

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-87

PROCEDURAL HISTORY

On June 12, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community 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 June 12, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 14, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 16, 2023, the Parent submitted additional issues, which OSPI accepted as part of the Parent's complaint. OSPI notified the District of the additional issues on July 3, 2023.

On June 30, 2023, OSPI received the District's initial response to the complaint and forwarded it to the Parent on July 3, 2023. OSPI invited the Parent to reply.

On July 13, 2023, OSPI received the Parent's initial reply. OSPI forwarded that reply to the District on the same day.

On July 14, 2023, OSPI received the District's response regarding the two additional issues. OSPI forward the response to the Parent on July 18, 2023.

On July 27, 2023, OSPI received the Parent's reply regarding the two additional issues. OSPI forwarded the reply to the District on the same day.

On July 27, 2023, OSPI requested additional information the Parent. OSPI received the additional information from the Parent on August 4, 2023 and forwarded it to the District on August 5, 2023.

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 June 13, 2022. 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.

OSPI notes that the Parent's reply addressed issues beyond the scope of this complaint and after the June 5, 2023 complaint was filed with OSPI. Thus, OSPI cannot address those issues. The Parent may wish to address those additional issues in mediation, a due process hearing, or a complaint.

ISSUES

1. Did the District conduct progress monitoring and provide progress reports in compliance with the Student's individualized education program (IEP) according to WAC 392-172A-03090 during the 2022–23 school year?
2. Did the District follow procedures according to WAC 392-172A-05000 regarding the Parent's request to examine the Student's records during the 2022–23 school year?
3. Did the District develop an IEP that met the Student's needs according to WAC 3092-172A-03110?
4. Did the District review and revise, as appropriate, the Student's IEP to address any unexpected lack of progress as required by WAC 392-172A-03110 during the 2022–23 school year?
5. Did the District conduct a comprehensive evaluation of the Student during the 2022–23 school year according to WAC 392-172A-03020?
6. Did the District provide the Parent with an opportunity to participate in deciding whether the Student was eligible for special education according to WAC 392-172A-03040?

LEGAL STANDARDS

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents and the district to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Parent Participation in IEP Meetings: A school district must ensure that one or both of the parents of a student eligible for special education are present at each IEP team meeting or are afforded the opportunity to participate, including: (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and (2) Scheduling the meeting at a mutually agreed on time and place. The notification must: (a) Indicate the purpose, time, and location of the meeting and who will be in attendance; and (b) Inform the parents about the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the student. If neither parent can attend an IEP team meeting, the school district must use other methods to ensure parent participation, including video or telephone conference calls. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as: (a) Detailed records of telephone calls made or attempted and the results of those calls; (b) Copies of correspondence sent to the parents and any responses received; and (c) Detailed records of visits made to the parent's home or place of employment and the results of those visits. The school district must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. The school district must give the parent a copy of the student's IEP at no cost to the parent. 34 CFR §300.322; WAC 392-172A-03100.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. 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. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current

classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student’s IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student’s educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents’ right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student’s educational needs. 34 CFR §300.305; WAC 392-172A-03025. The evaluation group’s review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305(b) and 300.501(b); WACs 392-172A-03025(3) and 392-172A-05000(2).

FINDINGS OF FACT

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of specific learning disability, was in the fifth grade, attended a District elementary school, and the Student’s November 2021 individualized education program (IEP) was in effect.
2. The Student’s November 2021 IEP provided annual goals and specially designed instruction in the area of written expression for 30 minutes, six times monthly.
3. The District’s 2022–23 school year began on September 14, 2022.
4. On November 1, 2022, the Parent emailed the school psychologist, requesting the District evaluate the Student for attention deficit/hyperactive disorder and “his tendency to misread the small common word in sentences.” On the same day, the Parent signed the consent for evaluation. The school psychologist responded that he was unable to “diagnose ADHD but would assess the Student’s behavior by providing the Parent with a behavior questionnaire.”
5. In November 2022, the District reevaluated the Student for eligibility and need for special education services. There was no documentation that a review of existing data was conducted, although the District used the cognitive results from the 2019 evaluation. The District evaluated the Student in the areas of reading, math, behavior, study organizational skills, and written expression. The results in reading, math, and written expression in comparison to the results from the prior evaluation in November 2019 were as follows:

