

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-06

PROCEDURAL HISTORY

On January 5, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint (SECC) from the parent (Parent) of a student (Student) attending the Seattle School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or regulations implementing the IDEA.

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.

On January 17, 2024, the District requested a partial extension to submit its response, which OSPI granted, asking the District to respond in part by January 26 and in part by February 2, 2024.

On January 26, 2024, OSPI received the District's part one response to the complaint and forwarded it to the Parent the same day. OSPI invited the Parent to reply.

On February 2, 2024, OSPI received the District's part two response to the complaint and forwarded it to the Parent on February 2 and 5, 2024. OSPI invited the Parent to reply.

On February 12, 2024, the OSPI complaint investigator reached out to the Parent to schedule an interview. The Parent's schedule did not allow for an interview.

On February 14, 2024, the Parent contacted OSPI to request more time to reply to the District response. OSPI granted the request, asking the Parent to reply by February 20, 2024.

On February 21, 2024, the Parent provided her reply to the District response. OSPI forwarded the Parent's reply to the District the same day and forwarded a revised copy of the Parent's reply on February 22, 2024.

On February 23, 2024, OSPI received additional information from the Parent and provided the information to the District on the same day.

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

ISSUES

1. Whether the District provided the Parent with requested education records per WAC 392-172A-05190?
2. Whether the District implemented the Student's individualized education program (IEP)?
3. Whether the District conducted appropriate progress monitoring and provided sufficient progress reports?
4. Whether the District followed initial evaluation and eligibility determination procedures?¹

¹ On December 28, 2023, OSPI received a copy of a request for a due process hearing No. 2023-SE-0210, filed by the District, regarding the Parent's request for an independent educational evaluation and the

LEGAL STANDARDS

Parents' Access Rights to Student Records: Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a free appropriate public education (FAPE) to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

As a general rule, parents do not have a right under FERPA to review and inspect documents that are not education records, that is, information that is not personally identifiable to the parents' child. 20 USC §1232g(a)(4); 34 CFR §99.3. "Records that are not directly related to a student and maintained by an agency or institution are not 'education records' under FERPA and parents do not have a right to inspect and review such records. For example, a test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be a part of his or her 'education records.'" However, if a school were to maintain a copy of a student's test answer sheet (an "education record") the parent would have a right under the IDEA and FERPA to request an explanation and interpretation of the record. The explanation and interpretation by the school could entail showing the parent the test question booklet, reading the questions to the parent, or providing an interpretation for the response in some other adequate manner that would inform the parent. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007).

A school district should, upon request, provide an opportunity for a parent to review education records and provide any explanations and interpretations necessary. This could include the interpretation of standardized test scores, such as reviewing the test questions with the parent. *Letter to Fonda-Fultonville (NY) Central School*, 31 IDELR 149, Family Policy Compliance Office (April 1998). With respect to the issue of liability for disclosing information to parents when other laws or contractual obligations would prohibit it, public agencies are required to comply with the provisions of IDEA and FERPA and must ensure that State law and other contractual obligations do not interfere with compliance with IDEA and FERPA. Federal copyright law protects against the

Student's initial evaluation, which contained the same issue related to the evaluation and eligibility determination the Parent raised herein SECC 24-06. Initially, OSPI set aside the investigation of Issue Four in this complaint until due process hearing No. 2023-SE-0210 was concluded. On January 9, 2024, OSPI received notice that the Parent withdrew her request for an independent educational evaluation and due process hearing request no. 2023-SE-0210 was dismissed on January 11, 2024. On January 16, 2024, OSPI notified the District that it would include Issue Four in the investigation of SECC 24-06.

distribution of copies of copyrighted document, such as a test protocol. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007).

Assessment Documents as Educational Records: A psychological evaluation or assessment is an education record if it contains information that is directly related to the student. Similarly, test protocols or test question booklets are education records if they directly identify the student. Conversely, a testing-related document that does not contain information directly related to a particular student is not an education record under FERPA. 34 CFR §300.611; WAC 392-172A-05180(2).

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).

