

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-59

PROCEDURAL HISTORY

On July 8, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the La Center 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 July 9, 2021, 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 July 19, 2021, OSPI received additional information from the Parent and thus amended the complaint.

On July 29, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on August 2, 2021. OSPI invited the Parent to reply.

August 18, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District on August 20, 2021.

On August 23, 2021, OSPI requested additional information from the Parent. The Parent did not respond to the request.

On August 26, 2021, the OSPI complaint investigator interviewed the District school psychologist.

On August 27, 2021, the OSPI complaint investigator interviewed the District speech-language pathologist who was also the Student's case manager.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on July 9, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District provide the Parent with an opportunity to participate in developing the Student's special education program, including the following:

- Considering Parent input, including the independent educational evaluation (IEE), into the Student's evaluation and eligibility decision;
 - Considering Parent input into May 11, May 25, and June 9, 2021 individualized education program (IEP) meetings; and,
 - Providing prior written notices that addressed the Parent's request for services, accommodations, staff training, and an assistive technology evaluation?
2. Did the District develop an appropriate IEP in the following areas:
 - Special education services and accommodations designed to meet the Student's unique education needs; and,
 - Extended school year (ESY) services?
 3. Did the District implement the IEP accommodation related to a frequency modulation (FM) system?
 4. Did the Student being sent home constitute a change of placement?
 5. Did the District properly consider the Parent's request for additional assessments based on the recommendations from the IEE?

LEGAL STANDARDS

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A child with a disability may seek to qualify for special education benefits under more than one eligibility category. *E.M. by E.M. and E.M. v. Pajaro Valley Unified Sch. Dist.*, 114 LRP 31486 (9th Cir. 2014). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002) (see also WAC 392-172A-03020)(g) "In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.")

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been

classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

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. 34 CFR §300.306; WAC 392-172A-03040(3). 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(b).

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Definition: An IEP must contain a statement of: (a) the student's present levels of academic achievement and functional performance; (b) measurable annual academic and functional goals designed to meet the student's needs resulting from their disability; (c) how the district will measure and report the student's progress toward their annual IEP goals; (d) the special education services, related services, and supplementary aids to be provided to the student; (e) the extent to which the student will not participate with nondisabled students in the general education classroom and extracurricular or nonacademic activities; (f) any individual modifications necessary to measure the student's academic achievement and functional performance on state or district-wide assessments ... (g) Extended School Year (ESY) services, if necessary for the student to receive a free and appropriate public education (FAPE)... (j) the projected date when the services and program modifications will begin, and the anticipated frequency, location, and duration of those services and modifications... 34 CFR §300.320; WAC 392-172A-03090.

IEP Implementation: Each district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

Change of Placement: In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option

is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. 34 CFR §300.502; WAC 392-172A-05005.

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 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.

Extended School Year Services: Extended school year (ESY) services means services meeting state standards provided to a student eligible for special education that are beyond the normal school year, in accordance with the student's IEP, and at no cost to the parents of the student. School districts must ensure that ESY services are available when necessary to provide a FAPE to a student eligible for special education services. ESY services must be provided only if the student's IEP team determines, based on the student's needs, that they are necessary in order for the student to receive a FAPE. The purpose of ESY services is the maintenance of the student's learning skills or behavior, not the teaching of new skills or behaviors. School districts must develop criteria for determining the need for ESY services that include regression and recoupment time based on documented evidence, or on the determinations of the IEP team, based on their professional judgment and considering the nature and severity of the student's disability, rate of progress, and emerging skills, among other things, with evidence to support the need. 34 CFR §300.106; WAC

392-172A-02020. A student's IEP team must decide whether the student requires ESY services and the amount of those services. *Letter to Given*, 39 IDELR 129 (OSEP 2003).

FINDINGS OF FACT

Background: 2018–2019 School Year

1. During the 2018–2019 school year, the Student attended another Washington school district. The Student was not eligible for special education services.
2. On January 22, 2019, the Student was evaluated by a private audiologist for a central auditory processing disorder (CAPD). The evaluation history stated the Student "met speech and language milestones at appropriate ages and has never been enrolled in speech therapy..." and the Student was on grade level with reading comprehension. But the Parent reported that the Student "appears not to hear or does not respond when spoken to if there are distractions in the room..." The summary of conclusions stated that based on one low score in each area of dichotic listening and comprehension of speech in noise, the Student exhibited an auditory processing disorder (APD). The report recommended improving the listening environment by using a FM system, preferential seating, a quiet work area, auditory training, listening strategies, and listening to audio books. There was no indication from the report that the clinician talked with the Student's school at the time to gather information about how the Student was progressing at school or observed the Student in the classroom.

2019–2020 School Year

3. During the 2019–2020 school year, the Student continued to attend the other Washington school district.
4. In April 2020, the Student was evaluated for special education services in communication due to "[P]arent concerns regarding the educational impact of [Student's] auditory processing disorder." The evaluation report included the following information, summarized:
 - Cognitive Ability: The results showed the Student's cognitive ability was in the average range.
 - Classroom Performance: The report stated:
 - Overall, [Student's] performance in the general education setting appears to be comparable to same-grade peers. She did show a decrease in i-Ready scoring, however this is not consistent with teacher report and report card grades, as she earned '3's ('proficient') across all academic areas. Her teacher reports that she is able to do 4th grade level work with a little teacher support in writing and sometimes math. [Student's] grades did show an area of difficulty in organization, and her teacher remarked that she sometimes needs redirection due to her socializing with peers. However, her teacher reports that, overall, she demonstrates many behavioral strengths in class, including perseverance, respect, and cooperation with others.

- Academic Testing: The results from the Weschler Individual Achievement Test, 3rd Edition were as follows:¹
 - Basic Reading: 98% (above average range)
 - Reading Comprehension and Fluency: 98% (above average range)
 - Oral Language: 87% (average range)
 - Written expression: 45% (average range)
 - Mathematics: 66% (average range)
 - Math Fluency: 58% (average range)
- Communication: The “Social Language Development Test-Elementary” was administered to assess the Student’s pragmatic language. The report stated the Student used age-appropriate pragmatic language during the evaluation and the standard score was 112, which did not indicate a disability in the area of speech or language impairment.
- Behavior/Social: Both the Parent and the Student’s teachers completed the “Behavior Assessment System for Children, 3rd Edition” and results were “variable” with some similarities. The teachers’ ratings fell within the typical range while the Parent’s ratings were within the at-risk range, which the report stated is an indication of more behavioral/social-emotional concerns at home than at school. On the “Cognitive Regulation Index,” one or both teachers expressed concerns about working memory and organization of materials while expressing no concerns about thought organization and efficiency, initiate, plan/organize, and task-monitor. The Parent’s ratings were primarily in the at-risk and clinically elevated range.
- Medical-Physical: The Parent reported the Student was delayed in developmental milestones, including walking, gross motor skills, language development, social skills, learning/thinking/problem solving, attention span, and social mannerisms and behaviors. The report cited the CAPD diagnosis.
- Audiology: The report summarized the January 2019 audiological report diagnosing CAPD. An observation was conducted by an education service district (ESD) hearing specialist and audiologist. The hearing specialist concluded the following:

Throughout the observation, [Student] was able to listen, participate, ask questions, have conversation with her peers with considerable ambient noise, and in quiet. Also, with APD (auditory processing disorder) in mind throughout the observation I was able to take into consideration that the Student’s needs were being met, attached checklist show that accommodations were also being met with the tally of the rating scale on the high end [sic]. Use of the FM system was appropriate, whether [Student] chose to use it or not.

