

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-179**

### **PROCEDURAL HISTORY**

On December 14, 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 East Valley 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 December 14, 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 21, 2023, OSPI received additional information from the Parent. OSPI reviewed the additional information and determined that the Parent raised an additional allegation. On December 22, 2023, OSPI provided this additional information to the District and requested the District respond to the additional alleged issue.

On January 5, 2024, OSPI received the District's response. OSPI provided the Parent a copy of the District's response on January 10, 2024.

On January 23, 2024, the Parent provided OSPI with additional information. OSPI provided a copy of this information to the District on January 31, 2024.

On January 29, 2024, OSPI's investigator conducted a phone interview of the Parent.

On February 1, 2024, OSPI's investigator conducted separate Zoom interviews of the special education teacher, the speech language pathologist (SLP), and the occupational therapist (OT).

On January 31, 2024, OSPI requested that the District provide additional information, and the District provided the requested information the same day. OSPI forwarded the information to the Parent on February 2, 2024.

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

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began with the beginning of the 2023–24 school year per the allegations in the complaint. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

## ISSUES

1. In fall 2023, did the District follow proper procedures for implementing the Student's individualized education program (IEP)?<sup>1</sup>
2. Did the District follow proper procedures for ensuring the Parent's participation in the November 6, 2023 IEP meeting?
3. In fall 2023, did the District follow proper IEP development procedures? Specifically, during this time period:
  - a. Did the IEP team or District's evaluation group properly consider the contents of the "Winston Center" report?
  - b. Did the IEP team or evaluation group address whether the Student experienced any potential change in need resulting from the Student's disability in the areas of specific learning disability, gross motor, sensory processing, and/or assistive technology, such that a reevaluation in these areas needed to be completed?
4. In fall 2023, did the District follow proper procedures for responding to any harassment and/or bullying the Student experienced? Specifically, in fall 2023, did harassment and/or bullying prevent the Student from accessing FAPE?"

## LEGAL STANDARDS

IEP Implementation: A district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. 34 CFR §300.323(c); WAC 392-172A-03105(2). Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

"When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [student with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

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. WAC 392-172A-03100(3).

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<sup>1</sup> The investigation into Issue 1 will be inclusive of the harassment and bullying concerns the Parent expressed regarding the fall 2023 time period. Specifically, did the District's response to any such harassment or bullying impact the Student's ability to access a free appropriate public education (FAPE)?

A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place. WAC 392-172A-03100(3).

Reevaluations: In any reevaluation, the qualified professionals, as appropriate, must: review existing evaluation data on the student, including information provided by the parents. On the basis of the review of existing data, and input from the student's parents, the group of professionals will identify what additional data, if any, are needed to determine what special education and related services the student needs. WAC 392-172A-03025. Once a parent has provided consent for the reevaluation, the district's group of qualified professionals will have 35 school days to complete the same. WAC 392-172-03015(3)(a).

Bullying and Harassment: Under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student's IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student's needs to change such that their IEP is no longer providing educational benefit. (Dear Colleague Letter, 61 IDELR 263).

Harassment or bullying that adversely affects that student's education, may result in a denial of FAPE. A denial of FAPE occurs when, taking into consideration the student's unique characteristics, it may be fairly said that a school district did not provide the student an opportunity to obtain some progress from the program it has offered. *Ojai Unified School District v. Jackson*, 4 F.3d 1467 (9<sup>th</sup> Cir. 1993), *cert. denied*, 115 S. Ct. 90 (1994). Harassment and bullying of a student eligible for special education that prevents the student from receiving meaningful educational benefit constitutes a denial of a FAPE that districts must remedy. As part of its response, the district should convene an IEP team meeting to determine whether additional or different services are necessary and must revise the student's IEP accordingly. A fundamental step in preventing disability-based harassment is developing and disseminating a policy that prohibits such harassment. *Dear Colleague Letter* (OSERS/OSEP Aug. 20, 2013).

## **FINDINGS OF FACT**

### **2022–23 School Year**

1. The Student attended an elementary school in the District and was eligible for special education services.
2. A February 9, 2023 prior written notice (PWN) read, in part, "Student's mother has requested dyslexia testing for Student. Within Washington State, dyslexia falls under the eligibility category of a specific learning disability in reading, and...standards for a comprehensive evaluation need to be followed."
3. During the 2022–23 school year, the Student was absent for approximately 44 school days.
4. A March 2, 2023 PWN read, in part:

Parent revoked consent for the reevaluation she had requested...The evaluation group is an agreement that it would be most appropriate to wait until next school year, when his triennial evaluation is due, to allow him more time to access his educational program and...special education services. This is the first school year that Student has been enrolled in public school [and] accessing his recommended special education services.

