

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-08

PROCEDURAL HISTORY

On January 23, 2023, 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). 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 January 24, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On February 8, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on February 9, 2023.¹ OSPI invited the Parent to reply.

On February 22, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on February 27, 2023.

On March 9, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on March 15, 2023. OSPI forwarded the information to the Parent on March 15, 2023.

On March 16, 2023, OSPI's investigator consulted with two additional OSPI team members, one of whom had a master's degree in educational administration and significant experience as a special education director, and one of whom had a master's degree in elementary education and educational administration and significant experience as a special education teacher.

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 January 24, 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.

¹ In relation to the contents of its response, the narrative portion of the District's response read, in part, "Nearly all of my communication with the family was done via telephone. We had regular conversations regarding Student's difficulty with attendance and his refusal to do homework. In addition, [both Parents] would stop by [the case manager's] classroom to speak about Student. None of these conversations were recorded."

ISSUES

1. Beginning no later than January 24, 2022, was any evaluation of the Student sufficiently comprehensive in terms of identifying the Student's needs resulting from the Student's disability in the areas of math and written expression?²
2. On or about January 24, 2022, did the District follow proper individualized education program (IEP) development procedures? Specifically:
 - a. Was the decision to not provide the Student with specially designed instruction in math and written expression based on relevant, sufficient data on the Student's needs resulting from the Student's disability?
 - b. Was the decision to not provide the Student with specially designed instruction in math and written expression pre-determined?
3. In January 2023, did the District follow proper IEP development procedures? Specifically:
 - a. Was the decision that was made regarding which accommodations and modifications to provide to the Student based on relevant, sufficient data on the Student's needs resulting from the Student's disability?
 - b. Was the decision that was made regarding which accommodations and modifications to provide to the Student pre-determined?

LEGAL STANDARDS

Basis for IEP Team Decisions: Generally speaking, an IEP team's decisions must be based on a student's needs resulting from that student's disability. *See generally* WAC 392-172A-03090(1); *see also* WAC 392-172A-03110. An IEP team should base its decisions on appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. *See, e.g.,* WAC 392-172A-03020(g); *see also, generally,* WAC 392-172A-03090.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district

² In OSPI's opening correspondence to the parties, dated January 24, 2023, OSPI failed to identify the specific areas the Parent believe the January 2022 reevaluation insufficiently addressed. The clear language of the Parent's complaint request, though, shows the Parent was concerned the January 2022 reevaluation was insufficiently comprehensive in the areas of math and written expression.

determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

IEP Prepared in Draft Form Prior to Meeting: School district staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the district must make it clear to the parents at the outset of the meeting that the services proposed by the district are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion, of the student's needs and the services to be provided to meet those needs before the IEP is finalized. School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student's IEP is finalized, regarding drafted content and the student's needs and the services to be provided to meet those needs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12478 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of other health impairment, attended a District middle school, and his February 2021 individualized education program (IEP) was in effect.

2. The District's response included progress data on the Student's annual goals in his February 2021 IEP.

For the goal of math calculation 1, the progress data showed the Student went from demonstrating sufficient progress in June 2021 to demonstrating insufficient progress in November 2021. But the progress report noted this was due, in significant part, to the "Student [having] been absent the majority of the school year."

The progress data for the February 2021 IEP goals of math calculation 2 and written expression goals read, in part, "due to missing assignments and lack of attendance [and that] there [had] not [been] enough progress [in increased attendance] to accurately measure the success of Student's goals."

3. According to an "Attendance Detail Report" included in the District's response, from January 24 through June 17, 2022, the Student was absent for approximately 44 days.
4. On January 24, 2022, the District's evaluation group completed a reevaluation of the Student.

The January 2022 reevaluation report recommended the Student be provided with specially designed instruction (SDI) in adaptive and organization/study skills. It also recommended the Student be provided the related service of school health services.

The January 2022 reevaluation report read, in part:

Student was initially evaluated and made eligible for Special Education services on 1/24/2019 while attending [Elementary School]. Student's academic and behavior had been a concern to his parents and the staff at [Elementary] for several years. He had tested well below grade level on all district and state testing. His behavior was such that he has spent a great deal of time outside the general education classroom. His classroom teacher described the basis for referral as: Student's erratic, aggressive, disruptive behavior that was seriously impacting his/and others academic success.

