

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-163

PROCEDURAL HISTORY

On November 12 and 14, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the complainant (Complainant) regarding students (Students) attending the Marysville School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Students' education.

On November 12 and 14, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 16, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On November 30, 2023, OSPI received the District's response to the complaint and forwarded a redacted version of the response to the Complainant on December 4, 2023. OSPI invited the Complainant to reply.

On December 6, 2023, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

On December 20, 2023, OSPI extended the 60-day timeline to February 2, 2024, due to exceptional circumstances with respect to this complaint, including the number of Students and different schools involved in the systemic complaint and because of unavailability of staff during the holiday break.

On December 20, 2023, OSPI received an individual student complaint from a different complainant (Parent). OSPI acknowledged the receipt of the new complaint and informed the Parent that because the Parent raised the same issue as the SECC 23-163 complaint, the Parent's complaint would be investigated as part of the systemic investigation regarding SECC 23-163.

On January 19, 2024, OSPI complaint investigators conducted a site visit and interviewed District staff and parents.

OSPI considered all information provided by the Complainant, the Parent, and the District as part of its investigation. It also considered the information received and observations made by the OSPI complaint investigators during the site visit/interviews.

ISSUES

1. Did the District provide each teacher and service provider with access to the Students' individualized education program (IEP) and inform them of their specific responsibilities to implement the IEP according to WAC 392-172A-03105?
2. Did the District implement special education services in conformity with the Students' IEP according to WAC 392-172A-03105?

3. Did the District comply with evaluation timelines according to WAC 392-172A-03005 and 392-172A-03015?

LEGAL STANDARDS

Provider Responsibility for Implementation: Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323(d)(1); WAC 392-172A-03105(3)(a).

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

Initial Evaluation Timelines: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within: thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or thirty-five school days after the date the consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing; or such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline. WAC 392-172A-3005.

Reevaluation Procedures: The district must 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.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020(3).

Medical Evaluation: 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. 34 CFR §300.304; WAC 392-172A-03020(3).

FINDINGS OF FACT: COMPLAINT & INVESTIGATION

1. On November 12 and 14, 2023, OSPI complaint investigators received and reviewed a systemic complaint regarding the District. The complaint made allegations of potential violations occurring during the 2023–24 school year. The complaint identified that special education services areas were impacted and provided information from staff and parents regarding different schools in the District. The complaint included the following allegations based on staff emails:
 - Teachers were not provided access to Students' IEPs.
 - Students did not receive their 1:1 paraeducator services, speech and language pathology (SLP) services, occupational therapy (OT) services, and physical therapy (PT) services.
 - Evaluations timelines were not followed.
 - Students identified under the autism and other health impairment categories were not properly evaluated because staff did not receive training or support in using the autism assessment.
 - Students' schedules were changed affecting the Students' placement in the least restrictive environment.

The Complainant later identified certain District schools where the alleged violations occurred.

2. OSPI initially requested a list of all the Students in the District that had evaluations completed since the beginning of the 2023–24 school year (22 Students), Students that were receiving 1:1 paraeducator services in the District (50 Students), and Students receiving speech/language services (335 Students) from a sample of six schools.

3. Based on the complaint allegations, OSPI interviewed a total of 23 staff from District elementary, middle, and high schools. Staff interviewed were requested by OSPI, as well as staff recommended by the Complainant and District, including special education teachers, school psychologists, speech/language pathologists, educational specialist, special education director, legal counsel, and two parents from the District. OSPI interviewed staff from schools that were identified in the complaint, along with other schools in the District.¹
4. In cooperation with OSPI and prior to this complaint investigation, the District has developed a plan that addressed overall school improvement, including special education. The plan addressed: standard operating procedures; professional development; scheduling; qualified staff; high-quality special education instruction; inclusive practices; grading practices, and least restrictive environments data dives. The plan sets targets and timelines for implementation.
5. As part of the response to the complaint, the District provided a schedule for staff professional development that included the following topics: intervention, discipline, and eligibility; designee/district representative; IEPs; functional behavioral assessment and behavior intervention plans; and special education classroom management.
6. The District also developed a compensatory education tracking sheet that identified the Students who received compensatory education. The District is in the process of identifying other Students who require compensatory education.

