

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-171

PROCEDURAL HISTORY

On November 22 and 28, 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 Renton 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 22 and 28, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 30, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 22, 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 January 10, 2024, OSPI's investigator conducted a joint phone interview of the Parent and the Parent's advocate.

On January 10, 2024, the Parent and the Parent's advocate provided OSPI with certain documentation.¹

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

ISSUES

1. Was the District's November 2023 evaluation of the Student sufficiently comprehensive to address all areas of suspected disability?
2. Did the District follow proper individualized education program (IEP) attendance procedures for the November 8, 2023 IEP meeting?

LEGAL STANDARDS

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. 34 CFR §300.304(c)(4); WAC 392-172A-03020(3)(e). The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. 34 CFR §300.304(c)(6); WAC 392-172A-

¹ This documentation was redundant of what was included in the District's response, so OSPI did not provide a copy of the same to the District.

03020(3)(g). No single measure or assessment as the sole criterion is used for determining a student's eligibility or determining an appropriate educational program for the student. WAC 392-172A-03020. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304(b); WAC 392-172A-03020(2).

Evaluation Standards: An evaluation 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. 34 CFR §300.304(b); WAC 392-172A-03020(2). School districts must use technically sound instruments; assessments and other evaluations must be 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. 34 CFR §300.304; WAC 392-172A-03020(3).

Review of Existing Data: As part of an initial evaluation, the IEP team and other qualified professionals, as appropriate, must review existing evaluation data on the student. WAC 392-172A-03025(1).

Student Eligible for Special Education Services: A student eligible for special education services means a student who has been evaluated and determined to need special education services because of having a disability [listed in WAC 392-172A-01035], has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services. WAC 392-172A-01035(1)(a).

Initial Evaluation Meeting Attendance: Washington State regulations state it is a "group qualified professionals selected by the district" that, as part of an initial evaluation, use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and 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, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2).

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was in kindergarten, attended a District elementary school, and the Student was not eligible for special education under the IDEA.
2. The District's 2023–24 school year began on September 5, 2023.
3. A "Guidance Team Record – Special Education Referral" regarding a September 5, 2023 meeting read, in part:
Student was referred to the evaluation team by her mother [Parent], because Student received an outside diagnosis of Autism Spectrum Disorder. Parents requested a school based evaluation to determine supports while at school. At this time, parents areas of

concern include: Cognitive, Social/Emotional/Behavioral, adaptive, communication, fine motor/sensory.

...

Outside of school, Student has been receiving speech and Occupational therapy. Parent reports that Student has responded well to these.

...

Student's mom reports that she really enjoys coloring, playing outside, and being around other students. She also notes that Student has a strength in her visual spatial skills, and enjoys complex games like Minecraft.

...

Mom reports that Student's Adaptive, communication, Behavior, Social/Emotional functioning (specifically anxiety), school refusal, fine motor/sensory are areas of concern.

...

Student received an Autism diagnosis in November 2022, as well as a speech delay. Student also attended 2 years of preschool, although one year was impacted by attendance and school refusal.

4. A September 5, 2023 prior written notice read, in part, "The team agreed that it would be best to let Student adjust to her school environment before assessing her special education needs."
5. According to emails, on September 21, 2023, the Parent requested a meeting "to discuss the [private] evaluation that was conducted" and the administrative assistant stated, "the next available meeting options" were in early November 2023.
6. According to a "Notification of Special Education Referral", on September 29, 2023, the "school psychologist called Parent to discuss opening an evaluation."
7. In an October 2, 2023 email to the school psychologist, the Parent requested that "sensory [be added] to the evaluation."
8. In an October 2, 2023 email, the Parent reported the Student had a great day at school that day. The general education teacher wrote, in part:
I have put in place all the accommodations that we talked about. She is taking a morning break with an iPad, an afternoon break with an iPad. I also offered a couple of different alternative seating options, she is using the blue wiggly seat both on the carpet and on her chair. I also got some new fidgets today and let her choose which one she'd like to try.
9. An October 3, 2023 prior written notice read, in part, "Outside Evaluation report provided by parent indicates some delays in the following areas: Executive functioning, social/emotional/behavior, adaptive, sensory, and communication. More information is needed to determine if Student is eligible for school-based services."

