

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-34

PROCEDURAL HISTORY

On May 15, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District No. 114 (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 May 16, 2017, 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 June 7, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on June 8, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 19, 2017, OSPI received the Parent's reply and forwarded that reply to the District on June 20, 2017.

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

OVERVIEW

During the 2015-2016 school year, the Student attended a District elementary school. In April 2016, the Student's evaluation group determined that she was eligible to receive special education services under the category of other health impairment. The Student's individualized education program (IEP) team then developed the Student's initial IEP in May 2016, which included a behavioral intervention plan (BIP). At the Parent's request, the District attempted to record the May 2016 IEP meeting, but the recording equipment malfunctioned and no recording was made. The District did not inform the Parent of the equipment malfunction. During the 2016-2017 school year, the Parent requested that the District conduct a reevaluation of the Student in the area of assistive technology and also to determine if the Student had dyslexia. In response, the District provided the Parent with prior written notice and a consent form, which indicated that assessments would be conducted in several areas. The Parent disagreed that all of the District selected assessments were needed and did not provide consent. Also during the school year, the Parent expressed concern that the Student was not receiving the reading services stated in her IEP.

The Parent alleged that the District failed to follow procedures for responding to her request for a reevaluation during the 2016-2017 school year. The Parent also alleged that the District failed to implement the Student's IEP, including providing specially designed instruction that was designed and supervised by a certificated special education teacher, during the 2016-2017 school year. The Parent further alleged that the District failed to follow procedures for responding to the Parent's May 2016 request

for records. The District denied that it failed to follow procedures for responding to the Parent's request for a reevaluation, and that it failed to follow procedures for responding to the Parent's request for records. The District denied that it failed to implement the Student's IEP, but proposed providing the Student compensatory services because the District did not have documentation to substantiate that services were provided by a paraeducator.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on May 16, 2016. 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 time period.

ISSUES

1. Did the District follow procedures for responding to the Parent's request for a reevaluation during the 2016-2017 school year?
2. Did the District implement the Student's individualized education program (IEP), including providing specially designed instruction that was designed and supervised by a certificated special education teacher, during the 2016-2017 school year?
3. Did the District follow procedures for responding to the Parent's May 2016 request for records?

LEGAL STANDARDS

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and assists the IEP team in determining the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction who is eligible to receive special education services. 34 CFR § 300.323; WAC 392-172A-03105. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

Provision of Services: Special education and related services must be provided by appropriately qualified staff. Other staff, including general education teachers and paraprofessionals, may assist in the provision of special education and related services, provided that the instruction is designed and supervised by special education certificated staff, or for related services by a certificated educational staff associate. Student progress must be monitored and evaluated by special education certificated staff or for related services, a certificated educational staff associate. 34 CFR §300.156; WAC 392-172A-02090(g).

Parents' Access Rights to Records: Districts must permit parents of a student eligible for special education to inspect and review, during school business hours, any educational records relating to the student that are collected, maintained, or used by the district. The district must comply with a request promptly and before any meeting regarding an individualized education program (IEP), hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made. The right to inspect and review educational records includes: the right to a response from the district to a reasonable request for explanations and interpretations of the records; the right to request that the district provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising their right to inspect and review the records; and the right to have a representative of the parent or adult student inspect and review records. 34 CFR §300.613; WAC 392-172A-05190.

Tape Recording: Federal law neither requires nor prohibits the use of recording methods, and the use of recorders is subject to state or district policy. Federal and state regulations implementing the IDEA amendments require districts to adopt methods to ensure that parents are allowed to participate in meetings, which can include methods for recording the meeting. OSEP guidance provides that a school district has the option to require, prohibit, limit or otherwise regulate the use of recording devices at IEP meetings. *Letter to Anonymous*, 40 IDELR 70 (OSEP 2003). If a public agency requires notice from the parent before permitting audio or video recording devices at IEP team meetings, (e.g., five days before the date of a meeting), then the public agency would need to schedule the meeting at a time that allows the parent to meet that

notice requirement so the parent can fully participate in the meeting. *Letter to Savit*, 116 LRP 11417 (OSEP 2016). School district policies that prohibit taping should include exceptions to allow for circumstances when taping is the only way parents would have a meaningful opportunity to participate in the IEP meeting. *In the Matter of the Issaquah School District*, Special Education Cause No. 2003-SE-0133 (WA SEA 2003). While the State has the discretion to determine the criteria for use, including the suspension of audio and video recording devices at IEP team meetings, under 34 CFR § 300.322(e), the public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP team meeting. While the public agency could suspend recording of an IEP team meeting, it must ensure that doing so will not interfere with the parent's understanding of the IEP, the IEP process, or other rights provided under Part B. *Letter to Savit*, 116 LRP 11417 (OSEP 2016).

FINDINGS OF FACT

2015-2016 School Year

1. At the beginning of the 2015-2016 school year, the Student attended a District elementary school.
2. On April 28, 2016, the Student's evaluation group, including the Parent, met to review the results of the Student's initial evaluation and determined the Student was eligible for special education under the category of other health impairment. The evaluation report stated that the Student had attention deficit hyperactivity disorder (ADHD), asthma, a behavioral disorder of anger/rage and conduct, and other health issues. The report noted that the Parent had indicated that the Student had been diagnosed as impacted by autism. The evaluation report recommended the Student receive specially designed instruction in the area of reading with a focus on vocabulary and phonics, and the area of social/emotional skills with a focus on "social problem solving." The evaluation report included a handwritten note from April 28, 2016, which stated that the Parent believed that the Student required a behavior support plan, as recommended by the Student's private behavior specialist, and that the Parent would provide the District additional information regarding the Student's behavior.
3. Later on April 28, 2016, the Parent emailed the school psychologist (school psychologist 1), stating that the Student's private behavior specialist was recommending that the Student have a behavior support plan in place at school, and the Parent requested that the District provide the Student with a support plan. The Parent also provided information about the Student's behaviors at school. In response, school psychologist 1 stated that a behavior intervention plan (BIP) was not foreseen at the beginning of the evaluation process, but that if a BIP was going to be included as part of the Student's individualized education program (IEP), then a functional behavioral assessment (FBA) would typically be completed. The psychologist suggested conducting an FBA, and the Parent and the psychologist later agreed to meet on May 4, 2016 to complete the Student's FBA.

