

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-167

PROCEDURAL HISTORY

On November 17, 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 Enumclaw 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 November 17, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 20, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 7, 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 December 19, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On December 28, 2023, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on the same day. OSPI forwarded the information to the District on the same day.

On January 3, 2024, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

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

ISSUES

1. Did the District conduct an individualized education program (IEP) meeting to discuss the results of the Parent's private evaluation according to WAC 392-172A-03110?
2. Did the District provide the Parent with an opportunity for input into the Student's IEP, including accommodations, according to WAC 392-172A-03110?
3. Did the District provide the Parent with prior written notice regarding the IEP meeting according to WAC 392-172A-05010?
4. Did the District follow referral procedures for a reevaluation in response to the Parent's request for a speech/language evaluation and functional behavior assessment according to WAC 392-172A-03015?

LEGAL STANDARDS

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.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. 34 CFR 300.503; WAC 392-172A-05010.

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 reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020(3).

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.

FINDINGS OF FACT

2022–23 School Year

1. During the 2022–23 school year, the Student attended a District preschool and was eligible for special education services under the category of communication disorder.
2. On June 12, 2023, the meeting notice invited the Parent to an IEP meeting to “Review Current IEP.”
3. On the same day, the Student’s team (minus the general education teacher who was excused) met to review the IEP. The IEP stated the Student “presents with a communication disorder which makes it difficult for him to express himself clearly to adults and peers in the classroom.” The “Team Considerations” were, in part, as follows:
 - Strengths and Parent Concerns: The Student was improving communication skills but continued to have significant needs in the area.
 - Communication Needs: Needs addressed in the IEP.
 - Assistive Technology: None
 - Behavior: “n/a” (Not applicable)

The IEP included annual goals in communication and provided the following special education services, in a special education setting:

- 6/14/23–7/31/23: Communication skills – 60 minutes weekly (provided by a speech language pathologist (SLP) or SLP assistant (SLPA))
- 7/2/23–9/26/23: Communication skills – 60 minutes weekly (provided by a SLP or SLPA)

The June IEP provided no accommodations, but the IEP included supports for school personnel that listed “copy of IEP” for classroom teachers.

4. On May 31 and June 7, 2023, the Student was privately evaluated by a psychologist. The Student was evaluated in the areas of cognitive, visual-motor integration, and developmental neurological, and was observed using an autism observation assessment. The Parent completed developmental and behavior assessments. Input from District staff included one of the Student’s teachers and the SLP completing a behavior assessment. The private evaluator did not observe the Student at school.

The report concluded the Student’s diagnoses were autism and unspecified anxiety disorder under the “Diagnostic and Statistical Manual of Mental Disorders, 5th Edition”. The report also stated the Student did not meet the criteria for attention deficit-hyperactive disorder. Regarding eligibility under the autism category for special education, the report stated, “His diagnosis of Autism Spectrum Disorder (ASD) also qualified him for an IEP under its respective eligibility categories.”

The report provided an extensive number of recommendations for school and home. Regarding school recommendations, the report stated, in part:

[Student] historically presented with several interfering behaviors and social/emotional vulnerabilities including difficulty focusing and keeping his body still. As of now, these behaviors primarily occur at home, but they might begin to arise in school as he starts attending school all day long with increased demands. Addressing his behavioral/emotional dysregulation and inattention to task is of essential importance, as it directly impacts his daily functioning and capacity to learn. Thus, it is recommended that an [functional behavioral assessment] FBA be conducted, and findings be outlined in a Positive Behavior Intervention Plan (BIP) should these behaviors emerge when he starts Kindergarten.

5. According to the prior written notice that accompanied the meeting, the proposed action stated, “[Student’s] IEP is being continued with changes made.” The notice indicated that accommodations for extra time to respond and no penalties for missing sounds were discussed but not included in the IEP because the teachers were “well acquainted” with giving extra time and producing sounds and already accommodated for those needs for all students.

2023–24 School Year

6. At the beginning of the 2023–24 school year, the Student was a kindergartener who attended a District elementary school. The Student continued to be eligible for special education services under the category of communication disorders.
7. On September 5, 2023, the 2023–24 school year began in the District.
8. The documentation showed that the District sent the Parent an undated meeting notice to meet on September 14, 2023, to “Review Evaluation Reports” and “Review of outside evaluation.”
9. On September 14, 2023, according to the District, the Student’s IEP team met to review the results, diagnoses, and recommendations provided by the outside evaluation.¹
10. The prior written notice, dated September 6, 2023,² that documented the meeting stated the team “reviewed the results, diagnoses, and recommendations,” including the private evaluation. The team proposed an occupational therapy screening and unspecified accommodations “as needed and appropriate for the setting.” Under the “Description of any other options considered and rejected” section in the Student’s IEP, the notice stated the private evaluation recommended an FBA and BIP “should these behaviors emerge when he starts Kindergarten.” No further action was indicated. The notice also stated that the Parent

¹ The prior written notice stated the Student’s classroom teacher could not attend the meeting.

