

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-13

PROCEDURAL HISTORY

On January 26, 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 Anacortes 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 26, 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 10, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on February 14, 2023. OSPI invited the Parent to reply.

On February 27, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on February 28, 2023.

On March 10, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on March 13, 2023. OSPI forwarded the information to the Parent on March 22, 2023.

On March 23, 2023, the OSPI complaint investigator interviewed the District special education director.

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

ISSUES

1. Did the District follow evaluation procedures according to WAC 392-172A-03020 when evaluating the Student, including ensuring parent input?

LEGAL STANDARDS

Consent for Initial Evaluation: A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. 34 CFR §300.300(a); WAC 392-172A-03000(1). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1). The District must make reasonable efforts to obtain parental consent and keep a record of its attempts. 34 CFR §300.300(a)(1)(iii); WAC 392-172A-03000(1)(c).

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student’s special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. No single measure or assessment as the sole criterion is used for determining a student’s eligibility or determining an appropriate educational program for the student. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040. A school district must determine a student’s eligibility for special education services with 35 school days after the date written consent for an evaluation has been provided to the school district by the parent. WAC 392-172A-03005(3)(a).

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was in the first grade and attended a District elementary school. The Student was not eligible for special education services at the start of the school year.
2. In February 2022, the District evaluated the Student for eligibility for special education services. The District evaluated the Student in the areas of medical-physical, social-emotional, adaptive behavior, cognitive, academic, communication, fine motor, and gross motor. The evaluation report—that included considerable input from the Parent—provided the following information about the Student:
 - Medical-Physical: The evaluation reported the Student had health conditions including chronic lung disease, hydrocephalus with shunt placement, and a gastrostomy tube. The report, in part, stated: “While [Student’s] medical conditions do not preclude her from participating in school or require specially designed instruction, they must be closely monitored and will require a formal health plan...”, which was based on written statements provided by the Student’s medical providers.
 - General Education: The Student was receiving three hours a week of instruction through home/hospital services. Despite the Student’s limited access to school in previous years, the Student’s teacher reported the Student “showing some strong student skills as well as academic aptitude with skills consistent with a typical first grader...”

- Social/Emotional: The report stated that the Student's results were indicative of a typical child her age although her somatization score was clinically significant.¹
- Adaptive Behavior: The District administered the "Adaptive Behavior Assessment – 3", which was completed by the Parent. The evaluation results indicated that the Student's adaptive behaviors were delayed although there was a question whether the Student could not do an activity or did not have the opportunity to try an activity such as folding clothes, finding a bathroom in a public space, or plugging something into an outlet. The report stated: "At this time, there is not sufficient evidence that [Student's] adaptive skill development is delayed versus not yet demonstrated." Thus, the results "should be interpreted with extreme caution."
- Cognitive: The District administered the "Wechsler Intelligence Scale for Children – 5th Edition" (WISC-V) to the Student. The report summary stated:
 Overall, [Student] demonstrated a balance between crystallized and fluid intelligence with a good amount of acquired knowledge and ability to apply reasoning to solve problems. She was equally strong in visual-spatial reasoning and verbal processing and showed good comprehension of material both visually and aurally. Because of limitations related to her medical condition and the Covid-19 pandemic, [Student] has experienced much less engagement with the world outside her home than a typical child. Such experiences in developmental years generally increase cognitive function as children are exposed to more information in different ways and opportunities to work through real-life situations. It is likely that scores on the WISC -V would have been higher given more access to education and other opportunities in recent years.

Nevertheless, [Student] is an intelligent child with strong cognitive abilities.

- Academic: The District administered the "Woodcock-Johnson Tests of Academic Achievement-IV" (WJ-IV) that compared the Student's performance with her others own age and grade. Her performance in relation to her peers in the same grade was given more deference because most of the students her age were in second grade and she had received significantly less instruction due to her medical condition than her same-age peers. Her academic scores were mostly in the low range when compared to others in the first grade.
- Communication: The report stated the following in the area of communication:
 [Student] was tested in the area of communication as part of a team assessment. [Student] presented as an 8 year, 2 month old child with typically developing speech and language skills. Her speech production skills were considered typical, she didn't exhibit speech production errors and her speech intelligibility was excellent. [Student's] listening comprehension and oral expression skills were within typical limits as well. There were no voice or fluency concerns. [Student] does not demonstrate a communication disorder at this time.
- Fine Motor: The District administered the "Bruininks-Oseretsky Test of Motor Proficiency - 2nd Edition" (BOT-2) and interviewed the Parent. The report stated the following in the area of fine motor:
 [Student] is an 8 year old girl who was evaluated for possible fine motor deficits. She was evaluated using the following methods: parent interview, BOT2, clinical

