

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-108

PROCEDURAL HISTORY

On September 8, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] School District (District). Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On September 12, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to District's superintendent on the same day. OSPI asked District to respond to the allegations made in the complaint.

On September 28, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on September 30, 2022. OSPI invited the Parent to reply.

On October 12, 2022, OSPI received Parent's reply. OSPI forwarded that reply to District on October 13, 2022.

On October 20, 2022, OSPI received additional information from the Parent. OSPI forwarded that information to the District on October 21, 2022.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on September 9, 2021. 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. During the 2021–2022 school year, did the District reevaluate the Student based on the Student's changed health condition?
2. During the 2021–2022 school year, did the District follow procedures in developing the Student's individualized education program (IEP) regarding:
 - Special transportation;
 - Extended school year (ESY) services;
 - Health plan;
 - Shortened school day and/or homebound placement?

LEGAL STANDARDS

IEP Development: A student's IEP must be developed annually, and reviewed and revised periodically if necessary. 34 CFR §300.324; WAC 392-172A-03110. 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 the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5). The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them to make joint, informed decisions regarding: the student's needs and appropriate goals and the services needed to support that involvement and participation and to achieve agreed-upon goals. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their individualized education program (IEP) team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. 34 CFR §300.320; WAC 392-172A-03090. *See also Shoreline School District No. 412*, 55 IDELR 178 (OCR 2010).

Health Plans: A district is required to include the provisions of a student's health plan into their IEP. An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable their participation in their education and to support their teachers. Any nursing or health services a qualified school nurse or other qualified person provide to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service. 34 CFR §300.320; WAC 392-172A-03090.

Evaluation Timeline. Within thirty-five school days after consent has been received, a school district must assess a student in all areas related to his suspected disability. The timeline can be extended if agreed to by the parent and documented by the district, including specifying the reasons for extending the timeline. The thirty-five school day time frame for evaluation does not apply if the parent of a child repeatedly fails or refuses to produce the child for the evaluation; WAC 392-172A-03005.

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

ESY Services: ESY services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

FINDINGS OF FACT

Background

1. The Student is eligible for special education instruction under the category of other health impairment. The Student was diagnosed with childhood absence epilepsy which causes the Student to suffer from seizures.¹

¹ An absence seizure is a seizure lasting 10–20 seconds that cause a short period of blanking out or staring into space.

2. On November 26, 2020, the Parent withdrew the Student from school.
3. During the fall of 2021, the Parent re-enrolled the Student in the District for the 2021–2022 school year.
4. On August 31, 2021, the District contacted the Parent about the District’s virtual learning program (AVL).
5. On September 2, 2021, the District informed the Parent that the two options for instruction during the 2021–2022 school year were in-person instruction and the AVL.
6. On September 6, 2021, the Parent responded that neither in-person instruction, nor remote learning through AVL, were options that would work for the Student at that time. In-person instruction was ruled out because the Student’s sibling had medically complex needs and was at an increased risk of severe COVID. A physician informed the Parent that the Student’s sibling should not attend school in-person until she was vaccinated. This meant that the Student also could not attend in-person to avoid exposing the sibling to COVID. According to the Parent, the Student could not attend AVL because: (1) Student was suffering many seizures every day that were making the Student exhausted and unable to focus on school work; and (2) Student did not qualify for AVL because the Student had not demonstrated success in an online environment up to this point.
7. On September 8, 2021, the District held its first day of instruction for 2021–2022 school year. The Student was in elementary school.

The Complaint Investigation Timeline Began September 9, 2021

8. On September 10 and 13, 2021, the District asked the Parent to sign release of information (ROI) documents so that the District could speak to the Student’s medical providers.
9. On September 15 and 21, 2021, the Parent met with the District’s assistant superintendent, director of inclusive services, and school principal to discuss the Student’s instruction. The Parent requested homebound services because according to a doctor, the Student’s sibling should not attend school in person until a vaccine was available, and so the Student would not attend in person to protect the sibling. It was the District’s understanding that the Student and her siblings would return to in-school attendance after receiving the COVID vaccination, which was not yet available to children. The District rejected the homebound instruction request² and offered home-hospital instruction,³ pending the availability of the vaccine for the Student.

² According to the Parent’s complaint, the District rejected the homebound instruction on September 15, 2022, because the District “want[ed] to look at this through a ‘medical lense’ and use home/hospital option,” and the District rejected homebound instruction on September 21, 2022, because it was “ ‘not listed on OSPI, other Districts not using it, no official form for it.’”

