

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-49

PROCEDURAL HISTORY

On April 3, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Kent School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 5, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. In its letter of April 5, 2023, OSPI identified one issue, with subparts, for investigation. OSPI asked the District to respond to the allegations made in the complaint.

On April 11, 2023, OSPI received additional information from the Parent. OSPI reviewed the additional information and determined that the Parent raised additional issues for investigation. On April 12, 2023, OSPI identified three additional issues for investigation and notified the parties of the same.

On April 17, 2023, the District requested an extension of the due date by which it was to submit its response. That same day, OSPI granted the District a one-week extension by which to submit its response.

On April 28, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on May 2, 2023. OSPI invited the Parent to reply.

On May 4, 5, and 10, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on May 10, 2023.

On May 11, 12, and 15, 2023, the Parent provided OSPI with additional information. OSPI forward the information to the District on May 26, 2023.

On May 22, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on May 22, 2023. OSPI forwarded the information to the Parent on May 26, 2023.

On May 22, 2023, the District provided OSPI with additional information. OSPI forward the information to the Parent on May 26, 2023.

On May 25 and 30, 2023, the Parent provided OSPI with additional information. OSPI forward the information to the District on May 31, 2023.

On May 25, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on May 31, 2023. OSPI forwarded the information to the Parent on May 31, 2023.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on April 4, 2022. 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's evaluation group follow proper reevaluation and IEP development procedures in spring 2022, including:
 - a. Ensuring the reevaluation was sufficiently comprehensive and that any subsequent IEP team decisions were based on sufficient, relevant data on the Student's needs;
 - b. Not predetermining decisions regarding appropriate IEP services;
 - c. Ensuring the parent was able to fully participate in relevant IEP meetings; and,
 - d. Consideration of any independent educational evaluation (IEE) findings?
2. Did the District follow proper IEP attendance procedures for the April 18 and May 3, 2022 meetings?
3. Did the District follow proper procedures for ensuring those IEP services the Integrated Program teacher was responsible for implementing were properly provided in May and June 2022?
4. Did the District follow proper Family Educational Rights and Privacy Act (FERPA) procedures, in relation to the Integrated Program teacher's May 18, 2022, 12:10:20 pm email?

LEGAL STANDARDS

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's individualized education program (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. 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. 34 CFR §300.304; WAC 392-172A-03020.

Predetermination: Predetermination is a procedural violation that "occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives." *H.B. ex rel. P.B.*

v. Las Virgenes Unified Sch. Dist., 239 F. App'x 342, 344 (9th Cir. 2007). School districts may not "prepare an IEP without parental input, with a preexisting, predetermined program and a 'take it or leave it' position." *Baquerizo v. Garden Grove Unified Sch. Dist.*, 826 F.3d 1179, 1186 (9th Cir. 2016).

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).

Independent Educational Evaluation (IEE): If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. If the parent obtains an IEE at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and may be presented as evidence at a hearing regarding that student. 34 CFR §300.502; WAC 392-172A-05005.

Determination of Eligibility Following Completion of Reevaluation: Upon completion of the administration of assessments and other evaluation measures, a group of qualified professionals and the parent of the student determine whether the student is eligible for special education services. WAC 392-172A-03040(1)(a).

IEP Team: An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment); not less than one special education teacher or, where appropriate, not less than one special education provider of the student; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child. 34 CFR §300.321(a); WAC 392-172A-03095(1).

IEP Team Member Excusal: Parents and districts can agree in writing that an IEP team member's participation is not necessary and that the team member may be excused from attending an IEP meeting, in whole or part, if the team member's area of curriculum or related services is not being modified or discussed in the meeting. If the meeting involves a modification to or discussion of

the team member's area of the curriculum or related services and the parties both consent in writing to the excusal of the team member, the excused team member must submit written input into the development of the IEP in prior to the meeting. 34 CFR §300.321(e); WAC 392-172A-03095(5).

IEP Implementation: At the beginning of each school year, each district must have in effect an IEP for every student within its jurisdiction served through enrollment who is eligible to receive special education services. It must also 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. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a [child with a disability] and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Confidentiality of Education Records: FERPA requires districts to maintain the confidentiality of students' education records. 34 CFR §300.623; WAC 392-172A-05230. FERPA controls the circumstances under which a district may disclose personally identifiable information from educational records, and prohibits non-authorized disclosure of that information. As a general rule, personally identifiable information may not be disclosed without specific, informed parental consent. 34 CFR §300.622; WAC 392-172A-05225.

FERPA: Personally Identifiable Information (PII): PII includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR Sec. 99.3.

FERPA: Disclosure of PII to School Officials with a Legitimate Educational Interest: A school district may disclose PII from an education record of a student without the consent required by 34 CFR § 99.30 if the disclosure is to other school officials, including teachers, within the school district whom the school district has determined to have legitimate educational interests in the relevant PII. 34 CFR § 99.31(a)(1)(i)(A); *see also* WAC 392-172A-05195 ("The [school district or] agency is not required to keep a record of access by parents, and authorized employees with a legitimate educational interest in the records.")

FERPA: When is a Contractor a School Official: "A contractor...or other party to whom [a school district] has outsourced institutional services or functions may be considered a school official...provided that the outside party: (1) performs an institutional service or function for which the agency or institution would otherwise use employees; (2) is under the direct control of the agency or institution with respect to the use and maintenance of education records; and (3) is

subject to the requirements of 34 CFR § 99.33(a)¹ governing the use and redisclosure of [PII] from education records. 34 CFR § 99.31(a)(1)(i)(B)(1)-(3).

FINDINGS OF FACT

2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of developmental delay, was in kindergarten, attended a District elementary school, and their May 2021 individualized education program (IEP) was in effect.

The May 2021 IEP included the following goals: social emotional (SE) (self-regulation); SE (invitation to play); SE (identify emotions); adaptive (follow directions); adaptive (focus); communication (self-advocacy); communication (use of prepositions); and communication (fricatives in phrases).

