

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-62

PROCEDURAL HISTORY

On April 23, 2024 the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the father (Parent) of a student (Student) attending the Spokane School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 23, 2025, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on April 25, 2024. OSPI asked the District to respond to the allegations made in the complaint.

On May 13, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on May 14, 2024. OSPI invited the Parent to reply.

On May 28, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 12, 2024, the OSPI complaint investigator interviewed the District special education director.

On June 14, 2024, OSPI requested that the Parent provide additional information, and the Parent provided the requested information on June 18, 2024. OSPI forwarded 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.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 24, 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. Did the District follow individualized education program (IEP) procedures regarding the Student's participation in the state assessments according to WAC 392-172A-03090?
2. Did the District review the Student's IEP periodically but not less than annually according to WAC 392-172A-03110?
3. Did the District implement the Student's IEP regarding provisions related to collecting behavior data according to WAC 392-172A-03105?
4. Did the District complete the reevaluation of the Student within the required timeline according to WAC 392-172A-03015?

LEGAL STANDARDS

Statewide Assessments: A student's IEP must address any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments and if the IEP team determines that the student must take an alternate assessment instead of a particular regular state or district-wide assessment of student achievement, a statement of why: the student cannot participate in the regular assessment and the particular alternate assessment selected is appropriate for the student. WAC 392-172A-03090. There is no "opt out" for federal accountability assessments. The intent of the state and district policy is that all students participate in state-mandated assessments.¹ See, <https://ospi.k12.wa.us/student-success/testing/state-testing/state-testing-frequently-asked-questions>.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a free appropriate public education (FAPE). It is not appropriate to make IEP decisions based upon a majority "vote" and no one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). See also, *Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents.)

IEP Implementation: A district must 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).

¹ OSPI notes that while there is no process for and districts may not opt students out of state assessments, a parent could refuse to have their student participate in testing. Test refusals are counted among the number of students who do not meet standard. See, <https://ospi.k12.wa.us/student-success/testing/state-testing/state-testing-frequently-asked-questions>.

FINDINGS OF FACT

Background

1. At the start of the 2022–23 school year, the Student was third grader who attended a District elementary school and was eligible to receive special education services under the category of developmental delay.
2. On January 9, 2023, the Parent requested a reevaluation to change the Student’s eligibility category to autism based on a private evaluation.
3. On January 23, 2023, the Student’s IEP team developed a new annual IEP for the Student. The IEP included annual goals and accompanying objectives in reading, writing, math, social, behavior, adaptive, speech/language, and occupational therapy. Progress towards the goals would be measured by teacher observation and weekly data collection.

The IEP included a behavioral intervention plan (BIP). The IEP also included 15 accommodations that included, in part, breaks, dynamic seating stool, and text-to-speech. The Student would participate in the state assessment with accommodations in the areas of English language arts and math.

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

- Reading: 90 minutes a week (provided by Special Ed Resource)
 - Writing: 90 minutes a week (provided by Special Ed Resource)
 - Math: 120 minutes a week (provided by Special Ed Resource)
 - Social: 50 minutes a week (provided by Special Ed Resource)
 - Behavior: 50 minutes a week (provided by Special Ed Resource)
 - Adaptive: 50 minutes a week (provided by Special Ed Resource)
 - Paraeducator: 1,740 minutes a week (provided by a paraeducator in “all settings (for 1 on 1 only)
 - Speech and language therapy: 120 minutes per month (provided by a speech/language pathologist)
 - Occupational therapy: 60 minutes per month (provided by an occupational therapist)
 - Music therapy: 30 minutes per week (provided by a music therapist)
4. On January 28, 2023, the Parent provided written consent for the reevaluation.
 5. Beginning on March 7, 2023, the school psychologist and the Student’s mother exchanged emails regarding the District’s request for her input into the evaluation. On March 14, 2023, the Student’s mother emailed her input into the reevaluation.
 6. On April 24, 2023, the one-year timeline for the complaint began.
 7. On April 26, 2023, the school psychologist emailed the Parent and the Student’s mother about available dates to meet to discuss the evaluation. The Student’s mother replied that she was available either June 13 or 14, 2023.

