

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-04

PROCEDURAL HISTORY

On January 5, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of two students (Student A and B) attending the Riverview 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 Students' education.

On January 5, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on January 9, 2024. OSPI asked the District to respond to the allegations made in the complaint. OSPI requested that the District respond by January 25, 2024.

On January 17, 2024, the District requested an extension to submit their response. OSPI granted the request with a due date of February 1, 2024.

On February 1, 2024, OSPI received the District's written response to the complaint and forwarded it to the Parent on February 2, 2024. Emails that the District provided as part of their response were sent to the Parent on February 5, 2024. OSPI invited the Parent to reply by February 15, 2024.

On February 14, 2024, the Parent requested an extension to submit her reply to the District's response. OSPI granted the extension with a due date of February 16, 2024.

On February 16, OSPI received the Parent's reply and forwarded that reply to the District on the same day.

On February 19, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on February 20, 2024. OSPI forwarded the information to the Parent on February 21, 2024.

On February 20, 2024, the OSPI complaint investigator conducted an interview with the Parent.

On February 23, 2024, the OSPI complaint investigator consulted with the OSPI assistant director, special education dispute resolution.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received by the complaint investigator during the interview.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 6, 2023. 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

Student A:

1. Per WAC 392-172A-03095, have all Student A's required IEP team members attended IEP meetings since January 6, 2023, or were they properly excused?
2. Since January 6, 2023, per WAC 392-172A-03105, has Student A's IEP been implemented properly, including Student A's minutes for speech and language pathology, occupational therapy, and sensory room?
3. In February 2023, did the District follow proper IEP development procedures for decisions regarding the Parent's concerns related to Student A's social emotional, sensory, vision, language, and ADHD issues?
4. Per WAC 392-172A-03005, was Student A reevaluated for occupational therapy services in a timely manner during the 2023–24 school year?
5. Did the District follow proper written notice and decision-making procedures regarding the Parent's request for a reevaluation of Student A during the 2023–24 school year?

Student B:

1. Per WAC 392-172A-03005, did the District appropriately deny the Parent's request for an initial special education evaluation of Student B?

LEGAL STANDARDS

IEP Team: An individualized education program (IEP) team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It 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. 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).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describes all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

STUDENT A: FINDINGS OF FACT

IEP Meetings & IEP Development

1. At the start of the 2022–23 school year, Student A was not eligible for special education services, was in the first grade, and attended a District elementary school. The District’s 2022–23 school year began on September 6, 2022.
2. On October 26, 2022, the District met with the Parent to determine if they would initiate an evaluation to determine if Student A was eligible for special education. The Parent had requested a special education evaluation for the Student. The team suspected that Student A had a disability that adversely impacted their educational performance.
3. On November 14, 2022, the Parent provided and the District received consent for an initial special education evaluation. The areas to be assessed were social/emotional, vision, behavior, health and development, speech language, hearing, motor, and written language (added after parent request).
4. The complaint investigation timeline began on January 6, 2023.
5. On January 23, 2023, the District held an initial special education eligibility evaluation meeting to determine Student A’s eligibility for special education services. In attendance were the Parent, the Parent’s advocate, Student A’s general education teacher, a special education teacher, the speech language pathologist (SLP), the school psychologist, the occupational therapist (OT), and two District representatives. Based on the evaluations conducted and a documented disability of attention deficit hyperactivity disorder (ADHD) by a neuropsychologist, the team determined Student A was eligible under the category of other health impairment (OHI), with communication disorder noted as a secondary disability. The report recommended specially designed instruction in speech and the occupational therapy evaluation indicated the need for related services.

The general education teacher had to leave the evaluation meeting prior to its conclusion as the school day was starting and she needed to return to her classroom. She participated in the evaluation process by completing rating scales on Student A's behaviors, as well as information about the Student's performance in the classroom in academics, writing skills, and social skills.