FINDINGS OF FACT: ISSUE ONE

7. The complaint alleged elementary school 1 failed to inform staff of their responsibilities under the IEPs and provide access the Students' IEP. The complaint provided an email as evidence that teachers were not informed of Students' IEPs at elementary school 1. On November 3, 2023, a staff member (the name was redacted) sent an email to the principal and speech/language pathologist, requesting the Student's "full physical IEP so I can do my very best for them."²

Elementary School 1, 3, and 6

8. OSPI interviewed the special education teacher at elementary school 1. The special education teacher stated that general education teachers were provided a copy of "IEP at a Glance" at the beginning of the school year and were provided a service schedule.
9. The District provided documentation in response to the complaint that elementary school 1's principal acknowledged that the general education teachers were provided with the "IEP at a Glance" and were provided access to the Students' IEPs.

¹ See Appendix A for the names of the schools.

² OSPI notes that the select emails with the redacted names and sometimes redacted dates limited OSPI's understanding of the emails because they lacked the context of complete email threads and it was difficult to tell if follow-up occurred, given the selection of emails included in the complaint filing.

10. OSPI interviewed the special education teacher at elementary school 3. The teacher reported that during the first few days of the 2023–24 school year, each Student's "IEP at a Glance" was placed in the teachers' mailbox, and she routinely checked in with teachers during school year.
11. OSPI interviewed the primary teacher in the self-contained behavior program at elementary school 6, in part, regarding access to IEPs. The teacher stated she had online access to Students' IEPs. The teacher stated that although general education teachers were not provided the full IEPs, they were provided "IEP at a Glance." The teacher also meets with teachers to discuss academics, goals, and strengths.
12. Similarly, staff from other schools also stated they were provided "IEP at a Glance" at the beginning of the school year in their respective schools.

Middle School 2

13. OSPI interviewed Parent 1 who had [REDACTED] of them had IEPs. According to Parent 1, the Student in middle school 2 did not receive their accommodations. The Parent stated that the Student had many substitute teachers who did not have access to his IEP. In addition, the general education teachers who did not provide the accommodations to the Student allegedly admitted they had not read the Student's IEP.
14. OSPI interviewed the special education teacher who worked in the resource room at middle school 2. The teacher stated that general education teachers at the school were given copies of the IEP and behavioral intervention plans. Updates to IEP were highlighted and provided to teachers. There was one occasion when a teacher was not notified of a schedule change resulting in a delay in services.

High School 1

15. OSPI interviewed the special education teacher at high school 1 about teachers being informed about IEPs and having access to them. The teacher began the school year working with virtual and homebound Students before being assigned to support staff at the high school with special education processes, IEP development, and IEP meetings. The teacher stated special education teachers had online access to IEPs and general education teachers received "IEP at a Glance." The teacher reported that general education teachers also attended IEP meetings, so they were familiar with the IEPs for their students.

CONCLUSION: ISSUE ONE

IEP Notification – The Complainant alleged that the District failed to provide teachers at elementary school 1 access to Students' IEPs and failed to inform service providers of their responsibilities under the IEPs. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation.

Here, the Complainant provided a November email that showed that a teacher requested the full IEP, which indicated the teacher previously received the "IEP in a Glance." The teacher requesting the full IEP does not necessarily show the teacher did not have access to the IEP. Staff from multiple schools generally reported that staff had access to the IEPs or received an "IEP at a Glance" at the beginning of the school year and had access to the IEP as needed. The one example of staff not having access to IEPs was primarily related to substitute teachers based on what was one Parent's experience at middle school 2. Although District staff reported instances in a few emails and in interviews where teachers were not informed of the IEPs and did not have access to the IEPs, these few instances do not amount to a systemic violation. Again, essentially all staff interviewed described that they had access to IEPs and how IEP information was provided to other teachers and staff. No violation is found. OSPI recommends that procedures are put in place to assure that all necessary staff have access to IEPs and are informed of their responsibilities under the IEPs.³

FINDINGS OF FACT: ISSUE TWO

16. The Complainant alleged that some schools failed to implement special education services to Students, in part because some Students were not assigned case managers. The services not provided included related services and 1:1 paraeducator services. The Complainant also alleged that the District did not respond to questions from parents about Students not receiving services. The complaint included staff emails as documentation.

