. On May 12, 2021, the Parent emailed the case manager with discussion topics for the upcoming IEP team meeting, including:

- Add/discuss role of school counselor on IEP team for emotional impacts;
- Add self-advocacy goal; and,
- Update IEP with current information on expressive language accommodations in general education, especially science.

26. On May 14, 2021, the Parent forwarded the case manager an email from OSPI's parent/community liaison, with information as follows:

It is possible to add a self-advocacy goal without specifically being in the social-emotional category. The eligibility category does not define the services a student receives. Services necessary for FAPE are determined by an IEP team based on the information available about a student's needs specifically in the most recent evaluation...The same is true for [speech]...

27. On May 18, 2021, the Student's IEP team—including an administrator, general education teacher, Parents, parent advocate, Student, school counselor, case manager, and IA—met. The IEP included the Parent's feedback regarding strengths and areas for growth (as well as accommodations/modifications provided at home and suggested goals), and included the Student's input:

I'm good at asking questions in class if I need help. But advocating feels harder when I can't understand the questions on an assignment or how to write down what I'm thinking or how to remember lots of numbers and words on a screen or different screens...if it feels like no one can help, I can feel overwhelmed. When it feels like a teacher isn't hearing me when I ask for help, I feel embarrassed, uncomfortable, and sad. If I need to ask again, I feel stressed and anxious, like I might get in trouble with the teacher.

Regarding communication, the IEP noted the Student "does not currently qualify in the area of communication, based on her most recent assessment in February 2021," but that based on a private evaluation done in 2020, there were a "number of concerns, including narrative expressive language, receptive language, meta-linguistics and level lexical issues." The IEP included information from the 2019 private neuropsychological evaluation, the December 2020 private communication assessment, and the March 2021 District communication reassessment. The IEP included: "the IEP team has determined from historical data and observations and current present levels that [Student] does demonstrate needs in Receptive and Expressive Language, to the point where accommodations/modifications, and classroom-based differentiation, alone, are not currently serving such needs." The IEP also included excerpts from the District communication assessment indicating the District members of the team did not see any language difficulties and noting the conclusion that the "[Student's] language skills can be leveraged, and challenges managed with classroom-based differentiation and IEP accommodations."

In the general education teacher report section, the Student's math teacher provided feedback: Student "has been doing a great job in class...has been doing a great job of self-advocating to take assessments a second time." The Parents also provided input based on their observations from remote learning, including that the Student can become overwhelmed by multi-step word problems, challenges in science, and challenges with the format of remote learning at times.

The adverse impact summary of the IEP noted the Student was impacted by a specific learning disability and required specially design instruction in math. The Parents, Student, and Student's counselor also provided information that her diagnosis of anxiety impacts her learning.

The IEP included present levels, goal progress, and five math goals (fraction calculation and number sense; equivalent values; word problems; pre-algebra; and numbers, operations, and ratios) with progress to be reported quarterly. The IEP included a list of accommodations/modifications and the following specially designed instruction in math, in the special education setting: 255 minutes weekly (provided by special education staff). The IEP noted the Student would spend the remaining time, 86% of her time, in the general education setting.

28. The prior written notice, dated May 21, 2021, noted the team would be meeting again to discuss supports for self-advocacy, among other topics. The prior written notice indicated the team rejected adding a goal for self-advocacy because "the IEP team is collecting more information from the district SPED program specialist and OSPI to make this decision as an IEP team. Supporting advocacy as an accommodation would be another option to consider in this process." The notice also repeated the language in the IEP about receptive and expressive language: "the IEP team has determined from historical data and observations and current present levels that [Student] does demonstrate needs in Receptive and Expressive Language,

to the point where accommodations/modifications, and classroom-based differentiation, alone, are not currently serving such needs.”<sup>12</sup>

29. Between May 18, following the IEP meeting, and June 2, 2021, the Parent and case manager exchanged emails regarding the May 2021 IEP amendment (e.g., suggested edits, wording, things to add, other changes, etc.), and other questions and concerns. In part, these included the Parent reiterating her request to discuss adding a self-advocacy goal, communication services, and social emotional support/school-based counseling.

30. On May 21, 2021, the program specialist emailed the Parent regarding the OSPI guidance the Parent emailed on May 14, 2021:

...I understand him to be saying the Eligibility category for a student does not determine a student's qualifying areas. That is true. It is the qualifying areas of a student's Evaluation that drive their IEP services. For example, [Student] qualifies in Math and receives Math services. To receive communication services from an SLP, even as a related service, a student would need to demonstrate a need and qualify for those services, as determined by an evaluation conducted by an SLP...

31. Also, on May 21, 2021, OSPI's parent/community liaison emailed the Parent as follows:

[Program specialist's] explanation does not actually seem that out of alignment at all. The guidance...essentially says what she is saying; that it goes back to what is in the student's evaluation. I would only add that recent progress monitoring too should be looked at in conjunction with the recent evaluation.

I do see lots of confusion, however, over how things are being described. I would recommend trying to unpack what is meant by a 'qualifying area' and to 'qualify for those services.' If the IEP team thinks a student needs a particular service to receive FAPE and that thinking is backed-up by the current evaluation and progress monitoring data, then that should be enough justification as the guidance I provided indicates.

The answers may ultimately be in trying to explain why an IEP team thinks a student needs a service for FAPE, but yet does not 'qualify.' If the answer relies upon a severe discrepancy model the same way eligibility is determined, then that would be problematic. If, on the other hand, the answer relies upon scores or some kind of discrepancy that does not rise to the level of needing a service (i.e., qualifying area?), then the IEP team may need to revisit its idea of what FAPE means to a student and perhaps consider a reevaluation...

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<sup>12</sup> According to the District's response, the case manager "did not agree with the statement," but added the "requested language because more members of the team (e.g., the family and advocates, but not necessarily those who worked with [Student] at [school]) believed she struggled than not." The case manager explained that this was all with the understanding that she did not qualify in communication only a few months prior. The District noted that the case manager, general education math teacher, IA, and school administrator did not see these communication difficulties. The Parent disagreed that they requested this statement be added, noting they requested the language be included in the prior written notice, "but this was after reviewing the language that had already been included as an update in the Communication section of the IEP draft that was received on 5/18/21."



