

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-98

PROCEDURAL HISTORY

On August 30, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the [REDACTED] 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 August 31, 2022, 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.

On September 21, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on September 26, 2022. OSPI invited the Parent to reply.

On October 6 and 10, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on October 10, 2022.

On October 10, 2022, OSPI requested and received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On October 12, 2022, OSPI received documentation from the District that was inadvertently left out of the September 21, 2022 submission. On October 14, 2022, OSPI forwarded the documentation to the Parent.

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 August 31, 2021. 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 before the investigation period.

Issue one identified referral procedures as an issue for investigation, but the March 2021 referral in this case preceded the one-year complaint timeline starting August 31, 2021. The complaint will address whether the District followed the referral and initial evaluation procedures after August 31, 2021.

ISSUES

1. Did the District follow referral and initial evaluation procedures for the Student beginning August 31, 2021?
2. Did the District develop the Student's individualized education program (IEP) in the required timeline?

3. Did the District follow procedures in considering the following in developing the Student's IEP:
- Special transportation
 - Extended school year services
 - Health plan
 - Shortened school day?

LEGAL STANDARDS

Referral for Initial Evaluation: A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services. The request must be in writing, unless the person is unable to write and/or communicate orally. Each school district must have an optional referral form for requesting an initial evaluation available to the general public and provide it upon receipt of any referral request in the requestor's native language or with the support of a qualified interpreter when needed. The school district must document the request for an initial evaluation, including the date the request is received, and: (a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student; (b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and (c) Within twenty-five school days after receipt of the request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision. 34 CFR §300.301; WAC 392-172A-03005.

Initial Evaluation Timeline: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within: (a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or (b) Thirty-five school days after the date the consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing; or (c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline. WAC 392-172A-03005(3).

IEP In Effect: For an initial IEP, a school district must ensure that: (a) The school district holds a meeting to develop the student's IEP within thirty calendar days of a determination that the student is eligible for special education and related services; and (b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP. WAC 392-172A-03105(2).

Specialized Transportation as a Component in the IEP: In determining whether to include transportation in a student's IEP, and whether the student needs to receive transportation as a related service, the IEP team must consider how the student's impairments affect the student's need for transportation. Included in this consideration is whether the student's impairments prevent the student from using the same transportation provided to nondisabled students, or

from getting to school in the same manner as nondisabled students. If transportation is included in the student's IEP as a related service, a school district must ensure that the transportation is provided at public expense and at no cost to the parents, and that the student's IEP describes the transportation arrangement. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 33); *Yakima School District*, 36 IDELR 289 (WA SEA 2002). The term "transportation" is defined as: travel to and from school and between schools; travel in and around school buildings; and specialized equipment, such as special or adapted buses, lifts, and ramps, if required to provide special transportation for students eligible to receive special education services. 34 CFR §300.34(c)(16); WAC 392-172A-01155(3)(p).

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

Health Plans: An IEP must include a statement of how the student's disability affects the student's involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his participation in his education and to support his teachers. Any nursing or health services a qualified school nurse or other qualified person provide to the student with an IEP should be documented in the student's evaluation and IEP as a related service. This includes an Individualized Health Plan (IHP), an emergency action/care plan, emergency evacuation plan, and any medical accommodations. If services are outlined in an IHP, best practice is to include the IHP as a section in the IEP or to attach the IHP to the IEP and document as a related service. The IEP team is also not required to include information under one component of a student's IEP that is already contained under another component of the student's IEP. 34 CFR §300.320; WAC 392-172A-03090.

Program Length: Students who receive special education should be allowed to participate in a district's educational programs and services to the same extent as their non-disabled peers, consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their individualized education program (IEP) team, based solely on any adjustments necessary due to their disability and/or unique needs. 34 CFR §300.114; WAC 392-172A-02050. If a student receiving special education services cannot attend school a full school day, the reason must be documented in his or her records and addressed in the student's IEP. 34 CFR §300.320; WAC 392-172A-03090. *See also Shoreline School District No. 412, 55 IDELR 178 (OCR 2010).*

FINDINGS OF FACT

Background

1. In March 2021, the Parent requested the District evaluate the Student for special education services. The Student was diagnosed with absence epilepsy.¹
2. In April 2021, the District conducted a preschool developmental screening with the Student. Based on the results, the District requested additional screening in the area of self-help.
3. During May 2021, the District and the Parent exchanged emails regarding the evaluation. Based on medical information and information received from a private educational psychologist, the Parent stated:

I think we need their expert opinion in this case on how [Student's] seizures and medication will affect his educational performance and that it is better to get this information before proceeding with a school evaluation as [educational psychologist] has said she (and I assume a School psychologist) would not be qualified to evaluate in this area and we would not get a full accurate evaluation...However after consulting with [educational psychologist], who's independent and professional opinion I value highly I think that it would be more beneficial to get more information from [hospital] and from the reading/writing tutor on [Student] before doing a school evaluation as this cannot be repeated for at least a year. I would like to ensure to all the information needed to inform the school evaluation are from the right qualified professionals at the right time.

The District then informed the Parent that the Student's eligibility for special education was based on the evaluation. The District stated the Student would start the next school year with a health plan due to the Student's medical needs.