¹ Somatization is the process of converting emotional symptoms into physical symptoms.

observations, writing samples. At this time, [Student] does not demonstrate deficits related to fine motor precision, visual motor integration, manual dexterity, and upper limb coordination. She demonstrates scores consistent with same age peers, is motivated and cooperative throughout entire testing session. She does not require further OT services or accommodations in order to participate in her education.

- Gross Motor: The District administered the “Test of Gross Motor Development – 3” (TGMD-3) and observed the Student. The results stated: “Based on the result of standardized test, observation and parent input, [Student] demonstrated gross motor skills that were above what are expected for her age. Physical Therapy as a related service is not recommended. The team will make the final decision.”
3. The District’s group of qualified professionals signed their agreement with the evaluation and determined the Student’s disability did not require specially designed instruction and therefore, the Student was not eligible to receive special education services. The prior written notice stated the Parent submitted “handwritten comments and preferred edits in the draft eligibility report...” The school psychologist reviewed the comments and “made changes where deemed appropriate before finalizing the eligibility report.”
 4. In June 2022, according to the Parent, the Parent provided the District with a letter from the Student’s physician, stating the following, in part:

[Student] has a significant history of prematurity born at 27 weeks and therefore has a long standing history of chronic lung disease. Because of this condition, a typical respiratory illness such as the common cold, can have a significant impact on the health and outcome for [Student]. [Student’s] mother understands the importance of social integration and attending school, however as we all facing the challenges of what the pandemic means for the health of the children within our community I am asking for your support to help with the precautions that should be taken while supporting [Student] in school. Specifically, [Student] should be in a smaller group room with 3-5 other students who are also wearing masks and spaced safely 6 ft apart or in an individual room with siblings to access her education safely. [Student] may socialize outdoors with other children during recess and outdoor PE and outdoor class activities. At this time [Student] needs to attend shorten days (about 3 hours) with main focus on academic instructions.
 5. On August 24, 2022, the District and Parent met to consider a 504 plan for the Student and to discuss the June 2022 letter from the Student’s physician. In addition, the Parent informed the District about a “new seizure disorder diagnosis.” Based on the new diagnosis, the District proposed a “targeted” evaluation of the Student that included a review of existing data and updated medical/physical information, as stated by the August 31, 2022 prior written notice. The Parent chose for the Student not to attend school during the evaluation process.

2022–2023 School Year

6. At the start of the 2022–2023 school year, the Student was a second grader who attended a District elementary school and had a 504 plan in place.

7. On September 6, 2022, the school year began in the District.
8. On September 18, 2022, the Parent signed the consent to evaluate form. The form stated the evaluation would address the areas of "medical-physical" and "other," which was review of the existing data from the February 2022 evaluation. At the time, there was no indication the Parent requested any other area be evaluated, including a cognitive assessment.
9. Also, on September 18, 2022, the Parent signed a release of information for the children's hospital (hospital) to share information about the Student with the District. The "Authorization To Release/Obtain/Exchange Patient Health Information" form limited the information to "verbal information only" about the Student's seizure management plan and seizure diagnosis.

Comments on the release form stated: "Attached permission to verbally communicate with [physician] re Seizure Diagnosis/Seizure Plan + verbally communicate with [Student's] PCP (primary care physician) re letter date June 1, 2022."