³ In Washington, Home/Hospital instruction is a funding mechanism and is limited to providing temporary interventions as a result of a physical disability or illness. Home/Hospital is available to students eligible for

10. On September 23, 2021, the District informed the Parent that the District was working on confirming available hours, organizing instructional materials, and supporting home-hospital instruction.
11. On October 8, 2021, the District sent the Parent the home-hospital instruction application and requested that it be completed. The District again contacted the Parent on October 15, 2021, about completing the home-hospital instruction application.
12. On October 21, 2021, the Student's hospital issued the Student's "Seizure Management Care Plan" for the 2021–2022 school year and summer school.
13. On November 9, 2021, the District's attorney emailed the Parent's attorney and the Parent, stating that the District had not received the Parent's signed ROIs for the Student's medical records and asked about the Parent completing the home-hospital instruction application. The Parent responded that she was not going to sign the home-hospital instruction application and that she "would be happy to provide any specific relevant medical records that the District needs" if the District let her know which records they wanted.
14. On November 22, 2021, the District met with the Parent and Parent's attorney to discuss the reevaluation of the Student to determine a possible change in placement for the Student. The prior written notice (PWN) (written for all three siblings) stated, "[P]arent is also now stating that [Student] is unable to access in person instruction as well due to medical conditions, the district proposed to reevaluate [Student] as her current evaluation does not support this contention and Student did attend school in person prior to COVID. Parent agreed to the reevaluation."
15. On November 23, 2021, the Parent sent the District a signed consent to evaluate the Student.
16. On December 1, 2021, the District again requested ROIs for the Student's medical records.
17. On December 2, 2021, the Parent signed the home-hospital instruction application and the application was completed by the Student's neurologist. Under the section that needed to be completed by a medical practitioner, it stated that the Student could not attend in person school from December 6, 2021 through January 10, 2022. Subsequently, this time period was extended until April 2022 due to the Student's seizure activity and extreme fatigue.

The District informed the Parent that a tutor had been secured for home-hospital instruction and the tutor subsequently contacted the Parent.

18. On December 5, 2021, the Parent signed a release of information for the District to receive information from the neurologist. The release of information was authorized from December 5, 2021 to January 27, 2022, and was limited to "office + telemedicine visit notes between

special education and students who are not eligible for special education services. See, WAC 392-172A-02100. Home instruction or a homebound placement is part of the continuum of alternative placements in special education. See, WAC 392-172A-02055.

9/1/20 and 12/1/21 EEG Test Results-All." The release stated, in part, "Verbal communications may only occur with the Parents or Parent's counsel present during the communications."

19. On December 6, 2021, the District informed the Parent that the Student's tutoring through home-hospital instruction was approved for five weeks.
20. On December 9, 2021, the District psychologist and Parent exchanged emails about the schedule and logistics for the reevaluation.
21. Also, on December 9, 2021, the Parent's attorney wrote a letter, objecting to some of the things that were written in the November 22, 2021 PWN. Those statements in part were:
 - Parent is not comfortable with the Student being vaccinated against COVID-19 (Parent's position was that she wanted her children vaccinated, but vaccination would not eliminate the need for 1:1 instruction in the home).
 - Parent rejected the Students attending school remotely due to seizure disorder (Parent's position was that the Student could not "benefit from remote instruction without a qualified adult available in the home to also attend the remote instruction and assist/instruct the [Student] in-person").
 - Parent rejected the Student attending school in person (Parent's position was that this is a "simplistic statement...Parent's request for homebound instruction (not home-hospital or homeschool instruction) is based on practical considerations...[a]t home the Parent can care for" the Student when the Student needed a break while the siblings continued to learn 1:1. The home was "already designed to promote hygiene and contacts with third parties is very limited." Parents were open to discussion to setting up a "safe space" at school with "very limited contact with students and staff, strict protocols to maintain hygiene..and a quiet, distraction free environment for 1:1 instruction to be delivered").
 - District suggested that the Parent asked for home-hospital instruction (the Parent's position was that home-hospital instruction was inappropriate for the [Student and siblings]. [Parent] asked for "homebound, interim appropriate educational services pending completion of the initial evaluations and provisions of IEPs [for siblings], and pending reevaluation and provision of a new IEP [for Student]." "Parents made it very clear at the November 22 IEP meeting that they would agree to complete the home-hospital forms for their children, but only with the understanding that this is the only way they would receive any educational assistance at home in the near future").
 - Parent "did not agree to the sufficiency of 3 hours per week of 1:1 instruction per student and pointed out that private schools offering 1:1 instruction for credit generally provide 15 to 20 hours a week per student for instruction in core academic classes."
 - Parent objected to the "delay in educational services occasioned by the District's insistence that, in order to provide any instruction at home, the Parents would have to take home-hospital forms to the [Student's] physicians to complete."
 - Parent "disagreed at the November 22 IEP meeting with many of the District's characterizations of pre-November 22 events and discussions."
22. On December 13, 2021, the District requested additional medical information regarding diagnoses and "recommended treatment information" to complete the evaluation. The Parent responded that "information for [Student]...including diagnosis, medical history, EEG summary reports, medications, and examinations" was included in the records previously provided to