² The September 6, 2023 prior written notice conflicted with the September 14, 2023 meeting date. According to the District special education director, the District was aware that the dates conflicted; the IEP program the District used created the glitch. The notice was later amended by mediation agreement on November 30, 2023.

requested special education services in behavior “as prevention,” but the District stated there was no need for behavior services at the time. There was no indication from the notice that the District proposed an FBA and BIP.

11. In the complaint, the Parent first disputed the prior written notice’s interpretation of the private evaluation’s recommendations for an FBA and BIP. The Parent claimed the notice stated the private evaluation recommended an FBA and BIP. Second, the Parent stated, “the school/district made the determination to deny the [FBA] that no one requested (parent’s ((sic)) did not request, and no one observed any behaviors at school that would warrant any assessment at that time) without any discussion or input from the Parents.” Third, the Parent stated the team did not discuss the private evaluation. Fourth, the Parent stated the District failed to discuss her request for accommodations at the September 14, 2023 meeting and follow up emails.
12. On September 15, 2023, the Parent emailed the District regarding the September 14, 2023 IEP meeting and requested the following:
 - Full speech/language evaluation
 - Social skills group
 - Weekly Parent/Teacher consultations
 - Accommodations including short breaks and non-punitive signals to stay on task
 - Teacher following up with student after direct instruction
 - Sensory strategies such as wiggle cushion or weighted blanket
 - Alternative ways to demonstrate knowledge
 - Strategies to manage frustration and anxiety in the classroom
 - Follow up IEP meeting
13. On September 19, 2023, the school psychologist emailed the Parent, requesting a follow-up meeting to continue the discussion from the September 14, 2023 meeting and discuss the Parent’s requests.
14. On September 24, 2023, the Parent replied and requested the prior written notice that accompanied the September 14, 2023 IEP meeting be amended to reflect the private evaluation’s recommendations, the proposed change in eligibility, and the teacher’s absence from the IEP meeting. The Parent also requested additional information regarding the Student’s performance, the name of the occupational therapist who was conducting the evaluation, eligibility criteria, and tier one supports.³
15. On September 29, 2023, the Parent emailed the special education director concerns about the author of the prior written notices. The Parent stated the notice from the September 14, 2023 IEP meeting was “filled with inaccurate information and misstatements/misrepresentations of an outside evaluation...” The Parent asked who will be responsible for writing the notices for the IEP meetings for all students in the future.

³ Tier one supports are general education interventions and strategies that are provided to all students.

16. Also on September 29, 2023, the special education director emailed the Parents the meeting agenda and a "Notice of Meeting" form for the October 2, 2023 IEP meeting. The "Notice of Meeting" form stated the meeting was to review the following:
- Evaluation reports
 - Educational progress
 - Reevaluation Consideration
 - "Review of outside evaluation (Continuation from 9/14/23)"

17. The meeting notes for the October 2, 2023 IEP meeting documented the Parent's requests and District's responses as follows:

Parent Requests	District Response
How Tier One services not in the IEP	All students have access to counseling
Full speech/language evaluation	Proposed a reevaluation
Change eligibility to autism category	Proposed a reevaluation
Occupational therapy evaluations	Part of proposed reevaluation
Social skills group	Small groups led by counsel; other groups are provided to qualified students
Weekly parent/teacher consultations	Behavior escalating at home. Concern is about possible school behavior.
Taking short breaks	Proposed reevaluation
Non-punitive signals	Proposed reevaluation
Teacher checking with Student	Proposed reevaluation
Sensory strategies	Proposed reevaluation
Alternative ways to demonstrate knowledge	Proposed reevaluation
Prior Written Notice did not address request for accommodations	(No response noted)

18. The prior written notice, dated September 29, 2023, stated that the Parent requested "further review" of the outside evaluation. In addition, the District proposed a reevaluation that would address the areas of academics, communication, adaptive, social-emotional, and occupational therapy. The notice stated, "The Parent rejected to start the re-evaluation at this time as they wanted to wait until spring in case more issues arise with behavior..." The notice also stated, "The District proposed starting a re-evaluation. This was rejected by parent at this time."