The audiologist concluded the following:

[Teacher] stated that the behavior observed is typical for [Student]. She reports that [Student] is often on task and a positive presence in the classroom. The only problem they have is with the FM use. [Student] reported that [teacher’s] voice is too loud with the earbuds in place and that is why she often pulls them out of her ears. No adverse behavior was noted at either observation and no concerns arose regarding [Student]’s access to auditory information in the classroom. A review of the 504 accommodations shows the following: preferential seating, use of FM system, use of closed captioning, teacher will have student verbally paraphrase directions, and provide a list of written instructions for multi-step tasks. These are all appropriate for a student with a diagnosis of Auditory Processing

¹ The Parent later disputed the writing results. The District retested the Student and although the Student scored lower, the Student scored in the average range.

Disorder and should remain in effect. No additional accommodations are recommended at this time.

The report noted that the Student was privately evaluated using the "Multiple Abilities Profile." Of the 12 areas assessed in the brain, the Student achieved a below average score in visual motor learning and a far below average score in auditory memory.

- On April 30, 2020, the evaluation group determined the Student was not eligible for special education services. The prior written notice, dated May 1, 2020, stated the following, in part:

The reason we are proposing or refusing to take action is: [Student] does not meet eligibility criteria under the category of Other Health Impairment or any other eligibility category. Though she has a diagnosis of Auditory Processing Disorder, evaluation results did not support that there was an adverse educational impact or a need for specially designed instruction.

Description of any other options considered and rejected: The team had requested additional testing from an outside agency, which was interrupted due to government-mandated closures and stay-at-home orders. We considered extending the evaluation, so that, after the mandate is lifted, the outside testing could be completed and included in the eligibility determination.

The reasons we rejected those options were: It was unknown how long the stay-at-home order would be in place and, in order to avoid any additional delay, the team decided, at parent request, to complete the evaluation without the outside testing. While the team feels that this evaluation may have provided some clarity to [Student's] struggles and further suggestions for educational planning, enough information was gathered to make a decision regarding eligibility.

- Although the Student was found ineligible for special education services, a 504 plan was developed for the Student. The 504 plan provided the following accommodations to the Student:

Accommodations	Frequency	Location	Duration
Agreed upon weekly communication with parent to update progress (include any work examples), provide resources or list for upcoming projects, suggestions for pre-teaching concepts, skills, vocabulary	Weekly	Classroom	6/10/2020 to 6/09/2021
Graded assignments will be sent home with student on weekly basis	Weekly	Classroom	6/10/2020 to 6/09/2021
Homeroom teacher will check-in weekly with student to ensure that FM system is working in all classrooms and that preferential seating is effective in all classrooms	Weekly	Classroom	6/10/2020 to 6/09/2021
Homeroom teacher will make sure that a set of all classroom books is sent home, as well as books related to current projects/assignments	As Needed	Classroom	6/10/2020 to 6/09/2021

Preferential seating: Near front of class or close to teacher, away from doorway, away from air conditioning units.	Daily	Classroom	6/10/2020 to 6/09/2021
Student will be allowed to use Speech-to-Text on her chromebook for classroom written assignments	Daily	Classroom	6/10/2020 to 6/09/2021
Teacher will initiate conference with student to discuss missed items on classroom tests	Daily	Classroom	6/10/2020 to 6/09/2021
Teacher will initiate having student verbally paraphrase directions to check for understanding of assigned task	Daily	Classroom	6/10/2020 to 6/09/2021
Teacher will provide list of written instructions for student for multi-step tasks that are presented verbally	Daily	Classroom	6/10/2020 to 6/09/2021
Teacher will provide options to support student getting started on writing assignments	Daily	Classroom	6/10/2020 to 6/09/2021
Use of Closed Captioning and Text-to-Speech during state assessments and interim assessments	As needed	School	6/10/2020 to 6/09/2021
Use of FM system to help amplify teacher's voice during whole group instruction, and/or when teacher needs whole class's attention. Teachers will remind student to wear FM system as needed	Daily	Classroom	6/10/2020 to 6/09/2021

7. On August 5, 2020, the Parent enrolled the Student in the District. She met with the special education director (director) and the superintendent to talk about the following, according to the Parent:
- "My daughter's January 2019 diagnosis of Central Auditory Processing Disorder and its negative impact on her ability to access to [a free appropriate public education] FAPE [sic]."
 - "My concerns that a comprehensive [individualized education program] IEP evaluation had NOT been done at my daughter's last school district (previous school district)." These concerns stemmed from:
 - "evidence-based research very clearly indicating almost 80% likelihood of 2 or more learning disabilities and 50% chance of having ADHD (attention deficit/hyperactive disorder) if given a clinical diagnosis of CAPD;" and that,
 - "[Previous school district] refusing to read, much less follow ASHA's (American Speech-Language Hearing Association) recommended protocol for IEP review for children diagnosed with Central Auditory Processing Disorder."

The Parent stated she provided a copy of the January 2019 CAPD report and ASHA's guidelines to the director and superintendent at the time.

8. Also, on August 5, 2020, the Parent sent the District superintendent an email about the Student's need for auditory training and requesting an "IEP review." The Parent included a copy of the Student's CAPD diagnosis from January 2019. The Parent also had questions about whether the APD "automatically qualify her for an IEP and related APD services under the specific disability qualification and/or Other Health Impairment per the 2021 Supreme Court ruling...Regardless, I believe that given testing specific to her diagnosis and related symptoms,

[Student's] scores will reflect that she is twice-exceptional student, i.e., a highly intelligent student who struggles in school due to her CAPD (learning disability)."

