

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-177

PROCEDURAL HISTORY

On December 12, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) regarding a student (Student) attending the Issaquah 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 Student's education.

On December 12, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 15, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 27, 2023, the District requested an extension of time to file its response to the complaint. OSPI granted that extension until January 8, 2024.

On January 8, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on January 9, 2024. OSPI invited the Parent to reply.

On January 18, 2024, OSPI interviewed the Student's case manager and the District's director of special services.

On January 19, 2024, the Parent requested an extension of time to submit her reply to the District's response. That extension was granted from January 22 to January 29, 2024. The Parent did not submit a reply by January 29, 2024.

On February 9, 2024, the Parent requested a second extension of time to submit her reply to the District's response as an accommodation under the American with Disabilities Act (ADA). That extension was granted until February 20, 2024. The Parent did not submit a reply.

On February 9, 2024, the written decision deadline was extended from February 9 to February 27, 2024.

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

ISSUES

1. Per WAC 392-172A-03020, was the District's October 2023 evaluation sufficient regarding testing for a specific learning disability (e.g., dyslexia, dysgraphia, dyscalculia, dyspraxia) and occupational therapy?
2. Per WAC 392-172A-03090, has the District satisfied its responsibility to the Parent regarding progress reporting for the Student's IEP?
3. Whether the District responded to the Parent's request for an explanation/interpretation of the progress report per WAC 392-172A-05190?

4. During the 2023–24 school year, has the District ensured that the Parent has had the opportunity to provide input into the Student’s individualized educational program (IEP) development per WACs 392-172A-03110 and 392-172A-03100/05001 regarding the Student’s reading and writing needs, 1:1 paraeducator support, executive functioning needs, and access to homework?

LEGAL STANDARDS

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, including information provided by the parents. 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. 34 CFR §300.304; WAC 392-172A-03020 and 392-172A-03025.

Progress Reporting: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to “guarantee [their] ability to make informed decisions” and participate in the IEP process). IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

Parent Input: The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and the provision of a free appropriate public education (FAPE) to the student. WAC 392-172A-05001. IEP teams must consider the parents’ concerns and the information that parents provide regarding their child in developing and reviewing their child’s individualized education program (IEP). 34 CFR §300.324; WAC 392-172A-03110(1)(b).

Parent participation is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child’s educational program; participate in discussions about their child’s need for special education, related services, and supplementary aids and services; and join with 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. 12473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in

order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

Invitations to Meetings: A district must ensure that parents are given an opportunity to attend and/or otherwise afforded an opportunity to participate at each IEP meeting, including notifying them of the meeting early enough to ensure they can attend and scheduling the meeting at a mutually agreed on time and place. The IEP invitation should include the purpose, time, and location of the meeting; indicate who will be in attendance; and inform the parents of the provisions relating to participation by other individuals on the IEP team who have knowledge or special expertise about the student. 34 CFR §300.322; WAC 392-172A-03100.

FINDINGS OF FACT

1. August 29, 2023 was the District's first day of instruction for the 2023–24 school year. The Student was a fourth grader at a District elementary school, was eligible for special education services under the category of autism, and the Student's July 26, 2023 IEP was in effect.
2. The Student's July 2023 IEP included goals in reading, writing, social/emotional, and behavioral, and specially designed instruction (SDI) provided by a special education teacher in a special education setting from July 17, 2023 through February 15, 2024, as follows:
 - Reading: 250 minutes/weekly
 - Writing: 250 minutes/weekly
 - Social/Emotional: 670 minutes/weekly
 - Behavior: 660 minutes/weekly

The IEP services matrix included the following weekly totals:

- Special Education Inside Gen Ed Classroom Minutes: 0
- Special Education Outside Gen Ed Classroom Minutes: 1,950
- Total Minutes of Special Education: 1,950
- Total Minutes in General Education: 0

The Student also received related services as follows:

- BCBA [board certified behavior analyst] Support: 120 minutes/weekly (special education).
- Paraeducator Support: 390 minutes/daily (special education).

3. On August 29, 2023, the director of special services (director) emailed the Parent, in part: I am writing in response to your three emails dated on August 28th received by myself and [school] staff.

I would like to propose a 45-minute meeting at [school] to address your questions regarding the re-evaluation and IEP services, as well as provide you a tour. Present would be [school psychologist], [principal], [teacher 1] and myself. We are proposing a tour on Thursday, August 31st from 8:00am-8:45am. Please let us know if that works for you. At the conclusion of the meeting, we would anticipate that [Student] would be starting at [school] that morning after our meeting.

I also would like to take the opportunity to define the diagnostic placement that was proposed in the August 2, 2023 Prior Written Notice. A diagnostic placement is a placement...during the course of an evaluation so that staff can conduct observations, collect data and conduct the assessments necessary for the evaluation while [Student] is present at [school].

