

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 20-58

PROCEDURAL HISTORY

On May 13, 2020, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Omak 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 15, 2020, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 9, 2020, OSPI received the first part of the District's response to the complaint and forwarded it to the Parent that same day. OSPI invited the Parent to reply.

On June 16, 2020, OSPI received the second part of the District's response to the complaint and forwarded it to the Parent on June 17, 2020. OSPI invited the Parent to reply. The Parent did not reply.

On June 18, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on June 24, 2020. OSPI forwarded that information to the Parent on June 25, 2020.

On June 25, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the District. OSPI received the requested information from the District on June 26, 2020. OSPI forwarded that information to the Parent on June 29, 2020.

On June 26, 2020, OSPI determined that additional information would be helpful to the investigation and contacted the Parent. OSPI received the requested information from the Parent on June 28, 2020. OSPI forwarded that information to the District on July 1, 2020.

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

SCOPE OF INVESTIGATION

The time period under investigation begins on May 14, 2019, as OSPI may investigate only those issues occurring during a one-year period. Any information included from events prior to May 14, 2019 is mentioned for informative, background purposes only.

ISSUES

1. Did the District follow proper reevaluation procedures for the Student during the 2019-2020 school year?

2. Did the District follow proper individualized education program (IEP) development procedures for the Student in the spring of 2020?
3. Did the District follow proper procedures for obtaining the Parent's consent prior to completing a District-conducted OT assessment in May 22, 2019?
4. Did the District follow proper procedures for responding to the Parent's request to access certain 'educational records' of the Student on November 18, 2019, under WAC 392-172A-05190 and FERPA?

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. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's individualized education program (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.

Evaluation/Reevaluation Standards: In completing an evaluation, the group of qualified professionals selected by the school district 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; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. Finally, districts must ensure that evaluations of students who transfer from one district to another within the state during a school year are coordinated with the student's prior and subsequent district as necessary and as expeditiously as possible, to ensure prompt completion of the full evaluation. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition, the student's social and cultural background, and adaptive behavior. In completing the evaluation report, the school district must ensure that information from all of these sources is carefully considered. 34 CFR §300.305; WAC 392-172A-03040. The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035. If the evaluation results in a determination that the student is eligible for special education and appropriate related services, the district must then conduct an IEP meeting to develop an appropriate IEP. A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide

assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

IEP Development Following Reevaluation: An IEP must be developed within 30 days of the completion of a reevaluation. WAC 392-172A-03105(2)(a).

Competing IDEA Requirements: Parental participation in the IEP and educational placement process is central to the IDEA's goal of protecting disabled students' rights and providing each disabled student with a FAPE. The regulatory framework of the IDEA places an affirmative duty on agencies to include parents in the IEP process. Most importantly, a meeting may only be conducted without a parent if, "the public agency is unable to convince the parents they should attend." When a public agency is faced with the difficult situation of being unable to meet two distinct procedural requirements of the IDEA, in this case parental participation and timely annual review of the IEP the Supreme Court and the 9th Circuit have both repeatedly stressed the vital importance of parental participation in the IEP creation process. Delays in meeting IEP deadlines do not deny a student FAPE where they do not deprive the student of any educational benefit. *Doug C. v. State of Hawaii*, 61 IDELR 91 (9th Cir. 2013); *Shapiro v. Paradise Valley Unified Sch. Dist.*, 317 F.3d 1072, 1078 (9th Cir. 2003); *Amanda J. v. Clark Cnty. Sch. Dist.*, 267 F.3d 877, 887 (9th Cir. 2001).

IEP Team Unable to Reach Consensus: The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a free appropriate public education (FAPE). No one team member has "veto power" over individual IEP provisions or the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and

the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12, 472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9). *Ms. S. ex rel. G. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1131 (9th Cir. 2003). *See also, Wilson v. Marana Unified Sch. Dist.*, 735 F.2d 1178, 1182-83 (9th Cir. 1984) (Holding that a school district is responsible for providing a student with a disability an education it considers appropriate, even if the educational program is different from a program sought by the parents).

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3).

Definition of Consent: Consent means that: the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040.

Parents' Access Rights to Student Records: Districts must permit the 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 IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a 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.

FERPA: Education Records: The term "education records" means those records, files, documents, and other materials which: (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by a person acting for such agency or institution. 20 USC § 1232g(a)(4)(A); 34 CFR § 300.99.3; WAC 392-172A-05180(2).

The term "educational records" does not include records of instructional, supervisory, administrative personnel, and educational personnel ancillary to those persons if those records are in the sole possession of the maker of the records, and are not accessible or revealed to any other individual except a temporary substitute of the record maker. 20 USC § 1232g(a)(4)(B); WAC 392-172A-05180(2); *see also* IDEA, 64 Fed. Reg. 12,641 (March 12, 1999) ("FERPA exempts from the definition of 'education records'...those records considered to be 'sole possession records,'

[such as raw data or notes]. FERPA's 'sole possession' exception is strictly construed to mean 'memory-jogger' type information. For example, a memory-jogger is information that a school official may use as a reference tool and, thus, is generally maintained by the school official unbeknownst to other individuals").

"Records that are not directly related to a student and maintained by an agency or institution are not 'education records' under FERPA and parents do not have a right to inspect and review such records. For example, a test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be apart of his or her 'education records.'" However, if a school were to maintain a copy of a student's test answer sheet (an "education record") the parent would have a right under the IDEA and FERPA to request an explanation and interpretation of the record. *Letter to Shuster*, 108 LRP 2302, Office of Special Education Programs (August 2007); *see also Letter to Fonda-Fultonville (NY) Central School*, 31 IDELR 149, Family Policy Compliance Office (April 1998).

FINDINGS OF FACT

2018-2019 School Year

1. At the start of the 2018-2019 school year, the Student was eligible for special education under the category of autism, was in the ninth grade, and attended an alternative learning experience virtual academy (online school).^{1 2} At the start of the 2018-2019 school year, the Student's June 2018 individualized education program (IEP) was in effect.
2. According to a 'Contact Attempt Report,' on May 20, 2019, the Parent gave verbal consent (via a telephone call) for the Student to be evaluated.
3. On May 21, 2019, the Parent emailed the online school's principal, stating, in part:
I am writing in regards to an occupational therapy (OT) evaluation that I requested that Student have done during the last IEP meeting. It has been about a year and this has not yet been done. I was told the District would contract with [a certain private OT group] to get this taken care of. I was in contact with them last week and they said that the District was trying to get everything set up. I called [the private OT group] back today and we are no further in the process than before.

Later that day, the online school's principal responded, stating, in part: "It is my understanding that someone is actively working on finalizing this contract."

¹ As described on its website, the online school "uses online curriculum and services provided by K12. The programs allow learning to happen at home, on the road, or wherever an Internet connection can be found. While attendance, teacher interaction, and daily lessons are conducted online, our lessons use physical materials and offline tools as well."

² According to the Parent's complaint, the Student has participated in the online school since fourth grade.

4. In her complaint, the Parent alleged: "Student had a school-requested occupational therapy (OT) evaluation dated May 22, 2019. However, I never signed consent for the evaluation until June 3, 2019."
5. The Parent's complaint included an OT evaluation, completed by a private occupational therapy group³ and dated May 22, 2019.
6. On June 3, 2019, the District completed an "assessment revision" for the Student. As detailed in the related prior written notice (also dated June 3, 2019), the assessment revision related to the results of the OT evaluation that had been completed by the private OT group on May 22, 2019, and "it was found that Student demonstrates a need for OT services."
7. The June 3, 2019 assessment revision documentation included an "Assessment Revision Notification/Consent" document that stated, on June 3, 2019, the Parent provided "permission [for the assessment revision] via phone," but was unsigned.
8. On June 3, 2019, the Student's IEP team created a new IEP for the Student.⁴

2019-2020 School Year

9. The District's first day of the 2019-2020 school year was August 28, 2019.
10. At the start of the 2019-2020 school year, the Student remained eligible for special education services under the category of autism, was in the 10th grade, and participated in the District's online school program. At that time, the Student's June 2019 IEP was in effect.

According to the District, during the 2019-2020 school year, the Student "was a full-time [online school] Student"—in other words, the Student received 100% of his instruction via the online school's online programming.

11. A September 4, 2019 email from the regional special programs manager to the special education secretary identified the Student as one of those students who required a new special education evaluation in the near future.
12. According to the Parent's complaint: as of September 2019, the last time the Student had received a three-year evaluation was September 2016⁵; "on September 24, 2019, [the Parent]

³ According to the District, this was "a private health care group that the online school [also] went into a contractual relationship [with] in order to provide face-to-face occupational therapy services to Student per Parent request."

⁴ From the documentation submitted to OSPI as part of this complaint, it appears the Parent participated in the June 3, 2019 IEP meeting via the telephone.

⁵ Other documentation submitted to OSPI as part of this complaint supports this statement—notably, the June 3, 2019 assessment revision, which stated: "More recent reevaluation: September 30, 2016."

signed the consent form” for the Student to be re-evaluated⁶; but on or around late September 2019, the Parent was not provided with a prior written notice “that identified the reevaluation testing areas and plan.”

According to the Parent’s complaint, the Student’s reevaluation, which she provided signed consent for on September 24, 2019, was not completed by the District in a timely manner.

13. According to the District’s response:

On September 24, 2019, a review of existing data was held and consent for evaluation in the areas of medical-physical, social/emotional, academic, communication, fine motor, general education, cognitive, adaptive, behavior, and gross motor was obtained from the Parent.

...

The plan to update the medical-physical and general education aspects of the evaluation were to be completed through the review of existing data.

The plan to update social-emotional, adaptive, and behavior were to be completed through [new] assessments measures.

The plan for [OT] was to have Student assessed but Parent agreed that since the last assessment had been completed in June 2019, that we could use that data instead of conducting another assessment.

For data requiring assessments, the plan was to have those assessments completed and the results reviewed by the multidisciplinary evaluation team within 35 days of signed consent which was provided on September 30, 2019. That timeline was not adhered to.

...

[Online school]...has contracts with several companies to provide services...virtually. They are also able to conduct assessments virtually...[In this instance, though, the online school decided to] contract for evaluations to be conducted face-to-face for Student, based upon Parent-stated Student need. My understanding is that Student would refuse to engage with...online platform[s].

14. The Parent’s complaint included an IEP document, dated September 24, 2019, that appears to relate to those areas the District evaluation group and the Parent agreed to evaluate the Student in, but the copy provided to OSPI is small, out-of-focus, and difficult to read.