6. The evaluation report provided to the Parent on January 24, 2023, outlined the procedures, assessments, records, and reports used to make the eligibility determination. The areas included were teacher collected data, behavioral, vision, academic (written language), classroom observation, speech/language, hearing, parent input, social/emotional and motor. District documentation indicated that the area of written language was added in response to a Parent request.

The evaluation report contained a section detailing Student A's medical, developmental, and health history, including notable medical issues and current medical concerns (stomachaches, vision difficulties, hearing sensitivity), as well as the overall results of the neuropsychological evaluation regarding the diagnosis of ADHD. The report noted that the Student has strengths in visual pattern recognition and abstract reasoning, although was not as strong in rapid naming tasks. This evaluation indicated that the Student demonstrated an unspecified neurodevelopmental disorder with sensory integration dysfunction.

The Parent provided information regarding the Student's impulse control concerns and emotional outbursts in the home, which are believed to be due to the "level of masking done at school during the day."

The full evaluation included the following assessments/procedures:

- Student observation in the classroom.
 - Written language skills were measured using the Kaufman Test of Education Achievement (3rd Ed).
 - Social skills were measured using the Social Skills Improvement System, Social Emotional Learning Edition.
 - Behavior was measured using the Behavior Assessment System of Children (Parent and Teacher Rating Scales) and the Behavior Rating Inventory of Executive Function 2 with ratings completed by the Parent and general education teacher.
 - Communication skills were measured using the Goldman-Fristoe Test of Articulation (3rd Ed), the Comprehensive Assessment of Spoken Language (2nd Ed), a speech and language sample and an oral-facial exam.
 - Motor skills were measured using professional observations (dexterity, handwriting, typing skills), the Beery-Buktenica Test of Visual Motor Integration (6th Ed), the Sensory Profile Questionnaire.
 - Vision was screened in November 2022 and the Student passed. The Parent shared that the Student was referred for a functional vision assessment.
 - Hearing was screened in November 2022 and the Student passed.
7. The District provided the Parent with a prior written notice (PWN), dated January 24, 2023, notifying the Parent of the District's actions following the eligibility meeting the day prior. The

decisions described above were noted in the PWN, and the notice included information that the Parent had not yet signed the evaluation, but that the team wanted to move forward with scheduling an individualized education program (IEP) meeting.

8. On January 25, 2023, following the initial eligibility evaluation meeting, the Parent's advocate wrote to the general education teacher, requesting additional information on her perspective regarding the Student's need for sensory supports, whether breaks are needed, how disagreements are handled with peers, and what does the Student's "ADHD look like from bell to bell." The teacher was out for several days and responded to the advocate on February 8, 2023.
9. On February 3, 2023, the Parent was sent an IEP meeting invitation, and the Parent confirmed the meeting date of February 22, 2023, on February 16, 2023. The Parent was sent a draft IEP on February 20, 2023.
10. On February 22, 2023, Student A's IEP team developed an initial IEP for the Student. The Student's strengths were noted in written language, social/emotional, and motor/sensory (sensory seeking, auditory filtering, functioning similar to peers). The Parent also provided information that was documented in the IEP. She shared that the Student is high energy and athletically inclined and a strong reader, and that the Student has stomach aches and emotional outbursts on school days. The Parent also shared that some strategies used at home are coregulation, visual schedule, and discussions regarding compromise, truthfulness, and anxiety.

The IEP included annual goals in speech/language (production of /s/, /z/, /l/, and prevocalic/vocalic /r/), with progress to be reported quarterly. Student A's February 22, 2023 IEP provided the Student with the following specially designed instruction in a *special education setting*: Speech/Language: 120minutes/month (to be provided by an SLP).

Student A's IEP team also determined the Student would also receive occupational therapy as a related service for 20 minutes per month. The related services were described on the IEP as consultation, collaboration, and materials development. The IEP included a list of accommodations for Student A, with use of the sensory room to occur at a minimum of once per week.

The IEP team participants included the Parent, the school psychologist, the general education teacher, the SLP, the OT, a District representative, and the Parent's advocate.

