

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-56

PROCEDURAL HISTORY

On April 22, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Mercer Island School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On April 23, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint by May 13, 2020.

On May 8, 2020, OSPI received the District's response to the complaint and forwarded it to the Parent on same day. OSPI invited the Parent to reply.

On May 21, 2020, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 11, 2020, OSPI conducted an interview with the school psychologist and the District special education director.

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

ISSUES

1. Did the District follow the procedures when evaluating the Student in January 2020, including ensuring parent input?
2. Did the District follow procedures in determining the Student's eligibility for special education in January 2020?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there was sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently

comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a).

SCOPE

This decision references events that occurred prior to the investigation period, which began on April 23, 2019. 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.

FINDINGS OF FACT

1. During the 2018-2019 school year, the Student was a first grader who was attending a District elementary school. The Student was not eligible for special education services. The Student exhibited some difficulties with keeping on task and anxiety.
2. On May 2, 2019, the Parent emailed the District early childhood education coordinator and stated because the Student was experiencing "some difficulties with focus in the classroom and various other issues", the Parent had the Student privately evaluated and he was diagnosed with attention deficit/hyperactive disorder (ADHD). The Parent stated she wanted a 504 plan initiated as soon as possible.¹ She stated she would forward the evaluation when completed.

¹ A 504 plan refers to Section 504 of the Rehabilitation Act of 1973, which prevents discrimination based on disability and helps ensure students with disabilities are able to have equal access to education.

June 2019

3. During summer 2019, the Student attended a private summer school.
4. On June 23, 2019, the Parents emailed the report by private psychologist 1 to the District school psychologist and numerous District staff. The report, dated June 11, 2019, included the following assessments:
 - Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V)
 - Cognitive Assessment System- Second Edition (CAS-2)
 - Gray Oral Reading Test, Fifth Edition (GORT-5)
 - Wide Range Assessment of Memory and Learning, Second Edition (WRAML-2)
 - Integrative Visual and Auditory Continuous Performance Test (IVA-2 CPT)
 - Comprehensive Executive Function Inventory (CEFI), Parent and Teacher
 - Behavior Assessment System for Children, Third Edition (BASC 3) Parent and Teacher
 - Parents completed a developmental questionnaire

The results were as follows:

- Cognitive Skills: The Student scored in the average range compared to others his age. The planning scale score indicated he had average ability to solve problems and his attention scale score was above average.
- Academic Skills: In testing oral reading fluency and comprehension, his reading skills were in the average range.
- Verbal Memory and Language-Based Processing Skills: Assessing memory in the areas of verbal, visual, and attention/concentration, his scores were in the average to above range except for story memory, which was low average.
- Executive Functioning Skills and Sustained Attention: The Student was unable to complete the test, so some results were invalid. However, the fine motor hyperactivity quotient scale score was in the moderately impaired range. The results of the "Comprehensive Executive Function Inventory," which is a behavior rating scale of executive functioning, were as follows:

Scale	Parent Rating	Teacher Rating
Full-scale score	Low average	Below average
Planning	Average	Low average
Attention	Low average	Below average
Flexibility	Low average	Low average
Self-monitoring	Low average	Below average
Initiation	Low average	Below average
Inhibitory	Low average	Low average
Working memory	Low average	Below average
Organization	Below average	Below average
Emotion	Below average	Average

The results of the Behavioral Assessment System for Children (BASC-3) were as follows:²

² An "*" indicates "at-risk" symptoms and an "***" indicates severe symptoms.

Clinical Subscales	Teacher	Teacher
Hyperactivity	60*	46
Aggression	59	42
Conduct Problems	47	56
Externalizing Problems	56	48
Anxiety	53	49
Depression	62*	52
Somatization	43	51
Internalizing Problems	53	51
Atypicality	41	43
Withdrawal	51	44
Behavioral Symptoms Index	57	47
Attention Problems	61*	58
Learning Problems	46	54
School Problems	54	57
Adaptive Subscales		
Adaptability	30**	48
Social Skills	42	57
Leadership	45	48
Study Skills	32*	41
Functional Communication	42	35*
Adaptive Skills	36*	45

Clinical Subscales	Mother	Father
Hyperactivity	54	47
Aggression	49	51
Conduct Problems	59	50
Externalizing Problems	54	49
Anxiety	52	53
Depression	58	59
Somatization	48	52
Internalizing Problems	53	56
Atypicality	46	51
Withdrawal	45	54
Behavioral Symptoms Index	52	53
Attention Problems	58	51
Adaptive Subscales		
Adaptability	40*	47
Social Skills	50	47
Leadership	42	44
Activities of Daily Living	28**	45
Functional Communication	41	50
Adaptive Skills	38*	46

The summary of results was as follows:

Cognitive and academic test demonstrate [Student] has many age-commensurate skills and abilities. Testing revealed some challenges for [Student], namely attention, focus, executive functioning skills, and anxiety-distress symptoms. [Student]’s parents and classroom teachers endorse these concerns.

Taken all together, [Student’s] attentional and executive function deficits meet criteria for Attention Deficit Hyperactivity Disorder. [Student’s] history and current anxiety-distress symptoms are significant enough to warrant a diagnosis of Unspecified Anxiety Disorder.

The results from the “Comprehensive Executive Function Inventory” were as follows:

Parent’s Response:

Scale	Standard Score	Percentile Rank	Classification	Strength or Weakness
<i>Full Scale</i>	82	12	<i>Low Average</i>	--
<i>Attention</i>	89	23	<i>Low Average</i>	--
<i>Emotion Regulation</i>	76	5	<i>Below Average</i>	--
<i>Flexibility</i>	86	18	<i>Low Average</i>	--

Inhibitory Control	81	10	<i>Low Average</i>	--
Initiation	83	13	<i>Low Average</i>	--
Organization	79	8	<i>Below Average</i>	--
<i>Planning</i>	92	30	<i>Average</i>	--
Self-Monitoring	86	18	<i>Low Average</i>	--
Working Memory	80	9	<i>Low Average</i>	--

Teacher's Response:

Scale	Standard Score	Percentile Rank	Classification	Strength or Weakness
<i>Full Scale</i>	<i>79</i>	<i>8</i>	<i>Below Average</i>	--
<i>Attention</i>	<i>75</i>	<i>5</i>	<i>Below Average</i>	--
<i>Emotion Regulation</i>	<i>102</i>	<i>55</i>	<i>Average</i>	--
Flexibility	84	14	<i>Low Average</i>	--
Inhibitory Control	96	39	<i>Average</i>	--
Initiation	77	6	<i>Below Average</i>	--
Organization	73	4	<i>Below Average</i>	Weakness
<i>Planning</i>	81	10	<i>Low Average</i>	--
Self-Monitoring	75	5	<i>Below Average</i>	--
Working Memory	70	2	<i>Below Average</i>	Weakness

The private psychologist's report recommended the Student receive support through a 504 plan in the areas of instruction, structuring the environment, strategies for initiation, improving organization, improving emotional regulation, counseling "with a parent-coaching component," a naturopathic referral, medication referral, and executive functioning books for the Student's parents. The report provided recommendations in the areas of behavioral management, structuring the environment, initiating activities, organization, and emotional regulation.