[School psychologist] can start the evaluation once she has received your signed consent. Please note that the evaluation testing can take place over several days/weeks but must be completed, to include the results meeting with the evaluation team, within 35 school days. After that the IEP will be drafted to reflect any of the recommendations of the evaluation report results.

I hope that this clarifies the next steps and that [Student] can indeed start attending [school].

The Parent replied:

I...signed [school psychologist's] consent form yesterday August 28th...45 Minutes isn't long enough to go over all my questions, and my request for roll (sic) descriptions, communication plan, disenrollment plan, conflict and resolution plan, expectation plan, and the IEP. When can the rest of my needs and questions be addressed?

4. On August 31, 2023, the director emailed the Parent, in part:

Below are the responses to your questions...Some of this we did cover in our meeting this morning. I will be following up with a new email outlining our next steps from our meeting this morning.

...

How is the data going to be compiled? In what format? Who is going to have access to this data? Who is going to enter it? Who is going to analyze it? Who is going to present this data when we have parent/teacher meetings? [Teacher 1]

...

You may submit requests for copies of your student's records and they would be produced electronically based upon the timing of your requests.

...

Go over the entire IEP, make changes in progress reporting, include Math and other changes once the evaluation with [school psychologist] is completed. We will convene as an IEP team after the evaluation results meeting to review a draft of the IEP based on the evaluation recommendations.

Later that day, the director emailed the Parent and District staff:

I have also attached the following data that [Parent] referenced at our meeting:

- Progress Analysis date 1.2023
- Table of Testing 11.2023

[Parent] – I was not provided a copy of the assessments the [previous school] conducted. If you have a copy of that, can you please reply all and attach it to your response? It would be greatly appreciated.

5. On September 25, 2023, the principal emailed the Parent, in part:

The district does not test for dyslexia/dysgraphia. We do assess, during the eval process, to see if a student has a specific learning disability in the area of reading, for example, and then write goals and objectives around that. I do know that the...Team is currently in the process of re-evaluating [Student] to assess her current levels of performance. The team will review these with you when we have our evaluation meeting scheduled.

...

[Teacher 1] will also end home a progress report that will indicate the progress that [Student] has made, up until the point of the progress report. This will be for her IEP goals and objectives.

6. On October 17, 2023, the Student's team met to discuss the Student's re-evaluation conducted by a multidisciplinary team. The evaluation report's discussion section provided, in part, as follows:

This re-evaluation was conducted as part of a diagnostic placement. Student transitioned...at the start of the 23-24 school year. The last school Student attended was a [nonpublic agency] NPA placement...where she attended from November 2022 through March 29, 2023. She had not been attending school since then. Student was placed in a 4th grade classroom per parental request although she is of 5th grade age. The results of the re-evaluation revealed that Student is functioning within acceptable parameters for her age in many areas. Areas of difficulty were identified in social/emotional functioning and mathematics. Student continues to qualify for special education services under the eligibility category of Autism. Specially designed instruction is recommended in social/emotional and mathematics. Student does not continue to demonstrate a need for specially designed instruction in reading, writing, and behavior.

The following areas were included in the re-evaluation to determine continued eligibility and appropriate areas of service:

- Reading
- Cognitive
- Behavioral
- Fine Motor/Math
- Health & Development
- Speech/Language
- Gross Motor
- Written Language
- Social/Emotional
- Vision
- Adaptive
- Sensory

The Parent requested updated information about the Student's speech/language skills and standardized evaluations were completed in the areas of speech, expressive and receptive language, and social communication, as well as informal assessment.

The Student was evaluated in part using the following assessments:

- Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) for cognitive abilities
- Goldman-Fristoe Test of Articulation, Third Edition
- Clinical Evaluation of Language Fundamentals, 5th Edition
- The Behavior Assessment System for Children-Third Edition (BASC-3)

- The Bruininks-Oseretsky Test of Motor Proficiency (BOT-2) for gross motor skills
- The Tools to Grow Occupational Therapy School Screening Checklist
- Kaufman Test of Educational Achievement – Third Edition

7. An October 18, 2023 prior written notice (PWN), documenting the re-evaluation meeting, stated in part:

This re-evaluation meeting was held on October 17, 2023 via zoom video conference.

[Parent] did not attend this re-evaluation meeting. The team waited 6 minutes before proceeding with the meeting. Contact attempts were made on the dates below. [Parent] did not respond to any of these attempts. Should [Parent] request a meeting to review the results, the team could reconvene at a mutually agreeable time.

