

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-49

PROCEDURAL HISTORY

On April 9, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an educational advocate (Complainant) on behalf of a parent (Parent) of a student (Student) attending the North Franklin School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 9, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 10, 2024. OSPI asked the District to respond to the allegations made in the complaint by April 26, 2024.

On April 26, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on April 29, 2024. OSPI invited the Complainant to reply.

On May 29, 2024, the OSPI investigator consulted with OSPI's assistant director, special education dispute resolution.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 10, 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

1. Since April 10, 2023, per WAC 392-172A-03020, was the District's evaluation sufficient regarding the Student's special education services eligibility category?
2. Since April 10, 2023, per WAC 392-172A-03110, has the District developed appropriate individualized education programs (IEPs) for the Student, including appropriate goals and least restrictive environment (LRE)?
3. Since April 10, 2023, per WAC 392-172A-03105, has the District properly implemented the Student's IEP, including his behavioral intervention plan (BIP), modifications, accommodations, and health/safety plan?
4. Since April 10, 2023, per WACs 392-172A-03110 and 392-172A-03100/05001, has the District amended the Student's IEP without seeking input from the Parent?
5. Since April 10, 2023, per WAC 392-172A-02020, did the District properly evaluate whether the Student needed to participate in the extended school year (ESY) program during the summer of 2023?

6. Since April 10, 2023, per WAC 392-172A-05010, has the District followed the proper procedures for prior written notice (PWN)?
7. Since April 10, 2023, per WAC 392-172A-03090, has the District's staff working with the Student been properly qualified?
8. Since April 10, 2023, per WAC 392-172A-05205, has the District implemented the mediation agreements?
9. Since April 10, 2023, per WAC 392-172A-05190, has the District responded properly to the Parent's records request?

LEGAL STANDARDS

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(b); 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 describe 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.

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.

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

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. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 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).

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. For purposes of ESY, "regression" means significant loss of skills or behaviors if educational services are interrupted in any area specified in the IEP. "Recoupment" means the recovery of skills or behaviors to a level demonstrated before interruption of services specified in the IEP. 34 CFR §300.106; WAC 392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. In most cases, a multi-factored determination would be appropriate, but for some children, it may be appropriate to make the determination of whether the child is eligible for ESY services based only on one criterion or factor. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

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.

Staff Training and Qualifications: School district personnel who direct or support the provision of special education and related services must be qualified to work in their particular capacities as required by state rule. All special education teachers providing, designing, supervising, monitoring, or evaluating the provision of special education must possess "substantial professional training." "Substantial professional training" will be evidenced by issuance of an appropriate special education endorsement on an individual teaching certificate issued by OSPI. Paraprofessional staff and aides must present evidence of skills and knowledge necessary to meet the needs of the students eligible for special education and must be under the supervision of a certificated teacher with a special education endorsement or a certificated educational staff associate. CFR §300.156; WAC 392-172A-02090. School district personnel who direct or support the provision of special education and related services must hold the credentials, certificates, endorsements, or permits that are required by the State Board of Education for the position in which they are employed. Generally, a teacher who is hired to provide special education services must hold an individual teaching certificate with a special education endorsement. 34 CFR §300.156; WAC 392-172A-02090. General education certificated teachers who deliver specially designed instruction must be supported by a certificated special education teacher responsible to monitor and evaluate the student's progress toward the annual IEP goals. 34 CFR §300.156; WAC 392-172A-02090(g).

Enforcement of Mediation Agreements: If the parties resolve a dispute through the mediation process, they must execute a legally binding agreement setting forth their resolution and states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and is signed by both the parent and a representative of the district who has the authority to bind the district to the agreement. 34 CFR §300.506; WAC 392-172A-05070. Disputes regarding whether the district has implemented a mediation agreement may also be raised through the community complaint process. 34 CFR §300.537; WAC 392-172A-05025(2)(a)(i)(B).

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.