9. On August 24, 2020, the Parent and director met to review the 504 documentation from the previous school district. According to the Parent, she again provided copies of the CAPD report and ASHA's guidelines. The Parent stated the following was discussed:
 - "Recent [occupational therapy] interventions for 'Unspecified Neurological Disorder' and shared [occupational therapist] OT notes reflecting impact to [Student] in an educational setting;"
 - "Also shared diagnosis regarding developmental delays and Brain Imbalance– specifically Non-integrated Asymmetrical Tonic Neck Reflex (ATNR). OT notes were provided showing therapist recommended [Student] have further testing done to determine other non-integrated reflexes as it was suspected there were quite a few."
 - "Shared evidence based research on non-integrated primitive reflexes affecting access to care thru psychomotor delays in older children (like [Student]) and strong negative impact on auditory processing capabilities as well as relationship to ADHD and other learning disabilities;"
 - "Provided information regarding non-integrated ATNR impact on access to education to include: difficulties concentrating, difficulties with auditory processing and coordination issues, difficulty with eye tracking problems, reading, spelling, mathematics, crossing midline and auditory processing (1). It requires effort for these children to hold and manipulate writing instruments. When a child is sitting at his desk writing, and he turns his head to see the board or the teacher, his writing arm will extend slightly and he will lose his spot on the page;"
 - "Also discussed [Student's] absolute need for an FM radio system to be not only provided but MUST be fitted and tested before leaving [Student's] on her own with it;" and,
 - "Last thing discussed was request under Title 2 that [Student] be allowed to record class teaching as recommended by audiologist and that it be through something simple like a smartpen."

10. According to the Parent's complaint, after enrolling in the District, the Parent requested a new special education evaluation from the District for the following reasons:
 - "[Previous district] incorrect scoring of tests"
 - "[Previous district] lack of comprehensive testing and testing specific to CAPD...diagnosis"
 - "[Previous district] not involving pertinent parties (diagnosing Audiologist w/subspeciality in CAPD) despite Parent request"
 - "Additional diagnosis of 'Other Disorders of the Nervous System' (not considered by [Previous district]), [Student's] Occupational Therapy...Evaluation indicating main concerns in the areas of sensory processing challenges, cognitive skill deficits and social skill deficits (not considered by [previous district] and"
 - "OT Treatment notes (not considered by [Previous district])"

2020–2021 School Year

11. During the 2020–2021 school year, the Student was a fifth grader who attended a District elementary school. The Student had a 504 plan developed by the previous district until May 11, 2021, when the Student became eligible for special education services.

12. On September 8, 2020, the 2020–2021 school year began in the District. At the time, the District was providing remote instruction to all students because of the COVID-19 pandemic.
13. During the school year, the District had a “2021 Individual Health Plan for Migraine Headache” for the Student. The plan to address the migraines included resting in the health room, administering ibuprofen, and calling the Parent to pick her up.
14. On September 9, 2020, according to the District’s response to the complaint, the District began the process to consider the Parent’s request for an evaluation. The Student’s general education teacher was instructed to make note of how the Student was progressing academically and referred the Student to the “Multi-Tiered System of Support” (MTSS) team to assist the Student and Parent.
15. On September 14, 2020, the Parent emailed the teacher about the Student’s schedule at school. The Student could not attend “group morning meetings” twice a week because the Student was receiving private services for her CAPD.
16. On September 17, 2020, the itinerant teacher for the deaf and hard of hearing for the ESD emailed the director and other District staff that the ESD audiologist and the teacher had read the private audiologist’s report and had observed the Student in the classroom in the previous school district. The email, in part, stated:

“...[ESD audiologist] felt in her opinion this was not something she would have given [Student] based on what she read in the report. She and I did classroom observations and did not see [Student] having any difficulty following directions, participating, and seemed to be understanding what was being presented and expected of her.
17. According to the District, a team meeting was held to discuss the referral for evaluation. A prior written notice, dated September 24, 2020, stated the District determined not to move forward with evaluating the Student for special education services. The reasons were that the Student was able to participate in general education with the accommodations that were provided, and the data did not support a special education referral. The Student did have a documented disability—CAPD—but the Student was participating successfully in the general education setting. The previous evaluation results also showed the Student was in the average range or above in all areas assessed. Previous general education reports were “satisfactory” or “excels” in academic and behavioral areas. The notice also stated the team would monitor the Student’s progress in general education and if there was any data to support an evaluation, the team would reconsider an evaluation.
18. In the Parent’s complaint, the Parent stated:

Even though school was online and only 2 weeks in, already [Student] was struggling and doing hours of work after the school day finished – not because she couldn’t grasp it but because she couldn’t grasp it while watching the computer and trying to also listen AND learn...Because [Student] was in private tutoring 4 hours a week to help her work on her executive functioning skills (of which she literally, per functional testing by two different groups had next to none) as well as help her stay caught up, she was missing her scheduled time to be in class (20 minute class time)...2 previous requests were made to move her time

slot to any of the other three available but wasn't happening although other children were moving around in the groups.

19. On September 28, 2020, according to the District, a copy of the September 24, 2020 prior written notice was emailed and mailed to the Parent. Regarding the Student's participation in the general education classroom, the Parent stated in the complaint:

The data I had was my daughter couldn't consistently finish a full day of school without a migraine and had to be retaught everything her teacher was doing online by me because her processing speed was too slow and the teacher moved too fast (for [Student] but not for other children), her working memory was non-existent (supported by 2 different specialist reports as well as parental input) so she wasn't able to monitor and manage her own classwork, and [Student] was going to 4 hours a week tutoring to keep up with her online classes. Something [District] was aware from the very beginning of the year but did not consider in their determination. I also asked how the District knew [Student] had the ability to participate in the general education curriculum when given appropriate accommodations and modifications as [Student] had only done online schooling with [District], had been absent many of those days due to migraine, and no accommodations or modifications had been provided by the District at that time.

20. The school psychologist who was interviewed by OSPI stated the Student did not demonstrate any academic or behavioral difficulties at the time the Student was referred. The team did not suspect a disability based on the previous school district's evaluation and the Student's performance up to that time. The school psychologist stated the District was aware the Student was receiving private services, except tutoring.

21. According to the Parent, on October 2, 2020, the Parent emailed the director the following list of specific requests:

- Formal testing for dysgraphia, dyslexia, and a sensory processing disorder
- Testing for inattentive attention deficit disorder (ADD)
- Evaluation of walking symmetry/gait
- Neuropsychological evaluation
- Expressive language evaluation
- A curriculum-based writing assessment
- An IEP designed to meet her unique needs
- Implement all recommendation provided by the January 2019 report
- Provide all the recommendation provided in October 2020 report
- Neurology evaluation (scheduled for November 2020)
- Developmental optometry evaluation
- Developmental delays relayed to visual processing and eye tracking problems

22. On October 13, 2020, a private speech-language pathologist (SLP) issued a report regarding the Student.² The report reviewed the Student's education records, private evaluations, and listed common signs of CAPD, including difficulty understanding verbal directions even with normal hearing and needing information to be repeated. The report stated the Student

² The previous school district agreed to pay for the evaluation as an independent educational evaluation (IEE) and the IEE was completed after the Student was enrolled in the District.

demonstrated many of these signs as reported by the Parent and the private OT the Student was working with. The report also expressed concern about the Student's anxiety and frustration and stated, "...Addressing her mental health is the most pressing current need." The report, however, did not reconcile the CAPD and the Student's progress in the general education curriculum. The report made the following recommendations:

- "Follow the treatment recommendations from the January 2019 audiology report consistent with auditory best practices."
- "Clearly [Student] is a child with 'an eligible disability and is entitled to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet her unique needs and that prepares her for further education, employment, and independent living...'"
- "The Student should wear a headset/earphones during online education sessions and teachers need to provide her with notes, handouts, etc. the day before or early in the day prior to class meeting."
- "Student needs to be taught self-advocacy skills so she can signal the teacher that she needs repetition or clarification."
- "Because of escalating worrying, fears, and anxiety, there should be an 'immediate assessment by mental health professionals.'"
- "Evaluation by a neurologist to address potential eye tracking difficulties possibly contributing to migraines."
- "A specialist assess the Student for potential neurotransmitter difficulties affecting auditory processing and other challenges. Low serotonin for example may be related to CAPD."
- "Administration of FOCUS test to impulsivity and distractibility."
- "IEP goals for math word problems, following directions, and expressing her ideas orally or in writing."
- "Precise goals for auditory therapy with coordination between school speech-language pathologist and evaluator."