The Student's May 2021 IEP provided the Student with the following specially designed instruction (SDI) in a *special education setting* from August 2021 through May 11, 2022:

- Speech: Articulation: 30 minutes 4 times a month (to be provided by a speech language pathologist (SLP))
- Speech: Language: 30 minutes 4 times a month (to be provided by an SLP)²
- SE: 30 minutes 4 times a week (to be provided by an "Integrated Program" (IP) teacher)
- Adaptive: 30 minutes 4 times a week (to be provided by a special education teacher)

The Student's May 2021 IEP provided the Student with the following SDI in a *general education setting* from August 2021 through May 11, 2022:

- SE: 45 minutes 5 times a week (to be provided by a paraprofessional)
- Adaptive: 30 minutes 4 times a week (to be provided by a paraprofessional)

2. A previous community complaint decision involving this Student, Parent, and District (SECC 22-116) included the following information on the Student's "Integrated Program" (IP) during the 2021–2022 school year:

The Student was in District's 'integrated program' (IP). According to the District, students primarily assigned to an IP caseload receive SDI addressing the 'mild to moderate differences' in their instructional needs. Instructional content varies based on each student's IEP. Services may be provided in any setting, based on the student's IEP.

34 CFR § 99.33(a)(1)-(2) reads, "An educational agency or institution may disclose personally identifiable information from an education record only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior consent of the parent or eligible student. The officers, employees, and agents of a party that receives information under paragraph (a)(1) of this section may use the information, but only for the purposes for which the disclosure was made."

² Speech: Language was to be provided concurrently.

3. The District's response included progress reporting related to the May 2021 IEP, dated late January 2022 and early February 2022, showing, in part:
 - SE (self-regulation): sufficient progress;
 - SE (invitation to play): sufficient progress;
 - SE (identify emotions): sufficient progress;
 - Adaptive (follow directions): mastered;
 - Adaptive (focus): mastered;
 - Communication (self-advocacy): emerging skill;
 - Communication (use of prepositions): sufficient progress; and,
 - Communication (fricatives in phrases): sufficient progress.

4. In a March 31, 2022 email to the Parent, the assistant director stated the IEP team needed to discuss, in part, "Consultation with a Board Certified Behavior Analyst [(BCBA)] for support with needs at home and at school, including consistent reinforcement planning and implementation across the team."

Later, on April 4, 2022, the assistant director emailed the Parent, stating, "I have connected with our district [BCBAs] and they are happy to support a consultation with you. I believe the special education teacher and a BCBA will be in touch with you soon about that connection."

The District's response included progress reporting related to the May 2021 IEP, dated mid-April 2022, showing, in part, the self-regulation and invitation to play goals were mastered. (The mid-April 2022 progress reporting did not include data related to the other goals in the May 2021 IEP.)

5. On April 1, 2022, the District school psychologist emailed the special education teacher, asking, "Do you have any data on Student's social/emotional/adaptive/behavioral skills that I could take a look at? I'm hoping to include that in the evaluation."

On April 5, 2022, the special education teacher responded, stating:

I don't know how much data has been collected since Winter Break because we have had no IP para sub coming except for Parent who comes for 2 hours in the morning.

I will check the data book to see what has been completed if anything. We added 2 new goals at the February progress reporting because she had already met all of her goals from last year. One goal was in initiating interactions with her peers. The second was: Student will take a break or use other functional communication strategies when she is feeling anxious or otherwise overwhelmed.

6. According to emails, on April 4, 2022, the psychologist and Parent spoke on the phone to discuss "follow-up questions [related to] the parent rating forms" used in the reevaluation and, via email, the psychologist provided input on how to fill out various rating forms.

In a separate April 4, 2022 email, the Parent provided the psychologist with "visit notes" from a December 2021 visit Student had with a private psychiatrist.

In a separate April 4, 2022 email, the assistant director emailed the Parent, stating, in part, "Our District BCBA...are happy to support a consultation with Parent."

7. On April 5, 2022, the Parent sent the psychologist a "positive behavior card" that the Parent desired District staff utilize. The chart tracked the extent to which the Student engaged in five different, listed behaviors.

In a separate email, dated April 5, 2022, the Parent shared concerns she had regarding the Student's communication needs with the SLP.

8. On April 7, 2022, the special education teacher emailed the BCBA therapist, stating, in part, "It looks like Student is no longer going to qualify for special ed services in IP so I think we can not worry about this meeting...Student no longer qualifies for services. She does not have social emotional concerns at school she only has them at home."
9. On April 7, 2022, the principal emailed the assistant director, stating, "Have you been able to connect with Parent about a BCBA home visit?"

Later that day, the assistant director responded, stating, "The BCBA tried to set up a call with the special education teacher and she declined it. The BCBA wanted to connect with the special education teacher before connecting with the family – as a segway to family. The BCBA is ready to connect."

10. On April 7, 2022, the occupational therapist (OT) emailed the special education teacher, stating, "Student can recognize and identify emotions in herself correct?" The special education teacher responded that day, stating: "Student says she's happy every day. There is never fluctuation in her feelings...[E]ven when Parent sends me an email saying something sad happened, Student still say she's happy. Who am I to contradict Student on this? I'm not inside her head."
11. On April 8, 2022, the psychologist emailed the Parent a draft of the reevaluation report; said draft did not yet include sections related to potential occupational therapy or speech-related needs.
12. The District was on break April 11–15, 2022.
13. On April 12, 2022, the assistant director emailed the special education teacher, stating:
BCBA Home Consultation for Family: The BCBA noted that he reached out [to you] as a connection point so he could have support in connecting with the family. I spoke with Parent about a consultation with them and Student would just need some connection information and support as [you are the Student's] case manager.
14. On April 13, 2022, the special education teacher forwarded the assistant director's email to the school psychologist, stating, "I told the BCBA that we were ok and didn't need further assistance. Yesterday I got this email from the assistant director. I was wondering if you would

mind letting her know what is going on? I'm afraid that I will explain things incorrectly or be accused of pre determination."