11. The District provided the Parent a PWN, dated February 22, 2023, following the IEP meeting, detailing the decisions made at the meeting. The PWN indicated that the team considered, but rejected, not implementing the IEP. The records and information used as the basis for 'proposing to take action' to implement the IEP included Student A's school records, the recent comprehensive initial special education evaluation, teacher input, Parent input, and the Student's present levels of performance. The document also included the notation that the Parent had previously been provided a copy of the procedural safeguards.

12. On September 3, 2023, the Parent emailed the District, requesting a meeting to smooth Student A's transition to second grade.
13. The District's 2023–24 school year began on September 5, 2023.
14. At the start of the 2023–24 school year, Student A was eligible for special education services under the category of OHI. Student A was a second grade student and attended a District elementary school. The Student's February 2023 IEP was in effect.
15. On September 5, 2023, the SLP (case manager) responded to the Parent's request for a transition support meeting, asking if it "would be OK" to wait until the week of September 18, 2023, to hold the meeting. The new student services director could attend, as well as the OT, who would be out of the country until September 15, 2023. The Parent responded on September 9, 2023, that she "agreed with waiting until everyone is able to attend."
16. The transition meeting was mutually scheduled to occur on September 25, 2023, and included discussion of progress on articulation goals and a request to check on Student A's errors related to the "/th/" sound. The Parent also requested that a sensory assessment be completed by the OT, and it was agreed that the District would conduct the assessment at the conclusion of the first quarter of the school year (November 9, 2023). The OT recommended this delay so that the second grade teacher could get to know Student A and provide valid responses on the rating scales. No changes were made to the Student's IEP.
17. On September 27, 2023, the SLP provided a summary of the meeting and action items to the Parent for review and comment. The Parent responded, appreciating the summary of the meeting.
18. On January 16, 2024, the District sent the Parent an invitation for an IEP meeting scheduled for January 30, 2024, to review current progress, discuss new annual goals and to review instructional and service needs.

OT Evaluation

19. On September 25, 2023, at a transition meeting, the Parent in part requested that a sensory assessment be completed by the OT. The OT recommended and the team agreed to wait to conduct the assessment at the end of the first quarter of school (November 9, 2023) to allow the second grade teacher time to get to know the Student so that she could provide valid responses on the rating scales.
20. On November 15, 2023, the SLP emailed the Parent regarding information about the Student's progress on goals, a consent form for reevaluation of the Student's fine motor and sensory processing, a notice of action proposing to reevaluate in OT as agreed upon in September 2023, and procedural safeguards.
21. On November 17, 2023, the Parent returned the signed consent for reevaluation and indicated she had written "speech/language for the Woodcock-Johnson assessment" on the consent

form. She informed the SLP that the Student had a complete neuropsychological evaluation that day and the provider stated, "there are many flags" and "that this test needs to be completed by the school." The SLP responded that same day, asking for clarification about what the Parent wrote on the consent and what the Parent "was looking for", as the Woodcock-Johnson is an academic assessment, not a speech/language assessment.

22. According to the District, the signature of the Parent was not in the correct spot on the consent form, in that it was not next to the box or line indicating the Parent was giving consent for the evaluation.
23. On December 4, 2023, the OT emailed the Parent, describing the reason for the delay in initiating the reevaluation, due to the confusion related to the Parent's additional request on the returned consent form, indicating "speech/language for the Woodcock-Johnson assessment" and the omission of a signature specifically indicating consent for the reevaluation. The OT stated that there is "no indication that the speech evaluation is required" and that "there is no indication that academic assessment is necessary for the Student to access the general education curriculum." The OT requested that the Parent sign a new consent form, provide a release of information so that she could talk with the Student's outside OT, as well as complete a health update form.
24. The Parent responded to the District on December 4, 2023, providing another signed consent form. She shared her frustration with the reevaluation process and indicated she was aware that another "speech evaluation is not warranted" but had checked that box without knowledge of what the Woodcock-Johnson assessment was. She also responded to the OT's statement regarding "no indication of the need for an academic assessment" believing that this was an internal District decision not made by the IEP team. The Parent stated she would send the neuropsychological report as soon as it was available. She ended the email, requesting intellectual/cognitive and academic achievement evaluations for the Student.
25. The OT attempted to initiate the reevaluation on January 10, 2024, though the Student was absent and again on January 11, 2024, though the Student declined to participate. The Student agreed to meet with the OT on January 16, 2024. The reevaluation was started on January 16, 2024, and testing completed on January 23, 2024.
26. On January 10, 2024, the District provided the Parent a meeting invitation to review the results of the OT evaluation. The meeting was scheduled for January 29, 2024.
27. On January 29, 2024, the team, inclusive of the Parent, met to discuss the reevaluation results and recommendations, of which the Parent agreed to and signed the reevaluation report that she had the opportunity to review and consider all relevant factors of the evaluation.