FINDINGS OF FACT

Background: Student's Previous Evaluations

1. The Student's evaluation history included three neuropsychological evaluations conducted by a children's hospital. The first occurred in 2015, followed by another in 2017, and the third in 2018.
2. The Student's evaluation history with the District included an evaluation in 2016 where the team determined the Student was eligible for special education services under the other health impairment (OHI) category with services in reading, writing, and motor. The Student was reevaluated in 2018, with the outcome that the Student continued to be eligible for special education services.
3. An independent educational evaluation (IEE) was conducted in 2019 by an outside provider that included the area of social thinking. The independent evaluator diagnosed a mild intellectual disability, unspecified anxiety disorder, and acquired attention deficit hyperactivity disorder.
4. The Student's most recent triennial evaluation was conducted December 13, 2021, and included the following assessments and observations, performed by qualified professionals:
 - Behavior Assessment System for Children (3rd ed)-school psychologist
 - Conners (3rd edition)-school psychologist
 - The Woodcock-Johnson IV Test of Achievement-school psychologist
 - Classroom and behavioral observations-special education teacher/behavior specialist
 - Beery Developmental Test of Visual-Motor Integration (6th ed)-occupational therapist (OT)
 - Bruininks-Oseretsky Test of Motor Proficiency (2nd ed)-OT
 - Gross Motor Function Measure-physical therapist (PT)
 - Comprehensive Assessment of Spoken Language (2nd ed)-speech language pathologist (SLP)
 - Social Language Development Test-Elementary-SLP
 - Social-pragmatic observation-SLP, behavior specialist

The evaluation team reviewed previous medical and assessment information.

5. In December 2021, the evaluation team determined that the results supported the Student's continued eligibility for services under the OHI category and recommended specially designed instruction (SDI) in math, reading, writing, behavior/social emotional, adaptive, gross motor, and communication, with occupational therapy services provided as a related service. The Student continued to demonstrate a delay in fine motor skills, though "it has been determined that they no longer benefit from SDI in this area, as skills have plateaued."

The evaluation report included accommodation recommendations, including use of a calculator, fewer assignments/items to complete, use of a word processor for editing, provide visual/written output of lectures, use of "cheat sheet" during assessments, simplify directions and explanation, preferential seating, and re-teaching of concepts using different presentation modalities.

A functional behavioral assessment (FBA) was conducted as a part of the comprehensive evaluation process.

Background: 2022–23 School Year

6. At the start of the 2022–23 school year, the Student was eligible for special education services under the category of OHI and was in the seventh grade.
7. The Student’s December 2022 IEP included annual goals in reading (comprehension, fluency), writing (paragraph composition), math (calculation, problem solving), adaptive (self-advocacy) communication (understanding of non-literal language), social (identify problem, identify solution), physical therapy (upright posture, bilateral coordination), and behavior (monitor goals), with progress reporting to occur quarterly. The Student’s December 2022 IEP provided the Student with the following SDI, provided primarily in a *special education setting*:
 - Reading: 375 minutes/week (to be provided by special education staff)
 - Writing: 125 minutes/week (to be provided by special education staff)
 - Math: 250 minutes/week (to be provided by special education staff)
 - Communication(lang): 15 minutes/week (to be provided by special education staff)
 - Communication (social): 15 minutes/week (to be provided by special education staff)
 - Physical therapy: 30 minutes/week (to be provided by special education staff in the special education or general education setting)
 - Behavior: 30 minutes/week (to be provided by special education staff)

The Student’s December 2022 IEP also included occupational therapy services as a related service, for 30 minutes/month, provided by special education staff. In addition, paraeducator support was provided as a supplementary aid and service for 500 minutes/week in the general education setting.

The Student was to spend 42% of the time in general education setting. And the Student’s December 2022 IEP indicated that the need for extended school year (ESY) services would be determined by May 1, 2023.

8. On January 30, 2023, the Parent shared with the District that she was concerned about the Student’s program and requested that the current evaluation, IEP, FBA, behavior intervention plan (BIP), and mediation results be sent to the Complainant. The director of special education responded on January 31, 2023, that the request was received and that she “will have all the documents for you (Parent) shortly.”
9. Following a meeting on February 23, 2023, to discuss communication concerns, the District provided the Parent with a prior written notice (PWN) that described the proposed actions related to weekly communication and homework expectations.
10. The Student’s December 2022 IEP was first amended on February 27, 2023, after discussion and email communication with the Parent and Complainant. The Student was exhibiting increased refusal behavior in the general education science class, so the team determined to serve the Student in a smaller educational environment. The Parent agreed with this change

and a meeting occurred with the Parent, Student, and principal to discuss the schedule change. The Parent was provided a PWN on February 27, 2023, regarding these changes.