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

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. When the student is to be evaluated to determine eligibility for special education services the district shall fully evaluate the student and

arrive at a decision regarding eligibility within thirty-five (35) school days after the date written consent for an evaluation has been provided to the school district by the parent. 34 CFR §300.301; WAC 392-172A-03005.

A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. No single measure or assessment as the sole criterion is used for determining a student's eligibility or determining an appropriate educational program for the student. 34 CFR §300.304; WAC 392-172A-03020.

Additional members of the evaluation group: The determination of whether the student is eligible for special education services in the specific learning disability category shall be made by the student's parent and a group of qualified professionals. WAC 392-172A-03050.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the eligibility categories listed in regulation and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002) (see also WAC 392-172A-03020)(g): "In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.")

FINDINGS OF FACT

2022–23 School Year

1. At the start of the 2022–23 school year, the Student was not eligible for special education services, was in the third grade, and attended a District elementary school.
2. In November 2022, a referral for a special education evaluation was made.
3. On January 19, 2023, the Parent asked the District for clarification on the evaluation process and assessments, including the "other" box in the assessment plan and consent form.

4. On January 23, 2023, the District psychologist responded that the "other" is a: catch all category that covers anything we may have overlooked. For example if the need for occupational therapy or speech comes up and we hadn't already checked it. By checking other it allows us to process without going back and asking the family for additional consent. Other can also be used to review any outside evaluations by families.

The District email to the Parent provided a summary of each of the requested areas.

5. A signed copy of the consent paperwork, dated February 1, 2023, was provided by the District in its response to this complaint and the District reported it received the consent form on February 6, 2023. The consent form had the "other" and "medical/physical" crossed out and the Parent wrote, "please contact me with any additional specific types of testing." The 35 school-day timeline for evaluation was calculated to be April 3, 2023.
6. On February 27, 2023, the District psychologist sent a link for the "BASC-3" to the Parent and District staff to complete as part of the evaluation. The link was sent to the Parent again on March 13, 2023.
7. On February 28, 2023, District staff indicated to the District psychologist that they completed the "BASC-3".
8. A March 13, 2023 email to the District psychologist indicated the Parent's response that the "BASC-3" was done and the Parent requested an update on other evaluations.

The District responded that the cognitive testing and results look average, and that academic testing was in progress. The District psychologist also responded, stating, "you will get the report when I'm finished." Parent responded same day: "ok, thank you!"

9. A March 20, 2023 correspondence between the Parent and the District psychologist indicated that evaluations were finishing up, and the District stated the Student "will be eligible for special education supports in the areas of reading, writing, math and social/behavior skills under the category of emotional/behavioral disabled." The email included follow-up questions to the Parent on pregnancy history, health issues, the onset of Student difficulties, current diagnoses, and when the Student began counseling. The email suggested a time the following Monday or Tuesday to go over evaluation results in person or online.
10. A March 23, 2023 email invited the IEP team to meet to go over the Student's evaluation and next steps. The meeting was scheduled for March 27, 2023. The Parent accepted the meeting invite to go over the evaluation for Student.
11. On March 24, 2023, the District sent a copy of procedural safeguards and a copy of the draft evaluation report to the Parent.
12. On March 27, 2023, a meeting was held to review the evaluation report with the Parent and District team. The District reported that the Parent expressed hesitancy about the Student

accessing special education due to stigma and did not raise concerns around the evaluative findings or eligibility area at that time.

The March 27, 2023 evaluation report listed academic and behavior concerns that had not been remediated with general education interventions. The report did not describe specific strategies or include academic or pre-academic record information. The evaluation report identified the disability eligibility category as "emotional behavior disability". The evaluation summary contained the following sentence for summary of qualifications and functioning, "Student is adversely impacted in the areas of reading, writing, math and social/behavior skills by her emotional/behavioral disability and requires specially designed instruction in order to access the general education curriculum. Student behaviors adversely impact the learning of herself and others."

The results of the "WISC-V" indicated average cognitive functioning and set a criterion for specific learning disability at 81. The results of the "Kaufman Test of Educational Achievement-Third Edition" indicated written language composite in the 4th percentile and the District psychologist attributed the significantly lower score than expected to Student task refusal and behavior.

