

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-48

PROCEDURAL HISTORY

On May 16, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Battle Ground 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 May 18, 2018, 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 8, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on June 11, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On June 29, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

On June 13, 2018, the OSPI complaint investigator conducted a site visit/interviews.

OSPI considered all of the information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the site visit/interviews.

OVERVIEW

During the 2016-2017 and 2017-2018 school years, the Student attended a District elementary school and was eligible to receive special education and related services under the category of other health impairment. On May 17, 2017, the Student's individualized education program (IEP) team developed a new IEP for the Student that provided, among others, an adaptive goal for ascending and descending stairs and a motor goal regarding tossing and catching a ball. The service the District would provide to address the motor goal was physical therapy, but the physical therapy services also addressed the adaptive goal. The May 2017 IEP also included an accommodation to provide the Parent with therapy session notes every six weeks.¹ In March 2018, the District conducted a reevaluation of the Student, which included a motor assessment. The evaluation report recommended changing the physical therapy as a related service to specially designed instruction. At an April 25, 2018 IEP meeting, the District proposed a new IEP, which no longer included a goal regarding descending and ascending stairs. The Parent requested physical therapy as a related service and annual goals for physical therapy. The Parent and the

¹ Although the IEP listed the therapy notes every six weeks under "accommodations," accommodations are limited to being provided to the Student.

District then agreed to delay the implementation of the new IEP in order to resolve the disagreement.

The Parent alleged that the District failed to do the following: conduct a comprehensive evaluation; develop goals for physical therapy; implement physical therapy and adaptive services; implement services at the beginning and end of each day; implement the accommodation to send data to the Parent each six weeks; and failed to conduct progress monitoring and report progress on the goal for the stairs. The District denied the allegations.

ISSUES

1. Did the District follow procedures for evaluating the Student in the area of physical therapy as part of a comprehensive evaluation?
2. Did the District follow procedures for developing the annual goals in the area of physical therapy in the April 25, 2018 individualized education program (IEP)?
3. Did the District follow procedures for implementing services in the Student's IEP(s) in the areas of physical therapy and adaptive behavior?
4. Did the District follow procedures for implementing the accommodations/modifications in the Student's IEP(s)?
5. Did the District follow procedures for monitoring and reporting progress towards the annual goal regarding the use of the Student's backpack?

LEGAL STANDARDS

Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student to determine if what additional data, if any, are needed to determine eligibility and special education and related services. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. 34 CFR §300.305(a); WAC 392-172A-03025. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305(d); WAC 392-172A-03025(5). The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to

enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304(c); WAC 392-172A-03020(3).

Measurable Annual Goals: IEPs must include a statement of the student's measurable annual goals, including academic and functional goals designed to: meet the student's needs that result from the student's disability so that he or she can be involved in and make progress in the general education curriculum; and, meet each of the student's other educational needs that result from the student's disability. Additionally, for students who take alternate assessments aligned to alternate achievement standards, the statement of measurable annual goals should include a description of the benchmarks or short-term objectives the student should meet. 34 CFR §300.320(a)(2); WAC 392-172A-03090(1)(b).

Definition of Specially Designed Instruction: Specially designed instruction means adapting, as appropriate to the needs of an eligible student, the content, methodology, or delivery of instruction: to address the unique needs of the student that result from the student's disability; and to ensure access of the student to the general curriculum, so that the student can meet the educational standards within the jurisdiction of the public agency that apply to all students. A need for special education is not limited strictly to academics; it also may include physical education, transition services, behavioral progress, and the acquisition of appropriate social and/or organizational skills. 34 CFR §300.39; WAC 392-172A-01175.

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(i).

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(a); WAC 392-172A-03105(1). 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.

Progress Reports: The purpose of progress reporting is to ensure that, through whatever method chosen by a school district, the reporting provides sufficient information to enable parents to be informed of their child's progress toward the annual IEP goals and the extent to which that progress is sufficient to enable the child to achieve those goals. *Amanda J. v. Clark County Sch. Dist.*, 267 F.3d 877, 882 (9th Cir, 2001) (parents must be able to examine records and information about their child in order to "guarantee [their] ability to make informed decisions" and participate in the IEP process). IEPs must include a statement indicating how the student's progress toward the annual goals will be measured and when the district will provide periodic reports to the parents on the student's progress toward meeting those annual goals, such as through the use of quarterly or other periodic reports concurrent with the issuance of report cards. 34 CFR §300.320(a)(3); WAC 392-172A-03090(1)(c).