23. On October 21, 2020, the District received a copy the October 13, 2020 report from the private SLP.

24. On December 10, 2020, the Student was administered a private neuro-optometric evaluation by a doctor of optometry. The Student was diagnosed with hyperopia (farsightedness) and recommendations included taking breaks, extra time on tests, and providing an uncluttered work space, among others. There was also a recommendation for a visual-processing assessment.

25. In January 2021, the District SLP conducted a speech and language evaluation of the Student. Using the "Clinical Evaluation of Language Fundamentals, 5th Edition," the Student's scores were significantly above others her age. Based on the scores, no speech and language services were recommended. When discussing the results with the Parents, the Parent stated she was substantially assisting the Student with her homework, prompted her to raise her hand, and keep her paying attention. She also rewrites the Student's notes herself.

26. On January 21, 2021, the Student was privately evaluated for visual and perceptual development by a doctor of optometry. In the report, there was no indication the evaluator

reviewed the Student's educational records or sought input from the classroom teacher to corroborate the results. The report included:

- Perceptual: The results stated the Student did not have an "overall perceptual deficiency." The report provided a list of recommendation including verbally repeating any written instruction on the board, minimize board-to-desk copying, extra time for testing, and wearing eyeglasses, among others.
- Visual: The report stated the Student had difficulty moving her eyes quickly and accurately in a task that stimulates reading. Her performance was in the 15th-20th percentile range. The report also stated the Student has a visual motor deficiency that is "likely contributing to her eye fatigue, inefficient reading and headaches...Due to her deficits in eye teaming and focusing, [Student] may have difficulty succeeding in a high-level academic environment unless these skills are developed to an age appropriate level."

27. A prior written notice, dated January 28, 2021, proposed a communication evaluation to address the Parent's concerns about the Student's communication abilities, processing time, and general academic ability in the classroom.

28. A prior written notice, dated February 5, 2021, stated the Parent, school administrator, and school counselor met to review the Student's 504 plan.

29. On January 26 and March 16, 2021, the Student was privately evaluated in the area of visual and perceptual development. The reason for referral stated the Student "has been struggling academically, despite performing at grade level on testing." Background history included CAPD and "likely traumatic brain injury related to several falls and migraine headaches." The education history stated the Student was below grade level in music, physical education, science, and social studies. The history stated, "Intellectually, she scores well on tests when provided 1:1 but struggles in school. She spends considerable time and effort to maintain her current level of performance with assistance from her mother." The summary for visual perceptual skills stated:

[Student] has a visual motor deficiency which is contributing to the symptoms manifested during testing. It is likely contributing to her eye fatigue, inefficient reading, and headaches. [Student] does have above average visual perceptual processing skills which are the foundations of learning. Due to her deficits in eye teaming and focusing, [Student] may have difficulty succeeding in a high-level environment unless these skills are developed to an age appropriate level.

The visual perceptual report recommended the following for school:

- Vision therapy
- Seating at the front of the class
- Minimal copying from the board
- Sloping work surface
- Maintaining a good reading distance and proper lighting
- Short visual work periods
- Extra time for testing, homework, classroom assignments
- During standardized exams, Student should be allowed to directly mark her answers on the test or the questions should be read by proctor rather than transfer them to a Scantron form

- Eye glasses to improve visual function
- "Tutoring may be needed in the future to address areas of academic weakness that persist after the vision problems that interfere with reading and learning have been remediated."

The visual evaluation "revealed that [Student] has reduced binocular, accommodative, and oculomotor skills." The results indicated the Student performed in the 15-20th percentile on tasks that simulate reading by moving her eyes. The results on eye-hand coordination and pencil grip were at the 47th percentile. There was no indication from the reports that the evaluators received input from the Student's school or observed the Student at school.

30. In February 2021, the Student began to attend school in-person.

31. On February 2, 2021, the private SLP provided a follow up report to the District about "additional testing" in the area of writing skills that were of concern to the Parent. The results when compared to others at the Student's grade level were as follows:

- Homophone Spelling – 87%
- Isolated Spelling – 96%
- Executive Working Memory – 100%
- Sentence Scaffolding – 67%
- Copy Editing – 85%

The Student was also administered the "Revised Children's Manifest Anxiety Scale, 2nd Edition" that assesses defensiveness, anxiety, worry, and social anxiety. The results were in the 69-79 range. Scores 61-70 are considered moderately problematic and scores 71 or higher are considered extremely problematic.

Based on the previous audiological report, the evaluator recommended a FM (frequency modulation) system and the "FastForWord" computer-based auditory program for a home-based program so it would not interfere with academic instruction at school.

32. On February 16, 2021, a pediatric psychologist consulted with the Parent about the Student's challenges with peer relationships and "anxiety at nighttime and the frequency of [Student's] medical visits." There was a history of being bullied and hiding in a bathroom. No signs of autism spectrum disorder were found. The consultation resulted in a clinical goal to improve school performance, including improving labeling emotions, self-advocacy, and relaxation. No follow up was recommended.

33. On February 25, 2021, the Parent emailed the superintendent, requesting a special education evaluation. The Parent stated the 504 plan was not meeting the Student's needs. The Parent stated the District did not understand the Student's CAPD, developmental delays, unspecified neurological disorders, and chronic migraine headaches.

34. According to the documentation, on March 1, 2021, the Parent called the director about the health plan being implemented, advocacy training, hearing devices privacy, reminders for the FM system, and an "Echo pen" being provided.