13. A prior written notice, dated March 27, 2023, summarized as follows:

- Marked "proposing" "eligibility category" and description, "proposing to qualify Student for special education services under the category of emotional/behavioral disabled."
- Cites that the Student behaviors adversely impacting the learning of herself and others, requiring specially designed instruction.
- The description of any other options considered and rejected, "considered and rejected qualifying Student under category of specific learning disability."
- Reason rejected cited "while Student meets eligibility criteria with scores below her criterion level of 81 in reading comprehension and written expression, her behaviors impede her ability to access the general education curriculum. Student behaviors adversely impact her learning and the learning of others."

14. On April 25, 2023, the IEP team convened to discuss the draft IEP and the Student's needs, goals, services, and accommodations. The Parent is listed as present at the meeting.

15. On April 27, 2023, the Parent provided consent to the initiation of special education services.

16. The Student's April 27, 2023 IEP included annual goals in reading, math, written expression, and social/emotional/behavioral, with progress reporting at the trimester. The Student's IEP provided the Student with the following specially designed instruction (SDI) in a *special education setting*:

- Math: 150 minutes a week (to be provided by special education teacher)
- Social/Emotional/Behavioral: 30 minutes a week (to be provided by special education teacher)

The IEP provided the Student with the following SDI in a *general education setting*:

- Written Expression: 60 minutes a week (to be provided by general education staff)
- Reading: 60 minutes a week (to be provided by general education teacher)

- Social/Emotional/Behavioral: 50 minutes a week (to be provided by general education teacher)
17. From May 1 to June 30, 2023, the District implemented the Student's IEP, dated April 27, 2023.
 18. On June 30, 2023, progress reports for the Student were completed for third trimester reporting.

2023–24 School Year

19. At the start of the 2023–24 school year, the Student was eligible for special education services under the category of emotional behavioral disability, was in the fourth grade, attended a District elementary school, and the Student's April 2023 IEP was in effect.
20. The school year began on September 6, 2023, and the Student's fourth grade class had a substitute teacher. The District reports that from September 25, 2023 on, a permanent general education teacher has been in the Student's classroom, who received a copy of the IEP from the District special education case manager, according to District response.
21. In September 2023, the District response indicated that the Student received the following SDI: math, 150 minutes per week Monday, Wednesday, and Friday, stating, "however, because the Student was resistant to being pulled from [Student's] general education classroom, for the majority of the school year, [Student] received push-in math SDI during this same time period." The District indicated the days and times for each of the IEP services.
22. On October 24 and 25, 2023, the Parent contacted the District special education teacher, expressing concern that the Student reported not receiving services and asked for progress reports. The District responded by emailing a class schedule and indicated that the District staff are "rapport building" with the Student and that the Student was resistant to leaving class for SDI. The District explained to the Parent that progress reports are generated at the trimester and provided the Parent with an anecdotal update on Student progress.
23. On October 29, 2023, the Parent sent an email to the District and requested the Student's "evaluation report and any and all records related to the evaluation that are not under copyright, including but not limited to observation notes, evaluation score sheets, work samples, etc."
24. On October 30, 2023, the District responded to the Parent and sent an email with a copy of the Student's evaluation report, signed consent and signature page, as well as a copy of IDEA procedural safeguards. The District email stated that "test protocols and score reports are copyrighted."
25. On November 1, 2023, the Parent responded and asked again for the observation notes and other records, including evaluation score sheets. The Parent stated, "score sheets are results of [Student's] scores and not the actual assessments and therefore they are not protected by copyright by the publisher."