8. On April 27, 2023, the Parent emailed the school psychologist, stating the evaluation past the due date. On May 4, 2023, the school psychologist responded:

Thanks for your patience as I worked to gather more information around the delay in the re-evaluation meeting. There are two components to this delay, from my understanding. The first component was waiting on information from [Student's mother] to be added to the re-evaluation. The second component was trying to work around the meetings regarding the completion of the IEP and the FBA/BIP and being intentional with keeping those meetings focused on those specific agendas. With this reevaluation, the only thing that is being considered is an eligibility category change. This change does not impact her services. Knowing the above information, please let me know if you are okay with one of the June meeting dates below or if you are requesting a meeting sooner. We can make this meeting virtual as well.
9. On May 4, 2023, the director emailed the Student's mother about the delay in the evaluation. According to the email, the District was waiting on information from the Student's mother and scheduling the IEP meeting to complete the IEP and BIP. The director stated that the reevaluation was to only consider a change of eligibility.
10. On May 17 and 18, 2023, the District, Parent, and Student's mother confirmed the meeting date of May 31, 2023.
11. By May 30, 2023, the District completed the reevaluation report draft and on May 31, 2023, the team met and determined that the Student was eligible for special education services under the category of autism. The prior written notice that accompanied the meeting stated, in part, that the Student's mother disagreed with changing the eligibility category and did not agree with the medical diagnosis.

The notice further stated, in part:

A draft of the evaluation report was emailed to parents for review and feedback on 05/31/2023 after information was added to the draft based on discussion at the reevaluation meeting. [Parent] provided a response on 06/04/2023 with suggested edits/additions and a statement. [Student's mother] provided a response on 06/07/2023. Revisions were made to the report based on parent feedback and the new draft along with any attached documents sent by both parents were resubmitted to parents and Special Education administrators on 06/12/2023. As of 6/20/2023 no additional feedback had been received. [Prior written notice] and reevaluation report were sent to both parents.

2023–24 School Year

12. At the start of the 2023–24 school year, the Student was a fourth grader who attended a District elementary school and was eligible to receive special education services under the category of autism.
13. The District's 2023–24 school year began on September 5, 2023.
14. The Parent had proposed that the District use "Mytaptrack" to collect behavior data. Beginning September 4, 2023 through May 2, 2024, the District used the program to collect daily

behavior on disrobement, duration of escalation, threatening statements, and unsafe behavior. The program identified the behavior, the number of occurrences, and duration of each occurrence.

15. During October 2023, the District data showed a significant increase in unsafe behaviors. Afterwards, the data showed much fewer incidents. The District acknowledged that some data may have been incorrect in October, but overall, the data was accurate.
16. According to the complaint, the District did not appropriately track behavior data and that the data that was tracked was "miscategorized and inconsistently collected, and thus unreliable." The Parent's belief was based, in part, on the fact that the Student continued to have behavior incidents and the District was not tracking all behaviors.²
17. On October 23, 2023, the District completed the "Fidelity Check for Behavior Intervention Plan", which documented 1) reinforcers; 2) antecedents; and 3) consequences interventions. The form showed the BIP was implemented, except for when the Student could not get back to task.
18. On October 25, 2023, the special education director and the school director sent a letter to the Parent, stating the District was initiating a "communication plan" due to the Parent's statements to staff. The plan stated that written communication must only be sent to the special education director and school director. But the plan did not restrict District staff from initiating communication with the Parent.
19. On November 9, 2023, the District completed another fidelity check, which indicated the BIP was followed.
20. On November 11, 2023, the Student's team met to amend the IEP. Regarding state assessments, the IEP stated, "The student will not participate in statewide assessments in this IEP cycle due to grade level or student has previously passed state assessments." According to the prior written notice that accompanied the meeting, the team proposed sending at least two of the Student's work samples to the Parent and Student's mother as part of progress reporting and reviewed the communication agreement between the Parent, the Student's mother, and the District. The notice indicated it was a very contentious meeting that resulted in the Student's mother and their significant other being excused from the meeting.
21. On December 8, 2023, the agreement between the District, Parent, and Student's mother was updated, addressing communication between all parties. The agreement, in part, stated the District would send all emails and responses to the Parent and Student's mother.
22. From December 15, 2023 to January 21, 2024, the District, Parent, and Student's mother exchanged emails to schedule an IEP meeting. The District initially proposed meeting for 90