32. On May 25, 2020, in an email to the case manager related to the upcoming IEP meeting, the Parent mentioned that, "There's now a direct connection between [Student's] struggles in receptive/expressive language and her mental health and efforts to advocate...and wasn't mentioned as a concern in the 2019 re-evaluation. But now it's a top concern..."
33. On May 26, 2021, the school SLP emailed the case manager, SLP lead, and program specialist, responding to questions from the Parent. The SLP noted she had reviewed the Student's IEP, assessment revision, triennial reevaluation, and had provided the case manager "strategies to support her language skills." The SLP reiterated that the Student did not meet eligibility criteria for speech and language services and that she did not want to imply that the Student was "'struggling' (parent statement) or that there are any perceived deficits 'impacting her ability to process and communicate language in class' (parent statement)" but that the SLP can always "provide language strategies for students."
34. In her reply to the District's response, the Parent noted that the Student had "significant struggles due to her disabilities in some gen-ed contexts" and that these challenges are not a "perception."
35. On June 3, 2021, the Parent emailed the program specialist regarding her requests for additional support for the Student. The Parent reiterated that the Student's challenges, including those with math, are language-based and noted "the depth and scope of language-based deficits may not always be readily apparent in some school-based contexts as a result of compensatory strengths and partial remediation," according to a private evaluator. The Parent also noted that data alone did not show the full picture of the Student's needs at school. The Parent referenced the Student's progress reporting, which the Parent stated showed a "lack of significant progress on math goals, and regression since Spring of 2020...little to no progress made on word problem goals, in contrast to some of [Student's] other goals." The Parent stated, "the impact of language deficits on math, which has been noted by every one of [Student's] special education teachers with [District], needs to be discussed and addressed by the team so [Student] can benefit from special education and make progress on her goals." The Parent requested that speech support be added either as program modifications for school personnel, a related service, or a supplementary aid/service. The Parent also reiterated her request for a self-advocacy goal, along with a math goal aligned to science standards.
36. On June 4, 2021, the assistant principal emailed the Parent to provide clarification, as follows:

IEP goals can only address areas that the student is qualified in. [Student] qualifies in math which means the IEP team can only write goals that directly address math skills...The other areas that you are asking for goals in (advocacy, anxiety, etc.) cannot be included in the IEP because she does not qualify for services in those areas. As a school, we want to be supportive and responsive to all sorts of student need, whether served by special education or not. [School counselor] said in an earlier email that he would be happy to support [Student] in setting personal goals for self-advocacy, etc....

The Parent responded, noting in part that she had received guidance from OSPI that "the team could consider goals and services beyond the area of math, since determination is based on

the evaluation and recent progress monitoring rather than initial eligibility and a discrepancy model." The Parent shared that the Student's challenges in math are "language-based, associated more with problem-solving versus straightforward calculations" and that the "expressive/receptive Communication component of [Student's] unique learning profile is relevant to specially designed instruction and math skill development."

37. Also, on June 4, 2021, the Parent, case manager, and school counselor emailed regarding the upcoming IEP meeting. The school counselor responded in part that he was removing his portion from the meeting agenda and clarified his role as follows:

...there is still confusion about the role counseling plays. Goals in IEPs that are connected to [specially designed instruction] are not delivered by counselors but rather by SpEd staff. The goal that [Student] and I will set is not an IEP goal it is a personal/social development goal...Counseling based personal/social development goals can support growth areas identified in an IEP and they often coincide with IEP goals but they do not have to. The goals that students set with counselors are developed with the student and the counselor...it would not be necessary to have an IEP team be involved...

The Parent replied and stated she felt it was important to have an advocacy goal on the IEP, as well as accommodations and modifications to support mental health. The Parent asked if the team could discuss "the need for an advocacy goal with support from SpEd staff, perhaps in addition to social/emotional check-ins with the counselor?"

38. On June 4, 2021, the Student's previous private SLP emailed the Parent and Student's case manager to provide information in advance of the Student's IEP meeting. The SLP noted the Student had challenges with "higher level integrative tasks," especially in the non-fiction context. The SLP stated the Student works well when given strategies and benefits from "multi-modal communication strategies."

On June 8 and 14, 2021, the Parent emailed the case manager, copying the program specialist and other members of the IEP team, with questions and considerations for the IEP team in advance of their June 15, 2021 IEP meeting, including requests for:

- A self-advocacy goal as a related or supplementary service with special education and counselor support
- SLP consultative/training support to the IEP team as a "program modifications for school personnel," related service, or supplementary aid/service

Supporting her requests, the Parent shared and requested the following:

- Requested the District confirm its position with respect to the OSPI guidance shared, including that "It would therefore not be appropriate to restrict consideration of added support/related service to 'math skills' only."
- Stated she was not clear on why the Student's "need for added support/related services can't be considered by the IEP team because 'communication and social/behavior were not identified in the [District] evaluation,' as this suggests a decision was predetermined by the district based on initial eligibility category and the associated severe discrepancy model..."
- Requested the District confirm "...the district's position is that consideration of student need for added support to benefit special education and access to FAPE as a *Related Service, Program Modification for School Personnel or Supplementary Aid/Service* must be determined by

eligibility under separate 'qualifying areas'...to be decided on by 'evaluation members' and the severe discrepancy model rather than by the IEP team..." (Emphasis in original.)

- Stated, "It was my understanding, based on prior emails, that there's general agreement that advocacy support in some form is needed for [Student]..."
- Shared that in science class, "[Student] has exhibited significant academic struggles due to language-based and [fluid reasoning] deficits and emotional distress..."
- Asked whether it was the District's position "that the IEP team did not have sufficient data at the time of our request for IEP team consideration...for a Self-Advocacy Goal and SLP support."
- Asked what the District's plan was to "respond to and address the IEP team's determination in the current IEP that [Student's] expressive/receptive needs are more than accommodations, modifications, and differentiated instruction alone can currently meet."
- Shared that "since math is taught using language and numbers, and [Student's] struggles with math are largely language-based" and asked what the plan was to "enable [Student] to make significant progress on her word problem goal next year? Would collaboration between the IEP case manager/SpEd Math Teacher and SLP to support development and delivery of [specially designed instruction] for the word problem goal enable [Student] to make progress in this area of need and close the gap compared to previous years?"

39. On June 9, 2021, the Parent emailed the program specialist and case manager with suggested language for a self-advocacy goal for the Student, specifically a "self-advocacy goal to support [Student's] ability to more independently access higher-order language accommodations/modifications at school and complete her school assignments." The Parent noted her hope was that the self-advocacy goal would build the Student's skills in "requesting/facilitating/and evaluating accommodations/mods, and help her problem-solve when the support is not sufficient to address her learning needs."

40. On June 10, 2021, the program specialist emailed the Parent and IEP team:

It continues to be my understanding, the qualifying areas of a student's Evaluation drive their IEP services, which include Related Services, Program Modifications for School Personnel and Supplementary Aids and Services.