As a result of the 2019 referral Student was evaluated by a multidisciplinary team who recommended he be made eligible for Special Education services under the Health Impaired disability category in the aforementioned areas. It is noted that a Behavior Intervention Plan and Initial IEP were signed on 2/19/2019 by his parents.

...
Student is adversely impacted due to attentional, attendance, and behavioral problems within all educational environments. An evaluation of Student's neurological status is positive for a diagnosis of a genetic form of epilepsy.

...
Assurance:...The findings of this evaluation are not primarily due to a lack of instruction in reading, math, or limited English proficiency.

...
Medical-Physical:...He has had no reported seizures in the last few years...A review of records, dated February 2018 from a children's hospital found that Student had been free of these seizures and also documents a family history of seizure disorder. The most recent

clinical impression states that Student meets criteria for a diagnosis of epilepsy and remains at risk of recurrent seizures.

...

General Education:...Eighth grade scores [for math and written expression] were both Level I. Some explanation of these scores are Student's aversion to testing which may also include an inability to sustain focus/concentration in such settings. Scores in Level I or II are below expected performance based on his grade level.

At this writing he has missed over 50 days of school. A review of his attendance record shows that Student has been absent from school close to 250 days in his school career dating back to 1st grade. Cumulatively speaking this is one full school year plus one quarter of another over his school career. He has missed much instruction since beginning school and this must be considered when considering his current school performance.

Currently, teachers are experiencing difficulty getting Student to engage. Along with the obvious attendance issues Student has difficulty with work completion. He is inconsistent with work completion while he is in the building and with homework. He is highly unorganized and does not appear to be motivated to address these issues.

Another distinct area of weakness for Student is his resistant behavior with adults who are working with him. When faced with a task that he does not like he can be combative and argumentative. This often disrupts the class. Student often leaves class without permission when he becomes frustrated with the situation.

...

Academic: Student was administered the Wechsler Individual Achievement Test-Fourth Edition (WIAT-4). This test includes subtests to measure listening, speaking, reading, writing, and mathematics skills...Student displayed relative strengths in the areas of reading comprehension, decoding fluency, and math problem solving subtests. Significant weaknesses were noted on the essay composition, spelling, written expression, and numerical operation subtests. It should be noted that scores on written expression are not valid as Student refused to cooperate.

Results of the WIAT4 academic achievement assessment indicate Student's...overall math ability falls in the below average range (SS=83), and his overall writing ability falls in the below average range (SS=73)...Written expression was more difficult, with Student scoring a standard score of 77 in the essay writing component of the test. Student struggled with grammatical components of the writing assessment...Student quickly gave up on the math numerical operations section of the test and refused to test further on Day 1. It is likely that had Student persevered with the math assessment he would have done much better, he refused to answer questions such as 8×6 . I know that he can answer this particular question as he has done so multiple times in academic support, he simply did not want to. The written section of the test was done on Day 2. Student did not want to do the writing assessment either, he stated this; I would thus interpret his scores on the writing assessment with caution.

...

It is this examiner's professional opinion the scores obtained are considered true and valid measures of Student's reading academic ability. However, due to Student's lack of desire to take the written expression portion of the assessment and lack of perseverance on the

math assessment, I would interpret both the math and written expression portion of the exam with caution as they are not necessarily a reflection of his true ability.

...

On Smarter Balance testing in the 3rd grade Student attained scores in Math Level II and ELA Level II. In the 4th grade both scores were Level I. Fifth grade scores were level II in both. Eighth grade scores were both Level I. Some explanation of these scores are Student's aversion to testing which may also include an inability to sustain focus/concentration in such settings.

...

Cognitive:...Student's scores on the Visual Spatial Index (VSI) were slightly lower and in the low average range. Skills required on this Index are abstract visual reasoning, visual processing, abstract, and spatial perception. These subtests can be influenced by concentration, attention, and persistence.

On the Processing Speed (PSI) and Fluid Reasoning (FRI) Indexes Student's score were in the very low range. The skills measured on the PSI are visual-motor speed, coordination, short term auditory memory, and concentration. The FRI measures the ability to identify patterns and relationships. They may have trouble drawing conclusions or understanding inferences. The FRI measures the ability to think flexibility and problem solve.