4. The Parent stated in her reply that "Parent did not say that they did not want to continue with the evaluation...," but the District interpreted the Parent's statement about getting more information "before proceeding with a school evaluation" as meaning she requested to put the evaluation on hold.

¹ An absence seizure is a seizure lasting 10–20 seconds that cause a short period of blanking out or staring into space.

5. On August 26, 2021, the Student's neurologist wrote a letter stating, in part:
[Student] will be starting kindergarten remotely. He may not be able to participate in school all hours or every day due to his frequent seizures, fatigue, and need to take naps. [Student] may miss instructions due to absence seizures (staring off) so please communicate with his parents frequently so that they can work on getting him the education that he needs. He may not be able to complete assignments in a timely manner due to having a bad day of seizures. Please also provide a 504 plan for the school year to include his seizures and possible difficulty with learning due to frequent, brief seizures.
6. On August 31, 2021, the one-year timeline for the Parent's complaint began.
7. On September 1, 2021, the District contacted the Parent and offered two learning options: in-person instruction or virtual learning. The Parent responded that the Student would attend school remotely. In addition, the Parent requested a 504 plan with accommodations.
8. The District's response stated, "It was the District's well-founded understanding that Student was not accessing in-person instruction because of Student's sibling's medical condition, but that Student would access these services once the vaccine became available."²
9. Regarding the Student's seizures, the Parent's complaint stated:
[Student's] daily seizure activity increased even further becoming greater in frequency and length and notable clusters of back to back seizures that could go on for an hour or more in the mornings but also at other times of day. During clusters of seizures he is unable to speak, see clearly or fully control the muscles in his body, stand unaided and will often fall asleep immediately following significant seizure activity.³
10. On September 10, 2021, the school principal emailed the Parent a release of information for the school nurse to communicate with the Student's doctor. On September 13, 2021, the Parent responded, stating she had access to all the Student's medical records and "if there is something relevant and specific that the district needs...I can provide it."

2021–2022 School Year

11. At the beginning of the 2021–2022 school year, the Student was a kindergartener in a District elementary school. The Student was not eligible for special education services.
12. On September 13, 2021, the 2021–2022 school year began for kindergarteners in the District.
13. From September through December 2021, the District and Parent discussed different service options that would be provided to the Student while at home, including home/hospital and home instruction (i.e., a homebound placement). On September 15 and 21, 2021, the District and the Parent met to discuss the Student's remote instruction program. The Parent had

² The Parent has two other children that have similar needs. One of the siblings was very vulnerable to COVID.

³ This information was dated August 2022 in the original complaint, but based on the investigation, it is likely that it was misdated, and the Parent meant the Student's seizure activity increased in August 2021.

concerns about the Student's ability to benefit from remote instruction. At the meeting, according to the District, the Parent requested "homebound" instruction in lieu of remote instruction, but the District recommended home hospital instruction until the Student was vaccinated.⁴ The District stated in its response, "...although Parent had identified health concerns related to in-person attendance only for Student's older sibling, the District agreed to extend the availability of home hospital services to all three siblings given Parent's representations that the students would return to school once the vaccine was available."

In response to the offer of home/hospital instruction, the Parent and the Parent's attorney (Parent attorney 1) stated the Student needed an IEP and would accept it "as long as the District understands we don't think this satisfies the obligation to provide FAPE (free appropriate public education)..."

14. On October 18, 2021, Parent attorney 1 sent a letter to the District, requesting, in part, the Student (and his siblings) be evaluated for special education services.⁵
15. During the latter part of October 2021, the District's attorney and Parent attorney 1 exchanged emails to schedule a meeting to discuss the Student and his siblings. The District asked for medical information and for the Parent to complete the home/hospital paperwork.
16. On November 10, 2021, Parent attorney 1 wrote to the District, requesting the District move forward with the special education evaluation.
17. On November 17, 2021, the District sent the Parent the consent to evaluate form, which the District stated was 20 school days after the Parent's request to evaluate on October 18, 2022.
18. On November 19, 2021, the Parent signed consent for the District to evaluate the Student. According to the prior written notice, dated November 22, 2021, in part, the District received the consent form on November 22, 2021. The District requested a release of information to communicate with the Student's medical providers and stated the Parent or her attorney could join any call or meeting with a provider. The District also noted that "it had been difficult to coordinate schedules so this stipulation should not prevent the district from completing the evaluation in a timely manner."
19. On November 22, 2021, the District met with the Parent and Parent attorney 1 to discuss the evaluation. The prior written notice (written for all three siblings) stated the District proposed to evaluate the Student and the evaluation would include "medical and the district requires authorization of consent to access medical records and providers for these students because

⁴ In Washington, Home/Hospital instruction is a funding mechanism and is limited to providing temporary interventions as a result of a physical disability or illness. Home/Hospital is available to students eligible for special education and students who are not eligible for special education services. See, WAC 392-172A-02100. Home instruction or a homebound placement is part of the continuum of alternative placements in special education. See, WAC 392-172A-02055.

⁵ The letter also referred to the Parent's previous request for an evaluation in March 2021.

it needs as much information as possible to complete the evaluation in terms of medical information, including how the medical conditions impact the student's ability to attend school in-person."