- The text provided by [Parent] from [OSPI liaison] (below) continues to support my understanding in regards to IEP teams not being able to add services that are outside of a student's qualifying areas...
- I would again suggest if an IEP team has reason to believe a student has a need in an area outside of their current qualifying areas then the IEP team could request an Evaluation be considered in that specific area.
- [text from OSPI liaison] 'The most recent/current evaluation is typically the most recent 3 year (triennial) reevaluation on file, not the IEP. The triennial reevaluation may not have of course covered all of the things that have come up since it was completed, so another more targeted reevaluation can be done at any time. A [reevaluation] does not need to include new testing; it can be focused on only a review of existing data that way the information contained in an IEP would be considered. You and the district team can determine from there what are the most current and relevant evaluations available when making decisions as a team.'
- It continues to be my understanding that SLP services, related services, supplementary aides and services, etc. may not be added to [Student's] IEP as this is not an area of qualification...That being said, the staff at [school] can always reach out to the SLP to be a thought partner in supporting their students.

Accommodations/Modifications...It is not the responsibility of the student to request their IEP accommodations/modifications. It is a legal obligation of the staff to offer these to students...

Self-Advocacy...If the team agrees this is an area of need, it's my understanding [Student's] counselor at [school] would be able to work with her directly on building her self-advocacy skills. A general ed intervention seems like the most appropriate place to start.

41. Also, on June 10, 2021, according to the Parent, the Student experienced anxiety during in-person science class and was unable to self-advocate for her needs while in class. The Student subsequently refused to attend science class in-person for the next week, which the Parent stated was not typical behavior for the Student.

42. On June 12, 2021, the Parent emailed the District, requesting an independent educational evaluation (IEE).<sup>13</sup> In a subsequent email, the Parent explained her reason for requesting an IEE:

- The communication assessment was incomplete and lack sufficient data.
- The communication assessment did not include testing in receptive language.
- The District's conclusion that the Student was not eligible for speech services and that her "challenges [could be] managed with classroom-based differentiation and IEP accommodations" was based on "assumptions rather than current data and relevant gen-ed educator input." Assessment lacked comprehensive input from general education teachers.
- The IEP team determined "from historical data and observations and current present levels" that the Student "does demonstrate needs in Receptive and Expressive Language, to the point where accommodations/modifications, and classroom-based differentiation, alone, are not currently serving such needs."
- "Due to compensatory strengths and partial remediation, testing data alone cannot provide a full picture of [Student's] strengths and weaknesses in the area of Communication."
- Private provider information shows how the Student's language deficits impact her access to general education curriculum and academic progress.

43. On June 14, 2021, the Parent emailed the case manager regarding the IEP meeting agenda for the following day. The Parent requested they discuss the follow updated agenda, summarized:

- Introductions (led by Student)
- Summer supports, recovery services, recovery assessment data
- Current IEP goal data report
- Consider adding accommodations and amending word problem goal with science concepts
- Self-Advocacy consideration (discuss self-advocacy supports (counselor, case manager), access to accommodations/modifications, and parent request to add a goal around self-advocacy)
- Private provider input
- Plan for modifications/accommodations in science and other general education classes; receptive/expressive language supports
- Student's fall schedule (if time)

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<sup>13</sup> The District declined to fund an IEE, initiated a due process, and the Parents ultimately withdrew their request.

44. On June 15, 2021, the Student's IEP team—including the Student—met. Based on the meeting notes, the team discussed the following:

- The Student's progress – some decreases, overall progress
- Summer services and fall recovery services
- Private SLP feedback – working on language-based comprehension, reading, and writing, noted "prior language testing broadly within average range but doesn't capture her challenges in applying language skills to curriculum." The Student makes incorrect inferences or misinterprets questions, thus sending her "into a completely wrong direction." The Student "has knowledge and vocabulary but her ability to put concepts together in right order/relationship is lacking...standardized testing doesn't do well in terms of picking up this deficiency since they just look at the sentence level. I see this challenge when you look into longer passages, paragraphs."
- History teacher shared that the Student self-advocates in the classroom but gets learning fatigue. Also shared that the Student "will read something then get to end and be baffled. So I've coached her to look at Q first and reread then go back and look at answer again – then usually gets answer." Other teachers and the IA shared input and observations.
- Parent shared that she spends 4-6 hours daily helping the Student "access, process & express thoughts/ideas."
- Discussed potential accommodations for the next year (e.g., prompting to look at questions, rereading) and discussed whether in-person would be different and more supportive.
- Parent shared that expressive language needs are not being met, which impacts anxiety, ability to advocate, and understanding concepts.
- Private SLP shared strategies such as chunking, modify curriculum – "language based challenges across all subjects"

The meeting notes indicated there was a difference between what some of the teachers saw working with the Student and what the Parent and private SLP saw. However, the notes indicated there was agreement that the team knew the Student has multiple disabilities and that her "anxiety is increasing." The notes indicated there was a question of whether to collect data about the Student's social/emotional needs; however, the notes indicated there was not agreement but that they were at a stopping point and would need to continue over email.

45. The June 15, 2021 IEP included much of the same information as the May 2021 IEP in the team considerations and present levels sections. The IEP included updated Parent input, which included concerns about independence and anxiety, barriers around communication ("understanding how concepts go together"), and self-advocacy. The IEP included updated general education teacher input from the history, computer science, science, and English teachers. The general education teachers reported the Student:

- Did a great job self-advocating in class; "Advocates for herself WELL above her peers."
- The Student "sometimes [has] a disconnect when she reads a text and then tries to apply that information to answer a question."

The IEP listed strategies and supports used (e.g., rereading, reading questions first, redirection, recorded verbal directions, clarifying/defining vocabulary, modified short answer questions, extra time).

The Parent also shared input (after the IEP meeting but incorporated into the IEP) that the Student was supported by the case manager and private SLP in science. The Parent provided a clarifying statement to add to the IEP regarding science that read, in part:

IEP team members, including...IEP Case Manager...[private SLP]...and [family advocate], among other IEP team members, were not in agreement that [Student's] abilities, skills, and performance are comparable to same-age peers, as stated at the 6/15/21 IEP meeting...

...[Student] did struggle with some communication tools, which impacted her ability to learn/access instruction, express her learning, fully participate...and self-advocate in class. This context is based on direct observation during remote and hybrid instruction, student and specialist input, and communication data between [Student] and teachers...The experience of struggling to understand content and access support to complete assignments over an extended period of time resulted in [Student] feeling significant anxiety when needing to advocate in class, which did not occur in other classes. Anxiety inhibited her ability to advocate without assistance from the case manager or parent, escalating to the point that she felt such a high level of distress, she refused to attend in-person Science class the last week of school.