11. On March 21, 2023, the District and Parent participated in a mediation with Sound Options Group (SOG), that focused on communication and the Student's check-in/check-out system for behavior management. The agreements made during the mediation were that the District would communicate with the Parent when seeking support in the home environment. It was also agreed that the check-in/check-out format would change to a digital format after the Student's spring break. The Student had been carrying a binder that contained information from check-in/check-outs. The team would then consider the most successful format, binder or digital, for the Student. The Parent was provided a PWN following this mediation session.

Complaint Timeline Began: April 10, 2023

12. On May 5, 2023, SOG held a mediation between the Parent, with the Complainant attending, and District, with the following agreements:
 - The District agrees to email draft IEP to the Parent on May 5, 2023; the Parent agree to review.
 - IEP can be agreed upon without meeting in person and would serve as the Student's IEP for the remainder of the 2022–23 school year, if agreed to.
 - The District will send meeting invitation to the Parent for August 22, 2023 IEP meeting by June 2, 2023, and confirmation sent by US mail in August 2023.
 - At the August 22, 2023 meeting, the team will determine if IEP needs any revisions.
 - The Parent agrees to review new digital check-in/check-out and implementation to begin May 8, 2023, until the end of the school year. The team will review and agree to check-in/check-out method prior to start of the 2023–24 school year.
 - Star testing will be removed as an assessment tool in the Student's draft IEP.

The District provided the Parent a PWN following the mediation session, highlighting the agreements made.

13. District emails show that the District sent the Parent a draft IEP on May 5, 2023, and that the Star testing was removed in the draft IEP.
14. The District provided the Parent with a PWN on May 12, 2023, following the Parent's request for the District to complete an assistive technology assessment on the Student. The PWN detailed the District's denial of that request, based on previous assessment of the Student's ability to utilize voice to text technology on the Chromebook. The PWN indicated the Student can use this technology independently. Discussion also included mobility technology, communication, and daily living technology options, which were rejected based on the Student's ability to walk well using ankle braces for support, that the Student can eat independently, and that the Student is not in need of speech generated technology.
15. On May 17, 2023, the District provided the Parent a PWN, proposing to initiate ESY services for the Student during the summer of 2023. The document stated that the Student "is showing a need for ESY." The PWN further stated that the "school-based team examined the data, and the Student is showing a need for ESY." The notice included information that the Parent

requested an iPad with games/learning applications for the Student to use during the summer and that the District pay for the Student to attend a summer camp hosted by a local organization. The District rejected the two requests and offered that the Student could use the Chromebook the District already provided for the Student to access games and speech-to-text features. The request for summer camp was rejected as the District "is able to provide ESY services."

16. On May 19, 2023, the District provided the Parent a PWN, following a request to remove the Student's daily check-in/check-out system. The PWN stated that the team saw a need for the system to support the Student, and it was agreed at the mediation that there would be a trial using a digital format for check-in/check-out and a determination of which format (binder or digital) was most successful for the Student would be made for the 2023–24 school year.
17. On May 22, 2023, the Student's December 2022 IEP was amended to increase behavior services from 30 minutes/week to 50 minutes/week. This amendment was the result of an emailed request by the Parent to increase behavioral support for the Student. Team members involved with this decision included the behavior specialist, the director of special education, and the school principal, who were all in agreement with the Parent's request. A PWN was provided to the Parent the same day, documenting this decision, which was based on the Student's December 2021 evaluation, current classroom performance and observations, and team input.
18. On June 2, 2023, the Parent emailed the District, declining the ESY services offered by the District, and the District provided a PWN to the Parent on the same date. The PWN stated that ESY services are needed for the Student, that the Parent had declined ESY services, and that the Parent requested enrichment activities using a Chromebook at home. The PWN also stated that a "Parent meeting has been set up to share ideas for the Student to use to provide enrichment activities."
19. The District provided a PWN to the Parent on June 7, 2023, after receiving a written request from the Parent on June 5, 2023, for an "early reevaluation." In addition, the Parent had requested an IEE on June 2, 2023. The District acknowledged this request and informed the Parent that an IEE can be requested if a parent disagrees with an evaluation the District has completed, but in this case, it appeared the Parent has not disagreed with an evaluation the District completed. The PWN included that the team would review general education and special education records, medical records, and other records provided to determine if an early evaluation was needed, and that the team would discuss this request with the Parent when the IEP team convened on August 8, 2023.
20. A second mediation session, facilitated by SOG, was held June 23, 2023, with the Parent and Complainant in attendance. District personnel included the school principal and director of special education. The following agreements made were:
 - Proposed August 22, 2023, IEP meeting will be canceled.
 - IEP team will meet no later than October 6, 2023, after assessing the Student's present levels of performance using the Woodcock-Johnson and staff assessment.