The District’s response included a similar document that was also out of focus. As best as OSPI’s investigator can make out, the following areas are delineated as being those areas the Student would be evaluated in: medical-physical; social/emotional; academics; communication; fine motor; general education; cognitive; adaptive; behavior; gross motor; and reviews of existing data. The District’s copy was signed by the Parent and dated September

⁶ The documentation the Parent submitted to support this statement is out of focus and difficult to read. But it does appear to represent a ‘Reevaluation Notification/Consent’ document that is: dated September 24, 2019; signed by the Parent; and read, in part: “I give consent for my child to be evaluated.” This document does not appear to detail those areas the evaluation group determined the Student needed to be evaluated in.

24, 2019. Other than the areas to be assessed, the Parent's signature, and the date, the District's copy does not contain any other information—such as: why the District and Parent believed those were the areas the Student needed to be evaluated in; and other courses of action that were considered.

15. On October 3, 2019, the online school personnel, the Parent, and staff from a private learning disabilities medical practice exchanged emails concerning a timeline for completing the Student's reevaluation—as well as having a meeting on the same. From these emails, it appears October 21, 2019 and October 22, 2019 were discussed as possible dates for a meeting.
16. On October 9, 2019, the Parent emailed the online school teacher, as well as staff from a private learning disabilities medical practice, stating, in part: "I was just wondering if we are still on for Student's evaluation to be done on October 12, 2019? I haven't heard anything about a time."
17. On October 16, 2019, the Parent emailed the District superintendent and the online school's program manager, stating, in part:

...It wasn't until May 22, 2019 that I had to drive Student to Idaho to get the OT evaluation completed...Only part of the [re]evaluation was done at that time...[We had an IEP meeting on September 23, 2019.] That meeting was for me to give permission for Student to be evaluated. We talked about what Student needed and the team decided that he needed communication, academic and social evaluations and possibly others...but I have yet to hear about the communications testing.

Later that day, the District superintendent responded, stating, in part: "I see that [the online school's program manager] has already set things in motion...The situation you have described to me is unacceptable and does not reflect the level of service I expect for all our students."

On October 17, 2019, the online school's program manager responded, stating, in part: [A staff member from a private learning disabilities medical practice] will be conducting the psychoeducational testing this Saturday.

We are waiting on contracts to be approved for the face-to-face speech and physical therapy providers. Their contracts have been waiting to be processed because of the educational staff associate (ESA) certification...We typically require providers to have their ESA in advance of processing their applications however we have submitted their applications for expedited processing.⁷

18. In a separate email, dated October 16, 2019, the Parent and a staff member from the private learning disabilities medical practice agreed that the Student would undergo a

⁷ According to the District, "The quoted language refers securing a face-to-face physical therapist to conduct the assessment, per parent request. At the time, the online school did not have a contract for face-to-face services in the Student's geographical area. Virtual physical therapy had been offered and was available. the online school has virtual physical therapists available to provide services to all students in need of those services."

psychoeducational evaluation on October 19, 2019, which according to the District, would consist of cognitive and academic assessments.

On October 18, 2019, the Parent emailed the staff member from the private learning disabilities medical practice, stating that the Student was sick and would not be able to be assessed on October 19, 2019.

19. In a separate email, dated October 17, 2019, the online school's program manager emailed the Parent, stating, in part: "The speech language pathologist should be in touch with you by the end of next week and I'm expecting that to be the case with the [occupational therapist]. We are still working on the physical therapist. I'll keep you posted."
20. According to emails provided to OSPI by the Parent:
 - On October 22, 2019, a staff member from the private learning disabilities medical practice emailed the Parent, asking if the Student had recovered from his illness and if the Student could be evaluated on Saturday, November 9, 2019.
 - The Parent does not appear to have responded to the foregoing email.
 - In a separate email from the private learning disability medical practitioner to the online school's program manager, dated October 28, 2019, read, in part: "I can run back over there on [(an unknown date)] and test the whole lot of [city] area kids."
 - Then, on November 6, 2019, the Parent emailed the private learning disabilities medical practice, stating, in part: "Are we still on for Student's evaluation on the Saturday, November 9, 2019?"
 - Later that day, the private learning disabilities medical practice responded to the Parent, stating that November 9, 2019 would not work, but that Sunday November 10, 2019 would work.
 - On November 7, 2019, the Parent emailed an attorney, stating she was upset that the Student would not be evaluated on Saturday, November 9, 2019.
21. On November 6, 2019, a private physical therapist emailed the online school's program manager, stating, in part: "I just spoke with Mom and gave her several options for scheduling the evaluation, including tomorrow 11-7, 11-8, 11-11 and 11-14, but she does not want to do any of them as he is having several other evaluations. I have scheduled to complete the evaluation on 11-18."
22. On November 7, 2019, the online school's programs manager emailed the evaluator from the private learning disabilities medical practice, stating, in part: "Please provide Parent with 5 or so different dates over the next three weeks for which you would be available to test Student? There are multiple tests that must be completed and Parent would like to plot out testing so he isn't testing more than once in a day."

Later that day, the evaluator responded, including the Parent in the email, and stating, in part: Tuesday, November 12, 2019 would work; and, "Parent, it is really hard for me to offer you five potential dates because I'm not even going to really be over there for five days in a row and each day I'll be testing a different student."

23. In a separate email, dated November 7, 2019, a private speech language pathologist emailed the online school's related services coordinator, stating, in part: "I just called for evaluation with no answer and the voicemail mailbox was full. I am documenting this on my communication log and am going to send mom an e-mail as well. Just wanted to keep you in the loop."
24. On November 11, 2019, the evaluator from the private learning disabilities medical practice emailed the online school's program manager, stating, in part:
Going over for an evaluation takes a minimum of 2 days for the roundtrip. So, taking myself off my patient calendar for 5 two day events means a lot of days that I'm not available to be scheduled for patients who call through the day, given my difficulty with getting a reply from [Parent]. To be clear, these days were offered, should you need them for a future PWN:
*10/26 (no show-sick)
*11/8 (can't test in the afternoon)
*11/9 (family plans)
*11/10 (family plans)
*11/11 no reply to several emails
25. According to emails produced to OSPI during the course of the instant investigation, in mid-November 2019, the evaluator from the private learning disabilities medical practice stated that she was no longer available to evaluate the Student. Soon thereafter, the District contracted with a private psychologist.
26. According to the online school's 2019-2020 calendar, November 13, 2019 was 35 school days after September 24, 2019.
27. According to emails, on November 13 and 14, 2019, the private psychologist the District contracted with to evaluate the Student tried calling and emailing the Parent, but as of November 14, 2019, had not been able to reach the Parent.
28. According to the District's response, on or about November 13, 2019, the Parent "agreed to using the data from the occupational therapy testing conducted May 22, 2019."

As explained by the District: "Parent agreed that since the last fine motor assessment had been completed in June 2019, that we could use that data instead of conducting another assessment."
29. According to emails provided to OSPI by the District, on November 15, 2019, the online school's program manager provided three dates during which the Student could be assessed in the area of speech (November 21, 2019, December 2, 2019, and December 7, 2019).

According to the aforementioned email thread, the Parent did not select one of the three proposed dates; nor did the Parent propose a different date.

30. According to emails provided to OSPI by the District, a physical therapy (PT) evaluation of the Student was scheduled to take place on November 18, 2019, but it did not occur. According to the District's response, this was because the Parent "canceled the physical therapy testing."

31. On November 18, 2019, the Parent's attorney provided the District with a request and release, signed by the Parent, for the District to release to the attorney the following records:

- **Document 1:** All special education records, including but not limited to IEP and/or Section 504, IEP and/or Section 504 progress notes, evaluations and accommodations.
- **Document 2:** All disciplinary records including, but not limited to all manifestation determination decision, isolations, restraints, suspension, expulsions, and in-school detention.
- **Document 3:** All evaluations of Student whether performed by school personnel or others.
- **Document 4:** All multi-disciplinary team notes, decisions or recommendations, and records relied upon by the team.
- **Document 5:** All IEP and/or Section 504 meeting notices sent to Student and/or his parent.
- **Document 6:** All IEP and/or Section 504 meeting minutes, notes, emails, and documents relied upon in meetings if not requested above.
- **Document 7:** All home schooling records.
- **Document 8:** All Becca or other attendance and/or truancy records.
- **Document 9:** Student health files with the School District.

32. According to the Parent's complaint:

On November 18, 2019, my attorney requested Student's school records from both the District and the online school. However, the records provided by the District and the online school are incomplete:

No data regarding any of Student's goals was provided...No meeting notes were provided. No disciplinary records were provided even though some of the registration records show that there was a suspension lasting more than 10 days.

In supplemental information provided to OSPI during the course of this investigation, the Parent clarified that the referenced "suspension lasting more than 10 days...occurred while Student [attended a different] school district [and] it occurred somewhere between 2010 and 2012."

33. According to the District's response and the relevant email, on November 19, 2019, the online school's program manager provided the Parent "with 8 different days the [private] psychologist was available to test [Student in the areas of cognitive and academic]."⁸

34. On November 22, 2019, the online school's program manager asked about the Student's availability the week of December 7, 2019, as the speech language pathologist had availability that week to evaluate the Student.

⁸ According to this email thread, as of November 21, 2019, the District and the Parent had not been able to agree upon a date for testing.

Later that day, the Parent responded, stating, in part: "I will have to look and see what would work for us. Tuesdays aren't good because that is the day that he has OT. I know that we have some other things going on, but I don't have that in front of me at the moment."

35. On November 25, 2019, the District provided the Parent with a prior written notice that read, in part:

The online school proposes to continue implementation of IEP dated June 3, 2019 until the IEP team conducts a review...The IEP contains conflicting information as to when the next review is due, a year from [the] last review or on October 1, 2019...Parent requested on October 17, 2019 that the IEP meeting wait until after [the] reevaluation has been completed...An evaluation meeting to determine continued eligibility will be had upon completion of testing as prescribed during review of existing data process of evaluation.

36. The District was on break from November 27 through 29, 2019.

37. According to the District's response, on December 5, 2019, the private psychologist provided the Parent with the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2), and asked her to fill out the same.⁹

According to the District's response, on December 5, 2019, the private psychologist completed an academic and cognitive assessment of the Student.¹⁰

38. On December 13, 2019, the District's manager of special programs emailed the Parent, stating, in part:

[The online school's program manager] and I just tried to call and left a voicemail. We were checking in with you to see how Student is doing, as well as the status of the evaluations for him.

Will you please provide us with an update? Was Student able to meet with the school psychologist last week? Also, have the PT and the Speech assessments been scheduled? If so, when are they set to be completed?