The District program specialist added input in response to the Parent's feedback/clarification regarding science:

- "That's not what I've heard the other teachers in this meeting say...How do we help teachers see or understand what her sort of independent need is? They're not seeing that...there's outside info but how do we get teachers to address what they don't see."
- "Moving forward, [school] staff to meet early in the year to see how to support. Communication – showing of [Student's] unsupported work vs supported work, because I'm hearing disconnect between what teachers are seeing and what [private SLP] and parents are seeing. [Parent], I appreciate that you are showing teachers her work – maybe there needs to be more of that. Might be anxiety producing for [Student] for teachers to see what she's doing unsupported."

The IEP also included additional information from the case manager about strategies that worked for the Student, including, in part: the importance of building relationships, direct instruction, consistent reteaching and review of skills, using a "quick warm-up or refresher" to get started, connecting instruction to the Student's interests, and verbalize problem-solving.

The IEP included updated goal progress, five math goals (fraction calculation and number sense; equivalent values; word problems; pre-algebra; and numbers, operations, and ratios) with progress to be reported quarterly, and an extensive list of accommodations and modifications. The IEP included the following specially designed instruction in math, in the special education setting:

- 255 minutes weekly (provided by special education staff)
- 90 minutes weekly (provided by special education staff)

The IEP noted the Student would spend the remaining time, 81% of her time, in the general education setting.

46. The prior written notice from the June 15, 2021 IEP meeting included the following, in relevant part:

Description of the proposed or refused action:

...

2) Continue with IEP with adjustments to the following:

-Amend and add classroom accommodations

-Add 90min/weekly to account for her special education homeroom next year.

...

Description of any other options considered and rejected:

...

2) Developing an IEP goal to support self-advocacy skills has been considered and rejected at this time.

...

The reasons we rejected those options were:

...

2) The IEP team has not reached a consensus on whether this goal is appropriate based on [Student's] present levels, general education team feedback, the most recent communication assessment, and IEP team feedback. The IEP team is also waiting for more information from the district supervisor about the process of considering a self-advocacy goal to support the IEP, per parent request to confirm the process aligns with OSPI guidelines. This subject will continue to be discussed at an early Fall Quarter meeting with a district supervisor attending, in addition to discussing other questions emailed to...Program Specialist, 6/14.

...

Any other factors that are relevant to the action:

...

4) The IEP team has determined from historical data and observations and current present levels that [Student] does demonstrate needs in Receptive and Expressive Language, to the point where accommodations/modifications, and classroom-based differentiation, alone, are not currently serving such needs...

5) The IEP team will meet at the end of August to meet the new team and set a plan for a formal IEP meeting in the first few weeks of 1st Quarter.

6) The IEP will integrate grade-level skills and Science related skills & concepts (including graphs with multiple data points) into [Student's] math goals at the December annual IEP meeting.

7) Developing an "Explain Your Thinking" math goal has been discussed and recommended for consideration by the IEP team and will be revisited at the December annual IEP meeting.

8) Discussion of adding an accommodation for "ability to preview content before class" will be a topic of conversation at the Fall IEP when the 7th grade teachers are included in the conversation.

9) Parent has requested that the addition of an IEP goal to support self-advocacy be included as a topic for ongoing monitoring and discussion at the next IEP meeting in early Fall 2021.

10) The IEP team recommends that the IEP Case Manager (in collaboration with [Student's] Science and History teachers) closely monitors [Student's] ability to access to gen-ed instruction and complete class assignments, with a particular focus on assisting with creation and facilitation of accommodations and modifications, if needed...The IEP case manager may need to assist teachers throughout the year, but with a special focus in the first weeks to observe how she is coping and support advocacy efforts and emotional well-being should there be observations of struggle. The case manager may need to partner

with teachers to provide support in her more challenging classes throughout the year to ensure academic progress and emotional well-being.

11) Teacher input in science (General Education section) says that [Student] is comparable with peers, and this decision/opinion is not agreed upon by all members of the IEP team.

12) Program Specialist...offered to schedule a meeting in the fall with the SpEd District Supervisor in attendance to continue the discussion of district-level related questions relevant to the IEP and the parents agreed to the meeting and informed the district that they requested facilitation...

47. Between June 15 and 18, 2021, after the IEP meeting, the case manager and Parent emailed several times, following up to the IEP meeting. They discussed edits and additions to the IEP, items that would need to be discussed with the new IEP team in fall 2021, and items the Parent wanted addressed in the prior written notice.

48. According to the Parent's complaint, at the June 15 and earlier May 18, 2021 IEP meeting, the "IEP team was not able to meaningfully discuss or consider student need for a...Self-Advocacy goal." The Parent stated the meeting notes from the June 15, 2021 IEP meeting indicated general education teachers shared input relevant to the Student's advocacy, but that the team did not discuss a self-advocacy goal or other support options, and "the teacher's input seemed to be separate from the self-advocacy agenda item." The Parent further noted that in email communications with the case manager after the IEP meeting, the case manager indicated they were waiting on guidance from the District on the self-advocacy goal request and that the IEP team should discuss the topic in the fall. Thus, the Parent stated she was confused as to why the prior written notice indicated the self-advocacy goal was considered by the IEP team and rejected.

The Parents stated their ability to meaningfully participate was "inhibited by the District's instruction to the IEP team prior to the...meeting that the student's needs in the areas of receptive/expressive language and self-advocacy can't be considered because the student is only eligible for services under the 'math skills' qualifying area." In response to their requested self-advocacy goal and communication supports, the Parent stated the District offered a more limited set of supports, including:

- A Student-led self-advocacy goal with the school counselor, not be part of the IEP.
- Supporting self-advocacy as an accommodation.<sup>14</sup>
- Utilization of the SLP as a "thought partner" for teachers at teacher request.
- Discussing requests in the fall of 2021 with the Student's new IEP team.

The Parent further stated they "remain open to exploring a gen-ed counseling support option if it could include some communication and connection between this 'Tier 2' support option and the IEP team/IEP."

The Parent did note in her complaint that the IEP team discussed the Student's expressive and receptive language deficits and the impact. However, the Parent stated, "the IEP team meeting

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<sup>14</sup> In her reply to the District's response, the Parent did state that she remains open to considering an accommodation for self-advocacy as one support option, among others.



did not include discussion about how the school logistically plans to address/support the student's receptive and expressive language needs."

49. On June 17, 2021, the program specialist emailed the Parent, stating:

In reading your questions below, it is apparent that I have not been able to clearly answer these questions in previous emails or clearly communicate the relationship between a student's Evaluation and IEP. I apologize for the frustration this has caused. I am going to suggest we set up a time to meet in the Fall and include a Sped Supervisor in the conversation.

