

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-23**

### **PROCEDURAL HISTORY**

On February 13, 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 February 13, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on February 15, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On February 22, 2024, the Parent contacted OSPI with questions around the investigation process and provided additional information.

On February 28, 2024, OSPI received part of the District response to the complaint and on March 1, 2024, OSPI forwarded the response to the Parent.

On March 1, 2024, the District requested an extension of time for the submission of the remainder of its response, which was granted.

On March 4, 2024, OSPI received the remainder of the District response and on March 5, 2024, OSPI forwarded the remaining District response to the Parent. OSPI invited the Parent to reply.

On March 5, 2024, the Parent contacted OSPI by phone to provide a reply to the District response.

On March 5, 2024, the Parent provided a written reply via email and OSPI forwarded a copy to the District on March 6, 2024.

On April 5, 2024, the Parent provided additional information to OSPI and OSPI forwarded that 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. Since February 14, 2023, has the District timely and sufficiently evaluated the Student to address potential reading and behavioral needs?
2. Since February 14, 2023, has the District developed an appropriate individualized education program (IEP) to address the Student's potential reading and behavioral needs?
3. Since June 2023, has the District provided progress reporting as outlined in the Student's IEP?

### **LEGAL STANDARDS**

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.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020(3).

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.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. IDEA, 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

The district is not required, however, to adopt all recommendations proposed by a parent. The IEP team work should toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. IDEA, 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for

whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

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).

## **FINDINGS OF FACT**

### **2022–23 School Year**

1. At the start of the 2022–23 school year, the Student was eligible for special education services under the other health impairment eligibility category. The Student was in the fourth grade, attended a District elementary school, and received services under a June 2022 IEP.
2. The June 7, 2022 IEP provided 150 minutes per week of specially designed instruction in writing in a special education setting. Accommodations in the IEP include extra time to complete assignments, frequent checks for understanding; repeated directions; short, one-step directions; preferential seating to avoid distraction; and the use of fidgets and manipulatives. Progress reporting listed in the IEP was to be provided on a trimester schedule.
3. On March 1, 2023, the Student's classroom teacher sent an email to the Parent, indicating the Student did not want to leave the general education classroom to receive specially designed instruction minutes in the special education setting, and asked the Parent for suggestions to help him transition out for services.
4. On March 3, 2023, the Parent responded and agreed that the Student expressed hesitation to go to the special education setting. The Parent requested that the Student get services in the general education setting. The District responded the same day and indicated that the caseload to teacher ratio for special education would not allow push in support at this time and that the general education teacher would try to accommodate the Student to schedule writing and read aloud at times the Student was in class.
5. On April 5, 2023, the District emailed the Parent the Student's second trimester general education report card, attached to the email. A special education progress report was inserted

into the District response to this complaint after this email, but it was not clear the progress report was attached to the email.

6. On May 25, 2023, an IEP meeting was held, and the team agreed to change the service setting for writing to the general education setting. The Parent expressed concern around the Student's ability to focus, concentration, and motivation, as well as reading and writing. The team agreed to reevaluate reading and writing at the start of the 2023–24 school year.
7. On June 8, 2023, the Parent emailed the school psychologist and shared that the IEP team determined the Student required reevaluation in reading and writing, sharing that the Student had a previous evaluation indicating a dyslexia diagnosis specific to orthographic processing.
8. On June 29, 2023, the District emailed the Parent the third trimester general education report card, which was attached to the email. The email subject line read, "final report card". The content of the email referred to the electronic version of the report card. A special education progress report appeared in the District's response to this complaint after this email, but it was not clear the progress report was attached to the email.

#### **2023–24 School Year**

9. At the start of the 2023–24 school year, the Student was in the fifth grade, attending a District elementary school, and his May 25, 2023 IEP was in effect.
10. The District's school year started on September 6, 2023.
11. On September 18, 2023, the Parent emailed the District to inquire about the scheduling of the reevaluation. The District responded the same day, indicating consent paperwork would be provided the same week.
12. On September 22, 2023, the District provided the Parent with consent paperwork and proposed using existing reading and writing evaluations and scores because the Student had been recently assessed, citing concerns around the validity of the scores.
13. On September 25, 2023, the Parent responded, returned the consent paperwork, and expressed disagreement on the use of past testing. The Parent requested new testing in reading and writing, expressing specific concerns around possible dyslexia.
14. On September 27, 2023, the District emailed the Parent, indicating that they would assess the Student and scheduled an evaluation meeting for November 14, 2023, with an IEP meeting scheduled for the same day.
15. On November 13, 2023, a meeting was scheduled with the Parent and District staff to address the Student's behavior, cited as escalating in number of disruptive/violent behaviors since the beginning of November. The meeting did not take place due to absent District staff and was rescheduled for November 20, 2023.

16. On November 14, 2023, a reevaluation feedback meeting and IEP meeting was held. The results of the assessment indicate the Student needed services in reading and writing and was eligible for special education under the category of specific learning disability.