- Staff will draft an IEP and share with the Parent 3 days prior to an IEP meeting to be held no later than October 6, 2023.
 - The new IEP will be considered the Student's annual IEP.
 - The District will complete the Student's triennial evaluation prior to the completion of their 8th grade year, to inform the Student's transition to high school.
 - The IEP team will review current BIP and make revisions based on current context and observations and will be included in the new IEP by October 6, 2023.
 - The current check-in/check-out process will be continued until the IEP is updated in September 2023.
 - The Parent will be informed by the end of the school day regarding Student behaviors that require extraordinary interventions (e.g., removal from class, administrative intervention).
21. The District provided the Parent a PWN following the mediation, indicating that the agreements were to move forward and support the Student by creating a new IEP for their eight grade year. The triennial evaluation was discussed, though they determined to wait and conduct the reevaluation during spring 2024. The PWN stated that the check-in/check-out process would continue and the data "will stay" with the school team. However, this information would be communicated to the Parent as part of the new BIP and new behavior goal that would be developed as part of the draft IEP. In addition, the Parent asked for clarification regarding ESY and the District shared that the Parent declined ESY. The District did provide the Student with a Chromebook and iPad to use for enrichment activities that were discussed in June 2023.
22. Documentation of the District's implementation of the June 2023 mediation agreement included documented efforts to schedule an IEP meeting with the Parent by October 6, 2023, though through mutual agreement, the IEP was scheduled for October 24, 2023, so that the preferred facilitator could attend. District documentation and emails indicate that the BIP was reviewed and modified based on current data.
23. On August 29, 2023, the District prepared a PWN for the Parent regarding the initiation of the academic assessment for the Student using the Woodcock-Johnson IV as agreed to during the June 2023 mediation. The assessment results were to be used to update the Student's IEP and would not be considered the triennial reevaluation.

2023–24 School Year

24. At the start of the 2023–24 school year, the Student continued to be eligible for special education services and was in the eighth grade.
25. The District's 2023–24 school year began on August 29, 2023.
26. On September 11, 2023, the Parent received a PWN from the District, proposing to change the IEP meeting date. Per the mediation agreement, the IEP meeting was to be held on or before October 6, 2023. The District proposed convening on October 24, 2023, due to the availability of the SOG facilitator. Both the Parent and District agreed to this change. The PWN

also documented that the draft IEP would be sent to the Parent three days prior to October 24, 2023.