2019-2020 School Year

- On September 4, 2019, the 2019-2020 school began in the District. At the beginning of the school year, the Student was a second grader who attended a District elementary school. The Student was not eligible for special education and did not have a 504 plan.
- The District's special education director provided the following information regarding the District's multi-tiered system of support (MTSS) model:

When a teacher identifies a student concern including a concern due to information received from parents the teacher would complete and submit an SST [student support team] referral form. The team facilitator schedules a meeting and invites the appropriate participants. Once the meeting is held and discussed interventions implemented, the team determines if a second meeting is warranted based on the collected data. During follow-up meetings, data and fidelity of implementation are reviewed and the team may suggest additional strategies or may suggest a meeting with the Building Guidance Team (BGT) to consider the need for a 504 plan or specially designed instruction.

If a parent puts in writing a referral for special education services, the MTSS process is to go straight to the Building Guidance Team to determine the next steps.

7. On September 29, 2019, the Parent emailed the school principal, requesting that the Student be evaluated for special education services. The Parent cited the June 2019 private evaluation and the Student's continual struggle with academics and behavior, despite the following support that was previously provided to the Student:³

- Private assessment
- Occupational therapy (OT)
- Cognitive behavioral therapy
- Tutoring
- Summer School
- PALS program⁴

8. On September 30, 2019, the building guidance team met with the Parents. The meeting notes stated the following:

The evaluation revealed some challenges in the area of executive functioning, attention and focus. Diagnostic impressions: Attention Deficit Hyperactivity Disorder, Unspecified Anxiety Disorder.

Parents are concerned with [Student's] performance in the classroom and the effects of his diagnosis in the classroom. Parents are requesting support so [Student] makes gains in his academic performance. [Student] received counseling to address his anxiety and summer school as well as writing interventions. The teacher shared that [Student] is responding to Tier II interventions. [Student's] PALs goal is targeting work completion. [Student] is motivated to earn prizes and adult attention. Academically, [Student] is meeting benchmark in reading and Math. Recent...curriculum-based assessment measured math to be at 62% and reading 54%. He is reading at a Mondo level J which is on target. Writing is commensurate with his peers. He is developing spacing and convention skills. [Student] has friends in the classroom but is struggling a bit on the playground finding peers to play with. Next steps: The team recommended continued interventions and to review [Student's] progress at conferences. The teacher and [PALS coach] will address finding peers on the playground to play with.

Parents were not in agreement with the decision to continue with interventions and were anticipating that a 504 Plan or an evaluation would be recommended.

9. The prior written notice, dated October 1, 2019, stated the District did not recommend an initial evaluation and the reason was that "[Student] is responding to interventions and making progress in his general education classroom." The notice also stated the District considered the Student for a 504 plan, but he did not demonstrate "a need for accommodations to access grade level curriculum."

10. On October 4, 2019, a local hospital conducted a screening assessment of the Student for a medication study that the Student was participating in. The "Effects of ADHD Medication

³ The Parent requested both a special education and a 504 evaluation.

⁴ The elementary school "Parent Guide" states, "PALS coaching is available for students who are having difficulty with the school structure in the classroom or on the playground. Our coach works directly with students to help them develop skills to successfully manage rules and routines at school..."

(Team) Study” findings included information from the Vanderbilt Rating Scale with input from the Parents and Student’s teacher. The input was as follows:

Rater	ADHD-Inattention Symptoms	ADHD-Impulsivity/Hyperactivity Symptoms
Parents	<p>Very often: does not pay attention to details or makes careless mistakes; has difficulty keeping attention to what needs to be done; has difficulty organizing tasks and activities; avoids, dislikes, or does not want to start tasks that require ongoing mental efforts; loses things necessary for tasks or activities</p> <p>Often: does not seem to listen when spoken to directly; does not follow through when given directions and fails to finish activities; is easily distracted by noises or other stimuli; is forgetful in daily activities</p>	<p>Very often: has difficulty waiting his turn</p> <p>Often: fidgets with hands or feet or squirms in seat; leaves seat when remaining seated is expected; runs about or climbs too much when remaining seated is expected; interrupts or intrudes in others' conversations and/or activities</p>
Teacher	<p>Very often: (none)</p> <p>Often: fails to give attention to details or makes careless mistakes in schoolwork; has difficulty sustaining attention to tasks or activities; does not follow through on instructions and fails to finish schoolwork; has difficulty organizing tasks and activities; avoids, dislikes, or is reluctant to engage in tasks that require sustained mental efforts; loses things necessary for tasks or activities; is easily distracted by extraneous stimuli; is forgetful in daily activities</p>	<p>Very often: (none)</p> <p>Often: fidgets with hands or feet or squirms in seat; blurts out answers before questions have been completed</p>

The recommendations by private psychologist 2 for the Student, in part, included the following:

It is recommended that [Student’s] parents set up a conference with the teachers and administrators who work with [Student] at his school. They are encouraged to provide a copy of this report to [Student’s] teachers. They may then work with the school to set up some of the accommodations recommended on the Classroom Adaptations Appendix attached to this report. [Student’s] parents may facilitate the creation of specific behavioral and academic target goals for [Student] and a list of the accommodations that will be provided to achieve these goals. They should consider setting a date for an additional conference one or two months later to review [Student’s] progress towards his behavioral and academic targets. This type of individualized education plan could be considered a reasonable accommodation of an identified disability under Section 504 of the Rehabilitation Act of 1974.

11. On October 7, 2019, the Parent emailed the principal and school psychologist along with others in the District, requesting information about Section 504 procedures and stated they believed the Student “satisfies the requirements for an [individualized education program] IEP or 504 plan at the least.” Referring to the needs for accommodations, the email stated:

It's been observed through feedback we've received at [school] and from his occupational therapists, that [Student's] needs are best met with accommodations. The accommodations of the PALS plan is starting to address some of needs for special help in the classroom, but there are other accommodations that could be put in place to allow him to access the learning in a way that supports him.