39. On December 15, 2019, the speech language pathologist that the District had been contracted with (or attempted to contract with) to schedule a speech evaluation of the Student emailed the online school's related services coordinator, stating, in part:

⁹ BRIEF-2 "assesses executive function and self-regulation in children and teens." <https://www.wpspublish.com/brief-2-behavior-rating-inventory-of-executive-function-second-edition> It is an "individually-administered rating scale completed by a parent, teacher, or self-report." *Id.* with the BRIEF-2, scores are given for the following categories: behavioral regulation index; emotional regulation index; and cognitive regulation index. These three indices are then combined to form an executive composite.

¹⁰ The 'academic' section in the Student's February 2020 reevaluation report does not include a date of completion. The 'cognitive' section in the Student's February 2020 reevaluation report reads: December 29, 2019. Upon knowledge and belief, the private psychologist administered the academic and cognitive assessments on December 5, 2019, but did not finalize her report, in conjunction with the wider IEP team (as documented in the February 2020 reevaluation report), until December 29, 2019.

I have reached out to the family with both emails and phone calls and offered a multitude of different dates and times spanning several weeks' time for an evaluation but the family did not directly respond to me. In her reply to a group e-mail with myself and the online school's program manager, the mother said that their family is very busy and her work schedule is fluctuating greatly at this time, I then offered to her to let me know what days and time work best for the family and I could try to accommodate based on their needs, but no reply was ever given.

Along with this information, I have to unfortunately inform you that I did not meet the criteria to obtain the ESA certification that is required by Washington State for therapy in school-based settings...Therefore I will be unable to accept future referrals.

...If of interest to K-12, I know of another outpatient clinic in town that currently contracts with schools and it is likely their staff is already ESA certified. If you would be interested in their contact information I would be happy to share and be of any assistance possible.

40. The District was on break from December 23, 2019 through January 3, 2020.

41. On December 23, 2019, the District's fiscal administrator emailed the Parent's attorney, stating, in part:

This message is regarding your November 18, 2019 request of public records from the District, submitted pursuant to the Washington Public Records Act... Upon receipt of your letter on November 20, 2019, the District underwent a preliminary review...Based on our review, we can confirm that we have records that meet the terms of your request.

We are providing you with access via Dropbox to the first batch of responsive documents. ...No log of redactions is included with this batch as there were no responsive documents requiring redaction in compliance with the federal Family Education Rights and Privacy Act (FERPA) and the parental consent provided. These responsive documents will be accessible via Dropbox link for 30 days from today ...For security purposes, after 30 days, or if you notify me that you have retrieved what you needed, we will deactivate the link to these documents...¹¹

According to the District's response: "The first file upload [on December 23, 2019] contained records and the second upload [on February 7, 2020] contained emails...The Parent's attorney accessed and shared the DropBox on December 23, 2020."

42. According to the District, the following files were uploaded to Drobox and shared with the Parent and her attorney on December 23, 2019¹²:

- 20190522 Student OT evaluation (1).pdf
- 20190522 Student OT evaluation (2).pdf

¹¹ The District's response asserted that this was not accurate and "All uploaded documents were available until March 20, 2020."

¹² The District provided OSPI with an excel document that tracked activity related to the Dropbox account. This excel document shows that two individuals from the law firm the Parent retained (including the Parent's attorney) accessed the Dropbox account on December 23, 2019.

- A_Student_O365_Email_Communications_AllDates.xlsx¹³
- Au. Student 1477307.pdf¹⁴
- STUDENT Assessment Revision 6-3-19.pdf
- STUDENT Assessment Revision Signatures 6-3-19.pdf
- Student Au Cumulative.pdf
- Student Au Report Cards.pdf
- Student Au State Testing.pdf
- STUDENT Consent Signature 9-24-19.pdf
- STUDENT Evaluation 10-1-13.pdf
- STUDENT IEP Review 1-7-15.pdf
- STUDENT IEP Review 6-6-18 (1).pdf
- STUDENT IEP Review 6-6-18.pdf
- STUDENT IEP Review 6-6-19.pdf
- STUDENT IEP Review 9-10-14.pdf
- STUDENT IEP Review 9-12-16.pdf
- STUDENT IEP Review 9-14-15.pdf
- STUDENT IEP Review 9-27-17.pdf
- STUDENT IEP Review 9-30-16.pdf
- STUDENT IEP Signatures 6-6-18.pdf
- STUDENT IEP Signatures 6-6-19.pdf
- STUDENT IEP Signatures 9-9-15.pdf
- STUDENT IEP Signatures 9-12-16.pdf
- STUDENT IEP Signatures 9-27-17.pdf
- STUDENT IEP Signatures 11-17-16.pdf
- STUDENT Reevaluation 9-30-16.pdf
- STUDENT Reevaluation Signatures 9-30-16.pdf
- STUDENT Sent Consent 9-24-19.JPG

43. During the course of this investigation, OSPI’s investigator asked the District several questions related to the Parent’s attorney’s request to access certain records pertaining to the Student. Those questions, and the District’s responses, are as follows:

Question 1: As of late December 2019, did the District have any discipline-related documents for the Student that it stored in Student’s file?

Answer 1: The student had not been suspended at the online school. The only discipline record that I am aware of is a truancy notification due to nonengagement but there was no action taken other than notification and documentation.

Question 2: As of December 2019, was any progress reporting completed related to the Student’s June 2019 IEP?

I believe this document would have been covered by the Parent’s attorney’s request, the June 2019 IEP has goals with an end date of late September 2019, but I did not see any progress reporting type documents uploaded to dropbox in late December 2019.

¹³ This document consists of an excel document wherein some of the metadata (sender and recipient) for emails from August 22, 2016 to December 1, 2019 are presented in chronological order. Furthermore, this document contains a column that appears to contain either the entirety, or substantial portions, of the verbatim text of the respective emails.

¹⁴ This document is a copy of the Parent’s attorney’s request for certain education records.

Answer 2: Progress towards reading and writing and occupational therapy were addressed during the IEP meeting(s). There was no written progress report.

Question 3: As of late December 2019, did the file the District kept on the Student include any meeting notes?

Answer 3: The student's central file did not include meeting notes, there were no meeting notes to include.

Question 4: Does the District have a policy in place for the retention of emails that relate to specific students? For example, does the District automatically place emails related to certain students in those students' respective files? Or are emails just saved on staff members' individual outlook accounts?

Answer 4: The online school does not have a policy in place for retention of emails related to students sent from staff accounts. Emails are not placed in a student's file, however they may be saved on a staff member's individual Outlook account. Emails sent through our online learning management program can be saved as a note when sent to a student email account, if the sender deems that necessary. Those emails were included in the records request.

44. According to the District's response, the Parent returned the completed BRIEF-2 to the private psychologist on December 23, 2019. Furthermore, according to the District's response, the private psychologist completed the portion of the BRIEF-2 that she was responsible for, on December 29, 2019.
45. According to the District's response, on December 29, 2019, the private psychologist completed assessments of the Student in the areas of social/emotional and adaptive.
46. On December 31, 2019, a physical therapist that the District contracted with emailed the online school's program manager, stating: "I was able to complete his gross motor testing yesterday."^{15 16}
47. On January 7, 2020, two attorneys working with the Parent exchanged an email that read, in part: "Spoke to Parent on the phone yesterday. She wanted me to note that the physical therapy evaluation was done on December 30, 2019. She wasn't sure how thorough it was since it only lasted 20 minutes."
48. On January 9, 2020, the District's related services coordinator asked the private speech language pathologist for an update on testing for the Student. The private speech language pathologist responded on January 13, 2020, stating, in part: "The family has never returned

¹⁵ According to the referenced email thread, this gross motor evaluation had originally been scheduled for December 2, 2019, but was canceled by the Parent on December 2, 2019, because Student "has not been sleeping and not taking his medication and Student is not doing well...she [said she will] call me when it [is] safe to do the evaluation."

¹⁶ In its response, the District clarified: "Parent agreed that since the last fine motor assessment had been completed in June 2019, that we could use that data instead of conducting another assessment [in the area of fine motor]. The gross motor assessment [that was needed as part of the Student's reevaluation in the fall of 2019] was completed on December 30, 2019."

any communication I have attempted to initiate unfortunately. Due to their lack of responses to me and that I was unable to obtain ESA certification, I recommend referring them to another provider for speech services.”

49. According to the District fiscal administrator’s email of December 23, 2019, the first Drop Box link (which was provided to the Parent’s attorney on December 23, 2019 and which represented the District’s first response to the Parent’s attorney’s records request) would have expired on January 22, 2020.

50. On February 3, 2020, the online school’s program manager emailed the Parent, stating she had found a different speech language pathologist to evaluate the Student and that she had “scheduled the evaluation meeting to review assessments for February 21, 2020 at noon.”

On February 4, 2020, the Parent responded, stating that February 21, 2020 would not work but February 27, 2020 or February 28, 2020 would work. The online school’s program manager responded that day, stating, in part: “I am working on moving the meeting within those time parameters.”

51. In a separate email on February 3, 2020, the second speech language pathologist emailed the Parent with four different dates and times for her to evaluate the Student.

52. According to the District’s response, on February 7, 2020, “a copy of all testing reports was provided to Parent, as requested. There was no evaluation draft available for distribution.”

53. On February 7, 2020, the District’s fiscal administrator emailed the Parent’s attorney, stating, in part:

This message is regarding your November 18, 2019 request of public records from the District... The District has gathered all of the remaining responsive documents.

We are providing you with access via Dropbox to the second and final batch of responsive documents. No log of redactions is included with this batch...This final batch of responsive documents will be accessible via Dropbox link for 30 days, from today...For security purposes, after 30 days, or if you notify me that you have retrieved what you needed, we will deactivate the link to these documents. Please contact me if you have any difficulty accessing records in Dropbox...

54. According to the District, its documentation shows that someone from the Parent’s attorney’s law firm accessed and downloaded the contents of the Dropbox on February 10, 2020.

55. According to emails provided to OSPI by the District as part of the instant investigation, as of February 14, 2020, it appears the District and the Parent had agreed to meet to discuss the Student’s reevaluation report on February 28, 2020.

56. On February 25, 2020, the Parent emailed the online school’s program manager, stating, in part:

I reached out to [the second] speech therapist a couple of different times. I chose a time on both occasions and did not get a response from her after choosing dates. I am not sure

what the situation is with that. I am only able to reach out to her by email because she does not provide any other contact information. I would appreciate if you could look into this matter.

Later that day, the online school's program manager responded, stating, in part: "I will have the Related Services Coordinator reach out to [the second speech language pathologist] and have her call you as soon as possible."

57. According to the District, the Student's evaluation group met on February 28, 2020, to discuss and finalize the reevaluation report. (See **Exhibit 1**)

58. According to the District, at the February 28, 2020 reevaluation meeting:

There was mention of a sensory profile during the meeting and Parent did state the Student previously had sensory supports but [the Parent] didn't deem them to have been successful. There was no discussion on evaluating that area nor was there a request for such an evaluation.