10. According to the District, the Parent's consent limited the information the hospital could provide to the District. The Parent's consent "eliminated the sharing of any records from [hospital] to the District and wrote over the District's requested ability to have telephonic and email communications with [hospital]."
11. On September 22, 2022, the District's legal counsel emailed the Parent's legal counsel about the limitations on the Parent's release of information.
12. On October 17, 2022, the Parent signed an "Authorization To Release/Obtain/Exchange Patient Health Information" form for a hospital to "release to" and "exchange with (verbal information only)" the District. The Parent provided the form to the District on October 20, 2022.
13. In late November 2022, the District sent the hospital the release of information form. According to the District, the delay in sending the release to the hospital was due to staff availability issues.
14. The District sent the Parent a list of questions regarding the Student's medical condition and attending school in person. The Parent forwarded the following questions to the hospital:
 - "Is there any medical reason that would prevent [Student] from attending school in-person in the public school environment with appropriate precautions?"
 - "If it is not safe for her to attend in-person, please explain the limitations and recommendations for meeting her specific medical needs."
 - "Is there any medical reason that would prevent [Student] from attending school remotely?"
 - "Please share any recommendations you have for necessary accommodations or precautions the school should consider to help [Student] safely access educational opportunities either in person or remotely."
15. On December 15, 2022, the school nurse telephoned the nurse from the hospital staff about the above listed questions regarding the Student's medical condition. According to the school

nurse's notes, the hospital nurse stated there was no specific neurological reasons why the Student could not attend school and provided recommendations that included making up for missed work, testing in a quiet room, and laying down after a seizure, among others.

16. The same day, the school nurse emailed the hospital nurse, asking to confirm the notes about the Student. The hospital nurse responded that she would check with the Student's neurologist. On December 18, 2022, the hospital nurse confirmed that the neurologist agreed with the school's nurse's notes regarding the conversation.
17. In a later email, dated January 23, 2023, from the Parent to the school nurse and other staff, the Parent stated that the neurologist had seen the Student one time five months ago for 30 minutes, which appeared to imply that the District should not defer to the hospital nurse or neurologist. The Parent also stated that the District's questions focused on the Student's seizures but not the Student's cognitive functioning.
18. From December 19, 2022 through January 2, 2023, the District was out on winter break.
19. On January 6, 2023, the special education director emailed the Parent about scheduling a meeting about the information received from the hospital. The District provided the Parent with the copy of the December 15, 2022 email from the school nurse to the hospital nurse regarding the information about the Student.
20. On January 7, 2023, the Parent replied that she would not be able to attend a meeting until January 19 or 20, 2023. Addressing the information the District received from the hospital, the Parent stated the neurologist had not seen the Student for five months, but the Parent offered to provide the District with "current neurological/seizure information." The Parent also stated the Student had "emergency brain surgery" on January 4, 2023 that the evaluation should address.
21. On January 10, 2023, according to the January 2023 evaluation, the District received information from the hospital regarding the Student's recent surgery. The hospital reported that the Student could return to school once the Student was comfortable without pain medication and could participate in physical education given certain conditions.
22. According to a letter dated January 12, 2023, from a neurologist who examined the Student the previous day, the Student had "childhood absence epilepsy." The neurologist "presumed" the Student had more frequent seizures in the morning, which led to fatigue. In response to the fatigue, the letter stated, in part, "Due to this, schooling in the afternoons is preferred so there is a higher chance of wakefulness and ability to participate and learn..." Since her fatigue and seizures had been reported to worsen over the year, the neurologist recommended "cognitive testing to help with determining specific academic needs [Student] may have." It is unclear whether the neurologist had the opportunity to review the District's February 2022 evaluation before making the recommendation.

23. On January 19, 2023, the evaluation group met to review the Student's medical information. The report cited the Student's medical information from the February 2022 evaluation and the more recent medical information. The report referred to information provided by the Student's medical care providers.

- Pediatrician: The June 2022 letter from the Student's pediatrician stated the Student was vulnerable to typical illnesses such as colds. The pediatrician made recommendations that included being in small groups with all students masked six feet apart or in an individual room with her siblings. The letter recommended a three-hour school day.
- Children's Hospital: In an August 2022 report, the Student was diagnosed with childhood absence epilepsy. The recommended seizure plan included monitoring the Student for seizures and documenting their frequency. The plan also addressed the Student's fatigue and the protocol for prolonged seizure activity.
- Emergency Surgery: The Student had emergency surgery related to her shunt. The hospital provided a letter, dated January 10, 2023, regarding her status for returning to school and some precautions.
- Hospital Response to District Questions: The pulmonologist stated that due to lung disease, the Student was at risk from viral illness. The District should minimize the risk by avoiding children who are sick. The gastroenterologist stated there were no restrictions for the Student to attend school. The report regarding the Student's seizure disorder provided recommendations for addressing seizures but provided no required limitations or educational implications.