Reading

KTEA-3	11/2022			11/2019	
	SS	Percentile	Difference	SS	Percentile
READING COMPOSITE	83	13th	-8	91	27th
Letter & Word Recognition:	86	18th	-3	89	23rd
Reading Comprehension	83	13th	-12	95	37th
DECODING COMPOSITE	88	21st	-3	91	27th
Nonsense Word Decoding:	91	27th	-4	95	37th

Math

KTEA-3	11/2022		11/2019

Composite/Subtest	SS	Percentile	Difference	SS	Percentile
MATH COMPOSITE	110	75th	+3	107	68th
Math Concepts & Applications:	119	90th	+13	106	66th
Math Computation:	100	50th	-7	107	68th

Writing

KTEA-3	11/2022			11/2019	
Subtest	SS	Percentile	Difference	SS	Percentile
Written Expression:	61	0.5	-24	85	16th

The results from the "Behavior Rating Inventory of Executive Function-2nd Edition" (Brief-2) ranged from "average" to "clinically elevated" in the area of organization of materials. The results from the "Behavior Assessment System for Children-3rd Edition" (BASC-3) ranged from "average" to "clinically significant", which was in the area of functional communication, and "elevated" in the area of attention control. This meant that the Student sometimes had difficulty with concentrating, following directions, and making careless mistakes.

6. The complaint alleged the reevaluation "lacked rigor" because the evaluation used existing data from the 2019 evaluation in the cognitive area and because all the same assessments used in the initial evaluation were not used in the reevaluation. The evaluation also did not include an observation of the Student. (Later, in July 2023, the Parent requested an independent educational evaluation (IEE) regarding this evaluation.)
7. On November 14, 2022, the school psychologist sent the Parent a draft copy of the evaluation.
8. On November 15, 2022, the District sent an invitation to the Parent for an eligibility meeting to review the reevaluation results.
9. On November 18, 2022, the District sent an invitation to the Parent to meet and review the Student's IEP.
10. On November 19, 2022, the special education teacher sent the Parent a draft copy of the proposed IEP. The copy provided was not watermarked "Draft."
11. On November 20, 2022, the Parent emailed the school psychologist, requesting "samples of the progress monitoring you did with [Student] over the past three years."
12. On November 21, 2022, the evaluation group met to review the report. The team, which included the Parent, determined the Student continued to be eligible for special education services under the category of specific learning disability. The evaluation report recommended special education services in the areas of reading, written language, and study/organizational skills. No dissents were filed by the professional members of the evaluation group.
13. On the same day, November 21, 2022, immediately following the review of the reevaluation, the Student's IEP team that included the Parent, developed a new annual IEP for the Student. Parent concerns were documented as follows, "[Student] works hard at school. He is responsible about finishing assigned work. He is friendly and kind." The IEP included annual

goals in reading (identifying main idea), written expression (correcting misspelled words and grammatically correct sentences), and organization (prewriting strategies), and with progress reporting at the trimester. Progress would be measured by "work samples." The Student's November 2022 IEP provided the Student with the following specially designed instruction:

- Reading: 45 minutes a week (to be provided by special education staff in a general education setting)
- Written expression: 60 minutes a week (to be provided by special education staff in a general education setting)
- Student/Organizational skills: 30 minutes a week (to be provided by special education staff in a special education setting)¹

The IEP provided five accommodations to the Student, including, in part, frequent checks for understanding and reducing length of assignments.

14. Separate prior written notices, dated the same day, accompanied the evaluation review and IEP meeting. The notice regarding the evaluation indicated that the Parent requested a speech evaluation. The Parent was concerned about speech fluency and expressive language. The notice stated that the District agreed to have the speech/language pathologist (SLP) determine if a speech evaluation was necessary "by the end of January 2023." The notice addressing the IEP meeting stated that the team considered waiting until after the speech evaluation was considered but decided to proceed with reviewing and revising the Student's IEP. The notice stated that one of basis for the decision was "parent input."
15. In the complaint, the Parent stated the Student's goals were "not appropriate for my child, ambitious or specific." The Parent contended that she was not given an opportunity to provide input into the Student's IEP because there was no IEP meeting. The Parent stated the discussion regarding reevaluation "took the whole time allotted and the meeting ended before any of the IEP portion of the meeting could take place." The Parent stated she was told another annual IEP meeting would be scheduled at a later date, but no meeting occurred. The Parent stated that because of an apparent technology glitch that involved the case manager attending the meeting remotely, the Parent "was unclear what part of the meeting she was able to participate in or understood took place [sic]."
16. A prior written notice, dated December 12, 2022, stated the District considered a speech evaluation but rejected it. The notice stated that the Parent was concerned about fluency and expressive language. Based on classroom observations by the SLP, teacher reports, a record review, the District concluded that the Student's speech and language skills were developmentally appropriate. The District stated that the Student's problems with processing and organizing his thoughts were due to attention, which fell under executive functioning and was addressed through study and organizational skills.

