

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-135

PROCEDURAL HISTORY

On October 3, 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 Washougal 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 October 3, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on October 4, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 13, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On October 24, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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 October 4, 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.

ISSUES

1. Did the District evaluate the Student for a specific learning disability in written expression according to WAC 392-172A-03020?
2. Did the District address the Student's need for services in the area of writing in the June 2023 individualized education program (IEP) according to WAC 392-172A-03110?
3. Did the District implement the Student's IEP, providing progress reports to the Parent according to WAC 392-172A-03090 during the 2022-23 school year?

LEGAL STANDARDS

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. 34 CFR §300.303(a); WAC 392-172A-03015(1). The student must be assessed in all areas related to the suspected disability. WAC 392-172A-03020.

Specific Learning Disability: Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage. WAC 392-172A-01035(k).

IEP Development: When developing each child's individualized education program (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.

Progress Reporting: 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).

FINDINGS OF FACT

2022–23 School Year

1. At the start of the 2022–23 school year, the Student attended a District preschool and was eligible for special education services under the category of autism.
2. On September 28, 2022, the Student's IEP team developed a new annual IEP for the Student. The IEP stated that the Student's strengths and Parent concerns were that the Student was a kind and inquisitive child and she was interested in art and fine motor-based activities. The IEP included annual goals in the areas of social/emotional and speech/language. The IEP also provided for an occupational therapy consultation. The Student's September 2022 IEP provided the Student with the following specially designed instruction:

Services 09/28/2022 – 07/01/2023

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)
Social/Emotional	Special Education Teacher	Special Education Teacher	60 Minutes / 4 Times Weekly	Special Education
Speech/Language Therapy	Speech Language Pathologist	Speech Language Pathologist	60 Minutes / 1 Time Monthly	Special Education

Services 07/02/2023 – 09/26/2023

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)
Social/Emotional	Special Education Teacher	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education
Speech/Language Therapy	Speech Language Pathologist	Speech Language Pathologist	60 Minutes / 1 Time Monthly	Special Education

Supplementary Aids and Services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)
Consultation by Speech Therapist	Speech Language Pathologist	Speech Language Pathologist	15 Minutes / 3 Times Annually	Special Education
Consultation by Occupational Therapist	Occupational Therapist	Occupational Therapist	15 Minutes / 1 Time Monthly	Special Education
Consultation by Speech Therapist	Speech Language Pathologist	Speech Language Pathologist	15 Minutes / 3 Times Annually	Special Education
Consultation by Occupational Therapist	Occupational Therapist	Occupational Therapist	15 Minutes / 1 Time Monthly	Special Education

3. According to the District, the Student’s team considered “cognitive skills” as area of service but did not include them in the IEP because the Student was demonstrating age-appropriate cognitive skills at the time of the meeting.
4. At the September 2022 IEP meeting, the Parent’s complaint stated that she brought up that she was concerned about the “possibility of dysgraphia.” The accompanying prior written notice addressed the denial for services in the area of cognition. The notice did not address any concern regarding dysgraphia specifically.
5. On October 4, 2022, the one-year timeline began for the investigation of this complaint.
6. On December 9, 2022, the District reported the Student’s progress toward her annual goals. The report stated, “sufficient progress being made to achieve annual goal within duration of IEP.” The District stated that the progress report was placed in the Student’s backpack.
7. On March 30, 2023, the District reported the Student’s progress. The Student was making sufficient progress toward her annual goals. The District sent the progress report in the Student’s backpack.
8. Sometime before April 9, 2023, according to the Parent, the Parent requested the Student’s special education progress reports “after not receiving any so far...” The Parent stated the District sent the Parent a “minimal” progress report on April 9, 2023, “with nothing about my

areas of concern just short statements that [Student] was supposedly making progress on her goals.”