5. The Student's IEP team developed a new IEP for the Student on May 2, 2023. The May 2023 IEP noted the "next reevaluation must occur before May 3, 2024."

The May 2023 IEP included the following goals: math 1 (two-digit addition with regrouping); math 2 (ordering and comparing numbers); reading 1 (blends and digraphs); reading 2 (vowel sounds); written language (completing a graphic organizer); communication 1 (articulation); communication 2 (vocabulary); occupational therapy 1 (handwriting); and occupational therapy 2 (tying shoes). Progress on the foregoing goals was to be reported via a written progress report every trimester.

The May 2023 IEP included the following accommodations:

- 100s number table
- Access to number line
- Access to sensory items, tools, standing desk, etc.
- All math word problems need to be read aloud
- Appropriate desk height
- Break long tasks or assignments into smaller parts
- Communicate with Parent about any patterns of behavior or schoolwork that Student is struggling with
- Directions read aloud
- Hundreds chart
- Math manipulatives
- Modified spelling assessment
- Movement/sensory breaks (may also call these brain breaks)
- Near point notes for everything written on the white board
- Read-aloud – English
- Seating in front of class with unobstructed view of the whiteboard
- Simplify complex directions
- Text-to-speech designated support level ELA-PT/all math and science (does not include passages)
- Text-to-speech ELA CAT/PT Passages/Stimulus plus items (accommodation only)
- Use language 'expected/unexpected'
- Use teachable moments to teach appropriate social skills and behavior.

The May 2023 IEP provided the Student with the following specially designed instruction and related services in a *special education setting*:

- Math: 2 hours a week (to be provided by a special education teacher)
- Reading: 2.5 hours a week (to be provided by a special education teacher)
- Written Language: 2 hours a week (to be provided by a special education teacher)
- Communication: 30 minutes a week (to be provided by an SLP)
- Communication: 15 minutes a week (to be provided by an SLP)
- Occupational Therapy: 30 minutes a week (to be provided by an OT)

According to the Student's May 2023 IEP, the Student was last evaluated on May 3, 2021.

6. According to the District, on or about June 2023, a group of qualified professionals determined the Student was to be reevaluated for special education eligibility in fall 2023, even though "the original re-evaluation due date is May 2024."

A June 6, 2023 PWN read, in part, "The team is proposing to initiate his reevaluation early next year (in the fall) to provide more current information regarding his needs...Through email correspondence Parent noted concerns with Student's gross motor development."

### **2023–24 School Year**

7. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of developmental delays, was in the third grade, attended a District elementary school, and the Student's May 2023 IEP was in effect.
8. The District's 2023–24 school year began on August 29, 2023.

In its response, the District included several documents related to the Student's schedule. Those documents are incorporated by reference.

In its response, the District asserted it provided the Student's "IEP-At-A-Glance" to the Student's "classroom teacher and specialists" prior to the start of the school year, on August 29, 2023.

9. In its response, the District asserted it followed proper procedures for implementing the Student's May 2023 IEP in fall 2023. The District also asserted it followed proper IEP development procedures during fall 2023.
10. In regard to those portions of the Student's May 2023 IEP that were not implemented beginning fall 2023, the Parent's complaint request read, in part:
  - "District did not provide dates of service and minutes for all IEP service providers"; and,
  - "Not consistently providing...accommodations and modifications. [Specifically, the] District did not provide...bi-weekly communication to family."
11. Regarding the Student's reevaluation-related needs in fall 2023, the Parent stated, in part:
  - "Historically, all gross motor and imitation skills are challenging [for Student]"<sup>2</sup>; and,
  - Parent suspected Student of dyslexia-related needs, and the District did not implement "state-required dyslexia screening".
12. According to a reading intervention document, the Student was scheduled to receive certain reading services each weekday. According to the reading intervention document, between September 4 and December 15, 2023, the Student attended approximately 60 reading service sessions; four of those 60 sessions were, potentially, shorter in duration due to "shorter class

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<sup>2</sup> In part, the Parent's complaint request read, "[The] OT previously reported...her inability to assess motor planning and bilateral coordination [as well as her ability to] write goals in these areas."

periods [because of] conferences]" than the schedule for a typical day, and on eight weekdays, the Student did not attend reading service sessions.