27. On October 21, 2023, the Complainant emailed District staff, inquiring about special education teacher licensure regarding students with physical and cognitive impairments. The director of special education responded that there are not specific physical or cognitive impairment teacher licenses in the state of Washington, though the Student's IEP team does include members with experience working with students with those disabilities.
28. During the 2022–23 and 2023–24 school years, according to the District and District's documentation, the Student was served by licensed/certificated staff, including special education teachers, general education teachers, SLPs, PTs, OTs, behavior therapists, and school psychologists. In addition, special education paraeducators have also supported the Student during the school day.
29. On October 25, 2023, the District provided a PWN to the Parent, documenting "the sending and receiving" of the Woodcock-Johnson score report of the Student's performance during the assessment. After receiving the score report of standardized scores, the Parent and Complainant requested a new score report with age and grade equivalents. The District declined to provide an age/grade equivalents as it stated that those scores can be misleading and mask important variations, and do not provide as precise a measurement of the Student's performance as standardized scores. The District also offered for the Parent to come in person and review the evaluation protocol, though the Parent declined the offer.
30. On October 27, 2023, the Parent requested, via email, a copy of the Student's most recent FBA. The director of special education emailed the FBA on November 1, 2023.
31. A PWN was provided to the Parent on November 13, 2023, to document the District's refusal to conduct a new FBA, at that time. The reason the request was denied was that a new FBA would be conducted in the spring 2024, as a part of the Student's triennial reevaluation, and that the current BIP was appropriate and based upon current data. The PWN stated the team reviewed the Parent's request and reviewed data collected for the current BIP.
32. The District provided the Parent a PWN on November 28, 2023, refusing to provide raw data for all areas the Student is provided services in, in the educational setting. The Parent had also requested to see all modified work on google classroom. The District stated that communication of Student performance occurred through the IEP progress monitoring process where data is interpreted by the service providers, and teachers assign grades on a quarterly basis. In addition, the Parent has access to Skyward (online gradebook), and to positive behavior intervention and support (PBIS) information. It was offered that not all modifications to classwork are in the google format, and it is best to observe in the classroom, with explanation from the teacher as to the modification provided during a particular lesson.
33. On November 30, 2023, the Student's IEP team developed a new annual IEP for the Student. The Student's IEP was developed during two facilitated IEP meetings held on October 24 and

November 30, 2023. The IEP included annual goals in reading (fluency), writing (conventions), math (multiplication, subtraction/math strategies, addition/regrouping), adaptive (organization/self-help) communication (prediction), social (conversation strategies), physical therapy (gross motor coordination) and behavior (accepting feedback/redirection), with progress reporting to occur quarterly. The Student's December 2022 IEP provided the Student with the following SDI in a *special education setting*:

- Reading: 375 minutes/week (to be provided by special education staff)
- Writing: 125 minutes/week (to be provided by special education staff)
- Math: 235 minutes/week (to be provided by special education staff)
- Communication (language): 15 minutes/week (to be provided by special education staff)
- Communication (social): 15 minutes/week (to be provided by special education staff)
- Physical therapy: 20 minutes/month (to be provided by special education staff)
- Reading(science): 250 minutes/week (to be provided by special education staff)
- Adaptive: 15 minutes/week (to be provided by special education staff)
- Behavior: 30 minutes/week (to be provided by special education staff)

The Student's November 2023 IEP also included physical therapy services for 60 minutes/month to be provided in the general education setting. Occupational therapy was included as a related service for 15 minutes/month, provided by special education staff in either a special education or general education setting. In addition, paraeducator support was provided as a supplementary service for 250 minutes/week in the general education setting.

The Student would participate in the general education setting for 45% of the time. Additionally, a new BIP was developed for the Student, as well as a seizure emergency care plan and both are included as part of the IEP.

34. The District provided the Parent a PWN on November 30, 2023, following the IEP meeting, proposing to initiate the new annual IEP for the Student. The PWN included information that the Parent was not in agreement with the proposed math goal, and shared that she wanted the math goal to focus on calculator use. In addition, the Parent requested that standards be embedded in each of the Student's goals, and that additional goals be developed. The District rejected a calculator goal, as the Student's evaluation indicated a need for SDI in specific math skills. The District also declined to include standards within each goal/additional goals, as it is believed the proposed goals were appropriate for the Student. During the IEP meeting, the Parent requested removing the check-in/check-out process from the current IEP, though that request was denied. The new annual IEP had a start date of December 7, 2023.
35. A PWN was provided to the Parent on December 7, 2023, documenting a manifestation determination meeting following a behavior incident. The team determined that the behavior was a manifestation of the Student's disability, and no disciplinary action was taken. The team also determined that the Student's IEP was appropriately implemented.
36. On December 12, 2023, the Parent emailed the District to express her concerns regarding the new IEP that was developed on November 30, 2023, and requested that her email be included as a part of the Student's IEP records. The District responded on December 14, 2023, that the email/letter was placed in the Student's special education file as requested.