- October 17th: emailed meeting reminder with zoom link
- October 12th: emailed the meeting invitation, re-evaluation draft, and meeting zoom link-
- October 4th: emailed with proposed meeting date
- September 19th: proposed meeting date and sent calendar invite
- September 6th: emailed meeting date options

The team was in agreement with the results of the re-evaluation.

8. On November 7, 2023, teacher 1 emailed the Parent the Student's progress report. The progress reports provided qualitative and quantitative information regarding how the Student was making progress on her goals.

9. On November 14, 2023, the Student's team met to review and update the IEP following the recent re-evaluation. The Parent attended the IEP meeting. The Student's IEP included SDI provided by a special education team in a special education setting from November 19, 2023 through November 13, 2024, as follows:

- Math: 120 minutes/weekly
- Social/Emotional: 30 minutes/weekly

The IEP services matrix included the following weekly totals:

- Special education Inside Gen Ed Classroom Minutes: 0
- Special Education Outside Gen Ed Classroom Minutes: 150
- Total Minutes of Special Education: 150
- Total Minutes in General Education: 1,515
- % (LRE) Inside General Education: 91
- Student's LRE was 80–100% in General Class

10. A November 16, 2023 PWN, documenting the IEP meeting, stated in part:

The following changes were discussed during the meeting:

- Mastery criteria for math goals to change from 80% and 90% accuracy to 100% accuracy. (The team accepted this proposal)
- Access to privacy shield and noise cancelling headphones. (The team accepted this proposal)
- Add the accommodation of a reminder for water intake for [Student]. (The team accepted the proposal of adding an accommodation of providing an access to water).

- Add the access to multiplication chart during classwork. (The team accepted this proposal)
- Add text to speech to testing accommodations. (The team accepted this proposal)

Parent requested to set up another meeting to discuss the evaluation results and IEP goals in 2024. The team will be proposing dates in January 2024.

...

Parent stated that she did not get chance to read all the paperwork and wanted to look at the data, so she would like to set up one more meeting in 2024 to discuss the results the IEP goals.

11. On November 17, 2023, teacher 1 emailed the Parent:

Please find the final copy of [Student's] IEP attached. I made the edits that were discussed during the meeting. If you have any further questions or would like to make any changes we can discuss those during our meeting in January. I will send you the invite once I get the possible dates from rest of the team.

12. On November 18, 2023, the Parent emailed the District:

I'd like an IEP meeting to be immediate since I disagree with the findings. Student should be getting help with reading, writing, math, and SEL. Student cannot do basic at 4th grade math. Student cannot at 4th grade level spell. Student doesn't know when to capitalize words or not. The writing sample had to be coached. If asked Student could not write that sample in a cold writing.

...

No matter what I ask for I am denied. I am out numbered 4-1 on the IEP team. Tell me how this is equitable?...I got a Prior Written Notice denying me everything I asked for. I still do not have any settlement offer at all.

13. On November 21, 2023, the school psychologist emailed the Parent:

I'm reaching out on behalf of the...[school] team to set up the meetings requested to discuss your concerns and answer questions about the evaluation and IEP. We think these should be separated into two meetings. The first meeting to discuss/review the evaluation and the second to discuss the IEP. The soonest time slots we have available are the following dates: Wednesday December 6th from 8:00 am-9:00 am, Friday December 8th from 8:00 am-9:00 am. Are you available on one or both of those dates? If both of them work for you, we can get the two meetings scheduled, evaluation on the 6th and IEP on the 8th. If you would like more meeting options, please let me know.

14. The District and Parent met on December 6, 2023, and the Student's IEP team met on December 8, 2023. A December 8, 2023 PWN, documenting both meetings, stated:

The re-evaluation results were reviewed with [Parent] on 12/06/2023 from 8:00am-9:00am. The IEP team met again on 12/08/2023 to determine any next steps related to the evaluation and review [Parent's] IEP requests.

...

[Parent] did not attend the re-evaluation meeting scheduled on October 17, 2023 and later emailed and requested to review the findings. The IEP team and the school psychologist met with [Parent] on 12/06/2023 to discuss the results and answer [Parent's] questions. On 12/08/2023, [Parent] expressed wanting more information about the fine motor assessment that was completed as part of the re-evaluation.

...

[Director] stated that she would arrange a zoom meeting for [Parent] to meet with the occupational therapist to review the fine motor results and address any questions she may have.

15. The Parent's notes, dated December 8, 2023, and entitled "IEP Requests" provided, in part:

I would like reality to be communicated in meeting requests. The staff can only meet between 8:00-9:00 a.m. and 4:00-5:00 p.m. maybe half day on Wednesdays. There are no evening dates and times. So, then why even write questions in emails to schedule meetings when I am available? When the truth of the scheduling is that parents have to accommodate teachers, and admin staff. You are only available a possible 2 hours a day. I would like the staff to learn and refresh themselves on the what the IDEA says about parents being an equal partner in the IEP process.