19. On October 3, 2023, the Parent requested the meeting notes, which were provided by the District the next day along with the prior written notice.

20. On October 4, 2023, the Parent emailed the special education director the following:
 I reached out to OSPI regarding the district's recommendation for an evaluation to be done by the school in order for [Student] to get qualified for services. Based on my understanding of the email from OSPI, as long as [private evaluator's] evaluation meets the district's requirements for an IEE (independent educational evaluation), there's no reason an evaluation needs to be done by the school at this time. Since I know [private evaluator] does IEEs for other districts in the area and her evaluations have been accepted by other schools in the district, I'm pretty sure she meets the criteria, but could you please send me

the district's requirements for an IEE so I can make sure she meets them. I have never been provided that information and am unable to find it in any of my research.^[4]

21. On October 4, 2023, the special education director replied:

The District has a different understanding of the process it is to follow in determining a student's eligibility for IEP services. In particular, the District has the right to select its own qualified evaluators in gathering multiple sources of data for such determinations and is not limited to just consideration of an existing outside report, whether characterized as an IEE or not. The District is happy to review any written input you received from OSPI on this issue and re-consider its position based upon that input...

22. On October 8, 2023, the Parent emailed the special education director, clarifying that she did not "decline" the reevaluation but wanted to wait to decide. The Parent requested the notice be changed to reflect, in part, that "because of concerns of a potential learning disability (dyslexia) and the parents wanted to wait until year" to have more data.

23. Also on October 8, 2023, the Parent again emailed the special education director, stating in reference to OSPI's email, that as long as the outside evaluation met the District's criteria, the District does not need a reevaluation. The Parent referenced the District's criteria for an independent educational evaluation. The Parent further stated:

I'm unclear as to why the district feels a full evaluation is needed at this time. It feels like a waste of district resources to do a full internal evaluation for a student that just had a full evaluation done by a qualified independent evaluator less than 6 months ago. Especially since the plan is then do another full evaluation in 12-months because I'm concerned that an evaluation at this time won't fully capture any learning disabilities since there are more testing available when a student is in first grade for these types of issues.

24. On October 31, 2023, the Parent contacted Sound Options to request mediation.

25. On November 17, 2023, the Parent filed this complaint with OSPI.

26. On November 30, 2023, Sound Options conducted a mediation with the Parent and the District. The mediation agreement provided the following:

- Regular check-ins with Student by school counselor
- Reevaluation will be initiated by December 8, 2023 (minus academics)
- Student's IEP team will meet in November 2024 to review academic progress
- Changes to the September 14 and October 2, 2023 prior written notices to clarify Parent statements regarding declining the reevaluation and review of the private evaluation.

⁴ The October 4, 2023 email from OSPI referenced by the Parent stated, in part, that "whether the district will need to conduct its own evaluation, in any given circumstances, is highly fact dependent." The email pointed out that although there could be a scenario when further assessments were not needed, "there are also scenarios wherein a district reevaluation might be warranted..." The OSPI's email did not address the specific facts in this complaint.

CONCLUSIONS

Issue One: Private Evaluation – The complaint alleged the District failed to discuss the results of the private evaluation that was conducted. A district is required to consider the results of a private evaluation, but a district is not necessarily required to accept the results and recommendations of the private evaluation. The District denied the allegation.

Here, the Student's IEP team met on September 14 and October 2, 2023, to address the private evaluation's results, in part. The documentation, including the prior written notices, Parent emails, and the complaint itself, showed that the IEP team discussed the private evaluator's recommendations, although there was some disagreement over what the District proposed in response to the recommendations. The Parent stated the team did not fully discuss the private evaluation at the September 2023 IEP meeting. The District requested a follow-up meeting to further discuss the private evaluation's results. The October 2, 2023 meeting notes documented discussion about the results and recommendations from the private evaluation. The notes addressed the recommendations for changing the Student's eligibility and implementing various accommodations. Based on the documentation, the IEP team did consider the results of the private evaluation. No violation is found.

Issue Two: Parent Participation – The complaint alleged the District failed to provide the Parent with an opportunity to provide input into the development of the Student's IEP. A district must ensure that a parent is afforded an opportunity to participate in development of the student's IEP. The District denied the allegation.

Here, the Parent attended the IEP meetings on September 14 and October 2, 2023, to review the private evaluation results and consider the need for a reevaluation and accommodations. Based on the private evaluation results, the District proposed a reevaluation to determine the need to change the Student's eligibility category to autism and whether the Student needed the accommodations recommended by the private evaluation. The Parent alleged the District did not give her an opportunity to provide input into the decisions. The Parent stated she did not agree to the reevaluation and wanted to "think about it." In addition, the Parent requested accommodations for the Student, which the District proposed to evaluate for, among other information.