15. On April 18, 2022, the special education teacher emailed the school psychologist and the assistant director, stating, in part, "The BCBA and I were going to meet before the break but then we cancelled the meeting when we realized that Student may no longer qualify for services."

The assistant director responded later that day, stating, "This consultation with the family can still take place as Student currently has an IEP we are serving." Subsequent to this email, the special education director and BCBA discussed scheduling a Teams meeting between themselves so the BCBA could "get some background information about what is going on with the family."

16. On April 18, 2022, the SLP emailed the Parent a draft, completed reevaluation report in advance of the meeting scheduled for April 19, 2022.

17. The District's evaluation group met via video conference on April 19, 2022.³

The April 2022 reevaluation report recommended the Student receive SDI in speech language.

The April 2022 reevaluation report detailed the results, in part, of the following assessments: the Behavior Assessment System for Children, 3rd Edition ("BASC-3"); the Vineland-3 Domain-Level Adaptive Behavior Scales ("Vineland-3"); the Social Skills Improvement System Rating Scales ("SSiS"); the Structured Photographic Articulation Test-Second Edition ("SPAT-D II"); portions of the Comprehensive Assessment of Spoken Language-Second Edition ("CASL-2"); the Clinical Evaluation of Language Fundamentals ("CELF-5"), completed by the Student's general education teacher; the Sensory Processing Measure ("SPM"), completed by the Student's general education teacher; and a vision and hearing screening. The April 2022 reevaluation report also incorporated parental feedback, teacher feedback, an interview with the Student, information on the Student's progress on prior IEP goals, and the results of state testing.

According to the Parent, "the District representative showed [up] 30 minutes late."

According to the April 2022 reevaluation, the following individuals attended the meeting on the 19th: Parent, SLP, special education teacher, OT, psychologist, assistant direction, principal, and general education teacher.

A prior written notice, dated April 21, 2022, referenced the April 19, 2022 meeting and read, in part, "The evaluation meeting was held remotely due to the restrictions from COVID-19.

³ A 'Notice of Meeting', dated March 14, 2022, referenced a meeting scheduled for April 19, 2022, the April 2022 reevaluation report stated the meeting took place on April 19, 2022, and the District's response included meeting notes dated April 19, 2022. But, in their respective narratives, both the District and the Parent stated the meeting took place on April 18, 2022.

Present at the meeting were parent/guardian, [OT], [SLP], school psychologist, special education teacher, general education teacher, district representative, and building administrator.”

18. On April 19, 2022, the psychologist emailed the Parent a copy of a PowerPoint presentation that the psychologist had used during the IEP meeting on April 18, 2022.

19. On April 25, 2022, the SLP emailed the special education teacher, stating:

I’ve scheduled Student’s IEP for next Tuesday, May 3, since the meeting is due by May 5. However, since the IEP itself doesn’t expire until May 11, the start date of the new IEP won’t be until Monday, May 9. This means we will still have this week and next week to help prepare Student for the transition from IP with communication services to communication-only services.

Please let me know if there’s anything I can do to help support Student as you ‘graduate’ her from IP!

Later that day, the special education teacher responded to the SLP, stating:

Thank you for the IEP date. I will be ending IP services on the date of the IEP since she will not be requiring further services after that. I have already begun to transition Student to complete her schedule on her own. Regardless of when you start the next IEP, her services in IP are no longer needed and therefore extending these services is further detrimental to her education.

I have already extended her services beyond the January evaluation time that was first requested. I was told that because related services were not ready to assess her at that time, that her evaluation would occur in April. Please let me know if you would like to discuss this further.

20. According to an April 25, 2022 email thread, the assistant director, special education teacher, and psychologist were invited to attend the May 3, 2022 meeting.

In a separate email, dated April 25, 2022, the SLP provided the Parent with progress reporting on IEP goals. Said email read, in part, “special education teacher has updated the data for the expiring adaptive and social/emotional goals.”

21. On April 27, 2022, the Parent emailed several District staff members, stating she disagreed with the decision to remove adaptive and social emotional/behavioral SDI and that she would “be asking that [the IEP team] review all IEP goals and their data for this school year regardless of [the District’s intended] status [for those goals].”

The principal responded to the Parent that day:

As stated in the previous email, the evaluation informs the IEP that we must create. Since we have a new evaluation and a new set of areas of qualification, we are required to complete a new IEP. In following the timelines required, we will hold the IEP meeting on Tuesday, May 3, 2022 and present the new IEP. We can review previous goal progress on the Adaptive and SEL areas, but these will not be part of the new IEP because they are not

areas that [Student] has qualified. The new IEP will only cover her new Speech goals in alignment with the new evaluation.

22. According to an email, the Parent met with a District school behavior analyst on April 28, 2022, and they discussed, in part, "strategies" and "communication between home and school," with the latter topic to be further discussed with the assistant director.

In a separate email, dated April 28, 2022, the SLP provided the Parent with a draft IEP, stating, in part, "This...is a collaborative document: goals, accommodations, and other information may be removed, added, or changed based on team input and insight during the meeting." The draft IEP would have provided the Student with a total of one hour of speech SDI each week.

Later that day, the Parent responded, stating, in part, "Thank you...this is very helpful to have so early."

23. A meeting took place on May 3, 2022. According to the District's response and reflected in meeting notes, "although [the May 3, 2022] meeting was initially scheduled to discuss Student's draft IEP, at Parent request, the meeting instead focused on a discussion of the April 2022 reevaluation."

According to the Parent, the "District representative was a no show." According to a May 3, 2022 email, another individual attended the IEP meeting as the Parent's advocate.