4. On May 3, 2016, the Parent emailed school psychologist 1, stating that she wanted to record meetings from that point on, as it was easier than taking notes. The Parent asked if the District had any policies regarding recording meetings or if the District objected to meetings being recorded.
5. On May 4, 2016, school psychologist 1 responded, stating that the District would provide a recording device for the meeting, and it was his understanding that this was the only recording device allowed at the meeting. After the meeting, the District would provide the Parent with a transcribed copy of the recording. School psychologist 1 also stated that he was in the process of getting a recording device set up, but if it could not be set up that day, then the meeting would need to be rescheduled. In response, the Parent stated that the meeting did not need to be canceled, but asked for a copy of the District's policy on recording meetings. It is unclear from the District's documentation if the Parent was provided a copy of the District's policy. The Parent and school psychologist 1 then met later that day to complete a draft of the Student's FBA.
6. According to the Parent's reply to the District's response to this complaint, the Parent was verbally told by school psychologist 1, that the Parent could not record the meeting with her own recording device. The Parent stated that she was also told by another staff member that she could not bring her own recording device to the IEP meeting. According to the District's response to this complaint, "typical District procedure" is that the District and a parent both record meetings and the District does not provide a transcript.
7. On May 5, 2016, the Parent emailed school psychologist 1, asking for clarification as to whether the District was able to assess the Student for a specific learning disability, such as dyslexia. In response, school psychologist 1 stated that the evaluation group had considered if the Student met the eligibility criteria for a specific learning disability (SLD), but ultimately the assessment data indicated that the most appropriate eligibility category for the Student was other health impairment. The psychologist said that this did not mean the Student did not meet eligibility criteria for SLD, but that her primary eligibility category was other health impairment. School psychologist 1 further stated that regardless of the eligibility category, the specialized instructional supports identified in the Student's evaluation report were based on the Student's unique learning/educational needs. Additionally, the school psychologist stated that at the evaluation meeting on April 28, the group had reviewed state special education regulations and discussed that dyslexia was listed under the definition of SLD. The psychologist then clarified that dyslexia was not itself a special education eligibility category, and provided additional information from state regulations about how the District determined if a student met the criteria for the SLD category.
8. In response, the Parent asked if school psychologist 1 was stating that the District only allowed one, and only one, need to be addressed in an IEP. The Parent stated that if this was the District's policy, then she would like a copy of the policy. The Parent then stated that to the best of her knowledge, special education regulations

did not say that the Student's IEP must be limited to one disability or need, and stated that the Student had a minimum of two disabilities – other health impairment and autism. The Parent stated that both disabilities needed to be addressed in the Student's IEP, and it was clear this was not the case if one disability was secondary to the other and not addressed per District policy. The Parent asked if the District was perhaps confusing listing disabilities in an IEP, with the category that a child was found eligible under. The Parent stated that for example, the Student could be classified under other health impairment due to her ADHD, but that the Student's IEP should also state that she had autism and discuss how that is being addressed or may impact her ADHD and educational progress. The Parent said that if the Student had multiple needs that prevented her from receiving a free appropriate public education (FAPE), then the needs needed to be addressed. The Parent stated that if the Student had a SLD, it would need to be addressed if it affected her education. The Parent asked if the Student had been assessed for a SLD, such as dyslexia, and that if not, she wanted the Student to be assessed.

9. On May 6, 2016, school psychologist 1 responded that he had tried to address the Parent's questions during the April 28, 2016 eligibility meeting and their May 4, 2016 meeting to draft the FBA. The psychologist stated that there were many things going on with the Student, and the other health impairment category could account for all of the issues/diagnosis. "Holistically, this may be the best elig[ibility] category at this time, as [the District] only identifies a primary elig[ibility] category" for special education. The psychologist said that the provision of FAPE was based on what a student needs, regardless of eligibility category. Additionally, the psychologist stated that the Student had been assessed as being impacted by a SLD, and that the "team" may want to reconsider the eligibility category if changing the eligibility category was more accurate for the Student. The psychologist stated that the Student was identified as needing specially designed instruction in her pending IEP in the areas of reading and social/emotional skills. The Parent replied, asking for more information about how the Student was assessed for SLD and requested a copy of the assessment results.
10. On May 9, 2016, school psychologist 1 replied that he had gone over the information with the Parent many times, and believed that his answers were not helping the Parent understand the process. Due to this, the psychologist was going to discuss how to move forward and help the Parent understand with the District elementary coordinator, and then get back to the Parent. In response, the Parent asked additional questions about the District's use of the discrepancy model in determining a SLD.

Timeline for this Complaint Begins on May 16, 2016

11. On May 23, 2016, the Parent emailed school psychologist 1 and copied the District elementary coordinator. The Parent stated that she had not heard back from the psychologist since May 9, 2016, and because her questions had not been addressed, she was now requesting an independent educational evaluation (IEE). The Parent stated that she disagreed with the evaluation for SLD the District had

performed. In response, the District assistant director of special services (assistant director) spoke with the Parent about her IEE request and also explained the Student's evaluation report. The assistant director also emailed the Parent a copy of the Student's evaluation summary, which outlined the service areas, based on the assessments conducted as part of the evaluation.