According to the documentation, including the prior written notices from the IEP meetings, meeting minutes from the October 2023 IEP meeting, and emails from the Parent, the Parent had an opportunity to participate in the decision making for the Student, although there was disagreement about some of the proposals and the immediate next steps. In this case, it appears that the Parent equates agreement with participation. However, the District does not necessarily have to agree with the Parent for the Parent to have had an opportunity to participate. No violation is found.

Issue Three: Prior Written Notice – The complaint alleged the District failed to provide the Parent with an accurate prior written notice. Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement

or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. The District denied the allegation.

Here, the June 2023 private evaluation recommended that an FBA and BIP be conducted "should these behaviors emerge when he starts Kindergarten." The prior written notice that accompanied the September 14, 2023 meeting stated that the FBA and BIP were options that were "considered and rejected." The Parent argued that the notice stated the District was proposing the FBA and BIP, although the Student did not need them. At the same time, the notice also stated the Parent requested behavior services "as prevention", which somewhat appears to contradict the Parent's statement that no FBA or BIP was needed. Regardless, there was no indication that the District proposed an FBA or BIP, nor did the notice reflected that proposal. The notice accurately reflected the District's decision. The notice also stated the District declined to provide behavior services because there was no indication the Student needed additional behavior support at the time. This decision was consistent with the District not proposing the FBA and BIP. Based on the documentation, no violation is found.

The Parent also disputed the notice that stated, in part, that the Parent disagreed with the proposed reevaluation. The Parent stated it was more accurate to say that the Parent did not disagree with the proposed reevaluation but wanted to think about it. The Parent requested that the District change the notice's language. The notice from the October 2, 2023 meeting stated, in part, that the District proposed a reevaluation which the Parent rejected "at this time" because the Parent wanted to wait until spring if behavior issues arose. When read in context, the notice was accurate because the Parent did disagree with initiating the evaluation at that time and wanted to delay the evaluation until spring. No violation is found.

Regarding accommodations, the complaint alleged the District's notice failed to address the Parent's request for accommodations as recommended by the private evaluation. The notice from the September 14, 2023 meeting stated the IEP team was "proposing accommodations as needed and appropriate to the setting." While initially a vague response to the Parent's request, the District proposed a reevaluation at the October 2, 2023 IEP meeting to evaluate the need for the proposed accommodations. This was also documented in the meeting notes. The District did not outright reject the accommodations, but proposed to reevaluate the need for them, which was reasonable given the circumstances. Because documentation showed the notice addressed the Parent's request for accommodations, no violation is found.

Issue Four: Referral for Evaluation – The complaint alleged the District failed to follow referral procedures for a reevaluation of the Student. 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. The District denied the allegation.

Here, the Student was initially found eligible for special education services under the category of communication disorder. The private evaluation recommended a change of eligibility; the private evaluator stated, "His diagnosis of Autism Spectrum Disorder (ASD) also qualifies him an IEP under its respective category...." The evaluator did not explain the difference between a medical diagnosis and eligibility for special education and the difference between medical necessity and what is educationally appropriate.⁵ For example, the evaluator neglected to clarify that a diagnosis is only part of the eligibility decision. An adverse education impact of the disability and the need for specially designed instruction is also required.

The Parent took the private evaluation's recommendation and requested the District change the Student's eligibility to autism without conducting a reevaluation by the District, which was also based on the Parent's interpretation of her email from OSPI. However, the Parent misconstrued OSPI's information, believing the District did not have the option of conducting a reevaluation because of the private evaluation's results. Given the circumstances, the District made a reasonable decision to reevaluate the Student in the areas of academics, communication, adaptive behavior, social-emotional, and occupational therapy to determine eligibility and the Student's need for services in those additional areas; the District was not required to solely defer to the private evaluation. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI recommends the District offer the Parent training in the IEP procedures, so the Parent better understands the IEP procedures and requirements. The District may offer the Parent training or the Parent can be referred to PAVE (Partnerships for Action, Voices for Empowerment) for training.

Dated this 11th day of January, 2024

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⁵ Although a medical service may be beneficial to a student, the service may not be necessarily required for the student to receive FAPE (free appropriate public education). In addition, a medical diagnosis of autism is not necessarily the same as determining a student is eligible for special education services under that eligibility category.

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.)