13. According to a math intervention document, the Student was scheduled to receive certain math services four days a week. According to the math intervention document, between September 4 and December 15, 2023, the Student attended approximately 47 math service sessions; five of those 60 sessions were, potentially, shorter in duration due to "shorter class periods [because of] conferences]" than the schedule for a typical day, and on five weekdays, the Student did not attend math service sessions.
14. According to a writing intervention document, the Student was scheduled to receive certain writing services four days a week. According to the writing intervention document, between September 4 and December 15, 2023, the Student attended approximately 48 writing service sessions; five of those 60 sessions were, potentially, shorter in duration due to "shorter class periods [because of] conferences]" than the schedule for a typical day, and on eight weekdays, the Student did not attend writing service sessions.
15. A "goal tracking" document noted the Student made the following progress on the following annual goals between late September and mid-December 2023:
  - Math 1 (two-digit addition with regrouping): 1/12 to 5/12.
  - Math 2 (two-digit subtraction with regrouping): 0/12 to 2/12.
  - Math 3 (ordering and comparing numbers): Ordering improved from 1/10 to 2/10 and comparing improved from 1/10 to 8/10.
  - Reading 1 (blends and digraphs): 3/10 to 6/10.
  - Reading 2 (vowel sounds): 0/5 to 2/5.
  - Written language (completing a graphic organizer): 1 supporting detail sentence with maximum adult support to 2 supporting detail sentences with maximum adult support.
16. According to a service log, at least in part, the Student received a total of approximately 5 hours and 50 minutes of communication services between September 11 and December 11, 2023.

Separately, "a speech-language therapy note"/"data sheet" noted the Student had approximately 17 speech sessions between September 7 and December 13, 2023.

17. According to September 2023 emails:
  - On September 10, 2023, the Parent emailed the District "information about [the family's] appointment at [the] Winston Center and formally requested a meeting" to discuss the same, take place either late October or early November.
  - On September 14, 2023, the principal proposed 2 meetings – one (for the first week of October) to discuss the report and one (on or about November 1, 2023) to discuss "any additional items." The principal stated first meeting was "not intended for IEP review or progress reporting."
  - The Parent requested "a full PT evaluation." The principal stated, District "agrees the physical therapist will be part of the evaluation team to assist us with gross motor present levels."
  - On September 27, 2023, the Parent stated she could "confirm the November 1<sup>st</sup> meeting."

18. According to meeting notes, on September 18, 2023, the Parent and principal spoke on the phone. In part, the Parent provided the principal with a specific type of paper that was to be used when the Student worked on handwriting-related assignments. Said notes also read, in part, "Spelling word: special education teacher would give Student the assessment verbally and then in writing."
19. According to the District, the principal and Parent exchanged several emails regarding scheduling a meeting between September 10 and October 7, 2023, ultimately scheduling a meeting for November 6, 2023.
20. According to October 2023 emails:
- On October 3rd, in response to an email from the Parent regarding "dyslexia screeners", the assistant director of assessment and technology wrote, in part, "We do not screen for dyslexia...The students complete the i-ready assessment and RAN assessment to measure the state-required early literacy skills. Teachers and building teams review the data from these assessments in conjunction with classroom assessments to determine if there are learning difficulties that need to be investigated further."
  - On October 5th, the Parent was invited to a "Student team meeting" scheduled for November 6, 2023.<sup>3</sup> On the 7th, the Parent responded, stating she "need[ed] to review all the assessments [mentioned in the technology director's October 3<sup>rd</sup> email] prior to the meeting."
  - In part, in early October: the District stated the first meeting—to discuss the Winston Center Report—would be 50 minutes long; the Parent expressed some confusion regarding whether the IEP would be amended and/or whether the Winston Center Report results would be "document[ed]" anywhere during the meeting scheduled for October; the Parent stated, for the second meeting, she was no longer available "the first week of November but...could meet on November 6 or 8"; the Parent requested "any assessment plan" the District's group of qualified professionals thought was appropriate; and, the principal stated the November 6<sup>th</sup> meeting would be "to discuss assessment options."
  - On October 10th, the Parent expressed confusion as to whether the District was going to have completed the Student's special education reevaluation "assessments" prior to November 6. In response, the principal stated the November 6, 2023 meeting would be to discuss the following: "assessment plan for his reevaluation"; and review the Winston Center Report.
  - On October 11th, either the bus driver or the Student told the Parent that another student had threatened the Student, stating, in part, "I am going to kill your whole family." Later, on October 18th, the principal stated the District had been "able to verify the threat made on the bus through video and interviews." (In its investigation, the principal asserted the District conducted a threat assessment.)
  - On or about October 17th, the Student transferred general education classes, so as to have more limited contact with a particular classmate. While the Parent approved of said move, the Parent did express concern about Student-student contact during "transition times and recess."
  - On October 17, 2023, the Parent requested "an assessment plan."
  - On October 18th, the Parent emailed the principal, stating, in part, "The team had agreed [in spring 2023] to move Student's triennial assessment up to the fall of 2023 rather than waiting until 2024. If the assessment from all the team members (including PT) is not completed by

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<sup>3</sup> The October 5, 2023 invitation for a November 6, 2023 meeting also included a list of email addresses for those who were invited to attend. These included a general education teacher, the principal, the special education director, the SLP, the special education teacher, and the "principal assistant."