35. On March 24, 2021, the Parent called the director about the District not meeting the Student's needs because of the bullying during recess that was not being addressed and privacy issues about the Student's FM system.
36. On March 30, 2021, the "Guidance Team Record-Special Education Referral" stated the Parent requested a special education evaluation for the Student because the Student had been diagnosed with CAPD and was having difficulties in the classroom keeping up with content and maintaining social relationships. The Student's teacher reported that "the Student produced adequate and quality work and is above benchmark for her grade" in reading, math, and written language.
37. The prior written notice, dated March 30, 2021, proposed "to move from 504 plan to IEP," indicating the District was proposing to evaluate the Student for special education services.
38. In April 2021, a private neuropsychologist evaluated the Student "to understand [Student's] profile of strengths and challenges...that extends beyond test scores." The evaluator reviewed all previous medical evaluations of the Student and information from the Parent, including that the Student was provided private tutoring four times a week during an unknown period of time. The Parent also reported the Student needed "extensive support" from her to understand what was taught and "routinely spent numerous hours each night and on weekends trying to keep up." The Student suffered from migraine headaches almost daily. The evaluation report included the following information:
- Cognitive: The Student general cognitive score were generally above average except for working memory (42nd percentile) and processing speed (16th percentile).
 - Language: The results were in the language domain ranged in the average to above average. It was noted in the context of her CAPD diagnosis that no directions had to be repeated before she initiated her response.
 - Nonverbal Reasoning and Visuospatial: The Student demonstrated "exceptional" ability to recognize and analyze visual patterns.
 - Learning and Memory: The results showed the Student retained new visual and verbal information well, but her disorganization affected her recall after a delay.
 - Executive Functioning: The Student had a number of difficulties in this area. The Student was able to maintain accurate visual attention but was very slow and had difficulty on attention tasks. The Student struggled returning to a task after it was initiated.
 - Academic Performance: Her academic scores were grade level or above, although math fluency was lower because of the Student's lack of attention to detail.
 - Behavioral Questionnaires: Both the Parent and the classroom teacher completed behavior assessments. Although the Parent's ratings were "more pronounced," both agreed the Student exhibited difficulties with inhibitory control, self-monitoring, shifting or adapting to change, emotional self-control, and working memory. The Parent expressed more concerns in a number of other areas than the teacher.
 - Clinical Impressions: Most significantly, the report stated:
 - ...[Student] has struggled to form and maintain meaningful friendships undoubtedly exacerbated by frequent changes in schools and the restrictions of COVID-19. She also tends to misinterpret neutral comments as negative feedback or criticism and to worry about what others think; features that can influence her social success. Lastly, [Student] has rigid and high expectations of herself to put on a happy face and to perform well.

There is little doubt that, *although relatively mild from a clinical perspective*, [Student's] challenges with CAPD and self-regulation have hampered her ability to do both..."

- "The 'added value' of this neuropsychological report is independently confirm [Student's] intellectual and academic competence and to identify patterns in extensive data that can shed light on other factors relevant to Student's profile of strength and challenge. There is no reason to question [Student's] diagnosis of CAPD, but *it is important to reiterate [private SLP's] observations that is relatively mild and specific*. Likely due to high competence, a strong work ethic, and strong family support, until recently [Student] was able to compensate for these underlying challenges. However, under the added demands to manage speed, load, and complexity that occur with development, shifts in schools and social networks, and the unprecedented stress and need to adapt to change under the COVID-19 Pandemic, additional areas of challenge have been exposed..."
- "[Student] will also benefit from therapeutic support, and a recommendation for counseling is warranted. Indeed, *[Student] is a highly competent child who has made expected developmental and academic progress with a few minor 'hiccups,'* but she has also been experiencing an increase in physical and emotional symptoms that threaten her health and sense of wellbeing..."
- **Recommendations:** The report recommended the Parent continue to work with the private SLP to improve the Student's auditory discrimination and process, sharing the report with the District, meeting the District before school starts, counseling for the Student, and prioritizing a to-do list for the Student. The recommendations also provided information and resources for attention-deficit/hyperactive disorder for the Parent.

(Emphasis added).

39. Since the FM systems provided to the Student under the 504 plan were not functioning properly, on April 26, 2021, the superintendent emailed the Parent, offering to buy the Student's FM system from home because "that is the one that works."

40. On May 11, 2021, the District held an evaluation group meeting to determine the Student's eligibility for special education services and identify the Student's unique needs that the IEP would address. The evaluation stated the Student was receiving accommodations according to a 504 plan, "but it became clear that her needs exceeded beyond what a 504 could provide her when accommodations were not enough." The District's evaluation report included the following:

- **General Education:** The classroom teacher reported the Student was a hard worker and enjoyed learning. She consistently produced high quality work in math and writing, although she took longer to complete assignments. She understood math concepts, asked questions for clarification, took part in class discussions. She had difficulty with organization and sometimes needed extra time to clean up from a lesson and prepare for the next.
- **Communication:** The District speech-language pathologist administered the "Clinical Evaluation of Language Fundamentals, 5th Edition" (CELF) to the Student. The overall core language school score was at the 91st percentile. Expressive language was at the 99th percentile and language memory was at the 99th percentile. The pragmatic profile was given to the Parent and the Student's teacher. The Parent's score was significantly below average and the teacher's score was a "slightly lower scaled score of 109" indicating "that is a concern in the classroom." The "Test of Pragmatic Language, 2nd Edition" (TOPL) was also administered to the Student.

Pragmatic language usage was at the 58th percentile and in the average range. The report stated:

- Even though [Student] scored in the average range on the TOPL-2 and the CELF-5, her ability to apply those language skills in the classroom is lacking. She demonstrates the knowledge of what you should do in certain social situations, but she is unable to explain why that is what is acceptable, and unable to consistently implement the skills in her daily life. The inability to implement skills leads to negative peer interactions at school and negatively impacts her ability to perform well in the educational setting. It is recommended that [Student] begin speech and language therapy in the area of pragmatics.
- Fine Motor: A fine motor screening was conducted by the OT and no concerns were noted.
- Gross Motor: The physical therapist (PT) conducted a screening that included ambulation, running, skipping, balancing, and cafeteria, among other physical tasks. No concerns were noted.
- Vocational: The "Career Interest Survey" and "Learning Styles Survey" were administered to the Student. The Student's top three areas of interests are animals, agriculture, and natural resources. The Student identified most with being a visual learner.
- Parent Input: The Student was referred by her mother for this evaluation due concerns that her daughter was not succeeding in school. She reported school work was taking the Student hours after school.
- Medical-Physical: The report took information from the March 2021 private vision report that the Student had difficulties with smooth pursuit eye movement, saccadic eye movements, convergence, fusion with defective stereopsis, and a visuospatial deficit. Recommendations included extra time for testing, avoiding scantrons, wearing glasses, and tutoring as necessary, among others.

41. The evaluation group determined the Student met the criteria for a communication disorder and was eligible for special education services. The report stated:

[Student's] pragmatic abilities impact her every day at school. She has trouble interacting with her peers and her teachers as she is not always able to interpret what they are meaning. She often believes students are being mean to her, when really they are trying to help. This creates stress for [Student] at school which impacts her academic ability to perform well.

The evaluation report recommended the Student receive specially designed instruction in the area of pragmatic language.