the District.” The Parent also stated she signed an ROI for the school nurse, but would not consent to a third-party review of the records.

23. On December 14, 2021, the District’s attorney emailed the Parent’s attorney the following:

It appears there is some miscommunication here. In our meeting in November, you assured the District that Parents would provide appropriate releases to allow the District to obtain the documentation in order to allow the District to evaluate the students. As [special education director] explained, the District needs full releases for medical records for all three students from the time period of initial diagnosis to present. The releases we have received are insufficient for purposes of obtaining the records necessary to evaluate these students given the medical needs Parents have identified. I reiterate the District’s request that the Parents execute appropriate releases that allow the District to obtain all medical records, not just the specific records Parents are selectively identifying in the releases. Please provide full and complete releases for the appropriate time period as soon as possible to avoid any further delay in the evaluation process.

Please also note that the District intends to have third party medical providers review these records as part of its evaluation process, which it is entitled to do under the IDEA and FERPA.

(Emphasis in original).

The Parent’s attorney responded that the District’s request for medical information was “too broad.” The Parent’s attorney stated that the Parent’s intent was for the Student to get “**timely** education services” and was concerned that the information request was delaying the implementation of services. (Emphasis in original).

24. From December 17, 2021 through January 2, 2022, the District was on winter break.

25. On January 6, 2022, the District’s attorney emailed the Parent’s attorney stating, in part:

To date, the District has received incomplete records regarding each student, impeding its ability to evaluate the students. Nor is it possible for the District to tell Parent the exact records it needs from the exact providers, as the District does not know the identities of all of the providers, nor does it have information as to what medical records may exist for each student. That is the purpose behind the releases – to allow the District to obtain information that it otherwise does not have. It is unclear why there is any resistance to providing the District with the requested releases, and the District asks that Parent reconsider their position regarding the scope of the releases.

26. On January 10, 2022, the District informed the Parent that the reevaluation review meeting was scheduled for January 26, 2022, and that a draft of the reevaluation would be ready by January 24, 2022.

27. On January 14, 2022, the District’s attorney emailed the Parent’s attorney and stated that the Parent was refusing to provide the requested ROIs.

28. On January 24, 2022, the assistant superintendent emailed the Parent, requesting an extension of the evaluation timeline. The District proposed extending the evaluation timeline because

"the team need[ed] additional time to synthesize the available information, draft the evaluation reports for each student and to do any necessary updates to the reports based on information obtained from the medical providers." The assistant superintendent also expressed concern about having a meeting for all three siblings on the same day, which might not give enough time to each student.

29. On January 26, 2022, the Parent responded to the District that she would not withdraw her consent for the evaluations.⁴ The Parent stated:

...Even before initiating the current evaluations, the District had denied my children FAPE by failing to initiate evaluations earlier and by failing to provide appropriate programming and placement. I cannot find any legitimate reason for the District not to have the current evaluation process completed within the statutory timeline.

30. The parties set up an evaluation assessment for the Student for January 27, 2022.

31. On February 4, 2022, the District requested new ROIs from the Parent because the previous ones had expired.

32. On February 8, 2022, the District sent the Parent written questions for the Student's doctor to answer. The response to these questions was provided by the neurologist on February 16, 2022 (response in italics).⁵

1) Does [the Student's] diagnosis of Absence Seizure Disorder prevent [the Student] from participating in in-person learning in the public school environment if properly accommodated? If so, please explain why.