² The complaint referred to some events that occurred before the one-year complaint timeline as evidence of noncompliance.

minutes, but the Parent requested at least three hours to meet. They eventually settled on two hours to meet, but would schedule another meeting if the IEP was not completed.

23. On January 23, 2024, the Student's team met to conduct an annual review of the IEP and the BIP. According to the meeting notes, the team extensively discussed how behavior data was taken and analyzed. The District stated a variety of tools were used, including observations and assessment data. Progress would be measured by two–three work samples for each goal. The District noted "significant decreases in behavior" of the Student. The Parent's partner expressed a concern about using different ways to measure the behavior to determine the function of the behavior. The team also discussed how breaks were implemented, "resets," which were calls to the Parent and Student's mother, and fidelity checks. The data collection for the BIP would occur as follows:
- Daily tracking of target behaviors
 - Track location (in classroom/out of classroom, class period, and duration of breaks)
 - Replacement behaviors with corresponding goal areas
 - Training staff and then monthly fidelity checks
 - Board-certified behavior analyst will review Mytaptrack quarterly

The Student's IEP stated the Student would participate in the regular state assessment with accommodations.

24. On January 26, 2024, the Student's special education teacher emailed the Parent and Student's mother "the raw data sheets for [Student] for her current reading, writing, math, social, behavior and adaptive goals. These sheets are for this current school year so far, and the sheets that are dated through mid-November were also scanned and sent with the records from November."
25. On February 5, 2024, the Student's team met again to discuss data collection and participation in the statewide assessment, among other issues. The team discussed how the Student would participate in the statewide assessment and how behavior data was collected. According to the meeting notes, the Parent recommended that the District take data on all behaviors and interventions. The District requested the Parent and Student's mother provide information about home behavior and then it would consider the recommendation. When participation in statewide assessments was discussed, the Parent and the Student's mother disagreed on whether the Student should participate. The team discussed the lack of consensus and how to proceed without it. Eventually, the District stated that if there was no consensus, the District was required to make the decision.
26. According to the complaint, the District encouraged the Parent and Student's mother to "opt out" of the Student taking the statewide assessment. In addition, the complaint stated the District had the final authority to make the decision about the Student's participation, not the Parent and Student's mother.
27. On February 12, 2024, the Student's team met to continue the discussion about the Student's participation in the statewide assessment, writing, reading and written expression goals,

adaptive behavior progress, accommodations, and behavior data. The team discussed using trials and percentages in evaluating the Student's behavior.

28. On February 19, 2024, the District emailed both the Parent and Student's mother to schedule a meeting to complete the annual IEP review. The Student's mother was only available on March 12, 2024.
29. On March 4, 2024, the Parent emailed the director, stating the BIP had not been finalized and "needs to be addressed as well..." The director responded, stating, in part:
Regarding reviewing the BIP for finalization, it was stated that once the entire IEP has been reviewed, the school team will update the IEP, which includes the BIP, based on the IEP team's discussions and will send out revisions for final review. If another IEP is needed to review proposed changes, then one can be requested.
30. The case record showed that the Parent made repeated requests for more specific data about the Student's behaviors that led to more significant behavior.

The complaint also alleged the following regarding the Student's behavior:

Our daughter's behavioral barriers to academic engagement have been a continuous problem, impacting every service area, that has further escalated to the school being unable to provide grades in multiple subjects during the 2023-24 school year. Further, the district has insufficiently tracked behavioral data to the extent that the data obtained is miscategorized and inconsistently collected, thus unreliable and cannot be used by the IEP team for the purpose of making data-based decisions to mitigate behavioral barriers.