20. On November 24, 2021, the Parent signed a release of information for the District to receive information from the Student's neurologist. The release of information was authorized from December 5, 2021 to January 26, 2022, and was limited to "office + telemedicine visit notes between 12/1/20 and 12/1/21 EEG Test Results-All." The release stated, in part, "Verbal communications may only occur with the Parents or Parent's counsel present during the communications."
21. On December 1, 2021, the District emailed the Parent about conducting the evaluation given the Student was not attending school. The District proposed evaluating the Student in an empty classroom. The District also again requested releases of information, giving the District permission to obtain the Student's unrestricted medical information and to talk with the Student's medical providers.
22. Between December 1 and 10, 2021, the Parent and the school psychologist exchanged emails regarding the Student's evaluation, including who would be administering the different assessments and scheduling the evaluation. On December 13, 2021, the District requested additional medical information regarding diagnoses and "recommended treatment information" to complete the evaluation. The Parent responded that "information for [Student] and [sibling] including diagnosis, medical history, EEG summary reports, medications, and examinations" was included in the records previously provided to the District. The Parent also stated she signed a release of information for the school nurse, but would not consent to a third-party review of the records.
23. On December 14, 2021, the District's attorney emailed the Parent attorney 1 the following:

It appears there is some miscommunication here. In our meeting in November, you assured the District that Parents would provide appropriate releases to allow the District to obtain the documentation in order to allow the District to evaluate the students. As [special education director] explained, the District needs full releases for medical records for all three students from the time period of initial diagnosis to present. The releases we have received are insufficient for purposes of obtaining the records necessary to evaluate these students given the medical needs Parents have identified. I reiterate the District's request that the Parents execute appropriate releases that allow the District to obtain all medical records, not just the specific records Parents are selectively identifying in the releases. Please provide full and complete releases for the appropriate time period as soon as possible to avoid any further delay in the evaluation process.

Please also note that the District intends to have third party medical providers review these records as part of its evaluation process, which it is entitled to do under the IDEA and FERPA. Please clarify your position on this based on the Parent's statements below.
24. Parent attorney 1 responded on the same day that the District's request for medical information was "too broad." Parent attorney 1 stated the Parent's intent was for the Student

to get timely education services and was concerned that the information request was delaying the implementation of services.

25. The Parent stated, "By Dec 15 or 16 when Parent dropped off by hand medical records for school nurse (as detailed in email of 1/12/22). The District had all the medical documentation as requested in their email of December 13, 2021."
26. From December 17, 2021 through January 2, 2022, the District was on winter break.
27. On January 6, 2022, the District attorney responded to Parent attorney 1 stating, in part:
To date, the District has received incomplete records regarding each student, impeding its ability to evaluate the students. Nor is it possible for the District to tell Parent the exact records it needs from the exact providers, as the District does not know the identities of all of the providers, nor does it have information as to what medical records may exist for each student. That is the purpose behind the releases – to allow the District to obtain information that it otherwise does not have. It is unclear why there is any resistance to providing the District with the requested releases, and the District asks that Parent reconsider their position regarding the scope of the releases.
28. On January 11, 2022, Parent attorney 1 emailed the District attorney, stating the Parent had provided all the medical records. According to the Parent, the Parent did not refuse to provide the requested releases of information. The Parent "had already supplied records and further releases requested and medical records by hand to the school and in evaluation meetings via the school psychologist."
29. According to the Parent, the Parent offered to deliver the latest office visit notes (January 5, 2022) to the District.
30. On January 10, 2022, the assistant superintendent emailed the Parent, stating the evaluation and IEP meeting (including the siblings' meeting) were scheduled for January 26, 2022.
31. On January 24, 2022, the assistant superintendent emailed the Parent, requesting an extension of the evaluation timeline. The District proposed extending the evaluation timeline because "the team needs additional time to synthesize the available information, draft the evaluation reports for each student and to any necessary updates to the reports based on information obtained from the medical providers." The assistant superintendent also expressed concern about having a meeting for all three siblings on the same day, which might not give enough time to each student.
32. On January 26, 2022, the Parent responded to the District that she would not withdraw her consent for the evaluations.⁶ The Parent stated:

⁶ Later, the Parent's reply stated she "did not refuse to consent to requested extensions..." but referred to the email, stating, "I am not withdrawing consent for the evaluations if the District takes longer than the law mandates to complete them. But I am not consenting to extensions or waiving my right to evaluations within the statutory time periods."

...Even before initiating the current evaluations, the District had denied my children FAPE by failing to initiate evaluations earlier and by failing to provide appropriate programming and placement. I cannot find any legitimate reason for the District not to have the current evaluation process completed within the statutory timelines...

33. On February 4, 2022, the school psychologist emailed the Parent, stating he had been trying to contact the Student's neurologist but scheduling a time had been difficult. On February 8, 2022, the school psychologist proposed that the Parent send the following questions to the Student's neurologist. The neurologist's answers, dated February 15, 2022, are included in italics.

1. Does [Student] or [sibling's] diagnosis of Absence Seizure Disorder prevent either student from participating in in-person learning in the public school environment if properly accommodated? If so, please explain why.