Currently, [Student's] seizures are not well controlled as noted above. Therefore, she has a difficult time with attending to instructions and requires 1:1 attention to keep her safe. It would be difficult for her to understand instructions even with 1:1 supervision while she is having seizures which can be a short or a longer part of the morning or throughout the day. Please see below for accommodations that could be helpful.

2) Does [the Student's] diagnosis of Absence Seizure Disorder prevent [the Student] from participating in remote learning if properly accommodated? If so, please explain why.

[Student] is deemed to be too young to independently participate in remote/online learning. She would require interactive/live remote learning and only during times when she is not having seizures. Since this is unpredictable for the most part, having a live online teacher available to her would be difficult. Independent online learning would be difficult without her parents working with her throughout the online classes due to her age.

⁴ Later, the Parent's reply stated she "did not refuse to consent to requested extensions..." but referred to the email stating, "I am not withdrawing consent for the evaluations if the District takes longer than the law mandates to complete them. But I am not consenting to extensions or waiving my right to evaluations within the statutory time periods."

⁵ Both the male and female pronouns are used in these answers. That is how it appears in the original document. OSPI notes this is likely because similar questions were sent to the same neurologist regarding the Student's siblings.

- 3) What accommodations or modifications would you recommend if [the Student was] to access the public school setting in person?
[Student] continues to have frequent seizures so she would most likely require 1:1 supervision so the class is not disrupted by the teacher attending to her. The aid would need to be aware of her typical seizures, what to do when they happen, and be flexible in teaching as there are periods between and after seizures when learning is difficult. She would likely need to be able to rest if she has a prolonged episode. [Student] may do better if he has a shorter school day, in the afternoon with condensed learning as this is the better part of the day for him typically.
- 4) What accommodations or modifications would you recommend if [the Student was] to access the public school setting through remote instruction?
Please see response to question 2.
- 5) Would you be willing to provide information or training to school staff regarding how to recognize and monitor seizure activity [of the Student]? If so, please provide any recommendations on what such information and/or training might entail.
The seizures consist of frequent or prolonged absence seizures. Mother is able to provide videos of [Student] having these seizures. She is also able to accurately provide the frequency, duration, and types of events that [Student] typically presents with. At this time, I recommend keeping her safe by making sure that she is in a safe environment where she does not fall or wander off. We are not using rescue medications at this time but this may be something to consider in the near future.

33. On February 14, 2022, a draft of the reevaluation report was completed.

34. On February 16, 2022, the evaluation group—including the Parent—met to determine if the Student continued to be eligible for special education services. The team determined the Student continued to be eligible for special education services under the category of other health impairments. The Student has:

a diagnosed health impairment of Absence Seizure Disorder that is creating an adverse impact on her education to the extent that the Student requires specially designed instruction (SDI) for Student to have equitable access to educational opportunity. SDI is recommended in the areas of social-emotional, adaptive, Math, Reading, and Written Language. It is also recommended that occupational therapy to support sensory integration be provided as a related service if [Student] returns to the school environment, but will not be required if she continues to learn in the home environment.

The evaluation report stated:

- The Student suffered from seizures, lasting a few seconds but sometimes coming in clusters.
- After a seizure, the Student is unable to “process what is happening in her surroundings.”
- “This condition will require accommodations in the general education and special education setting such as rest periods, reduced or modified assignments, or opportunity to review missed instruction.”
- The Student demonstrated delays in short-term memory and processing speed, which are common side effects of seizures, along with gross motor development.
- The Student has had limited instruction, which was not the primary reason for the delays.

The evaluation report also stated, in part:

[Student] is currently in a very restrictive educational setting that is preventing her from accessing a wide variety of learning opportunities that are critical for her academic and personal development. Various assessment results have highlighted specific areas of delay, but it is very difficult to discern what is related to her disability and what is related to lack of opportunity. Student was previously found eligible for special education services based on demonstrated deficiencies.