November 6, 2023, I will not be making time to attend.” (Upon knowledge and belief and based, in part, on an October 17th email from the Parent, the Parent’s understanding and/or desire was that the Student’s reevaluation would be completed in fall 2023 and a new IEP for the Student would be developed following completion of said reevaluation.<sup>4</sup>)

- On October 29th, the Parent expressed concern the Student was still having contact with the student during transitions, and that the Student was being prevented from “access to the playground, gym, and other areas” because of the need to avoid interactions with the other student. (Based on an email authored by the Parent, the safety plan included, in part, the following provisions: Student was to sit close to the bus driver; “Student will exit the bus first and enter into the building first”; “Student will eat his breakfast in the gym”; “When transitioning to and from recess, Student will be in the front of the line at all times”; “While at recess, Student will stay in an assigned area”; “During assemblies...Student will be placed close to the teacher.”

21. Regarding the incident on October 11, 2023, according to the District, the incident was: handled according to policy and procedures both at the state and federal level...Student [was] not prevent[ed] from accessing FAPE. Video was watched, students [were] interviewed, [a] threat assessment was completed, discipline [was] issued for the other student, [and] a safety plan for Student and a plan for the other student were all a result.

22. According to the Parent’s complaint request, following the development of a safety plan following the October 11, 2023 incident:

District continues to not follow-through on parts of the safety plan...[The] peer [in question] continues to eat breakfast in Student’s shared space daily. [This peer] also has access [to Student] in other shared space[s] such as [the] hall, [the] gym, [and the] bus line...Student is regularly denied access to areas of the playground because [the] threatening peer is provided repeated access to Student’s preferred games/activities on the playgroup and staff do not apparently provide [a] rotating schedule for access.

23. The District received the Winston Center report (report) on October 12, 2023, and following its receipt—according to the District—“the team considered the contents of the report individually as service providers.”

According to the Parent, concurrent and/or subsequent to her providing the report to the District, she expressed a belief the Student’s May 2023 IEP needed to be amended on multiple occasions.

24. According to its website, the Winston Center “helps children...address, manage, and overcome ADHD, dyslexia, and related learning challenges.”<sup>5</sup> The Winston Report was dated September 28, 2023. In part, the report detailed the following:

- The Student had a “language disorder,” demonstrating “difficulty [completing]...receptive and expressive language tasks [and these areas may be] impacted by Student’s difficulties with executive functioning [such as] attention, memory, [and] impulse control.”

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<sup>4</sup> The Parent cited a June 6, 2023 PWN that allegedly read: the team will “wait until next fall to develop the assessment plan and initiate his comprehensive reevaluation.”

<sup>5</sup> <https://www.winstoncenter.com/>



- Recommendations that the Student receive hours hours each week of services from an SLP, with short-term goals related, in part, to the following: phonemes (“for graphemes for consonants, consonant diagraphs, short and long vowels, and welded units”); “orally provide a minimum of three attributes of familiar items (pets, family members, cars, foods, friends)”;
- ability to “select synonyms and antonyms”; and, “follow 1 step oral directions containing basic concepts.”
- It recommended, in part, the following long-term goal, “receptive [and] expressive language skills that are commensurate with same age peers.”
- It recommended the Student “receive an assessment that [would] measure his nonverbal abilities that can rule out or which may be indicative of an underlying intellectual disability.”
- It recommended the Student receive numerous accommodations, including, in part: additional time for reading and writing assignments; “eliminate or reduce spelling tests and/or grading for spelling on written assignments”; “allow student to submit dictated, typed, or scribed writing assignments”; “provide student with a quiet and low-distraction environment [for] tests”; “use timers to mark transitions”; repeat instructions; break down instructions into individual, smaller steps; confirm Student’s understanding of directives; and “prior to introducing new units/stories, compile a list of key vocabulary words [and] discuss...meanings [of said words].”
- It stated the Student might “benefit from the use of assistive technology,” and listed several software programs, including, in part, programs that helped students “read faster or slower”; programs that permitted the size of text to be increased; programs that “read aloud [scholastic] text”; “speech-to-text”; and “word prediction” software.
- It also recommended some “low tech AT options,” such as “colored overlays” to assist Student when reading, “index card[s] with...windows cut out of [them] for the Student to use to focus on one word or line of text at a time”, and graphic organizers.
- One “next step” was “complete [an] ADHD intake.”
- The dyslexia portion of the report read, in part, “Student’s dyslexia index score was 53, placing Student in the ‘very high’ range for risk of having dyslexia.”<sup>6</sup>

25. According to the District, the principal met with the Parent on October 12, 2023, to discuss the incident that had taken place on October 11, 2023.