...

The evaluation meeting on February 28, 2020 included a review of existing data [for the areas of] medical-physical, fine motor, and general education.

The evaluation also included a review of [the recently-completed] assessments in cognitive, academic, gross motor, behavior, social/emotional, and adaptive domains.

[As of the February 28, 2020 reevaluation meeting], the only outstanding assessment [that needed to be completed] was language and communication.

59. According to the Parent's complaint, she had numerous concerns with the February 2020 reevaluation report:

- "The school psychologist who conducted the re-evaluation was not from [our geographic area] and had never [previously] interacted with Student at all."
- "Student's occupational therapy evaluation was only a paper review by an occupational therapist (OT) in Nebraska who had not once talked to Student."
- "I had requested, and the IEP team agreed, to do a speech language pathologist (SLP) evaluation and that still has not been done. I was told that the re-evaluation would be amended to include the SLP evaluation once it was done."
- "It was also agreed that Student would have a sensory evaluation [and] that was not done."
- The portion of the February 2020 reevaluation report that summarized the results of the BASC-3 did not include a chart, and, without said chart, she was unable to understand this portion of the reevaluation report.¹⁷
- Several portions of the final reevaluation report looked different than they had in the draft reevaluation report. For example, in the draft reevaluation report, "the BRIEF description [included] the actual academic testing [and this] was not included in the final report."
- "The occupational therapist...and physical therapy (PT) separate evaluations were not included in the final report."

¹⁷ On this point, the District stated: "If there was a request to include graphics in the evaluation report, it would have been declined as the software system, as it's configured, does not allow for including graphics."

60. According to the District, following the February 28, 2020 meeting to discuss the reevaluation report:

The IEP team met on several occasions to develop the annual IEP and the IEP was not finalized. The team met on 3/6, 3/20, 3/31, 4/2. All but one meeting was approximately two hours in length, with one meeting limited to one hour...Included in the [District's] response [are] documents [such as] the PowerPoints that were used to capture discussions had and decisions made [during the multiple spring IEP meetings].

...

[The online school's program manager] facilitated the discussions and the dominate contributors were Parent, Parent's attorney, and the online school's program manager. Parent's input was requested and provided throughout the meeting. At nearly every point in the discussions, Parent was asked 'does the sound accurate?', 'do you agree?', 'how do you want that to look?', 'what is your goal for Student?', so on and so forth.

The English teacher for Student drove the discussion on present levels of reading and writing, goals, and placement for the upcoming school year.

The general education teachers provided input on Student's class performance.

61. On March 5, 2020, the online school's program manager emailed the Parent, informing her that there was no draft IEP prepared, and that she would be completing a draft after the IEP team met the next day (on March 6, 2020).

62. In a separate email on March 5, 2020, the Parent emailed the online school's program manager, stating, in part:

I am reaching out to you again in regards to the speech evaluation. I spoke with [the new speech language pathologist] by phone and we had it set to be done yesterday. She was supposed to contact [a District staff member] as to how they would meet. It did not get done as it was supposed to ... Could you please look into this again.

63. According to the District, the Student's IEP team met on March 6, 2020 to develop a new annual IEP for the Student. According to the District, a new annual IEP was not finalized by the end of the IEP meeting on March 6, 2020.

In response to this citizen complaint, the District provided OSPI with a PowerPoint, dated March 6, 2020, that included pages related to different portions of the Student's potential IEP. This PowerPoint noted the participants were: Parent; special education teacher; two general education teachers; occupational therapist; physical therapist; and District representative.

According to the District: "The meeting on March 6, 2020 addressed post-secondary transition, (in which the parent stated that Student was currently working with a photographer), [OT], and began addressing other areas of performance."

64. According to emails submitted to OSPI by the District, on March 12, 2020, the Parent canceled an upcoming scheduled IEP meeting because her "attorney had an unexpected medical emergency."

65. According to the District's response:

The online school did not experience any breaks in instruction due to COVID.

[Parent] and [the online school's program manager] spoke on the phone about Student's [OT] since Student was receiving those services face-to-face. Parent stated that she would rather keep Student home and I told her that online therapy would be made available, of which she declined. We agreed to place a 'hold' on services from March 16, 2020 through April 20, 2020, and revisit on April 20, 2020, depending on the State's response to COVID.

66. On March 17, 2020, the District provided the Parent with a prior written notice that read, in part:

Description of the proposed or refused action: the online school proposes to pause [OT] until Washington resumes normal school operations on April 27th.

The reason we are proposing or refusing to take action is: the online school is proposing to take this action because Student receives face-to-face OT services in a clinical setting.

Description of any other options considered and rejected: the online school and parent considered providing Student with OT services online.

The reasons we rejected those options were: Online OT services were rejected because Student is developing the ability to engage online, which is currently a stressor.

67. According to the District, the Student's IEP team met on March 20, 2020 to develop a new annual IEP for the Student. According to the District, a new annual IEP was not finalized by the end of the IEP meeting.

In response to this citizen complaint, the District provided OSPI with a PowerPoint, dated March 20, 2020, that included pages related to different portions of the Student's potential IEP. This PowerPoint noted the participants were: Parent; special education teacher; 2 general education teachers; occupational therapist; physical therapist; and District representative.

According to the District:

The meeting on March 20, 2020 continued the discussion on present levels and began the discussion on goals for adaptive and social/behavioral domains. A lot of time was spent on discussing what the Parent wants Student to be able to do with regards to communication and increasing independence.

68. On March 20, 2020, the Parent emailed the online school's program manager, stating she was concerned the Student's typing goal was inaccurate, in that there was no data on the Student's current baseline.

On March 23, 2020, the online school's program manager responded, stating, in part:

As far as a current baseline in typing baseline goes, I am looking into a test for Typing Club, the program I set Student up with. I know that typing.com does have a baseline assessment but let's wait to find out if Typing Club does before I offer guidance on which to use. I know he struggles with that method of communication for several reasons, not limited to just fine motor skills, so let's revisit that when we have more data and when we meet next.

69. On March 30, 2020, the online school's program manager emailed the District's special education secretary, stating, in part: "[As regards Student], multiple IEP meetings have been held but [the] IEP [has not yet been finalized]."

70. According to the District, the Student's IEP team met on March 31, 2020 to develop a new annual IEP for the Student. According to the District, a new annual IEP was not finalized by the end of the IEP meeting.

In response to this citizen complaint, the District provided OSPI with a PowerPoint, dated March 31, 2020, that included pages related to different portions of the Student's potential IEP. According to the District, "the meeting on March 31, 2020 continued the discussion on present levels and the team began developing academic performance goals and physical therapy goals."

71. According to the District: "A draft [IEP] was...requested by Parent's attorney email on April 2, 2020, in preparation for an April 13, 2020 meeting. [In that email, the Parent's attorney stated:] 'If we do not have the IEP, in IEP format, Parent will not agree to it verbally or otherwise.'"¹⁸

72. According to the District, the Student's IEP team met on April 2, 2020 to develop a new annual IEP for the Student. A new annual IEP was not finalized by the end of the meeting.

In response to this citizen complaint, the District provided OSPI with a PowerPoint whose file name included the date of April 2, 2020. This PowerPoint file included pages related to different portions of the Student's potential IEP. However, this PowerPoint file appears to be the same as the March 31, 2020 version.

According to the District's response:

...The majority of the meeting was spent discussing executive functioning goals. These were challenging conversations. It took some time for the team to come up with what they wanted Student to be able to do but even longer to craft that into measurable goals. The parent's attorney...repeatedly stated the goals was unclear and immeasurable no matter what language was used. At one point I did err and engage her to ask her what she wanted to be written for the goal and measurement for which she responded that she wasn't the expert.

Parent's input was requested and provided throughout the meeting. However, there were frequent breaks in which Parent's attorney and Parent would spend time discussing what had been discussed [as a larger group], privately. These conversations were lengthy and frequent; one such discussion was nearly 20 minutes in length.

73. On April 7, 2020, the online school's program manager provided the Parent with a draft IEP to discuss at an upcoming IEP meeting.

¹⁸ Upon request, the District was able to provide OSPI with a copy of the referenced email. The referenced email did include language nearly identical to that set forth above. Furthermore, the email thread shows that on April 7, 2020, the District provided the Parent with "a DRAFT of the IEP for review at our next meeting" (emphasis added).

74. On April 13, 2020, the Parent canceled an upcoming IEP meeting because her "husband had a medical emergency." In response, the online school's program manager offered two potential meeting times for April 24, 2020, but the Parent said that date did not work for her. (As of May 7, 2020, there was a continued back-and-forth but, no date was agreed to by the District and the Parent.)

75. According to the Parent's complaint, she had the following concerns with the draft IEP that was provided to her:

Pg. 4, Academic: 'Student's difficulties in the realm of executive functioning may be the source of frustration that results in inappropriate emotional responses to certain tasks.' This appears to be pure speculation in Student's IEP. No functional behavior assessment was done to determine why Student acts the way he acts.

Pg. 5, Math: When my attorneys asked whether Student met his goal from last year, [the online school's academic administrator] did not know. She thought it was 70 to 75% met. She wasn't sure whether Student would go into geometry or algebra because she didn't know the classes that would be available.

Pg. 5, Writing: Student has a Typing Club account created that he hasn't yet (?-word unknown). Typing club was discussed at one of the IEP meetings. Student does not have control of his fingers and cannot type. I tried to tell the online school's academic administrator and the [occupational therapist] this, but no one listened. Student can hunt and peck typing but he has no idea where to put his fingers. What is he supposed to do with Typing Club?

Pg. 5, Reading: We talked about Student's reading being co-taught by his general education and special education teacher. I thought this would be identified in his goal and it is not.

Goals: No data was provided to know his baseline. My attorney kept asking about the goals in his 2019 IEP and no one seemed to know whether he met them or not. The present levels does not state Student's current functioning in terms of percentages like the goals. I do not know what Student's baseline performance is for his goals because it was never provided.

Pg.6, Behavior goal: There is no baseline information or data to know whether he improved or not. The goal is not measurable or objective and I could not get the online school's academic administrator to change it.

Speech to Text: Student was to have this available to him and it has never been available. It was in his June 2019 IEP too.

Pg. 6, Executive Functioning goal: Even after a lot of discussion during the IEP meeting, the proposed IEP does not have the right language. The goal is not objective, measurable or understandable. This goal contains numerous subjective words and phrases. We ended the discussion on this goal with a suggestion of his teacher to do a performance goal, not this goal. How do I know if Student met this goal? I also thought we discussed this goal as an adaptive goal.

Pg. 6, Executive Functioning goal: Again, the wording is vague and not what we discussed. There is no baseline other than 'inconsistent' and I thought 'activity of daily living' was going to be removed. How do I know if it is met? I also thought we discussed this goal as an adaptive goal.