35. On March 9, 2022, the Student's IEP team met. The IEP provided the following special education and related services:

- Reading-Basic: 15 minutes, 5 times weekly (provided by a special education staff in a special education setting)
- Reading-Comprehension: 15 minutes, 5 times weekly (provided by a special education staff in a special education setting)
- Written Language: 20 minutes, 5 times weekly (provided by special education staff in a special education setting)
- Math-Calculation: 15 minutes, 5 times weekly (provided by special education staff in a special education setting)
- Math-Problem Solving: 15 minutes, 5 times weekly (provided by special education staff in a special education setting)
- Adaptive: 15 minutes, 5 times weekly (provided by special education staff in a general education setting)
- Social/Emotional: 15 minutes, 5 times weekly (provided by special education staff in a general education setting)
- Occupational Therapy: 20 minutes, 1 time monthly (provided by an occupational therapist in a general education setting)

The IEP also provided for "regular transportation" and stated that extended school year (ESY) services were not required for the Student.

The IEP provided 21 accommodations, including "Please see health plan for support for medical condition."

The prior written notice (PWN)⁶ provided:

[Student] has been diagnosed with a seizure disorder that will be supported through the development of an Individual Health Plan.

The district is proposing a full-day schedule for [Student]...and stands ready to serve [Student] as outlined in this IEP. The family is requesting a transitional schedule to reintroduce [Student] to a school setting and to determine her stamina. Parents are requesting that [Student] start attending only for one hour a day in the afternoons for three days a week. Although the District stands ready to serve [Student's] full educational program, in an effort to work with the family, it has agreed to serve [Student] in her general education classroom and the resource room during the time period Parents send [Student] to school. The district has drafted a schedule reflecting an afternoon program. Parents anticipate [Student] starting to attend the week of March 28. It is the district's expectation

⁶ The PWN states that the meeting was held March 7, 2022, but the overall document states that the meeting was held March 9, 2022. The March 7, 2022 date is probably a mistake.

that parents will increase the amount of time [Student] participates in her educational program. The team will reconvene 4-6 weeks after [Student] begins attending to review her program.

Although [Student] does not qualify for special transportation, in an effort to accommodate the Parents desired schedule, the district has agreed to provide transportation to and from school for the period of time [Student] is attending.

[Student] no longer qualifies for home hospital. The district agreed to continue tutoring with a district tutor for 3 hours per week until April 15, 2022, to allow [Student] to continue gaining the skills she has started to gain in home hospital tutoring. The district clarified that these services would be provided only so long as they do not interfere with [Student's] attendance in school.

36. On March 10, 2022, the Parent's attorney emailed the District's attorney, asking for seizure logs to be added to the health plan based on the October 21, 2021 seizure plan from the Student's hospital.

37. On March 17, 2022, the District's nurse emailed the Parent, asking to speak to the Student's neurologist.

38. On March 21, 2022, the Parent responded to the nurse's email from March 17 as follows:

At a recent meeting [assistant superintendent] stated that any instructions to the school from a Doctor would need to be in writing in a Doctor's order or letter. The Seizure Management Plans are written doctor's orders. Any clarification of these order should be done in writing also and attached to the original order. If you send me any question on clarification I can pass them on through the...secure patient portal and they normally respond within 2 working days. [Neurologist] is back in the office this week so if you have a more general question regarding seizures I could pass on any question to her through her secure portal.

The Parent also emailed the District regarding:

- The Student needing a shortened school day.
- Revising the IEP.
- Logging Student's visible seizures.
- Receiving a draft health plan.
- Student's school schedule.

The District's attorney emailed the Parent's attorney about the ROIs.

39. On March 24 and 25, 2022, the parties' attorneys exchanged multiple emails about the ROIs. The main point of this exchange was that the District was requesting greater access to the Student's medical records, and the Parent's attorney responded that the requests would be forwarded to the Parent.