12. On May 27, 2016, the District completed an FBA of the Student.

13. Also on May 27, 2016, the Student's IEP team, including the Parent, met to develop the Student's initial IEP. According to the District's response to this complaint, the District attempted to record the May 27 meeting, but the audio recording device was not functioning correctly and as a result, the meeting was not recorded. The Parent was not informed of the device malfunction at the meeting.

14. The Student's May 2016 IEP included annual goals in the areas of reading and social/emotional skills, which stated:

- Reading – When given a pertinent leveled text the Student will identify vocabulary words she is not familiar with, read, and define the vocabulary word and understand the definition of the word improving her ability to identify vocabulary words from 1/5 attempts to 4/5 attempts as measured by special education teacher and staff collected data.
- Reading – When given a pertinent reading leveled text the Student will increase her reading readiness skills improving her knowledge and use of phonetic strategies for phonemic print awareness, print awareness, letter knowledge, decoding, word recognition, comprehension, letter and sound patterns blends (etc.) from 1/5 words to 4/5 words as measured by special education teacher and staff collected data.
- Social/Emotional Skills – When given social interaction opportunities the Student will demonstrate respectful peer and staff interactions using polite, respectful, and cooperative communication skills improving her ability to speak appropriately in all school settings from 50% average on 5 non-consecutive days to 90% average on 5 non-consecutive data days as measured by special education teacher and staff collected data.
- Social/Emotional Skills – when given verbal and written direction the Student will follow directions, improving her on task behavior, improving following directions 50% of the time on 5 non-consecutive data days to following directions 90% of the time on 5 non-consecutive data days as measured by special education teacher and staff collected data.

The IEP stated that the Student would receive the following specially designed instruction in a general education setting provided by a "staff assistant":

- Reading – 30 minutes 4 times weekly
- Social/Emotional Skills – 30 minutes 1 time weekly
- Social/Emotional Skills – 10 minutes 1 time daily

The IEP also included a BIP and multiple classroom and testing accommodations.

15. Also on May 27, 2016, the Parent signed consent for the initial provision of special education services.

16. On June 7, 2016, the District executive director of special services (executive director) emailed the Parent, stating that the District was agreeing to pay for an IEE and provided information about selecting a private evaluator. The executive director asked that the Parent provide him with the private evaluator's contact information once she had selected one.
17. On June 13, 2016, the assistant director spoke with the Parent and the Parent indicated that she was no longer requesting an IEE. The assistant director then sent a follow-up email confirming their conversation.

2016-2017 School Year

18. The District's 2016-2017 school year began on August 31, 2016. At that time, the Student continued to attend the same District elementary school and her May 2016 IEP continued to be in place.
19. The elementary school operates Monday, Tuesday, Thursday, and Friday from 8:35 a.m.–3:17 p.m., and on Wednesdays from 8:35 a.m.–1:02 p.m.
20. On September 2, 2016, the Student's special education teacher emailed the Student's general education teacher (Student's teacher) a copy of the Student's May 2016 BIP and an "IEP at a Glance" sheet, which listed the Student's IEP goals and accommodations, and stated the services the Student would receive in a general education setting.
21. On September 6, 2016, a staff member at the elementary school emailed the school principal and attached a draft copy of a schedule, which outlined when students eligible for special education would receive services. The draft schedule stated that the Student would receive reading services from 9:00–9:15 a.m., and services on Thursdays from 1:30–1:45 p.m. It is unclear from the schedule if the reading services would be provided on a daily basis or whether the services on Thursdays were intended to be reading services or social/emotional services.
22. On October 26, 2016, the Student's case manager emailed the Student's teacher, stating that the special education department at the school was being assigned an assistant to help with students eligible for special education that had behavioral needs. The case manager asked if the teacher thought that the Student was in need of having some 1:1 assistant time to help with her behavior. In response, the teacher suggested providing the Student reading support after the case manager left. The teacher stated that "engaged reading" was very difficult for the Student, but that the Student needed to keep reading. The teacher stated that she could really use "someone" from 9:30–10:00 a.m. The case manager replied that she could schedule support at that time, every other day.
23. The District's documentation in this complaint includes two schedules which address the Student's services. One schedule states that the Student receives services from 9:30–10:00 a.m. on "B" days and indicates the services are directed at helping the

Student “with what she is working on.” Another document indicates these are reading services on Monday, Tuesday, Thursday, and Friday. The second schedule also shows the Student is scheduled to receive services from 9:30–10:00 a.m. Neither schedule addresses when the Student receives social/emotional services. According to the District’s response to this complaint, the Student was scheduled to receive social/emotional services from 8:25–8:30 a.m. daily, and 3:05–3:10 p.m. The Student was also scheduled to receive social/emotional services Wednesdays from 11:00–11:15 a.m. and 12:55–1:00 p.m., and was to receive another 10 minutes of social/emotional services throughout the week. It is unclear from the District’s documentation when this schedule was first implemented. Additionally, the Student was scheduled to receive 20 minutes of learning assistance program (LAP) reading services on Wednesdays.