The Parent's email also noted that the Student received private occupational therapy (OT) during the 2018-2019 school year that addressed fine/motor/visual motor skills, auditory processing, sensory strategies, executive functioning, and handwriting. The Parent stated the OT he received was evidence that the Student needed specially designed instruction.

12. On October 9, 2019, the principal responded to the Parent's email and stated the District declined to evaluate for Section 504, but as the October 1, 2019 prior written notice stated, "The 504 team will reconvene at any time if data indicates that [Student] requires accommodations." The Parent and District exchanged further emails regarding the decision at the building guidance team meeting on September 30, 2019.
13. On October 26, 2019, the Parent emailed the principal, requesting information about the classroom assessments that were being used with the Student and what the specific criteria was for a student to receive general education assistance.
14. On October 28, 2019, the principal responded, and in part, described the District's "universal screening tool" and a reading assessment for the school curriculum.
15. On November 7, 2019, the Parent emailed the PALS coordinator about PALS. On November 13, 2019, the PALS coordinator responded to the Parent's questions (in italics):
Please see the below for more detail about [Student's] support in PALS. I work as part of a team with both his teacher, [teacher], and the Student Support Team (SST) that meets every Wednesday morning. I have cc'd some of these team members...

Your questions about the Pals program:

How often do you meet with them? Once or twice a week? For how long?

I meet with [Student] daily for about 5 minutes in the morning to talk about his PALS goals (see attachment) and progress. Weekly, during recess time, he invites a friend to play in my room or I coach him regarding friendships on the playground.

Do you meet with them in class or elsewhere during the school day?

For the daily check-in, I either meet in the classroom or bring him into the hallway depending on the class activity. Sometimes, I come back to check-in with him at a better time. The recess activity is either in my room or on the playground.

You have shared with us goals that you are working with the kids on. In addition to that are you also providing special instruction? If so, is it considered behavioral, social or emotional coaching?

I provide behavior coaching. We read and talk about books like "What Would Danny Do?" and "Mindset Matters." This material teaches flexible thinking and how our thinking impacts our behavior. Additionally, there is a social coaching component. I coach him on friendships both on the playground and in my room. We also use growth mindset language ("not yet") and highlight the many ways that he is doing well in class and with friends. We do this to help him use positive self-talk more often.

Are you specifically teaching them "zones of regulation" or any other specific self regulation programs? I know the school uses Kelso's choice, but if there are other models being used at school we would like to use them at home as well to provide consistency.

For self regulation, we teach breathing exercises and taking a break when needed to reset then return to classwork.

For [Student] are you offering any special instruction or coaching to address executive function (specially planning, follow through, problem solving, concentration, self-monitoring, initiation, self-control, working memory & organization)?

[Student] uses a checklist (see attached) to help him self-monitor, initiate and complete his classwork. He uses a fidget (when needed) during class discuss to help him focus on the conversation and learning.

Are you measuring their improvements? If so, how is this evaluated?

We use the weekly PALS goal sheet (see attached) to monitor progress. [Teacher] records his progress daily on the goal sheet. I enter the information into a PALS progress spreadsheet. We consider five or less reminders during a class activity as meeting his goal during that time period.

What are the targeted goals that both [Student] & [sibling] have met and ones that they are still working on?

[Student's] PALS goals are to: 1) During classwork, do your best work and ask questions if you do not understand; 2) Work toward having a calm day. If a conflict comes up or you feel upset, use breathing to calm down. Then, use calm words to explain the problem and work with your teacher to solve the problem.

[Student] is consistently meeting both of his PALS goals with reminders. We plan to continue using this goal sheet, his checklist and his fidget, as these support his learning and help him stay calm. [Student] has made nice progress calming down when upset. He no longer argues with [teacher] about his classwork.

Is there anything we can be doing at home to further support the work that you are doing with them?

I talked with [teacher] about this question. She suggests that you could, as a family, read books about characters overcoming obstacles. This reading would reinforce the positive self-talk and growth mindset that he learns about in class.

16. On November 15, 2019, the principal emailed the Parent:

In the meantime, we have discussed the concerns that you shared and want to extend an invitation for an earlier meeting to discuss [Student] than we had previously suggested. We can meet in November. We believe that a November meeting date will provide enough time to determine:

- if the current classroom and PALS interventions are effective;
- if additional interventions, modifications, or accommodations are needed (we can for example discuss if adding some sessions with our counselor would be helpful in reducing his anxiety and of course if a 504 is now indicated); and,
- if [Student's] new medications (I understand he is scheduled to begin a medication trial beginning sometime next week) are creating a need to consider any changes to his program. We can also discuss again if an evaluation for special education services is now appropriate.

17. On November 21, 2019, the Parent sent the principal and other school staff a memorandum entitled "What is Known" to be reviewed at the building guidance team meeting. The information consisted of the Student's school history and some of the difficulties the Student had experienced. The memo stated, in part:

[Student] has been struggling with attention, emotion regulation, fine motor skills, planning, organization, self-control, working memory, flexibility, initiation, self-monitoring, time-monitoring, impulsivity, self-confidence, following instructions with more than one step, sensory issues, expressive & receptive communication skills, internalizing problems, anxiety, and executive functioning.

The memorandum listed the supports the Student received in preschool and kindergarten, including mental health counseling, a private OT evaluation, private OT therapy in handwriting, and private psychological evaluations.

The memorandum stated the Student qualified for special education under the categories of "other health impairment and emotion disturbances." The memo requested an evaluation of the Student in the following areas:

- Fine motor skills
- Dysgraphia
- Dyscalculia
- Dyspraxia
- Developmental Coordination Disorder
- Executive Functioning Disorder
- Apraxia

18. On November 22, 2019, the Parent emailed the school psychologist, stating the Student had been on medication for the last four weeks. The Parent stated "any positive benefits should not influence whether or not he qualifies for a 504 Plan or IEP..."

19. On November 25, 2019, the building guidance team and the Parent met to review the private evaluation and the Parent's concerns expressed in the memorandum. As a result, the District proposed an initial evaluation to determine if the Student was eligible for special education services. The Parent signed the consent for initial evaluation on the same day.

The prior written notice, dated November 26, 2019, stated:

Description of the proposed or refused action:

[District] is proposing to conduct an initial evaluation to determine if [Student's] meets eligibility criteria for special education services.