26. On November 11, 2023, the Parent emailed the District to follow up on the records request, indicating she had not received a response.
27. On November 13, 2023, the District responded to the Parent and indicated that the District team determined the request for records had been met, indicated that there were no observation notes as notes are recycled after the observations is entered into the report. The District stated that test protocols and score reports are not given out.
28. On November 20, 2023, the Parent and the District met for fall conferences. The Parent expressed concern about speech and shared new medical information with the District team. The District provided the Parent with information on Student progress, program, and interventions.
29. Also, on November 20 2023, the District speech language pathologist (SLP) provided the special education teacher with a speech language referral form. The District also initiated a referral for an occupational therapy evaluation due to the recently shared medical diagnosis and Parent concerns.
30. On December 12, 2023, the Parent emailed the District, outlining the October 29, 2023 record request and asking for the evaluation assessments and protocols, stating that it is the Parent's understanding that the assessments used on the Student are not subject to copyright. The Parent also shared a concern that records were destroyed, believing that the District did not transfer all information to the evaluation report.
31. On December 15, 2023, the District special education case manager and teacher emailed the Parent, requesting an IEP meeting, stating that the Student's needs had changed since spring, and emailed the first trimester progress report.
32. On December 16, 2023, the Parent responded to the IEP meeting request and asked for "all special education services logs and for any record related to monitoring of Student's progress including copy of teacher given test mentioned in the goal, data sheets and notes and so on." The Parent emailed the District psychologist and requested an independent educational evaluation (IEE).
33. On December 28, 2023, the District filed due process related to the IEE request by the Parent. The Parent subsequently withdrew her IEE request, and the due process was dismissed.
34. On January 1, 2024, the District emailed the Parent to ask if the December 12, 2023 record request email had been responded to.
35. On January 2, 2024, the District emailed the Parent and stated that the District had delivered all records to the Parent. In response to the request for the score sheets, the District offered the Parent a time to meet to review the records at the school and a copy of all the records in the Student's special educational file.

36. On January 3, 2024, the Parent responded via email, accepting the District offer to schedule a meeting to review the Student's records, requesting again "score sheets, observation notes or any samples of work that was considered part of the evaluation."
37. On January 4, 2024, the District offered meeting times to review records, and indicated that all records in the system would be sent by District staff.
38. In the January 5, 2024 complaint, the Parent stated that the District did not provide the Parent with the requested evaluation records pertaining to the Student.

The Parent also stated that the Student requires services, such as speech language, that are not in the current IEP and alleged that the District has not been providing services as stated in the IEP, stating that when the Parent asks the Student, the Student reports not leaving class for math or reading supports.

Also in the complaint, the Parent alleged that the District failed to follow procedures of progress monitoring and stated that Student progress reports indicate progress without evidence and that the quantitative data was not provided to match the IEP goals.

39. On January 22, 2024, an IEP meeting was held to discuss the Student's progress, program, and whether to adjust service setting for math instruction to general education setting and pull-out. The team agreed that a motor and communication evaluation was necessary and sent the Parent the consent form.
40. In the February 2, 2024 District response, the District stated it provided progress reports to the Parent and provided copies of the progress reports in the response documents. The District denied that it failed to conduct progress monitoring and provided progress reports in compliance with the Student's IEP. Progress reports, dated June 28, 2023 and December 4, 2023, indicate reported progress in each of the IEP service and goal areas for the Student with comments embedded.

In its response, the District conceded that the Student's math and social/behavior minutes were not fully implemented in the correct setting but that the school team largely implemented the Student's IEP, with the Student receiving the correct amount of SDI in all areas. The District noted the Student was showing "steading progress in academics and significant gains in behavior and social skills."

The District acknowledged there was a delay in solidifying services for the Student at the start of the 2023-24 school year due to staffing issues and proposed six hours of compensatory education to remedy any missed services.

Regarding records, the District acknowledged that while a District staff immediately provided the evaluation report to the Parent request, there was confusion surrounding the testing protocols and score sheets, which contain language, such as "warning: none of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical,

including photocopy, recording.” The District acknowledged that it did not immediately provide the Parent with the option to review the additional records. But the District offered the Parent a meeting to review records on January 2, 5, and 22, 2024. The District stated that as of the date of the District response, the Parent has not provided a time or date to review the testing protocols.

41. In the Parent’s reply to the District response, the Parent alleged the District has not provided the Student with a free appropriate public education and requested a finding for an IEE at District expense and compensatory services for the Student, in addition to training in all areas of the complaint.