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education and related services under the category of other health impairment.
2. On May 10, 2017, the District conducted a reevaluation of the Student in the areas of medical/physical, communication, and behavior/social. The evaluation report stated the Student had numerous medical issues and the need for supra malleolar orthotic leg braces. The report stated that the Student was not toilet trained and required a frequency modulation (FM) system. He also required continual access to food and fluids, which are considered "more important than academic work." Additionally, the evaluation report stated that with curriculum modifications and a one-to-one paraeducator, the Student was performing at grade level in reading, math, and written language. In communication, his pragmatic language usage was within normal limits. Regarding behavior, the Student displayed age appropriate social skills, although his play behavior was repetitive and interactions with others would last only a few minutes. The evaluation report recommended that the Student receive specially designed instruction in the areas of adaptive, behavior/social, and written language and related services in the area of physical therapy. The evaluation report also recommended the following supplementary aids and services: autism consultation; 1:1 assistant; hearing impaired specialist; speech/language pathologist consultation; physical therapist consultation; assistive technology; and occupational therapist consultation.

Based on the evaluation results, the Student's evaluation group determined that he continued to be eligible for special education services under the category of other health

impairment. The eligibility group had considered identifying the Student also under the category of autism, but the prior written notice to the Parent stated:

[Student's] team feels that, while he is impacted by autism, other health impairment better accounts for his multiple medical diagnoses. Based on [Student's] performance on a standardized language assessment, he is not in need of specially designed instruction. [Student's] needs in the area of pragmatic language can be addressed through instruction in behavior/social. The team agreed to emphasize pragmatic language and reciprocal social interactions in his behavior/social goals.

3. On May 17, 2017, the one-year timeline for this complaint began.
4. On May 17, 2017, the Student's IEP team, including the Parent, developed the Student's annual IEP. The May 2017 IEP team included annual goals in the areas of adaptive, behavior/social, motor, social skills, and written language. The IEP stated that the progress reporting regarding the annual goals would be provided on a semester basis. Two of the Student's goals were:
 - Adaptive: By 5/17/18, when give the opportunity to ascend or descend while wearing his backpack, [Student] will independently ascend and descend steps with rail support improving functional school access from stand by supervision 100% of opportunities to independent 100% of opportunities as measured by staff and therapist observation and data collection.
 - Motor: By 5/17/18, when given opportunity to participate in catch and toss with peers, [Student] will throw overhand with forward release and catch with two hands improving functional ball skills from 50% of opportunities to 90% of opportunities as measured by therapist data collection.

The IEP provided for the following special education and related services in a general education setting:

Service	Provider	Monitor	Frequency
Physical Therapy	Physical Therapist	Physical Therapist	30 minutes/1 time weekly
Written Language	Special Education Assistant	Special Education Teacher	20 minutes/5 times weekly
Behavioral/Social	Special Education Assistant	Special Education Teacher	10 minutes/10 times weekly
Adaptive	Special Education Assistant	Special Education Teacher	10 minutes/5 times weekly

The IEP provided the following supplemental aids and services in a general education setting:

Service	Provider	Monitor	Frequency
1:1 Assistant	Special Education Assistant	Special Education Teacher	1850 minutes/1 time weekly
Hearing Impaired Specialist	Hearing Impaired Specialist	Hearing Impaired Specialist	30 minutes/1 time weekly
Speech/Language Consultation	Speech/Language Pathologist	Speech/Language Pathologist	30 minutes/1 time weekly
Physical Therapy Consultation	Physical Therapist	Physical Therapist	30 minutes/1 time weekly

Occupational Therapy Consultation	Occupational Therapist	Occupational Therapist	60 minutes/1 time weekly
Assistive Technology	Assistive Technology Consultant	30 minutes/1 time weekly	60 minutes/1 time weekly
Autism Consultation	Autism Consultant	Autism Consultant	60 minutes/1 time weekly

The IEP provided for thirty-two accommodations/modifications and supports for school personnel, including a list of forty-three accommodations/modifications that expanded and clarified the accommodations/modifications in the IEP. The accommodation most pertinent to this investigation is as follows: “Parents will be provided with therapy session notes, consultation log and teacher collection including data percentages every six weeks”.