40. On March 31, 2022, the Parent's attorney emailed the District's attorney about the Student's school bus plans.

41. On April 1, 2022, home-hospital instruction ended.
42. On April 4, 2022, the District's attorney emailed the Parent's attorney about the ROIs to obtain medical records and characterized the Parent's actions as "resistance" and "road blocks".
43. On April 7, 2022, the Parent's attorney emailed the District's attorney to ask whether: (1) a March 25, 2022 email with signed releases was received; and (2) whether transportation with the extra person would be ready the following week.
44. On April 9, 2022, the Parent signed consent for initial special education services.
45. On April 10, 2022, the Parent's attorney emailed the District's attorney regarding three points. (1) Asking whether a March 25, 2022 email with signed releases was received; (2) Sending a signed consent for the Student to be enrolled in special education; and (3) stating that the Parents were not signing the IEPs because "they do not believe the ones you sent are properly updated, but as Parents' signatures are not required, those programs should start."
46. On April 12, 2022, the District's attorney emailed the Parent's attorney the final health plan and IEP for the Student.
47. The Student's "Seizure Emergency Care Plan", which was also referred to as the "Health Plan" described the Student's seizure history, triggers, detailed emergency response to seizures, and health accommodations that included:
 - [Student] will be allowed a quiet place to rest following a seizure event and/or when experiencing tiredness related to seizures.
 - [Student] will be escorted by an adult to the identified quiet space following a seizure. She may need comfort after a seizure, it can be frightening for her. Staff should move slowly around her, talk in soft voices and provide reassurance. She will be escorted back to class after stating she is feeling better and/or feels rested.
 - [Student] will use the bathroom in the nurse's office. Teacher will call the office to send an adult to escort or supervise her to and from the bathroom.
 - Teacher and supervision staff will be trained in seizure first aid (including what to look for and how to respond to Absence Seizures and Tonic-Clonic seizures) and [Student's] health plan. A list of trained staff will be kept in the school health room.
 - Seizure log to be sent home daily as part of school-home communication. As above, parent and school nurse will be notified if seizure lasts longer than one minute.
48. On April 14 and 15, 2022, the Parent's attorney and the District's attorney exchanged emails about the following, in relevant part:

Issue	Parent	District
Monitor on Bus	Where does it say a monitor will be on the bus?	Prior Written Notice
Time in School	Parent wanted to increase time in school to five days a week.	District was prepared for Student to attend five days a week.
Time in Physical Education	Parent wanted more time in academic setting.	Parent preferred Student attend in afternoons.

		Academics were in the mornings. Physical education is in the afternoons.
Communication with Physicians	Parent previously gave consent to talk with doctors on the condition that Parent could participate in the discussion.	District requested release of information to communicate in writing and to speak with doctors.
Shortened School Day	IEP says it was the Parent's choice.	District proposed a full day of instruction but agreed to partial day.
Special Transportation	Student qualified for special transportation.	Issue addressed in PWN.

49. On April 15, 2022, the District emailed the Parent that beginning the following Monday (April 18, 2022), the Student would be picked up at home by a school bus at 12:30 pm and would be picked up at the school by the school bus at 2 pm to be returned home, and that there would be a person on the bus to and from school to monitor the Student for seizures and collect data. The District also said that this level of support will be revisited once the Student started riding the bus.
50. On April 18, 2022, the Student started attending school in person.
51. On April 22, 2022, the Student's sibling contracted COVID, and the Student could not attend school because she also began showing COVID symptoms.
52. On April 28, 2022, the Parent's attorney emailed the District's attorney that one of the Student's siblings had contracted COVID at school and that the Parent wanted a meeting with the District to discuss a safer way for the Student to attend school.
53. On May 4, 2022, the Student's IEP team met. The IEP team agreed to one hour of instruction with time spent in general education and special education settings. The District proposed providing a temporary alternate location for the Student's general education instruction based on the Parent's concerns regarding COVID.
54. On May 13, 2022, the Student returned to school. The Parent and District agreed that the Student would attend school from 1–2 pm and be in a small group special education setting or with siblings in a separate room. The Student attended school in this manner from May 13 through June 20, 2022.
55. On June 15, 2022, the Student's IEP team met. The District proposed the Student participate in the summer impact program. The Parent rejected this proposal because it started too early in the day. The Parent stated that the morning was not a good time for the Student to attend school because of the Student's seizure issues. The District agreed to provide an ESY proposal as requested by the Parent.

56. On June 30, 2022, the parties held an IEP meeting. The Parent once again rejected the Student's participation in the summer program because it started too early in the day. The District then offered ESY from 11:30 am to 12:30 pm from July 5 through July 29, 2022. The District could not provide special education transportation for the Student for ESY because there was not a bus nor driver available between 11:30 am–12:30 pm because the students from other summer programs were being transported. The District offered to compensate the Parent for transporting the Student, but this option was not feasible for the Parent because of the unpredictable and significant health needs of the Student and her siblings would make the Parent transportation unreliable.

57. The Parent filed a special education community complaint on September 8, 2022, alleging the District:

- Delayed re-evaluating Student based on a changed health condition.
- Did not update health plan and did not gather updated health information.
- Did not provide an appropriate education (shortened school day).
- Did not provide special education transportation.
- Did not provide ESY.