26. According to the District, on October 18, 2023, a “safety plan for Student was shared and implemented [and the] plan [itself noted] a formal check-in [regarding the same was] scheduled for November 6, 2023.”

27. A November 3, 2023 letter addressed to the Parent noted a “meeting [scheduled for] November 6.” According to this letter, on November 6, 2023, the following topics were to be addressed: safety plan; Winston Center results; and the assessment plan.

28. According to November 2023 emails:

- On November 5, 2023, the Parent was invited to attend “two meetings scheduled for” November 6, 2023.
- On November 6, 2023, the Parent stated she was aware the safety plan noted there would be a “formal check in” regarding said plan on November 6, 2023.

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<sup>6</sup> It further read, “Student demonstrated difficulty in phonological processing, decoding, reading fluency, reading comprehension, and spelling, [which are all] consistent with a diagnosis of dyslexia. However, Student’s difficulty in other language areas...indicates an underlying overall language delay.”

- On November 6, 2023, the Parent and principal had a “phone conversation...regarding the safety plan.”
- On November 8th, the principal emailed the Parent, stating, in part, “Find attached the reevaluation notification...Within this document, you will find the assessment plan.” The “Reevaluation Notification/Consent” form noted the following areas: review of existing data; social / behavior; general education; adaptive; communication; gross motor; medical-physical; academic; cognitive; fine motor; and Student observation. It also listed the specific assessments in each of the foregoing areas that was to be administered to the Student.
- A District “team met on Friday, November 17<sup>th</sup> to review the safety plan that was put into place on October 18, 2023.” And, on or about November 17<sup>th</sup>, at least one addition was made to the safety plan.

29. According to the Parent, she was first invited to what the District called a “non-IEP meeting” scheduled for November 6, 2023 on November 5, 2023. According to the Parent, she understood the November 6, 2023 meeting to be a conversation between herself and the principal to discuss a “peer’s threatening behavior.” The Parent stated she was “not provided sufficient [and/or] appropriate notice” of the November 6, 2023 meeting.

30. According to the District, “the special education team” met on November 6, 2023. In its response, the District stated:

The District did not schedule an IEP meeting for November 6, 2023, [and] the meeting purpose and intent [of the November 6, 2023 meeting] had been clarified in conversations [between] the principal and Parent several times from September [through] November 6, 2023.

...

The special education team...considered the report at the November 6, 2023 meeting. This report helped provide assessment information which was included on the assessment plan to be considered for re-evaluation...When the goal areas [in the Student’s May 2023 IEP] were reviewed in comparison to the report, the goals and accommodations [recommended by the report] were already in place in the [May 2023] IEP.

Meeting notes for the November 6, 2023 meeting note, in part, “the accommodations recommended [by the Winston Report] align with Student’s current IEP” and “Parent emailed that she [was] unable to attend...and gave permission for the team to develop the assessment plan and send it to her.”

31. According to the District, a reevaluation consent form was sent home to the Parent on November 8, 2023.

32. November 15, 2023 progress reporting noted, in part, the following:

- Math 1 (two-digit addition with regrouping): emerging skill.
- Math 2 (two-digit subtraction with regrouping): emerging skill.
- Math 3 (ordering and comparing numbers): emerging skill.
- Reading 1 (blends and digraphs): emerging skill.
- Reading 2 (vowel sounds): emerging skill.
- Written language (completing a graphic organizer): emerging skill.
- Communication 1 (articulation): sufficient progress.

- Communication 2 (vocabulary): sufficient progress.
- Occupational therapy 1 (handwriting): emerging skill.
- Occupational therapy 2 (tying shoes): emerging skill.

33. According to December 2023 emails, on December 5th, the Parent emailed several questions regarding the District’s proposed reevaluation of the Student. In part, the Parent asked which staff member would be administering certain proposed assessments. The principal provided a response the same day.

34. On January 19, 2024, the Winston Center provide the Parent with information on some of the specific assessments the District proposed to administer to the Student.

35. According to the Parent, as of January 29, 2024, she had not provided signed consent for a reevaluation to the District.

36. As of January 31, 2024, the Student had been absent for approximately nine school days during the 2023–24 school year.

37. During this investigation, OSPI’s investigator conducted interviews of the Parent, the special education teacher, the SLP, and the OT. In part, the Parent stated:

- Concern with administration of spelling tests to the Student: the Parent believed the following process was supposed to occur: a District staff person was to verbally administer the spelling test; the Student was to verbally provide his response; and the District staff person was to write down the Student’s response. But, according to the Parent, she received copies of the Student’s spelling tests wherein the Student had written down his own responses.
- That she had provided the District with a special type of writing paper for Student to use, paper that had certain lines and margins that empowered the Student to perform better on writing assignments.
- That another student threatened to harm one of the Student’s dogs in December 2023.