37. The District provided progress monitoring information to the Parent regarding the Student's progress on goals from the November 2023 IEP on January 12 and March 25, 2024. The Student made progress in all areas of SDI (reading, written language, math, adaptive, communication, physical therapy, and behavior), and the service providers indicated that they expect the Student to meet all goals.

38. As of the writing of the report, the District emailed the Parent on April 19, 2024, to discuss the initiation of the Student's triennial evaluation, as required by the mediation agreement.

CONCLUSIONS

Issue 1: Appropriateness of Student's Evaluation – The Complainant alleged the District's evaluation was not sufficient regarding the Student's eligibility category.

First, the most recent triennial reevaluation of the Student was conducted in 2021, prior to the one-year complaint investigation timeline. OSPI notes that it has authority through the SECC process to investigate potential allegations from the year preceding the receipt of a complaint and thus makes no conclusion with respect to the 2021 reevaluation.

Second, per a mediation agreement and subsequent discussion, the team agreed to conduct a reevaluation in the spring of 2024. Emails indicate the team began discussing the initiation of the reevaluation in April 2024, and thus the reevaluation is in progress. As this evaluation is in progress, OSPI cannot yet make a conclusion as to the sufficiency of the evaluation and the allegation is premature. Therefore, OSPI finds no violation related to the appropriateness of the Student's evaluation.

Issue 2: Development of Appropriate IEP Goals/Location of Services – The Complainant alleged the District did not develop appropriate IEPs for the Student, including appropriate goals and location of services. When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student.

In this case, the District developed an annual IEP for the Student in December 2022, with SDI provided in math, reading, written language, communication physical therapy, social, adaptive and behavior. OT services were provided as a related service, and paraeducator support was provided in general education. The goals developed for the IEP, as documented on the IEP, were developed based on the Student's current areas of need and levels of performance. The Student LRE was determined to be 42% in a general education setting. The December 2022 IEP was amended first in February 2023, prior to the start of the complaint investigation timelines and then again in May 2023, to increase behavior services from 30 minutes/week to 50 minutes/week. This also resulted in a decrease in paraeducator time to support the Student in general education. The Parent was provided a PWN regarding these changes and attached IEP form with the changes in service minutes. The IEP also included a BIP based on an FBA conducted as part of the comprehensive triennial evaluation in December 2021.

On November 30, 2023, the Parent and District met to develop a new annual IEP for the Student, facilitated by SOG. The IEP meeting occurred over two dates (October 24 and November 30, 2023). The November 2023 IEP included SDI in reading, written language, math, behavior, adaptive, communication (language and social), and physical therapy. OT services are delineated as a related service and paraeducator support is provided in general education settings. A BIP is also a part of the new annual IEP based on updated Student data. The Student's LRE was determined to be 45% in a general education setting. The District provided progress monitoring information to the Parent in January 2024 and March 2024, which indicated the Student made progress in all areas of SDI (reading, written language, math, adaptive, communication, physical therapy, and behavior), and the service providers indicated that they expect the Student to meet all goals.

In this case, the District developed two annual IEPs for the Student, providing SDI across all areas of need, inclusive of support in the general education setting. District and Complainant documentation indicates the Parent participated in the development of both annual IEPs, providing input throughout the process. The IEPs were based on Student specific data and information about the Student's needs. The District provided the Parent with PWNs each time an amendment was made to the IEP. Therefore, OSPI finds the IEPs were developed appropriately and finds no violation.

Issue 3: IEP Implementation – The Complainant alleged the District did not properly implement the Student's IEP, including the Student's BIP, modifications, accommodations, and health/safety plan. A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP.