Attached to the prior written notice was a signed consent form, dated October 3, 2023, that noted the following areas of assessment: general education; communication; observation; executive functioning; medical-physical; social emotional behavior; sensory; and adaptive.

10. In a November 6, 2023 email thread between the Parent and the psychologist, they collaborated on how to best reflect certain information in the draft evaluation report, particularly the Student's recent academic history.
11. The District's evaluation group, including the Parent, met on November 8, 2023. The November 2023 evaluation group determined the Student was not eligible for special education services under the IDEA.

In relation to her concern the November 2023 evaluation was insufficient, the Parent's complaint request read, in part:

[The] psychologist had no one-on-one interaction or testing with Student. She had completed one 20-minute observation of Student in the classroom. She sent out parent and teacher surveys. [The psychologist also] used information from a private evaluation that was over a year old and a 2021 school district evaluation that was two years old. [The psychologist] did not consider parent input.

The speech therapist didn't evaluate for all areas of suspected disability.

[The] occupational therapist did one observation of Student in the classroom and did not interact with the student. [The occupational therapist] sent out parent and teacher surveys only.

In relation to the Student's needs, the Parent's community complaint request read, in part, "Student has social and emotional issues, anxiety, sensory, transitioning, speech and communication differences, [and] difficulty across all settings. Student's needs related to executive functioning...have impact Student socially and emotionally."

The November 2023 evaluation group determined the Student required a 504 Plan under the Rehabilitation Act of 1973.

District staff presented a PowerPoint presentation at the November 8, 2023 evaluation meeting. In part, it reflected the following:

- The Student had certain strengths, including, in part: met grade level expectations in all areas; loves to participate in classroom discussions; positive relationships with peers; positive relationship with staff; listens, follows directions, and participates; can transition with her class easily; does well with fidgets/breaks; and can use the calm-down corner when needed;
- The Student had certain "needs" in an academic setting: "can be 'handsy' with peers if no access to fidgets"; "has some anxiety when she is unsure of the task, but rejoins as soon as she sees what her peers are doing"; "can become agitated if not called on frequently"; and, "will taker herself to the calm corner to avoid something, but usually returns quickly (under 5 minutes usually)."
- In the home, the Parent noted, in part, the following needs: anxiety about going to school in the morning; "can become aggressive"; adaptive; expressive/receptive communication; articulation; "sensory differences"; executive functioning; and social emotional skills.
- The slide relating to the Behavior Assessment System for Children (BASC) results read, in part, "Student is demonstrating more extreme behaviors at home than at school. More so, we can see that raters had consistency within trends (For example, both raters reported less rule breaking/conduct than hyperactivate or aggressive behaviors). At School Student demonstrates

mostly typical behaviors. While she does demonstrate slightly more hyperactive behaviors than her peers and some anxiety symptoms, Teacher reports that the current accommodations are successful.”

- The slide related to the adaptive results read, in part, “Student is demonstrating less adaptive skills at home than at school. While all of parent scores fall in the below average or low range, teacher reports all average scores. At School Student demonstrates mostly typical behaviors. While teacher reports some lower communication, self-direction, social, and community use scores these are still within the average range.”
- The slide entitled, “SLP Test”, read, in part, “Needs: none.”
- The sensory-related slide read, in part, “Easily redirected with minimal verbal cues, able to use classroom tools and calm down corner appropriately to meet sensory needs, self-advocates. Needs: accommodations for sensory tools.”
- The conclusions page read, in part, “Student is not demonstrating the same concerns at home vs school. Thus, they are not adversely impacting her education.”

12. November 8, 2023 meeting notes, authored by the Parent read, in part:

It was reported by District staff that Student struggles to share, she uses the calm down corner at most 5 mins at a time (was not clear on how often she uses), she is ‘handsy’ with peers when she doesn’t have access to fidgets, she gets tired and board, she gets agitated when she isn’t called on, teacher reports she does not know if it is anxiety induced.

...

The school psychologist stated that the teacher rating scales are not valid since the teacher checked the estimate box a lot for the screenings. School sees that Student has a hard time stopping her behaviors and self-monitoring her interactions with peers. It was said by the school psychologist that ‘this is common in children with Autism.’

[Parent reported the Student’s private speech therapist had noted Student had challenges with the ‘TH’ sound and ‘s’ and ‘l’ errors.]