Elementary School 1

17. The complaint included an email to the school principal and SLP. The name of the sender was redacted. The email stated that the mother of a Student who was apparently receiving communication services had been "calling the office numerous times about getting his services going."

18. OSPI interviewed the SLP who provided services at elementary school 1. According to the SLP, no speech services were provided until "late October" 2023. At that time, the Students on the SLP's case load (46 Students) were provided SLP services. The SLP stated the District was also in the process of hiring a virtual SLP at that time. When asked what impact the delay had on Students, the SLP stated that impact ranged from minimal to significant, depending on the Student's needs. Students in developmental learning program were much more impacted because of their needs and would have progressed further if services were provided.

Elementary School 2

19. The complaint included emails from September 11 and October 17, 2023, from unknown parents (names redacted) to unknown District staff (names redacted). The first email requested to discuss their child's daily routine. The response from staff suggested the Parent request an

³ OSPI notes that creating standard operating procedures is part of the District's improvement plan that it is working on with OSPI.

IEP meeting. The second email was sent to the special education director, stating that the Parent previously inquired about students receiving services at elementary school 2, among other questions, but had not received a response. The complaint did not include any response that may or may not have occurred.

20. OSPI interviewed the special education teacher at elementary school 2. According to the special education teacher, Students were currently receiving their special education services. However, at the beginning of the school year, one Student did not receive their services for one to two months because of scheduling problems.

The teacher stated that elementary school 2 initially attempted to provide services in the general education classroom, but "there were too few teachers for inclusion." The setting where special education services were provided changed from the general education classroom to the special education classroom. It was unclear whether the changes aligned with the Students' IEPs or whether IEPs were amended to reflect such changes, if needed.

Regarding 1:1 paraeducator services, the teacher stated that Students with a 1:1 paraeducators received support from paraeducators, but school staff believed more Students needed 1:1 paraeducator support. The teacher stated that while he did not receive any questions about services from Parents, the one Parent of the Student who was not receiving services at the beginning of the school year was not informed about the delay in implementation of services.

21. OSPI also interviewed the OT who provided services at elementary school 2 and middle school 1. The OT reported Students received their OT services as scheduled. The OT also stated that there was unfortunately a lack of communication between the District OT, Parents, and private service providers. The OT recommended that the teachers receive more guidance and mentoring when working with Students with IEPs.

Elementary School 3

22. OSPI interviewed the special education teacher at elementary school 3. The teacher reported that no OT services were provided. There was no OT until a virtual OT was hired in November 2023. However, there was no paraeducator to take Students to the room where they received their virtual OT and set up the computer. As a result, the virtual OT did not directly work with Students. The OT stated that Parents were not informed that Students were not receiving OT services. The teacher recommended providing reminders and checklists to teachers to ensure procedures are followed. The teacher also recommended the District develop policies and procedures, so staff are provided guidance.

23. OSPI interviewed an OT who provided services at elementary school 3 and seven other schools. The OT stated that he had a general concern that Students at some schools did not receive their OT services because they were not fully staffed. The District hired a virtual OT in November 2023; however, Students receiving services from a virtual OT had to be supported by an in-person paraeducator. The OT reported that because there were shortages in paraeducators, the virtual OT provided limited services and only worked with a few Students

that already had 1:1 paraeducators to support them. Regarding 1:1 paraeducator services for Students, the OT knew four Students that did not have their services all year.

24. OSPI interviewed the vice principal worked part time at elementary school 3 about implementation of 1:1 paraeducators and related services. The vice principal stated that OT and SLP services were provided to Students at elementary school 3. According to the vice principal, hiring paraeducators was a “challenge,” but the school brought in temporary paraeducators from other buildings and shifted staff around to cover the Students’ needs. The District has called Parents about Students missing 1:1 paraeducator services and some Parents chose to keep the Student at home; however, the vice principal stated the District has been tracking the missed services to address the possible need for compensatory education. Regarding OT services, the vice principal noted the District attempted to hire remote OTs, which seemed to help.

Elementary School 4

25. The complaint included an undated email from a kindergarten/first grade developmental learning class at elementary school 4 to the special education director. The teacher stated her classroom had one paraeducator and one Student in the classroom had a 1:1 paraeducator. The teacher reported behavior incidents that created an “unsafe” classroom. The teacher described her attempts to address the behavior incidents and shared that as a result of managing the behavior incidents, she and the paraeducator missed lunch. The teacher requested an additional classroom paraeducator.