5. In an interview with District staff, the District reported that the Student’s physical therapy related services were provided by a physical therapist assistant² and supervised by a certified physical therapist.³ The physical therapy services, at the insistence of the Parent, were integrated into the Student’s general education recess time and physical education class and were to coincide with the activity the Student was participating in at the time. The District also reported that both the special education teacher and the physical therapist provided services to address the annual adaptive goal regarding ascending and descending stairs. These adaptive services were also integrated into general education activities during the school day.
6. On June 22, 2017, at the end of the second semester, the District issued progress reporting regarding the Student’s annual goals. The progress reporting for the adaptive goal regarding ascending and descending stairs stated that the Student was making sufficient progress to achieve the goal within the duration of the IEP. Regarding the annual goal in catching and tossing a ball, the Student was also making sufficient progress to achieve the goal.
7. On June 23, 2017, the 2016-2017 school year ended.
8. The Student’s special education teacher for the 2016-2017 school year provided the following written statement for this investigation: “I provided adaptive services for [Student] for the 2016-2017 school year. The services were provided in his general education first grade classroom. I also provided the accommodations and modifications as written in his Individualized Education Program.”

² The District acknowledged that the IEP did not clarify that the physical therapy assistant would provide the Student’s direct physical therapy service. WAC 392-172A-02090(i) allows that general education teachers and paraprofessionals, or in this case, a physical therapy assistant, 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.

³ According to the documentation, the physical therapist had a continuing educational staff associate certificate with a school physical therapist endorsement, which was valid through June 30, 2018. The physical therapist had twenty-seven years of experience in the school as a physical therapist.

9. The District provided documentation regarding the physical therapy services the Student received during the 2016-2017 school year. The documentation shows the services addressed balancing activities, ascending and descending stairs, and throwing. The documentation indicated that on some days, there was “no opportunity” to work on a particular skill, mostly throwing, because the Student was engaged in other activities that did not involve throwing a ball, or choose not to participate, while at recess or in physical education.
10. According to the Student’s attendance record, the Student missed thirty-one (31) full days and twenty-six (26) half days during the 2016-2017 school year.

2017-2018 School Year

11. On August 30, 2017, the District’s 2017-2018 school year began. At that time, the Student continued to attend the same elementary school and his May 2017 IEP was in place.
12. The documentation in this complaint includes the following daily checklist and schedule for the Student:

8:55 – 9:05 am

- Assistant meets bus; make sure [Student] has backpack on to ascend stairs with rail support; social story for lining up with peers; entry to building with focus on safety on stairs; refer to visual schedule for all activities and transitions

9:00 – 9:20 am – Opening

- Ensure attention upon entering classroom
- FM system-hearing aids; check working status-batteries
- Encourage greeting adults and peers-teacher/assistant
- Bathroom: follow visual prompts; g-tube check; record data on charts
- Extra time to unpack lunch; store backpack-assistant
- Check that seat cushion and foot support is in place-assistant
- Open lunch box and drink on desk with reach-assistant
- Refer to visual schedule for transition to writing-assistant

9:20 – 10:00 am – Writing

- Ensure attention prior to hearing instructions
- Repeat/model instructions-teacher
- Check for understanding of task-teacher
- Weighted pencil/slant board-assistant
- Shorten assignment/extra time for work-teacher
- Breaks while working-teacher/assistant
- Allow oral responses
- Use of chrome book/highlighted work to trace from his dictation
- Refer to visual schedule for transition to specialist-assistant

10:00 – 10:40 am – Specialists

- Ensure attention prior to transition-assistant
- Guide on stairway for transitions-assistant
- Walk within arm’s length for transition-assistant

- Allow additional mobility time to get settle at specialist-teacher
- Repeat/model instructions-teacher
- Check for understanding-teacher/assistant
- Prompt to prepare for transition back to general education classroom-assistant

10:40 – 11:10 am – Reading Intervention (Guided Reading)

- Ensure attention prior to hearing instruction-assistant
- Repeat/model instructions-teacher
- Check for understanding of task-teacher
- Shorten assignment-teacher
- Use first/then prompt-assistant
- Have [Student] repeat info-assistant
- Allow additional time to process information-teacher/assistant
- Bathroom break with assistant and additional stand-by adult

11:10 am – 12:10 pm – Whole Group Reading

- Ensure attention prior to hearing instructions-teacher
- Repeat/model instructions-teacher
- Check for understanding of task-teacher
- Shorten assignment-teacher
- Use first/then prompt-assistant
- Have [Student] repeat info-assistant
- Allow additional time to process information-teacher/assistant
- Bathroom break with assistant and additional stand-by adult