During their respective interviews, the special education teacher, SLP, and OT:

- Stated the Student never communicated bullying concerns to them during the 2023–24 school year.
- Provided detailed descriptions of their work with the Student on Student’s various IEP goals, as well as implementation of the Student’s accommodations.

During her interview, the special education teacher:

- Explained: the general education teacher now administers the spelling tests to the Student; previously, the special education teacher administered the spelling tests to the Student; when the special education teacher administered the spelling tests to the Student, she would first have the Student write down his answer, prior to having the Student share his answers verbally; but the special education teacher would only grade the responses Student gave verbally.
- Stated both herself and the OT had used the Parent-provided special writing paper on occasion.

## **CONCLUSIONS**

**Issue 1: IEP Implementation** – The Parent alleged the District did not follow proper procedures for implementing the Student’s May 2023 IEP.

A district must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a student with a disability and those required by the IEP.

Here, the documentation and interviews showed the Student's May 2023 was materially implemented. For example, in part: the District's response included no less than four different service provider logs related to reading, math, writing, and occupational therapy, respectively; the Student's schedule would have permitted the provision of the service times listed in the May 2023 IEP; both a "goal tracking" document and progress reporting showed the Student's IEP goals were worked on by providers; and in their respective interviews, the special education teacher, SLP, and OT were each able to provide detailed descriptions of their work with the Student on the Student's various IEP goals, as well as implementation of the Student's accommodations. OSPI does not find a violation of the IDEA; OSPI finds the District materially implemented the Student's May 2023 IEP.

OSPI does provide three additional conclusions.

One: In part, the Parent alleged, "[The] District did not provide [the accommodation of] bi-weekly communication to family." The May 2023 IEP, though, does not contain an accommodation with that precise wording. There is an accommodation described as follows, "Communicate with Parent about any patterns of behavior or schoolwork that Student is struggling with."<sup>7</sup> To the extent the nature of this accommodation needs to be revisited, the Parent is encouraged to communicate this request to the IEP team, and the IEP team should discuss the same.

Two: In her interview with OSPI's investigator, the Parent articulated the following concern with administration of spelling tests to the Student: the Parent believed the following process was supposed to occur: a District staff person was to verbally administer the spelling test; the Student was to verbally provide his response; and, the District staff person was to write down the Student's response.<sup>8</sup> But, according to the Parent, she received copies of the Student's spelling tests wherein the Student had written down his own responses. In part, in her interview with OSPI's investigator, the special education teacher explained: the general education teacher now administers the spelling tests to the Student; previously, the special education teacher administered the spelling tests to the Student; when the special education teacher administered the spelling tests to the Student, she would first have the Student write down his answers prior to having the Student share his answers verbally; but the special education teacher would only grade the responses the Student gave verbally. OSPI does not find an implementation violation related to this accommodation.

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<sup>7</sup> In fact, in her interview with OSPI's investigator, the Parent clarified that it was the IEP in existence prior to May 2023 that required the District to communicate with the Parent on a bi-weekly basis.

<sup>8</sup> According to the director, this concern of the Parent's related to the following accommodation in the May 2023 IEP, "modified spelling assessment."

Three: During her interview with OSPI's investigator, the Parent stated she provided the District with a special type of writing paper for Student to use, paper that had certain lines and margins that empowered the Student to perform better on writing assignments. In her interview with OSPI's investigator, the special education teacher stated both herself and the OT had used this paper on occasion. More importantly, though, the May 2023 IEP does not appear to include an accommodation related to the use of special paper during writing assignments. OSPI encourages the IEP team to consider whether such an accommodation should be added to the Student's IEP.

For the foregoing reasons, OSPI does not find a violation of the IDEA; OSPI finds the District materially implemented the Student's May 2023 IEP.

**Issue 2: Parent Participation: Meeting Scheduled for November 6, 2023** – The Parent alleged the District did not follow proper procedures for ensuring the Parent's participation in any meetings scheduled for November 6, 2023.

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, in part, the purpose of the meeting. A meeting may be conducted without a parent in attendance if the school district is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place.

Here, the documentation showed between September 10 and November 6, 2023, the District and Parent exchanged no less than eight separate emails regarding a meeting scheduled for November 6, 2023. From these emails, it was clear that three topics would potentially be discussed at the meeting: the results of the Winston Report; creating a reassessment plan for the District's forthcoming reevaluation of the Student; and the safety plan that had been created on or about October 18, 2023. Based on emails dated October 18 and November 5, 2023, the Parent articulated two reasons for not attending any meetings on November 6, 2023.