Currently, [Student's] seizures are not well controlled as noted above. Therefore, he has a difficult time with attending to instructions and requires 1:1 attention to keep him safe. It would be difficult for him to understand instructions even with 1:1 supervision while he is having seizures which can be a short or a longer part of the morning or throughout the day. Please see below for accommodations that could be helpful.

2. Does [Student] or [sibling's] diagnosis of Absence Seizure Disorder prevent either student from participating in remote learning if properly accommodated? If so, please explain why.

[Student] is deemed to be too young to independently participate in remote/online learning. He would require interactive/live remote learning and only during times when he is not having seizures. Since this is unpredictable for the most part, having a live online teacher available to him would be difficult. Independent online learning would be difficult without his parents working with him throughout the online classes due to his age.

3. What accommodations or modifications would you recommend if the students were to access the public school setting in person?

[Student] continues to have frequent seizures so he would most likely require 1:1 supervision so the class is not disrupted by the teacher attending to him. The aid would need to be aware of his typical seizures, what to do when they happen, and be flexible in teaching as there are periods between and after seizures when learning is difficult. He would likely need to be able to rest if she has a prolonged episode. [District] may do better if he has a shorter school day, in the afternoon with condensed learning as this is the better part of the day for him typically.

4. What accommodations or modifications would you recommend if the students were to access the public school setting through remote instruction?

Please see response to question 2.

5. Would you be willing to provide information or training to school staff regarding how to recognize and monitor seizure activity in [Student] and [sibling]? If so, please provide any recommendations on what such information and/or training might entail.

The seizures consist of frequent or prolonged absence seizures. Mother is able to provide videos of [Student] having these seizures. She is also able to accurately provide the frequency, duration, and types of events that [Student] typically presents with. At this time, I recommend keeping him safe by making sure that he is in a safe environment where he does not fall or wander off. We are not using rescue medications at this time but this may be something to consider in the near future.

The school psychologist requested a new release of information from the Parent because the previous one expired.

34. On February 6, 2022, the Parent responded, stating she had access to the Student's medical records and "offered to assist with anything needed for an evaluation." The Parent stated she would forward the questions to the Student's neurologist.
35. On February 14, 2022, the District provided the Parent and Parent attorney 2 with a draft evaluation report and a meeting invitation.
36. On February 18, 2022, the eligibility team, including the Parent, met and determined the Student was eligible for special education services under the category of developmental delay. The evaluation was based, in part, on the medical information received from the Student's neurologist. The evaluation recommended services in the areas of adaptive behavior, cognitive reading, cognitive math, written language, and gross motor.

The evaluation stated the Student had a seizure disorder resulting in seizures, lasting a few seconds but sometimes coming in clusters. After a seizure, the Student was unable to "process what is happening in his surroundings." The report stated, "This condition will require accommodations in the general education and special education setting such as rest periods, reduced or modified assignments, or opportunity to review missed instruction." The report stated the Student demonstrated delays in short-term memory and processing speed, which are common side effects of seizures, along with gross motor development. The report noted the Student has had limited instruction, which was not the primary reason for the delays.

The report stated, in part:

[Student] has led a very sheltered existence during the years when children are typically increasing their interactions with the world outside of home, learning how to students, and laying the foundational skills for learning. A big factor in his education personal development will be accessing learning opportunities and he will need to be in a less restrictive environment than his current one in order to access such opportunities. At this point, there is no indication of any barrier, health or otherwise, that should prevent him from attending in the traditional school environment where he can spend time with peers and access learning. It is recommended that he receive specially designed instruction in the areas of adaptive and cognitive/pre-academic skills in reading, math, and written language with the related services of physical therapy for gross motor development. It will be up to the IEP team to determine exactly how and where these services are delivered, but all indications are that he should be able to spend a majority of his school day in the general education setting with appropriate accommodations for his seizure disorder. As mentioned previously, a baseline of response to instruction has not been established so it is recommended that his development be closely monitored in order to provide the least restrictive environment for learning.

The Parent noted on the report that the Student's seizures were a barrier to attending school, according to the Student's medical providers. The Parent also noted that the Student had received private tutoring twice a week for two months.

37. On February 25, 2022, the Student's IEP team met and developed an initial IEP for the Student. The IEP provided annual goals in the areas of adaptive behavior, written language, cognitive reading, cognitive math, and gross motor. The IEP provided 16 accommodations that included prompts to wear a mask, sitting where the teacher can observe the Student's face to notice seizures, and "Please see health plan for support for medical condition."

The IEP provided the following special education and related services:

- Adaptive: 40 minutes, 5 times weekly (provided by a general education teacher in a general education setting)
- Cognitive math: 30 minutes, 4 times weekly (provided by special education staff in a special education setting)
- Cognitive reading: 20 minutes, 4 times weekly (provided by special education staff in a special education setting)
- Written language: 10 minutes, 4 times weekly (provided by special education staff in a special education setting)
- Gross motor: 120 minutes, 1 time monthly (provided by a physical therapist in a general education setting)

The IEP also provided for "regular transportation" and the IEP stated extended school year (ESY) services were not required for the Student.

38. Regarding special transportation, the District's response stated:

Here, once the Student's health plan was finalized and Student was able to attend school, the District provided Student with Parent's requested transportation. This included transportation to and from Student's home for the one-hour period that he attended school each day. The District also provided a second adult on the bus with Student and his siblings and appropriately trained this individual on the Student's health plan. The District did so despite this not being contained in Student's seizure plan from [hospital], which was the only doctor's orders in place.