12:10 – 12:40 pm – Math Intervention (small group instruction)

- Ensure attention prior to hearing instruction-assistant
- Sitting in close proximity to teacher
- Repeat/model instructions-teacher
- Check for understanding of task-teacher
- Shorten assignment-teacher
- Use first/then prompt-assistant
- Have [Student] repeat info-assistant
- Allow additional time to process information-teacher/assistant
- Chrome book for math practice of facts-ensure attention to directions
- Check with [Student] regarding FM system for chrome book use
- Verbal prompts to work only on teacher directed tasks-no changing of chrome book settings (visual prompt for this as well)

12:40 – 1:20 pm – Lunch and Recess

- Visual schedule reminder/prompt for transition to lunch-assistant
- Wearing backpack while descending stairs; rail support and proximity-assistant
- Walk within arm's length for transition-assistant
- Allow additional mobility time to get settled at cafeteria-assistant
- iPad with app to encourage eating-assistant
- Verbal prompt prior to dismissal for recess-assistant
- Remain with arm's length proximity for safety-assistant
- Visual prompt for lining up to transition back to class

- Bathroom with stand-by adult-assistant
- Direct attention to visual prompts for toileting/hand washing

1:20 – 2:25 pm – Math

- Ensure attention prior to hearing instructions-teacher
- Repeat/model instructions-teacher
- Encourage [Student] to ask for the tools needed-teacher
- Check for understanding of task-teacher
- Shorten assignment-teacher
- Break down directions into first/then prompt-teacher
- Have [Student] repeat information-assistant
- Allow breaks, encourage food/drink
- Dictation for longer explanations of math work

2:25 – 2:40 pm – Recess

- Verbal prompt prior to dismissal for recess-teacher
- Visual for lining up with peers-assistant
- Verbal prompt-hands to self-assistant
- Safety on stairs-hand on rail reminder-one step at a time-assistant
- Remain within arm's length proximity for safety-assistant
- Visual prompting for lining up to transition back to class

2:40-3:00 pm – Class meeting

- Ensure attention prior to hearing instructions-teacher
- Sitting in close proximity to teacher
- Repeat/model instructions-teacher
- Check for understanding of task-teacher
- Conversational turn taking with peers and adults

3:00 – 3:30 pm – Thematic (Second Step, Social Studies, Science, Collaboration)

- Ensure attention prior to hearing instructions-teacher
- Repeat/model directions
- First/then visual prompt; break down instructions
- Allow oral response/dictation for written responses
- Refer to visual schedule for end of day

3:30 – 3:40 pm – Closing

- Pack up
- Bathroom break with assistant and additional stand-by adult
- Line up with peers
- Wearing backpack to descend stairs
- Exchange greeting/farewells with peers and adults
- Escort to bus

13. On November 27, 2017, the special education teacher emailed the Parent the following sets of data: occupational therapy consultation notes; physical therapy session notes; communication documentation; and time log.

14. From December 18, 2017 to January 1, 2018, the District was on winter break.

15. On January 22, 2018, the special education teacher emailed the Parent copies of the teacher data collection, consultation logs, and therapy session notes.
16. The District's first semester ended on January 26, 2018.
17. On January 29, 2018, the physical therapist completed progress reporting regarding the Student's motor goal, indicating that the Student was making sufficient progress in catching and tossing a ball to eventually meet the annual goal within the IEP timeline. On February 2, 2018, the District provided progressing reporting for the adaptive goal for ascending and descending stairs, indicating that the Student was making sufficient progress to eventually meet the annual goal within the IEP timeline.
18. On February 5, 2018, the contact attempt record indicated that the District contacted the Parent regarding consent for a three-year reevaluation to determine eligibility and the Student's need for special education and related services. There was no documentation of the reason why the District proposed a reevaluation in light of the existing May 2017 reevaluation. As part of the reevaluation documentation, the District included an undated "Reevaluation Notification/Consent" form. The form indicated that the following areas were assessed:
 - Review of existing data
 - General education teacher report
 - Student observation
 - Behavior/social
 - Fine Motor
 - Medical/physical
 - Vision/orientation and mobility
 - Academic
 - Communication
 - Study skills
 - Adaptive
 - Gross motor
 - Audiology
 - Other: sensory

The form stated the following: "I understand that I have the opportunity to participate in the consideration of the areas to be assessed. I would suggest the following areas of need be considered in assessing my child." The form was blank and there was no indication of Parent consent.