¹ Although the service matrix showed the Student would receive the study/organization service in a special education setting, the total minutes per week the Student is serviced in special education setting was zero. The zero was more likely than not a clerical error.

17. On November 23, 2022, the special education teacher emailed the "Team," including the Parent. The email stated, "We met for [Student's] reevaluation and IEP meeting on Monday and we decided to add Study/Organizational skills as a qualifying area. I have added that area to the IEP as well and have attached a draft *or the new IEP* (emphasis added). I am hoping to meet again on Wednesday Nov 30th as we are facing a compliance deadline..."
18. On November 28, 2023, the special education emailed the Parent and stated, "Here is the IEP, including the added Study/Org skills. We will wait until we have information from the SLP before we determine to meet again."
19. On November 29, 2022, the Parent emailed the special education teacher and asked if the IEP could be extended until after the Student was evaluated for speech. The teacher replied that "there are no extensions for an IEP. We can open an IEP at any time and change it, though."
20. On November 30, 2023, the Parent emailed the Student's general education teacher that the Parent was having the Student's pediatrician evaluate the Student for ADHD.
21. On December 5, 2022, the special education teacher asked the Parent, "Are you ok with keeping the IEP in place (as discussed in the 11/22/22 reeval/IEP meeting) until the SLP has finished?" The Parent replied, "Do you know if the SLP will see him?" The teacher emailed both the Parent and the SLP, who later explained how she would proceed with the referral for a speech evaluation.
22. In December 2022, the District provided an IEP progress report, but because of the recent IEP meeting and new goals, there was insufficient time to determine progress toward the Student's goals.
23. During January and February 2023, the Parent and the Student's special education teacher exchanged numerous emails regarding scheduling a meeting to discuss the Student's progress after receiving the progress report in December 2022. The teacher invited the Parent to meet with her to talk about progress. There was no indication the Parent responded until April 14, 2023.
24. In April 2023, the District provided another IEP progress report. The report stated "some progress made" for the Student's reading, organization, and correcting misspelled words goals. The Student made little or no progress in writing grammatically correct sentences.
25. Regarding the April 2023 progress report, the complaint stated:

The progress reported on this goal was "[Student] is developing his ability to determine main idea/details." There isn't data points included with this report and if the team is not monitoring progress as noted in the IEP, it would be hard for the team to identify lack of progress and address it.
26. On April 14, 2023, the Parent emailed the Student's special education teacher, asking when they would meet to discuss progress. In April 2023, the Parent and the teacher exchanged emails, ultimately scheduling a meeting in May 2023. The Parent continually requested to see

the Student's progress data and the District provided the Parent with samples of the Student's writing. A meeting was scheduled May 16, 2023, but there was no documentation that it occurred.

27. On May 15, 2023, the special education teacher emailed the Parent the IEP progress report and work samples of the Student's writing and offered to share more.
28. On May 23, 2023, the Parent emailed the special education teacher a series of questions about the work samples. The questions included the following:
 - What was the context of the writing assignments you sent me?
 - When did they take place?
 - Where did they take place?
 - Were they written independently or with support?
 - Were they timed?
 - Did he get any pre-writing support?
 - If so, what were they and where were they?
 - Where are the notes from his teacher?
 - Where is he at relating to the data of the goals?
 - If the goal is to utilize a discrete skill 8/10 times, how many times out of ten is he doing now?
 - Do you have any finish and edited samples from class?
 - Has he produced any writing on a computer?
29. The Parent repeated the questions in emails on May 31 and June 5, 2023. After exchanging emails, the special education teacher responded at length to the Parent's questions on June 13, 2023.
30. The complaint stated the Parent's questions in the May email constituted a request under the Family Educational Rights and Privacy Act (FERPA) to review the Student's records. The Parent stated she requested assessments records also on June 15 and 23, 2023, and that these records were not provided by the District. In the Parent's later reply to the District's response, the Parent stated, "Parent acknowledges a lack of understanding between the terms and information as written in the district response. Parent wonders why student information under any specific [sic] is not provided timely and comprehensively when requested."
31. According to the Student's attendance record, the Student missed 36 half-days and 13 full days of school during the 2022–23 school year. The Student's schedule showed 37 absences and 14 tardies. It was not clear from the documentation whether the missed instruction had an impact on the Student. The IEP team did not address the issue regarding the Student's attendance.
32. On June 5, 2023, the Parent filed this complaint with OSPI.
33. In June 2023, the District provided a third IEP progress report. The Student made significant progress in reading, organization, and the goal for writing grammatically correct sentences. Some progress was made in correcting misspelled words. The report provided data to support the determinations.