24. The District was on break December 19, 2016 through January 2, 2017.

25. On January 27, 2017, the Student’s IEP case manager emailed the school principal, expressing concern that the Student was beginning to “show bullying” toward her friends. The case manager stated that the Student’s teacher had relayed that the Student had ripped up her behavior chart that day, and the teacher had asked that the case manager speak with the Student. The case manager had then spoken with the Student and realized the Student was beginning to show behavior she had shown the previous school year. As a result, the case manager had the Student speak with the school counselor, and the case manager had also spoken to other staff members. The case manager stated that she wanted to help the Student before it became an issue like the last school year.

26. On March 9, 2017, the Parent emailed the Student’s IEP case manager and teacher, expressing concern that the Student had “pretty emotional” days the last two days, and had been crying due to issues with two girls at school. The Parent stated that she had tried working with the Student at home, but because the Student was so upset, she was not making any progress. The Parent stated that the Student was refusing to go to school and had reported crying during class. The Parent said that she was sure this wasn’t atypical behavior for 4th grade girls, but the Student was not able to process it. The Parent hoped that the case manager could work with the Student on how to handle the situation. The Parent also stated that when she had asked the Student what days she worked with the case manager, the Student reported that the case manager had not come into her class for weeks, and that only the paraeducator came in to help the Student with her schoolwork. The Parent stated that she was sure that this was not the case, because the Student’s IEP provided for behavior support fairly often, but she figured she would ask a few questions. The Parent asked what was being done as far as implementing the Student’s BIP or social/emotional goals, and how and when the Student was receiving her supports.

27. In response, the Student’s teacher stated that she and the case manager had been working with the Student to address the issues with friends, and it seemed that the Student had a difficult time sharing her friends. The teacher planned to rearrange

seating in the class during worktime to try and address the issue. The teacher also stated that she would forward the Parent's concerns about services to the case manager and that she would have the case manager contact the Parent shortly.

28. On March 13, 2017, at 3:53 p.m., the case manager responded to the Parent's March 9, 2017 email, stating that the Student was receiving services and that there had been some temporary changes to the schedule. The case manager stated that the Student had 30 minutes of English services four times per week and "1 half hour behavior". The case manager said the services could be delivered concurrently, or the behavior services could be split up so she was being seen each day. The case manager further stated that when the services were provided concurrently, the Student could write stories about behavior, or behavior could be discussed while the Student worked on writing. The services could also be provided with "LS" or one of the school's behavioral assistants. The case manager stated that extra reading and behavior service times had been scheduled for the Student, and there had been times when the case manager had taken extra time to help the Student work through a difficult situation. The behavioral assistants checked in on the Student and talked with her. Additionally, the case manager stated that she had set up lessons for the Student to help her find the qualities of what makes a good friend, and they were working on facial expressions and feelings to help her understand what her friends' feelings might be. The case manager asked that the Parent let her know if she had additional questions.
29. Also on March 13, 2017, on 4:04 p.m., the Parent emailed the Student's case manager and teacher, expressing concern that the Student was continuing to have issues with a girl in her class. The Parent stated that the Student was refusing to go to school the next day due to the issues, and the Parent was not sure what to do. The Parent stated that she was unsure if the Student was being bullied or if the Student was equally part of the issue. Additionally, the Parent stated that she still had not heard back from the case manager about what was happening with the Student's social emotional goals.¹ The Parent stated that as far as she knew, the Student's IEP/BIP provided that someone was working with the Student several days per week. The Parent asked what the services looked like and when they took place. The Parent also asked that the case manager help address the issue with the Student's classmate, since the Student's teacher was out that day. The Parent stated that she could not continue to allow the Student to become so upset about another student, as it was causing the Student not to eat and feel ill.
30. On March 14, 2017, the Student's case manager emailed the Parent with information about private counseling services. The case manager also stated that the Student had told her assigned paraeducator that she was no longer going to speak to the staff, because staff had sent an email to the Parent. The case manager stated that she would speak with the Student about how it was important that staff

¹ It is unclear from the documentation if the Parent had yet reviewed the case manager's 3:53 p.m. email when she sent her 4:04 p.m. email.

Speak with the Parent about the Student's best interest. In response, the Parent requested a copy of any service notes or service logs for the Student.

31. On March 20, 2017, the Parent emailed the Student's case manager again, requesting copies of any service notes/logs and stated that she had not yet received a response to her prior request.
32. On March 21, 2017, the Student's case manager provided the Parent with information about the Student's services. Later that day, the Parent emailed the case manager, thanking her for the information, but stated that what she was looking for was information on exactly what was being done during the scheduled service time. The Parent asked how the Student was given her reading support and how she was given her emotional/behavioral support. The Parent also asked what program was being used to help the Student in reading and what the once a week behavior support looked like, including the program being used and who provided the support.
33. Also on March 21, 2017, the Parent emailed the Student's teacher, asking if the Student had done better that day working with her assigned paraeducator. The Parent stated that it seemed like pretty regularly, the Student did not want to work with the paraeducator, and the Parent was uncertain what to do about it. The Parent asked if the teacher had any suggestions. The Parent stated that the Student needed her reading support, but constantly spending the time just trying to get the Student to interact with the paraeducator was not helping the Student.
34. On March 22, 2017, the Student's teacher responded that in regard to the Student's reading support, the Student's case manager had spoken with the Student, and when the paraeducator came into the classroom, the case manager was able to reinforce that the Student needed to listen to the paraeducator. It then took a long time for the Student to start following the case manager's directions. The teacher stated that she would speak with the paraeducator to see if the paraeducator could spend some quality time with the Student to get to know her. The teacher stated that the Student could be tricky at times but that it was a matter of having lots of options for her to pick from. The Student enjoyed word work activities, which was the area she needed the most help with. The teacher thought that the paraeducator may be able to engage the Student in these activities. The teacher stated that she would keep the Parent updated on how things progressed over the following week.
35. On March 23, 2017, the Parent emailed the Student's case manager, requesting copies of any service logs that showed exactly when the Student received reading and behavior support, and what the support looked like. The Parent also asked what reading program was being used with the Student. Additionally, the Parent stated that at the May 27, 2016 IEP meeting, school staff had discussed gathering data to determine if the Student qualified for extended school year (ESY) services. The Parent requested a copy of the data. The Parent also stated that she had requested that the May 27, 2016 IEP meeting be recorded, and was told that she would receive a transcript based on the audio recording. The Parent had not yet

received a copy of the transcript, and asked to be provided one. In response, the school principal called the Parent to discuss her request for service logs. The principal suggested a meeting to review the logs.