19. On March 7, 2018, the special education teacher emailed the Parent, indicating that the school psychologist had informed the special education teacher that the Parent had not received progress notes from "some of the past reporting periods." The teacher stated, "I'm happy to resend if you let me know if attachments were not coming through clearly." The email included copies of the teacher's data collection, consultation logs, and therapy session notes from the previous six weeks.
20. On March 19, 2018, the District sent the Parent a meeting notice for a March 21, 2018 meeting to review reevaluation reports.
21. On March 21, 2018, the Student's evaluation group reviewed the results of the reevaluation with the Parent. According to the Parent's complaint, at the meeting, she was informed that when a student receives a related service, there is no requirement that an IEP include a goal to address the area of related service and that the District keep data regarding the goal.

22. The March 2018 evaluation report stated that the Student continued to perform in the average range in reading and math, although math fluency was below average. His scores in the area of written expression was also in the average range when compared to other students his same age. The results of the communication assessments indicated that the Student performed in the average range in speech sounds, as well as his linguistic performance, but pragmatic judgement showed a mild deficit. There was no concern in voice or fluency.

In the area of behavior/social, the Student's overall ratings fell in the moderate range "suggestive of deficiencies in reciprocal social behavior that were clinically significant and led to substantial interference with everyday social interactions."

The results of the assessment for study skills indicated the Student's overall study skills were in the typical range with specific concerns with monitor behaviors, shift, working memory, and initiate behaviors. The Student's adaptive skills ranged from low to low average. In the area of fine motor skills, the Student had a strength in visual-perceptual and a relative weakness in motor coordination. The school function assessment found the Student had clear strengths on physical tasks and computer use while legibility in writing was his most challenging area. In writing, he was unable to keep up with other students.

The gross motor skills assessment consisted of a file review, staff interview, clinical observations, and timed mobility tasks, including the following timed assessments: up and down stairs; timed up and go; floor to stand; 30 seconds walk test; shuttle run; pediatric balance scale; and five repetition sit to stand. The evaluation report stated that the results ranged from being in average range to a 15% delay in the timed up and down stairs. The observation concluded the Student independently walks on level, uneven, and sloped surfaces throughout school. He independently ascended and descended steps alternating feet with one rail support and walked through hallways and around classroom obstacles without a loss of balance and independently transitions from all seating.

The audiology section of the evaluation report stated that the Student has bilateral hearing loss and wore a hearing aid on his left side and a bone conduction hearing aid on his right side. The report stated that the Student used a frequency modulator for audio input. The results indicated that the Student listened to instructions and followed directions, but needed occasional prompts and checks for understanding.

The visual/orientation and mobility section of the evaluation report stated that the Student was using his vision in a "functional" manner. He stayed on task and worked persistently. At times, the Student had trouble seeing his work, which could result in difficulties with concentration, eye strain, fatigue, and headaches. However, the report stated: "[Student] is currently using his functional vision to access his educational environment successfully." The report recommended a number of accommodations to facilitate the Student's access to instruction.

The evaluation report also addressed the area of sensory as part of the occupational therapy assessment. The report stated that the Student obtained sensory input to the degree “much more than others.” The Student needs external prompts and supports to notice people and objects in the way, listening to the speaker, filling out a worksheet, and touching people and objects.

The evaluation report recommended the following:

Specially Designed Instruction	Area Assessed	Description
Adaptive	Adaptive	Adaptive
Behavior/social	Behavior/social	Behavior/social
Written Language	Academic	Written Language
Motor	Gross motor	Gross motor
Reading	Academic	Reading comprehension

Related Services: None recommended.

Supplemental Aids and Services:

- 1:1 assistant
- Speech language pathologist consultation
- Autism consultation
- Vision consultation
- Occupational therapy consultation
- Assistive technology
- Hearing impaired specialist

23. Regarding the recommendation for specially designed instruction in the area of motor, the District in its response to the complaint stated the following:

While the district followed procedures, it does admit that, as written, the 3/21/2018 evaluation report may not necessarily support the recommendation for a motor goal area, demonstrate an adverse impact in the area of motor, nor support the recommendation for the delivery of physical therapy services.

24. On March 27, 2018, the District provided the Parent with prior written notice. The notice proposed the following:

The district is proposing to continue the eligibility category: Health Impairments. The district is also proposing the following service recommendations: adding vision consultation, adding specially designed instruction in reading, and changing physical therapy from a related service to specially designed instruction.