31. On March 12, 2024, the team met again to discuss extended year services, music and science class, and data collection, according to the meeting notes. The IEP was not completed.
32. On March 13, 2024, the Student's mother emailed the District to request another IEP meeting to discuss the behavior data and complete the IEP.
33. On March 24, 2024, the District emailed the Parent regarding the Student's mother's request for an IEP meeting.
34. On April 16, 2024, the Student's mother emailed the Parent and District about her availability.
35. On April 19, 2024, the District emailed both the Parent and the Student's mother regarding their inability to find a mutual date and time to meet.
36. In its response to the complaint, the District stated:
The District determined that a fifth IEP [meeting] was not necessary because the IEP team had already reviewed the Student's IEP (including BIP) during four previous meetings for a combined total of 7.5 hours and because Student's parents had ample opportunity to participate in the IEP review at all of those meetings and in fact did participate in all of those meetings. The District nonetheless agreed to hold another meeting if the Student's parents could mutually agree to a meeting time before May 3, 2024. The Student's parents did not agree to a day and time, so the District finalized the Student's IEP.

37. On April 23, 2024, the Parent filed this complaint with OSPI.

38. The complaint alleged, in part, that the District failed to develop a timely annual IEP for the Student. The Parent stated that the delay was due to the follow:

- "The district proposing their available dates to space the meetings out 2-4 weeks between each meeting."
- "The district refusing to schedule each meeting to be an appropriate length of time to complete [Student's] extensive IEP with 9 related service areas, BIP, data tracking, accommodations/modifications and other required component of the IEP."
- "The district continuously accommodated the mother's blatant efforts to delay and frustrate the IEP meeting from being scheduled."

39. In its response to the complaint, the District provided progress reports, showing the Student's progress towards the annual goals. Progress was reported as follows³:

Goal	June 2023	November 2023	January 2024	April 2024
Reading	Making progress	Making progress	Mastered	Mastered
Writing	Maintaining	Maintaining	Maintaining	Making Progress
Math	Making progress	Making Progress	Approaching Mastery	Mastered
Social	Making progress	Making Progress	Mastered	Mastered
Behavior	Making Progress	Maintaining	Approaching Mastery	Mastered
Adaptive	Making progress	Making Progress	Mastered	Mastered
OT	Making progress	Approaching Mastery	Mastered	Mastered
Speech/Language 1	Making progress	Approaching Mastery	Approaching Mastery	Mastered
Speech Language 2	Making progress	Making Progress	Mastered	Mastered

40. The complaint alleged the Student was not making meaningful progress in the annual goals during the 2022–23 and 2023–24 school years. According to the complaint, the District manipulated the data by not counting the proper number of trials. For example, the complaint stated, "...there should be 10 trials for some areas, if [Student] successfully completed two trials, but refuses all others, the district will score at 2/2 with 100% satisfaction of the goal instead of 2/10 with 20% satisfaction."

41. On May 9, 2024, the Student's team met to review the IEP and determine whether the Student qualified for extended school year (ESY) services. The Student's IEP stated the Student would be participating in the regular state assessment with accommodations. According to the prior written notice, the team determined that the Student did not qualify for ESY.

³ The comments that accompanied the progress code also provided quantitative data.

The notice also stated, in part, that the Parent's request that the BIP addressed refusing to participate in classroom lessons was rejected because it was not a behavior that was identified in a previous functional behavioral assessment of the Student. The notice further stated:

The IEP team convened on several occasions to review, discuss, and adjust the annual IEP. Meetings were held on the following dates: January 23, 2024, for 2 hours; February 5, 2024 for 2 hours; and March 12, 2024, for 2.5 hours. A second draft of proposed IEP edits was forwarded to the parents on March 14, 2024. Parent feedback was communicated to the District on March 26 and 27, 2024. Following [Parents'] request to reconvene the IEP team for further review of the BIP and data tracking, the District sought to arrange a mutually agreeable meeting time with the parents. Unfortunately, the parents were unable to reach a consensus. As the District deemed another IEP meeting unnecessary, it informed the parents that if they could not propose a mutually agreeable meeting time by May 1, 2024, the District would finalize the IEP to ensure timely commencement of appropriate services. By May 1, 2024, the parents had not provided the District with a mutually agreeable meeting time. Consequently, the District proceeded with finalizing the IEP.