According to the District, "[The May 3, 2022 meeting] was scheduled to be an IEP meeting, a full IEP team was present [and], although the assistant director was not in attendance at the meeting, the principal attended as a district representative...the assistant director was not a required participant." The May 3, 2022 meeting notes included in the District's response referenced, in part, the following individuals: two District BCBA's and Parent advocate.

24. The Parent requested an independent educational evaluation (IEE) on May 4, 2022.

According to an email, a follow-up IEP meeting had been scheduled for May 4, 2022, but the Parent canceled it that day.

25. The District granted the Parent's request for an IEE on May 5, 2022.

26. On May 13, 2022, the special education teacher emailed several District staff, stating, in part:

As you know I will be providing accommodations for the SBA next week and for the next 3 weeks, so all of my normal IP groups will be cancelled EXCEPT next Thursday and Friday...You will notice that there are afternoon time slots with specific students listed. I tried to keep in mind specials and lunch and recess times on this schedule.

In addition, if there is an IP para sub that comes next week, since all my groups will be cancelled, I am trying to make sure that the IP para sub goes to all grade levels in the course of one day. So you will see that all IP services provided by the para next week (if we get any) will be push in services in your classrooms. The para will come into your rooms at the

times scheduled and will help IP students (and others if they're in a group) with whatever you are working on in class.

The excel sheet attached to the special education teacher's email showed, in part: the Student was to be seen in the morning by a paraeducator as part of a "check-in" every day of the week; on Thursday and Friday afternoons, the Student was listed as being seen for adaptive and social emotional/behavioral SDI; and on Thursday and Friday afternoons, the Student appears to have been supposed to have been assisted "from the lunch room."

27. On May 17, 2022, the SLP emailed the Parent a revised draft IEP stating, in part, "There are a few changes from the initial draft I sent (primarily adding a new self-advocacy goal and updating proposed accommodations)."

28. On May 18, 2022, the Student's IEP team met to discuss development of a new IEP for the Student.

29. On May 18, 2022, the principal emailed the Parent, stating, in part:

No paraeducator substitute today, and the general education teacher is out today, so there will be a substitute in the class today (I do not know who this will be yet).

Every May is our annual state-based assessment testing and Spring iReady testing window. This means that many of our building staff (certificated and classified staff) are required to be testing proctors...This means that the special education teacher will be testing 3rd-6th grade students...each morning for the next couple weeks, and also supporting all grade levels with iReady testing accommodations...All that to say Student will be in her kindergarten class each day.

Additionally, the special education teacher is out on Thursday and Friday and the substitute we had for the position cancelled yesterday. I am not sure we will get a substitute to cover her absences.

The special education teacher then replied to the principal only, stating, "I meet with Student every morning to go over Student's schedule with her!"

The special education teacher then forwarded the thread to her husband, stating, in part, "Wait till you see this! And this is after the principal responded to her email this morning!"

30. In a separate email, dated May 18, 2022, the special education teacher emailed the principal, stating, in part, "I do not want the guest teacher to pull Student for the 1st grade reading and writing class in the afternoon. If I get a sub, I'm not sure s/he could handle Student. If there is an IP para, then they will have the kindergarteners at 1:30."

31. According to emails, a District BCBA and Parent were scheduled to meet on May 19, 2022, to discuss "home routines" and "school/home communication." But it appears the meeting did not take place. One May 20, 2022, a District BCBA emailed the SLP stating, in part, "We didn't connect with Parent yesterday, but did extend an offer. We're available to her if she'd like to follow-up."

32. According to a May 19, 2022 email from the SLP to the Parent, it appears, in part, IEP accommodations were revised during the May 18, 2022 meeting.
33. On May 19, 2022, the principal emailed several District staff “three [different] schedules that could be a possibility [for Student] depending on staff that are present each day. This schedule will remain in effect until the new IEP goes into place.” One of the three schedules mentioned adaptive and social emotional/behavioral SDI and speech, and two of the schedules mentioned “pull-out” and “pull-in” and speech, but did not mention adaptive and social emotional/behavioral SDI.
34. A May 20, 2022 prior written notice, detailing certain IEP team conversations that had taken place in May 2022 read, in part:
- The team also determined 30 minutes of speech-language therapy services 1x weekly would not allow for adequate instruction in and generalization of each of Student’s 4 communication goals.
- ...
- Parent requested Student be tested in her familiar classroom environment with a familiar adult administering the assessment (such as general education teacher or classroom paraeducator).
35. On May 20, 2022, the principal emailed several individuals, including the Parent, stating, in part, “No IP subs for today, no groups or push-in support...The only familiar adults today for Student will be recess staff...and the PE teacher.”
36. According to the District’s response, emails, and the June 2022 IEP (see below), on May 24, 2022, the Student began to receive certain additional SDI in speech, meaning beyond the total weekly speech services included in the May 2021 IEP.
37. According to the District:
- On May 25, 2022, [the provisions of a new IEP were] implemented [and] this IEP [only] provided for services in the area of communication, and there were no ongoing services that the special education teacher was responsible for implementing after this date. To maintain continuity in her services, however, the District continued to offer Student morning check-ins...Student’s program was not affected by the teacher’s facilitation of state testing with students during May and early June 2022.
38. On May 25, 2022, the SLP collaborated with the District BCBA’s on a “school/home communication” system—a chart to be filled out by various District staff—and conveyed the same to the Parent.
39. On May 26, 2022, the Parent emailed several District staff, stating, in part, “We are at the end of two weeks of no IP support besides a few minutes of a morning check-in.”
- On May 26, 2022, the principal emailed the Parent and several District staff, stating, in part, “As a reminder, the new IEP is in effect. It is a ‘place holder’ pending the IEE or any other decisions that are made that would cause a change to the IEP.”

Later that day, the special education teacher asked the principal whether she could “stop doing the morning check-ins with Student.”