In this case, the District developed an appropriate IEP for the Student, with documentation highlighting the progress the Student made towards achieving the goals from the previous IEP. In addition, the District amended the IEP to better support the Student's behavioral needs as changes in behavioral needs occurred. District data documentation provided and reviewed in the complaint investigation supports that the IEP was implemented by staff, and the Student's school schedule also supports the services provided. Data was collected by service providers to track Student progress (e.g., check-in/check-out data, SLP data, PT data, teacher data) and progress monitoring information was provided to the Parent. Related to implementation of the Student's IEP, OSPI finds the IEP was materially implemented. OSPI finds no violation.

Issue 4: IEP Amendments Without Parent Participation – The Complainant alleged the District amended the Student's IEP without seeking input from the Parent.

After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP.

In this case, the Student's IEP was amended once within the timeline of the complaint investigation, in May 2023, when the Student's behavior minutes (SDI) were increased from 30 minutes/week to 50 minutes/week. The amendment occurred following an emailed request from

the Parent to increase behavioral support. A PWN was provided to the Parent, documenting the District's decision to support the Parent's request, with accompanying paperwork showing the change in minutes with the behavior specialist and decrease in minutes of support provided by the paraeducator. There is no evidence supporting any other amendments to the IEP without the Parent's input or participation. Therefore, OSPI finds no violation.

Issue 5: ESY Determination for Summer 2023 – The Complainant alleged the District did not properly evaluate whether the Student needed to participate in ESY program during the summer of 2023. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE.

In this case, the December 2022 IEP indicated that the decision regarding the Student's need for ESY would be determined by May 1, 2023. On May 17, 2023, the District provided the Parent a PWN, proposing to initiate ESY services for the Student during the summer of 2023, as the Parent had requested the team consider ESY services for the summer. The District's document stated that the Student "is showing a need for ESY." The PWN further stated that the "school-based team examined the data, and the Student is showing a need for ESY." Thus, it appears the District made a determination regarding the Student's ESY needs without reconvening the IEP team or the Parent's input into the decision documented in the May 17, 2023 PWN. However, the PWN does include information that the Parent requested an iPad with games/learning applications for the Student to use during the summer and that the District pay for the Student to attend a summer camp hosted by a local organization.

On June 2, 2023, the Parent emailed the District, declining ESY services offered by the District, and the District provided a PWN to the Parent on the same date. The PWN stated that ESY services are needed for the Student, and that the Parent has declined ESY services and requested enrichment activities using a Chromebook at home instead. Subsequently, the District did discuss with the Parent enrichment activities and shared enrichment activities for the Student to do on the Chromebook over the summer.

Thus, OSPI finds a violation regarding the determination of ESY as the District made its initial decision without Parent participation. However, the District corrected the violation with respect to the Student as it engaged in ongoing discussion and a meeting with the Parent regarding ESY after the May 17, 2023 PWN was shared. And ultimately, the Parent eventually declined ESY services, so there was no deprivation of educational benefit for the Student. Still OSPI finds a violation as to the District's process and the District will be required to issue written guidance on the topic.

Issue 6: PWN Process – The Complainant alleged the District did not follow proper procedures for PWNs. 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 proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student, or the provision of FAPE to the student.

In this case, from April 10, 2023 through April 2024, the District provided many PWNs to the Parent, responding to requests from the Parent or documenting proposals to change the Student's program. The content in the PWNs included, ESY eligibility, assistive technology evaluation request, mediation agreements, check-in/check-out plan, reevaluation request, FBA request, etc. The District provided PWNs documenting decisions by the District and responding to requests of the Parent, and the PWNs contained all required elements. Therefore, OSPI finds no violation.

Issue 7: Staff Qualifications – The Complainant alleged the District has unqualified staff working with the Student. School district personnel who direct or support the provision of special education and related services must hold the credentials, certificates, endorsements, or permits that are required by the State Board of Education for the position in which they are employed.

In this case, the District follows OSPI requirements regarding hiring licensed and certified professionals. OSPI reviewed District documentation that support the District verified the credential/license status of the employees to hire special education teachers, school psychologists, SLPs, OTs, PTs, and behavior specialists. All paraeducators must have at least a high school diploma. All employee positions are reviewed and approved by the District's school board. OSPI finds that all the staff working with the Student met the relevant qualifications. OSPI finds no violation.