9. On April 12, 2023, the District proposed reevaluating the Student prior to the Student transitioning from preschool to kindergarten. The “Reevaluation Notification/Consent” form stated the Student would be assessed in communication, fine motor, sensory, and social/emotional. The undated consent form stated that the evaluation considered evaluating the possible need for cognitive services, but the area was rejected because the Student was “demonstrating age appropriated cognitive skills at this time.”
10. On April 17, 2023, the Parent emailed the Student’s case manager in response to the District’s requested consent for the reevaluation. The Parent expressed concern about possible dysgraphia, among other concerns, and stated:

Her challenges seem beyond fine motor skills, as she struggles to form letters or even draw straight lines, but enjoys coloring and writing with chalk. Even though [Student] can read a LOT of words, she cannot spell simple ones, or even her name, which can be a sign of dysgraphia...

The case manager replied, in part:

I am in agreement with you on this, she is demonstrating some characteristics of dysgraphia. Unfortunately, dysgraphia is a medical diagnosis and can’t be diagnosed by a school district. We can, however, look at ways we can support her school. I have included the Occupational Therapist and she would like to add a fine motor evaluation, it is now on the consent form...From what I’ve read and with I’ve talked to, I am aware that dysgraphia can be a challenge to diagnose in younger children, but I’d like us figure it out and include a goal for writing in her new IEP...

11. On April 19, 2023, the Parent signed the consent form and did not suggest other areas that should be assessed.
12. In the complaint, the Parent argued the District should have known to conduct a cognitive evaluation. The Parent stated in the complaint:

It is incumbent upon the District, NOT THE PARENT, to use their educational and assessment expertise, as well as observations and data, as part of their due diligence to determine an effective thorough Assessment Plan for the student...The District’s claim that they did not assess Cognitive levels in the Triennial is absurd, as cognitive levels should be used as Baseline for a disparity model. In other words, if [Student] is at age/grade level Cognitively and in her Academics, yet cannot write or spell, a learning disability should be assessed for.
13. On June 2, 2023, the District reported the Student’s progress. The report stated the Student had mastered her annual goals. The Parent did not indicate that she did not receive the progress report, which was sent home in the Student’s backpack.
14. On June 5, 2023, the evaluation team that included the Parent reviewed the reevaluation results. The results indicated the Student continued to be eligible for special education services under the category of autism. The evaluation report recommended specially designed

instruction in social/emotional/behavior and fine motor skills. The evaluation also recommended speech/language therapy, along with occupational therapy consultation to provide “strategies and accommodations as needed for classroom and school wide support for her sensory processing differences,” and a speech/language consultation.

15. The accompanying prior written notice stated the Parent requested a “pragmatic assessment” and the Parents were concerned that the Student may have dysgraphia. The District agreed to conduct a fine motor assessment to address the Parent concern about the Student’s writing. The evaluation meeting was continued to June 21, 2023.

16. On June 21, 2023, the evaluation team met again to discuss the results of the fine motor assessment. The District assessed the Student using the “Berry-Buktenica Developmental Test of Visual-Motor Integration” (VMI). The areas assessed were visual-motor integration, visual perception, and motor coordination and the results ranged from average to very low. For fine motor, the report stated:

During the evaluation, and in class, [Student] uses a right-handed downward pronated grasp with writing tool. She has the opportunity daily to participate in a table project that involves a multi step art activity involving, tracing her first name, cutting with scissors, and using glue, and sometimes paints. She has difficulty grading the pressure required when writing or drawing, and will often use a very light pressure. During the evaluation, [Student] demonstrated appropriate tracing skills of curved lines (on a circle), however had more difficulty with vertical, horizon, diagonal lines and was unable to change directions (corners of shapes). She would simply curve all the corners.