...

Other:...Student does not appear to require specially designed instruction in written expression, reading, behavior plan, and math. Rather, he needs to build positive habits that will allow him to access the general education curriculum. These habits include building organizational skills, work completion, handing in of work, and regular attendance. Improvement in these areas will hopefully also address his frustration level when he is in school.

It is recommended that the math calculation, basic reading, written expression, social-emotional goals as well as the behavior plan discontinue.³

During this investigation, the Parent provided, in part, the following feedback regarding the January 2022 reevaluation:

According to the Weschler Individual Achievement Test (WIAT) scores and the school psychologist's comments, Student should [not] have been released from specially designed instruction (SDI) in math and written expression.

Student refused to do the essay portion of the WIAT, so [the evaluation group and IEP team] did not have enough data to make the decision to discontinue services [in math and written expression]^[4]...Student's fluid reasoning and processing speed indicate a problem.

[The following portions of the January 2022 reevaluation, in particular, show Student continued to require SDI in math and written expression]: (a) WIAT-Essay Composition –

³ The reevaluation consent form the Parent signed on November 29, 2021, explicitly stated the Parent was not providing consent for any social-emotional assessments.

⁴ During this investigation, the Parent also stated, "Scores on written expression [in the January 2022 reevaluation] are not valid as Student refused to cooperate. [And because of the Student's] lack of perseverance on the math assessment, that data is not] necessarily a reflection of his true ability."

percentile rank [of] 6 (age equivalent [of] 9.6); (b) WIAT – Numerical Operations – percentile rank [of] 7 (age equivalent [of] 9.2); and, (c) WIAT – Fluid Reasoning – percentile rank [of] 3.

The essay composition [score] is 1.5 standard deviations [below] the mean...The numerical operations [score] is also 1.5 standard deviations [below] the mean [and] the spelling [score] was more than 1.5 standard deviations [below] the mean, [all of] which indicates [Student had a continued need in written expression and math].

Student's overall math ability falls in the below average range and his overall writing ability falls in the below average range.

...

Student's profile [also] indicates learning challenges. [For example], the 15 point split between the Verbal Comprehension Index and the Visual Spatial Index Scores...may relate to weak simultaneous processing.

5. Separately, on January 24, 2022, the Student's IEP team developed a new IEP for the Student.

The January 2022 IEP provided the Student, in part, with SDI in organization/study skills (approximately 10.5 hours a week) and adaptive (approximately 1.5 hours a week).

The January 2022 IEP provided the Student with the following accommodations: "allow use of a calculator (when calculation is not being assessed)"; "spelling and grammar check"; "reduce environmental distractions (test [and] study in separate location, noise buffers, etc.)"; and "time/scheduling: extra time on assignments/assessments."

The documentation included a prior written notice related to the January 2022 reevaluation and IEP meetings, dated January 18, 2022. It read, in part:

Description of the proposed or refused action: The team proposed that Student's services in reading, writing, math and behavior be eliminated. Also proposed was the addition of services and goals in adaptive and social/organization.

The reason we are proposing or refusing to take action is: Based on assessments done during the re-evaluation, Student no longer qualified in reading, writing, and math. Parents requested that student not be evaluated in behavior.

In relation to the development of the January 2022 IEP, the Parent stated, in part:

The Parents were not given a draft copy of the reevaluation [report], nor the time to review the reevaluation [report itself] prior to the IEP meeting – [as] the IEP meeting [took place] immediately [after] the reevaluation meeting...The prior written notice that was sent to us [in relation] to the January 24, 2022 IEP was...dated January 18, 2022. [This is] evidence that [the January 24, 2022 IEP team decisions] were, in fact, predetermined.

In its response, the District stated the January 18, 2022 date on the prior written notice was the result of a transcription "discrepancy":

The original date for both the [evaluation meeting] and IEP meeting was January 18, 2022. A prior written notice was sent confirmed this date. [But then] the Student's father contacted [the school psychologist stating] he was not able to attend [on January 18, 2022].

So [the meetings were] rescheduled for January 24, 2022. The signatures on the reevaluation [report] and the IEP were gained using DocHub, sent out from the District office, **after** the meetings.