On September 27, 2023, the special education director replied that the District was having “conversations every day about how to support our staff and students with experiencing these shortages.” The director stated the District was planning to open another developmental learning classroom at the school to reduce class sizes and was working to “ensure hiring for special education is taken care of.”

26. OSPI interviewed two other developmental learning classroom teachers at elementary school 4 regarding the implementation of speech services and 1:1 paraeducators. One of the teachers stated SLP services stopped on October 26, 2023, and had only recently been started. There was one paraeducator and three open positions for paraeducators, which both teachers stated presented a safety concern because Students sometimes attempted to elope. One teacher reported four vacant 1:1 paraeducator positions, which required the existing paraeducators to “shift around” to address Students’ needs. However, the teacher stated the inconsistency in who provided the paraeducator support negatively impacted the Students, stating that with some Students, they “missed” their 1:1 paraeducators which caused them to “start at square one.” Regarding SLP services, the teachers stated Students have not received services since September 2023. One teacher shared that the SLP initially refused to provide services and a virtual SLP was hired. Students still did not receive SLP services on a consistent basis. When asked if Parents had been informed that Students were not receiving services, the teacher stated that Parents had not been informed and there was no discussion about the possibility of compensatory education for the missed services.

Elementary School 5

27. The principal of elementary school 5 was interviewed by OSPI. The school has three developmental learning classrooms where the Students have significant needs. The principal stated there were open positions for 1:1 paraeducators. The District had tried filling the positions, but the principal stated hiring is difficult. The principal shared several different challenges in hiring: sometimes there are no applicants and when there were interviews, scheduling could be difficult because District hiring practices include a union representative for interviews, and at times availability was limited. In addition, the principal stated staffing changed frequently because of seniority rights and paraeducator were "bumped" from one school to another.

As a result of the lack of 1:1 paraeducators to support Students, the school had to shift around staff as the need arose. In some cases, the 1:1 paraeducator was shared with other Students or the principal stepped in to assist. When asked the impact of the lack of 1:1 paraeducators on the Students' progress, the principal stated that some Students were significantly impacted while others were minimally impacted.

28. OSPI interviewed the vice principal at elementary school 5, who also worked at elementary school 3, about the implementation of services. The vice principal stated there were challenges to hiring and retaining paraeducators, but meanwhile, the school pulled in paraeducators from other schools and shifted staff to meet Students' needs.

Elementary School 6

29. OSPI interviewed the primary teacher in the self-contained behavior program at elementary school 6, in part, regarding the implementation of special education services. The teacher expressed concern that IEPs were not fully implemented. Five Students in her classroom receive SLP services, but one Student began services in December 2023, and two other Students have had only a couple of sessions. When asked if Parents knew services were not provided, the teacher stated she had some conversation with Parents who were told there was a plan in place for a new SLP. Regarding 1:1 paraeducators, the teacher stated not having enough paraeducators had an impact, especially when there are behavior incidents. Other paraeducators must be pulled from their Students to address the situations. The teacher expressed concerns about the lack of "procedure, protocol, and best practice" and stated there was no guidance or guidelines.

Middle School 1

30. OSPI interviewed the principal at middle school 1. The principal reported no issues with Students receiving their OT and SLP services. However, middle school 1 was short-staffed in terms of certified staff and paraeducators. Middle school 1 attempted to mitigate the impact on Students by hiring substitutes who were coached by senior staff, hiring a special teacher (although it "did not work out"), reassigning paraeducators and behavior technicians when Students were absent, and attempting to hire more paraeducators. The principal noted that

there were no gaps in services to Students due to shifting staff and using substitute teachers. Also, although Students did not have a case manager for a period of time, the Students still received their services. Similar to other staff interviewed, the principal also described the challenges to hiring staff due to District hiring practices. The principal also stated that the District had special education procedures in place and emphasized there was a need for staff to continue reading and utilizing these procedures. The principal also stated there was a plan to provide compensatory services for missed services.

31. OSPI interviewed the OT who worked part time in middle school 1. The OT reported that Students received their OT services.