CONCLUSIONS

Issue One: Reevaluation based on changed health condition – The Parent alleged the District delayed reevaluating the Student based on changed health conditions.

Within 35 school days after consent has been received, a school district must assess a student in all areas related to his suspected disability. The timeline can be extended if agreed to by the parent and documented by the district, including specifying the reasons for extending the timeline.

In the present case, on November 22, 2021, the District provided the Parent with an evaluation consent form for a reevaluation of the Student and asked the Parent to provide ROIs for the Student's medical providers. The District received the signed consent to evaluate the Student on November 23, 2021. 35 school days from this date was February 2, 2022. The District completed the evaluation on February 14, 2022; eight school days after the evaluation deadline. Thus, a violation is found.

However, the need for corrective action is limited given that the evaluation was subsequently completed, and the Student continued to be eligible for special education. Additionally, the District stated it needed more information about the current status of the Student's seizures than what the medical documentation, provided by the Parent, included and the information relayed by the Parent herself. The Parent did offer the opportunity for the District to directly communicate with the Student's medical providers, as long as the Parent or her attorney was part of the call. However, scheduling such a discussion was difficult and time-consuming, which is not uncommon when involving private medical personnel. Given the evaluation was completed and the delay was due to the District's attempts to obtain additional medical information, OSPI finds that no additional corrective action is warranted.

Issue Two: IEP Development – Regarding the second issue, the four sub-issues that need to be addressed are the health plan, the shortened school day, transportation, and ESY.

Health Plan

The Parent alleged the District delayed updating and gathering information for the Student's health plan. An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum. If a student has health related needs, a district is required to include the provisions of a student's health plan into their IEP, or if captured in a separate document, the health plan should be referenced and connected to the IEP.

Between February 14, 2022, when the Student's evaluation was completed, and April 12, 2022, when the Student's final health plan was completed, the parties exchanged emails on multiple days regarding the District's access to medical records. The District's position in these emails was that it could not access all the Student's medical records because of the Parent's "resistance" and "road blocks". This demonstrates that the parties were not on the same page as to what access the District should have to the Student's medical records. These differences slowed down the District's ability to finish the health plan. However, with respect to specific updates to the health plan, the District made requested updates. For example, on March 10, 2022, the Parent's attorney requested that the health plan include seizure logs and the final health plan included "Seizure log to be sent home daily as part of school-home communication. As above, parent and school nurse will be notified if seizure lasts longer than one minute." On April 12, 2022, the District's attorney emailed the Parent's attorney the Student's final health plan. Thus, OSPI finds no violation as to whether the District delayed updating and gathering information for the health plan.

Shortened School Day

The Parent alleged that the District did not provide the Student an appropriate education, e.g., a shortened school day.

Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs.

Ultimately, the District, per the Parent's request, provided the Student with a shortened school day. The District stated that the appropriate offer of FAPE to the Student was a full day of school and framed the Student's attendance for only part of the day as the Parent choice. While OSPI understands and commends the District for its effort to work with the Parent around her desired schedule, the question remains as to whether the Student's IEP team made a reasonable decision, based on Student specific information regarding the Student's potential need for a shortened school day.

In this case, the information available to the IEP team was mixed. The Student's neurologist recommended the Student have a shortened school day and 1:1 assistance. The neurologist and

Parent deserved some deference regarding the Student's needs in this case. The neurologist is an expert in seizures and the Parent knew the Student well and had the most experience observing the Student's seizures. However, the neurologist made the educational recommendations without any discussion with the District about what supports or services the District could provide to help the Student attend school full-time and without 1:1 assistance. Had the neurologist heard what services the District could provide, the neurologist might have reconsidered or altered the recommendations. However, other medical information was silent with respect to the need for a shortened school day. The District was not necessarily required to follow the recommendations of either the neurologist or the Parent if the District had information that indicated otherwise. The District acknowledged that it needed more information, particularly medical information, about the Student's needs, and stated it was making decisions based on incomplete medical information because, according to the District, the Parent refused to give the District access to the information the District believed was needed to ensure the Student's health needs were met.

OSPI acknowledges the difficulty the District had in getting additional medical information; but the District did not have sufficient information or documentation to establish that a full school day *was* appropriate for the Student. Thus, OSPI finds the IEP team did not have sufficient, Student specific information and data to make a decision on whether a shortened school day was needed. The District should have considered conducting a medical evaluation. A violation is found.