CONCLUSIONS

Issue One: Education Records Request – The Parent alleged the District violated FERPA and the IDEA when the District did not provide the Parent with the Student’s evaluation score sheets and observation notes as requested.

Districts must permit the parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an IEP or provision of a free appropriate public education (FAPE) to the student. However, as a general rule, parents do not have a right under FERPA to review and inspect documents that are not education records, that is, information that is not personally identifiable to the parents’ child. Records that are not directly related to a student and maintained by an agency or institution are not ‘education records’ under FERPA and parents do not have a right to inspect and review such records. A school district should, upon request, provide an opportunity for a parent to review education records and provide any explanations and interpretations necessary. This could include the interpretation of standardized test scores, such as reviewing the test questions with the parent. With respect to the issue of liability for disclosing information to parents when other laws or contractual obligations would prohibit it, public agencies are required to comply with the provisions of IDEA and FERPA and must ensure that state law and other contractual obligations do not interfere with compliance with IDEA and FERPA. Federal copyright law protects against the distribution of copies of copyrighted document, such as a test protocol.

Regarding the Parent’s request for records, the District stated, and the investigation showed that the District sent all available evaluation reports not protected by copyright to the Parent immediately upon request. The District acknowledged that the District employee originally responding to the request should have offered a meeting with the Parent to review the records in question protected by copyright. However, the District subsequently offered to meet with the Parent to review the requested records. By providing copies to the Parent of the Student evaluation report and providing the Parent the opportunity to inspect and review the records, the District has fulfilled its obligation. Thus, OSPI finds the District offered the Parent the opportunity to review and inspect records. OSPI finds no violation. If the Parent still has questions about certain records, OSPI recommends the Parent clarify which records she would like to review and that the District set up a time to review the records with the Parent and provide any necessary explanation.

Issue Two: IEP Implementation – The Parent alleged the District failed to follow the Student’s IEP. The District does not fully contest the factual allegations in this section of the complaint but denied there was a material failure to implement the IEP. Typically, when a 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.

From the beginning of the school year until September, the District indicated that the Student received specially designed instruction (SDI) in math, at 150 minutes per week on Mondays, Wednesdays, and Fridays. The District acknowledged that the Student received push-in math SDI during this same period vs. the pull-out support listed in the IEP. The District indicated the days and times for each of the IEP services and class schedule. The District’s failure to provide math SDI in accordance with the IEP, with a deviation in setting over one-month period, is not a material failure to implement the IEP as the math SDI was provided, and as such, this allegation does not represent a violation. However, in addition to the issue with setting, the District acknowledged a delay in solidifying services for the Student at the start of the 2023–24 school year due to staffing issues and proposed six hours of compensatory education to remedy any missed services. OSPI finds that the delay in starting services does represent a violation and finds the District’s proposed corrective action appropriate.

Issue Three: Progress Monitoring and Progress Reports – The Parent alleged the District did not provide progress monitoring and progress reports for the Student.

The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child’s progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. Parents must be able to examine records and information about their child to “guarantee [their] ability to make informed decisions” and participate in the IEP process.

Here, OSPI finds the District provided this opportunity to the Parent. The District provided progress reports, dated June 28 and December 4, 2023, for the Student. The District also provided anecdotal emailed reports of Student progress to the Parent at various points in the school year, allowing the Parent to be informed of progress toward the IEP goals, and opportunities to review and examine the records to make informed decisions and participate in the IEP. OSPI finds no violation.

Issue Four: Initial evaluation and eligibility determination procedures – The Parent alleged the District did not follow evaluation and eligibility determination procedures and that the District pre-determined the eligibility category for the Student, citing a March 20, 2023 email from the District psychologist, stating that the Student “will be eligible for special education supports in the areas of reading, writing, math and social/behavior skills under the category of emotional/behavioral disabled.”

A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the eligibility categories listed in regulation and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. A student's eligibility category does not determine services. An evaluation should be sufficiently comprehensive to identify all the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.