The report indicated given the data collected and reviewed, school-based OT was not recommended for the Student at that time and that adverse educational impact has not been demonstrated. It was also noted in the report that the Student passed both the hearing and vision screening in October 2023.

During the reevaluation results meeting, questions were posed by the Parent's advocate related to the Student's writing skills. These questions highlighted the fact that not all team members had been provided a copy of the private neuropsychological report that had occurred in November 2023. The Parent had received the report from the neuropsychologist on December 19, 2023, and provided it to some staff on January 26, 2024, along with a health history form and a scanned copy of a vision assessment of the Student, in response to a previous email from the OT regarding scheduling of the eligibility and IEP meetings.

28. The District provided the Parent a PWN on January 31, 2024, following the reevaluation results meeting. The PWN stated that Student A continued to be eligible for special education and would receive specially designed instruction in speech, but that the Student did not show a need for occupational therapy as a related service. The evaluation established that occupational therapy services were not required to access special education and general education curriculum and make progress on IEP goals.

IEP Implementation

29. Student A's IEP stated that progress would be provided on IEP goals on a quarterly basis. District documentation indicates that progress was reported on the three speech goals on April 17, 2023, June 21, 2023, October 31, 2023 (November 14, 2023 for goal 3), and January 16, 2024. The SLP's reporting stated that the Student met goal 1 (/s/ /z/ sounds), met goal 2 (/l/ sound), and would not meet goal 3 (prevocalic and vocalic /r/ sound), though progress increased to 41%.
30. The District provided SLP therapy logs, documenting February 27, 2023 through January 9, 2024, and that the SLP provided services to the Student on Mondays. The IEP called for 120 minutes per month of SLP services. The Student's IEP was initiated February 22, 2023, and the Student was provided the following amounts of services:
- 30 minutes of service in February 2023 (first day of SLP service was February 27, 2023)
 - 120 minutes of service in March 2023
 - 90 minutes of service in April 2023 (spring break occurred the week of April 10–24, 2023)
 - 120 minutes of service in May 2023
 - 30 minutes of service in June 2023 (Student A was absent June 5, 2023, school holiday June 19, 2023)
 - 60 minutes of service in September 2023
 - 150 minutes of service in October 2023
 - 90 minutes of service in November 2023
 - 60 minutes of service in December 2023 (the last two Mondays of the month were winter break)
 - 60 minutes of service in January (data include through January 9, 2024)
31. The District provided occupational therapy logs, documenting March 2023 through January 23, 2024. Student A's IEP called for 20 minutes per month of OT consultation and support as a related service. The documentation indicated the Student was provided the following amounts of services:
- 20 minutes of service on March 15, 2023
 - 20 minutes of service on April 26, 2023

- 70 minutes of service in May 2023
- 20 minutes of service on June 5, 2023 (in collaboration with Student's SLP service)
- 50 minutes of service in September 2023
- 20 minutes of service on October 6, 2023
- 20 minutes of service on November 20, 2023
- 20 minutes of service on December 4, 2023
- 20 minutes of service on January 5, 2023
- Assessment was conducted January 10, 11, 16 and 23, 2024