34. Regarding the progress reports, the complaint stated:

Progress monitoring for 04/07/23 and prior to that date is incomplete. Progress monitoring data has not been shared by the team with the parent and what has been shared in progress reports don't align with the conditions and criteria of the annual goals. Parent is unable to fully understand and participate in student's education without comprehensive reporting.

Based on what the Parent stated was incomplete information the District provided to her, the Parent stated, "I don't believe/know this (services) is happening."

OSPI requested information from the Parent regarding what services and the times when services were not provided by the District. The Parent provided no specific information regarding what and when services were not provided.

35. The complaint stated the progress reports did not provide sufficient information. For example, the progress report for identifying the main idea did provide sufficient data for the Parent to know "what teacher developed test was administered, how many key details [Student] was able to share, was he able to determine the theme, what percentage of comprehension skills student is at presently..."

CONCLUSIONS

Issue One: Progress Monitoring and Progress Reports – The complaint alleged the District failed to conduct progress monitoring and report progress consistent with the Student's IEP. The IEP is required to describe how progress will be measured toward the annual goals and determine when the district will provide periodic reports on the student's progress towards the annual goals.

Here, the Student's November 2021 and November 2022 IEPs determined the goals would be measured by work samples and progress reported at the trimester. The District used work samples to document progress and reported the progress each trimester by using a descriptor, such as "satisfactory progress made." Some of the reports included the data used to determine the progress. The documentation showed the progress monitoring and reports were consistent with the IEP. No violation is found.

The Parent also contended that the progress monitoring was inadequate, and the progress reports did not sufficiently report progress. The Parent wanted more detail about progress, including taking regular data points and more specifics about the work samples that were used. While it was understandable that the Parent wanted more information, there was no requirement that the District provide more frequent data points or more specifics about the work samples used since the IEP did not require progress to be reported in that way. The Parent may request an IEP at any time to discuss whether the progress monitoring reports contained enough information for the Parent to effectively participate. If the IEP team cannot agree on the method of measurement for progress, the District would be required to provide the Parent with a prior written notice of its refusal of a parent request. However, if the Parent continues to have concerns about how progress is measured, OSPI recommends this be a topic of discussion at the Student's next IEP meeting.

Issue Two: Records Request – The complaint stated the District failed to respond to the Parent’s records request when it failed to provide all information that the Parent requested. A district must permit parents to inspect and review any education record relating to the student that are collected, maintained, and used by the district.

In late May 2023, the Parent posed a list of questions to the District regarding the Student’s work samples. Although the Parent apparently meant the questions to be a records request, the District interpreted the questions as a request for information, not for records. While the Parent acknowledged that she did not understand the difference between the terms “information” and “records,” the District is required to do so in the sense that the District must determine if a parent is requesting student records or information about records. And while the regulations do require a district to provide a response to “reasonable requests for explanations and interpretations of the records”, the Parent’s questions here went beyond just an explanation of student records and were requests for new information. Further, the Student’s special education teacher responded by mid-June to the Parent’s questions. Based on the documentation, it was reasonable for the District to interpret the questions as a request for information and not records. No violation is found. If the Parent still seeks to review the Student’s records, it is recommended the request expressly state it is for records and specify the records requested.

Issue Three: IEP Development – The complaint alleged the District failed to develop an IEP that was appropriate to meet the Student’s needs. The Parent further alleged the District did not get input from the Parent in developing the Student’s IEP and that no IEP meeting was conducted due to the length of the evaluation meeting. When developing each child’s IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

In November 2022, the evaluation group that included the Parent met to review the reevaluation. In the evaluation meeting, the Parent proposed a speech evaluation. The District stated it would consider the proposal and have the SLP review information before deciding to evaluate or not. The District stated it would respond by the end of January 2023. Following the review of the reevaluation, the IEP team met to review and revise the Student’s IEP, according to the District. In the complaint, the Parent alleged first that no IEP meeting occurred because most of the time was spent discussing the reevaluation results. Second, the Parent stated she did not have an opportunity to provide input into the IEP. And third, as a result, the IEP did not meet the needs of the Student.