Middle School 2

32. OSPI interviewed the special education teacher who worked in the resource room at middle school 2. The teacher reported that Students were receiving all their services, including OT, PT, and SLP.
33. OSPI interviewed Parent 1 who had a Student who attended middle school 2. The Parent stated the Student did not initially receive their accommodations, but implementation had "improved." The Parent stated that the Student was approved for a 1:1 paraeducator in October 2023, but a 1:1 was not hired until mid-to-late December 2023. Once the 1:1 paraeducator was hired, Parent 1 stated she received less calls from the school during the day.
34. OSPI also interviewed Parent 2 whose Student attended middle school 2, regarding, in part, to 1:1 paraeducator services. Parent 2 expressed concern that the Student had learned that they "only had to work with the 1:1 and gets away with not working [if a substitute 1:1 is present]." The Parent stated that if the Student's 1:1 was absent, the substitute paraeducator did not know the Student. This year, the Student has received SLP and OT services.
35. OSPI interviewed the special education resource teacher at middle school 2, in part, about the implementation of services. The teacher indicated that SLP and OT were implemented consistently. The teacher was concerned about the shortage of 1:1 paraeducators and classroom paraeducators. Class paraeducators were important because they provide instruction in small groups and the teacher stated it was difficult to implement the curriculum without the additional classroom paraeducator.

Middle School 3 & 4

36. OSPI interviewed the SLP who worked in middle school 3 and 4. The SLP reported that Students had been receiving SLP services since the beginning of the 2023–24 school year.

High School 1

37. OSPI also interviewed the special education teacher at high school 1 about service implementation. The teacher reported that she did not work directly with Students but worked

with their teachers. General education teachers modified Students' work and provided accommodations. The teacher was not aware of any Parent concerns.

Central Office Staff

38. OSPI interviewed the education specialist who worked in all elementary schools. The specialist stated that for Students at elementary school 2, there were no schedules for services and Students were still not receiving services. Parents were not informed about the missing services. There was one instance when the SLP never wrote an IEP for a Student who was receiving SLP services. The education special commented that when Students received 1:1 paraeducators, they became "out sight, out of mind." The paraeducators were expected to do everything, but they were not trained.
39. OSPI interviewed the District special education director and the District legal counsel pertaining to the implementation of services, including 1:1 paraeducators. The director acknowledged some Students did not receive all their special education services, due in large part to staffing shortages, although there has been improvement as the school year goes on. The District developed a plan to address gaps in services that included hiring more staff and providing training. The plan also included providing compensatory education to Students who missed services and had their education impacted. The director also described the barriers to hiring due to District hiring practices. For example, scheduling interviews was challenging and resulted in delays in holding interviews and hiring. The District also attempted to address the staff shortages by hiring private agency personnel.

CONCLUSION: ISSUE TWO

Implementation of Services – The Complainant alleged the District failed to provide special education services, particularly 1:1 paraeducator services and related services, to Students at the following schools: elementary schools 1, 2, 3, 4 and middle school 1. In addition, the Complainant alleged the District did not inform Parents that Students were not receiving services. A district is required to implement the special education services in conformity with the IEP. In addition, the district should inform parents that students are not receiving services and proactively address the need for compensatory education.

Here, different staff from different schools reported that at some schools, Students received their special education services while at other schools, Student did not receive services. Staff, including the special education director, acknowledged there was a staffing shortage in specific schools, particularly 1:1 paraeducators⁴, OTs, and SLPs that caused IEPs to not be fully implemented and Students to miss services. And, in general, Parents were not consistently informed about the missing services. In addition, because of a lack of staff, some Students' schedules and classes at

⁴ OSPI notes that when discussing paraeducators, it was difficult to determine whether staff were talking about 1:1 paraeducators specified on IEPs or general classroom paraeducators. Regarding 1:1 paraeducators, OSPI is charged with determining whether Students received their 1:1 paraeducator services according to their IEPs, not whether there was sufficient classroom paraeducators to serve all students.

elementary school 2 were changed from receiving special education in the general education classroom to the special education classroom, which affected their placement in that the least restrictive environment changed.