As Parent had refused consent to allow the District to communicate freely with Student's providers, it was unable to reconcile the discrepancies between the seizure plan and the documentation from Student's other providers. To allay any Parent concern, the District provided the requested supervision despite it not being documented in Student's seizure plan as medically necessary. The District further agreed to collect data on Student while he was riding the bus to determine the need for this level of supervision. As such, it is the District's position that it followed the relevant procedures related to the provision of transportation to Student and provided greater transportation services than required.

39. The documentation provided in this complaint investigation included a District "Seizure: Emergency Care Plan," which was also referred to as the "Health Plan." The plan described the Student's seizure history, triggers, detailed emergency response to seizures, and health accommodations that included:

- [Student] will be allowed a quiet place to rest following a seizure event and/or when experiencing tiredness related to seizures. If [Student] is unable to respond to a question verbally, he may be able to respond to a simple yes/no question. For example: asking him to lift his hand in a positive response if he needs to rest. He may be able to say he has had a 'blurry eyes' to indicate a seizure.

- [Student] will be escorted by an adult to the identified quiet space following a seizure. He may need comfort after a seizure, it can be frightening for him. Staff should move slowly around him, talk in soft voices and provide reassurance. He will be escorted back to class after stating he is feeling better and/or feels rested.
 - [Student] will use the bathroom in the nurse's office. Teacher will call the office to send an adult to escort or supervise him to and from the bathroom.
 - Teacher and supervision staff will be trained in seizure first aid (including what to look for and how to respond to Absence Seizures and Tonic-Clonic seizures) and [Student's] health plan. A list of trained staff will be kept in the school health room.
 - Seizure log to be sent home daily as part of school-home communication. As above, parent and school nurse will be notified if seizure lasts longer than one minute.
40. The prior written notice, dated February 25, 2022. stated, in part, the District proposed a full-day schedule for the Student at school. The Parent requested a transition schedule starting 1-2 hours a day in the afternoon, three days a week. In an effort to work with the Parent, the District agreed to the Parent's schedule. The District also agreed to continue home/hospital services at home "so long as they do not interfere with [Student's] attendance at school." The notice also addressed the following, in relevant part:
- District would prompt the Student to wear a mask while at school
 - A daily seizure log at school would be provided to the Parent
 - The seizure plan did not require an additional person on the bus. But the District agreed to collect data on seizure episodes on the bus once the Student begins riding the bus.
41. Regarding the timeline to complete the evaluation and determine eligibility, the District acknowledged that the 35-day timeline was exceeded because the evaluation and determination were completed within 50 school days. The District argued that this procedural error was "harmless," thereby not constituting a denial of FAPE. The District stated this procedural error was harmless because the Parent thwarted the District's efforts to complete the evaluation on time and the IEP was completed within the required timeline.
42. On March 3, 2022, the District provided the Parent with the form "Individual Health Plan: Notice of Action." The form stated the District proposed to evaluate the need for an individual health plan and initiate a health plan. It was unclear if the health plan was different than the seizure plan.
43. On March 9, 2022, the District sent an updated IEP based on the discussions at the February 25, 2022 IEP meeting. The IEP continued to include the health plan as an accommodation.
44. On March 10, 2022, the Parent's new (Parent attorney 2) emailed the District attorney a "Seizure Management Care Plan" for the Student, dated July 13, 2021, from the hospital. The plan included when to treat the Student having a seizure as an "emergency." According to the District, since this seizure order was different than the existing seizure plan and some of the requests by the Parent, and the District wanted to reconcile any conflicting information from the Student's medical providers by contacting the providers directly. The Parent refused to sign a release of information, wanting all questions to the Student's providers to go through the Parent.

45. On March 13, 2022, the Parent forwarded a letter from the Student’s physician, dated March 11, 2022, stating:

My patient and her family deserve every accommodation for adjusted school schedules and environment for an epilepsy patient, including going to a one-hour day at start, as we work to get his seizures under control, and hopefully limit his reoccurring and profound fatigue related to a recurring post seizure (post-ictal) state.

He also warrants close monitoring of seizures at school and while on any school transportation. Current recommendation from Neurology is to time seizures and call 911 if a single event or combined events are over 4 minutes total.

The District noted in its response that it was “unclear” what the basis for the recommendations for one hour of service and close monitoring was because the Student’s seizure plan did not include them.

46. Regarding the District’s request to contact the Student’s neurologist during this time period, the Parent stated:

Student’s prescribing primary neurologist was not available around this time due to leave for 2 weeks so in order to provide some documentation to the District regarding safety monitoring of seizures provided a Seizure Care Plan that had been put together automatically the previous summer by [hospital] after one second opinion consultation was given to the District. As primary and prescribing neurologist was unavailable this was the quickest way to provide the District the documentation they were demanding before primary neurologist returned to the office.