The evaluation's "Summary of Qualifications and Functioning (2/18/22)" stated:

[Student] is a very intelligent child who has some strong academic skills, considering the limited amount of exposure to instruction that she's had. Current results indicate typical functioning in terms of motor skills, speech/language, social-emotional and adaptive development. Currently, [Student's] only educational instruction is being provided for 3 hrs/week by a teacher who visits her home through the Home/Hospital instruction program. While this may have been appropriate prior to her access to the Covid-19 vaccine and during the process of being evaluated, it is not in her long-term best interest. For her to have equal access to educational opportunity, she requires a less restrictive environment and the traditional school setting is an appropriate choice. This would afford her vastly more opportunity for academic instruction as well as peer interaction and development of social/emotional and adaptive skills.

The evaluation summary stated:

The current evaluation is the third time [Student] has been considered for special education eligibility and the second time in the past year. Since that last evaluation, dated 2/18/22 [Student] continues to have a compromised immune system, depressed pulmonary function, and a ventriculoperitoneal shunt. She has been diagnosed with absence seizure disorder and recently had surgery to replace her VP shunt. According to her mother, [Student] experiences significant amounts of fatigue, irritability, and loss of appetite, particularly in the morning. There is speculation that these symptoms could be related to seizure activity, but no medical documentation of such.

[Student's] mother has expressed grave concerns about her being in the public school setting as well as a desire for her to have social and academic experiences. Medical

documentation from [Student's] doctors have indicated that she can be in the school setting and outlined specific recommendations to keep her safe (see Medical section).

Shortly before the eligibility determination meeting, a letter from one outside medical provider was shared that recommended administration of an updated cognitive test to determine if her score is different than when such a measure was given less than a year ago. In an email exchange on 12/15/2022 between [school nurse], School Nurse, and [Student's] neurology team at [hospital], the question was posed to [neurologist] of how [Student] is different from other students with seizures. The response was, 'Currently there is no indication of difference between her and other students with absence seizures from a neurology standpoint. She is cognitively doing well, although she has noted feeding difficulties and other medical conditions.' Thus, the evaluation team determined that updated cognitive assessment was not necessary and a more effective way to gauge the educational or cognitive impact of her condition would be to provide educational opportunity with ongoing measurement of progress and response to instruction.

At this time, the evaluation team has determined that [Student] does not meet eligibility for special education services based on a lack of documented adverse educational impact and lack of need for specially designed instruction. To provide her a more restrictive educational environment without those factors would be a violation of least restrictive environment. The team has suggested that a 504 accommodation plan be put into place that will make allowances for [Student] to have educational opportunity while accommodating the specific needs related to her disability. Further, it is suggested that a formal health plan be implemented to provide the necessary restrictions and interventions while she is in school.

24. According to the District, the team met and discussed the evaluation results, including the recent January 2023 letter from the neurologist. The District's response described the meeting, in part:

The team, including Parent, [participant], and District nurse, [school nurse], further discussed Student's reported medical needs, including the information only recently shared by Parent from [neurologist] and others. The team did not dispute the medical information on Student's conditions, but did not agree with Parent's perspective that Student required special education services as a result of her conditions. [School psychologist] also addressed [neurologist's] recommendation for new cognitive testing and explained that there was no indication that Student's cognitive testing from the February 2022 District evaluation was no longer valid. As it had in February 2022, the District staff recommended that Student's medical needs be addressed through accommodations under a Section 504 plan.

25. On January 23, 2023, the Parent emailed the District regarding her concerns about the evaluation. The Parent's concerns are summarized as follows:

- No parent input;
- Not considering the Student's entire medical needs;
- The evaluation did not consider all medical information provided by the Parent;
- No neuropsychological or cognitive assessment was done;
- The evaluation "seemed delayed, disorganized, and I was constantly being given conflicting information when I asked questions..."; and,

- Questioned how can the Student's needs be met in the classroom without specially designed instruction.