The reason we are proposing or refusing to take action is:

[Student] is diagnosed with Attention Deficit Disorder/combined type, generalized anxiety disorder, and oppositional defiant disorder. At school [Student] appears regulated and making academic progress, however at home he is struggling to regulate his anxiety, and is acting out. He has difficulty regulating his emotions, behavior, and executive functioning skills.

Description of any other options considered and rejected:

The team considered not evaluating [Student] but rejected this based on information presented by parents and the significant discrepancy between his behavior at school and at home. More information is needed to determine if [Student] qualifies for special education services.

The reasons we rejected those options were:

There is a significant disconnection between how [Student] presents at home and at school.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Review of records, including a private evaluation, parent notes, and teacher input.

Any other factors that are relevant to the action:

1. Parents brought a family friend to take meeting notes.
2. [Assistant], special services assistant, took district notes.
3. Parent reviewed the district notes after the meeting.
4. Notes and parent input will be uploaded into the district online special education system- IEP Online.
5. The following areas will be evaluated:
Medical Physical, General Education, Academic, Social/Emotional and Behavior and Adaptive Skills, Communication, Fine Motor, Sensory, Communication, Cognitive, and Observation.

20. According to the District's meeting notes, the District indicated that the Student was not exhibiting some of the behaviors that were of concern at home while he was at school. For those behaviors he was demonstrating at school, the District had put supports in place to address the behaviors, which had resulted in the Student's improvement. With supports, he was able to communicate why he was upset, work independently in small groups, and complete writing tasks. A review of his handwriting did not "flag concerns." In response to the Parent's concern about sensory issues, the District agreed to include an OT evaluation.

21. The meeting notes taken by the Parent's notetaker included the following, in part:

- Parents stated that previously, the Student was the "sweetest, happiest little boy...Now, he is frequently irritable, angry, frustrated, withdrawn, sad, and struggles to get along with others."
- Parents stated since taking medication, he has been able to explain why he is upset.
- Parents stated the Student lacks executive functioning skills, a low tolerance for frustration, and difficulty with peer relationships.

- Parents stated the Student also “satisfies the requirements for an IEP by having disabilities (ADHD, anxiety, and ODD), which impedes the child’s learning or the learning of other children...”
- The District has been providing “tier II” interventions rather evaluating the Student for special education services.
- The Parent stated “It’s apparent to us that [Student] doesn’t want to embarrass himself around his peers, is employing an immense amount of energy into holding it together at school and the school days are relatively structured and predictable...”
- The Parents stated, “if the student is taking medication, the school district cannot consider any ameliorative effects of that medication, or any other mitigating measure, when evaluating whether the student is substantially limited in a major life activity.”
- The Student’s first semester report card “appears to reflect satisfactory results...” but it conflicts with other feedback during the school year.
- The District stated, “We don’t see these behaviors at school, so the ODD diagnosis is a surprise to us...”
- The Parents stated the Student spends an “immense amount of energy” holding his behavior in check but breaks down at home.
- The District has provided classroom interventions to help with social/emotional issues. “[Teacher] uses a progress report and he meets his goals daily. She is also teaching him to use breathing to calm himself. I don’t see this behavior from him frequently. In the 2nd and 3rd week of school he had moments where he was frustrated and yelled at me across the classroom for help. He does sometimes show signs of frustration, but can self-start, work independently and in small groups, complete writing tasks, organize thoughts and write them down. He does have problems keeping his area organized but generally can do it. Over the last 3 weeks she has seen improvements in his behavior. His last week was his best week in improvements. We are talking with him about how to be successful and how to use his fidget toy.”
- The Parents stated that they were glad to hear he was not having a problem at school, but this was not consistent with the previous behavior assessment results.
- The team discussed some of the sensory supports the Students needed such as headphones and a quiet space.
- The Parents stated the Student had previously received private OT therapy to address sensory issues which was no longer occurring.
- The Parents asked about PALS and whether it was a tier II intervention. The District confirmed it was a tier II intervention and invited the Parents to discuss the process at a later date.
- The team agreed that the Student would be evaluated for special education.

22. On December 8, 2019, the Parents emailed the school principal, school psychologist, and other staff to follow up from the November 25, 2019 meeting. The Parents stated the behavior questionnaires were completed, the medical form was delivered, and copies of outside evaluations and other information were being compiled. The Parents also informed the District they had stopped the Student’s medication for ADHD because of complications and would be consulting with the primary care doctor.

23. From December 9 to 16, 2019, the Parents and the District exchanged numerous emails about scheduling the evaluation and eligibility requirements for special education.

24. From December 10 to 16, 2020, the Parents exchanged emails with the District about the Student participating in PALS. The December 10, 2020 email from the PALS coach to the

Parents stated the Student was “working quickly to finish his work.” A new goal sheet and checklist was placed on the Student’s desk. In addition, the coach would pause the social skills reading “to focus on ways that he can remember to take his time with classwork.”

25. On December 18, 2019, the Parents emailed the District OT regarding three behavior incidents that occurred in the past several weeks at the Student’s after-school program. According to the Parents, the incidents involved behavior not previously exhibited by the Student. The Parents stated they did not understand how the Student was not exhibiting these behaviors while at school, but struggling in every other setting. On December 19, 2020, the OT responded and acknowledged the Parents’ frustration. The therapist stated, “...It is certainly a conundrum (and a tortuous one at that for a parent!!!) but *does* give us one important piece of information: *something* is different for [Student] in these settings. That something could be an aspect of the environments themselves, the social/relational systems that exist within them, or something with [Student] that shifts (i.e., fatigue or something of that nature.”
26. From December 23, 2019 to January 3, 2020, the District was on winter break.
27. According to the Parents, in January and February, the Student’s mother volunteered in the Student’s classroom for an art lesson, the class Valentine’s Day party, and provided a lesson on architecture to the class. The mother stated she observed the Student having a difficult time initiating tasks and following directions. The Student would rush through his work. The Student’s father observed him for approximately 45 minutes on the playground, walking around by himself, occasionally socializing but “not showing sustained engagement in activities.”
28. On January 6, 2020, according to the District, the Parents requested the evaluation team “coordinate the testing with dates that Student is without medication with the goal of remaining consistent throughout the complete testing process.” On January 7, 2020, the school psychologist updated the Parents on the progress of the evaluation and asked for dates to complete the evaluation. On the same day, the Parents emailed the school psychologist and requested a copy of the draft evaluation report by January 14, 2020.
29. On January 14, 2019, the Parents emailed the principal about the evaluation team meeting. The Parents requested a specific notetaker for the meeting and informed the principal that they had a “special education advocate” who would be attending by phone.
30. On January 16, 2020, the school psychologist emailed the Parents a draft copy of the evaluation report, along with the meeting notice, an explanation of how eligibility is determined, and the names of all the evaluation team members.
31. On January 21, 2020, the Parents emailed the school psychologist regarding the draft report. The email stated the following:
 - Specific information was not included or was reported incorrectly, and the Parents had specific questions “about how the conclusions were formulated based on the data provided as they seemed to contradict each other.”