To address the lack of paraeducators, the staff reported that schools took considerable measures to mitigate the impact on Students by shifting staff and using other personnel as needed. Nevertheless, some Students were significantly impacted by the missing services. The District also demonstrated efforts to hire staff, such as 1:1 paraeducators, but was hindered because the lack of applicants in some cases and by the obstacles allegedly encountered with the District's hiring practices, according to some staff. The District also attempted to and hired staff from private agencies and remote/telehealth providers to meet staffing needs. OSPI notes that there is no restriction under the IDEA whom the District hires—i.e., local, agency, or telehealth hire—as long as they are qualified, and Students are provided their special education services according to their IEPs. Ultimately, the District is responsible for ensuring that Students receive their special education in conformity with their IEPs.

The documentation showed that some Students did not receive their 1:1 paraeducator services at various times depending on the situation. There were enough reports from District staff to substantiate a systemic violation. In addition, based on staff reports, some Students also consistently missed OT and SLP services at specific schools. Staff at some of the other schools reported that Students received their OT and SLP services consistently. However, the number of Students in the District who did not receive their OT and SLP amounts to a systemic violation. The District already has a plan to track compensatory education. For corrective action, the District will implement its compensatory education plan and OSPI will continue to periodically monitor its implementation.

FINDINGS OF FACT: ISSUE THREE

40. The Complainant stated the District failed to follow evaluations procedures. The Complainant alleged that evaluations timelines were "delayed" and evaluations were "over diagnosing autism by using educational autism screener prior [to] staff receiving training or support."

Elementary School 1

41. OSPI interviewed the SLP who provided services at elementary school 1, in part, about whether evaluations were conducted according to timelines. The SLP also reported that he was not aware of any delays in evaluations or that autism was overidentified.

Elementary School 2

42. OSPI interviewed the school psychologist who serviced elementary school 2. The school psychologist reported that evaluations were completed with the 35-day timeline. Regarding evaluations for autism, the school psychologist stated that historically, the District did not conduct evaluations for eligibility under the autism category in that the District considered all eligibility categories, but unless the Student readily appeared to be on the autism spectrum,

the District would not identify eligibility under autism. If a Student did have suspected autism, in that case, they would work with the family to seek a medical diagnosis to identify Students as eligible under the autism category. The school psychologist stated that recently, the District required autism evaluations be conducted, including using autism rating scales and that this school year, some school psychologists have requested training for evaluating autism. The psychologist stated the District also addressed evaluating for other health impairment—specifically ADHD—this school year in similar way, in that they would not rely on a medical diagnosis, although a diagnosis would be considered.

Middle School 3 & 4

43. OSPI interviewed the SLP who worked in middle school 3 and 4. Regarding evaluations, there were “one or two” late evaluations at the beginning of the school year because of staff turnover, but the school was now meeting the evaluation timelines. Evaluating for autism or other health impairment have not been problem. There was no indication that District was over-identifying autism or other health impairment.

Elementary School 7

44. OSPI interviewed the school psychologist who worked remotely at elementary school 7 and 10. The school psychologist reported no problems with evaluation timelines or paraeducators to assist with evaluations. Regarding autism evaluations, the school psychologist received mixed messages about conducting autism evaluations without a medical diagnosis. Although the central office indicated it was appropriate to evaluate for autism without a medical diagnosis, other unidentified staff reportedly told the remote school psychologist it was not appropriate. The school psychologist reported to OSPI that not all District school psychologists have been trained to conduct autism evaluations and recommended clarification and training, but not necessarily on any one autism assessment. Lastly, the school psychologist commented that there had not been open communication with Parents about what was going on with the Students.

Elementary School 3

45. OSPI interviewed the school psychologist who worked in-person at elementary schools 3 and 6 and started in the District in mid-October 2023 after a previous school psychologist left the District. The school psychologist reported that with the exception of one–two evaluations that were previously started in other elementary schools, the evaluations have followed the timelines. The school psychologist stated that she was “very comfortable” with evaluating Students under the categories of autism and other health impairments. She stated she was appropriately trained in conducting assessments in these areas. She did not require a medical diagnosis, although some Students had previous medical diagnoses. When asked if training was required to evaluate for autism or other health impairment, she replied that she required no further training based on her own professional training.