The District stated an IEP meeting followed the reevaluation meeting. The documentation showed the District sent a written invitation for an IEP meeting and the meeting was conducted with all participants (although the case manager attended remotely.) The IEP documented the Parent’s concerns in the IEP, developed new goals, and added services in the areas of reading and organization skills. The District provided the Parent with a prior written notice regarding the meeting. There was no indication from the notice that an IEP meeting was not conducted.

The Parent also indicated some confusion about the meetings. The Parent stated she “was unclear what part of the meeting she was able to participate in.” Clearly, the Parent participated in the evaluation meeting; she requested a speech evaluation, which the District considered. The Parent also stated she was waiting for a follow-up IEP meeting that she understood would be held by the end of January 2023. However, the notice referred to the speech evaluation that was proposed in January 2023. At the IEP meeting, the team added study/organization skills to the Student’s IEP, which indicated some discussion had taken place about the IEP. In addition, the special education teacher sent the Parent a copy of the IEP following the IEP meeting.

It is not uncommon to hold an evaluation meeting and IEP meeting consecutively. The discussion about the evaluation might have taken more time than planned and as a result, the IEP review might have been rushed. But there was evidence that study/organization skills were discussed and added to the IEP. In addition, the special education teacher later asked the Parent if she agreed to keep the IEP in place until the decision about the referral for a speech evaluation was made. The Parent responded to the special education teacher and had questions for the SLP but did not respond to the question about keeping the IEP in place.

The documentation showed there was discussion about the Student’s IEP. And the special education teacher offered an opportunity to have a follow-up IEP meeting if the Parent choose. However, the Parent appeared to be focused on the speech evaluation referral and did not request another meeting. If the Parent wanted further input into the Student’s IEP, the Parent could have requested an IEP meeting. The documentation also shows the Student’s IEP was developed based on Student-specific data and was consistent with the Student’s abilities and needs. Based on the documentation that the IEP was reviewed at the meeting, no violation is found.

Issue Four: Review and Revise the IEP – The complaint alleged the District failed to review and revise the Student’s November 2022 IEP due to the Student’s lack of progress. A district is required to annually review a student’s IEP and revise the IEP to address any unexpected lack of progress toward annual goals and in the general education curriculum.

Here, the Student’s November 2022 IEP provided goals in the areas of reading, written expression, and organization. Progress would be measured by work samples and reported each trimester. The December progress report provided no information because of the recent development of the IEP goals in November 2022. The April 2023 progress report indicated the Student was making progress towards the goals, except for writing grammatically correct sentences where little or no progress was made. The June progress report was provided after the complaint was filed, but it was reported that the Student made significant progress in all areas, except correcting misspelled words. The Student made “some progress” on the misspelled words goal.

The complaint alleged the Student did not make progress on his goals, requiring the District to revise the Student’s IEP. The Parent’s claim was based on her belief that the progress reports’ lack of sufficient data indicated the Student did not make progress. While including data in progress reports is best practice, there is no requirement to provide data in progress reports, unless the Student’s IEP specifically requires it as part of the reporting progress. The District provided progress reports consistent with the IEP. And the progress reports showed that overall, the

Student made progress on his goals despite the temporary lack of progress during the second trimester. By the end of the year, the Student made significant progress on the goal. The progress may not have been what the Parent wanted, but the reports showed progress and did not necessarily indicate a need for the IEP team to meet. No violation is found.

It should be noted that in the documentation, the Student missed a considerable amount of time in school (36 half-days and 13 full days). This equated to a considerable amount of missed instruction that may have impacted the Student that neither the District nor the Parent addressed in the complaint. OSPI recommends the IEP team assess the impact of the Student's attendance and address it if necessary.

Issue Five: Comprehensive Evaluation – The complaint alleged the District failed to comprehensively evaluate the Student's needs. A district is required to comprehensively evaluate the student's needs. As part of any reevaluation, a district is required to review existing data. A reevaluation must meet the same requirements as an initial evaluation, including use of a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student and considering parent input.

Here, the Student was reevaluated in November 2022. The District assessed the Student in the areas of reading, math, writing, organizational skills, and behavior. Although the District used some existing data, which was the cognitive testing done in 2019, there was no documentation that the District did an initial review of existing data or reviewed any evaluations and information provided by the Parent, current classroom-based, local, or state assessments and classroom-based assessments, and observations by teachers and related services providers.