36. On March 24, 2017, the Parent emailed the school principal, stating that the Student had not been functioning well at school and that she was concerned about the Student's educational progress. The Parent stated that she was making a referral for an assessment for special education services, and was specifically requesting that the Student be assessed for dyslexia and in the area of assistive technology. The Parent asked that the principal inform her if she should send the request to another staff member or needed to complete a referral form.
37. On March 25, 2017, the Parent emailed the school principal, suggesting they meet to review the Student's service logs later that week. The Parent stated that she wanted to meet with the Student's case manager and paraeducator. The Parent wanted to know what was happening that was causing the Student to not want to work with the staff members. The Parent stated that the Student had always loved reading even though she was not at grade level, and had enjoyed her reading support services in 1st-3rd grade.² However, since she had been working with the case manager and paraeducator, the Student had come to hate the reading support. The Parent was unsure why. The Parent stated that the Student had been crying about having to work with the staff members, and the Parent thought it was a great idea to meet and discuss what was going on. The Parent stated that even if they could not meet that week, she needed to receive the information about the service logs prior to the Student's upcoming IEP meeting. The Parent said that there should not need to be an IEP meeting to review the logs or meet with the staff members, since nothing was being changed in the Student's IEP at this time.
38. On March 28, 2017, the Parent emailed the school principal and copied the Student's case manager and teacher. The Parent stated that the Student was crying hysterically about having to work with the "reading specialist" at school the next day. The Student had relayed that at school, the reading specialist had come in and "just sat there" while the Student read the assigned class work to herself, and did nothing but sit there, with the exception of helping with one word. The Student had also relayed that the case manager was angry and upset with her because the Student had told the Parent about crying during reading support time. The Student had also stated that she had been punished and kept in from recess, and did not want the Parent to contact the staff again. The Parent stated that she did not know what had happened at the school, but knew the Student's perspective and that the Student was upset about her recess being taken away. The Parent also expressed concern that the Student was exhibiting self-injurious behavior, which she had not exhibited in many years, and was also exhibiting other behaviors that the Parent had not previously seen before that school year. The Parent stated that she was unsure how to move forward, as the Student needed her reading support, and felt that

² Prior to being eligible for special education reading services, the Student had received LAP reading services.

halting the services, even temporarily, would send the Student the wrong message. The Parent stated that as far as behavior went, the Student needed help interacting with peers and learning how to be a good friend, and not how to deal with the “very specific niche issue” of not getting along with the reading specialist. The Parent further stated that the same failed approach was not helping the Student, was not providing FAPE, and was hurting the Student. The Parent said she could not let the Student continue to harm herself because she was overwhelmed by what was happening at school. The Parent also stated that she was willing to meet with staff to discuss suggestions for moving forward. In response, the principal called the Parent that evening, but was unable to reach her.

39. On March 29, 2017, the Parent emailed the school principal, stating that she could meet during the week of April 10, once the District returned from spring break.
40. Also on March 29, 2017, the Student’s case manager emailed the Parent, stating that she understood a meeting was being arranged. The case manager asked how the Student’s behavior at home had been yesterday and today. The Parent replied that the Student had really good days, had been in a positive mood, and not said anything negative about school.
41. The District was on break April 3-7, 2017.
42. On April 13, 2017, the school principal emailed the Parent, stating that he had been able to arrange a meeting for April 19 to discuss the Student’s reading instruction. The Parent later confirmed that she could attend.
43. On April 18, 2017, the Parent emailed the school principal, stating that she had not yet received a response to her March 24 request for an evaluation and asked where the District was in the process.
44. On April 19, 2017, the Parent met with the Student’s case manager to discuss the Student’s reading services and reevaluating the Student. Based on the District’s documentation in this complaint, it appears the school principal also attended the meeting, and it is unclear if other staff members also attended.
45. The District’s documentation in this complaint includes a prior written notice, dated April 19, 2017, proposing to continue the Student’s IEP. Based on the documentation in this complaint, it appears the April 19 notice was not sent to the Parent until May 2017. The notice stated that the Student’s IEP team met to discuss reading services for the Student. The notice also stated that the Parent made several requests that the team needed to consider, and that the team agreed to initiate a reevaluation of the Student. The notice stated:

The team agreed to keep services the same at this time. There were a few flexible options the team could consider looking at the next IEP, which will be held in May. Those options included providing the reading instruction in the special education setting, changing the staff who is providing the instruction, and increasing services

minutes for [the Student] in reading. The team agreed to add communication of reading activities to the daily behavior form that goes home...

The team discussed Parent's request for an assessment for dyslexia. [The Student]'s eligibility category is health impairments, and dyslexia falls under specific learning disabilities. The team will be considering this during the reevaluation. Parent also requested an assessment for assistive technology. This is something the team will consider during the reevaluation...