32. Student A's IEP indicated that the accommodation of 'use of the sensory room' would be offered a minimum of one time per week, and the District provided 'sensory break tracker' data, documenting October 6, 2022 through January 8, 2024. Since implementation of the IEP on February 22, 2023, the data indicated Student A's use of the sensory room as follows:

- 5 uses of the sensory room in March 2023
- 1 use of the sensory room in April 2023
- 4 uses of the sensory room in May 2023
- 2 uses of the sensory room in June 2023
- 1 use of the sensory room in October 2023
- 3 uses of the sensory room in November 2023
- 2 uses of the sensory room in December 2023
- 2 uses of the sensory room in January 2024 (up to January 8, 2024)

STUDENT A: CONCLUSIONS

Issue 1: Required IEP Team Members – The Parent alleged that the District failed to have the required IEP team members in attendance at IEP meetings since January 6, 2023.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student; not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); and any individuals who have knowledge or special expertise regarding the student, including related services personnel.

In this case, when this complaint was filed, the only IEP meeting held since January 6, 2023 was Student A's initial IEP meeting held on February 22, 2023. In attendance, as IEP team participants at this initial IEP meeting, were the Parent, the school psychologist, the general education teacher, the SLP, the OT, a District representative, and the Parent's advocate. The Student's only services areas were communication and occupational therapy as a related service, making the SLP the special education provider for the Student. All required participants attended and participants signed the IEP on February 22, 2023, indicating their attendance. OSPI finds no violation.

Issue 2: IEP Implementation of Speech/OT/ Sensory Room Services – The Parent alleged the District failed to implement and provide the services agreed to in the IEP.

A district must 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. 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.

In this case, the District provided service logs for speech therapy, occupational therapy, and use of the sensory room beginning after the IEP was signed on February 22, 2023.

The speech therapist met regularly with Student A, providing the level of service specified in the IEP (120 minutes/month) for: February, March, April (one week was spring break), May, June (Student was absent one day and a school holiday on June 19, 2023), October, November (November 21, 2023 was a half-day of school), December 2023 (winter break began December 19, 2023), and January 2024 (data provided up until District responded to complaint). In September 2023, the speech therapist only provided 60 minutes of service when 90 minutes should have been provided, so 30 minutes of service are owed to the Student; however, an additional 30 minutes of service was provided in October 2023 (for a total of 150 minutes), so the Student has received the appropriate amount of speech therapy. OSPI finds no violation related to the provision of speech therapy.

Student A's February 2023 IEP stated that occupational therapy services would be provided 20 minutes/month. The OT began services in March 2023 and provided 20 minutes/month or more of related services from March 2023 through January 2024. In the month of May 2023, Student A received 70 minutes or related services, and in the month of September, received 50 minutes of service. For occupational therapy related services, OSPI finds no violation.

Student A's February 2023 IEP stated that the use of the sensory room would be offered at least one time per week. The Student had been offered use of the sensory room prior to the IEP development and implementation of services. The Student was offered the use of the sensory room the week following the signing of the IEP and the remaining four weeks of March 2023. In April 2023, the Student was offered the sensory room one time, though not the two other weeks school was in session. The data from May 2023 indicate the Student used the sensory room each of the four weeks in the month. However, in June 2023, the Student was only offered the use of the sensory room two times, missing two weeks of the sensory room use. For September, October, and November 2023, the data indicate that the sensory room was not offered per the IEP and the Student missed four opportunities in September 2023, three opportunities in October 2023, one opportunity in November 2023. The sensory room use was appropriately provided in December 2023 and January 2024.

For sensory room use, OSPI finds a violation. As corrective action, the IEP team will meet and discuss the Student's needs related to the sensory room and whether the Student has been negatively impacted by the missed opportunities to use the sensory room.

Issue 3: IEP Development Procedures – The Parent alleged the District did not follow proper IEP development procedures regarding the Parent's concerns.

When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child.