The speech language pathologist said Student would need to be 78 or below in order to qualify for services. Parent asked for a policy, procedure or law that states this. The speech language pathologist could not share that information.

...

The last PowerPoint slide stated that Student does not qualify and the district stated they would give her a 504.

...

Advocate requested we end the meeting at this time to reconvene as the general education teacher had left the meeting at 8:52 AM...Meeting ended at 8:56 AM.

13. Regarding the issue of whether the November 8, 2023 evaluation meeting was composed of the appropriate individuals, the District’s response read, in part:

The parent complaint raised concerns about the general education teacher leaving the meeting five (5) minutes before its conclusion, to meet her class to start the school day.

...

Despite having discussed the evaluation results [by the] point [the general education teacher left the meeting], the team mutually agreed to reconvene at a different time for an additional 30 minutes. This subsequent meeting was intended to address any outstanding questions and collaboratively discuss next steps.

...

According to [relevant state regulations], the only eligibility meetings that require general education teachers are when the team is determining eligibility under the category of Specific Learning Disability. Based on the areas of concern and the Student's Diagnosis of Autism, the category of Specific Learning Disability was ruled out [as a possibility].

Regarding the team members, a November 8, 2023 prior written notice read, in part, "Team members present at this meeting: Parent, Parent advocate, school psychologist, occupational therapist, speech language pathologist, special education facilitator, principal, general education teacher, and special education teacher."

14. A November 8, 2023 prior written notice read, in part:

While Student has a diagnosis of Autism Spectrum Disorder (satisfying criteria #1), results of this evaluation indicate that Student's Autism is not adversely impacting her at school (Criteria #2). Because she is not demonstrating an adverse impact, specially designed instruction to address such impacts is not warranted (Criteria #3)...Results of this evaluation indicate that Student is able to access curriculum in her general education classroom with some accommodations (ex: fidget toys, wiggle seats, calm down corner, visual schedules, etc.).

15. Regarding the November 2023 evaluation report, the Parent and general education teacher completed questionnaires for five different assessments.² Additionally, the November 2023 evaluation report included, in part, the results of two assessments administered to the Student,³ observational notes from the general education teacher and the psychologist, summaries of findings of previous evaluations of the Student,⁴ the Student's attendance record, the Student's scores on District-wide assessments, and a review of "school health records."

The adaptive section of the evaluation report noted there was "a high volume of estimated responses on both the parent and teacher Vineland scales....While [the Vineland assessment is] discussed...the ABAS is thought to be a better representation of Student's abilities."

The Listening Comprehension Scale of the OWLS-2 did not include test "items" specific to the "pragmatic" category. For example, in specific relation to the pragmatic category, the communication section of the evaluation read, in part, "Student demonstrated good understanding of appropriate questions and had some difficulty in describing a sequence of events...During classroom observation, Student was observed to interact with classmates appropriately, follow directions from her teacher, and wait patiently for her turn to speak."

² Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2); Behavioral Assessment System for Children, Third Edition (BASC-3); Vineland-3; Adaptive Behavior Assessment, 3rd Edition (ABAS-3); and Sensory Profile School Companion, 2nd Edition.

³ Arizona Articulation and Phonology Scale, 4th Edition and Oral and Written Language Scales (OWLS-2).

⁴ A school-based December 2021 evaluation; an "Ages and Stages questionnaire" completed by the Parent during the 2021-22 school year; and an October 2022 neuropsychological evaluation.

The evaluation report further read, in part:

Parent reported Student has been receiving outside speech and occupational therapy (equine therapy focused on emotional regulation) and has responded well to these...Parent reported Student will sometimes go through 'honeymoon periods' when experiencing new situations before she starts to struggle...In the past, Parents report severe anxiety, school refusal, aggression, impulsivity, defiance, poor social skills, and communication concerns...Student's health history was obtained from Parent on October 19, 2023.

16. In a November 17, 2023 email to multiple District staff members, the Parent expressed concerns with various portions of the evaluation report, articulated some questions regarding the import of certain language, and expressed frustration the general education teacher had left the meeting prior to her being able to fully speak to all issues she wanted to speak on.

The Parent's email read, in part:

[In the behavior section], teacher agrees there are issues with her behavior regulation.

...

[Regarding adaptive needs], she doesn't use the bathroom at school.

...

[Adaptive] domain- too many estimated scores between parent and teacher, so invalid.