40. A May 27, 2022 prior written notice noted, in part, the IEP team would implement a particular communication protocol with the Parent. It read, in part:

An email will be sent each morning before school starts to inform Parent of the IP and general education staffing each day, including whether any changes will be made to the planned schedule [and] a follow-up email will be sent before the end of the school day if any changes occurred.

41. On May 31, 2022, the principal emailed the Parent, stating, in part, “No IP support based off the new IEP...Check-in/check-out will be with [a staff person other than the special education teacher] today, with the support of the SLP and general education teacher.”

42. According to the District, the Student’s spring 2022 was finalized in June 2022 (even though, in IEP online, the IEP is dated May 18, 2022). The June 2022 IEP included the following goals: communication (TH production); communication (narrative retell); communication (awareness of emotions); and communication (self-advocacy).

The Student’s June 2022 IEP provided the Student with the following SDI in a *special education setting* from May 25, 2022 through May 24, 2023:

- Speech: 30 minutes 2 times a week (to be provided by an SLP and/or SLP assistant)
- Speech: 30 minutes 1 time a week (to be provided by an SLP and/or SLP assistant)⁴

The June 2022 IEP included, in part, the following accommodation: “assessments need to be given by a familiar person.”

43. On June 7, 2022, the SLP emailed the Parent, stating, in part, “Attached is the current updated draft of Student’s communication-only IEP. [Please consult] your list of accommodations to cross-reference with the list we devised together as a team.”

44. In several emails, dated mid-June 2022, the Parent provided proposed edits to the Student’s IEP.

45. In an email to the Parent, dated June 16, 2022, the SLP asserted she would check in with the Student at the end of the Student’s school day.

46. On June 18, 2022, the SLP emailed the Parent “an updated draft of Student’s IEP.” The draft had highlighting representing changes and/or insertions in the following areas: narrative information in the General Education Teacher Report; and accommodations.

47. The District’s last day of school was June 20, 2022.

⁴ This particular component of the speech SDI was to be provided concurrently.

Summer 2022

48. The IEE was completed in July 2022. The IEE itself does not include a specific date the report was completed, but it mentions that the assessments that formed the basis of the report were completed on June 18 and July 13, 2022.

2022–2023 School Year

49. At the start of the 2022–2023 school year, the Student was eligible for special education under the category of communication disorders, was in the first grade, attended a District elementary school, and the Student’s May 2022 IEP was in effect.

50. An October 12, 2022 prior written notice read, in part:

The evaluation team has determined that Student is eligible for special education services under the category of Autism. She will receive specially designed instruction in the areas of Adaptive Skills, Social/Emotional, Speech Language-language, and Speech Language-articulation, with Occupational Therapy as a Supplementary Aid and Service.

...

The team determined that Student meets eligibility requirements for the category of Autism. She has a diagnosis of Autism and demonstrated below average skills in the areas of adaptive, social/emotional, and communication as measured by student performance on standardized measures and information indicated in Student's independent educational evaluation.

...

An independent educational evaluation and neuropsychological assessment (completed on 06/18/2022 and 07/13/2022 by [a] Pediatric Neuropsychologist and Licensed Clinical Psychologist) was used in addition to school information.

51. The District’s response included an IEP, dated November 3, 2022.⁵

The November 2022 IEP included the following annual goals: adaptive (self-advocacy); communication (articulation); communication (narrative retell); communication (awareness of emotions); SE (practice skills); and SE (scenarios of anxiety or frustration).

The Student’s November 2022 IEP provided the Student with the following SDI in a *special education setting* from January 3, 2023 through January 2, 2024:

- Speech: 30 minutes 1 time a week (to be provided by an SLP or an SLPA)
- Speech: Articulation: 30 minutes 1 time a week (to be provided by an SLP or an SLPA)⁶
- Adaptive: 15 minutes 5 times a week (to be provided by a paraprofessional)
- SE: 25 minutes 5 times a week (to be provided by a paraprofessional)

⁵ The District’s response read, in part, “A meeting was initially held on November 3, 2022. Due to Parent’s questions and requests regarding the IEP, two additional meetings were held to discuss the IEP, and its finalization was delayed as a result. The IEP was finalized shortly before the District’s winter vacation, and was implemented beginning in January 2023.”

⁶ Speech: Articulation was to be provided concurrently.

The Student's November 2022 IEP provided the Student with the following specially designed instruction in a *general education setting* from January 3, 2023 through January 2, 2024:

- Adaptive: 100 minutes 4 times a week (to be provided by a paraprofessional)
- SE: 45 minutes 5 times a week (to be provided by a paraprofessional)

The Student's November 2022 IEP provided the Student with the following supplementary aids and services in a *special education setting* from January 3, 2023 through January 2, 2024:

- Occupational Therapy: 20 minutes 2 times a month (to be provided by an OT and/or a COTA)
- Occupational Therapy: 20 minutes 1 time a month (to be provided by an OT and/or a COTA)
- Occupational Therapy: 20 minutes 2 times a month (to be provided by an OT and/or a COTA)

52. A December 16, 2022 prior written notice read, in part:

New areas of qualification from previous IEP were added, and a her category of qualification was changed...Parent requested the team consider increasing speech-language therapy minutes to 30 minutes 3x weekly per [the] recommendation in the Independent Education Evaluation report...Student demonstrates a mild speech production delay, and her receptive-expressive language skills mostly fall within the average range, with the exception of her language use, or pragmatic/social language skills. These considerations in combination with Student's least restrictive environment resulted in Student's SLP recommending she receive communication services 30 minutes 1x weekly, in addition to indirect services including but not limited to observation/data collection, consultation with teacher, materials/visuals making, etc.