(emphasis added).

In relation to the January 24, 2022 meetings, the District's response further read:

The real focus of the meeting was to deal with Student's lack of attendance and how to best help him remove the barriers of getting to school and to enhance performance once he arrives. It was felt by the eligibility group that his absenteeism is seriously impacting his educational gain. It was noted that Student had missed 204 school days in his school career by the date of the January 27, 2022 meeting. [Therefore], instruction was shifted to organizational/study skills – the thought being all teachers would work with him and assist him anyway possible to motivate him to attend regularly and to understand the assigned work.^[5]

6. The District response included a March 28, 2022 prior written notice. It read, in part, "Description of...option considered and rejected: online school...The reason we rejected [that] option: Student will not participate...Any other [relevant] factors: Parents have assured District that Student will not miss any more school."

2022–2023 School Year

7. At the start of the 2022–2023 school year, the Student was eligible for special education services under the category of health impairments, attended a District high school, and his January 2022 IEP was in effect.
8. According to an "Attendance Detail Report" included in the District's response, from September 1, 2022 through February 8, 2023, the Student was absent for approximately 30 days.
9. On September 7, 2022, the Student's IEP team amended the Student's January 2022 IEP.

The corresponding prior written notice read, in part, "The IEP team proposes to adjust the Student's minutes. The Student's needs are still being met though there is a change in service minutes and schedule."

⁵ In relation to the Student's comparative lack of attendance, the Parent's reply stated there were numerous reasons for this: (a) the Student was taking adult-strength "epilepsy medication [that] caused extreme changes in behavior and...learning regression"; (b) the Student had challenges engaging with schoolwork in the "online" format during COVID; (c) the Student's IEP team was in agreement that, if the Student work up on a particular day with certain behavioral challenges, the Student "could [either] come to school after homeroom or later – when Student's mood was better, or Student's father could just pick up Student's work and bring it home for Student to work on"; (d) the Student "experienced depression and continues to experience depression...since COVID began"; (e) Student had "digestive issues...since he tested positive for COVID in the winter of 2022."

The September 2022 amended IEP provided the Student with specially designed instruction in organization/study skills (50 minutes a week) and adaptive (75 minutes a week).

The September 2022 amended IEP included the same accommodations as those listed in the January 2022 IEP.

10. A November 17, 2022 email from the Student's first period teacher to the case manager highlighted that the first period teacher was concerned about the Student's attendance ("Student is either late or a no-show. [I do] not have a tally of his tardies or absences but it's been a lot").

11. In an email, dated January 7, 2023, the case manager forwarded the Parent's accommodation requests to several IEP team members and asked them for their input on the same.

From the emails provided to OSPI during this investigation, it does not appear any IEP team members responded to the case manager's January 7, 2023 request for input on the accommodations requested by the Parent. (The Student's teachers did provide updates—via email—on the Student's performance in their respective classes, including the Student's grades in those classes, as well as progress on specific assignments, etc.)

12. On January 12, 2023, the Student's IEP team developed a new annual IEP for the Student.

The corresponding prior written notice read, in part, "The IEP team proposed to change Student's goals. Several accommodations were added, a few were taken away, and some [were] amended."

The January 2023 IEP provided the Student with specially designed instruction in organization/study skills (15 minutes a week) and adaptive (15 minutes a week).

The January 2023 IEP provided the Student with the following accommodations:

- Allow oral clarification response on test for writing;
- Allow use of calculator;
- Alternative testing area;
- Calculator;
- Extended time;
- Frequent checks for understanding;
- If behind at quarter/semester, IEP team will meet to review grade determination and award a pass/incomplete dependent on finishing missing assignments, impacting final grade to a D or higher;
- Modify and break down assignments to critical content what Student needs to show to work towards mastery;
- Peer tutor;
- Spelling and grammar check;
- Reduce environmental distractions (test/study in separate location, noise buffers, etc.);
- Speech-to-text;
- Teacher will utilize unit assessment to determine mastery of standard;

- Teachers will provide printed copies of classroom notes/study outlines/guides/graphic organizers;
- Test/quiz scores will be limited to a maximum weight of 25% to support student success;
- Text-to-speech; and,
- Timing/scheduling: extra time on assignments/assessments.