Pg. 7, Social Skills goal: Again, this is vague, not measurable, or objective.

Pg. 7, Adaptive: There are no adaptive goals and he is eligible for [specially designed instruction] in adaptive.

Pg. 7, OT goal: I thought we had agreed to not include so much to be monitored, such as letter size, spacing, orientation, appropriate capitalization and letter formation on lined paper. We, as a Team, agreed to limit it to spacing and letter formation, which are not at 40% for a baseline.

Pg. 7, OT goal: I told the Team over and over that Student does not know where to put his fingers on the keys to type and he doesn't have the hand strength to type for very long. The response from the occupational therapist was to not follow this proposed IEP if he can't do it. He would start where can regardless of what the goal says. This goal should have been a goal to strengthen his hands not type 15 words per minute with 'decreasing assistance,' whatever that means.

Pg. 8, PT goal: I question whether Student's baseline is really 36 seconds simply because he did it once. I questioned it at the meeting and no one listened.

Pg. 10, Secondary Transition: The chart shows that Student did job shadowing his sophomore year. He did not. We did not discuss this at any meeting. Additionally, I don't know how Student will do CTE or Career Center in the next two years.

Pg. 12, Accommodations: We have not discussed this page yet. I do not know if it is accurate because I was not given a list of what options there are for Student.

Pg. 14, Testing: I do not know how Student will use Text to Speech for testing. It was in his IEP last year and he never received access that worked, nor did he use it for anything. How is this going to work?

Pg. 15, Minutes: I have tried several times to get the math to work and I don't understand how the school came up with only 105 minutes per week in a special education setting. We have not yet talked about this but I don't understand this calculation.

76. In her complaint, the Parent alleged she was "not given the opportunity to effectively participate" in the various IEP meetings that took place after the completion of the February 2020 reevaluation report, in part, because: a) "the teachers provided very little input into the goals;" and b) "[the online school's academic administrator] argued with everything that was asked by my attorney or me."

77. According to the District, "Student attended [the District] until April 22, 2020, when Parent and [Parent's] attorney stated [Student would be taking] a leave. Student was withdrawn by Parent on May 12, 2020."

78. On May 12, 2020, the Parent emailed the online school's program manager, stating: "I am writing to let you know that Student has been enrolled with our local school district. We will not need to schedule any more meetings to finish the IEP."

79. The District provided the Parent with a prior written notice on May 14, 2020 that read, in part: The online school is terminating the development of the IEP that began on March 6, 2020, because Student withdrew from the online school on May 12, 2020...The IEP team met on several occasions to develop the annual IEP and the IEP was not finalized. The team met on March 6, 2020, March 20, 2020, March 31, 2020, and April 2, 2020. The draft [IEP] was requested by your attorney for you on April 2, 2020 in preparation for an April 13, 2020 meeting. The draft was provided on April 7, 2020. The meeting scheduled for April 13, 2020 was canceled and another time to meet was not provided prior to [Student's] withdraw.

CONCLUSIONS

Issue 1: Reevaluation Procedures – The Parent alleged the District did not follow proper reevaluation procedures for the Student during the 2019-2020 school year. Specially, the Parent alleged:

- Allegation 1: The District did not complete the Student's reevaluation in a timely manner.
- Allegation 2: The Parent was not provided with a prior written notice "that identified the reevaluation testing areas and plan."
- Allegation 3: "The school psychologist who conducted the re-evaluation was not from [our geographic area] and had never interacted with Student at all."
- Allegation 4: "Student's occupational therapy evaluation was only a paper review by an occupational therapist...in Nebraska who had not once talked to Student."
- Allegation 5: The speech language assessment was not completed and "I was told that the re-evaluation would be amended to include the SLP evaluation once it was done."
- Allegation 6: "It was also agreed that Student would have a sensory evaluation [and] that was not done."
- Allegation 7: The portion of the February 2020 reevaluation report that summarized the results of the BASC-3 did not include a chart, and, without a chart, the Parent was unable to understand this portion of the reevaluation report.
- Allegation 8: Several portions of the final reevaluation report looked different than they had in the draft reevaluation report. For example, in the draft reevaluation report, "the BRIEF description [included] the actual academic testing [and this] was not included in the final report."
- Allegation 9: "The occupational therapist...and physical therapy (PT) separate evaluations were not included in the final report."

Allegation 1

The Parent alleged the District did not complete the Student's reevaluation in a timely manner. A reevaluation must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary.

Prior to the fall of 2019, the last time the Student had been evaluated was September 30, 2016. This means that, unless the Parent and the District agreed a reevaluation was unnecessary, the reevaluation need to be completed by September 30, 2019.

Here, though, the Parent and the District agreed the Student needed to be reevaluated and on September 24, 2019, the Parent provided written consent for the Student to be evaluated. Importantly, by first obtaining the Parent's written consent for the Student's reevaluation on September 24, 2019, it was impossible for the evaluation group to complete its reevaluation in time to meet the deadline of September 30, 2019.¹⁹ Therefore, this represents a violation of the IDEA. To remedy this violation, the District will be required to send an email to certain District staff with written guidance on evaluations timelines.

Once a district obtains the parents' consent to conduct a reevaluation, it must 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. Here, as detailed above, the District first obtained the Parent's written consent for the Student to be reevaluated on September 24, 2019. According to the online school's 2019-2020 calendar, 35 school days after September 24, 2019 was November 13, 2019. The Student's reevaluation, though, was not completed until February 28, 2020, long after the 35-school day deadline had lapsed.²⁰ This, therefore, represents a violation of the IDEA. In determining whether and what remedy is warranted, though, it is important to note the circumstances under which the November 13, 2019 deadline was not met.²¹

Based on documentation submitted to OSPI during the course of this investigation, by both the District and the Parent, it appears the reevaluation plan was as follows:

- The District would contract with providers to administer new assessments for the Student in the areas of:
 - Social-emotional;
 - Adaptive;
 - Behavior;
 - Cognitive;
 - Academic;
 - Communication; and,
 - Gross motor.²²
- The following portions of the Student's reevaluation were going to consist of a review of existing data:
 - Medical-physical; and,
 - General education

¹⁹ On this point, it is also worth noting: according to emails, the first time District staff recognized the Student as requiring a reevaluation was on September 4, 2019—still, a relatively late date if the reevaluation was to be completed by September 30, 2019.

²⁰ Though, it should be noted, even as of February 28, 2020, the Student had not been administered a planned assessment in the area of communication.

²¹ A state educational agency has "general supervisory responsibility" for ensuring a district's compliance with the IDEA.

²² Ultimately—on November 13, 2019, the District and the Parent agreed to adopt the fine motor assessment data from the Student's June 2019 occupational therapy assessment. In other words, the District and the Parent determined the Student did not require additional fine motor assessments during the 2019-2020 school year.

Based on the documentation submitted to OSPI, it appears that, in some of the areas in which the evaluation group determined the Student needed to be assessed—namely, cognitive, academic, and gross motor, the District made a good faith effort to schedule and complete the assessments before the deadline of November 13, 2019.

For example, as per cognitive and academic, the District contracted with a private learning disabilities medical practice to complete the assessments in these areas. The documentation provided to OSPI shows in October and November 2019:

- On October 3, the private learning disabilities medical practice proposed two potential dates to the Parent.
 - The Parent first responded to this email on October 9, asking if the Student would still be evaluated on the first of these dates—despite the fact that agreement had not yet been reached on that date as the Parent had not previously responded.
- On October 18, the Parent cancelled the cognitive and academic assessments scheduled for the next day (October 19) because the Student was sick.
- On October 22, the private practice emailed the Parent, asking if the Student had recovered from his illness and if the Student could be evaluated on Saturday, November 9.
 - The Parent first responded to this inquiry on November 6, stating, in part: “Are we still on for Student’s evaluation on Saturday, November 9, 2019?”
 - The private practice then responded to the Parent, stating, November 9 would not work, but November 10 would work.
 - In response, the Parent emailed an attorney stating she was upset the Student would not be assessed in cognitive and academic on November 9.
- On November 11, the private practice emailed the online school’s program manager, stating, in part: “To be clear, these days were offered, should you need them for a future PWN: 10/26 (no show-sick); 11/8 (can't test in the afternoon) 11/9 (family plans); 11/10 (family plans); and 11/11 no reply to several emails.”

On the basis of the foregoing, OSPI determines the District made a good faith effort to complete the assessments in academic and cognitive before the deadline of November 13, 2019, and that the Student was not made available for testing.²³

As per gross motor:

- On October 17, 2019, the online school began the process of getting a contract approved for a physical therapist to evaluate the Student.
- On November 6, 2019, a private physical therapist emailed the online school’s program manager, stating, in part:

²³ The District continued to make a good faith effort to complete the assessments in academic and cognitive after November 13, 2019. For example, soon after that date, the private learning disabilities medical practice said it was no longer available to evaluate the Student. In response, on November 13 and 14, the District contracted with a private psychologist to complete the assessments in these areas. On November 19, the online school’s program manager provided the Parent with 8 different days the private psychologist could complete the assessments in academic and cognitive. As of November 21, no date had been agreed on. The academic assessment was ultimately completed on December 5 and the cognitive assessment on December 29, 2019.

I just spoke with Mom and gave her several options for scheduling the evaluation, including tomorrow 11-7, 11-8, 11-11, and 11-14, but she does not want to do any of them as he is having several other evaluations. I have scheduled to complete the evaluation on 11-18.

On the basis of the foregoing, OSPI concludes: the District made a diligent effort to complete the gross motor evaluation of the Student prior to November 13, 2019.²⁴

With some of the other areas, though—namely, communication, social-emotional, adaptive, and behavior, it is less clear the District diligently attempted to complete the required assessments by November 13, 2019.

As per communication from the documentation provided to OSPI as part of this complaint, it appears the first time the Parent was contacted regarding setting up a time for the Student to be assessed in the area of communication was on November 7, 2019, a Thursday—and the evaluation was due the following Wednesday, November 13, 2019. With only four business days remaining before the deadline lapsed, it is not clear this was a reasonable effort to complete the communication assessment before November 13, 2019.²⁵

The following facts are pertinent to determining the timeliness of the District's efforts to schedule assessments of the Student in the areas of social-emotional, adaptive, and behavior:

- Prior to November 13, 2019, there were several communications between the Parent, the online school, and a private learning disabilities medical practice in regard to scheduling a "psychoeducational" assessment of the Student.
 - On two occasions during the course of this investigation, the online school's program manager informed OSPI's investigation that the language "psychoeducational" referred exclusively to assessments in the areas of cognitive and academic.
- In mid-November 2019, the District replaced the private practice with a private psychologist.
- There was little-to-no documentation provided to OSPI during this investigation that relates to the District's efforts to schedule the Student's assessments in social-emotional, adaptive, and behavior.
- According to the Student's February 2020 reevaluation report, and the District's response, the private psychologist completed the social-emotional, adaptive, and behavior assessments on December 29, 2019.