CONCLUSIONS

Issue 1: Reevaluation and IEP Development Procedures – The Parent alleged the District did not follow proper reevaluation and IEP development procedures in spring 2022. Specifically, the Parent alleged: the reevaluation was not sufficiently comprehensive and that subsequent IEP team decisions were not based on sufficient relevant data on the Student's needs; the Student's IEP team predetermined services; the District did not permit the Parent to fully participate in relevant IEP meetings; and the evaluation group did not properly consider the results of relevant independent educational evaluations (IEEs).

Comprehensiveness of April 2022 Reevaluation Report

The Parent alleged the April 2022 reevaluation report did "not us[e] a variety of sources for data collection in the evaluation process" and the observation of the Student did not result in sufficient data collection regarding the Student's needs. The Parent further alleged these reevaluation errors resulted in the erroneous "removal of services," specifically the removal of SDI in SE and adaptive.

A reevaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been classified. In completing a reevaluation, the reevaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. 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.

Here, OSPI makes two conclusions. First, the issue of whether the April 2022 reevaluation included sufficient, relevant data on the Student's needs resulting from the Student's disability, such that it was substantively defensible for the IEP team to not include SDI in SE and adaptive in the Student's new annual IEP, was already investigated and decided in SECC 22-63. Issue 2 in SECC 22-63 read, "Did the District properly amend the Student's IEP in February 2022 to removing adaptive and social emotional services, including whether this decision was made based on sufficient, Student-specific data?" The decision in SECC 22-63, dated July 2022, noted that SDI in SE and adaptive was removed with the IEP that was developed in May and June of 2022. (A new annual IEP had not been developed in February 2022.) The decision in SECC 22-63 read, in part:

The majority of the documentation, though, shows to the extent the Student continued to demonstrate a need in either social emotional or adaptive, this need existed primarily in the home setting; and to the extent such a need did exist in the school setting, it could best be addressed via communication goals that focused on self-advocacy...In addition to the fact that the majority of the data supports a finding that the IEP team reasonably concluded in May 2022 that the Student no longer required specially designed instruction in either adaptive or social emotional, it is also notable that...multiple data sources were reviewed prior to making the determination in question, including observations of the Student, several assessments, and the result of progress reporting.⁷

In sum, OSPI already investigated this issue in SECC 22-63 and issued findings regarding the same.

Second, the April 2022 reevaluation report included numerous assessments addressing multiple areas of potential need. For example, the April 2022 reevaluation report detailed the results, in part, of the following assessments: the Behavior Assessment System for Children, 3rd Edition ("BASC-3"); the Vineland-3 Domain-Level Adaptive Behavior Scales ("Vineland-3"); the Social Skills Improvement System Rating Scales ("SSiS"); the Structured Photographic Articulation Test-Second Edition ("SPAT-D II"); portions of the Comprehensive Assessment of Spoken Language-Second Edition ("CASL-2"); the Clinical Evaluation of Language Fundamentals ("CELF-5"), completed by the Student's general education teacher; the Sensory Processing Measure ("SPM"), completed by the Student's general education teacher; and a vision and hearing screening. The April 2022 reevaluation report also incorporated parental feedback, teacher feedback, an interview with the Student, information on the Student's progress on prior IEP goals, and the results of state testing. In sum, numerous assessments were utilized to evaluate the Student's needs across multiple domains. OSPI does not find a violation of the IDEA.

Predetermination

The Parent alleged the District predetermined that the spring 2022 annual IEP was going to be a communication-only IEP "and that social emotional learning [and] adaptive services...were no longer needed."

⁷ OSPI incorporates the decision in SECC 22-63 via reference. And the Parent is directed to Pages 22-24.

Predetermination is an IDEA violation that occurs when an educational agency has made its determination prior to the IEP meeting, including when it presents one placement option at the meeting and is unwilling to consider other alternatives. School districts may not prepare an IEP without parental input, with a preexisting, predetermined program, and a 'take it or leave it' position.

Here, the documentation generally supports two conclusions. One, the District did not predetermine the narrative information included in the IEP that would ultimately be finalized in May or June of 2022, the accommodations the Student required, or the amount of speech services the Student would receive. For example, multiple meetings and numerous email communications took place between April 2022 and June 2022 regarding foregoing components of the Student's annual IEP. Specifically, the IEP team increased the total amount of speech services the Student would receive each week, as well as the accommodations the Student would receive, in direct response to parental feedback.

Two, completion of the spring 2022 reevaluation and development of the spring 2022 IEP appeared to be happening somewhat concurrently—between late April and mid-June 2022—and Parental input was considered, in various formats, throughout this time period. But there are multiple statements by District staff early in the foregoing process, notably from the time period prior to when reevaluation was completed⁸, wherein staff unequivocally state the Student will not be receiving SDI in either adaptive or social emotional/behavioral. For example:

- On April 7, 2022, the special education teacher emailed the BCBA therapist, stating, in part, "It looks like Student is no longer going to qualify for special ed services in IP so I think we cannot worry about this meeting...Student no longer qualifies for services. She does not have social emotional concerns at school she only has them at home";
- On April 18, 2022, the special education teacher emailed the school psychologist and the assistant director, stating, in part, "The BCBA and I were going to meet before the break but then we cancelled the meeting when we realized that Student may no longer qualify for services";
- On April 24, 2022, the special education teacher emailed the SLP, stating, in part, "I will be ending IP services on the date of the IEP since she will not be requiring further services after that. I have already begun to transition Student to complete her schedule on her own. Regardless of when you start the next IEP, her services in IP are no longer needed and therefore extending these services is further detrimental to her education"; and,
- In a separate email, dated April 28, 2022, the SLP provided the Parent with a draft IEP, stating, in part, "This...is a collaborative document: goals, accommodations, and other information may be removed, added, or changed based on team input and insight during the meeting." Notably absent from the foregoing statement is an assertion that whether the Student has needs resulting from her disability in the areas of adaptive or SEB will be a permitted topic of conversation.)