The IEP team developed a new IEP, which included 50 minutes of reading weekly in the general education setting and 50 minutes of written language weekly in the general education setting. The IEP included accommodations to assist the Student to stay on task and “frequent positive reinforcement of appropriate behavior” was added as an additional accommodation to address behavior. The team discussed the Student’s recent escalating behaviors and determined that tier 2 supports from the counseling team was needed, as well as regular, ongoing check-ins for both behavior and academics.

17. The District response indicated that the Student’s fall parent teacher conference was held on November 20, 2023, and the District stated the school shared the Student’s progress reports with the Parent.

18. On January 21 and 23, 2024, the Parent emailed the District special education case manager to express concern that the Student was missing general education activities during specially designed pull-out instruction. The Parent was concerned the Student was missing choice time and requested communication on determining a better time for him to receive services. The Parent also asked for information on how the District was meeting the reading and writing needs of the Student and what curriculum was utilized.

19. On January 22, 2024, an internal District meeting occurred to discuss the Student’s escalating behavior. It was determined that the Student would have a consequence and the Parent was notified. The Parent responded and inquired about the counseling services discussed at the previous IEP meeting. The IEP team responded and clarified that the counseling was a tier 2 service and not listed in the IEP and connected the Parent with the counselor, nurse, and social worker.

20. Also, on January 22, 2024, the Parents met with the District and requested the team address the Student’s behavior through the IEP and requested a functional behavioral assessment (FBA) and behavioral intervention plan (BIP), citing the Student’s attention hyperactivity deficit disorder. The Parent additionally requested the administration reconsider the consequence of the Student missing recess, citing concern around the relationship between the Student and administration. The District denied the Parent’s request to reconsider the recess consequence and the Parent expressed concerns in a follow-up email.

21. On January 23, 2024, the District responded to the Parent’s email from January 21, 2023, indicating they checked in with the Student and that they will “keep a watch on the situation”.

22. Also, on January 23, 2024, the Parent responded to the District and asked that the questions in the January 21 and 23, 2024 emails be addressed.

23. On January 24, 2024, the District special education staff responded to the Parent around the curriculum and services.
24. Also, on January 24, 2024, the District's school administrator contacted the Parent to report that the Student refused a reflection sheet during recess consequence time.
25. On January 31, 2024, the Parent contacted the District special education supervisor and requested an independent educational evaluation (IEE) and outlined concerns around previous evaluation and the current IEP.
26. On February 6, 2024, the Parent contacted the school to request a plan of action while an updated IEP and evaluation were conducted, citing bullying by other students toward the Student. The Parent indicated the Student would not return to school until it was safe.
27. On February 7, 2024, the Parent met with the school counselor to discuss a safety plan and establishing a safe place for the Student to go for help. The Parent also met with the District school administrator and shared concerns about school climate and bullying in the grade level.
28. On February 12, 2024, the Parent met with school administration to go over a proposed safety plan and establishing a safe place for the Student to go for help. The District staff outlined the actions the school was taking to address bullying in the grade level and schoolwide.
29. On February 13, 2024, the Parent filed this special education community complaint.
30. On February 14, 2024, the District granted the request for an IEE.
31. On March 5, 2024, the Parent contacted OSPI to reply to the District response. The Parent shared that the District had contacted her to share a corrective action plan and next steps, noting the District acknowledged flaws in the process. The Parent shared that the most recent IEP was not perfect but was moving in the right direction. The Parent stated that she only received general education report cards and that February 2024 was the first time she received the special education progress reports. The Parent stated that her overall concern was that behavior and social emotional supports have not been provided and should have been provided earlier.
32. In the District response, the District concluded that the reevaluation was completed 35 school days after obtaining consent, and therefore a timely evaluation was conducted in the area of reading. The District also acknowledged, however, that beginning in November 2023, the Student began consistently struggling with behavior which was impeding learning and the District should have conducted an FBA, developed a BIP, and/or re-evaluated the Student to see if he required services in the area of social/emotional or behavior.

The District also stated in the response to this complaint, that steps have since been taken to remedy the Parent's concerns. The District granted the Parent's IEE request, and the District initiated an FBA on February 27, 2024, obtaining Parent consent on February 28, 2024.

33. The District stated, in regard to the Parent's allegation, that although progress reporting was not provided as outlined in the IEP, the Parent was provided progress reports on three different dates. The District response did not, however, clearly demonstrate delivery of the progress reports on any of the three listed dates.
34. On April 5, 2024, the Parent sent an email to OSPI, reinforcing the original complaint with additional information. The Parent summarized, relating to the issues identified in this complaint, frustrations with a gap in the Student's IEP in the area of reading and the allegation that the District disregarded the third-party neuro psych evaluation, which demonstrated a diagnosis of dyslexia, in addition to ADHD and anxiety.