46. OSPI interview the special education teacher at elementary school 3. The special education teacher was interviewed, in part, regarding evaluations. The teacher reported there was one Student who needed a three-year evaluation, but the District had not been able to get the parent's consent.⁵

Middle School 1

47. OSPI interviewed the school psychologist who worked at middle school 1 and high school 1 and 2. The school psychologist came to the District in August 2023. When asked about evaluation timelines, the school psychologist stated that less than five evaluations were not completed the previous year, but evaluations have been completed. However, there were some delays in holding IEPs meetings at the beginning of the school year because there were two case manager vacancies. But the positions have been filled and the school is holding IEP meetings as required.

Regarding evaluations of autism and other health impairment (specifically ADHD), the school psychologist acknowledged there had been a previous reluctance to evaluate for autism and ADHD, but there are procedures in place to evaluate in those areas without requiring a medical diagnosis. There was no indication that autism or ADHD were over-identified.

48. The SLP who worked at middle school 1 was also interviewed by OSPI. The SLP also worked at high school 1 and 2. The SLP expressed concern that the school had only two of four positions filled, which resulted in some annual IEPs not being developed on time. When asked about evaluation timelines, the SLP stated that evaluations were conducted within the required timelines.

Middle School 2

49. In the interview with OSPI, Parent 2 stated she did not know until recently that the District conducted autism evaluations. As a result, Parent 2 stated that the Student had a private evaluation conducted to diagnose autism; however, this occurred many years ago when the Student was younger and first identified as being eligible for special education services.

Middle School 4

50. OSPI interview the school psychologist who worked remotely at middle school 4 and elementary school 6. The school psychologist performed evaluations, wrote evaluation reports, directed the team through the eligibility process, and lead team meetings. A paraeducator was assigned to assist Students during the evaluation. Regarding autism evaluations, the psychologist stated that the role of school psychologist was not to make a diagnosis but to evaluate and make an eligibility determination. The school psychologist reported having considerable experience evaluating for eligibility under autism, which was the

⁵ The District may proceed with a reevaluation, without obtaining consent if it can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent has failed to respond.

current expectation of the District. The school psychologist expressed concern about the previous evaluations that were conducted at the school and did not recall seeing any evaluations for autism. The school psychologist recommended training on standards for evaluations and evaluation reports, especially autism evaluations.

51. OSPI also interviewed the special education resource teacher that worked in middle school 4, in part, about evaluations. The teacher stated the school psychologist was a “.8” full time employee, but the workload was very high, and that the psychologist was over their case load. The teacher expressed concerns that evaluations were not being completed within the timeline due to staffing and caseload.

High School 3

52. OSPI interviewed Parent 1 who had [REDACTED] of the Students had IEPs. The Parent stated that one of her five Students now attends high school 3 (and attended high school 2 previously). The Student was currently on a 504 plan, but the Parent stated she had tried to get an IEP “for years.” The Parent requested an initial evaluation last year at high school 3. The Parent expressed concern about the evaluation meeting because the school psychologist said the Student did not need an IEP, although others saw the need for an IEP. Parent 1 sought an outside evaluation for the Student, which recently diagnosed the Student with autism. The Parent stated she had again referred the Student for a special education evaluation in January 2024.

Central Office Staff

53. OSPI interviewed the District special education director and the District legal counsel pertaining to evaluations for autism and other health impairments. The director acknowledged that there had been a history of requiring Parents to provide medical diagnoses of autism and ADHD before determining a Student’s eligibility. The director stated she has put procedures in place and will continue to do so to ensure evaluations are compliant.
54. OSPI interviewed the education specialist who worked in all elementary schools and was based in the central office. Regarding evaluations, the specialist stated that school psychologists had previously told Parents that Students did not qualify for eligibility (under autism and ADHD), but if they had a medical diagnosis, their eligibility would be reconsidered. The education specialist stated this practice seemed to relate, in part, to a supposition by the psychologists that special education eligibility would not qualify Students for private services and therefore families needed a medical diagnosis. The specialist recommended that better assessments be used in evaluations. The specialist stated that the “Wide Range Achievement,” for example, was used in an evaluation which was a “short cut” that did not the best information for Students.
55. The District provided OSPI with a spreadsheet that showed 26 evaluations that were completed from a sample of five schools in the District. The information showed that two evaluations were late, although no information was provided as to why.