47. On April 14 and 15, 2022, Parent attorney 2 and the District attorney exchanged emails about the following, in relevant part:

Issue	Parent	District
Monitor on Bus	Where does it say a monitor will be on the bus?	Prior Written Notice
Time in School	Parent wanted to increase time in school to five days a week.	District was prepared for Student to attend five days a week.
Time in Physical Education	Parent wanted more time in academic setting.	Parent preferred Student attend in afternoons. Academics were in the mornings. Physical education is in the afternoons.
Communication with Physicians	Parent previously gave consent to talk with doctors on the condition that Parent could participate in the discussion.	District requested release of information to communicate in writing and to speak with doctors.
Shortened School Day	IEP says it was the Parent’s choice.	District proposed a full day of instruction but agreed to partial day.
Special Transportation	Student qualified for special transportation.	Issue addressed in PWN. Added accommodations to IEP.

On April 28, 2022, Parent attorney 2 emailed the District attorney that the Student had contracted COVID, and the Parent wanted to have a meeting to discuss ways for the Student to safely attend school. A meeting to discuss the Student's safety was scheduled.

48. According to a prior written notice, dated May 4, 2022, the District proposed a "temporary alternative location" for the Student to attend school while having COVID. The notice stated, in part:

It is the District's position that it can safely serve [Student] in the school setting and that it fully implemented [Student's] health plan while he was in attendance. This proposed action for a temporary alternative setting is being done solely in an effort to work with the family to return [Student] to school as soon as possible and is not being offered as a long-term accommodation or an offer of stay put.

49. In May 2022, the District and the Parent exchanged emails about conducting a developmental screening of the Student in the area of self-help skills. The Parent had completed a questionnaire regarding the Student's developmental skills. The Parent stated she was unable to bring the Student to the screening because of concern about exposing the Student and eventually his sibling to COVID. The District offered to review the results of the screening with the Parent.

50. On June 15, 2022, the IEP team met to review the Student's progress and program. According to the prior written notice dated the same day, the team discussed the Student's progress and the Parent's request for "summer services." The District offered to have the Student attend the "summer impact program," which was the general education summer program. The Parent declined the program because of frequent seizures and tiredness.

51. On June 30, 2022, the IEP team met again to discuss ESY services for the Student. A prior written notice, dated June 30, 2022, stated the District offered ESY services from July 5–29, 2022. The District proposed two times—8:30–11:30 am and 11:30 am–12:30 pm—to provide ESY services to the Student. But the District was unable to provide transportation for a later time. Nevertheless, the Parent declined both because he would be "too tired" in the morning and "would be unable to access any learning during a pre-seizure, seizure, or post seizure state" at the later time.

52. Regarding ESY, the District stated in its response to the complaint:

...The District followed the required procedures in considering ESY services for Student. Student's IEP team considered the need for ESY and determined Student was eligible. Given the specific nature of Parent's request that Student's services be delivered outside the time period of the District's offered summer program, the District had to determine whether it could identify staff to provide this service. After the District identified staff, it formally offered ESY to Parent in the June 30, 2022 PWN.

53. On the same day, Parent attorney 2 emailed the District attorney, asking why the District was not providing transportation to the Student. The next day, the District attorney responded, stating, "Due to parents' request for these students to receive services at a different time than all other students, the district does not have staff available to provide transportation at

parents' preferred time." The District offered to reimburse the Parent for transportation, but the Parent declined.

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54. On September 8, 2022, the Student's neurologist noted in a report that the Student had "prolonged and frequent seizures on a daily basis, occurring much more in the mornings but persisting into the afternoons..." The Student has difficulty with stamina and recommended a shortened school day. The report also stated, "Family prefers schooling in the afternoons due to [Student] having fewer seizures when he had been awake for a few hours and there is a higher chance of wakefulness and ability to participate and learning." In addition, the report that it was "preferred" that the students and adults around him be masked and be spaced three feet apart.
55. According to the Parent's reply, the Student's health has "deteriorated throughout this period of this complaint so his ability to attend school has decreased due to his seizure activity increasing as well immune response to Covid increasing seizures." The Parent stated, "[Student] is currently on 4th medication trial, which so far has been unsuccessful in controlling his seizures, which continue to increase along with associated fatigue."

The Parent also stated that the Student was not currently attending school. The Student has continued to receive services through home/hospital at home. The Parent stated, "[Student] is not currently in school as parent is waiting for further response from District and safe and appropriate access to education again."

CONCLUSIONS

Issue One: Initial Evaluation Timeline – The complaint alleged the District failed to conduct the Student's evaluation within the required timelines.⁷ Once a referral for an evaluation is received, a district has 25 school days to determine whether to evaluate or not. If the district proposes to evaluate, the district is required to evaluate the Student and determine eligibility within 35 school days after the district receives the parent's consent.

Here, on October 18, 2021, Parent attorney 1 requested in writing that the Student be evaluated for special education services. The District determined the Student should be evaluated and provided the Parent with the consent to evaluate form within 25 school days, on November 17, 2022. The District received the signed consent form from the Parent on November 22, 2021. The evaluation and eligibility determination were completed on February 18, 2022, which was 50 school days after the District received the Parent's consent. The required timeline to evaluate and determine eligibility is within 35 school days after receiving a parent's consent. Thus, a violation is found.

⁷ The complaint also contained allegations regarding the referral process in March 2021. However, the March 2021 referral in this case preceded the one-year complaint timeline starting August 31, 2021. The complaint will address whether the District followed the referral and initial evaluation procedures after August 31, 2021.