In this case, the District conducted a full evaluation of Student A in the areas of classroom performance/teacher collected data, behavioral, vision, academic (written language per Parent request), classroom observation, speech/language, hearing, parent input, social/emotional, and motor. The evaluation report detailed the information gathered through specific assessments, teacher observations, and Parent input, including pertinent health information and behavior exhibited at home. The IEP was developed based off the initial evaluation and reflected the special education services recommended in the evaluation. The District provided all appropriate notices (e.g., invitations to meetings, notice of referral results, notices of action/prior written notices) to the Parent, outlining team decisions that were made at the initial special education eligibility meeting and the IEP development meeting (eligibility, Student needs, and services) with Parent input and participation. The Parent was provided a copy of the procedural safeguards regarding their rights and legal protections during the evaluation and IEP process. Thus, OSPI finds no violation.

Issue 4: Timely Reevaluation of OT Services – The Parent alleged the District did not conduct the requested OT reevaluation in a timely manner.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district.

In this case, the Parent requested an occupational therapy/sensory reevaluation, which was agreed to be conducted at the end of the first quarter of the 2023–24 school year. The first quarter ended on November 9, 2023, and the District provided a consent for evaluation on November 15, 2023, which was signed and returned by the Parent on November 17, 2023. There was a complication with the signed consent, as the Parent had hand-written an addition to the form, stating "speech/language for the Woodcock-Johnson assessment"; which caused confusion because the team had not proposed a speech/language reevaluation and the "Woodcock-Johnson" is an academic assessment. In addition, the District indicated the signature of the Parent was not in a place on the form that clearly indicated the Parent was providing consent. After District review of

the consent form, a new consent form was sent on December 4, 2023, and the Parent signed and returned it on the same day. The OT initiated the evaluation on January 16, 2024, and the evaluation results meeting was held on January 29, 2024, well within the 35 school days timeline required by law. The OT attempted to complete the reevaluation within 35 school days of the first consent form signed, but was not able to do accomplish that. Based on the initial consent form signature receipt, the 35 school days ended January 25, 2023 (Thursday), and the team met on January 29, 2024 (Monday). However, based on the corrected and properly signed evaluation consent form, the reevaluation was conducted timely. Therefore, OSPI finds no violation.

Issue 5: Proper PWN and Decision-making Procedures Related to Reevaluation Request –

The Parent alleged the District did not follow proper procedures related to providing PWN and decisions related to request for reevaluation.

In this case, at a transition meeting held in September 2023, to discuss Student A’s transition to second grade, the team agreed to reevaluate the Student related to OT, at the end of the first quarter of the school year. The SLP followed up with an email regarding the summary of the meeting and the decision to conduct the sensory/occupational therapy evaluation after the first quarter. A consent for evaluation was sent on November 15, 2023, to the Parent and returned on November 17, 2023. After review by the District of the signed and amended consent form, and communication with the Parent, the District sent a new consent form on December 4, 2023, which was signed and returned by the Parent on the same day. The District did not provide a prior written notice, following the meeting on September 25, 2023, documenting the decision made regarding postponing the occupational therapy evaluation until after the first quarter of school. Therefore, OSPI finds a violation. As corrective action, the District will be required to develop written guidance.

It is noted that contained in the email with the return of the newly signed consent form, the Parent requested evaluation of Student A in academics and intellectual/cognitive, based on information provided to her by the outside neuropsychologist. It is also noted that the Parent provided the neuropsychological report to the evaluation team at the results meeting on January 19, 2024. If this new information has not already been reviewed, OSPI recommends that occur as well as responding to the Parent’s new request for a reevaluation if it has not already been addressed.

STUDENT B: FINDINGS OF FACT

33. At the start of the 2023–24 school year, Student B was not eligible for special education services and was a kindergarten Student attending a District elementary school.
34. The District’s 2023–24 school year began on September 5, 2023.
35. On November 30, 2023, the Parent emailed the District, requesting an evaluation for Student B. The Parent further indicated that a neuropsychological evaluation had recently been completed where “disabilities were identified of which dyslexia is one.” The Parent specifically requested that a consent form be forwarded to her for signature.