The reason for the proposal stated the following:

[Student’s] evaluation has been completed and his team feels that Health Impairments continues to be the most appropriate eligibility. Based on increased needs in reading comprehension and continued needs in gross motor, the team feels goals should be written. The team also feels that vision consultation would be beneficial to support the staff working with [Student].

25. On April 20, 2018, the special education teacher emailed the Parent copies of the teacher’s data collection, consultation logs, and therapy session notes.

26. On April 24, 2018, the Parent emailed the special education teacher, stating that she had not received the physical therapy progress notes from November 18, 2017 to January 15, 2018. The Parent stated she had progress notes up to November 17, 2017 and after January 16, 2018. Later that day, the special education teacher responded and sent the progress notes again to the Parent.
27. On April 25, 2018, the Student’s IEP team, including the Parent, met to develop a new IEP for the Student based on the results of the March 2018 reevaluation. The District proposed that the April 2018 IEP include annual goals in the areas of adaptive behavior, behavior/social, motor, written language, writing, and reading. The relevant motor goal to this complaint was:
 By 4/24/2019, when given opportunity to participate in ball skills with a partner, [Student] will bounce, pass, and catch improving functional ball skills from 25% of opportunities to 50% of opportunities as measured by therapist data collection.

The District’s proposed IEP did not include a goal addressing ascending and descending stairs. The District also proposed that the April 2018 IEP include many of the same accommodations/modifications as the prior May 2017 IEP, including the accommodation to provide the Parent with teacher’s data collection, consultation logs, and therapy session notes every six weeks.

The IEP proposed the following specially designed instruction in a general education setting:

Services	Service Provider	Monitor	Frequency
Written language	Special education assistant	Special Education Teacher	20 minutes/5 times weekly
Behavior/social	Special education assistant	Special Education Teacher	10 minutes/10 times weekly
Adaptive	Special education assistant	Special Education Teacher	10 minutes/10 times weekly
Motor	Physical Therapist	Physical Therapist	30 minutes/4 times monthly
Reading	Special education assistant	Special Education Teacher	15 minutes/3 times weekly

28. According to both the District and the Parent, the IEP team discussed the issues regarding “changing physical therapy from a related service to specially designed instruction.” Since the IEP team was unable to reach consensus, they agreed to continue the May 17, 2017 IEP until the issues were resolved. No prior written notice was provided.
29. On May 16, 2018, the Parent filed this complaint.
30. As of June 6, 2018, the Student was absent fourteen (14) full days and twenty-three (23) half days during the 2017-2018 school year.
31. In response to this complaint, the District submitted documentation to OSPI regarding the implementation of motor and adaptive services throughout the 2017-2018 school year, addressing balance activities, climbing stairs, and throwing. The session notes sometimes

indicated there was “no opportunity” to engage in instruction because the Student was engaged in another activity at the time the services were to be provided. According to the documentation, the physical therapist had “no opportunity” to work on tossing and catching a ball during thirteen scheduled service times, and ascending and descending stairs during seven scheduled service times during the 2017-2018 school year.

32. The District also provided documentation of progress monitoring of adaptive goals, and information regarding gastroonomy tube checks and the Student’s toileting schedule.⁴

33. The District also provided documentation of weekly data collection from the special education teacher that included information about whether the Student was independent, needed some help, or required multiple prompts. The areas that were addressed included the following:

- Initiated greeting
- Returned greeting
- Initiated interaction with peer
- Responded to peer interaction
- Stayed in personal space
- Nice hands
- Stayed on task
- Asked for help
- Participated
- Finished my work
- Listened during group time
- Followed teacher directions
- I followed my schedule
- I walked in the hall
- I was safe on the stairs

Regarding the stairs, the data indicated whether the Student was able to independently ascend and descend stairs or required assistance. The data shows the Student initially needed assistance, but then progressed to consistently using the stairs independently.

34. The Student’s special education teacher provided the following written statement: “I provided 10 minutes per day of adaptive services for [Student] for the 2017-2018 academic year. I also implemented accommodations and modifications as written in his Individualized Education Program (IEP).”

35. The Student’s general education teacher provided the following written statement: “I implemented accommodations and modification throughout the school day for [Student] during the 2017-2018 school year. These accommodations and modifications were as written in his Individualized Education Program (IEP).”