[The Student] is being provided reading instruction four times a week (9:00 am- 9:30 am Monday, Tuesday, Thursday, and Friday) in small group instruction and the special education teacher supports [the Student's] access to reading instruction during independent reading time. A paraeducator is also providing check-ins on [the Student's] independent access to phonics and reading comprehension instruction twice weekly. Positive reinforcements were implemented earlier in the week to support [the Student] with engagement and specially designed instruction and check-ins.

Both the general education teacher and special education teacher shared that they have seen progress in [the Student's] reading abilities over the course of this school year. It was also noted that [the Student] was asking for more breaks during reading instruction and the material is getting challenging.

[The Student] is also part of a reading group (which everyone in the class is part of at some point) for fluency and phonics. This occurs three times a week. [The Student] is working on chunking her words and vowels teams. [The Student] is getting positive reinforcement for joining this group from the general education teacher.

46. Also on April 19, 2017, the Student's case manager emailed the Parent, stating that after thinking about it, she thought the best way to get the Student's behavioral charts to the Parent was to have the Student's paraeducator make copies of the chart and give it to the Student at the end of each day. In response, the Parent stated that this would be fine, and that as she had mentioned in the meeting, it would also be fine to send the behavior charts once a week. The Parent stated that she was more concerned about the Student's reading services and hoped to receive information about what the services looked like. However, since the Student's behavior was interfering with her reading, it was fine to send that information too.
47. On April 20, 2017, the Parent emailed the school principal to follow up on their conversation on April 19. The Parent stated that she wanted to make sure her request/permission for the dyslexia and assistive technology assessments "stand". The Parent stated that she "absolutely wanted" the Student to be assessed in those areas. The Parent also stated that she knew the principal had mentioned state vs. federal law and had provided an explanation around that, but the Parent wanted a yes or no answer regarding the assessments.
48. Also on April 20, 2017, the school psychologist (school psychologist 2) emailed the Parent, stating that the District wanted to move forward with the reevaluation, which would include the areas of reading, writing, communication, and assistive

technology, and an observation. School psychologist 2 stated that a cognitive test file review would be completed, as well as a review of social/emotional and medical information. The psychologist also stated that she was attaching a consent for evaluation form and asked that the Parent return it as soon as possible. Once the District receive the consent form, it would proceed with the evaluation. The attached notice/consent form stated that the District would conduct assessments in the area of medical-physical, social/emotional, academics, cognitive, and communication, and would include a review of existing data.

49. In response, the Parent stated that she would have to think about the reevaluation, as she had not been given an explanation as to why all the assessments were needed or necessary. The Parent stated that her request was, and her consent would be given, for two areas – dyslexia and assistive technology. The Parent asked that the psychologist explain why each requested assessment areas was relevant to those two things. The school psychologist replied that cognitive and academic testing were required by state regulations to identify a learning disability, but that the District could use the cognitive assessment information from the Student's April 2016 evaluation. Additionally, communication testing would be used to better understand the Student's learning in the areas of reading and writing, and would focus specifically on vocabulary. The psychologist stated that an observation of the Student and medical information were also required, and that because the Student had IEP goals in the area of social/emotional, the reevaluation needed to reflect testing in those area. However, the District could use the information from the Student's prior evaluation. Later that day, the District executive director also replied to the Parent's email, stating that "an assessment related to a student's reading needs completed in a manner to address your request of dyslexia assessment" required assessment in the following areas: cognitive skills, oral language skills, word recognition, decoding, spelling, phonological process, automaticity/fluency skills, vocabulary skills, and reading comprehension skills. The executive director stated that the District's proposed reevaluation included assessments to address each of these areas.

50. The Parent responded that she believed "all of this" was evaluated last school year, and asked if it could just be reviewed. The Parent stated that in requesting to have the Student reevaluated, it had not occurred to her that the data was already available. The Parent said that to her understanding, if dyslexia was something that the Student had, it was not something she would outgrow nor suddenly develop, and asked what the April 2016 evaluation showed in regard to dyslexia. The Parent stated that if the prior evaluation supported that the Student may have dyslexia, then she wanted the Student's next IEP to reflect this and be geared toward helping the Student using a proven, data driven reading support plan for students with dyslexia. The Parent also stated that the Student did not always like tests and evaluations, and they sometimes made her angry. The Parent did not want to cause the Student to be upset, if the District could use data from the prior evaluation. Additionally, the Parent stated that based on information she received at the April 19 meeting, the Student was receiving reading services in her general education class four days per week from her case manager or an aide. During that time, the case manager or aid

assisted the Student with class work that the general education teacher was teaching. The Parent asked if this was correct, and further asked if the Student only received the reading services during reading time in the general education class.