26. On January 26, 2023, the Parent filed this complaint with OSPI.

27. On January 27, 2023, the District emailed Parent the final copy of the evaluation and prior written notice.

CONCLUSIONS

Issue One: Evaluation – The complaint alleged the District failed to follow procedures in conducting a comprehensive evaluation of the Student, including not giving the Parent an opportunity to provide input. A district is required to conduct an evaluation that uses a variety of assessments and sources of information, including parents, to gather relevant information to determine a student's eligibility for special education services. No single measure or assessment must be the sole criteria for determining eligibility. A district is required to complete the eligibility determination within 35 school days after receiving parent consent for the evaluation.

Here, the Student has several medical conditions. She was evaluated for eligibility for special education services in February 2022. The Student was assessed in the areas of cognitive, medical-physical, social-emotional, academic, communication, adaptive behavior, gross motor, and fine motor. The documentation showed the District considered the input from the Parent and the Student's medical providers at the time. The District determined the Student had a disability but did not require specially designed instruction. The District continued to offer a 504 plan to provide accommodations to the Student's medical needs.

In August 2022, the Parent informed the District that the Student had recently been diagnosed with a seizure disorder. The District proposed evaluating the Student again for eligibility. The evaluation would consist of a review of the existing data, including the results from the previous and recent February 2022 evaluation, and getting updated medical/physical information regarding the Student. In September 2022, the Parent signed consent for the evaluation. There was no indication that the Parent disagreed with the evaluation or requested additional testing at the time. The District requested a release of information from the Parent to receive information from the Student's medical providers. On September 18, 2022, the Parent signed the release of information with limitations on how the District could receive the information. After communication between the Parent's and District's legal counsels, the Parent signed a new release on October 17, 2022. But the release was not sent to the hospital until late November 2022; the District explained that this delay was due to staff unavailability.

In December 2022, the school nurse phoned the hospital, asking specific questions regarding the Student's medical status, capacity to attend school in-person, and what supports the Student may need. The information was confirmed by one of the Student's neurologists. It should be noted that the Parent disputed some of the information provided by the Student's neurologist; however, at the time as that was the information the District had, the District reasonably relied on the information despite the Parent's disagreement. If the Parent disagreed with the information, the Parent had the opportunity to provide the District with other or additional medical information.

The information from the hospital, along with documentation from other medical providers, was included in the evaluation report. The evaluation also included data from the February 2022 evaluation, including the cognitive results and input from the Parent. The Parent alleged the District failed to give the Parent an opportunity to provide input in the evaluation. However, the Parent attended the evaluation meeting and provided input into the evaluation. The Parent appears to equate agreement with the outcome to the opportunity to give input. The District was not necessarily required to agree with the Parent for the Parent to have input.

The Parent also stated the District failed to conduct a neuropsychology or cognitive evaluation. The District proposed a targeted evaluation rather than a comprehensive evaluation because of the results from the relatively recent evaluation conducted in February 2022 were still valid and the February 2022 evaluation was comprehensive. The Parent agreed and signed the consent. It appears that after the neurologist's January 12, 2023 letter, recommending a cognitive evaluation for the Student, the Parent had second thoughts about the evaluation and claimed the District should have conducted cognitive testing. The District completed the evaluation that the Parent consented to. The District was not required to conduct a new cognitive assessment.

Based on the documentation that the District considered all information from multiple assessments and multiple sources, including the Parent's and medical providers' input, no violation is found.

OSPI does note one concern regarding the timing of the evaluation; the District was required to determine eligibility within 35 school days of receiving Parent consent. The Parent signed consent on September 18, 2022, and the Student's eligibility was determined on January 19, 2023, which exceeded the required timeline. While staff availability was not reason to delay the evaluation and eligibility determination, there were extenuating circumstances that included the delay over the release of information and setting the meeting when participants would be available. Ultimately, the District did complete the evaluation and made an eligibility determination and because the Student was not found eligible for special education, there was no negative impact on the Student's access to education.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI reminds the District that the eligibility determination must be completed within 35 school days from the date when the District receives the parent's consent for evaluation. The timeline is to ensure that decisions are made in a timely manner, especially when a student is eligible and needs special education services.

Dated this 24th day of March, 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.)