On the basis of the foregoing facts, OSPI concludes: The District was not diligent in attempting to complete the Student's assessments in social-emotional, adaptive, and behavior prior to November 13, 2019. To remedy this violation, the District will be required to send an email to certain District staff with written guidance on evaluations.

²⁴ After the Parent apparently canceled a gross motor evaluation that had been scheduled to take place on November 18, 2019, the gross motor evaluation was eventually completed on December 30, 2019.

²⁵ The back-and-forth regarding setting up a time to assess the Student in communication that took place after November 13, 2019 is discussed below. See *Allegation 5*.

Allegation 2

The Parent alleged she was not provided with a prior written notice “that identified the reevaluation testing areas and plan.” When a district determines that a student should be reevaluated, it must provide prior written notice to the student’s parents that describe the evaluation procedures that the district intends to conduct.

A prior written notice need not come in a particular form. For example, a prior written notice need not be labeled ‘prior written notice,’ for it to function as an effective prior written notice under the IDEA. However, in order for a communication to count as a prior written notice under the IDEA, it must contain several elements: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the individualized education program (IEP) team considered and the reasons why those options were rejected; and, (g) a description of other factors that are relevant to the agency’s proposal or refusal.

Here, both the Parent’s complaint and the District’s response included a September 24, 2019 ‘Reevaluation Notification/Consent’ document, signed by the Parent, that appears to relate to those areas the evaluation group and the Parent agreed to evaluate the Student in. Neither party provided OSPI with a document titled, ‘Prior Written Notice,’ that related to the September 24, 2019 decision to reevaluate the Student.

While both copies provided to OSPI are difficult to read, it appears the following areas are delineated as being those areas the Student would be evaluated in: medical-physical; social/emotional; academics; communication; fine motor; general education; cognitive; adaptive; behavior; gross motor; and reviews of existing data.

Here, then, the September 24, 2019 ‘Reevaluation Notification/Consent’ document included some of the required elements for a prior written notice—namely, that the District was proposing to reevaluate the Student, with a list of the specific areas they are proposing to evaluate the Student in. It lacks, however, other required elements of a prior written notice. For example: why the District and Parent believed those were the areas the Student needed to be evaluated in; and other courses of action that were considered. Therefore, the September 24, 2019 ‘Reevaluation Notification/Consent’ document is ineffective as a prior written notice under the IDEA, and this is a violation. To remedy this violation, the District will be required to send an email to certain District staff with written guidance on evaluations and prior written notice.

Allegation 3

The Parent alleged the February 2020 reevaluation was deficient in that: “the school psychologist who conducted the re-evaluation was not from [our geographic area] and had never [previously interacted with Student at all.”

The IDEA does not require that, as part of the evaluation process, students be assessed by an individual that lives or works in the student’s “geographic area” or that assessments be administered by someone who has previously worked with the Student. Rather, the IDEA simply requires that assessments “are administered by trained and knowledgeable personnel.” Here, the records contains no indication that the school psychologist who administered certain assessments of the Student during the 2019-2020 school year was not “a trained and knowledgeable” individual in the areas assessed. Therefore, there has been no violation of the IDEA.

Allegation 4

The Parent alleged the February 2020 reevaluation was deficient in that: “Student’s occupational therapy evaluation was only a paper review by an occupational therapist (OT) in Nebraska who had not once talked to Student.” Based on the documentation provided to OSPI during the course of this investigation, OSPI understands the Parent’s allegation on this score to be: it was an error for the Student’s February 2020 reevaluation report to adopt the Student’s May 2019 occupational therapy evaluation as presenting sufficient data in the area of fine motor.

For three reasons, OSPI does not find an IDEA violation in regards to this allegation.

First, it does not appear to be an accurate statement: while the February 2020 reevaluation reviewed existing data—the May 2019 evaluation—the May 22, 2019 occupational therapy evaluation itself was not “only a paper review.” As the May 22, 2019 occupational therapy evaluation itself shows, the occupational therapist: 1) directly observed the Student; 2) communicated with the Student; and, 3) administered the Beery-Buktenica Developmental Test of Visual-Motor Integration to the Student.²⁶

Second, the IDEA does not require that evaluators be from certain geographic regions, such as the same State as the student. Rather, the IDEA simply requires that assessments “are administered by trained and knowledgeable personnel.” Here, the record contains no indication that the occupational therapist who administered the May 22, 2019 occupational therapy assessment was not “a trained and knowledgeable” individual in that area.

Third, according to the documentation submitted to OSPI as part of this complaint, prior to the Parent filing her special education citizen complaint, she does not appear to have taken issue with the May 22, 2019 occupational therapy evaluation as being substantively inadequate” or the

²⁶ According to the May 22, 2019 occupational therapy evaluation, the Beery-Buktenica Developmental Test of Visual-Motor Integration “is a neuropsychological test that analyzes visual construction skills. It identifies problems with visual perception, motor coordination, and visual-motor integration such as hand-eye coordination.”

occupation therapist was from a different State. In fact, during the reevaluation process in the 2019-2020 school year (on or about November 13, 2019), the Parent agreed that the fine motor data from the May 22, 2019 occupational therapy assessment was relevant, accurate, and sufficient for purposes of the Student's triennial evaluation.

For the foregoing three reasons, there has been no violation of the IDEA on this score.

Allegation 5

The Parent alleged the February 2020 reevaluation was deficient in that: "I had requested, and the IEP team agreed, to do a speech language pathologist (SLP) evaluation and that still has not been done. I was told that the re-evaluation would be amended to include the SLP evaluation once it was done."

As detailed above, in *Allegation 3*, the District and the Parent were not able to set up a time for the Student to be evaluated in communication prior to November 13, 2019. Regarding the continued efforts to set up a time for the Student's communication assessment after that date, OSPI notes the following:

- According to emails, on November 15, 2019, the online school's program manager provided three dates during which the Student could be assessed in the area of speech (November 21, 2019, December 2, 2019, and December 7, 2019). The Parent did not select one of the three proposed dates; nor did the Parent propose a different date.
- On November 22, 2019, the online school's program manager asked about the Student's availability the week of December 7, 2019, as the speech language pathologist had availability that week to evaluate the Student. From the documentation provided to OSPI, it is not clear what, if any, response the Parent provided to this inquiry.
- On November 25, 2019, the District decided to continue implementing the prior IEP (June 2019) until the Student's reevaluation can be completed and a new IEP can be developed.
- On December 15, 2019, the speech language pathologist that the District had been contracted with (or attempted to contract with) to schedule a speech evaluation of the Student emailed the online school's related services coordinator, stating, in part:

...I have reached out to the family with both emails and phone calls and offered a multitude of different dates and times spanning several weeks' time for an evaluation but the family did not directly respond to me. In her reply to a group e-mail with myself and the online school's program manager, the mother said that their family is very busy and her work schedule is fluctuating greatly at this time, I then offered to her to let me know what days and time work best for the family and I could try to accommodate based on their needs, but no reply was ever given.
- On December 15, 2019, the speech language pathologist the District contracted with after the Parent signed consent for a reevaluation in early September 2019 had to excuse herself from further participation in the Student's communication assessment.
- On February 3, 2020, the online school's program manager emailed the Parent, stating she had found a different speech language pathologist to evaluate the Student.
- In a separate email on February 3, 2020, the second speech language pathologist emailed the Parent with four different dates and times for her to evaluate the Student.
- From the documentation provided to OSPI, it is unclear what, if any, action the District took to complete the Student's communication assessment after February 3, 2020.

- The Parent withdrew the Student from the District on or about May 12, 2020.

On the basis of the foregoing, OSPI concludes: the District was, at times, diligent in trying to schedule the Student's communication assessment, and, at other times, not diligent in trying to schedule the Student's communication assessment. For example, between November 15, 2019 and December 15, 2019, the District made repeated efforts to schedule a communication assessment for the Student. But the District's efforts appear to have stalled for the month of January 2020. Then, it was diligent again in early February 2020—offering at least four different dates the Student could be evaluated in communication. But then, from the middle of February 2020 till the Student withdrew from the District (on May 12, 2020), it is unclear what, if any, efforts the District took to schedule a communication assessment of the Student. On the basis of the foregoing, OSPI concludes a violation of the IDEA occurred. To remedy this violation, the District will be required to send an email to certain District staff with written guidance on evaluations.

Were the Parent to reenroll the Student in the District, OSPI reminds the District that it must take steps to complete a communication assessment of the Student soon thereafter.

Allegation 6

The Parent alleged the February 2020 reevaluation was deficient in that: "it was also agreed that Student would have a sensory evaluation [and] that was not done."

Here, the September 24, 2019 'Reevaluation Notification/Consent' document did not identify sensory as an area in which the Student would be evaluated. Furthermore, from the documentation provided to OSPI during the instant investigation, the earliest (and only) reference to a potential evaluation of the Student in the areas of sensory is from the February 28, 2020 reevaluation meeting. According to the District: "There was mention of a sensory profile during the meeting and Parent did state the Student previously had sensory supports but [she] didn't deem them to have been successful."

In sum, it does not appear there was an agreement (at least prior to February 28, 2020) to evaluate the Student in the area of sensory. That, though, is not the end of the analysis. A 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. Furthermore, during a reevaluation, the reevaluation group must consider 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.

On this point, OSPI makes several observations:

- At the February 28, 2020 reevaluation meeting, the Parent reported the Student had a potential need in the area of sensory, as the Student previously had "supports" in this area, but, regardless of those "supports," the Student made no progress in this area.
- The 'Fine Motor' portion of the February 2020 reevaluation report read, in part: "While sensory was not evaluated, this practitioner believes there may be some sensory integration issues and that

Student may have decreased sensation. Parent reports that there were some sensory concerns in the past and that application of prior recommendations did not yield remarkable results.”

- It appears the Student’s IEP team did not explicitly determine whether the Student had a need in the area of sensory resulting from his disability.

Therefore, this appears to be a violation of the IDEA. Consequently, were the Student to be reenrolled in the District, the Student’s IEP team would need to meet. At that meeting, the Student’s IEP team would need to answer the following questions:

1. Does the Student have a need resulting from the Student’s disability in the area of sensory? Why or why not?
2. Does the Student’s IEP team have the data necessary to determine the answer to Question 1?
3. If the answer to Question 2 is ‘no’, what is the District’s plan to complete an evaluation of the Student in the area of sensory?