17. On the same day, the District reviewed the Student’s IEP. The IEP team developed annual goals in the areas of social/emotional/behavior, speech/language, and fine motor (copying shapes and pre-writing skills). The IEP provided the following special education services:

Services 06/22/2023 – 07/01/2023

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)
Fine Motor	Occupational Therapist	Occupational Therapist	30 Minutes / 1 Time Weekly	Special Education
Social Emotional Behavioral	Special Education Teacher	Special Education Teacher	30 Minutes / 4 Times Weekly	Special Education
Speech/Language Therapy	Speech Language Pathologist	Speech Language Pathologist	30 Minutes / 3 Times Monthly	Special Education

Services 07/02/2023 – 06/20/2024

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)
Social Emotional Behavioral	Special Education Teacher	Special Education Teacher	60 Minutes / 5 Times Weekly	Special Education

Fine Motor	Occupational Therapist	Occupational Therapist	30 Minutes / 1 Time Weekly	Special Education
Speech/Language Therapy	Speech Language Pathologist	Speech Language Pathologist	30 Minutes / 3 Time Monthly	Special Education

Supplementary Aids and Services:

Service(s)	Service Provider for Delivering Service	Monitor	Frequency	Location (Setting)
Consultation by Occupational Therapist	Occupational Therapist	Occupational Therapist	30 Minutes / 1 Time Monthly	Special Education
Consultation by Speech Therapist	Speech Language Pathologist	Speech Language Pathologist	10 Minutes / 1 Time Monthly	Special Education
Consultation by Occupational Therapist	Occupational Therapist	Occupational Therapist	30 Minutes / 1 Time Monthly	Special Education
Consultation by Speech Therapist	Speech Language Pathologist	Speech Language Pathologist	10 Minutes / 1 Time Monthly	Special Education

18. The District’s response to the complaint described the discussion during the June 2023 IEP meeting:

At the IEP meeting on 6/21/23, the team reviewed the fine motor evaluation and recommended specially designed instruction in the area of fine motor. The team stated that [Student’s] writing was developmentally appropriate at that time. The IEP team agreed on a pre-writing goal that would support the development of fine motor coordination, which was identified as being below average on the evaluation. The team also discussed and agreed on accommodations, pencil grip and slant board, that would support [Student’s] fine motor skills when writing. There were no additional district or parent concerns expressed regarding additional testing, services, or supports needed to address writing concerns. The team shared what writing expectations would look like in Kindergarten and stated that [Student’s] writing skills were currently developmentally appropriate. The parent requested a writing sample, which was provided on 7/6/23.

19. On July 4, 2023, the Parent provided a “dissenting opinion” regarding the evaluation results and the progress reports. The Parent stated the Student was not comprehensively evaluated.
20. On July 6, 2023, the District special education director replied by acknowledging the Parent’s concerns. The director provided an updated copy of the IEP, a writing sample, progress reports, and meeting notes from the June IEP meeting.
21. On August 29, 2023, the Parent emailed District that she was withdrawing the Student from the District.
22. On October 3, 2023, the Parent filed this complaint with the OSPI.

CONCLUSIONS

Issue One: Evaluation for Specific Learning Disability – The complaint alleged the District failed to evaluate the Student for a specific learning disability in the area of written expression. A district is required to evaluate a student when there is sufficient reason to suspect a disability and that the student may need specially designed instruction. A district must ensure that a student is evaluated or reevaluated in all areas of suspected disability.

Here, the Student was evaluated in 2020 and was found eligible for special education under the category of autism. During the 2022–23 school year, the Parent began expressing concern about the Student's writing due to possible dysgraphia.¹ The Parent continued to request the District evaluate the Student for dysgraphia. The District correctly responded that the District was not necessarily required to evaluate for dysgraphia specifically but would administer a fine motor evaluation to address concerns about the Student's writing.² The Student was reevaluated, and the June 2023 results showed that the Student continued to be eligible for special education services and recommended specially designed instruction in the areas of social/emotional/behavior, speech language, and fine motor to address the Student's writing skills. While the case manager originally expressed concern to the Parent about the Student's writing, the 2023 evaluation stated the Student's writing skills were "developmentally appropriate." The evaluation also recommended a speech/language therapy and occupational therapy consultation.