50. The District's response included progress reporting for the Student, which reported the following progress for spring semester of the 2020–2021 school year:

- Fractions/Number Sense: Significant progress in February 2021; Some progress made in April and June 2021
- Equivalent Values: Some progress made in February and April 2021; Goal met in June 2021 ("Goal met but will continue to practice and teach until the December annual review.")
- Word Problems: Some progress made in February 2021 (70% accuracy); Little or no progress made in April 2021 (50% accuracy); Some progress made in June 2021 (70% accuracy)
- Pre-Algebra: Some progress made in February, April, and June 2021 (64% accuracy, 79% accuracy, 81% accuracy)
- Numbers/Operations/Ratios: Significant progress in February 2021 (79% accuracy); Some progress made in April 2021 (81% accuracy); Little or no progress made in June 2021 (81% accuracy)

51. The District's 2020–2021 school year ended on June 18, 2021.

52. Regarding accommodations, modifications, and self-advocacy, the documentation and information provided in the complaint included:

- According to the Parent's complaint, the Student contacted her case manager and special education IA with "some frequency seeking academic and emotional support due to struggles to access or sufficiently benefit from accommodations, modifications, and/or differentiated instruction in her most challenging classes...Science, as well as gen-ed Math at times."
- The Parent noted science was challenging for the Student to access, even with "implementation of modifications created and delivered by the IEP case manager on a weekly basis in April-June."
- The District, in its response, noted that during the spring semester, there were multiple instances of the Student advocating for herself, largely documented in emails between the Parent and District staff. This included examples from the IA and case manager of the Student advocating for herself and peers, advocating for extra time on assignments, emailing teachers, private messaging teachers, asking questions about instructions, and staying after class or during asynchronous time to get assistance. The District also noted the IA and case manager worked with the Student to better understand her accommodations to increase her confidence and help her feel comfortable advocating for herself.
- There were also examples in emails, where the Parent shared the Student was self-conscious, for example, when asking questions about the wording of test questions during a test or when a teacher was working with other students. Or, for example, where the Parent noted the Student was "strengthening self-advocacy skills...but does need some scaffolded Communication support at times."

- There were also examples, in emails, of the Student advocating through her case manager—in that the Student would ask for extra time, for example, and the case manager would contact the teacher; and, examples of the Parent advocating on behalf of the Student.
- The Parent shared examples of teams chat messages between the Student and teachers, asking for assistance when she did not understand the assignment and noting that she “felt awkward” or uncomfortable asking for help with a science assessment. In one chat with the science teacher, the Student stated, “It’s hard to communicate and get help in the chat because I learn best when I hear teacher explain what is hard to understand.” In another chat, the Student shared with the case manager that “it doesn’t feel good when [teacher] says she knows I can do it after I tell her I can’t understand the questions...if feels like she isn’t hearing what I am saying but I don’t want to give up.” The messages also included responses, primarily from the case manager, providing accommodations or support.
- The Parent noted when sending the chat examples, that “in some cases, [the Student] needed our encouragement/support to reach out to teachers and self-advocate during or after class due to high anxiety and feeling overwhelmed.” In her reply to the District’s response, the Parent stated she provided significant support to prompt the Student to self-advocate.

53. In additional information, the Parent shared that the Student would be undergoing a private evaluation in receptive and expressive communication in August 2021 and planned to share the report with the IEP team. The evaluation would assess metalinguistics and included “additional measures without visual supports and using nonfiction language, when possible.”

## **CONCLUSIONS**

**Issue 1: Communication Reevaluation** – The Parent alleged the District’s communication evaluation was not comprehensive. The Parent specifically alleged that there were problems with data collection, information was summarized or input restricted due to the report word count limit, the Parents and individualized education program (IEP) team members’ ability to participate was limited, and eligibility was predetermined and based on a standard deviation model.

In conducting a reevaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant information about the student, including information provided by the parents. No single test or measure may be used as the sole criterion for determining the student’s eligibility and the evaluation must be sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. The evaluation is documented in the evaluation report, which must be sufficient in scope to develop the student’s IEP and interprets evaluation data to determine if a student is eligible for special education services.

### Communication Reassessment & Report

On December 1, 2020, the District received consent<sup>15</sup> from the Parent to conduct a communication reassessment and subsequently completed the reassessment in early 2021. The communication

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<sup>15</sup> OSPI notes there was some confusion regarding the consent. The Parent, during this investigation, stated she was unclear whether both receptive and expressive language were assessed. At the time, the Parent’s advocate emailed the District, “[Parent] has not consented to an early reevaluation, but is seeking to have

reassessment report documented that the reassessment reviewed prior District<sup>16</sup> and private provider evaluations, including previous assessments of receptive and expressive language. The reassessment also reviewed reports from the Student's private tutor and information and input from the Parent, special education teacher/case manager (case manager), and private school teachers. The District conducted new assessments, including the "Comprehensive Assessment of Spoken language 2 (CASL-2)," which assesses expressive language and higher-level language processing, and the "Test of Narrative Language 2 (TNL-2)." The assessment report found that the Student's "current formal testing indicates that her expressive language skills are in the solidly average range" with the exception of one subtest; that her "higher-level language processing skills are clustered in the low average range;" and that, "previous testing has shown receptive language skills are a relative strength, generally falling in the high average range with some variability." The report stated the Student's teachers "did confirm her difficulties in math but did not indicate needs in the area of language comprehension or expression," although "some difficulties may not be apparent during remote learning." The report indicated that, per Parent and outside provider reports, the Student "has functional struggles processing directions and understanding factual text." Ultimately, the assessment report did not recommend eligibility under the communication disability category or special education services in communication.

The communication reassessment considered a variety of sources, including Parent input, previous District and private testing, educator input, and new assessment data. The assessment's conclusions were based on a variety of information and not on a single test or criterion. While the Parent disagreed with the fact that some of the assessments used fictional/story-based text and images (the Parent noted fiction is an area of relative strength for the Student), the documentation supports that the speech language pathologist (SLP) determined these assessments were appropriate, valid, reliable, and administered by a trained and knowledgeable SLP. Importantly, the conclusion was not based solely on the outcome of one assessment that used narrative language and images. While the communication reassessment (and previous evaluations) indicate the Student has communication challenges in some areas, the existence of some relative areas of weakness do not render the communication reassessment insufficient—overall—the Student's

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an evaluation amendment so the team can look at [Student's] communication needs. Specifically, [Student's] receptive/expressive language..." OSPI finds that this is a clear statement about the Parent's goal for the reassessment and for the reasons discussed in this conclusion the potential confusion over consent did not ultimately impact the sufficiency of the reassessment.