42. The Parent also provided additional information that analyzed the data collected by the District and "other external data." (Some of this data was before the one-year complaint timeline.) Based on the Parent's analysis, the Parent alleged the data was "significantly altered" by the District.

CONCLUSIONS

Issue One: Participation in Statewide Assessments – The complaint alleged the District failed to address the Student's participation in statewide assessments in the IEP. A district is required to ensure that the IEP team address how the student will participation in statewide assessments. The District denied the allegation.

Here, at the January IEP meeting, the team discussed, among other things, the Student's participation in the statewide assessment. The discussion mostly focused on whether the Student taking the assessment was appropriate and there was confusion about who makes the decision regarding a student's participation in the statewide assessment. According to the case record, the District initially deferred the decision about whether the Student would participate to the Parent and Student's mother. The Parent and Student's mother disagreed about whether the Student should participate. Thus, the District stated that it would make the decision.

An IEP team is required to determine *how* a student will participate in statewide assessments. It is not up to the IEP team to determine *whether* a student will participate in statewide assessments. Moreover, there is no option for a district to opt a student out of participating in statewide assessments (although it is acknowledged that parents may refuse to have their children participate by keeping them home during assessments.)

In this case, District had an affirmative duty to ensure that the IEP team made a decision regarding how the Student would participate in assessments regardless of the decisions by the Parent and Student's mother. Had the District been clear about this to begin with and proceeded to make a decision, the chance of a dispute would have been much less. However, after discussions, even if

the information about assessment participation communicated was confusing, the Student's IEP did provide for the Student's participation in the statewide assessment. Although no violation was found, it is recommended that the District clarify the requirements for participating in statewide assessments for students with IEPs.

Issue Two: Annual IEP Review – The complaint alleged that the District failed to conduct annual review of the Student's January 2023 IEP. A district is required to review a student's IEP at least annually. The District denied the allegation.

Here, the Student's January 2023 IEP was reviewed and developed on January 23, February 5, February 12, and March 12, 2024. The District had considerable difficulty with scheduling a meeting at a mutually agreed upon time between the Parent and Student's mother to ensure that both had input into the development of the IEP. There were many emails between the District, Parent, and Student's mother, attempting to schedule meetings. In addition, the case record indicated that much of the IEP meetings focused on discussion about methodology and data collection. While the Parent and Student's mother should have input into the development of the IEP, teaching methodology and the details of data collection are left to the discretion of the District. While OSPI credits the District for its attempts at ensuring parent participation, here, the long and detailed discussions about methodology and data collection contributed to the delay in completing the Student's annual IEP.

After the complaint was filed in April 2024, another IEP meeting was requested. In order to complete the IEP, the District informed the Parent and Student's mother if they could not agree on a meeting time by May 1, 2024, the District would go forward and implement the IEP.

The District attempted in good faith to complete the Student's IEP and prioritize parent participation, but the discussions never resolved the differences between the District and the Parent to reach consensus or resulted in the District proposing and implementing an IEP despite the Parent's disagreement. OSPI notes that case law provides precedent supporting the emphasis on parent participation, both the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. At the same time, delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE.⁴ Here, OSPI acknowledges the efforts the IEP team went to, to develop an IEP for the Student and ensure parent participation and while parent participation is essential, a team also cannot meet indefinitely to develop an annual IEP. In this case, the District proceeded to implement the Student's IEP after the Parent and Student's mother could not agree on a meeting date. Although it took a considerable time to implement the IEP, given the circumstances and prioritization of parent participation, there was no violation.

⁴ See, *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

Issue Three: IEP Implementation – The complaint alleged the District failed to properly collect behavior data. A district is required to implement the special education services in conformity with the IEP. 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. The District denied the allegation.