For corrective action, the District will conduct its own medical evaluation to provide additional information. The District will then convene the Student's IEP team and address the request for a shortened school day based on either a new medical evaluation or additional information provided by the Student's medical providers.⁷

Transportation

The Parent alleged that the District did not provide special education transportation. A district is required to consider what supports or accommodations a student with an IEP might require to be transported. Here, the Parent stated the Student should receive special transportation because of the need for someone to monitor the Student's seizures on the bus. The District stated the Student's seizure plan did not provide for the Student to be monitored on the bus, although the District agreed to provide "supervision" to the Student on the bus.

Regardless of whether the seizure plan addressed the need for supervision specifically or whether the District felt it had sufficient medical documentation to substantiate the need, the District chose to provide supervision to the Student on the bus. This decision appears to be consistent with the Student's medical information available at the time regarding the frequency of seizures. Supervision of the Student on the bus would fall under special transportation. Given that the District was providing this, the service needs to be appropriately documented in the Student's IEP

⁷ OSPI notes that a recent complaint decision, SECC 22-98, addressed the same issues for this Student's siblings. Part of the corrective action in SECC 22-98 required written guidance, which also addresses the violations identified here. Thus, OSPI does not required additional District level corrective actions.

and the District did not amend the Student's IEP to reflect the transportation arrangement. A violation is found, given the failure to amend the IEP to include this service.

For corrective action, the District is required to convene the Student's IEP team and address the request for special transportation, considering the information from a new medical evaluation or additional information from the Student's medical providers.

ESY

The Parent alleged that the District did not provide ESY. A district must address the need for ESY, considering a student's regression and recoupment of skills over school breaks. On June 15, 2022, the Student's IEP team met. The District proposed the Student participate in the summer impact program. The Parent rejected this proposal because it started too early in the day and the Parent stated morning was not a good time for the Student to attend school because of the Student's seizure issues. The District agreed to provide an ESY proposal as requested by the Parent.

On June 30, 2022, the parties held an IEP meeting. The Parent once again rejected the Student's participation in the summer impact program because it started too early in the day. The District then offered ESY from 11:30 am to 12:30 pm from July 5 through July 29, 2022. The District stated it could not provide special education transportation for the Student for ESY because there was not a bus nor driver available because the students from other summer programs were being transported. The District offered to compensate the Parent for transporting the Student, but this option was not feasible for the Parent because of the unpredictable and significant health needs of the Student and her siblings would make Parent transportation unreliable.

A program, ESY or otherwise, must meet the student's needs rather than the student conforming to the program's needs. Availability of staff and transportation are a practical concern, but these cannot be the reasons for denying the Student an ESY program that met the Student's disability related needs; in this case, the need for ESY services to be provided at an appropriate time of day. Based on the current medical information available at the time the decision was made, the Student needed ESY services in the afternoon to benefit from them. The District did not offer ESY services in the afternoon and should have. In addition, a district cannot make ESY services contingent on the parent agreeing to provide transportation, even if reimbursement is offered.⁸ A violation is found. As noted above, this issue was also addressed in SECC 22-98 and corrective action ordered, which addresses the violation here.

CORRECTIVE ACTION

By or before **December 14, 2022**, the District will provide documentation to OSPI that it has completed the following corrective action.

⁸ Reimbursing the parent for transportation can be one of several transportation options considered and can be utilized if it is mutually agreed upon.

STUDENT SPECIFIC:

Evaluation

The District is required to conduct a medical evaluation of the Student. The District could bring in outside experts to conduct the evaluation or conduct its own District evaluation. If the Parent refuses to provide consent to the medical evaluation, which is her right, OSPI will consider the refusal in its review of the IEP team’s decision in this matter. In such a case, the IEP team should re-review the existing information it has, including any more recently received medical information and any data/information from the services the Student received through home/hospital instruction.

By **December 14, 2022**, the District will provide OSPI with a prior written notice, proposing the evaluation and a proposed timeline to evaluate. The District can find an outside expert to do the evaluation, or do their own evaluation. If the Parent does not consent to such an evaluation, the District should at minimum review the existing data and conduct an IEP meeting. Based on the documentation, OSPI will determine what further action is required.

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.

Dated this 2nd day of November, 2022

Dr. Tania May
Assistant Superintendent of 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.)