42. The prior written notice, dated May 11, 2021, stated the District proposed initiating an IEP for the Student under the eligibility category of communication "specifically for specially designed instruction in the area of pragmatic due to her diagnosis of Auditory Processing Disorder...Her disability impacts her in the classroom on a daily basis and interferes with her success in her interpersonal communication."

43. On May 20, 2021, according to the District, the Parent agreed to sell the FM system the Student used at home because the previous FM systems were not working properly.

44. On May 24, 2021, the District received the report on the private evaluation conducted by the neuropsychologist. There was insufficient time to review the report, but the Parent wanted to

move forth with the May 25, 2021 IEP meeting. The Parent and District agreed that another time would be set up to review the report.

45. On May 25, 2021, the Student's IEP team, including the Parent, met to develop an initial IEP for the Student. An IEP facilitator from Sound Options Group participated in the meeting. The strengths of the Student and the concerns of the Parent for enhancing the education of the Student section of the IEP stated:

[Student] gives her best effort if she understands what she's being asked to do. She does well when she understands expectations and know ahead of time what to expect. She is honest and loves school and learning. [Student] is upset when she believes she is misunderstood or when she feels like a situation is misunderstood. Parent has concerns that school staff haven't understood her daughter's disability and how it impacts her at school. One outcome of being misunderstood is anxiety, which may lead to migraines and sometimes having to leave school.

The IEP listed the Student's CAPD and difficulty with pragmatic language as communication needs and listed assistive technology (AT) needs for a FM system and an "Echo pen" in the classroom. The IEP did not indicate that the Student's behavior impeded her learning or the learning of others.

The IEP provided for annual goals in the areas of pragmatics and self-advocacy. The IEP included 15 accommodations that included AT (FM system and Echo pen), overt reminders from staff to implement her advanced organizers (Echo smart pen, FM system, speech-to-text), preferential seating, health plan, breaks, and closed captioning with videos or written transcript, among others. Special designed instruction in the area of communication would be provided twenty minutes, four times a month, provided by an SLP. Supplementary aids and services were "private communication services" provided by an SLP for sixty minutes, twice weekly. Supports for school personnel included case coordination once a year for the Student's teachers. The IEP did not provide for extended school year (ESY) services.

46. The prior written notice, dated May 25, 2021, proposed deleting some previous accommodations and contracting with the private SLP to provide auditory training to the Student. The notice listed the Parent's concerns about having a transition meeting before school, yearly training for teachers, the decision about the FM system was made without her input, pragmatic goal, and classroom "fit" for the Student's middle school teachers.
47. Also, on May 25, 2021, the District contracted with the private SLP to provide speech-language pathology/audiology services to the Student and consulting services for the District about the Student.
48. On June 8, 2021, the Parent emailed the director with a list of concerns, including, in relevant part:
- IEP did not identify all medical conditions and symptoms specific to school;
 - The Student was also not identified under Other Health Impairment;
 - ESY services were not identified on the IEP;
 - Auditory training was not listed on the IEP;

- The IEP lacked goals in working memory, processing speed, organizational skills, and other executive function areas;
- Accommodations were not based on “multiple comorbidities;”
- “Assistive technology, classroom transitions, specific training for teachers, executive functioning, individualized instruction such as pre-teaching as well as mnemonics as a targeted approach to work on [Student’s] many documented struggles with weakness in working memory...” were not included;
- “There are clearly listed impacts to [Student’s] access to FAPE from her other diagnoses beside CAPD;” and,
- The fifth grade IEP needed to be also addressed by the sixth grade IEP team.

49. On the same day, the director replied, responding to the concerns. Regarding ESY, the director stated that although the private SLP was providing services to the Student during the summer and after school to prevent the Student from losing instruction time during the school day, there was no need for ESY because there was no indication of any academic loss over periods of time.

Regarding the request for an AT evaluation, the director replied again:

I continue to research the [AT] Assessment. [Student] is not in need of a general [AT] assessment. If an assessment were to be given it would be a specific Assessment to auditory processing. According to the paperwork provided the FM system is currently addressing [Student’s] auditory processing needs. The Pen or another form of recording device should also support her auditory processing needs. No other [AT], which supports her diagnosis under communication has been suggested. I confirmed this piece with [private SLP] this afternoon.

50. On June 9, 2021, the IEP team met to discuss the neuropsychological report. The prior written notice, dated June 9, 2021, indicated following was proposed/refused:

- Acknowledgement of ADHD and specified anxiety in the Student’s IEP;
- Refused to change the eligibility category from communication to Other Health Impairment;
- Amended the accommodations according the neuropsychologist’s recommendations; and,
- Adding the services from the private SLP as supplementary aid and service.

The notice stated the IEP services would begin once initial consent for the provision of special education services was signed by the Parent.

51. The prior written notice, dated June 10, 2021, indicated the Parent and the director met to discuss the “Pulse Pen” and FM system. The notice stated, in part:

[AT] FM System: [Parent] returned the check...for the school’s purchase of Student’s FM system. [Parent] does not think the FM system will work for [Student’s] transition to Middle School next year. [Parent] would like the school to look into purchasing a receiver for each teacher so that [Student] will not have to be responsible for making sure each teacher gets the receiver before the beginning of class. [Director] said she would look at her request but we do have FM systems we could use from ESD...[Parent] would also like a plan established before school how the FM system would be used next year in middle school. [Director] explained that it could be discussed at the transition meeting before school starts. [Director] suggested that [Student] check the FM system out at the beginning of the year and check back in at the end of the year and this idea was rejected from [Parent]. [Parent]

continues to request an [AT] Assessment. [Director] told [Parent] she had responded to this request in a previous email (June 8th) that a general [AT] assessment would not be available and from medical reports supplied by [Parent] the recommendations for [AT] are FM system and recording device (we provided a Pulse Pen).

[Parent] had 3 major areas of concern: 1) [Student's] working memory, 2) [Student's] executive functioning skills and 3) [Student's] FM system (see above about FM system). [Parent] feels [Student] needs support in working memory and executive functioning skills. [Director] explained [private SLP] would be addressing these areas over the summer and we can address later in the IEP per [private SLP's] recommendations. At this time [Student] qualifies under communication.

Current technology – [Parent] has requested to have speech to text and closed caption reviewed on [Student's] Chromebook, that is currently not accessible. [Director] will talk to tech about this.

Visual deficits: [Parent] wants team to acknowledge that [Student] has a visual impairment which is the main factor to [Student's] difficulties. [Parent] referenced report from [doctor of optometry].

Consent for Placement: [Parent] and [Director] discussed that without a signed consent form for placement the IEP could not move forward. [Parent] agreed to send in a signed consent form with the condition that her concerns about the IEP be attached to the IEP. [Director] will attach those concerns within the notes section of the Demographics page...

52. The prior written notice, dated June 18, 2021, stated the services provided by the private SLP would be considered as a supplementary aid and service so as "to not interfere with [least restrictive environment] due to services being held outside of school hours." Also, the notice indicated the accommodations were updated to align with the neuropsychologist's report. The notice stated the Parent brought up concerns about the Student's visual impairment and adding an accommodation for extended time on assignments. The Parent reported she was looking into medical hearing aids for the Student to eliminate the need for a FM system.