- Parents requested “detailed score sheets” in addition to the report.
- Parents asked if the Student must have a “disability” or a “school-based disability?”
- Parents asked why the PALS coach or the Student’s first grade teacher did not participate in the evaluation.
- Parents requested the District confirm that testing and observations were completed on January 6, 2020 “when we let you know that [Student] was on medication and we wanted to know when testing would occur so we could make sure not to give him medication so that he would be evaluated in an unmedicated state...”
- Parent did not have an opportunity to fill out the Parent version of the Sensory Processing Measure.
- Parent requested confirmation the Student “was being evaluated by his teachers and others involved that it was clearly communicated they could not consider the mitigating measures of Tier II RTI [response to intervention] (PALS program) and how that support was helping him behaviorally, emotionally, socially and academically as his evaluation should be not be reliant on that support...”
- Parents requested the PALS coach attend the meetings.

32. On January 21, 2020, the evaluation team and the Parents met to review the results of the evaluation and determine eligibility. The Parents’ advocate participated by phone. The District evaluation team consisted of the following staff:

- | | |
|---------------------------------------|---|
| • School psychologist | • Resource room teacher (i.e., special education teacher) |
| • Speech therapist | • 504 Coordinator |
| • Occupational therapist (OT) | • District representative |
| • Principal | • Notetaker |
| • Student’s general education teacher | • Parent advocate |

33. The draft evaluation report included the following information:

- Medical/Physical Findings (health history and medical diagnoses from private evaluations): Diagnosed with ADHD and unspecified anxiety disorder with signs of excessive inattention, distractibility, hyperactivity, and impulsivity.
- General Education Teacher Report (behavior observation and report card):
 - Teacher did not observe any factors interfering with his performance in the classroom.
 - Report card indicates he is meeting standard in all academic areas: “Based on the teacher’s report and file review, [Student] is meeting academic standards, demonstrates appropriate behavior for learning, and follows classroom expectations.
- Social/Emotional (results from the Social Skills Improvement System and a review of the records): Results of the current evaluation indicate that [Student’s] social skills are more developed at school than in the home setting. In the school [Student’s] social skills are typical and rated in the average range. He demonstrates socially acceptable learned behaviors that do not interfere with his functioning. At home parents report below average social skills.”
- Adaptive (results from the Adaptive Behavioral Assessment System-3rd Edition): “Scores indicate significant difference in [Student’s] adaptive behavior across settings. [Student’s] adaptive behavior at school is rated in the above average/high range. Functional academics and school living were rated as significant strengths. He is able to manage his time, follows classroom routines and expectations and is able to communicate his needs and wants. In the home setting [Student’s] ability to function independently is significantly lower and rated in the below

average range. Similarly to school, functional academics was rated as an area of relative strength.”

- Behavior (results from the Behavioral Regulation Index-2nd Edition [BRI] and Comprehensive Executive Function Inventory [CEFI]) (April 2019): BRI Parent version – rating clinically elevated. Teacher version – within normal limits. CEFI Parent – Low average. Teacher – Below average with noted weakness in organization and working memory.
- Cognitive (results from the Reynolds Intelligence Assessment-Scale-2nd Edition, review of private evaluation – Wechsler Intelligence Scale for Children-5th Edition, and review of private evaluation – Cognitive Assessment System -2nd Edition): “In summary, [Student’s] performance is average in all domains which indicates that he has the language processing and nonverbal cognitive skills to learn and make progress in school. His working memory, processing speed, attention and planning were all measured to be in the average range.”
- Academic (results from the Kaufman Test of Educational Achievement-3rd Edition, Gray Oral Reading Test-5th Edition, and Wide Range Assessment of Memory and Learning-2nd Edition):
 - “In summary, [Student’s] math, written language and reading skills are commensurate with his same aged peers. [Student’s] written language skills are age appropriate; however, he becomes easily fatigued with increased demands.”
 - “[Student] is meeting standard in all academic areas.” Student received a level 3 standard (meeting standard) in all areas except in language conventions which was level 2.5 (level 2 is approaching standard).
- Observations (observation during testing): “[Student’s] attention and ability to focus were not observable factors in the one on one testing session. [Student] was easily engaged and appeared to enjoy developing a relationship with perseverance, sustained attention and generally persisted with difficult tasks.”
- Communication (results from the Clinical Evaluation of Language Fundamentals-5th Edition and the Test of Problem Solving-3rd Edition): “Based on the results from this evaluation, [Student] is demonstrating receptive and expressive language skills within the average to high average range for his age when compared to same-aged peers. This evaluation indicates that [Student] does not have a communication disorder or significant delay that adversely affects his educational progress. The results of these findings are considered to be a valid reflection of [Student’s] communication skills at this time. As a result, speech and language services are not indicated at this time.”
- Fine Motor (results from a review of the records, parent report, teacher report, skilled observations, Developmental Test of Visual Perception-3rd Edition, and the Sensory Processing Measure):
 - “At this time, [Student’s] general visual perceptual and visual motor integration skills are considered to be solidly in the average range as compared to same-aged peers.”
 - “Per teacher report, [Student] is not currently demonstrating differences in his ability to process sensory information at school. At this time, all areas are reported to be in the Typical range.”
 - “Based on the results of this evaluation, [Student’s] fine motor skills are currently in the average range as compared to same-aged peers. During his assessment, [Student] displayed the most difficulty with the visual motor integration sub-category of eye-hand coordination (i.e., drawing precise straight or curved lines within visual boundaries), scoring slightly below average in this area. However, his scores in all other sub-categories indicate that he has developed the strategies necessary to compensate for these deficits and to successfully complete visual perceptual/visual motor integration tasks. [Student] is able to legibly write his name/the alphabet/numbers, cut

out age-appropriate shapes with accuracy, and copy grade level sentences from a model. From a self-care perspective, [Student] is able to independently eat and drink, open containers, open/close all doors, use the bathroom/wash hands, and manage fasteners. Per teacher report, [Student] is not currently displaying difficulty processing sensory information in the school environment. However, the following accommodations are helpful to [Student] for increased ability to focus in the classroom:

- As noted by his teacher, a fidget has proven helpful for increased concentration.
- Per parent report, [Student] is sensitive to loud sounds and environments and benefits from access to headphones as well as a quiet workspace.
- Per skilled OT observation, [Student] appears to benefit from breaking novel and challenging tasks into smaller chunks and frequent, brief breaks, especially during perceived challenging tasks/assignments.