While the review of existing data is optional in an initial evaluation, it is a requirement of all reevaluations, including considering information from any classroom observations of or other current classroom-based assessment information about the student. A meeting is not required to review existing data; however, an evaluation group may discuss existing data via email or show that existing data was considered by documenting this in the evaluation report. The review of existing data is important in a reevaluation as it helps the team determine what additional information and assessments are needed for the reevaluation. For example, as an observation is required in an initial evaluation and determination of eligibility under the specific learning disability category², a review of existing information could inform whether the team needs to conduct additional, new observations of the student in his current classroom. Here, the SLP later observed the Student in the classroom; the purpose was to determine whether the Student needed a speech evaluation and occurred after the reevaluation was conducted.

The Parent contended in the complaint that the reevaluation was not comprehensive because the District did not use the same assessments from the 2019 evaluation, and as a result, was less thorough. A reevaluation must meet the same requirements as an initial evaluation, in that it must

² Districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. WAC 392-172A-03075.

use a variety of assessment tools and strategies to gather relevant information about the student. However, there is no requirement for the reevaluation to use the exact same assessments. The reevaluation must be individualized, making it appropriate to use different assessments as a student's needs change. The November 2022 evaluation did conduct the same academic assessment as the previous evaluation and compared the different results. Although the Student made progress on his goals, the evaluation should have reconciled the declining academic scores in the evaluation by explaining the Student's rate of learning and whether the Student is capable of achieving passing grades and advancing grade-to-grade in the general education curriculum if given appropriate instruction. Based on the reevaluation not meeting the requirements for reviewing existing data, a violation is found. The District is required to conduct a new reevaluation, ensuring that procedures are followed and the necessary information about the Student is provided. Once the reevaluation process is completed, the IEP team will need to review the IEP in light of the reevaluation results and revise the Student's IEP if needed. The District will also be required to conduct training.

Issue Six: Parent Participation in the Eligibility Decision – The complaint alleged the District failed to give the Parent an opportunity to provide input into the eligibility decision in November 2022. A group of qualified professionals and the parent of the student must determine whether the student is eligible for special education services and educational needs of the student.

Here, the District and the Parent met to discuss the results of the November 2022 reevaluation. The District provided a draft copy of the evaluation before the meeting. The District and Parent determined the Student continued to be eligible for special education services and developed the Student's IEP. As discussed above, the documentation showed the Parent attended the meeting and had an opportunity participate in the eligibility decision and determining the Student's needs. In fact, the Parent requested a speech evaluation, which the District took under consideration. The complaint stated, "Parent wanted additional support for student in light of the evaluation results and was never offered an opportunity to share that." This is inconsistent with documentation that the Parent requested the speech evaluation, and the District considered the request. While the Parent may now have second thoughts about the reevaluation and IEP, the documentation did not indicate the Parent expressed them at the time. No violation is found.

CORRECTIVE ACTIONS

By or before **August 18, 2023, September 6, 2023, September 13, 2023, October 4, 2023, October 20, 2023, and November 3, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Reevaluation

By **September 15, 2023**, the District shall provide the Parent with prior written notice, proposing a reevaluation and requesting the Parent's consent for the reevaluation. If the Parent does not provide consent, the District will review existing data to determine if additional data is required. If consent is received, after reviewing existing data, the District will reevaluate the Student and

conduct an evaluation meeting by **October 13, 2023**. The District will provide OSPI with a copy of the prior written notice, Parent consent, and evaluation report by **October 20, 2023**.

IEP Meeting

By **October 27, 2023**, the District will conduct an IEP meeting to review and revise, if necessary, the Student's IEP. By **November 3, 2023**, the District will provide OSPI with a copy of the meeting notice, IEP, and the accompanying prior written notice.

DISTRICT SPECIFIC:

Training

By **September 27, 2023**, the District will develop and conduct a training on conducting reevaluations. The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and jointly conduct a training on the below topics. By or before **August 18, 2023**, the District will contact OSPI to schedule a planning meeting for the training.

The following District staff will receive training: the school's certified special education staff and administrators and all educational staff associates (ESAs). The training regarding reevaluations will cover the following topics:

- Review of existing data,
- Addressing student's potential and rate of learning.

The training will include examples. By or before **September 6, 2023**, the District will notify OSPI that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **September 13, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 20, 2023.

By **October 4, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 9th day of August, 2023

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.)