Also, on June 18, 2021, according to the District and the Parent, the Parent provided consent for initial special education services.

53. On June 22, 2021, the 2020–2021 school year ended in the District.

Summer 2021

54. On July 8, 2021, the Parent filed this complaint with OSPI. In the complaint, the Parent stated the Student was sent home almost every day because the Student refused to use the FM system. This occurred until the Parent provided the FM system for the last four weeks of school. The Parent later clarified that because the Student's FM system was either not working properly or that the Student was not reminded to use the FM system, the Student would get a migraine headache and go home. The Parent stated the teacher believed the Student was choosing not to use FM system, but the Parent stated the Student would forget because of her working memory impairment.

55. According to the documentation provided in the complaint, the Student was absent 19 days of school during the 2020–2021 school year. The District stated eight days were excused absences due to illness, five days were excused for medical appointments, two were unexcused, and one was titled “excused.” Three excused absences due to illness were when the Student went home because of migraine. After the Student became eligible for special education services on May 11, 2021, the Student was absent June 7, 2021 because of migraine headache, among other days.

CONCLUSIONS

Issue One: Parent Participation – The complaint alleged the District failed to consider the Parent’s input in developing the Student’s special education program.

Evaluation and Eligibility Decisions: In conducting the evaluation, the evaluation group—a group that includes qualified professionals selected by the district—must use a variety of assessment tools and strategies to gather relevant functional developmental and academic information, including information provided by the parent, about the student. The evaluation group must determine whether the student has disability and if there is an adverse effect on the student’s education that requires specially designed instruction.

Here, the Student enrolled in the District for the 2020–2021 school year with a 504 plan from the previous school district. The previous school district had evaluated the Student for special education eligibility in April 2020 and found the Student was not eligible for special education services at that time. The previous district found that although the Student had central auditory processing disorder (CAPD), there was no adverse effect that required specially designed instruction. The Student was generally successful in her general education classes, although the Student had some difficulties in other areas.

Upon enrollment in the District, the Parent referred the Student for a special education evaluation based on the Student’s CAPD diagnosis. In September 2020, the District considered evaluating the Student, but based on the recent results of the previous district’s evaluation and the Student’s performance at the time, the District determined there was insufficient evidence to suspect a disability that required specially designed instruction and declined to evaluate. The Parent, in her complaint, disputed the District’s refusal to evaluate because according to the Parent, even at the beginning of school, the Student was experiencing difficulty and needed support. The Parent continued to request special education services because she felt the 504 was not meeting the Student’s needs.

In May 2021, after a number of private evaluations of the Student were conducted, the District evaluated the Student and found the Student eligible for special education services under the category of communication disorder and that the Student required specially designed instruction for language pragmatics, which was a result of CAPD. The Parent expressed concern with the evaluation and subsequent individualized education program (IEP) because she wanted each concern noted in the private evaluations identified as disabilities and as services provided.

Based on the documentation, the District evaluated the Student in all areas of suspected disability and followed the procedures in determining the Student's eligibility on May 11, 2021.³ The documentation showed the District considered the Parent's input, including the private evaluations that were available at the time, and the Student's diagnosis of CAPD. The District acknowledged that the Student had other difficulties, but determined there was no adverse educational effect. Despite the Parent's disagreement, the Student having difficulties does not mean the Student had a disability in that area or required specially designed instruction. Further, the Parent's disagreement does not mean the Parent was denied an opportunity to participate in the evaluation process; in fact, the Parent actively participated in the decision-making process throughout. No violation is found.

The Parent placed a great deal of importance to the findings in the private evaluations, as most parents would. However, just because the Parent requested the District adopt all findings and recommendations in a private evaluation, does not mean the District is required to do so. Importantly, the direct educational relevancy in most of the reports was diminished because the evaluators did not get input from the District and in particular, the classroom teacher who worked directly with the Student, nor did the private evaluators observe the Student in her education setting. Further, for example, the private speech and language pathologist's (SLP) statement that the Student was clearly eligible for special education services did not reconcile the CAPD and the Student's adequate school performance at the time, nor may one person determine eligibility in isolation. It is important to note that having a disability does not automatically make one eligible for special education services; a student must have a disability that creates an adverse educational impact that necessitates specially designed instruction. And there can be significant differences between clinical recommendations that might help a student and recommendations that are required for the student to receive a free appropriate public education (FAPE). Overall, the documentation indicates the District considered the private evaluations provided by the Parent, and given that there is no requirement to fully adopt private evaluations, the fact that the District did not do this is not a violation, nor does it indicate a violation of parent participation.

IEP Meetings: The complaint alleged the District failed to consider the Parent's input at the IEP meetings. When developing each student's IEP, the IEP team must consider the strengths of the student, the concerns of the parents for enhancing the education of their student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student.

Here, the IEP team met with the Parent on May 25, 2021 to develop the Student's initial IEP, and a held a follow up meeting on June 9, 2021 to discuss the results of the neuropsychologist's report. The documentation showed the Parent had significant input, but the IEP team did not agree to implement the extensive list of services the Parent was requesting. The Parent also requested the IEP reference the list of diagnoses and difficulties identified in the private evaluations, which in part, the IEP team declined to do. While, again, the IEP team may have disagreed with the Parent's requests, disagreement is not tantamount to failing to get the Parent's input. Importantly, the

³ The complaint indicated the meeting was held on May 11, 2021. But the meeting to develop the Student's IEP was held on May 25, 2021.

Parent participated in the meetings and had significant input through numerous emails and phone calls to the District about her concerns. OSPI finds no violation.

Prior Written Notices: The complaint alleged the District failed to provide the Parent with prior written notices regarding her requests. A parent has a right to a written explanation of the district's proposals and refusals through a prior written notice before implementation.

Here, the Parent made requests for services, accommodations, and staff training on the behalf of the Student in meetings, phone calls, and emails, some repeatedly. The District attempted to respond to the majority of the requests with prior written notices, including requests the District agreed to implement such as staff training. The District provided written explanations of the decisions, but the Parent did not agree with the decisions and kept asking for the same services. The District is not required to provide repeated prior written notices for the same requests, if the District has already refused and the refusal was documented in a previous prior written notice.

However, there were a few requests that the District did not document in a formal prior written notice. For example, regarding the assistive technology (AT) evaluation, on June 8, 2021, the District's director of special education (director) emailed to respond, in part, to the Parent's request for an AT evaluation. The director denied the request because the Student was receiving appropriate AT services. The District responded to the Parent's request and gave an explanation why the request was refused. Although email did not formally constitute a prior written notice that contained all the required information, the Parent's participation in the decision was not impeded. A violation is found, and the District will be required to provide the IEP team and District special education administration with training about providing prior written notice.