CONCLUSIONS

Issue 1: Comprehensive Evaluation – The Parent alleged that the District failed to conduct a “full, comprehensive special education reevaluation” in the area of gross motor as part of the March 21, 2018 reevaluation, including providing input from the Parent about the motor area. As part of the evaluation process, the IEP team must review existing data, including evaluations and information provided by the parents to determine, with input from the parent, what

⁴ Regarding toileting, the school reported that the Student had significant toileting and hygiene needs that the IEP did not address. Please see the recommendations at the end of this report.

additional data, if any, is required to determine if the student continues to meet eligibility and determining the special education and related services the student requires. An evaluation must include a variety of assessment tools to gather relevant functional, developmental, and academic data about a student. No single test may be used to determine eligibility or developing the appropriate program for a student. Assessments must be technically sound and administered by trained and knowledgeable personnel.

Here, while the District conducted a review of existing data, there was no documentation of Parent input into the motor area and the decision regarding whether additional data was needed. The District evaluated the Student in the area of motor area as part of a comprehensive evaluation that included a number of other areas. Although the motor evaluation included multiple sources of data that were technically sound, including motor assessments, observations, input from staff, and was administered by a certified physical therapist, the District failed to provide the Parent with an opportunity to provide input into the review of existing data regarding the motor area. At the time of the complaint, the District had agreed to pay for an independent educational evaluation (IEE) regarding physical therapy, per the Parent's request. Given this, the District is not required to take any additional steps at this time.

Issue 2: Development of Physical Therapy Goals in the April 25, 2018 IEP – The Parent alleged that the District failed to adequately address the need for direct physical therapy and accompanying annual goals in the Student's April 2018 IEP. An IEP must include specially designed instruction and any required related services a student needs. Specially designed instruction is defined as adapting, based on the unique needs of a student, the content, methodology, or delivery of instruction. A related service is a service that is required for a student to benefit from their special education services. Here, the Student's March 2018 reevaluation report recommended that the Student receive specially designed instruction in the area of motor, and the District proposed that the Student's April 2018 IEP include specially designed instruction provided by a physical therapist (or physical therapy assistant). The proposed IEP also included a motor goal regarding ball skills. While the Parent may not have agreed with the proposed services or goal, the documentation does not substantiate that the District failed to follow procedures for developing the motor goal in the April 2018 IEP. Additionally, when the Parent raised concerns about the IEP, the District agreed to hold another meeting to allow more time to address the concerns.

Issue 3: Implementation of Physical Therapy and Adaptive Services – The Parent alleged that the Student's physical therapy and adaptive services were not implemented as required in the May 17, 2017 IEP, specifically related to the annual goals for catching and tossing a ball (motor) and ascending and descending stairs (adaptive). In addition, the Parent stated the District failed to provide the Student services during the first and last part of the school day. Services stated in an IEP must be implemented in accordance with the IEP.

Here, the Student's May 2017 IEP provided for physical therapy services 30 minutes one time weekly and adaptive services 10 minutes five times weekly in a general education setting. The physical therapy services were to be provided by the physical therapist, and based on the

documentation in this complaint, the physical therapist also provided some of the Student's adaptive services. The special education teacher also provided instruction in the adaptive area, including stair climbing, for ten minutes five times a week.

The District provided documentation that the physical therapy assistant attempted to provide weekly therapy services in a general education setting, addressing balance, climbing stairs, and/or throwing and catching. However, the documentation showing the implementation of physical therapy services indicated that on some days, there were "no opportunities" to work with the Student on one or more of the skills, mostly throwing the ball, because when staff attempted to provide the services, the Student was engaged in other activities at that time, which did not relate to balance, throwing, or climbing stairs. An example of this was when the Student's physical education class was involved with an activity/game that did not include throwing a ball. Because of the requirement that the motor services be provided in a general education setting, the physical therapist (or physical therapy assistant) was not expected to pull the Student away from the general education activity and work on throwing a ball.

Due to the apparent logistical problems in coordinating the physical therapy assistant's availability with the Student's general education activities, the Student missed thirteen opportunities to practice throwing and catching and seven opportunities for ascending and descending stairs during the school year. When the District recognized there was a pattern of missed opportunities, the District should have reconvened the IEP team to address the issue rather than allow the missed opportunities to continue. Despite the missed opportunities with the physical therapist, however, the Student received specially designed instruction in stair climbing on other occasions from his special education teacher and the progress monitoring and documentation showed the Student was making consistent progress towards independence. Regarding catching and tossing the ball, the progress monitoring and documentation indicate that the Student was making progress towards the goal.