Allegation 7

The Parent alleged the February 2020 reevaluation was deficient in that: the portion of the February 2020 reevaluation report that summarized the results of the BASC-3 did not include a chart, and, without said chart, she was unable to understand this particular portion of the reevaluation report.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child’s need for special education and related services and supplementary aids and services; and, (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

Here, the ‘Social/Emotional’ section of the Student’s February 2020 reevaluation report did not include a chart of the BASC-3²⁷ results. This section of the February 2020 reevaluation report also contains some complex language. For example: “The Externalizing Problems composite scale T score is 63, with a 90% confidence interval range of 60-66 and a percentile rank of 91.”

However, the ‘Social/Emotional’ section of the Student’s February 2020 reevaluation report does clearly summarize both the results of the BASC-3, as well as the import of those findings. For example, this portion of the February 2020 reevaluation report read, in part:

Student’s T score on [the externalizing problems] composite scale falls in the At-Risk classification range....The rater reports that Student displays a moderately high number of disruptive, impulsive, and uncontrolled behaviors. Such behaviors are probably not

²⁷ The Behavior Assessment System for Children, Third Edition (BASC-3) “is a multimethod, multidimensional system used to evaluate the behavior and self-perceptions of children and young adults ages 2 through 25 years.” <https://images.pearsonclinical.com/images/assets/basc-3/basc3resources/About-the-BASC-3-Rating-Scales.pdf>

considered severe but may warrant further follow-up, particularly if other scales are elevated.

Student's T score on Aggression...falls in the At-Risk classification range and follow-up may be necessary. The rater reports that Student sometimes displays aggressive behaviors, such as being argumentative, defiant, and/or threatening to others. Because aggressive behaviors in children often are present with other externalizing behaviors and with diminished social relations, even moderately elevated Aggression scores such as this may warrant intervention.

Student's T score on Conduct Problems is 56 and has a percentile rank of 83. The rater reports that Student demonstrates rule-breaking behavior no more often than others his age.

The Internalizing Problems composite...falls in the Clinically Significant classification range.

Student's T score on Anxiety...falls in the Clinically Significant classification range and usually warrants follow-up. The rater reports that Student frequently displays behaviors stemming from worry, nervousness, and/or fear.

Student's T score on Depression...falls in the Clinically Significant classification range and follow-up may be necessary. The rater reports that Student is withdrawn, pessimistic, and/or sad. Scores in this range usually warrant assessment of vegetative symptoms (e.g., weight loss or gain, fatigue). Suicidal tendencies should also be explored.

Student's T score on Somatization...falls in the At-Risk...range and follow-up may be necessary. The rater reports that Student displays several health-related concerns. When a serious health problem is not present, these concerns may be indications of an underlying emotional problem.

Additionally, numerous other portions of the February 2020 reevaluation report set forth the results of assessments in narrative form—in other words, not in the form of a chart.²⁸ There is no evidence that the parent indicated a lack of understanding of the results. Therefore, OSPI finds no violation of the IDEA.

Allegation 8

The Parent alleged the February 2020 reevaluation was deficient in that: several portions of the final reevaluation report looked different than they had in the draft reevaluation report. For example, in the draft reevaluation report, “the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2)²⁹ description [included] the actual academic testing [and this] was not included in the final report.”

²⁸ For example: cognitive (results of the Reynolds Intellectual Assessment Scales, Second Edition (RIAS-2)); behavior (results of the 'behavior regulation, emotion regulation, and cognitive regulation indexes'); and gross motor (results of the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2)).

²⁹ BRIEF-2 “assesses executive function and self-regulation in children and teens.” <https://www.wpspublish.com/brief-2-behavior-rating-inventory-of-executive-function-second-edition>. It is an “individually-administered rating scale completed by a parent, teacher, or self-report.”

For four reasons, this allegation does not represent a violation of the IDEA.

First, the IDEA does not require that a final reevaluation report look the exact same as it did in draft form. Second, as a district should be incorporating parent input and information, there is always a potential that an evaluation report may change between the draft and final version. Third, to the extent the Parent alleged the February 2020 reevaluation report should have included, verbatim, any and all documentation related to the administration of the BRIEF-2—as opposed to a summary of the same, this is not required. See *Allegation 9*, below.

And, fourth, to the extent the Parent alleged the February 2020 reevaluation report did not include the testing results of the BRIEF-2, this does not appear to be an accurate statement. For example, with the BRIEF-2, scores are given for the following categories: behavioral regulation index; emotional regulation index; and cognitive regulation index.³⁰ These three indices are then combined to form an executive composite. Here, the 'Behavior' section of the February 2020 reevaluation report clearly states the testing results for the Student for each of these indices. (According to the February 2020 reevaluation report, as well as the District's response, at the private psychologist's request, the Parent filled out the BRIEF-2 on December 5, 2019, and returned it to the private psychologist on December 23, 2019.)

For the foregoing four reasons, *Allegation 8* does not represent a violation of the IDEA.

Allegation 9

The Parent alleged the February 2020 reevaluation was deficient in that: "the occupational therapist...and physical therapy (PT) separate evaluations were not included in the final report."

Under the IDEA, though, that is not required. Rather, the evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the findings as related to the student's suspected disabilities and instructional program.

As per the PT assessment for gross motor ability of the Student that was administered on December 30, 2019, the nature of this assessment, including who conducted it, the type of evaluative measurement used, the results obtained, and a statement of the apparent significant of the results, are all clearly contained with the February 2020 reevaluation report. For example, as per the February 2020 reevaluation report: on December 30, 2019, a private physical therapist "assessed [Student] with the gross motor portion of the Bruininks-Oseretsky Test of Motor Proficiency, Second Edition (BOT-2).³¹ The results were, in part, as follows: bilateral coordination

³⁰ <https://www.wpspublish.com/brief-2-behavior-rating-inventory-of-executive-function-second-edition>

³¹ The BOT-2 measure's a student's "motor skills, both gross and fine. It contains subtests and challenging game-like tasks and is very easy to administer."

(below average); balance (below average); body coordination (well below average); running speed/agility (below average); strength (well below average); strength and agility (well below average). Furthermore, the February 2020 reevaluation report set forth the significance of the findings as they related to the Student's suspected disabilities and instructional program:

Significant Findings:

Student struggles with postural control, core strength, balance and bilateral coordination per his testing score on the BOT-2, as he is well below average in all of the areas. All of his scores are -2.0 standard deviations below average. However, he was able to transition to a community place from home, sit in a chair and walk up/down stairs safely.

In sum, as per the December 2019 PT assessment in the area of gross motor, the Student's February 2020 reevaluation report contains all the required elements, and there has been no violation of the IDEA.

The February 2020 reevaluation report, though, does not appear to include the required information on the May 2019 private OT assessment and June 2019 District assessment revision incorporating the same. As stated earlier, during the reevaluation process, the Student's evaluation group and the Parent agreed to adopt the fine motor data from the June 2019 OT assessment, as it had been recently gathered. The 'fine motor' portion of the Student's February 2020 reevaluation report, though, appears to be limited to: certain conclusions on the Student's need in the area of fine motor³²; as well as reports of the Student's progress on his measurable annual goals in fine motor from his June 2019 IEP.

In other words, the 'fine motor' portion of the Student's February 2020 reevaluation report does not appear to include: the procedures and instruments that were used and the results obtained as a result of the Student's June 2019 OT assessment. For example, the Student's June 2019 IEP mentions the results of the Beery-Buktenica Developmental Test of Visual-Motor Integration (Beery test)³³, which had recently been administered to the Student.³⁴

<https://www.pearsonassessments.com/store/usassessments/en/Store/Professional-Assessments/Motor-Sensory/Bruininks-Oseretsky-Test-of-Motor-Proficiency-%7C-Second-Edition/p/100000648.html>

³² For example: "Student demonstrates difficulties in the areas of visual motor integration, a skill that allows us to use our eyes and our hands in a coordinated and efficient way, and motor planning, the ability to conceive, plan, and carry out a skilled, non-habitual motor act in the correct sequence from beginning to end."

³³ The Beery test helps assess the extent to which individuals can integrate their visual and motor abilities."
<https://www.pearsonassessments.com/store/usassessments/en/Store/Professional-Assessments/Academic-Learning/Brief/Beery-Buktenica-Developmental-Test-of-Visual-Motor-Integration-%7C-Sixth-Edition/p/100000663.html>

³⁴ The June 2019 IEP does not specify the exact date the Beery test was administered to the Student. Upon knowledge and belief, it was administered as part of the Student's occupational therapy assessment in May 2019.

Since, according to the documentation provided to OSPI during the course of this investigation, the Student's reevaluation group determined the fine motor data gathered as part of the Student's June 2019 OT evaluation would be relevant to the Student's triennial evaluation (and subsequent IEP development), were the Student to reenroll in the District, the Student's evaluation group would need to amend the February 2019 reevaluation report to specifically include: what specific fine motor assessments were administered to the Student in June 2019; who administered them; what were the results of the same; and how do those results relate to the student's suspected disabilities and instructional program. This does represent a violation of the IDEA. To remedy this violation, the District will be required to send an email to certain District staff with written guidance regarding evaluation reports.

Issue 2: IEP Development – The Parent alleged the District did not follow proper IEP development procedures in the spring of 2020. Specifically, the Parent alleged: 1) she was “not given the opportunity to effectively participate” in the 4 different IEP development meetings that took place throughout March and April of 2020 because “the teachers provided very little input into the goals” and the online school's academic administrator “argued with everything that was asked by my attorney or me;” and 2) the draft IEP is deficient in 19 different respects.

Allegation 1

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and, (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting.

Here, based on the documentation provided to OSPI, the District gave the Parent ample opportunity to participate in the development of the Student's draft IEP following the completion of the February 2020 reevaluation report. For example, there were four different IEP development meetings after the February 2020 reevaluation report was finalized: March 6, March 20, March 31, and April 2, 2020. From the documentation provided to OSPI during the course of this investigation, these IEP meetings appear to have been both lengthy and thorough. For example, for each such meeting, the District provided OSPI with a copy of a lengthy PowerPoint that was used during the meeting. The slides of the PowerPoint presentations related to different portions of the Student's draft IEP. Furthermore, from these PowerPoint presentations, as well as the District's response, it appears the development of the Student's goals was a recurring topic of discussion at these meetings.

In sum, based on the documentation provided to OSPI, the District gave the Parent ample opportunity to participate in the development of the Student's draft IEP following the completion of the February 2020 reevaluation report.³⁵ This does not represent a violation of the IDEA.

Allegation 2

The Parent alleged the draft IEP is deficient in 19 different respects. The IDEA, though, does not contain any requirements concerning draft IEPs. In other words, OSPI cannot weigh in on an IEP draft that the Student's IEP team has not finalized as it would be premature to make a conclusion about the sufficiency of a document still being created. This does not represent a violation of the IDEA.