First, the Parent did not want to attend any meetings scheduled for November 6, 2023, unless the Student's reevaluation had either already been completed, or the District's group of qualified professionals had already decided upon which assessments the District would administer to the Student as part of the reevaluation. But the special education regulations require the group of qualified professionals to obtain the Parent's input in determining which assessments would comprise the reevaluation. For example, WAC 392-172A-03025(1)(a), reads, in part, "[In] any reevaluation, the...qualified professionals, as appropriate, must: review existing evaluation data on the student, including...information provided by the parents." WAC 392-172A-03025(2) further reads, "On the basis of [the review of existing data], and input from the student's parents, [the group of professionals will] identify what additional data, if any, are needed to determine...what special education and related services the student needs." Accordingly, OSPI does not find the Parent's position to present a sufficient reason for the District to reschedule the meeting when the Parent indicated she would not attend as the District should not have begun the reevaluation without the Parent's input and consent, which the District sought to get at the meeting.

Second, the Parent stated she was unclear whether the Winston Report would be discussed as part of the November 6, 2023 meeting. Emails dated September 14, early October, and October 10, though, clearly show consideration of the Winston Report was one of the topics to be discussed at any November 6, 2023 meeting. For this reason, OSPI does not find the Parent's position to present a sufficient basis for the Parent to not have attended the November 6, 2023 meeting.

Finally, OSPI notes the October 5, 2023 invitation for a November 6, 2023 meeting also included a list of email addresses for those who were invited to attend. These included a general education teacher, the principal, the special education director, the SLP, the special education teacher, and the "principal assistant."

For the above reasons, OSPI finds the District did follow proper procedures for scheduling a meeting with the Parent for November 6, 2023. OSPI does not find a violation of the IDEA.<sup>9</sup>

**Issue 3: Reevaluation Procedures** – The Parent alleged the District did not follow proper reevaluation procedures during fall 2023. Specifically, the Parent alleged the District did not properly consider the results of the Winston Center Report and that the District did not address whether the Student experienced any potential change in need resulting from the Student's disability in the areas of specific learning disability, gross motor, sensory processing, and/or assistive technology.

First, the dispute between the parties appeared to relate principally to that of timing. According to the Student's May 2023 IEP, the Student was last evaluated on May 3, 2021, meaning the Student's triennial reevaluation would have needed to be completed by late spring 2024.<sup>10</sup> On June 6, 2023, though, the IEP team agreed the Student's "reevaluation [would take place] in the fall of [2023]." As discussed above, in collaborating regarding scheduling the meeting in early November 2023, though, the Parent was of the belief that either the reevaluation needed to be completed prior to said meeting, or that the District's group of qualified professionals needed to identify the areas of reassessment prior to said meeting. For the reasons, discussed above, this was an erroneous position: a district's group of qualified professionals must obtain the Parent's input in determining which assessments would comprise the reevaluation; and a district must obtain informed parental consent prior to conducting reevaluation-related assessments. OSPI

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<sup>9</sup> As early as September 14, 2023, it was clear the District was proposing two separate meetings be scheduled, presumably to ensure a complete discussion of the three topics. Based on a reading of the emails, at some point in late October 2023, after several scheduling-related email communications between the parties, it was determined that the two separate meetings would each take place on November 6, 2023. OSPI further acknowledges that, in isolation, the principal's September 14, 2023 email might have presented some confusion, when the principal said consideration of the Winston Report would not be part of an "IEP review." Moving forward, OSPI recommends each time the District invites the Parent to a meeting, e.g., if a proposed meeting time gets changed, that the District provide the Parent with a new IEP meeting invitation via an IEP Online form, one that includes the purpose, time, location, and attendees for the meeting.

<sup>10</sup> "A [special education] reevaluation must occur at least once every three years, unless the parent and the school district agree that a reevaluation is unnecessary." WAC 392-172A-03015(2)(b).

therefore, does not find the District failed to follow proper reevaluation timelines, in not completing the reevaluation by or before early November 2023.

OSPI further notes on or about November 8, 2023, the District provided the Parent with a reevaluation consent form, and this form detailed the District was proposing to reevaluation the Student, in part, in the area of gross motor; and on December 5, 2023, via email, the District addressed several of the Parent's reevaluation concerns. OSPI recommends the group of qualified professionals and the Parent meet to discuss whether assessments in the areas of specific learning disability, sensory processing, and assistive technology should be administered to the Student as part of the reevaluation, as in her community complaint request, the Parent articulated a belief the Student had needs in these areas. The District should then provide OSPI with a prior written notice detailing the decision that was made for each of these areas.<sup>11</sup> Then, once the Parent has provided written, informed consent for the reevaluation, the District's group of qualified professionals will have 35 school days to complete the same. See WAC 392-172-03015(3)(a).<sup>12 13</sup>

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<sup>11</sup> OSPI encourages the Parent and the District to consider utilizing a facilitated IEP meeting through Sound Options for meetings in the near future. Information on the Sound Options will be included with this decision.