In relation to the development of the January 2023 IEP, the Parent stated:

The vice principal entered the IEP meeting [room] with a printout of an email I had sent to the case manager containing accommodations/modifications I was going to request. The vice principal had already crossed out many accommodations/modifications on the sheet, highlighted and reworded them prior to the IEP being started. She handed me the printout and then we discussed them. I was told certain ones were not going on the IEP. The vice principal predetermined what the District would allow on the IEP.

...

Some accommodations/modifications were crossed off with a black line (meaning they would not go on the IEP), [some were] highlighted in green (meaning the vice principal agreed to keep them), [some had the word] 'universal' written on them (meaning they were allowed for all students and so did not need to go on the IEP)...and [some were] reworded in her handwriting in black ink (reflecting the vice principal's position on how they should be written to be accepted).

The comments in blue ink and blue highlighters were mine that I wrote on the document during the meeting.

The vice principal would not allow my wording, but insisted that the accommodations/modifications would be written into the IEP the way she had edited them [prior to the IEP meeting].

A copy of the above-referenced accommodations/modifications page is attached and labeled Exhibit 1.

The District's response included an 'IEP Agenda' for the January 12, 2023 IEP meeting. One discussion item listed on the January 12, 2023 'IEP Agenda' was a comprehensive list of "[Parents'] Accommodation Requests."

13. In an email thread, dated January 18 through 20, 2023, the Parent, the case manager, and District staff discussed revising the Student's goals and accommodations. In that thread, in part, the Parent stated:

I also really feel Student needs this accommodation/modification too because Student gets too overwhelmed by the number of problems/questions: 'assignments, quizzes, and tests will be modified so that they are not overwhelming with the number of problems or questions.'

...

I would like to include on the accommodations/modifications that quizzes and tests will not be weighted more than 25% of the...overall grade. The weighting on quizzes and tests should be weighted no more than 25% in all classes.

In that thread, in part, the case manager stated, “[IEP team]: Parent is now requesting that instead of the accommodations saying ‘as requested by Student’ [that] it just be required of [the] teachers to modify all assignments. Thoughts?”

In that thread, in part, the vice principal stated:

[Here is an accommodation proposal]: If the Student is failing at the quarter and/or semester, the IEP team, including the Parents, will meet with the teacher to review the grade determination. The team will consider awarding a pass/letter ‘P’ grade and the team may also consider awarding the Student an incomplete, to finish missing assignments that will positively impact the final grade to a D or higher.

The District’s response included an IEP, dated January 12, 2023. As the above emails demonstrate, the Student’s IEP team continued to discuss and/or revise the goals and accommodations in the January 2023 IEP after the date of January 12, 2023. In addition, requested information provided to OSPI, the District asserted that the copy of the January 2023 IEP provided to OSPI did reflect the finalized version of the January 2023 IEP—inclusive of any changes made in late January 2023.

14. According to emails and the District’s response, there was a second IEP meeting on January 24, 2023, to further discuss the Student’s IEP goals and accommodations.

The District’s response included an ‘IEP Agenda’ for the January 24, 2023 IEP meeting. The January 24, 2023 ‘IEP Agenda’ read, in part, “This meeting is to go over Student’s goals and accommodations. His goals and accommodations were discussed last time but Student’s Parents wanted them reworded and also wanted to add a few more accommodations.”

15. According to the District, as of January 31, 2023, the Student “still [demonstrated] attendance issues and [did] not access the available general education and special education assistance offered.”

In her reply, the Parent disagreed with the foregoing statement, stating, in part, “Student has attended after-school tutoring with a District staff person. Student has gone to get help from his case manager.”

16. In the complaint request to OSPI, the Parent requested an independent educational evaluation (IEE) of the Student be completed, in part, to help identify those “accommodations [and] modifications that will support his learning.”

CONCLUSIONS

Issues 1 and 2(a): Substantive Appropriateness of January 2022 Decision Regarding Specially Designed Instruction in Math and Written Expression – The Parent alleged the data available to the Student’s IEP team in January 2022 did not support the removal of specially designed instruction in math and written expression. Specifically, the Parent alleged results from the “Weschler Individual Achievement Test” (WIAT) did not support the removal of specially designed instruction in math and written expression.