Issue Two: Appropriate IEP – The complaint alleged the District failed to develop an appropriate IEP. In developing an IEP for a student, the IEP team must consider the strengths of the student, the concerns for enhancing the education of the student, results from the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student.

Special Education Services and Accommodations: The complaint alleged the District failed to provide special education services and accommodations to meet all the Student's needs identified in the May 2021 evaluation conducted by the District and all the private evaluations. Special education services and accommodations in an IEP are designed to meet a student's annual goals that are related to the student's disability.

Here, based on the District evaluation and private evaluations, the IEP team developed goals in the areas of pragmatic language and self-advocacy. The Parent disagreed and wanted goals in areas such as working memory and executive functioning, which were areas of difficulty for the Student. However, working memory and executive functioning were not required for the Student to receive FAPE as there was no indication of an adverse effect requiring specially designed instruction in these areas. The IEP team's decision to provide communication services and accommodations, provided both at school and at home, were based on individual Student data and made in light of the Student's abilities and needs. Once again, the Parent may have disagreed

and wanted more services and accommodations, but that does mean the services outlined in the IEP were necessarily inappropriate.

The April 2021 neuropsychologist's report provided the most appropriate perspective as it is the most recent private evaluation, although the evaluator did not observe the Student in the classroom. The evaluator collected all the previous evaluation information about the Student's difficulties. The report stated the "Student is a highly competent child who has made expected developmental and academic progress with a few minor 'hiccups'..." Although the Student was diagnosed with CAPD, it was "relatively mild and specific." Both the CAPD and self-regulation challenges are "relatively mild from a clinical perspective," but have hampered the Student's ability to perform well and remain adjusted at the same time. This was inconsistent with the Parent's constant claim that the Student needs the extensive list of services to receive FAPE.

Ultimately, the IEP team considered a significant amount of information about the Student, discussed and considered the Parent's concerns, and developed an IEP based on Student specific data about her disability-related needs. No violation is found.

Extended School Year (ESY): The complaint stated the District failed to identify the auditory training provided by the private SLP after school and during the summer as ESY services. A district is required to consider ESY to ensure a student with an IEP receives FAPE, if the student experiences regression over periods of time when instruction is not provided.

Here, the IEP provided for the Student to receive auditory training by the private SLP during the summer and after school to avoid the Student missing instructional time during school. According to the District, this service was not intended to be an ESY service as there was no evidence the Student regressed after periods without instruction. Based on the documentation, the IEP team made a decision that was based on Student-specific data and consistent with the needs of the Student. Further, there is no requirement to label services that occur outside the school day as ESY, although such services could be considered ESY. No violation is found.

Issue 3: Implementation of FM System – The complaint alleged the District failed to implement the accommodation for a FM (frequency modulation) system. A district is required to implement special education services and accommodations in conformity with a student's IEP.

Here, the Student had a 504 plan that included an accommodation for a FM system from the beginning of the 2020–2021 school year to May 11, 2021 when the Student became eligible for special education services. The May 2021 IEP for the Student provided accommodations for an FM system and reminders to the Student from staff to use her FM system. Under the 504 plan, the District had problems with different FM systems. On May 20, 2021, the District attempted to purchase the FM system the Student used at home, which was shown to work as needed. On June 10, 2021, the Parent returned the District's check because the Parent believed the specific FM system would not work for the Student in middle school.

The implementation problems in the complaint largely occurred before the Student's eligibility for special education in May 2021 and under the 504 plan. Implementation of 504 plans is outside

OSPI's authority in the special education complaint process and thus will not be addressed. But the District was still responsible for implementing the accommodation for a FM system based on the May 25, 2021 IEP after the consent for services was signed on June 18, 2021. Thus, ultimately, the District was only required to implement the IEP for the last few days of the 2020–2021 school year. Regardless, the documentation showed the Parent brought the home FM system for use the last few weeks of school. Despite the Parent having to provide the FM system, there was no material failure to implement the IEP and no violation is found.

Issue 4: Change of Placement – The complaint stated the Student was sent home because the Student would not wear the FM receiver at school. This occurred until the Parent provided the District the Student's FM system from home for the last four weeks of school. The Student was "sent home early every day except two that school was in session denying her FAPE." In determining whether a change in placement has occurred, the district responsible for educating a student eligible for special education must determine whether the proposed change would substantially or materially alter the student's educational program. In making this determination, the following factors must be considered: whether the educational program in the student's IEP has been revised; whether the student will be educated with nondisabled children to the same extent; whether the student will have the same opportunities to participate in nonacademic and extracurricular activities; and, whether the new placement option is the same option on the continuum of alternative placements. *Letter to Fisher*, 21 IDELR 992 (OSEP, July 6, 1994).

Here, the Parent initially alleged the District repeatedly sent the Student home for disciplinary reasons, but later clarified the Student was being sent home due to migraine headaches brought on by the Student not using the FM system. The Parent stated the teacher believed the Student was deliberately refusing to wear the device, but the Parent claimed the reason was the Student's working memory impairment. According to the District, after the May 2021 eligibility meeting, the Student was sent home once because of a migraine headache according to her health plan. The Parent provided consent for initial services on June 18, 2021. The Student's attendance record substantiated the Student was absent because of a migraine headache on June 7, 2021. Because there was insufficient documentation to substantiate there was a change of placement, no violation is found.

Issue 5: Additional Assessments – The complaint alleged the District failed to consider the recommendations from the private evaluations for additional assessments. In the complaint, the Parent stated it was the District's responsibility to provide the private evaluations that she had conducted. And, because the District failed to provide them, the Parent alleged the private evaluations should be considered independent educational evaluations (IEEs) for which the District is responsible (i.e., the District is responsible for the cost). A district is required to conduct a comprehensive evaluation of the student using a variety of assessment tools and strategies to gather relevant information about the student to determine whether a student is eligible for special education and the content of the student's IEP. Regarding an IEE, a parent has the right to request an IEE if they disagree with district's evaluation.

The Parent stated the District did not conduct a comprehensive evaluation of the Student in May 2021 because the District did not follow up with the recommendations from the private

evaluations for further evaluations. In May 2021, the District evaluated the Student for a communication disorder. The District evaluated the Student in the areas of general education, communication, fine motor, gross motor, vocational, and reviewed input from the classroom teacher, the Parent, and the private evaluations. As discussed above, the District evaluated the Student in all areas of suspected disability, considered the private evaluations, and considered Parent input. There was no indication that the District needed to conduct other evaluations or assessments to determine the Student's eligibility or make recommendations for services. No violation is found.

CORRECTIVE ACTION

By or before **October 7, 2021**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **October 1, 2021**, the Student's fifth grade IEP team and District special education administration is required to complete the eLearning training module ([eLearning for Educators | The Evergreen State College](#)) on providing prior written notice. The District will provide OSPI with a list of the IEP team members and verification that the module was completed by **October 7, 2021**.

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

Dated this ___ day of September, 2021

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.)