This, therefore, represents a violation of the IDEA, as staff made statements that the IEP would no longer include certain services before the group of qualified professionals, including the Parent, had completed the conversation regarding the Student's spring 2022 reevaluation report. In terms of corrective actions, though, OSPI notes as detailed in SECC 22-63 and Issue 1(a), above, despite

⁸ As best OSPI can determine, the group of qualified professionals, including the Parent, continued to discuss the spring 2022 reevaluation, at least through May 3, 2022.

the presence of the procedural violation of predetermination regarding SDI in adaptive and social emotional/behavioral, this decision does appear to have been substantively appropriate—at least as of spring 2022—based on the evaluation. Accordingly, the following represents an appropriate corrective action: the District will be required to provide certain staff with written guidance regarding the prohibition on predetermination.

Parent Participation

The Parent alleged she was not permitted the opportunity to fully participate in IEP meetings in spring 2022. Specifically, the Parent stated she was not provided with certain “assessment reports” and/or interpretations of certain assessments.

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.

As a preliminary matter, OSPI notes while SECC 22-63 did not include an issue related solely to parent participation in spring 2022, that decision did include some findings related to this topic. For example, SECC 22-63 read, in part, “Based on the documentation provided to OSPI during this investigation, the Parent was afforded an opportunity to fully participate in the [spring 2022] reevaluation process.” A review of SECC 22-63, as well as the separate investigation that took place with this decision, SECC 23-49, supports the foregoing conclusion. For example, in part, the following show the Parent was able to fully participate in the spring 2022 IEP meetings:

- In various communications provided to OSPI during the instant investigation, the Parent acknowledged her input and concerns were considered during the spring 2022 meetings. For example, Parent noted, in part, “Classroom observation was redone by a different staff member at Parent’s request”; and, “OT observation was redone” following parental input;
- The April 2022 reevaluation incorporated the Parent’s input and concerns in several places. For example, the Parent was formally interviewed and the Parent completed surveys for the Behavior Assessment System for Children, Third Edition (BASC-3), the Vineland-3 Domain-Level Adaptive Behavior Scales (Vineland-3), and the Social Skills Improvement System (SSiS) Rating Scales;
- The Parent was provided progress reporting data in spring 2022, in part, on February 7, 2022, April 25, 2022, and June 2022;
- In spring 2022, the Parent attended no less than three meetings related to either completion of a reevaluation and/or development of a new IEP, on April 19, 2022, May 3, 2022, and May 18, 2022;
- The Parent’s advocate attended the May 3 and 18, 2022 meetings with the Parent;
- The Parent was provided with draft IEPs prior to relevant meetings; and,
- Between early May 2022 (when IEP development conversations first began) and late May and/or early June 2022 (when the IEP was finalized), several changes were made to the IEP to response to the Parent’s concerns, including, in part, 30 minutes of communication SDI was increased to 60

minutes of communication SDI,⁹ and according to the May 20, 2022 prior written notice, the accommodation of “assessments need to be given by a familiar person” was added at Parent request.

For the foregoing reasons, OSPI finds the Parent was able to fully participate in the spring 2022 IEP meetings and there was no violation of the IDEA.

Consideration of IEE Results

The relevant issue to be investigated in this decision was, “Did the District’s evaluation group follow proper reevaluation and IEP development procedures **in spring 2022**, including consideration of any IEE findings?” (emphasis added).

If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. And a district must consider the results of any IEE.

Here, the Parent requested the IEE on May 4, 2022, and the District granted the request on May 5, 2022. In other words, the District responded to the Parent’s IEE request in an appropriate time frame. Additionally, the IEE was completed in July 2022, after the end of the 2021–2022 school year. The IEE itself does not include a specific date the report was completed, but it mentions the assessments that formed the basis of the report were completed on June 18 and July 13, 2022. Accordingly, the IEE was not completed in enough time for it to be considered as part of IEP development procedures in spring 2022. For the foregoing two reasons, OSPI finds the District followed proper IEE procedures, at least through the end of the 2021–2022 school year. OSPI finds no violation.

Issue 2: IEP Attendance Procedures – The Parent alleged the District did not follow proper IEP attendance procedures for both April 18 and May 3, 2022 IEP meetings.

April 18, 2022

The Parent alleged improper attendance procedures were followed in relation to the April 18, 2022 meeting, in that “the District representative showed [up] 30 minutes late.”

The purpose of the April 18, 2022 meeting was to complete the Student’s reevaluation and make a determination of eligibility. Accordingly, the attendance requirements in WAC 392-172A-03040(1)(a) applied: upon completion of the administration of assessments and other evaluation

⁹ The draft IEP shared in early May 2022 provided for 30 minutes of services from the SLP in the area of language and 30 minutes of services from the SLP in the area of articulation, with the articulation services to be delivered concurrently with the language services. But the finalized IEP included two 30-minute increments of communication SDI that were concurrent and one 30-minute increment of communication SDI that was not concurrent, for a total time of 60 minutes of communication SDI each week.

measures, a group of qualified professionals and the parent of the student determine whether the student is eligible for special education services. The attendance requirements for IEP meetings, as set forth in WAC 392-172A-03095, did not apply to the April 18, 2022 meeting as it was not an IEP meeting.

Here, according to the April 2022 reevaluation, the following individuals attended the meeting on the 19th: Parent, speech language pathologist (SLP), special education teacher, occupational therapist (OT), psychologist, assistant director, principal, and general education teacher. Furthermore, the April 2022 reevaluation noted the SLP, OT, and psychologist that attended the April 18, 2022 meeting had administered various assessments to the Student as part of the reevaluation. Accordingly, the April 18, 2022 meeting was attended by a group of qualified professionals, including the Parent, and OSPI does not find a violation of the IDEA.

May 3, 2022

As a preliminary matter, OSPI holds the May 3, 2022 meeting did represent an IEP meeting. For example, while the documentation supports a finding that the reevaluation report was further discussed at the May 3, 2022 meeting, the same documentation also supports a finding that IEP supports were also discussed at that meeting. Therefore, a properly constituted IEP team needed to be in attendance at the May 3, 2022 meeting.