<sup>16</sup> The Student's last triennial reevaluation occurred in 2019 and found that the Student continued to be eligible for special education services and recommended specially designed instruction in math. The 2019 reevaluation documented that the Student's disability "makes it difficult for her to gain information from spoken or written material and apply it in the general education classroom...specifically, her disability and subsequent processing deficits in fluid reasoning adversely affect her capacity for performing higher level math reasoning." The reevaluation also noted that the Student's language disorder may present challenges "when information or instruction has been provided verbally or involves higher-order language," but no longer recommended the Student receive special education services in communication (finding the Student's language skills were in the average to high average range, with comparatively lower expressive language skills). However, the prior written notice indicated the Student's performance in communication would be monitored and in future, a need for support could be reevaluated.

scores placed her in the average range and educators saw no communication issues at the time.<sup>17</sup> Further, while there did appear to be a word limit on the report, this did not impact the sufficiency of the evaluation. The evaluation report contained summaries of data, previous evaluations, and educator input. The evaluation report interprets evaluation data, and while it must contain enough information to explain and justify the conclusions, there is no requirement that all data from every assessment or previous evaluation be quoted; summaries are permitted and potentially more appropriate in places, depending on the information being conveyed. The SLP also attached documents to the communication reassessment to supplement the information in the body of the report. The Student's teachers did note that the remote learning environment impacted how well they knew the Student, but this factor—given all the other information reviewed—alone does not mean the reassessment was insufficient.<sup>18</sup> OSPI finds the communication reassessment was sufficiently comprehensive and finds no violation.

### Communication Reassessment Review Meeting

On February 1, 2021, the Parent attended an evaluation feedback meeting to review the communication reassessment report. The Parent alleged that the communication reassessment is insufficient because the full IEP team did not meet to discuss, and therefore, she alleged did not participate in the reassessment. The Parent also alleged the results of the reassessment were predetermined because the reassessment report conclusions were drafted prior to the meeting to review the report.

The regulations governing evaluations require evaluations to be conducted by a group of qualified professionals selected by the district. There is no requirement that the evaluation group be the same as the IEP team (of which, the members are specified in regulation). Thus, the fact that the full IEP team did not meet to review the report prior to the determination of eligibility and recommendations, is not a violation of evaluation procedures.<sup>19</sup> Further, members of the IEP

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<sup>17</sup> OSPI notes the Parent shared information during the investigation about subsequent challenges she stated were related to receptive/expressive language issues. However, when investigating the sufficiency of an evaluation, the investigator must look at the information available at the time without the benefit of hindsight. At the time of the evaluation, educators reported no concerns regarding communication, although noted potential difficulties related to the remote learning format. Later challenges experience by the Student do not render the evaluation insufficient.

<sup>18</sup> This, combined with multiple statements in documentation reviewed in the investigation, indicated that the Student's receptive/expressive language challenges are variable and are not immediately apparent given compensatory strengths and the need to get to know the Student. Thus, OSPI recommends the Student's IEP team continue to pay attention to this area of potential need. OSPI believes that when the Student returns to full-time, in-person learning, educators will be able to better understand the Student's unique needs and the IEP team will be able to better judge whether additional services and supports are needed, or whether additional data collection and/or consideration of this area in the Student's next, 2022 comprehensive triennial reevaluation is needed.

<sup>19</sup> OSPI notes that the IEP team must subsequently use evaluations to inform the development of IEPs.

team—e.g., the case manager and instructional assistant—did participate in the assessment by providing input into the report, even if they did not attend the review meeting.

As there is no specific regulation that requires an evaluation meeting, the fact that the SLP could draw conclusions and make recommendations from the assessment prior to reviewing the report with the Parent is not predetermination. Further, the existence of a draft report alone is not evidence of predetermination. Here, the Parent participated in the communication reassessment process by sharing her own input and information and evaluations from private providers, and by participating in the meeting to review the reassessment. While the Parent disagreed with the outcome of the communication reassessment, in this case, disagreement does not indicate the Parent's participation in the process was limited nor does disagreement necessarily mean there has been a violation of special education regulations.

Here, OSPI finds no violation with respect to the 2021 communication reassessment.

**Issue 2: IEP Development** – The Parent alleged the IEP team, and her ability to participate in the IEP team, was limited in its ability to develop the Student's IEP because the District advised the team it could not consider the Parent's requests for a self-advocacy goal or consultative speech supports because the Student only "qualified" for specially designed instruction in math under the specific learning disability eligibility category.

A special education evaluation must be sufficiently comprehensive to identify all of a student's special education needs, whether or not commonly linked to the disability category in which the student has been classified. This is generally understood to mean that a student may receive services and supports not commonly associated with their eligibility category if there is a *need* for those services and supports. For example, many students have a need for special education services in the area of social/emotional or behavior, even if they are eligible under a category other than emotional behavioral disability.<sup>20</sup>

With respect to how services, once determined needed, can be provided, an evaluation/evaluation group recommends *specially designed instruction* and *related services*; respectively, instruction wherein the content, methodology, or delivery is individualized to address the student's unique disability related needs and addresses the measurable annual goals in the IEP and related services that are required to assist a student to benefit from special education. Based on a reevaluation, the IEP team develops an IEP, considering all information about the student. When determining whether to add a service to an IEP, the IEP team should meet and determine whether to revise the

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<sup>20</sup> To clarify, this is what guidance from OSPI, referenced in communications reviewed in the complaint, meant. In short, the eligibility category does not define the services a student receives. However, services are based on a student's *needs* as demonstrated by data and other information. In other words, if the IEP team thinks a student needs a particular service to receive FAPE, this need should be backed-up by data (e.g., the evaluation, progress reporting). As discussed below, some of the confusion here appears to be due to the District's use of the phrase "qualifying area" interchangeably with "need." OSPI recommends use of the phrase "need in an area" instead to help ensure clarity when discussing whether a particular student has a need for a particular service regardless of eligibility category. See e.g., TAP #5 FAQ #11, [https://www.k12.wa.us/sites/default/files/public/specialed/pubdocs/tap\\_5.pdf](https://www.k12.wa.us/sites/default/files/public/specialed/pubdocs/tap_5.pdf).

IEP, reviewing if existing data supports such a need, or whether additional data is needed. Unlike specially designed instruction and related services, *supplementary aids and services*—services or other supports provided in general education classes or settings to enable to the student be educated in the least restrictive environment—are the decision of the IEP team and can be added based on current, relevant data (which would include the most current reevaluation, but also other data such as progress reporting).

Here, the District maintains that the Student's IEP was appropriately developed and provides the Student a free appropriate public education (FAPE). The District acknowledged that some District communications were not clear that the District members of the IEP team did not agree the Student had a need for additional communication or self-advocacy supports. The District stated that when it used the phrase "qualify for services," it meant: "does not need those services to benefit from their special education program." The District stated the issue was not that the team believed the Student's eligibility category limited services; rather "it was the team's opinion that the services and goal were not necessary." Again, the District acknowledged the communication was not precise, and while the District stated it was not admitting a violation, the District stated it could provide special education supervisors and program specialists guidance to better assist teams around this general concern.