<sup>12</sup> If the Parent does not respond to repeated requests from the District for the Parent to provide consent for the reevaluation, the District may proceed with the reevaluation, but it would not be obligated to do so under these circumstances. WAC 392-172A-03000(3)(d). If the Parent actively refuses to provide consent for the reevaluation, the District cannot proceed with any new assessments, unless the District were to "pursue the reevaluation by using the due process procedure to override the parent's refusal to provide consent." WAC 392-172A-0300(3)(b).

<sup>13</sup> For clarification purposes, OSPI also states that an evaluation must be sufficiently comprehensive to evaluate all areas of potential needs resulting from a student's disability, which could include assessing whether a student has a specific learning disability. As part of a special education evaluation, though, a district is not obligated to complete an assessment that would purport to specifically answer: does this student have dyslexia? Rather, if a group of qualified professionals believes a student might have needs related to difficulty reading due to challenges identifying speech sounds and learning how they relate to letters and words (decoding), that group of qualified professionals must utilize various assessments and evaluative tools (including observations) that sufficiently gathers data in these areas. See, for example, *Crofts v. Issaquah School. Dist. No. 411*, No. 19-35473 at pp 3-4 (9th Cir. Jan. 12, 2022), which found 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-learning-disability category and not specifically for dyslexia...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."

Two, regarding the Winston Center Report: this was provided to the District on October 12, 2023. District staff considered the report in a meeting that took place on November 6, 2023. According to the District, these District staff determined “When the goal areas [in the Student’s May 2023 IEP] were reviewed in comparison to the [Winston Center] report, the goals and accommodations [recommended by the report] were already in place in the [May 2023] IEP.” In other words, no changes were made to the Student’s May 2023 IEP as a result of the November 6, 2023 meeting. As the Student’s reevaluation process is ongoing, OSPI recommends the Parent communicate to the District the IEP services she believes the Winston Center Report suggests the Student requires. And should the Parent engage in the reevaluation process moving forward, the group of qualified professionals should re-review the results of the Winston Center Report.<sup>14</sup>

**Issue 4: Response to Bullying** – The Parent alleged the District did not follow proper procedures for responding to any harassment and/or bullying the Student experienced in fall 2023.

Under the IDEA, school districts have an obligation to ensure that students who are the targets of bullying continue to receive a free appropriate public education (FAPE) in accordance with the student’s IEP. As part of an appropriate response to bullying under the IDEA, districts should consider convening an IEP team meeting to determine whether the effects of bullying have caused the student’s needs to change, such that their IEP is no longer providing educational benefit. A fundamental step in preventing disability-based harassment is developing and disseminating a policy that prohibits such harassment.

Here, the documentation and interviews presented information on two potential incidents of bullying: (1) In an October 18, 2023 email, the principal confirmed another student verbally threatened the Student and the Student’s family on or about October 11, 2023; and (2) During her interview with OSPI’s investigator, the Parent asserted another student threatened to harm one of the Student’s dogs.

In response to the October 11, 2023 incident, the District developed a safety plan for the Student and changed the general education class the Student attended, so as to limit the Student’s contact with the other student. These measures appear to have been largely successful. For example, in part, during their respective interviews, the special education teacher, SLP, and OT all stated the Student never communicated bullying concerns to them during the 2023–24 school year, and the Student was generally able to attend his service sessions during the 2023–24 school year. On this latter point, the director and general education teacher informed OSPI’s investigator that, whereas the Student was absent for approximately 44 school days during the 2022–23 school year, thus far, the Student has only been absent for approximately nine school days during the current year. OSPI finds the District followed proper procedures for responding to any incidents of bullying or harassment the Student experienced.

In emails, the Parent expressed concern that even with implementation of the safety plan and the Student changing general education classrooms, the Student still had interactions with the other

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<sup>14</sup> During any reevaluation of a student, the relevant group of qualified professionals must consider any information provided by the parent. WAC 392-172A-03020(2)a).



student, most often during transitions between activities. This is to be expected to a degree as the Student attends the same school as his classmate. Even so, as described above, the District appropriately responded to the bullying concerns and there is no indication this impacted the Student's access to FAPE. Thus, OSPI finds no violation. However, if the Parent continues to have concerns regarding the safety plan, OSPI recommends the IEP team discuss the same.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

Dated this 8th 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.)