...

Oral expression score, and Oral Language composite scores - There is an issue with her expressive language. With a CI of about 5 points above and below the standard score Student should qualify since 2 of the three areas assessed are within CI range of being at the districts cut off of 78. score of 78 required for qualification of services.

...

Why didn't Student complete any of the pragmatic sections? This is a known deficit area for her and is an important area of evaluation. This information comes directly from her private speech therapist. Speech therapist says this is what we are working on every week.

...

Teacher reports Student avoids but doesn't know what Student is avoiding. Happens mostly during carpet time. Student states she is bored or tired. Uses calm down corner frequently.

CONCLUSIONS

Issue 1: Initial Evaluation – The Parent alleged the District did not follow proper procedures regarding the initial evaluation.

State regulations impose several procedural requirements for initial evaluations. These requirements and Parent concerns will be addressed in turn.

Procedural Requirements

Sufficiently Comprehensive: An evaluation of a student must be sufficiently comprehensive to identify all areas of potential need.

Here, as reflected in the October 3, 2023 consent form, the Parent stated the Student needed to be evaluated in the following areas: general education; communication; observation; executive

functioning; medical-physical; social emotional behavior; sensory; and adaptive. And, in fact, the November 2023 evaluation assessed the Student in each of these areas. OSPI does not find a violation on this score.

Variety of Assessment Tools: An evaluation should include a variety of assessments. Here, the November 2023 evaluation report did, in fact, include a variety of assessments. For example, the Parent and general education teacher completed questionnaires for five different assessments.⁵ Additionally, the November 2023 evaluation report included, in part, the results of two assessments administered to the Student,⁶ observational notes from the general education teacher and the psychologist, summaries of findings of previous evaluations of the Student,⁷ the Student's attendance record, the Student's scores on District-wide assessments, and a review of "school health records." OSPI does not find a violation in relation to this requirement.

Incorporation of Parental Input: An evaluation of a student must include information provided by the Parent.

Here, as stated above, the Parent completed numerous questionnaires related to several different areas of potential need. The November 2023 also noted the Parent's input in other areas. As but one example, the November 2023 evaluation read, in part:

Parent reported Student has been receiving outside speech and occupational therapy (equine therapy focused on emotional regulation) and has responded well to these...Parent reported Student will sometimes go through 'honeymoon periods' when experiencing new situations before she starts to struggle...In the past, Parents report severe anxiety, school refusal, aggression, impulsivity, defiance, poor social skills, and communication concerns...Student's health history was obtained from Parent on October 19, 2023.

OSPI does not find a violation of this requirement.

Technically Sound: School districts must use technically sound instruments; assessments and other evaluations must be 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.

Here, the November 2023 evaluation report showed the group of qualified professionals administered the various assessments in a technically sound manner. As but one example, the adaptive section noted there was "a high volume of estimated responses on both the parent and teacher Vineland scales." To ensure the group of qualified professionals obtained sufficient,

⁵ Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2); Behavioral Assessment System for Children, Third Edition (BASC-3); Vineland-3; Adaptive Behavior Assessment, 3rd Edition (ABAS-3); and Sensory Profile School Companion, 2nd Edition.

⁶ Arizona Articulation and Phonology Scale, 4th Edition and Oral and Written Language Scales (OWLS-2).

⁷ A school-based December 2021 evaluation; an "Ages and Stages questionnaire" completed by the Parent during the 2021-22 school year; and an October 2022 neuropsychological evaluation.

relevant data on the Student's adaptive needs, then, the Parent and teacher were asked to also complete ABAS-3 questionnaires. And, the November 2023 evaluation report noted, "While both assessments are discussed...the ABAS is thought to be a better representation of Student's abilities." OSPI does not find a violation.

Parent's Specific Concerns

Lack of Direct Interaction with Student by Psychologist and Occupational Therapist: In the November 2023 evaluation, the psychologist is listed as the "examiner" for certain areas, including, in part, executive functioning, social/emotional/behavior, and adaptive. Similarly, the occupational therapist is listed as the "examiner" for the area of sensory. And the Parent took issue with the fact that neither the school psychologist nor the occupational therapist directly interacted with the Student. This, though, does not represent a violation of the IDEA. For example, as "examiners," the psychologist and the occupational therapist, respectively, were presenting the data gathered in the various areas of evaluation. And the specific assessments in each area did not necessitate either of these individuals to directly interact with the Student to be technically sound. Rather, it was the general education teacher and the Parent who completed the questionnaires relevant to the BRIEF-2, BASC-3, Vineland-3, ABAS-3, and the Sensory Profile-2. Additionally, while neither the psychologist nor the occupational therapist appear to have directly interacted with the Student, both of these individuals conducted their own classroom observations of the Student. OSPI does not find a violation of the IDEA.