The complaint also stated the District failed to evaluate the Student in the cognitive area. At the time of the proposed evaluation, the District did not propose a cognitive assessment because the Student demonstrated age-appropriate cognitive skills. The Parent had an opportunity for input into the reevaluation but did not request any additional assessments, including a cognitive assessment. The Parent later argued that it was the District's responsibility to propose an appropriate evaluation, not the Parent. There was no documentation that showed that the Student

¹ The National Institute of Neurological Disorders and Stroke defines dysgraphia as follows: "Dysgraphia is a neurological disorder characterized by writing disabilities. Specifically, the disorder causes a person's writing to be distorted or incorrect. In children, the disorder generally emerges when they are first introduced to writing."

² OSPI notes the Student's case manager stated, "dysgraphia is a medical diagnosis and can't be diagnosed by a school district." Alone, this is not necessarily a violation of special education regulations; however, OSPI notes that it is an incomplete and thus unclear explanation to the Parent. The District should be clear in its explanations to parents that although the District is not necessarily required to evaluate for dysgraphia specifically, the District may need to evaluate for a specific learning disability for which dysgraphia may fall under. Additionally, District staff should be able to explain the difference between a medical diagnosis and an educational determination of special education eligibility. And in some situations, a medical assessment statement may be required to determine whether there are other factors that may be affecting the student's educational performance. (WAC 392-172A-03020 (3)(d)). Here, ultimately, despite the case manager's statements, the District did evaluate the Student's writing needs and developed an IEP that addressed pre-writing and motor skills. Regardless, OSPI recommends the District consider whether staff need additional training in this area. (See also *Letter to Colleague*, OSERS, 2015.)

should have received a cognitive assessment, other than the Parent's interest in identifying the Student as a student with a specific learning disability. Based on the District conducting an appropriate evaluation that was consistent with the Student's needs and abilities, no violation is found.

Issue Two: Appropriate IEP – The complaint alleged the District failed to develop an appropriate IEP for the Student. A district is required to develop an IEP that meets the needs of a student and provides access to the general education curriculum.

Here, the Student's June 2023 IEP provided specially designed instruction in the areas of social/emotional/behavior and fine motor. In addition, the IEP also provided for speech/language therapy, a speech therapy consultation, and an occupational therapy consultation. The special education services were consistent with the recommendations from the 2023 reevaluation and the Student's needs as assessed and outlined in the reevaluation. The evaluation identified a need for fine motor skills and the IEP addressed it by providing specially designed instruction in this area. The IEP was developed based on student-specific data and was consistent with the Student's needs. No violation is found.

Issue Three: Progress Reports – The complaint alleged the District did not provide the Parent with reports of the Student's progress toward the annual goals. IEPs must include a statement indicating how a student's progress will be measured and how often progress is reported to the parent.

According to the District, progress reports were sent to the Parent in December 2022, March 2023, and June 2023. The progress reports were sent home to the Parent in the Student's backpack. The Parent reported that she did not receive the progress reports until April 2023, when the reports were sent by the District. The District was required to ensure that the progress reports were sent to the Parent. In this case, the Parent stated she did not receive the December 2022 and March 2023 progress reports and the District was unable to verify that the progress reports were sent. Although sending progress reports via a student's backpack may sometimes be acceptable, it may result in a violation if there is no way to substantiate that the progress reports were sent. A violation is found.

CORRECTIVE ACTION

By or before **December 15, 2023** and **January 12, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **December 22, 2023**, the District will ensure that the following individuals receive written guidance regarding providing progress reports to parents: special education administrators, the

principal, the assistant principal, and special education certificated staff (teachers), at the school that the Student was enrolled in during the 2023–24 school year.

By **December 15, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will provide feedback on the guidance.

By **January 12, 2024**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 30th day of November, 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.)