CONCLUSION: ISSUE THREE

Evaluation Procedures – The Complainant alleged that the District failed to systemically follow evaluation procedures when evaluating Students. The complaint specifically alleged that evaluations were delayed, and Students were being over-identified under the category of autism. A district is required to conduct an evaluation within 35 school days of receiving parent consent. The evaluation must be comprehensive and address all areas of the suspected disability. A medical evaluation or diagnosis is not necessarily required in all evaluations of students suspected of qualifying under the autism or other health impaired category. If a medical evaluation is required, the district is responsible for paying for it.

Staff, including school psychologists, reported that some evaluations were not completed according to the timeline mostly when they were carried over from the 2022–23 school year to the 2023–24 school year. The documentation sampled from five schools showed that two evaluations were delayed during 2023–24 school year. While one delayed evaluation is a concern and OSPI strongly recommends the District review open evaluations and complete any delayed evaluations as soon as possible; at the same time, the evidence in this investigation did not show a systemic violation in the District. No violation is found related to evaluation timelines. OSPI recommends the District continue to track evaluation timelines to ensure evaluations are completed with the timeline.

Regarding the over-identification of the autism category, the complaint alleged the District over-identified Students under the category of autism because school psychologists were not trained using an “educational autism screener” prior to evaluating Students for autism. The school psychologists interviewed stated that the District had a history of refusing to evaluate Students or declaring them ineligible under the autism (and other health impairment) category without a medical diagnosis. Parents were told that once the Student received a medical diagnosis, their eligibility would be reconsidered.

A medical diagnosis is not necessarily required for determining eligibility under the autism category, as a district can make an educational autism determination for purposes of identifying whether a student is eligible for special education services. If the evaluation team determines that a medical diagnosis is required, then the district is required to pay for any necessary medical evaluation. Apparently, previously, the District was operating under incorrect assumptions about the need for medical diagnoses and who was responsible for paying for those.

In attempting to correct the evaluation procedure, this year, the District required the school psychologists to conduct autism assessments. Several of the school psychologists that were interviewed were experienced with autism assessments and used them in their evaluations, while others were not experienced using them. However, this is not evidence that Students were over-identified under the category of autism and other health impairment (ADHD); in fact, there is more of a concern that autism has been under identified historically in the District. Aside from the professional and ethical obligations of school psychologists to be competent and use assessments that are appropriate, the District was responsible for ensuring that Students were evaluated appropriately. Although there was no evidence that Students were over-identified under autism

in the District, the District failed to exercise its supervision over those school psychologists who either refused to evaluate for autism or other health impairments without a medical diagnosis or did not evaluate because they lacked training.

As part of the development of the OSPI/District improvement plan, the District proposed a schedule of professional development to address the violation regarding evaluations, which OSPI accepts as corrective action. The plan included the following topics: intervention, discipline, and eligibility; designee/district representative; IEPs; functional behavioral assessment and behavioral intervention plans; and special education classroom management. The District must ensure that the professional development is attended by all relevant staff. Per the plan, attendance at the training will be monitored by OSPI.

CORRECTIVE ACTIONS

By or before **March 1, 2024, April 1, 2024, May 1, 2024, June 3, 2024, October 1, 2024, November 1, 2024, December 2, 2024,** and **January 21, 2025,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory education

The District is required to continue identifying the Students who require compensatory education and monitor the implementation of the services. The District will use its existing tracking sheet for verification to OSPI that Students have been identified and are receiving services. OSPI will meet monthly with the District to review the implementation of the compensatory education plan to ensure Students are receiving their services and to determine if there are any additional measures needed to achieve and maintain compliance.

DISTRICT SPECIFIC:

Training

OSPI accepts the District's proposed professional development plan according to the schedule. The District must ensure that the designated staff attend the trainings and will provide OSPI with documentation of attendance. OSPI will meet monthly with the District to review the impact of the trainings on compliance by reviewing documents to determine if there are any additional measures needed to achieve and maintain compliance.

OSPI will meet with the District by the following dates to review results of the trainings and the implementation of compensatory education:

- March 1, 2024
- April 1, 2024
- May 1, 2024
- June 3, 2024
- October 1, 2024
- November 1, 2024
- December 2, 2024
- January 21, 2025

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 1st day of February, 2024

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.)