An IEP team's decisions must be based on a student's needs resulting from that student's disability. An IEP team should base its decisions regarding appropriate programming for a student on sufficient, relevant data on the student's needs resulting from the student's disability. For example, in part: (a) a reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services; and (b) a student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters.

Here, the documentation did not show evidence the IEP team inappropriately removed specially designed instruction in math and writing. For example:

- Some portions of the January 2022 reevaluation showed the Student had made some progress on his math abilities. The WIAT results showed, in part, "Student [had] relative strength...in the area...of...math problem solving", and the special education teacher noted Student had previously shown—in the classroom setting—an ability to complete certain math calculation problems;
- The fluctuation in the Smarter Balance scores⁶ supported the IEP team's belief the Student had adaptive and social/organizational needs that impacted the Student's academic performance; and,
- The January 2022 reevaluation report did explain why the written expression and numerical operations scores (two of the lowest scores on the WIAT) were to be interpreted with caution. For example, the January 2022 reevaluation report noted, in part, the Student showed a reluctance to engage with the foregoing components of the WIAT, numerous absences had impacted the Student's academic performance, and the Student had been experiencing challenges with work completion, organization, and motivation.

In sum, the documentation did not show evidence the IEP team inappropriately removed specially designed instruction in math and writing.

Nonetheless, OSPI notes that in her community complaint request, the Parent requested an independent educational evaluation (IEE). The Parent requested an IEE to help identify those "accommodations [and] modifications that will support Student's learning." But it is also possible the Parent will want the IEE to address the areas of math and written expression. OSPI encourages the District and the Parent to clarify this matter and for the District to take the appropriate next steps with respect to the IEE request if it has not already.

Issues 2(b): Predetermination: Specially Designed Instruction in Math and Written Expression (January 2022) – The Parent alleged the District predetermined the decision to remove specially designed instruction in math and written expression from the Student's IEP in January 2022. Specifically, the Parent stated, "The prior written notice that was sent to use [in

⁶ The January 2022 reevaluation report read, in part, "On Smarter Balance testing in the 3rd grade Student attained scores in Math Level II and ELA Level II. In the 4th grade both scores were Level I. Fifth grade scores were level II in both. Eighth grade scores were both Level I. Some explanation of these scores are Student's aversion to testing which may also include an inability to sustain focus/concentration in such settings."

relation] to the January 24, 2022 IEP was...dated January 18, 2022. [This is] evidence that [the January 2022 IEP team decisions] were, in fact, predetermined.”

School district staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding IEP content, but the district must make it clear to the parents at the outset of the meeting that the services proposed by the district are only recommendations for review and discussion with the parents. Parents have the right to bring questions, concerns, and recommendations to an IEP meeting as part of a full discussion, of the student’s needs and the services to be provided to meet those needs before the IEP is finalized. School districts must ensure that, if district personnel bring drafts of some or all of the IEP content to the IEP meeting, there is a full discussion with the parents, before the student’s IEP is finalized, regarding drafted content and the student’s needs and the services to be provided to meet those needs.

For three reasons, OSPI does not find the District predetermined the decision that specially designed instruction in math and written expression needed to be removed from the Student’s IEP. First, in its response, the District explained the January 18, 2022 date on the prior written notice was the result of a transcription “discrepancy”:

The original date for both the [evaluation meeting] and IEP meeting was January 18, 2022. A prior written notice was sent confirmed this date. [But then] the Student’s father contacted [the school psychologist stating] he was not able to attend [on January 18, 2022]. So [the meetings were] rescheduled for January 24, 2022. The signatures on the reevaluation [report] and the IEP were gained using DocHub, sent out from the District office, **after** the meetings.

(emphasis added).

Second, the documentation provided to OSPI during the investigation did not show the Parent’s participation in the January 2022 IEP meeting was inappropriately limited. For example, in part: relevant meeting notes document the Parent was provided a copy of the special education procedural safeguards via email around the January 2022 IEP meeting; both of the Student’s parents attended the IEP meeting; the reevaluation report noted the Parent’s input at various stages in the reassessment process; for example, that the Parent requested that no vision, hearing, or social-emotional assessments of the Student be completed; and no less than two individuals who were qualified to interpret the instructional implications of evaluation results⁷ attended the IEP meeting, including, at least in part, the special education teacher and the special education director, indicating the Parent had the opportunity to ask questions to ensure understanding of the evaluation.