However, the need for corrective action is limited given that the evaluation was subsequently completed, and eligibility determined. Further, the time it took the District to get the necessary medical information that the District needed, and still needs, is a mitigating factor in this specific case. The District consistently communicated that it needed more information about the current status of the Student's seizures than what the medical documentation, provided by the Parent, included and the information relayed by the Parent herself. The Parent did offer the opportunity for the District to directly communicate with the Student's medical providers, as long as the Parent or her attorney was part of the call. However, scheduling such a discussion was difficult and time-consuming, which is not uncommon when involving private medical personnel. According to the District, the District was unable to schedule a call with the medical providers at a mutually agreeable time to discuss the Student. The District thus proceeded with the evaluation and eligibility determination based on the medical information that the District did have access to, although the District maintained that it was not all of what it requested or needed. Given the evaluation was completed and the delay was due to the District's attempts to obtain additional medical information, OSPI finds that no additional corrective actions are warranted.

Issue Two: Initial IEP Timeline – The complaint alleged the District failed to develop the Student's initial IEP within the required 30-day timeline after the evaluation. A district is required to develop an IEP for a student who is eligible within 30 days of the evaluation.

Here, the District evaluated the Student and determined eligibility on February 18, 2022. The Student's IEP was developed on February 25, 2022. The evaluation and eligibility determination should have been completed by February 1, 2022 (35-school days from the Parent's signed consent). Based on the original required timeline of February 1, 2022, the District still developed the Student's IEP within the required 30-day timeline. No violation is found.

Issue Three: Developing the IEP – The complaint stated the District failed to address the Student's need for special transportation, extended school year (ESY) services, a health plan, and a shortened school day.

It should be emphasized that throughout these complaint issues, the District stated it was making decisions based on incomplete medical information because the Parent refused to give the District access to the information the District believed was needed to ensure the Student's health needs were met. The Parent provided, among other information, diagnoses, office visits notes, and recommendations from the Student's medical providers and her own input. Some of the information was conflicting—e.g., some of the medical information was inconsistent with the seizure plan—and it was apparent that the District disagreed with other information. However, the District had little or no medical information other than the medical information provided by the Parent on which to base its decisions.

The District stated it was also hampered by the limited amount of contact with the Student. It was reasonable that the District wanted to verify the information it had and seek more detail about the Student's seizures to better understand the interventions and supports the Student might need to access instruction, especially since the seizures had worsened according to the Parent. Although it was the Parent's right to limit access to the Student's medical information, better

communication between the medical providers, the District, and the Parent could have significantly helped to resolve this dispute.

That being said, since the medical information the District believed was needed was not forthcoming, the District should have considered and followed through with a medical evaluation as part of the comprehensive evaluation to accurately and appropriately identify the Student's disability and his specific needs, with input from the Student's medical providers and the Parent, and address any conflicting information about the Student's condition. The specific areas the Parent alleged related to IEP development will be analyzed, given the lack of sufficient medical information about the Student's needs.

Special Transportation: A district is required to consider what supports or accommodations a student with an IEP might require to be transported. Here, the Parent stated the Student should receive special transportation because of the need for someone to monitor the Student's seizures on the bus. The District stated the Student's seizure plan did not provide for the Student to be monitored on the bus, although the District agreed to provide "supervision" to the Student on the bus.

Regardless of whether the seizure plan addressed the need for supervision specifically or whether the District felt it had sufficient medical documentation to substantiate the need, the District chose to provide supervision to the Student on the bus. This decision appears to be consistent with the Student's medical information available at the time regarding the frequency of seizures. Supervision of the Student on the bus would fall under special transportation. Given that the District was providing this, the service needs to be appropriately documented in the Student's IEP and the District did not amend the Student's IEP to reflect the transportation arrangement. A violation is found given the failure to amend the IEP to include this service.

For corrective action, the District is required to convene the Student's IEP team and address the request for special transportation, considering the information from a new medical evaluation or additional information from the Student's medical providers. The District is also required to provide special education staff and District administrators with written guidance regarding special transportation.

ESY: A district must address the need for ESY, considering a student's regression and recoupment of skills over school breaks. Here, the complaint alleged the ESY services offered by the District were not appropriate for the Student due to his pattern of seizures in the mornings. On June 15, 2022, the Student's IEP team met to discuss ESY services. The District stated it offered the Parent the general education summer program, a program from 8:30–11:30 am, and an individual program from 11:30 am–12:30 pm each day. The first two options included transportation, but the third did not, although the District offered to reimburse the Parent to transport the Student. The Parent rejected all the options because of the Student's seizures during the mornings.

A program, ESY or otherwise, must meet the student's needs rather than the student conforming to the program's needs. Availability of staff and transportation are a practical concern, but these cannot be the reasons for denying the Student an ESY program that met his disability related

needs; in this case, the need for ESY services to be provided at an appropriate time of day. Based on the current medical information available at the time the decision was made, the Student needed ESY services in the afternoon to benefit from them. The District did not offer ESY services in the afternoon and should have. In addition, a District cannot make ESY services contingent on the Parent agreeing to provide transportation, even if reimbursement was offered.⁸ A violation is found. The District is required to provide appropriate guidance to staff regarding ESY and ESY transportation.