...

I would like the book that Student uses in her classroom. I would access to Eureka, I would Student (sic) to bring Eureka home with her and have homework assigned. I would like Student to be given math tutoring...on the weekends.

...

I would like the OT person to come back and test Student on the following:

- Gross Fine Motor Skills with her hands
- Using Utensils, Knife, fork, spoon, Student still eats with her hands
- Writing long term
- Tying Shoes
- Opening Jars
- Locks
- Gears
- Double Dutch Jump rope

I would like a writing teacher to help her specifically with writing straight on lines Capitalization, punctuation, grammar, fluency, speed, and phonics/phonetically sound out words.

I would like Executive Functioning to be added to the IEP with measurable goals...

SEL minutes should be increased, and should be focused on fears, anxiety around people, honoring her feelings of bullying, and not discrediting the incidents that have happened, but focusing on what's behind the fear. Focus on coping with her fears, making and practicing coping strategies and skills. I would like to know what those skills and strategies and practice them at home.

I would like it broken down over what the specially designed instruction is. How does Student's services relate to [multi-tiered systems of support] MTSS?...

I would still like Student to be tested for dyslexia, dysgraphia, dyscalculia, dyspraxia. Twice this week I saw Student reverse two words side by side while she was reading.

Accommodations:

...

I would all data to be compiled by [teacher 1] and put into a spreadsheet dating back to August 31st, 2023, to forward.

I would like to see all reading, writing, math, and SEL data.

...

I would an executive functioning plan in place and added to her IEP.

I would like the IEP broken down and translated into the MTSS model and through the lens of the MTSS Triangle in the Tier system. In other words move the accommodations and goals and interventions filled into the MTSS Tiers to be able to show me how Student is getting MTSS.

I would like to have a spreadsheet for all the bullying incidents with the date/time, location, description, gender, age, grade of student, if the investigation happened, and what the outcome was.

I would like a second spreadsheet to show when the school counselor is meeting with Student with date/time, location, duration, what was discussed or taught, and any goals.

...

I would like to know who is going to write the Prior Written Notices, and if they are not correct, I would like to know who is going to correct them.

...

I would like all staff working with Student to learn Declarative Language, and have training on Pathological Demand Avoidance...

I would like all staff working with Student to have updated training on Trauma Informed Teaching, and Trauma Informed practices.

16. On December 9, 2023, the Parent emailed the District:

I can get Student caught up in any subject. Can you send her Power point story and I can get her caught up? Why are you not practicing actual handwriting? Why is the focus on typing? I would like Student to have homework. She should not be behind in this class despite my ability to get her to school. I can keep her on track. Please attach Eureka Math, or any lesson to this email or send me links.

The District responded:

Regarding your questions below:

- The PowerPoint that features Student's writing will be attached to her weekly Friday email on 12.15.23. When it arrives in your personal email Inbox, it will be in its final form for you to enjoy and celebrate. No further work will be needed. It will be in its final form.
- We have addressed the handwriting/typing question in prior meetings on several occasions. As students become 3rd graders-onward, the district is committed to a 1:1 experience regarding technology (laptops). This allows us to set our students up for their future success, a future that is theirs and not ours. As technology progresses, our thinking around application of knowledge must change and adapt, hence the reason for students to be proficient users of laptops, technology and any future developments in this area.
- Please click on the following link for all of our elementary online resources that can be used to support Student at home (homework). This is a family decision as to how you want to access and how much you want to have her do. Most, if not all, of the resources, are specific to Student's ability. Scroll down just a bit once you have clicked on the link

until you see the Elementary Resources tab. Click on the "+" sign and you will find all that is available to you. This can be accessed 7 days week throughout the school year.

The Parent replied:

Student's handwriting is not acceptable. I am going to be requesting a writing tutor. I am also going to be requesting that Student do homework at home from the teacher's assignments. There is no reason why Student cannot do this. I want proof by the teacher and the school district that her handwriting is at 4th grade level. It will become a due process complaint if it is not.

17. On December 11, 2023, the principal sent an internal email that stated, "I would like to request a...para...(and) also use one hour to support [Student] at lunch/PM recess."

18. Also, on December 11, 2023, the Parent emailed the District, in part:

Student has missed considerable amounts of school this year. I would guess it to be 40%-50%. Student is late almost every day. Student does not have the executive functioning she needs to get to school on time consecutively for five days. The IEP Team, rather [principal] denied Student getting any assistance from the IEP Team for executive functioning because quote 'It's not happening here, and we don't see it' 'Whatever is happening at home' isn't happening here' therefore 'we cannot serve Student in an Executive Functioning manner'.