Issue 8: Implementation of Mediation Agreements – The Complainant alleged the District has not implemented the mediation agreements. OSPI has authority through the special education community complaint process to address whether a district has implemented a mediation agreement.

The District and Parent and Complainant participated in two mediation sessions mediated by SOG (May 5, 2023 and June 23, 2023). The mediation agreements outlined District responsibilities, and the investigation shows the District followed through and completed their responsibilities. It is true however, that some of the agreements from the May 5, 2023 mediation were changed, amended, or dropped during the June 23, 2023 mediation session.

Following the May 5, 2023 mediation, the District provided a draft IEP to the Parent on the same day and removed Star testing from the draft IEP, per the agreement. The other items on the agreement were not required to be initiated by June 23, 2023, when the second mediation session occurred.

During the June 23, 2023 mediation, the proposed August IEP meeting was canceled, and the IEP meeting was to be held no later than October 6, 2023. The Parent and District later mutually agreed to schedule the IEP meeting for October 24, 2023, due to facilitator availability. The IEP meeting was held on that date, with a second meeting held on November 30, 2023. As evidenced by District email documents, it provided a draft IEP to the Parent at least three days prior to the scheduled IEP meeting. The Student's check-in/check-out system was continued as agreed to. On August 29, 2023, the District initiated the Woodcock-Johnson assessment through a PWN provided to the Parent, and the assessment was completed in October 2023. Email

communications between the District and Parent highlight conversation regarding when the District would inform the Parent of behavior issues (e.g., when extraordinary interventions are used). Finally, on April 19, 2024, the District emailed the Parent to initiate the Student's triennial evaluation.

Therefore, OSPI finds the District implemented the mediation agreements and finds no violation.

Issue 9: Parent Requests for Records – The Complainant alleged the District has not responded properly to the Parent's records request. 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.

During the timeframe of this community complaint, the Parent requested records in October 2023, and November 2023. District and Complainant documentation also shows that the Parent did ask, at times, for additional copies of documents already provided, for herself or for the Complainant. Emails indicate that the District provided the additional copies as requested.

In October 2023, the District provided a PWN to the Parent, responding to her request for additional score reports of the Woodcock-Johnson. The District had already provided the Student's standardized scores and declined to produce age/grade equivalent scores reports. They based this decision on the fact that age/grade equivalent scores can mask important variations in performance and standardized scores are more precise. As the requested record did not exist, the District was not required to provide it or create a new record that was not already collected or maintained by the District. The other request in October 2023 was a request for the Student's most recent FBA and the District provided a copy to the Parent.

On November 28, 2023, the District provided a PWN to the Parent in response to her request for raw data from all service providers and teachers. The District declined this request via a timely PWN. However, under the IDEA and Washington special education records, districts must allow 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. In addition, districts are required to provide explanations or interpretations to the parents when asked, and also provide copies of records if necessary to support the parent's participation in their child's educational program. Here, the District improperly declined the Parent's request—if the District maintained data in the Student's educational record, even if that data was compiled into progress reports, the District has an obligation to provide the Parent with or an opportunity to review the Student's educational records. OSPI notes the District should have clarified what records the Parent was seeking and then determined if those records existed. Therefore, OSPI finds a violation. The District will be required to clarify with the Parent what records she is seeking and provide those records, if they exist; and the District will be required to provide written guidance related to this topic.

CORRECTIVE ACTIONS

By or before **June 14, 2024, September 3, 2024, and September 16, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Records Clarification

By or before **June 14, 2024**, the District will discuss with the Parent what educational records she is seeking per her request for "raw data" and schedule a time for the Parent to obtain a copy of the records or review the records in person, if those educational records exist.

DISTRICT SPECIFIC:

Written Guidance

By **September 16, 2024**, the District will ensure that the following individuals receive written guidance on the topic listed below: special education administrators, the principal, and special education certificated staff (teachers), at the school that the Student was enrolled in during the 2023-2024 school year.

- District responsibilities regarding parent requests for educational records per WAC 392-172A-05190.
- Requirements around ESY determinations, including parent participation in the decision making.

By **September 3, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 10, 2024.

By **September 16, 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.

Dated this 7th day of June 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.)