51. On April 26, 2017, the District executive director emailed the Parent, stating that the Student had been initially evaluated and identified for special education services as a student with a health impairment that required services in the areas of reading and social/emotional skills. The executive director also stated that the Parent had asked the District to consider if the Student demonstrated needs related to dyslexia, which fell under the eligibility category of specific learning disability. The executive director then provided the definition of a specific learning disability. Additionally, the executive director stated that the Student's prior evaluation did not provide enough information to determine if the Student had a specific learning disability, including dyslexia, and stated that the District was willing to conduct a reevaluation to further investigate and address whether the Student had dyslexia. However, if the Parent did not want the District to conduct the reevaluation, it would continue to provide the Student the services in her current IEP. The executive director also stated that the Student's current reading services focused on reading vocabulary and phonological awareness, and that the school principal would provide more information about when the reading services were provided. The executive director said that if the Parent had additional questions about the services, an IEP meeting could be scheduled.
52. On April 27, 2017, the school principal emailed the Parent, stating that the Student's reading services were provided from 9:00-9:30 a.m. on Monday, Tuesday, Thursday, and Friday.
53. Also on April 27, 2017, the Parent emailed the District executive director and other school staff, stating that she did not think they were "on the same page". The Parent stated that her request was for the Student to be assessed for dyslexia and what her current reading level was as compared to last year. The Parent had not requested an entire reevaluation of the Student's IEP. The Parent stated that she had not yet signed the consent form, and was waiting to meet with her advocate, because every box on the consent form was "pre-checked" and not everything had to do with dyslexia/reading. The Parent stated that she did not want to reevaluate the Student's behavior support plan. The Parent said that for some time, the District had her permission to assess for two areas, which both had to do with reading, and that she as having a hard time understanding why the consent form included social/emotional and behavior support plan. The Parent stated that until she met with her advocate, the District could retest the Student using the Wechsler Individual Achievement Test—Third Edition (WIAT III), and assess the Student for dyslexia and any assistive technology that could help her. Additionally, the Parent stated that she did not believe the Student was receiving reading support from 9:00-9:30 a.m., because on the days she was provided a teaching aide (paraeducator), the paraeducator did nothing but sit there unless the Student asked for help. The Parent stated that she did not need to know the times the Student was supposed to be receiving help, but wanted clarification as to what was actually happening during that

time, which was why she had repeatedly asked for the service logs to show what was worked on. The Parent said that when she met with the “reading team”, it was explained that the reading support was helping the Student, if she did not reject the help, with regular classwork only, and currently did not offer any additional support beyond classwork. The Parent asked if this was correct. The Parent then expressed concern that the Student was not making as much progress in reading as she had in past years, and that whatever support was being provided to the Student was not helping. The Parent said that no one had been able to give her an answer as to what was being done outside of the regular classwork, and hoped that additional assessments would pinpoint an area for school staff to support the Student in. The Parent also expressed concern that the Student was not getting along with the paraeducator, and hoped that the new plan the Student’s case manager had put in place would help the Student’s attitude toward reading.

54. In response to the Parent’s email, the executive director asked school staff to schedule an IEP meeting. Based on the District’s documentation in this complaint, an IEP meeting to develop the Student’s annual IEP had already been scheduled for May 15, 2017, but the executive director was not informed of the meeting.

55. On May 9, 2017, the Parent emailed the District superintendent, stating that her April 27 email had not been responded to by the executive director or the school principal. The Parent said that since March 2017, she had been requesting that the Student be evaluated for dyslexia, and that she agreed at the April 19 meeting that the Student could be assessed using the WIAT III in order to compare her current reading level to last year’s reading level. The Parent stated that she had now received a prior written notice, postmarked May 5, regarding the April 19 meeting, which stated the meeting was an IEP meeting to discuss a reevaluation. The Parent stated that this had not been mentioned before the meeting or at the meeting. Additionally, the Parent stated that it was agreed that she would receive weekly communication from the Student’s case manager regarding the support the Student was receiving, but she had only received one communication. The Parent then expressed concern that the consent form was for an entire evaluation of the Student’s IEP, including her behavior support plan, and stated that she would not provide consent, because no one had explained why this was being evaluated. The Parent stated that at the April 19 meeting, it had not been mentioned that the Student would be reevaluated beyond using the WIAT III, and that she had repeatedly asked for a consent form that did not address the Student’s behavior plan. The Parent had not yet received an updated consent form. The Parent also stated that the Student had not been receiving her reading support as listed in her IEP, as the support had been “very sporadic” and the Student had received it based on her mood. The Parent said that the support was not working. The Parent then requested a copy of the Student’s educational records, including a copy of the audio recording from the May 27, 2016 IEP meeting, and stated that she planned to file a citizen complaint if she did not hear back from the District by the end of the week.

56. In response, the District executive director, who had been copied on the email, stated that staff at the elementary school would be contacting the Parent to set up

an IEP meeting to address her request for a dyslexia evaluation and her concerns about the Student's reading services and progress. The executive director stated that he would work on collecting the records the Parent had requested and notify her when they were available.

57. On May 10, 2017, the Parent then replied that waiting until the IEP meeting on May 15, did not help the Student. The Parent then again expressed concern about the District's proposed reevaluation and the Student not receiving her reading services. The Parent also expressed concern that she had not received clear answers to her questions regarding the Student's reading services, and stated she would file a citizen complaint. The next day, the executive director stated that it appeared the Parent's questions were not being addressed through email and that the Parent's requests would be discussed at the IEP meeting on May 15. The executive director attached a copy of the procedural safeguards.

58. Also on May 10, 2017, the Student's case manager emailed the Parent, stating that she had been sending home a copy of the Student's behavior chart, but would now begin emailing the Parent a copy of the chart in addition to sending it home with the Student. The case manager would also resend the prior reports once she collected them. The case manager stated that the Student had been achieving her behavior goals and earned a reward the last two weeks. In response, the Parent stated that she appreciated and welcomed feedback on the Student's behavior and used the information to discuss the behavior with the Student at home. The Parent also stated that she was also hoping to get updates regarding the Student's reading support, more than the behavior updates, and that once a week was fine.

59. On May 15, 2017, the Student's IEP team, including the Parent, met to develop the Student's annual IEP and discuss the Parent's concerns and requests. Based on the District's May 15 prior written notice, the IEP team discussed the Student's reevaluation and agreed that the reevaluation would include assessments in the areas of academics, cognitive, and language (communication), and would include a review of data regarding the Student's social/emotional assessments from the April 2016 evaluation, and a review of prior medical information.