Additionally, instruction in/reminders related to a growth mindset could be helpful to [Student] as the demands of his school day increase. As a result, occupational therapy services are not necessary to support [Student's] progress within the educational setting at this time."

34. After reviewing the draft report, the evaluation team and the Parents discussed the Student's eligibility for special education. The evaluation team reviewed the information from the building guidance team, PALS, and input from the Parents regarding all private evaluations, counseling, and OT. The District determined that the Student had a disability, but there was no adverse effect on the Student's education that required specially designed instruction.

According to the school psychologist and the special education director, the Student had demonstrated some signs of distractibility and frustration, although not excessively. He was much like other second-graders. Handwriting, for example, was difficult for the Student, but it was difficult and frustrating for many students. For each challenge the Student presented, the natural classroom supports and the tier II interventions, including PALS, were able to meet the Student's needs.

35. The District's meeting notes from the evaluation team meeting provided the following information, in part:

- The Parents stated the evaluation did not include enough information and contained errors.
- "Note: Drafts are not typically sent out prior to evaluation meetings and was sent prior to the meeting per parents' request."
- The Student's working memory and processing speed were average.
- Other tests including Math were in the average range.
- Written tests were in the average range.
- Parents reported the Student's grades "aren't the overall concern, rather verbal, behavioral, and executive functioning."
- [Student] can stay on-task, stay in his seat, and is the same as his peers.
- The evaluation team also noted that there is a difference in Student's performance when medicated vs non-medicated, but it is not impacting his performance.
- The Parents were concerned that the report was "skewed to highlight [Student's] strengths only skirts the issues [Student] has."
- Next steps: A 504 plan was recommended by the evaluation team.

36. The Parents provided an amended version of the District's meeting notes in which the Parents' comments were included. The additional comments related to testing in the "unmitigated state," the school psychologist stated the Student had struggled with written expression but added that writing is difficult for most second graders, the different behavior challenges the Student experienced at school and home, and the Student was not meeting all academic standards (Student was at level 2.5 in language conventions), among other things.
37. On January 21, 2020, the day of the evaluation meeting, the District received the document titled "Evaluation Eligibility Meeting" from the Parents in response to the draft evaluation report. The document arrived too late for the evaluation team to consider at the meeting. The Parents requested the evaluation team consider and add to the report the following information:
- Student received counseling from September 2016 through December 2016 and from June 2018 to August 2018.
 - The Student received private OT from July 2018 to March 2019 which was discontinued because the Student was missing school.
 - A private evaluation was conducted in April 2019 that diagnosed the Student with ADHD and generalized anxiety disorder.
 - Another private evaluation was conducted in October 2019 in which the diagnosis of oppositional defiant disorder (ODD) was added to ADHD and generalized anxiety disorder. The Student began receiving medication but was stopped after eight weeks because of side effects the Student had.
 - The Student had a follow-up appointment to consider alternative medication.
 - The Student had the following diagnoses: ADHD combined type; generalized anxiety disorder; ODD; and sensory processing disorder.
 - The recommendation from the October 2019 private evaluation.
 - Clarification that the Student did not meet academic standards in all areas.
 - Score sheets from the behavior assessments.
 - Clarification of the BASC ratings that included "at-risk" and "clinically significant" for each scale or subscale score.
 - A list of specific language from the private evaluations be included in the report.
38. On January 23, 2020, the Parents emailed the school psychologist, requesting "all the evaluation testing score sheets and results for [Student]."
39. On January 27, 2020, according to the District, the Parents requested the January 2020 eligibility meeting notes. The school psychologist responded, stating the team was addressing the Parents' January 21, 2020 evaluation meeting notice amendments and would send the final evaluation report, prior written notice, and meeting notes by January 29, 2020.
40. On January 23, 2020, the Parents emailed the OT provider and requested more information about the results of the District's OT evaluation.
41. On January 29, 2020, the school psychologist emailed the Parents the following:
- The final evaluation report.
 - Supplemental evaluation graphs.
 - Prior Written Notice dated January 23, 2020 regarding the eligibility determination.

- Prior Written Notice regarding the Parents' January 21, 2020 requests.
- The January 21, 2020 District meeting notes.

42. The prior written notice, dated January 23, 2020, regarding the eligibility determination stated:

Description of the proposed or refused action:

[District] has completed [Student's] evaluation and determined that he is not eligible for special education services.

The reason we are proposing or refusing to take action is:

Although [Student] has a diagnosed medical health condition (ADHD), it is not adversely impacting his educational progress to the degree he requires specially designed instruction.

Description of any other options considered and rejected:

The team considered special education but rejected this based on [Student's] ability to access grade level curriculum. He is not demonstrating a need for specially designed instruction.

The reasons we rejected those options were:

[Student] does not meet criteria for educational disability at this time.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

The team based their decision on data collected through the evaluation process, standardized test scores, review of records, private evaluations provided by the parents, observations, teacher and parent input.

Any other factors that are relevant to the action:

Team Participants: [principal], [school psychologist], [learning IEP and 504 coordinator], [resource room teacher], [Student's general education teacher], [OT provider], [speech/language pathologist], [district representative], [District notetaker], [practicing and learning specialist/PALS coach], Parents, and [Parents' advocate].

The team shared the draft evaluation with the family on Thursday, January 16, 2020. The team received an email, including feedback for the team to reference and include in the report, early morning of the scheduled evaluation feedback meeting. At the start of the meeting on Tuesday, January 21, 2020, the team acknowledged receipt of the family's email (sent 1/21/2020 at 3:18 am). Due to the time the email was sent and the time of the meeting, team members were not able to read through the email and attached document. The team offered to meet with the parents another time to discuss the contents of the email. Upon completion of the evaluation feedback meeting, the family chose not to sign the evaluation summary page. Parents agreed to the Section 504 recommendation with some disagreement with the evaluation results. Parents have additional questions regarding what supports are available via the 504 process/plan. [School psychologist] will add the decision summary to the final evaluation. [504 coordinator] will be contacting parents to begin the Section 504 process.