## **CONCLUSIONS**

**Issue One: Timely and sufficient evaluation for reading and behavior** – The Parent alleged that the District was not meeting the needs of the Student and expressed concern that a third-party evaluation presented by the Parent from 2022,<sup>1</sup> identifying a reading disability, was disregarded, and the school evaluation denied reading services. The Parent alleged that the District did not sufficiently evaluate the Student in the areas of behavior and reading.

In the late spring of 2023, the Parent expressed concerns around the Student's ability to focus, concentration, and motivation, as well as reading and writing. The team agreed to reevaluate reading and writing at the start of the 2023–24 school year. On June 8, 2023, the Parent emailed the school psychologist and shared that the IEP team determined the Student required reevaluation in reading and writing, sharing that the Student had a previous evaluation indicating a dyslexia diagnosis specific to orthographic processing. The District provided the Parent with an assessment plan and consent paperwork at the beginning of the 2023–24 school year, and completed the assessment in the areas identified at the time as areas of concern (reading and writing), 35 days after consent was received by the school, indicating timely evaluation in the area of reading.

However, in developing, reviewing, and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. In this case, the District addressed the reading concerns at the beginning of the 2023–24 school year, but after concerns arose indicating behavior challenges beginning in November 2023, it did not timely address the behavioral needs of the Student in the IEP. An FBA

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<sup>1</sup> OSPI notes that it has authority to investigate allegations going back one calendar year in the special education community complaint process, thus from February 14, 2023 on. Therefore, the Parent's original provision of an outside evaluation to the District in 2022 is outside the scope of this complaint and the investigation focuses on the period of time and District actions after February 14, 2023.



and BIP must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. Ultimately, the District sought and obtained consent for an FBA on February 28, 2024. However, OSPI finds that the FBA should have been initiated sooner.

The District acknowledged that it should have proposed and conducted an FBA and developed a BIP and/or re-evaluated the Student to see if he needed services in the areas of social/emotional and behavior earlier than it did. Thus, OSPI finds the District did not respond in a timely or sufficient manner to address the Student's behavioral needs. The District acknowledged this finding in their response, and the District has taken steps to remedy the issue by granting the Parent's request for an IEE and initiating an FBA, which is appropriate corrective action. OSPI finds a violation related to addressing behavior and determines no further corrective actions are required.

**Issue Two: IEP development** – The Parent alleged the District failed to develop the Student's IEP to include reading and behavior services and supports. As discussed above, the District does not fully contest the factual allegations in this section and similarly to issue one, the District response concluded and OSPI's investigation finds that the District adequately developed the IEP to address reading but failed to address behavior in the IEP in a timely manner.

The District conducted an evaluation and appropriately amended the Student's IEP to include services in reading. However, the District's failure to develop the IEP in accordance with the existing data and the developing behavior needs of the Student, indicates this allegation is partially substantiated because the District did not timely consider conducting an FBA or developing a BIP. The District acknowledged that an IEP meeting should have been held to explore additional behavior supports and to discuss the IEP and behavior supports.

As discussed above, the District already agreed to an IEE and initiated an FBA to better inform the IEP. OSPI finds a violation related to developing the IEP to support the Student's behavior needs, and as corrective action, the IEP team will meet following the completion of the FBA.

**Issue Three: Progress reports** – The Parent alleged the District did not provide 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 in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process.

The District provided this opportunity to the Parent to some degree. The District response included progress reports dated June 2023 and indicated that a November 2023 parent teacher

conference was held for the Student during which the District stated progress reports were shared with the Parent. However, the Parent maintained that she did not receive any progress reports until February 2024. In addition, while the District provided emailed report cards with evidence of the attached report card, it was not clear the progress reports were attached to the email or whether they were only included in the District response to this investigation. While the progress reports were situated in the District response after the report card emails, the emails did not include a progress report attachment, indicate special education progress reports were attached, or reference the progress reports, whereas it was clear the general education report card was attached to the email. The Parent stated that the first time she saw these progress reports was February 2024 and that she had not previously received these progress reports; the Parent stated only the general report cards were received.

Thus, OSPI finds a violation as the balance of evidence indicates the Parent did not receive the progress reports until February 2024. As corrective action, the District will ensure the Parent receives the end of year progress reports.

### **CORRECTIVE ACTIONS**

By or before **May 8, 2024** and **June 28, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC**

##### **IEP Meeting**

By or before **May 1, 2024**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team will review the FBA, develop a BIP if determined warranted, and amend the Student's IEP to include appropriate social/emotional and behavioral services and supports.

*OSPI notes that the IEE may not be completed by this date and a future IEP meeting will likely be needed to review the results of the IEE.*

By or before **May 8, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) the BIP if developed; d) the IEP if amended; and e) any other relevant documentation.

##### **Progress Reports**

By or before **June 28, 2024**, the District will send the Parent the Student's final 2023–24 school year progress reports, and if sending via email, copy OSPI on the email. If sending via hardcopy in the US mail, the District should provide OSPI with documentation that the progress reports were mailed.

#### **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 11th day of April, 2024

Dr. Tanya May  
Assistant Superintendent of Special Education  
PO BOX 47200  
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**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.)