....
When this sample was given to me at the 11-14-23 IEP meeting, I explained to ... that Student could not have written this sample by herself, that she cannot spell these words without prompting. I explained that if asked for Student to write this on a cold sample that she could not. It was not explained to me that this writing sample was something that Student copied from the board. I was made to believe that this writing sample is something that Student somehow wrote free hand.

...
I am more than qualified to help Student in Powerpoint or Math. I tutored Business Math At Bellevue College. [Teacher 2] feels that Student does not need homework according to what she has shared in the IEP meetings. I did not agree to this...[teacher 2] is denying me a right to participate in my child's academics, and the IEP Process.

...
I want Student to get writing tutoring added to her IEP.

...
Student cannot stay up with her peers now in 4th grade. Student is not at 4th grade level writing no matter what. I cannot find anything definitive that says that Student can write at 4th grade standard and meets standard and therefore does not need any IEP minutes in writing. Student is again being denied FAPE because she cannot access her actual classroom homework.

19. On December 12, 2023, the school psychologist emailed the Parent the Student's October 2023 reevaluation report and a PWN.

20. On December 12, 2023, the Parent filed this complaint with OSPI that alleged, in part:

- My daughter was not tested for the four forms of dyslexia as a specific learning disability after explaining that my daughter does show and exhibit signs of dyslexia, dysgraphia, and possibly the other two dyscalculia, and dyspraxia.

- My daughter was denied executive functioning even though she cannot get to school on time.
- My daughter was not tested appropriately by the OT in the most recent evaluation.
- My daughter was not tested to hold a pencil, pen, tie her shoes, tie anything, or hold a utensil such as a fork, knife, or spoon. My daughter still eats with her hands.
- The school and IEP case manager have denied compiling IEP data for reading, writing, and math. The only data I have been sent is progress notes, and report cards. In other words, it's not in any spreadsheet format.
- The IEP team took away my daughter's reading, writing, and paraeducator without my knowledge or approval. The IEP team made decisions for me without me being present.
- IEP team made decisions for me that I did not agree with. Many attempts to get my daughter help in writing, grammar, punctuation, spelling, and the actual correct writing techniques went ignored.

21. On December 14, 2023, the Parent emailed the District, in part:

The purpose of this email is to document what has been happening and what needs to be happening moving forward. [Student] needs an Academic Make Up plan in writing, and in a spreadsheet that is easy to follow, understand, and that can be updated for the benefit of the IEP Team to track her missing assignments and IEP Minutes.

22. A December 22, 2023 PWN documented the District's attempts to schedule an IEP meeting and stated:

On December 19, 2023, the Parent emailed and declined the proposed...additional IEP meeting on January 10, 2024 at 8am via Zoom. Parent did not provide a reason for declining the meeting or propose any additional dates.

...

The Parent provided the District proposed meeting dates, including January 10, 2024, and the District agreed to meeting again on January 10, 2024 via zoom.¹ When staff return after the Winter Break, the District will propose additional meeting dates. In lieu of another IEP team meeting, the District is also open to a Sound Options mediation or facilitated IEP team meeting.

...

The Parent proposed meeting dates that fell on Wednesday afternoons.

...

The District rejected the proposed Wednesday afternoon meeting dates due to required staff trainings and staff meetings.

23. On January 8, 2024, the District submitted its response to the Parent's complaint. Regarding the first issue, the Student's reevaluation, the District responded:

District sufficiently tested for a specific learning disability and occupational therapy...because it conducted the reevaluation in all areas of suspected disability, including Reading, Math, Written Language, Cognitive, Fine Motor, Gross Motor and Sensory...The evaluation team administered the Kaufman Test of Educational Achievement...in Reading, Math and Writing...It found that Student did not qualify as having a specific learning disability...Additionally, based on fine motor and sensory

¹ On January 12, 2024, the District's attorney informed OSPI the following, "the Parent requested to reschedule the January 10th meeting, which was to be the 3rd part of the IEP meeting, ... The District is still working on rescheduling the meeting."

processing concerns from Parent, the evaluation team conducted an Occupational Therapy evaluation of Student...Student presented with age appropriate motor skills and Occupational Therapy was also not recommended to support her sensory processing skills.

Regarding the second issue, related to progress reports, the District responded it satisfied its responsibility to provide progress reports, and stated:

Here, Student's IEP provides that her progress report be sent to Parent each trimester...[Teacher 1] emailed Parent a copy of Student's progress report, which showed Student's IEP goals and objectives with the progress she had made during the fall semester...Further, although not required by the IEP for purposes of annual goal reporting, [teacher 2] sent weekly updates, communicating where Student was in terms of work completion, also connecting with Parent and showing her work examples.