43. The prior written notice, dated January 28, 2020, regarding the Parents' proposed changes to the evaluation report included the following information:

Description of the proposed or refused action:

The following changes to the reevaluation report were requested by parents:

1. Medical/Physical History be referenced
Action: Information can be found in the evaluation summary section of the evaluation report.
2. Diagnosis be added to the report.
Action: Diagnosis can be found in the Medical/Physical section of the evaluation report.
3. Parents requested that the same language be used in the report as is used on the report card.
Action: Information from the report card has been added to the evaluation report.
4. Update data from [private psychologist 1's] report.
Action: [private psychologist 1's] report is attached to the evaluation.
5. Adaptive: include [private psychologist 1's] BASC-3 Adaptive skills data.
Action: [private psychologist 1's] report is attached to the evaluation.
6. Adaptive: Update information from the private OT evaluation be added.
Action: The OT Report is attached to the evaluation.
7. Behavior: Update [private psychologist 2] and [private psychologist 1] data.
Action: [private psychologist 2's] information was added. [Private psychologist 1's] report is attached.
8. Cognitive: Include a graph of cognitive scores.
Action: The RIAS-2 graph is included in the evaluation.
9. Cognitive: Include WRAML-2 data be included.
Action: Report attached to the evaluation report.
10. Cognitive: [private psychologist 2] K-BIT-2 be added to the evaluation.
Action: Information included in the evaluation report.
11. Academic: Include graphs.
Action: Graphs will be provided with the finalized evaluation report.
12. Academic: K-TEA-3 significant findings have clerical errors.
Action: Corrected errors on the finalized evaluation report.
13. Academic: Conclusions are missing.
Action: Conclusion statement in finalized evaluation report.
14. Communication graphs.
Action: Graphs will be included in the finalized evaluation report.
15. Fine Motor: Edit note in review of records.
Action: Revised in finalized evaluation report.
16. Other: Gross Motor evaluation.
Action: Gross motor was not checked on the initial consent form.

The reason we are proposing or refusing to take action is:

Parent email dated 01/21/2020 included several requests for changes to the evaluation report. The evaluation team considered these requests and determined it was necessary to make the changes as listed above.

Description of any other options considered and rejected:

1. Include the diagnosis of sensory processing disorder.
2. Include diagnosis of [counselor].
3. Include educational implications from private evaluations.
4. Include [summer school] Assessment.
5. Include information from private OT report in Fine Motor evaluation.
6. Fine Motor: Include Parent input for Sensory Processing Measure.

7. Include [private psychologist 1] IVA-2 data be included in the cognitive section.
8. Include [private psychologist 1] BASC-3 data in the Behavior section.
9. Take out diagnosis and medication information.

The reasons we rejected those options were:

1. Sensory Processing Disorder is not recognized as a medical diagnosis: Sensory concerns are addressed in the Fine Motor evaluation.
2. [Private counselor] diagnosed Encopresis, which is included in the report. The district has not received an official diagnosis of Anxiety from [private counselor].
3. Educational implications from private evaluations were considered by the evaluation team. The report will remain as this is district evaluation. Outside reports are referenced and attached for reader reference.
4. An official report from [summer school] was not provided to the evaluation team.
5. Private OT report was considered and reviewed by the evaluation team. The OT report will remain as this is a district evaluation. The private report is attached.
6. The Sensory Processing Measure was completed by the teacher. Scores do not require parent administration.
7. The cognitive section will remain as this is a district evaluation. [Private OT] evaluation completed by [evaluator] is attached to for reader reference.
8. The behavior section will remain in the district evaluation. [Private psychologist 1] report is attached to the evaluation for reference.
9. This information is provided in the medical and referral sections.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Parents submitted a written request for specific information to be included in the evaluation report.

Any other factors that are relevant to the action:

None.

44. The final evaluation report provided substantially the same information that was in the draft report, but the final report added or clarified the information—per the Parents' request—according to the January 28, 2020 prior written notice.
45. According to the documentation, a meeting with the District and Parents was scheduled for February 5, 2020. The Parent emailed the school psychologist and other members of the building guidance team the following documents and requested the documents be incorporated into the Student's record:
 - Updated evaluation meeting notes from the January 21, 2020 eligibility meeting;
 - Building guidance team correspondence;
 - [Summer school] Student Assessment and Summer Conference notes; and a
 - Letter from the Parents' attorney.

The private summer school information included a description of the curriculum and instruction methods along with the following:⁵

	Grade 1	Pre-Test Grade Equivalent	Post-Test Grade Equivalent
Reading	Letter-Word Identification	2.2	2.3
	Reading Fluency	1.4	2.5
	Word Attack	1.5	2.0
Writing	Sentence Writing Fluency	2.2	2.5
Math	Math Calculation	K.9	1.9
	Math Facts	1.2	2.4

The letter from the Parents’ attorney, in part, raised the concern that the Student’s scores indicated a specific learning disability in written expression, which can be establish through professional judgement.

46. On February 12, 2020, the school psychologist emailed the Parents an “updated” evaluation report, prior written notice, and Parent questionnaire. The prior written notice, dated February 7, 2020, stated the following:

Description of the proposed or refused action:

Consistent with Parent request, the [District] proposes to make the following changes to the District Evaluation Report (“District Evaluation”) dated January 21, 2020:

1. Attach the [summer school] Report to the District Evaluation.
2. Add Social Skills Inventory Scale (SSIS) performance data to the body of the District Evaluation in the Social Emotional Section.
3. Although the official physician report received by [District] does not list [ODD] as an official diagnosis, a study provided by Parents does list this diagnosis. Therefore, the District is adding both data points to the Medical Information section in the District Evaluation. Dates of received reports were also added to this section.
4. Update the counselor name reflected in the District Evaluation from [private counselor] to [private counselor] in the referral section as well as dates identified in parent report.
5. Update [agency] Termination Date for outside OT as well as stated reason for termination.
6. Add the number of weeks that [Student] received medication to his medical information.
7. Add additional medical/physical information from [physician’s] recent medical trial to the referral section of the District Evaluation.
8. Add [Student’s] K to 2nd grades to the education implications discussion under general education.
9. Attach CEFI Test [counseling agency] Executive Functioning Report to the District Evaluation.
10. Correct clerical error in the Cognitive evaluation section under Conclusions and Observations.