Reference to Earlier Evaluations: The Parent faulted the November 2023 reevaluation for referencing evaluations completed in 2021 and 2022. Here, though, WAC 392-172A-03025(1) states it is "appropriate" for an initial evaluation to incorporate "review [of] existing evaluation data on the Student" and as demonstrated throughout these conclusions, the November 2023 evaluation did not rely exclusively on the evaluation data from 2021 and 2022. OSPI does not find a violation.

OWLS-2 Assessment: The Parent faulted the November 2023 evaluation for the following: the Listening Comprehension Scale of the OWLS-2 did not include test "items" specific to the "pragmatic" category.

By way of explanation, "the OWLS-2 consists of four scales: listening comprehension; oral expression; reading comprehension; and written expression", and the listening comprehension scale itself consists of "four primary categories: lexical/semantic, syntactic, supralinguistic, and pragmatic."

Here, it is true the November 2023 evaluation noted, "There were no pragmatic items on the section of the test that Student completed."

It is important to note, though, the pragmatic category of the listening comprehension scale evaluated the Student's ability to provide "appropriate responses in specific situations (such as questions, courtesy responses/greetings, and reasonable explanations) and understanding directions." And the November 2023 evaluation did include information relevant to this area of

potential need. For example, in specific relation to the pragmatic category, the communication section of the evaluation read, in part, "Student demonstrated good understanding of appropriate questions and had some difficulty in describing a sequence of events...During classroom observation, Student was observed to interact with classmates appropriately, follow directions from her teacher, and wait patiently for her turn to speak." In part, the observation, executive functioning, social/emotional/behavior, and adaptive sections of the November 2023 also appear to include data relevant to the pragmatic category of the listening comprehension scale. OSPI does not find a violation.⁸

Issue 2: IEP Meeting Attendance – The Parent alleged the District did not follow proper IEP meeting attendance procedures on November 8, 2023.

For two reasons, OSPI does not find an IDEA violation in relation to this issue. First, Washington state regulations state it is a "group qualified professionals selected by the district" that, as part of an initial evaluation, use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, to determine if the student is eligible for special education. (This contrasts with attendance requirements for IEP meetings, for which the Washington state regulations present more specific rules. See generally WAC 392-172A-03095.) And, here, a group of qualified professionals was convened on November 8, 2023, including the Parent, Parent advocate, school psychologist, occupational therapist, speech language pathologist, special education facilitator, principal, general education teacher, and special education teacher.

Second, though the general education teacher left the November 8, 2023 initial evaluation meeting approximately five minutes early, it is clear the group of qualified professionals had already determined, prior to the general education teacher leaving the meeting, that the Student was not eligible for special education under the IDEA.

For the above-stated reasons, OSPI does not find a violation of the IDEA on this issue.

⁸ OSPI did want to highlight one additional aspect to the communication portion of the November 2023 evaluation report: the Parent's November 8, 2023 meeting notes read, in part, "The speech language pathologist said Student would need to be 78 or below [on the standard score for OWLS-II] to qualify for [communication] services." In isolation, this statement would be problematic, as WAC 392-172A-03020(2)(b) mandates, in part, in completing an evaluation of a student, the group of qualified professionals must "not use any single measure or assessment as the sole criterion for determining whether a student [is eligible] for special education services." Here, though, the communication portion of the November 2023 evaluation included four data sources: results from the Arizona Articulation and Phonology Scale, 4th Edition; results from the OWLS-2; notes from a classroom observation of the Student; and a review of existing data. Accordingly, OSPI finds the group of qualified professionals did not rely on one data source—the OWLS-2 score—in reaching the conclusion that "Student presents with receptive communication skills in the average range...Student does not present with a receptive or expressive language disability or an articulation disability at this time." OSPI does not find a violation.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 24th day of January, 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.)