Here, the District used Mytaptrack, which was a behavior tracking program. The program tracked the January 2024 BIP’s target behaviors that included disrobement, threatening statements, unsafe behavior, and duration of escalation. The Parent insisted that the District collect data on all behavior, both pre-occurrence and post-occurrence in order to better analyze occurrences because the Student was not making progress in her program. In addition, the Parent claimed the data that was collected and analyzed was inaccurate and skewed. For example, the previous reported data collected and was different from the current data during the same time period. The Parent attributed it to the District altering the data to reflect better progress. However, OSPI notes that there could have been other reasons for the differences, such as looking at the data over a period of time and multiple collections of data during the same time period that could show natural fluctuations in the Student’s behavior and needs. Other than the difference between the two sets of data, there was no evidence that the District deliberately altered the data.

The Parent may have wanted and repeatedly requested more detailed data, but there was no specific right to such detail. And despite the Parent’s claim the Student was not making progress, the case record indicated that the Student was making progress on her goals, including behavior. It should be noted that the District appeared to accept some of the Parent’s recommendations and dismissed others. But in discussing data collection with the Parent, the District did not clearly address the Parent’s requests through a prior written notice about what data would be taken. Based on the documentation that the District collected data consistent with the IEP and BIP and the Student was making progress, no violation is found.

While no violation is found regarding data collection, OSPI strongly recommends that the District clearly document what data will be collected and address the Parent’s requests through a prior written notice.

Issue Four: Reevaluation Timeline – The complaint alleged that the District failed to follow the reevaluation timeline when evaluating the Student. A district is required to conduct the reevaluation and determine eligibility within 35 school days after receiving the parent’s written consent.

On January 9, 2023, the Parent requested an evaluation to reconsider the Student’s eligibility for autism based on medical reports. On January 25, 2023, the District provided the Parent with prior written notice, proposing the evaluation. Also on January 25, 2023, the District held an IEP meeting for the Student. On January 28, 2023, the Parent provided written consent for the evaluation.

March 19, 2023 represented 35 school days from receipt of consent.⁵ On May 30, 2023, the evaluation team met to review the medical information and determined the Student continued to be eligible for special education, now under the category of autism. The evaluation report was later revised with input from the Parent and Student's mother.

A district must determine eligibility and the needs of the student within 35 school days of receiving parent consent. The District acknowledged that the evaluation took longer than 35 school days. The District argued that the delay was due to trying to get input from the Student's mother, which was not immediately forthcoming. In addition, the District argued that the reevaluation was perfunctory; it was provided only a change in eligibility, not the Student's program.

Like the delays in developing the Student's annual IEP, parent unavailability or lack of response were in part responsible for the delay in the reevaluation. However, the Student's mother provided her input on March 14, 2023, which was within the 35-day timeline of March 19, 2023. While there might have been a delay in receiving the Student's mother's input, this does not account for the remaining delay to May 30, 2023. Therefore, OSPI finds a violation. The District is required to provide the special education staff and administrators at the Student's school written guidance on completing reevaluations within the 35-day timeline. Since the violation did not impact the Student's services, no Student-specific corrective actions are required.

CORRECTIVE ACTION

By or before **September 13, 2024** and **October 11, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Written Guidance

By **September 27, 2024**, the District will ensure that all case managers and school psychologist who worked in the Student's school receive written guidance on completing reevaluations within the required timeline. By **September 13, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments September 20, 2023.

By **October 11, 2024**, the District will submit documentation that all required staff received the guidance.

⁵ OSPI notes that the one-year complaint investigation timeline began on April 24, 2023. Because the evaluation meeting was not held until May 30, 2023, it presented a potential violation within OSPI's one-year investigation timeline, even if the original evaluation due date was outside the year window for investigation.

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.

RECOMMENDATIONS

OSPI strongly recommends that the District clearly document what data will be collected and address the Parent's requests through a prior written notice.

OSPI also recommends that the District clarify the requirements for participating in statewide assessments for students with IEPs and review such requirements with IEP teams.

Dated this 20th 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, Student's mothers (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. Student's mothers (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.)