⁵ The Student’s summary did not indicate that the Student demonstrated any behavior issues during summer school.

11. Attach [District] Kindergarten Parent Questionnaire (dated February 1, 2017) to District Evaluation.

The reason we are proposing or refusing to take action is:

2/3/2020 Parent email included several requests for changes to the District Evaluation. The District considered these requests and determined it was appropriate to make the changes as listed above.

Description of any other options considered and rejected:

The District considered and rejected the following Parent requests

1. [First grade teacher's] informal communication to Parents.
2. [Private psychologist's] recommendations.
3. Change of Eligibility Decision.

The reasons we rejected those options were:

The District rejected these options for the following reasons:

1. The information gathered through the evaluation process is an accurate representation of [Student's] functioning in the school setting at this time. The informal information provided by Parent is not supported by the school data.
2. The Parent requested accommodations were rejected to the extent they were sought to be part of eligibility for services under IDEA (i.e., IEP). Instead, the District has referred Parents to District 504 representative to explore the initiation/implementation of a 504 plan.
3. On 1/21/2020, the team determined that [Student] did not qualify for special education services. Although he has a medical diagnosis, the District Evaluation does not show that there was an adverse impact or a need for specially designed instruction per WAC 392-172A-01035 (see District Evaluation for full description/explanation).

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Parents submitted a written request for specific information to be included in the District Evaluation report.

Any other factors that are relevant to the action:

None

47. On March 19, 2020, the Parents emailed the District's attorney and principal to request an independent educational evaluation (IEE).
48. On March 26, 2020, the Parents received notification that the District had denied the Parents' request for an IEE and had filed for a due process hearing, which was subsequently dismissed following the Parent's withdrawal of their IEE request on March 31, 2020.
49. On April 18, 2020, the Parent file this complaint.

CONCLUSIONS

Issue One: Evaluation Procedures – The Parent alleged the District failed to follow evaluation procedures when evaluating the Student for a disability by failing to consider input from the

Parents. When conducting a special education evaluation, a district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by the parents and information that is related to enabling the child to be involved in and progress in the general curriculum. When interpreting the evaluation for the purpose of determining eligibility, the district must document and carefully consider information from a variety of sources.

Here, the documentation showed that the Student had difficulty with executive functioning and distractibility at school and exhibited more significant behaviors at home. In September 2019, the Parents had a private psychological evaluation conducted that diagnosed the Student with attention deficit/hyperactive disorder (ADHD) and a generalized anxiety disorder. Based on the results, the Parents requested the District conduct a special education evaluation. The District declined to evaluate because the Student was responding to classroom interventions and making progress in the general curriculum. The documentation showed that the Student did reasonably well academically, although he had some difficulty in writing, and his behavior difficulties were being managed within the classroom with additional general education behavior supports. The Parents reported the Student was displaying significant behavior problems at home, which appeared to the Parents to be in conflict with the Student's reported behavior at school.

In January 2020, at the Parent's later request, the District conducted an initial evaluation of the Student. The documentation showed the District conducted a comprehensive evaluation in the areas of behavior, academic, adaptive, cognitive, communication, and fine motor that addressed the Student's diagnosis of ADHD and anxiety disorder, which were the concerns raised at the initiation of the evaluation. In addition, the Parent provided the District with the private evaluations and previous information about the Student. The private evaluations consistently noted greater concerns than what the Student was displaying at school, something that is not necessarily uncommon with students. The private evaluations provided numerous recommendations for the school; however, the private evaluators did not have the benefit of having observed the Student at school, which may explain the difference in evaluation conclusions regarding the Student's behavior. Because of the Student's behavior at home, the Parents appeared to believe the District was minimizing the problems at school while at the same time, acknowledging the Student's behavior in school was much better than at home.

In addressing the evaluation results, the documentation showed the District focused on multiple sources of data and did not use a single score or criterion to determine the Student's level of functioning. Some of the District behavior data indicated the Student had difficulties, but the difficulties were not significantly different than what other first and second graders experienced, according to the District. The Student also received the benefit of and was making progress with additional classroom support and participation in the PALS program, which allowed the Student to successfully access the general education curriculum.

The complaint alleged the evaluation was not comprehensive because the District failed to use a variety of assessment tools and strategies along with the Parents' information provided to the District. The documentation showed the evaluation addressed all areas of suspected need and carefully considered the input from the Parents. While the Parents may disagree with the outcome,

disagreement does not necessarily mean the District did not consider the Parent's information. No violation is found.

Issue Two: Eligibility Determination – The Parent alleged the District failed to follow procedures in determining the Student's eligibility for special education. When interpreting the evaluation for the purpose of determining eligibility, a district must document and carefully consider information from a variety of sources. In order to be identified as a child with a disability under the IDEA, the district must determine whether the child meets a three-prong eligibility standard. A child qualifies for special education and related services if: (1) the child is determined to be a child with a disability within one of the listed categories of impairment, (2) there is an adverse effect on the child's education, and, (3) the child needs specially designed instruction.

Here, the Student was evaluated in January 2020 and determined ineligible for special education. According to the eligibility determination, the Student had a disability based on the ADHD and anxiety disorder diagnoses. However, there was no adverse effect on the Student's education that required specially designed instruction. The Parents argued the Student was eligible for special education because the Student needed accommodations to access his education. Eligibility for special education services requires the need for specially designed instruction, not just a need for accommodations or related services. The private evaluators and ultimately the District recommended accommodations in a 504 plan.

The Parents continually insisted the District could not consider the effects of any medication the Student was taking or any of the additional classroom supports the Student was receiving when determining whether the Student had a disability, under the Individuals with Disabilities Education Act (IDEA). State special education regulations do not require a district to disregard medication and other accommodations, supports, or services a student is receiving—in other words, there is no requirement to evaluate a student in an "unmitigated state"; however, the District is required to consider the Student's medical history and academic history—including current accommodations and supports—as part of a comprehensive evaluation. In this case, the documentation indicates the District considered the impact of current supports and accommodations.

So, while the Student was identified as having a disability, the Student's performance in the classroom and the evaluation results were consistent with the decision there was no adverse effect that required specially designed instruction. The data indicated the Student was accessing the general curriculum with the support of classroom interventions, including PALS, and did not require specially designed instruction. The Student did not meet all eligibility criteria; thus, the District did not err in finding the Student ineligible for special education services. No violation is found. OSPI notes that if the Parent continues to disagree with the evaluation, the Parents may wish to renew their request for an independent educational evaluation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of June, 2020

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)