Here, the psychologist determined the Student was eligible for special education services in March 2023 under the eligibility category emotional behavioral disability. On March 20, 2023, prior to the evaluation meeting and while the evaluation was still being completed, the District told the Parent that the Student would "be eligible for special education supports in the areas of reading, writing, math and social/behavior skills under the category of emotional/behavioral disabled."

The March 27, 2023 evaluation report listed academic and behavior concerns that had not been remediated with general education interventions. In the report, the "Eligibility Decision" section checked "yes" and identified the disability category as "emotional behavior disability." The evaluation summary contained the following sentence for summary of qualifications and functioning, "Student is adversely impacted in the areas of reading, writing, math and social/behavior skills by her emotional/behavioral disability and requires specially designed instruction in order to access the general education curriculum. Student behaviors adversely impact the learning of herself and others." At the same time, OSPI notes that the results of the WISC-V indicated average cognitive functioning and set a criterion for specific learning disability at 81. The results of the Kaufman Test of Educational Achievement – Third Edition indicated written language composite in the fourth percentile and the District psychologist attributed the significantly lower score than expected to the Student's task refusal and behavior. The evaluation report and the prior written notice for eligibility determination further indicated areas of consideration and the rejection of specific learning disability as an eligibility category. The report dismissed reading and written expression scores below the criterion and attribute discrepancies to the Student's behavior.

The evaluation does meet requirements in that a variety of assessment tools and strategies were used to gather relevant functional, developmental, and academic information about the Student, including information provided by the Parent. The Student was assessed in multiple areas of suspected disability, and the evaluation was sufficiently comprehensive to identify her needs in math, written expression, reading, and social/emotional/behavioral.

However, the fact that the school psychologist emailed the Parent prior to the evaluation meeting, stating that the Student would be eligible under the emotional behavioral disability category presents a concern around predetermination. OSPI notes that when considering the specific learning disability category, the evaluation group consists of the parent and the group of qualified professionals. Here, given the March 20 email, it is not clear that the Parent was truly included in a full consideration of whether specific learning disability was the appropriate eligibility category to identify the Student under.

While the prior written notice indicates the evaluation group considered specific learning disability and “while Student meets eligibility criteria with scores below her criterion level of 81 in reading comprehension and written expression, her behaviors impede her ability to access the general education curriculum. Student behaviors adversely impact her learning and the learning of others;” the documentation reviewed in the complaint indicated this decision was made prior to the meeting and without the Parent. The findings in the evaluation indicate that the Student also meet the criteria for a specific learning disability. Importantly though, OSPI finds that the likely impact on the Student of being identified under the emotional behavior disability category versus the specific learning disability category was minimal. The Student’s IEP provided her with services in all the areas of need identified in the initial evaluation, including math, reading, written expression, and social/emotional/behavioral. It is not clear the initial IEP would have been developed differently had a different eligibility category been identified.

Thus, while OSPI finds that the evaluation was sufficient, OSPI also finds that the eligibility category was predetermined. As corrective action, the Student’s IEP team will meet to discuss whether changing the eligibility category would be appropriate and whether additional assessment or data would be needed to consider such a change.

CORRECTIVE ACTIONS

By or before **March 29, 2024** and **May 31, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **March 22, 2024**, the District and Parent will develop a schedule for six hours of compensatory education. The Parent and District may determine the area or areas of service for the compensatory education.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District’s school day and can be schedule on weekends, over District breaks, or before or after school. The District will provide OSPI with documentation of the schedule for services by or before **March 29, 2024**.

If the District’s provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours’ notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **May 24, 2024**.

By or before **May 31, 2024**, the District must provide OSPI with documentation that it has completed compensatory services for the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **May 31, 2024**.

IEP Meeting

By or before **March 22, 2024**, the Student's IEP team will meet. At the meeting, the IEP team must discuss the Student's eligibility category and whether changing the Student's eligibility category to specific learning disability would be appropriate and beneficial to the Student. The team should also discuss whether additional assessment or data would be needed to consider such a change, and if so, the team should discuss next steps.

By **March 29, 2024**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's IEP; and iii) any other relevant documentation.

DISTRICT SPECIFIC:

None.

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.

Dated this 5th day of March, 2024

Dr. Tanya 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.)