While Parent may have desired daily communication, or communication on her own terms at all times, with the District regarding Student's progress and/or schoolwork, this was not feasible with the number of students in the District, the responsibilities of staff in the classroom throughout the day, and was not required under the regulation or Student's IEP.

Regarding the third issue, the Parent's request for interpretation/explanation of progress reports, the District responded:

The District appropriately responded to Parent's request for an explanation/interpretation of the progress report.

...

Here, the District was not in receipt of any written request by Parent to explain or interpret Student's IEP progress report to which it failed to reasonably respond. As noted above, [teacher 1] provided Parent with an electronic copy of Student's Progress Report on November 7, 2023, which included detail regarding the data collected on each goal, the date the data was collected and the score of each data collection...Further, as Parent's own Complaint shows, the District provided her with requested information regarding comprehensive literacy and materials after the November 15, 2023 presentation.

During both the December 6, 2023 and December 8, 2023 team meetings, Parent requested IEP goal progress, iReady, SBA and all other data to be compiled into an Excel spreadsheet so she could understand and interpret Student's progress. The District explained and interpreted the data and progress to Parent at both meetings, including but not limited to evaluation data and IEP goal progress.

Additionally, it seems that Parent's Complaint may also be referring to the December 14, 2023 email, in which she requested a spreadsheet from the IEP team regarding Student's academic make-up plan to track her allegedly missing assignments and IEP minutes...However, given that this communication came just one day prior to Winter Break and that [teacher 2] had already informed Parent that Student did not have any outstanding homework for Winter Break, [director of special services] emailed her and stated that District staff could not fulfill her request and that the email, along with her other requests, would be addressed at the January 10, 2024 IEP meeting.

Regarding the fourth issue, whether the District has allowed the Parent to provide input into the Student's IEP development, the District responded:

In this case, Parent had several opportunities to provide input into Student's IEP during the 2023- 24 school year, because the District reevaluated Student based on Parent's concerns, it began the process of hiring 1:1 paraeducator support for Student based on Parent's concerns, and Parent had access to Student's homework. First, Parent was present for the November 14, 2023 IEP team meeting, after which the IEP team added each of Parent's requested changes to the IEP, none of which concerned Student's reading and writing needs...Parent stated she did not have an opportunity to read all of the paperwork and wanted to look at all of the data, requesting a second meeting, which the IEP team agreed to, and a second meeting was scheduled for December 8, 2023...A third IEP meeting is scheduled for January 10, 2024...Additionally, in mid-December, the District began the process of hiring a paraeducator to support Student during lunch and afternoon recess. The District had agreed to this support during these unstructured times and was responsive to the multiple HIB [harassment intimidation bullying] complaints filed by Parent that listed Student as the alleged victim of bullying.

Further, Parent had the opportunity to provide input regarding Student's executive functioning skills during the October 2023 Reevaluation when the team specifically evaluated Student's executive functioning skills based on Parent's concerns, but Parent did not return the Parent BASC-3 questionnaire at the time of the report...In contrast to Parent's reported concerns, the teacher questionnaire scores noted that Student showed low-level behaviors, Student's behavior was observed to be consistent with school expectations across all settings, and that Student did not demonstrate any significant behavioral challenges...Student was reported to follow classroom expectations, was receptive to feedback, demonstrated safe behavior at school, and her behavior was not impeding her learning or the learning of others...The District further an additional meeting with Parent on December 6, 2023 to review the reevaluation results with Parent.

Finally, the District provided Parent with access to Student's homework throughout the school year and assisted Student in catching up on homework when she was out of school. When Student was out of school with COVID in October, [teacher 2] worked with her to catch her up on her schoolwork when she returned. On December 11, 2023, [principal] addressed Parent's homework questions and provided her with a link to elementary online resources, also labeled 'homework' in the email communication, which could be accessed at home, with Parent making the decision on how much Student accessed the information...On December 15, 2023, [teacher 2] informed Parent that Student turned in all work and provided to Parent how Student was assessed on the rubric.

24. On January 12, ,2024, the District informed OSPI that the Parent canceled the scheduled January 10, 2024 IEP meeting and it has yet to be re-scheduled.

CONCLUSIONS

Issue 1: Sufficient Evaluation – Regarding the first issue, the Parent's complaint alleged, in part, that the Student was not tested for "four forms of dyslexia" and appropriately assessed by the occupational therapist.

Additionally, according to the Parent, the Student was denied executive functioning support even though she cannot get to school on time.