60. The Student's May 15, 2017 IEP included annual goals in the areas of reading and social/emotional skills. The IEP stated that the Student would receive the following specially designed instruction provided by a "staff assistant":

- Reading – 30 minutes 4 times weekly (general education setting)
- Social/Emotional Skills – 30 minutes 1 time weekly (general education setting)
- Social/Emotional Skills – 5 minutes 2 times daily (general education setting)
- Reading – 15 minutes 4 times weekly (special education setting)

The May 2017 also included an updated BIP and multiple classroom and testing accommodations.

61. Also on May 15, 2017, the Parent filed this citizen complaint.

62. On May 22, 2017, the school psychologist emailed the Parent and attached an updated consent form based on the IEP team's agreement at the May 15 meeting. As of June 6, 2017, the Parent had not yet provided consent for the District to conduct the reevaluation.

CONCLUSIONS

Issue 1: Request for a Reevaluation – A school district must conduct a reevaluation at least every three years, or when the district determines that the educational needs of a student warrant a reevaluation, or if a parent or teacher requests a reevaluation. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. When a district determines that a student should be reevaluated, it must provide prior written notice that describes all of the evaluation procedures that the district intends to conduct. The district must then obtain the parent's consent to conduct the reevaluation. Here, the District provided the Parent with a notice/consent form within a reasonable time (fourteen school days) of her request for a reevaluation, and the notice/consent form appropriately addressed assessments to help the District determine if the Student had a specific learning disability in addition to her needs related to her other areas of documented disability. While the Parent may have disagreed with the District's proposed assessment, the District was required to evaluate the Student in all areas of suspected disability. The District followed procedures for responding to the Parent's request for a reevaluation during the 2016-2017 school year.

Issue 2: IEP Implementation – The District failed to substantiate that it provided the Student with specially designed instruction consistent with the Student's May 2016 IEP. First, the District's documentation includes conflicting and unclear information as to when the Student was scheduled to receive her services, and indicates that the Student may have been provided some of her services concurrently, even though her IEP did not provide for the services to be provided concurrently. Additionally, while the IDEA and state regulations allow for paraprofessionals to assist in the provision of special education, that instruction must be designed and supervised by special education certificated staff, and a student's progress must be monitored and evaluated by special education certificated staff. Here, while it was allowable to have a paraeducator assist in providing the Student's reading services, there is no documentation to show that the Student's case manager was designing instruction to address the Student's IEP reading goals and there is no documentation to show that the paraeducator provided the Student with specially designed instruction. The District has acknowledged the lack of documentation in its response to this complaint. Further, the District's documentation in this complaint indicates that the Student's progress in reading was monitored by her general education teacher and the District's LAP reading specialist, but it is unclear if her case manager was monitoring her progress. The District proposed providing the Student with 20 hours of compensatory services to address any services the Student did not receive. OSPI agrees that compensatory services are warranted. However, the District will provide the Student with 34 hours of services, which is one-half the amount

of services³ the Student should have received from August 2016 through May 15, 2017, when the Parent filed this complaint. The District has also acknowledged that there is no documentation in the form of behavior reports, to show the Student received her social/emotional services prior to November 22, 2016, and proposed providing the Student 13 hours of services to address any services she missed from August–November 22, 2016. However, the behavior reports do not show that the Student was receiving specially designed instruction, but rather paraeducator support with the paraeducator checking in with the Student. Additionally, as discussed above, it was unclear from the Student’s schedule when she was to receive all of her social/emotional services. The District will provide the Student with 23 hours of compensatory services in the area of social/emotional skills, which is approximately one-half the amount of services the Student should have received from August 2016 through May 15, 2017, when the Parent filed this complaint.

Issue 3: Request for Records – The Parent alleged that the District failed to provide her with a copy of the recording of the May 27, 2016 IEP meeting. A school district must respond to parents with a copy of educational records within forty-five calendar days. Here, the District stated in its response that there is no audio recording of the May 27, 2016 IEP meeting because the recording device malfunctioned. Therefore, the District could not provide the Parent with a copy of the recording and has complied with the special education regulations regarding student records. However, given that the Parent was counting on being provided a transcribed copy of the audio recording based on information she was provided by District staff, the District should have informed the Parent of the technical issues with the recording device at the time of the meeting or shortly thereafter, so she could have documented the meeting in another manner.

CORRECTIVE ACTIONS

By or before **September 20, 2017, November 13, 2017, January 12, 2018, March 9, 2018, and May 7, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

By **September 15, 2017**, the District will meet with the Parent to develop a schedule to provide the Student with a total of 57 hours of compensatory services (23 hours of social/emotional services and 34 hours of reading services). The services will be provided outside of the District’s regular school day, and may be provided during the summer of 2017, in addition to any other ESY services determined necessary by the Student’s IEP team. All reading services must be provided by a certificated special education teacher. Services in the areas of social/emotional may be provided by a certificated special education teacher or a school counselor. If the District’s provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours’ notice of the absence, the District does not need to reschedule. The

³ The services have been reduced by one-half, given the more intensive instruction that can be provided through 1:1 tutoring, rather than in a classroom or group setting.

services must be completed no later than **May 1, 2018**. The District will provide OSPI with documentation of the schedule by **September 20, 2017**.

The District must provide OSPI with documentation by **November 13, 2017, January 12, 2018, and March 9, 2018** of the compensatory services provided to the Student. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student. No later than **May 7, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **May 7, 2018**.

DISTRICT SPECIFIC:

NONE

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

RECOMMENDATION

It is recommended that the District review, and if necessary, revise its policy on recording IEP meetings to ensure a clear policy can be provided to staff and parents.

Dated this ____ day of July, 2017

Glenna L. 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.)