Regarding the implementation of services during the first and last part of the day, the Parent stated that the Student was "pulled out of class...denying [Student] valuable and appropriate daily teacher instruction." The Student's May 2017 IEP does not specifically address the Student's activities during the first and last part of the day, as the IEP provided for approximately fifty minutes of specially designed instruction per day, which based on the Student's daily schedule, did not occur during the first and last part of the school day. According to the Student's schedule, the Student was instead involved in activities to either prepare for the school day or to go home. The morning activities included checking the Student's FM system and hearing aids, going to the bathroom, and conducting a gastrostomy tube check, which were part his special education program. End of school activities included packing up, a bathroom break, and navigating the stairs, which was also part of the Student's program. The Parent may have preferred different activities occur at the beginning and end of the school day, but there was no documentation to substantiate that the District failed to provide the Student's specially designed instruction.

Issue 4: Accommodations/Modifications – The Parent alleged that the District failed to implement the IEP accommodation to provide her with therapy session notes and teacher data

collection every six weeks. Services on the IEP must be implemented in accordance with the IEP. Here, the IEP provided an accommodation for the Parent to receive therapy session notes, consultation logs, and teacher data collection every six weeks. However, according to the documentation in this complaint, including the emails between the special education teacher and the Parent, the Parent did not receive the data that was collected during the time period from November 17, 2017 to January 16, 2018. This is a failure to implement the IEP accommodation. However, once the District became aware that the Parent had not received the data, the District rectified the apparent lapse and sent the data to the Parent on April 24, 2018. All other data was sent and received in a timely manner. Because the District has already provided the Parent with the data from November 2017 to January 2018, no corrective actions are required.

Issue 5: Progress Report and Monitoring – The Parent alleged that the District failed to collect sufficient data to monitor and report on the Student’s progress regarding his annual adaptive goal concerning ascending and descending stairs with his backpack. IEPs must include an explanation of how progress towards annual goals will be measured and when the progress will be reported to the parents. The purpose of measurable annual goals is to subsequently measure progress to see whether the student met the annual goal.

Here, the Student’s May 2017 IEP provided for progress reporting on a semester basis. The adaptive goal in the May 2017 IEP was aimed at increasing the Student’s ability to ascend and descend stairs wearing his backpack from 100% of the time with supervision to 100% without supervision, and progress towards the goal was measured by “staff and therapist observation and data collection”. Following the end of the first semester in late January/early February, the District provided progress reporting, which stated that the Student was making sufficient progress to meet the annual goal, but no further explanation or documentation was provided.

There is no specific requirement regarding what progress reporting provided to the Parent must contain, but progress reporting must be reasonably supported by measurable data. Here, while the progress reporting stated only that the Student was making sufficient progress to achieve the goal, the District also provided the Parent with documentation from both the special education teacher regarding climbing stairs and documentation from the physical therapist regarding the Student’s weekly physical therapy services involving balance activities, climbing stairs, and throwing and catching a ball. Although the documentation from the physical therapist did not indicate whether the Student was climbing the stairs independently, the documentation from the special education teacher provided sufficient data regarding the Student’s level of independence to substantiate the progress monitoring. The District has substantiated that it followed procedures for providing the Parent with progress reporting.

CORRECTIVE ACTIONS

By or before **September 7, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Prior to the beginning of the 2018-2019 school year, the District will convene the Student’s IEP team and other qualified professionals to review exiting evaluation data in order to provide the Parent with an opportunity to give input into whether additional evaluation data is needed to reevaluate the Student in the area of gross motor.

The IEP team will also:

- Consider the results from any new assessments conducted by the District or independent educational evaluation (IEE), if available; and,
- Develop a plan to ensure that the Student’s motor services will be implemented in accordance with his IEP. This will include a discussion of whether the services can be provided with fidelity in the general education setting, or if the services should be provided in a special education setting in order for the Student to receive FAPE.

By **September 7, 2018**, the District will submit 1) a copy of any meeting invitations; 2) documentation of the Parent input from the meeting; 3) a copy of any amended or new IEP, if applicable; 4) a copy of the service implementation plan for the Student’s motor services; 5) a copy of any related prior written notices; and, 6) a copy of any other relevant documentation.

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

According to the documentation, the Student was not toilet trained and needs assistance with hygiene. The District provided extensive and methodical documentation of the services provided to the Student in these areas. However, this is not addressed in the Student’s IEP. It is recommended that the IEP team address the Student’s unique needs in toileting and hygiene in the IEP, as appropriate.

Dated this ____ day of July, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT

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