Regarding the sufficiency of the Student's evaluation, the District responded and the documentation support that the District:

...conducted the reevaluation in all areas of suspected disability, including Reading, Math, Written Language, Cognitive, Fine Motor, Gross Motor and Sensory...The evaluation team administered the Kaufman Test of Educational Achievement ("KTEA-III") in Reading, Math and Writing...It found that Student did not qualify as having a specific learning disability...Additionally, based on fine motor and sensory processing concerns from Parent, the evaluation team conducted an Occupational Therapy evaluation of Student...Student presented with age appropriate motor skills and Occupational Therapy was also not recommended to support her sensory processing skills.

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, including information provided by the parents. 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.

The present case's record shows that a multidisciplinary team conducted the Student's re-evaluation in at least fourteen areas of suspected need using observations, surveys, and at least seven different assessments to gather relevant functional, developmental, and academic information about the Student. The record shows that during the re-evaluation process, the Parent raised specific concerns about the Student's executive functioning, occupational therapy, and needs related to a specific learning disability (e.g., dyslexia, dysgraphia, dyscalculia, dyspraxia). The record also shows that the District addressed each one of these three concerns in the re-evaluation. Regarding executive functioning, despite the Parent's concerns, the teacher's observations and BASC-3 "questionnaire scores noted that Student showed low-level behaviors, Student's behavior was observed to be consistent with school expectations across all settings, and that Student did not demonstrate any significant behavioral challenges." Regarding occupational therapy, the "Student presented with age appropriate motor skills and Occupational Therapy was also not recommended to support her sensory processing skills." And relevant to the Student's potential executive functioning needs, although the Parent later expressed concern, the Parent did not return the BASC-3 parent questionnaire she was provided to complete as part of the re-evaluation. Finally, regarding the Parent's concerns of dyslexia, dysgraphia, dyscalculia, and dyspraxia, the principal emailed the Parent, "The district does not test for dyslexia/dysgraphia. We do assess, during the eval process, to see if a student has a specific learning disability in the area of reading, for example, and then write goals and objectives around that."² Additionally, the

² OSPI notes the District's position and the principal's statement is supported by *Crofts v. Issaquah School. Dist. No. 411*, No. 19-35473 at pp 3-4 (9th Cir. Jan. 12, 2022), which found that it is appropriate for a district to evaluate for a specific learning disability when dyslexia concerns are raised. In part, the decision stated, "[Parent] requested that the District evaluate [Student] for special-education services after she received an outside evaluation indicating that [Student] might have dyslexia. The District evaluated [Student] under the IDEA's enumerated 'specific learning disability' category, which statutorily encompasses conditions like dyslexia. It determined that she was eligible for services in reading and writing...[Parent] contends that the District should have evaluated [Student] specifically for dyslexia...A Washington State Administrative Law Judge (ALJ) found that the District did not violate the IDEA by evaluating [Student] under the specific-

evaluation team administered the Kaufman Test of Educational Achievement (“KTEA-III”) in reading, math, and writing and found that the Student did not qualify as having a specific learning disability.

The record clearly shows that the District addressed the concerns the Parent raised regarding the Student’s needs in the evaluation and conducted a comprehensive reevaluation of the Student. Thus, OSPI does not find a violation as to the first issue.

Issues 2: Progress Reporting – The Parent initially raised general allegations in her complaint regarding receiving progress reports; however, as discussed in Issue 3, the Parent’s concern upon investigation is more related to the formatting of the reports.

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards.

When this case was originally opened, OSPI believed that the Parent had raised an issue of whether the District had provided her with progress reports in a timely manner. A closer review of the record shows that the Parent admitted in her complaint that she had received the progress reports. Additionally, a review of the present case’s record shows that the Student’s November 2023 IEP provides that progress reports will be done on a trimester basis and would be in the format of a written progress report. On November 7, 2023, the District sent the Parent the Student’s progress report. A review of this progress report shows that it provided both qualitative and quantitative information on the Student’s progress for seven goals focused on two reading, one writing, two social/emotional, and two behavior goals.

The progress report provided information on what type of activity the Student was working on to satisfy a goal, and then provided a percentage of success, or raw data such as how many words per minute the Student was reading for example. This is sufficient quantitative and qualitative information for the Parent to get an understanding as to how the Student is progressing on her goals. Additionally, the District provided the November 2023 progress report in a timely manner. Finally, while not required by the IEP specifically, the District provided the Parent with information about the Student’s progress through weekly updates and multiple IEP meetings. Thus, the District did satisfy its progress reporting responsibilities under the applicable regulations, and for this reason, OSPI does not find a violation regarding the second issue.

learning-disability category and not specifically for dyslexia. The United States District Court for the Western District of Washington affirmed...We conclude that the District correctly evaluated [Student] for a specific learning disability-of which dyslexia is one - and provided an education reasonably calculated to enable [Student] to make appropriate progress in light of her disability.”