Regardless, were the Student to be reenrolled in the District, OSPI reminds both the Parent and the District of the following matters, as an IEP would need to be developed for the Student at that upon the Student's re-enrollment:

- IEP team decision must be based on sufficient, relevant data on the Student.
- The IEP team should work toward consensus, but the district has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive a free appropriate public education (FAPE). No one team member has the right to dictate a particular educational program. If the team cannot reach consensus, the district must provide the parents with prior written notice of the district's proposals or refusals, or both, regarding the student's educational program and the parents have the right to seek resolution of any disagreements by initiating an impartial due process hearing.
- The goals must be measurable, therefore OSPI recommends that IEP goals be written in the following manner: they have a baseline (which reflects the Student's current ability in that goal area); an goal (which reflects where the Student's IEP team hopes the Student will progress to after receiving IEP services); and that the baseline and the goal be in the same unit of measurement.

Issue 3: Parental Consent for OT Assessment – The Parent alleged the District did not follow proper procedures for obtaining her consent prior to completing an OT assessment of the Student on May 22, 2019.

A district is required to obtain written, informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. Consent means that: the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; the parent

³⁵ It is true that an IEP must be developed within 30 days of the completion of a reevaluation. And, here, that did not occur: the reevaluation was completed on February 28, 2020; 30 days after February 28, 2020 was March 29, 2020; and, as of the date this special education citizen complaint decision was issued, no IEP had been finalized for the Student. Here, this does not, though, represent a violation of the IDEA. When faced with competing IDEA requirements, such as ensuring parental participation and a particular deadline, the 9th Circuit has said IEP teams should generally prioritize parental participation. Here, that is exactly what the District did by having 4 lengthy IEP development meetings with the Parent. Furthermore, in terms of the 30 day deadline not being met, it is also important to note the Parent cancelled two planned IEP development meetings in the spring of 2020—on March 12, 2020 (the Parent's attorney "had an unexpected medical emergency") and sometime after April 13, 2020 (reason for cancellation unknown).

understands and **agrees in writing** to the carrying out of the activity for which consent is sought, and the consent describes that activity. This includes a list of any records that will be released, and to whom they will be released, or records that will be requested and from whom; and the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

Here, it is unclear when the Parent gave verbal consent for the District to administer an OT assessment to the Student in the spring of 2019. According to a 'Contact Attempt Report,' on May 20, 2019, the Parent gave verbal consent (via a telephone call) for the Student to be evaluated in the area of OT. An 'Assessment Revision Notification/Consent' document, though, states the Parent provided "permission [for the OT assessment] via phone" on June 3, 2019. Regardless of the date verbal consent was provided, it is clear the Parent did not provide the District with **written** consent for it to administer an OT assessment to the Student in the spring of 2019, as is required by WAC 392-172A-01040. This represents a violation of the IDEA.

To remedy this violation, the District will be required to send an email to certain District staff with written guidance regarding consent.

Issue 4: Parent's November 2019 Request for Educational Records – The Parent alleged the District did not follow proper procedures for responding to her November 18, 2019 request to access certain records pertaining to the Student. Specifically, the Parent alleged the records provided by the District in response to her request were insufficient in three regards: 1) "no data regarding any of the Student's goals was provided"; 2) "no meeting notes were provided"; and 3) "no disciplinary records were provided even though some of the registration records show that there was a suspension lasting more than 10 days."

Under the IDEA and State special education regulations, districts must permit the 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 right to inspect and review educational records includes, in part: 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. The district must comply with a request promptly and before any meeting regarding an IEP, hearing, or resolution session relating to the identification, evaluation, educational placement of the student, or provision of a FAPE to the student, including disciplinary proceedings. The district must respond in no more than 45 calendar days after the request has been made.

Here, on November 18, 2019, the Parent's attorney provided the District with a request and release, signed by the Parent, for the District to release numerous documents pertaining to the Student. Importantly, the November 18, 2019 request includes the three categories of documents the Parent takes issue with in the instant special education citizen complaint: Document 1 ("all special education records, including...progress notes"); Document 2 (all disciplinary records); and, Documents 4 and 6 (all meeting notes).

On December 23, 2019, the District granted the Parent and the Parent's attorney access to a District-created Dropbox folder that contained numerous records pertaining to the Student. (December 23, 2019 is less than 45 calendar days after November 18, 2019; January 2, 2020 represents 45 calendar days after November 18, 2019). According to documentation provided to OSPI during this investigation, on December 23, 2019, two individuals from the law firm the Parent retained (including the Parent's attorney) accessed the Dropbox account. A review of those documents the District uploaded to Dropbox on December 23, 2019 reveals: they do not appear to contain the three categories of documents the Parent takes issue with in this special education citizen complaint. This does not, however, mean a violation of the IDEA and State special education regulations has necessarily taken place.

Category 1: Data on Student's Goals

As of December 2019, the Student's June 2019 IEP remained in place. The Student's June 2019 IEP had several goals with an end date of late September 2019. According to the June 2019 IEP, progress on these goals was supposed to be reported via a copy of the updated goal page each semester.

According to the District's response, though, as of late December 2019, it had not created any individual progress reports that related to the goals in the June 2019 IEP: "Progress towards reading and writing and occupational therapy were addressed during the IEP meeting(s). There was no written progress report." While this raises an issue of whether the District properly reported the Student's progress on the goals in the June 2019 IEP, this means there was not a violation related to providing the records, as there were no progress reports available to the District to disclose to the Parent on December 23, 2019.

Category 2: Meeting Notes

As per Category 2, the District noted: "The student's central file did not include meeting notes, there were [therefore] no meeting notes to include [on the December 23, 2019 upload to Dropbox]." Under FERPA, the term 'education records' means those records, files, documents, and other materials which: (1) contain information directly related to a student; and (2) are ***maintained by*** the District. This means the following type of documents are exempt from the definition of 'education records': those records considered to be 'sole possession records,' such as raw data or notes. FERPA's 'sole possession' exception is strictly construed to mean 'memory-jogger' type information. A memory-jogger is information that a school official may use as a reference tool and, thus, is generally maintained by a school official unbeknownst to other individuals.

Here, as the District stated no meeting notes were placed in the Student's central file, these meeting notes would not have constituted 'educational records' under FERPA, and the District was, consequently, under no obligation to disclose them on December 23, 2019. As relates to Category 2, then, OSPI finds no violation.

Category 3: Disciplinary Records

As per Category 3, the District did state that one disciplinary record did exist: "The only discipline record that I am aware of is a truancy notification due to nonengagement but there was no action taken other than notification and documentation."³⁶

This truancy notification was not provided to the Parent in response to her request for access to the Student's 'education records' as it was not uploaded to Dropbox on either December 23, 2019 or February 7, 2020. This, therefore, represents a violation of the IDEA. The District will be required to provide the Parent with access to this truancy notification. To remedy this violation, the District will be required to send an email to certain District staff with written guidance regarding educational records.

CORRECTIVE ACTIONS

By or before **July 17, 2020** and **September 4, 2020**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By or before **July 17, 2020**, the District will provide the Parent with access to the "truancy notification due to non-engagement."

By **July 17, 2020**, the District will provide OSPI with documentation that it has completed the same.

DISTRICT SPECIFIC:

By **September 4, 2020**, the District will ensure that the following individuals receive the following written guidance: District special education administrators and the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs)³⁷, at the school that the Student was enrolled in during the 2019-2020 school year. The written guidance will read as follows:

A reevaluation must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary.

Once a district obtains the parents' consent to conduct a reevaluation, it must 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.

³⁶ The Parent referenced a disciplinary record related to a suspension, that she clarified occurred several years earlier in a different school district. It is plausible the District did not possess any documentation related to the Student's suspension that occurred sometime between 2010 and 2012 at a different school district.

³⁷ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

A district must obtain informed parental consent before conducting assessments as part of a reevaluation of a student eligible for special education services; and,

Consent means the parent: has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; understands and **agrees in writing** to the carrying out of the activity for which consent is sought; and the consent describes that activity.

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.

A prior written need not come in a particular form. For example, a prior written notice need not be labeled 'prior written notice,' for it to function as an effective prior written notice under the IDEA. However, in order for a communication to count as a prior written notice under the IDEA, it must contain several elements: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal.

By **September 4, 2020**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

RECOMMENDATIONS

Annual goals must be measurable; therefore, OSPI recommends that IEP goals be written in the following manner: they have a baseline (which reflects the Student's current ability in that goal area); an goal (which reflects where the Student's IEP team hopes the Student will progress to after receiving IEP services); and that the baseline and the goal be in the same unit of measurement. OSPI recommends the District review how it is writing goals in the IEPs of students eligible for special education and determine if staff need professional development in this area.

Further, in the event the Student were to be reenrolled in the District, OSPI recommends the Student's IEP team, as a proactive measure, review the following text from OSPI's Special Education Technical Assistance Paper No. 5 (TAP 5) Revised:

May a district ever supplement an existing evaluation report without conducting a reevaluation?

Supplementing an existing evaluation report should be the exception rather than a common district practice. Districts should not need to supplement an existing evaluation report, if the initial evaluation or reevaluation was comprehensive to begin with. When more information is needed, the district should be reevaluating the student. However, there might be times when despite the district's effort to conduct a comprehensive evaluation, new information is obtained after the evaluation is completed. In these situations, it might be appropriate to supplement the existing evaluation or reevaluation. If this approach is used, the district should verify with all members of the IEP team, and any others who would or should be involved in a reevaluation, that this is the only suspected area of service affected by the student's current needs. Districts also always need to consider any information in an IEE that is obtained that may contain additional information to be considered in revising or amending an IEP.

OSPI recommends the District consider this as an option for updating the Student's reevaluation report with data regarding his sensory needs, if the Student were to reenroll in the District.

REMINDERS

Were the Student to be reenrolled in the District, the Student's IEP team would need to meet. At that meeting, the Student's IEP team would need to answer the following questions:

1. Does the Student have a need resulting from the Student's disability in the area of sensory? Why or why not?
2. Does the Student's IEP team have the data necessary to determine the answer to Question 1?
3. If the answer to Question 2 is 'no', what is the District's plan to complete an evaluation of the Student in the area of sensory?

Were the Student to reenroll in the District, the Student's evaluation group would need to amend the February 2019 reevaluation report to specifically include: what specific fine motor assessments were administered to the Student in June 2019; who administered them; what were the results of the same; and how do those results relate to the student's suspected disabilities and instructional program.

Were the Parent to reenroll the Student in the District, OSPI reminds the District that it must take steps to complete a communication assessment of the Student soon thereafter.

Dated this ____ day of July, 2020

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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