Here, this issue largely comes down to whether communication around the Parent's requests related to communication and self-advocacy was so confusing or unclear that it prevented Parent participation and appropriate IEP team consideration/decision making. This is explored in detail below.

### Communication Services and Supports

Throughout spring 2021, the Parent requested support for the Student in receptive/expressive communication and from the speech language pathologist (SLP); to update the IEP with information and accommodations related to expressive language accommodations; and, to add speech support to the IEP as program modifications for school personnel, a related service, or a supplementary aid/service. These requests were often connected to discussions between the Parent and case manager about the Student's accommodations, frequently in the context of the Student's science class. The Parent connected the times the Student struggled to the Student's challenges with receptive/expressive language and her need for language-based support (e.g., ("confused by the language in multistep questions" and challenges with word problems/problem solving). The Parent noted the Student had challenges with "when asking for help due to her struggles with processing or communicating instruction due to language-based or fluid reasoning challenges."

The Student's IEP team met, discussed concerns around communication, and developed IEP amendments following meetings on May 18 and June 15, 2021. At the June 15, 2021 IEP meeting, the team discussed the Student's potential communication needs, including receiving input from the Student's private SLP who noted that prior language testing put the Student within the average range, but that this testing does not capture the Student's challenges in applying language skills to curriculum. The Parent shared that the Student's expressive language needs are

not being met and the SLP shared strategies, noting language-based challenges across all subjects. While teacher statements in the IEP noting times the Student, for example, read something and then would not understand at the end, or that the Student “sometimes [has] a disconnect when she reads a text and then tries to apply that information to answer a question;” the teachers described the accommodations, like prompting the Student to reread the question and then reread the text, were effectively addressing the concerns. The meeting notes and IEP indicated there was a difference between what some of the teachers saw working with the Student and what the Parent and private SLP saw. While the IEP did add additional minutes of specially designed instruction in math, the IEP did not add or change any of the services or supports with respect to communication.

The documentation indicates there is a, perhaps fundamental, disagreement between the District and Parent regarding whether and to what degree communication supports are needed. This is summarized in an email from the SLP, wherein she stated the Student did not meet eligibility criteria for speech and language services and that she did not want to imply that the Student was “‘struggling’ (parent statement) or that there are any perceived deficits ‘impacting her ability to process and communicate language in class’ (parent statement)” and statements from the SLP that the Student’s IEP already contained the accommodations/modifications necessary to address any need.<sup>21</sup> The Parent, as per her complaint, disagreed, noting the Student had “significant struggles due to her disabilities in some gen-ed contexts” and that these challenges are not a “perception.”

Reflecting this disagreement, the May and June IEPs contained confusing and potentially contradictory statements about the Student’s needs in communication, stating:

- The Student “does not currently qualify in the area of communication, based on her most recent assessment in February 2021;”
- A private evaluation done in 2020 indicated a “number of concerns, including narrative expressive language, receptive language, meta-linguistics and level lexical issues;”
- Indications the District members of the team did not see any language difficulties and noting the communication reassessment conclusion that the “[Student’s] language skills can be leveraged, and challenges managed with classroom-based differentiation and IEP accommodations;” and,
- *The IEP team has determined from historical data and observations and current present levels that [Student] does demonstrate needs in Receptive and Expressive Language, to the point where accommodations/modifications, and classroom-based differentiation, alone, are not currently serving such needs.*”

According to the District response, the case manager “did not agree with the statement [in the last bullet point above],” but added the “requested language because more members of the team (e.g., the family and advocates, but not necessarily those who worked with [Student] at [school]) believed she struggled than not.” The District noted the case manager, general education math

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<sup>21</sup> In early May 2021, following a request from the Parent, the SLP emailed the case manager a list of strategies, modifications, and accommodations for the Student, noting “80% of them are already listed in her IEP...couldn’t really ask for clearer accommodations and modifications” (e.g., pre-teacher/review unit specific and word problem vocabulary, guided prompting by teacher, prompting with “W” questions, utilize oral and alternate responses, etc.)

teacher, instructional assistant, and school administrator did not see these communication difficulties. The Parent disagreed that they requested this statement be added, noting they requested the language be included in the prior written notice, "but this was after reviewing the language that had already been included as an update in the Communication section of the IEP draft that was received on 5/18/21."

Regardless, both the May and June 2021 IEPs and associated prior written notices contained this statement—a statement that implies the communication supports in the IEPs were not considered sufficient—however, it does not appear additional or different supports and services were added to the IEP. Further, the IEP does not reconcile the above statement that the Student does have a need for communication supports with the position that District members of the IEP team did not see a need for such supports, which implies that the idea that the Student did not "qualify" or was not "eligible" for communication services was impacting or limiting the decision making (despite the District's position that "qualify" was interchangeable with "need").

Overall, while there may still be disagreement about need, taken together, the contradictory statements in the IEP with respect to whether the IEP sufficiently addressed the Student's expressive/receptive communication needs and the confusion in email communication over whether the IEP team could consider additional communications supports, does seem to have limited the IEP team's considerations. For example, the IEP could have considered whether supplementary aids and services in the form of the SLP providing consultation to teachers or different/additional accommodations could have been added to the IEP. The IEP team could have, if it agreed data supported a need, added a supplementary aid and service, despite this not being recommended on the communication reassessment. However, it appears the team did not discuss the above because it believe the Student did not "qualify" for services, rather than focusing on and exploring how to meet the Student's needs. Or the IEP team could have discussed and documented that no, the current IEP accommodations were sufficient to address the concerns. Either way, the lack of clear communication seems to have limited the IEP team discussion and the Parent's participation in that discussion. Thus, OSPI finds a violation. The Student's IEP team will be required to meet and specifically discuss and document whether the IEP team believes the Student needs different or additional supports to address communication concerns. There is no indication that the noncompliance identified in this complaint decision is systemic, but instead was due to unclear communication, thus no systemic corrective actions are required.

Note: Importantly, an IEP team should work toward consensus, but the District has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. A student's education program may be appropriate and provide FAPE, even if it is different from the program sought by the parents.



## Self-Advocacy Services and Supports

The Parent also requested self-advocacy support be added to the Student's IEP in the form of support from the school counselor, a self-advocacy goal (including sending draft language for a goal on June 9, 2021), related or supplementary services in self-advocacy, or other support.

It is valid to note that the Student's current reevaluation does not show a need for specially designed instruction or related services in social/emotional, including advocacy. Further, the information shared at the two IEP meetings (May 18 and June 15, 2021) and in other document shared in the complaint generally indicate the Student self-advocates, although struggles to do so at times and does require prompting. It is not clear the progress reporting supports a need for special emotional or advocacy supports (e.g., the progress report showed variable progress on her math goals but not necessarily a need for self-advocacy supports).