Issue 3: Explanation of Progress Reporting – Regarding the third issue, the Parent’s complaint alleged, in part, “The only data I have been sent is progress notes, and report cards. In other words, it’s not in any spreadsheet format.” The District responded in part:

[We] appropriately responded to Parent’s request for an explanation/interpretation of the progress report...During both the December 6, 2023 and December 8, 2023 team meetings, Parent requested IEP goal progress, iReady, SBA and all other data to be compiled into an Excel spreadsheet so she could understand and interpret Student’s progress. The District explained and interpreted the data and progress to Parent at both meetings, including but not limited to evaluation data and IEP goal progress.

Again, the purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. IEPs must include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals.

The crux of the present case’s third issue is whether the District needs to provide the Student’s progress reports in a spreadsheet as the Parent has requested. The applicable regulations do not provide that progress reports must be produced or re-produced in a spreadsheet or any specific format, rather that the IEP include a statement indicating how the student’s progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student’s progress toward meeting those annual goals. As stated above, the Student’s November 2023 IEP provides that progress reports will be done on a trimester basis and would be in the format of a written progress report.

A review of the Student’s progress reports show that the District provided a written progress report with sufficient qualitative and quantitative information to enable the Parent to be informed of the Student’s progress. The District was not required to format the progress report specifically as a spreadsheet as requested by the Parent; although, OSPI notes that if the Parent continues to have concerns about the progress reports, OSPI recommends the IEP team discuss whether there is a different format that would be beneficial to the IEP team in understanding the Student’s progress. Further, the District discussed and explained data and progress related to the Student with and to the Parent in multiple evaluation and IEP meetings. Thus, based on the present case’s record, there is not a violation concerning the third issue.

Issue 4: Parent Input – Regarding the fourth issue, the Parent’s complaint alleged, in part:

- The IEP team took away my daughter’s reading, writing, and para educator without my knowledge or approval. The IEP team made decisions for me without me being present.
- IEP team made decisions for me that I did not agree with. Many attempts to get my daughter help in writing, grammar, punctuation, spelling, and the actual correct writing techniques went ignored.

The District responded that it appropriately ensured that the Parent has had the opportunity to provide input into the Student’s evaluation and IEP during the 2023–24 school year.

The parents of a student eligible for special education services must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a free appropriate public education (FAPE) to the student. IEP teams must consider the parents' concerns and the information that parents provide regarding their child in developing and reviewing their child's IEP. Parent participation is an active role in which the parents: provide critical information regarding the strengths of their child, and express their concerns for enhancing their child's educational program; participate in discussions about their child's need for special education, related services, and supplementary aids and services; and join with 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.

The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.

A review of the present case's record, including email exchanges and PWNs, shows that the Parent has had an opportunity to participate and provide input regarding the Student's re-evaluation and IEPs. For the October 17, 2023 re-evaluation meeting, although the Parent did not attend, the record shows that she was contacted at least four times between September 19 and October 17, 2023, about scheduling and attending the meeting. It is not clear why the Parent did not attend the re-evaluation meeting. The Parent then attended a November 14, 2023 IEP meeting.

Then, according to the November 16, 2023 PWN, the IEP team made several accommodations and goal mastery changes to the November 14, 2023 IEP at the behest of the Parent. The PWN also stated, "Parent requested to set up another meeting to discuss the evaluation results and IEP goals in 2024. The team will be proposing dates in January 2024." Then on December 6, 2023, a meeting was held where the re-evaluation results were reviewed with the Parent, and on December 8, 2023, the IEP team met again to "determine any next steps related to the evaluation and review [Parent]'s IEP requests." Finally, the parties were supposed to meet on January 10, 2024, but the Parent canceled the meeting.

OSPI notes a district is not required adopt or agree with every request made by a parent, nor does disagreement necessarily mean a parent was not able to participate. The District's failure to comply with the Parent's requests does not mean that a violation exists. Here, the Parent attended and participated in multiple IEP meetings and the IEP team incorporated many of her requested changes to the IEP. It is unfortunate that the Parent feels that the IEP meetings are not equitable because she is "out numbered 4-1 on the IEP team," but as stated just above, "the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE." OSPI recommends the IEP team continue to discuss and consider the Parent's concerns and requests and work together to center the Student and address the Student's needs. OSPI also recommends the team consider a facilitated IEP meeting. Based on the present case's

record, the District has taken into consideration the Parent's desires and provided multiple opportunities for the Parent to participate in the evaluation and IEP development, and thus, OSPI does not find a violation regarding this issue.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 27th 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.)