An IEP team is composed of: the parent(s) of the student; not less than one regular education teacher of the student; not less than one special education teacher; a representative of the school district who is qualified to provide or supervise the provision of specially designed instruction, who is knowledgeable about the general education curriculum, and who is knowledgeable about the availability of district resources; an individual who can interpret the instructional implications of evaluation results (who may be one of the teachers or the district representative listed above); any individuals who have knowledge or special expertise regarding the student, including related services personnel; and when appropriate, the child.

Here, the documentation did not appear to include a prior written notice or meeting notes (or other documentation) that conclusively documented the attendance at the May 3, 2022 IEP meeting. As best OSPI can determine, the following individuals attended the IEP meeting: at least one (and possibly two) District BCBA's, the special education teacher, the psychologist, the Parent, the Parent advocate, the principal, and the general education teacher. (During this investigation, the general education teacher provided a written statement to OSPI's investigator, asserting she was present at the May 3, 2022 IEP meeting.)

The Parent alleged it was an IDEA violation for the assistant director to be absent. But the District asserts the principal was present. And during this investigation, the principal provided a written statement to OSPI's investigator asserting he was present at the May 3, 2022 IEP meeting. And the principal would have met the criteria for a district representative: an employee of the public agency who: (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students eligible for special education services; (ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of

resources of the school district. Accordingly, OSPI finds a District representative to have been present at the May 3, 2022 IEP meeting and there was no IDEA violation.

Issue 3: IEP Implementation: Integrated Program Teacher – May and June 2022 – The Parent alleged the District did not follow proper procedures for ensuring the IEP services the integrated program (IP) teacher was responsible for implementing were provided in May and June 2022.

When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a child with a disability and those required by the IEP.

Here, OSPI makes two conclusions. First, the issue of whether the District materially implemented the Student's IEP services, including any IEP services that would have been provided by the special education teacher during May and June of 2022, was already investigated and decided in SECC 22-116. For example, the issue to be investigated in SECC 22-116 was, "Since September 21, 2021, did the District implement the Student's individualized education program (IEP) during the 2021–2022 school year?" And the decision in SECC 22-116 was dated November 2022, after the conclusion of the 2021–2022 school year.¹⁰ SECC 22-116 is incorporated herein by reference, and the Parent is directed, in part, to Pages 5–6 of that decision. Washington state regulations do not permit OSPI to reinvestigate special education allegations that have been investigated in a previous community complaint; in sum, OSPI already investigated this issue in SECC 22-116 and issued findings regarding the same.

Second, OSPI notes while the Student's spring 2022 IEP was not finalized until either late May or early June of 2022, it does appear that the decision to not provide the Student with either adaptive or SE SDI had already been made, in or around late April 2022 or early May 2022. See Issue 1(b), above. In terms of SDI to be provided to the Student, the spring 2022 IEP only included communication. And this was to be provided to the Student by an SLP, not the special education teacher. So, functionally, as of early May 2022, the special education teacher was not responsible for providing any IEP services to the Student. (The documentation did show the Student was likely provided semi-regular check-ins and check-outs from District staff in May and June 2022.)

In sum, for the above two reasons, OSPI does not find a violation of the IDEA.

Issue 4: FERPA: Integrated Program Teacher's May 18, 2022 Email – The Parent alleged the District did not follow proper FERPA procedures in relation to the special education teacher's May 18, 2022 email.

¹⁰ OSPI's investigation in SECC 22-116 related, in part, to the District's offer of compensatory education to address a certain IEP implementation failure in 2021–2022. Relevant here is the fact that the first time the District conveyed this offer to the Parent was on June 22, 2022, after the conclusion of the 2021–2022 school year. And that the District's compensatory education offer letter asserted the District had looked at the entirety of the 2021–2022 school year. The foregoing facts are further support for the conclusion that this issue (Issue 3 in SECC 23-49) was already decided in SECC 22-116.

FERPA requires districts to maintain the confidentiality of students' education records. FERPA controls the circumstances under which a district may disclose personally identifiable information from educational records and prohibits non-authorized disclosure of that information. As a general rule, personally identifiable information may not be disclosed without specific, informed parental consent.

Personally identifiable information includes, but is not limited to: the student's name; the name of the student's parent or other family members; the address of the student or student's family; a personal identifier, such as the student's social security number, student number, or biometric record; other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Here, on May 18, 2022, the special education teacher shared personally identifiable information on the Student with her husband. Information disclosed included, in part, the Student's name, certain staffing changes related to serving the Student, and the Student's emotional state in relation to said changes. This investigation did not show the Parent had provided the District consent to share the Student's personally identifiable information with the special education teacher's husband. (And it does not appear the special education teacher's husband was a contractor for the District or otherwise had a legitimate educational interest in receiving the information that was shared.) Accordingly, this represents a FERPA violation. As a corrective action, the District will be required to provide written guidance on FERPA requirements to certain staff.

CORRECTIVE ACTION

By or before **June 9, 2023** and **June 16, 2023**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

Dissemination of Written Guidance

By **June 16, 2023**, the District will ensure that the following individuals receive written guidance on the topics listed below: special education administrators, the principal, the assistant principal, and special education-certified staff, including educational staff associates (ESAs)¹¹, at the school

¹¹ ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school counselors, school nurses, and other service providers.

that the Student was enrolled in during the 2021-2022 school year. The guidance will include examples.

Topic 1: Family Educational Rights and Privacy Act (FERPA) rules regarding the preventing the disclosure of personally identifiable information on students to individuals without a legitimate educational interest in said information; and,

Topic 2: The prohibition on predetermination. See, in part, Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12478 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 32).

By **June 9, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by *June 14, 2023*.

By **June 16, 2023**, 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.

Dated this 1st day of June, 2023

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

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

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