36. District documentation indicated that the Parent was contacted by the school psychologist regarding her referral of November 30, 2023. The Parent was provided a “referral for evaluation for special education services” to gather input/information from the Parent regarding her concerns, though the Parent did not provide additional information.
37. On December 6, 2023, the District completed a notice of referral that included the following information:
- Student B was referred for a special education evaluation by the Parent
 - Parent indicated Student B was diagnosed with dyslexia by a neuropsychologist
 - The school team considered the Parent request but would not be conducting an initial special education evaluation based on teacher data and observational data, as well as Student B’s “WaKids” data
 - No evidence exists of a significant adverse educational impact
38. On December 13, 2023, via email, the District sent the Parent a notice of action (prior written notice), documenting their refusal to conduct a special education evaluation at this time, stating that “no evidence to suggest that an adverse educational impact is present.” There is no indication that Student B demonstrated an adverse educational impact academically, socially, behaviorally, or in any other area of development “at this point in time.” The District also noted that the Parent had shared that Student B was being evaluated by a neuropsychologist, and that the District invited the Parent to provide this documentation to them. The Parent was provided special education procedural safeguards.
39. The Parent received Student B’s neuropsychological evaluation from the provider on December 19, 2023.

STUDENT B: CONCLUSION

Issue: Denial of Request for Initial Special Education Evaluation – The Parent alleged the District improperly denied her request for an initial special education evaluation.

In this case, the District received the Parent’s request for an initial special education eligibility evaluation on November 30, 2023, and District documentation indicated the school psychologist responded to the Parent’s request on the same day and provided the Parent a ‘referral for evaluation for special education services’ form to gather input/information from the Parent regarding her concerns, though the Parent did not provide additional information. Then on December 6, 2023, the District sent the Parent a notice of referral form, stating that the Parent had referred the Student for an initial special education eligibility evaluation and that after review of Student data (teacher data and observations, WaKids data), the school team was declining to evaluate the Student as there was no indication of an adverse educational impact. The District followed up with a notice of action sent to the Parent December 13, 2023, stating the District’s refusal to conduct an initial special education evaluation at the time, due to the fact that there no evidence to suggest that an adverse educational impact is present. While the Parent may disagree with the decision to not evaluate the Student at this time, the District followed the referral process. Therefore, OSPI finds no violation.

CORRECTIVE ACTIONS

By or before **March 15, 2024, March 29, 2024, and April 12, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Student A: IEP Meeting

By **March 22, 2024**, the Student's IEP team will meet and review all data from fall 2023 and from January through March 2024, to review and determine whether the sensory room usage has been provided to the Student in conformance with their IEP. The team will discuss the impact on the Student of missed time in the sensory room and whether the IEP needs to be amended to reflect additional time in the sensory room or whether other strategies and supports are more appropriate for the Student.

OSPI notes that the annual IEP meeting likely took place by February 21, 2024. If the IEP team has already discussed the above and/or sensory services and supports have changed, the District may submit documentation from the annual IEP meeting to fulfill this corrective action and is not required to meet again.

By **March 29, 2024**, the District will provide OSPI with documentation from the IEP meeting, including 1) the Student's IEP; 2) prior written notice; and 3) any other relevant documentation.

DISTRICT SPECIFIC:

Written Guidance

By **March 31, 2024**, the District will ensure that the following individuals receive written guidance on the topic listed below: special education administrator, principal, and special education staff (special education teachers, SLP, OT), at the school that the Student is enrolled in this school year.

The guidance will address when prior written notice must be provided to parents and the content requirements of a prior written notice.

By **March 15, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by March 25, 2024.

By **April 12, 2024**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

RECOMMENDATION

OSPI notes that in the Parent's December 2023 email with the return of the newly signed consent form, the Parent requested evaluation of Student A in academics and intellectual/cognitive, based on information provided to her by the outside neuropsychologist. The Parent then provided the neuropsychological report to the evaluation team at the results meeting on January 19, 2024. If the report has not already been reviewed by the team, OSPI recommends that occurs. OSPI also recommends the District respond to the Parent's request for an evaluation if this has not already been addressed.

Dated this 4th day of March 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.)