Third, while the Parent did not agree with the decision the IEP team made at the January 2022 meeting, the District did follow proper prior written notice procedures; for example, by providing

⁷ WAC 392-172A-03095 requires an IEP team include “an individual who can interpret the instructional implications of evaluation results.”

the Parent with a written statement explaining what decisions were made, and the reasons for those decisions.⁸

For the foregoing three reasons, OSPI does not find the District predetermined the decision that specially designed instruction in math and written expression needed to be removed from the Student's IEP in January 2022. OSPI does not find a violation.

Issues 3(a): Substantive Appropriateness of January 2023 Decision Regarding Accommodations and Modifications – The Parent alleged the District did not have sufficient, relevant data on the Student's needs resulting from the Student's disability to support the decisions made in January 2023 regarding the accommodations and modifications to be included in the Student's IEP.

For three reasons, OSPI does not find a violation of the IDEA. First, the documentation showed the Student's IEP team did have several data sources available to it in January 2023, principally, the Student's present levels of performance, progress on IEP goals, the reevaluation, and staff and Parent input. Second, as detailed below, the District and Parent engaged in a back-and-forth regarding what constituted appropriate accommodations and modifications for the Student between January 12 and 24, 2023. Third, the factual basis for the Parent's allegation on this score is not clear, in other words, it is not clear what information the Parent believes the Student's IEP team required, but did not possess, to be able to properly determine what accommodations and modifications needed to be in the Student's IEP. In conclusion, OSPI does not find a violation of the IDEA.

But, if the District and Parent proceed with an IEE, OSPI encourages the parties to determine whether specific assessments are needed to properly determine whether any revisions need to be made to the accommodations and modifications included in the Student's IEP.

Issues 3(b): Predetermination: Accommodations and Modifications (January 2023) – The Parent alleged the District predetermined IEP decisions regarding accommodations and modifications in January 2023. Specifically, the Parent stated:

The vice principal entered the IEP meeting [room] with a printout of an email I had sent to the case manager containing accommodations/modifications I was going to request. The vice principal had already crossed out many accommodations/modifications on the sheet, highlighted and reworded them prior to the IEP being started. She handed me the printout and then we discussed them. I was told certain ones were not going on the IEP. The vice principal predetermined what the District would allow on the IEP.

For several reasons, OSPI finds the District did not predetermine the accommodations and modifications that were to be included in the January 2023 IEP. First, as noted above, district staff

⁸ The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

may come to an IEP meeting prepared with proposed recommendations regarding IEP content, so long as the district subsequently engages with a conversation with the parent regarding the same. Second, numerous emails and both IEP meeting agendas show the District and Parent engaged in a fairly extensive back-and-forth regarding appropriate accommodations and modifications for the Student between January 12 and 24, 2023. The Student's IEP team met a second time in January 2023 to discuss the Student's goals and accommodations. Third, the Student's January 2023 IEP included several of the accommodations recommended by the Parent, showing, in part, District staff were receptive to the Parent's input regarding the same. And the January 2023 IEP included approximately 12 accommodations that were not in the January 2022 IEP. For the foregoing reasons, OSPI does not find a violation of the IDEA.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

In her community complaint request, the Parent requested an independent educational evaluation (IEE). The Parent requested an IEE to help identify those "accommodations [and] modifications that will support Student's learning." OSPI notes it is also possible the Parent wants the IEE to address the areas of specially designed instruction in math and written expression.

If the Parent and District proceed with an IEE⁹, OSPI recommends the parties clarify the objectives for the same, including whether certain assessments are needed in relation to accommodations, modifications, and specially designed instruction in math and written expression.

Dated this 22nd day of March, 2023

Dr. Tania May
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If a parent requests an independent educational evaluation at public expense, the school district must either: (i) Initiate a due process hearing within fifteen days to show that its evaluation is appropriate; or (ii) Ensure that an independent educational evaluation is provided at public expense without unnecessary delay. WAC 392-172A-05005(2)(c).

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.)