Health Plan/Shortened School Day: The complaint stated the District failed to “update medical recommendations in Health Plan and only partially adjusted [the] education schedule.” The Parent primarily asked for the Student’s health plan to reflect a shortened school day. The District stated that the “health plan is separate from the IEP” and that to provide the Student a FAPE, he needed to attend a full day of school.

Updating the Health Plan

An IEP must include a statement of how the student’s disability and health affect the student’s involvement and progress in the general education curriculum, and the IEP team is required to consider, and describe in the IEP as appropriate, the related services, supplementary aids and services, and accommodations a student needs to enable his participation in his education and to support his teachers. If a student has disability related health needs, the IEP team should consider whether a health plan is needed, which could be a part of the IEP, or it can be a separate document, as long as the plan is then referred to in the IEP. Here, the Student had a health plan (seizure plan) that was developed with input from the Parent, the Student’s medical providers, and the District. The Student’s February 2022 IEP referred to the health plan as an accommodation. Thus, the health plan was connected to the IEP. It would be appropriate, if decided by the IEP team, that any updates to the medical details of the plan be delegated to a subset of the IEP team to amend if needed. For example, the IEP team could determine that the Parent and nurse update the health plan and that the full IEP team does not necessarily need to meet every time the health plan is updated.

However, in this case, the primary update to the health plan that the Parent wanted was to include a shortened school day in the health plan. OSPI finds that while connected to the Student’s health needs, given the significance of shortening a school day and the instructional implications, the Student’s full IEP team would need to consider this and determine whether a shortened day was needed. And the health plan itself would not necessarily be the appropriate way to record a shortened school day plan, if agreed to by the IEP team. Since the shortened school day needed to be addressed in the IEP and not the health plan, no violation is found with respect to updating the health plan.

⁸ Reimbursing the Parent for transportation can be one of several transportation options considered and can be utilized if it is mutually agreed upon.

Shortened School Day Decision

Ultimately, the District, per the Parent's request, provided the Student with a shortened school day. The District stated that the appropriate offer of FAPE to the Student was a full day of school and framed the Student's attendance for only part of the day as Parent choice. While OSPI understands and commends the District for its effort to work with the Parent around her desired schedule, the question remains as to whether the Student's IEP team made a reasonable decision, based on Student specific information regarding the Student's potential need for a shortened school day. Students who receive special education have the right to participate in a district's educational programs and services to the same extent as their non-disabled peers consistent with their rights under IDEA. Any decision to limit or restrict their access and participation must be made by their IEP team, based solely on any adjustments necessary due to their disability and/or unique needs.

In this case, the information available to the IEP team was mixed. The Student's neurologist recommended the Student have a shortened school day and 1:1 assistance. The neurologist and Parent deserved some deference regarding the Student's needs in this case. The neurologist was an expert in seizures and the Parent knew the Student well and had the most experience observing the Student's seizures. However, the neurologist made the educational recommendations without any discussion with the District about what supports or services the District could provide to help the Student attend school full time and without 1:1 assistance. Had the neurologist heard what services the District could provide, the neurologist might have reconsidered or altered the recommendations. However, other medical information was silent with respect to the need for a shortened school day. The District was not necessarily required to follow the recommendations of either the neurologist or the Parent if the District had information that indicated otherwise. The District acknowledged that it needed more information, particularly medical information, about the Student's needs. Again, OSPI acknowledges the difficulty the District had in getting additional medical information; but, because of this, the District had limited information that a shortened school was contraindicated: the District did not necessarily have information or documentation that a full school day *was* appropriate for the Student. Thus, OSPI finds the IEP team did not have sufficient, Student specific information and data to make a decision on whether a shortened school day was needed. The District should have considered conducting a medical evaluation. A violation is found.

For corrective action, the District is required to provide written guidance to staff regarding a shortened school day. The District will conduct its own medical evaluation to provide additional information. The District will then convene the IEP team and address the request for a shortened school day based on either a new medical evaluation or additional information provided by the Student's medical providers.

CORRECTIVE ACTIONS

By or before **November 4, 2022** and **December 2, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Evaluation

The District is required to conduct a medical evaluation of the Student. The District could bring in outside expert to conduct the evaluation or conduct its own District evaluation. If the Parent refuses to provide consent to the medical evaluation, which is her right, OSPI will consider the refusal in its review of the IEP team's decision in this matter. In such a case, the IEP team should re-review the existing information it has, including any more recently received medical information and any data/information from the services the Student received through home/hospital instruction.

By **November 4, 2022**, the District will provide OSPI with a prior written notice, proposing the evaluation and a proposed timeline to evaluate and conduct an IEP meeting. Based on the documentation, OSPI will determine what further actions are required and IEP timelines.

DISTRICT SPECIFIC:

Written Guidance

By **November 18, 2022**, the District is required to provide all District special education staff (special education teachers, related service providers, and District administrators) written guidance regarding when special transportation is required and included on the IEP, requirements for offering ESY services and ESY transportation. By **November 4, 2022**, the District will provide OSPI with a draft of written guidance. OSPI must approve the guidance and will provide the District with feedback as needed.

By **December 2, 2022**, the District will provide OSPI with verification that all required staff received the written guidance.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 27th day of October, 2022

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)