At the May 18 meeting, the Student shared that she was good at asking questions, but that advocating feels harder when she did not understand the question or how to write down what she was thinking. The Student noted "if it feels like no one can help, I can feel overwhelmed. When it feels like a teacher isn't hearing me when I ask for help, I feel embarrassed, uncomfortable...If I need to ask again, I feel...anxious, like I might get in trouble with the teacher." (The Parent explained this in other communications as the Student being good at straightforward, clarification type self-advocacy, but struggling with self-advocacy impacted by her expressive/receptive challenges; for example; where the Student does not realize she has misunderstood a question). At the meeting, the Student's general education math teacher shared that the Student does a great job self-advocating. The prior written notice from the May 18, 2021 meeting indicated the team would continue discussing supports for self-advocacy and rejected adding a goal in the area because "the IEP team is collecting more information from the district SPED program specialist and OSPI to make this decision as an IEP team. Supporting advocacy as an accommodation would be another option to consider in this process."

At the June 15 meeting, teachers again shared information about the Student's self-advocacy skills—largely agreeing that the Student does a great job self-advocating. Like communication, District staff noted that there seemed to be a gap between what the teachers were seeing and what the Parent was observing; for example, the program specialist stated: "That's not what I've heard the other teachers in this meeting say...How do we help teachers see or understand what her sort of independent need is? They're not seeing that...there's outside info but how do we get teachers to address what they don't see."

Based on the notes, it does not appear the team specifically discussed adding a self-advocacy goal or adding counseling support to the IEP at the June 15, 2021 meeting. The IEP meeting notes indicated there was a question of whether to collect data about the Student's social/emotional needs; however, the notes indicated the team was not in agreement but that they were at a stopping point with the meeting and would need to continue the discussion over email. The prior written notice stated that developing a self-advocacy goal had been "considered and rejected" based on the following reasons and factors:

The IEP team has not reached a consensus on whether this goal is appropriate based on [Student's] present levels, general education team feedback, the most recent communication assessment, and IEP team feedback. The IEP team is also waiting for more information from the district supervisor about the process of considering a self-advocacy goal to support the IEP, per parent request to confirm the process aligns with OSPI guidelines. This subject will continue to be discussed at an early Fall Quarter meeting with a district supervisor attending, in addition to discussing other questions emailed to...Program Specialist, 6/14.

Parent has requested that the addition of an IEP goal to support self-advocacy be included as a topic for ongoing monitoring and discussion at the next IEP meeting in early Fall 2021.

The Parent maintains that the team did not "meaningfully discuss or consider" the Student's need for a self-advocacy goal, and that the general education teachers sharing information about self-advocacy was not adequate consideration of her request for a self-advocacy goal or other support options. The Parent also shared that the case manager stated they were waiting on guidance from the District and that the IEP team would discuss the request further in the fall, and thus it did not make sense for the prior written notice to state that the request was considered and rejected. The Parents stated they "remain open to exploring a gen-ed counseling support option if it could include some communication and connection between this 'Tier 2' support option and the IEP team/IEP." (The documentation does indicate there was a plan to have the Student start meeting with the grade-level school counselor and that the Student would work with the counselor to develop her own goals. This would be a general intervention and would not be included in the Student's IEP.)

While the team may not have discussed adding a goal specifically at the IEP meeting, between the two IEP meetings and continued conversation via email, OSPI finds the IEP team considered the Parent's request regarding self-advocacy and followed procedures in responding. There was discussion about self-advocacy at the IEP meetings, with both the teachers and Parent having the opportunity to and actively participating in sharing information. The team agreed to continue the discussion via email when it ran out of time at the June 15 meeting, and the Parent emailed follow up questions and information. Given the lack of consensus, the District documented the IEP meeting and the decision regarding the self-advocacy goal, including that the IEP team could continue the discussion in the fall in a prior written notice. OSPI reminds the District that the IEP team could consider whether there is enough data to support a need for accommodations, modifications, or supplementary aids and services, despite this area not being recommended on the last reevaluation; or the team could determine it needs additional data and/or that this area should be reassessed at the upcoming triennial reevaluation in 2022. OSPI expects the team to continue the discussion as planned at the next IEP meeting, clearly documenting the discussion, decisions, and next steps.

Overall, OSPI finds that the District considered the Parent's request for self-advocacy supports, and while, like the communication issue, there was some unclear communication, ultimately, the team—including the Parent—did discuss self-advocacy. The Parent may disagree with the outcome, but the District followed procedures in documenting the decision in a prior written

notice, given the lack of team consensus. OSPI finds the plan to revisit the issue at a fall IEP meeting appropriate. OSPI finds no violation with respect to self-advocacy.

### **CORRECTIVE ACTION**

By or before **October 15, 2021**, the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **October 8, 2021**, the Student's IEP meeting will meet to discuss communication supports, specifically:

- Whether the Student has a **need** for different or additional supports to support communication or whether the supports in the existing IEP are sufficient;
- If supports are needed, what those supports are; or,
- Whether the IEP team instead needs to collect additional data to determine the Student's current needs.
- OSPI also recommends the District discuss the Student's self-advocacy needs, if any, as it already planned to do so in fall 2021, in addition to any other already planned agenda items.

By **October 15, 2021**, the District will provide OSPI with documentation from the IEP meeting, including: 1) IEP meeting agenda or notes (if used/taken); 2) a copy of amended IEP if applicable; 3) prior written notice; and, 4) any other relevant documentation.

#### **DISTRICT SPECIFIC:**

None.

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.

### **RECOMMENDATIONS**

The District acknowledged the communication with respect to students "qualifying" for services was unclear and the District stated it could provide special education supervisors and program specialists guidance to better assist teams around this general concern. OSPI strongly recommends the District create and disseminate guidance. The District is welcome to share the guidance with OSPI for feedback and technical assistance.

Additionally, OSPI notes the Student's teachers stated the remote learning environment impacted how well they knew the Student, which supports continued data collection once the Student is back in-person, full time. This, combined with multiple statements in documentation reviewed in the investigation, indicated that the Student's receptive/expressive language challenges are variable and are not immediately apparent given compensatory strengths and the need to get to

know the Student. OSPI believes that when the Student returns to full-time, in-person learning, educators will be able to better understand the Student's unique needs and the IEP team will be able to better judge whether additional services and supports are needed, or whether additional data collection and/or consideration of this area in the Student's next, 2022 comprehensive triennial reevaluation is needed. Thus, OSPI recommends that the Student's IEP team continue to pay attention to this area of potential need regardless of the decision made at the above ordered IEP meeting.

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

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.)