

## **SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-84**

### **PROCEDURAL HISTORY**

On November 9, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Sumner 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 November 9, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On December 5, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on December 6, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 18, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District December 21, 2017.

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

### **OVERVIEW**

During the 2017-2018 school year, the Student attended a District elementary school and was eligible to receive special education services. In September 2017, the Student's individualized education program (IEP) team met twice to consider the results of the Student's independent educational evaluation (IEE) and private speech and language evaluation report, and amended the Student's IEP. During the second IEP meeting, the Parent requested that the District reevaluate the Student and then provided written consent. In October, the Student's evaluation group met and determined the Student continued to be eligible to receive special education services and recommended adding occupational therapy as a related service. The Parent alleged that the District failed to follow procedures for considering the results of the Student's IEE and failed to follow procedures for reevaluating the Student. The District denied both allegations.

### **SCOPE OF INVESTIGATION**

This decision references events which occurred prior to the investigation time period, which began on September 6, 2017. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation time period.

### **ISSUES**

1. Did the District follow procedures for considering the results of the Student's independent educational evaluation (IEE) during the 2017-2018 school year?

2. Did the District follow procedures for reevaluating the Student during the 2017-2018 school year?

### **LEGAL STANDARDS**

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. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. 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.

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent, and should clearly describe what the district proposes or refuses to initiate. It also includes a statement that the parent has procedural safeguards so that if they wish to do so, they can follow procedures to resolve the conflict. Prior written notice is not an invitation to a meeting. Prior written notice must be given to the parent within a reasonable time before the district initiates or refuses to initiate a proposed change to the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. 34 CFR 300.503; WAC 392-172A-05010.

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1). A district is not required to obtain informed parental consent prior to reviewing existing data. 34 CFR §300.300(d)(1); WAC 392-172A-03000(4)(a)(i).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related service needs, including improved academic achievement and functional

performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after receiving consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015(3). The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

## **FINDINGS OF FACT**

### **Background Information**

1. During the 2016-2017 school year, the Student attended a District elementary school and was eligible to receive special education services under the category of developmental delay.
2. On January 4, 2017, the Student's individualized education program (IEP) team developed the Student's annual IEP and changed the Student's eligibility category to speech and language impairment based on the Student's December 2016 reevaluation results. The January 2017 IEP stated the Student was receiving speech and language services in school and also in a private setting. The IEP also included annual goals in the areas of reading, writing, mathematics, social skills, and communication skills and provided for specially designed instruction to address those goals. The IEP provided for accommodations and modifications in the general and special education settings as follows:
  - Allow errors made with phonetic spelling, flipped numbers, and sloppy (legible) handwriting
  - Allow for listening or movement breaks within the classroom

- Allow for repetition of newly taught skills
  - Allow time to respond to questions
  - Allow use of word bank, student dictionary or word wall
  - Allowances made for speech errors
  - Break materials into manageable parts (chunking)
  - Check with student to ensure she is gaining an understanding of skill
  - Classroom communication log in place of daily/weekly classroom behavioral system/chart
  - Couple visual aids with verbal communication when learning
  - Gain student's visual attention before giving instructions
  - Provide basic written/visual instruction
  - Provide words of encouragement to slow down when talking and working
  - Repeat instructions and/or have student repeat directions
  - Use carrier phrases to support student communication needs
  - Use graph paper
  - Use manipulatives for math (math rack, number line, and/or objects)
  - Use number and letter charts for formation
  - Use of pacing board to support student pacing
  - Use of sensory tools
  - Use of visual schedule
  - When taking assessments allow for: extended time, small group/study carrel, frequent breaks, allow for physical movement, adult proximity/preferential seating, break materials into manageable parts
  - Testing Accommodation: mask testing items where only one item is presented at a time; test answers dictated and accept short answers; allow matching and/or multiple choice type questions on assessments
3. According to the Parent's complaint, on January 4, 2017, she requested an independent educational evaluation (IEE) of the Student at public expense. The District agreed to the Parent's request.
  4. On August 28, 2017, the Student's IEP team, including the Parent, the Parent's advocate, and the IEE provider, met to review the results of the Student's IEE. According to the meeting notes, the IEE provider stated the Student's nonverbal abilities are in the high average range and that the Student is able to read facial expressions, but the Student does not "catch the tone or words" in verbal expression and has a "hard time with expressive and receptive language". The IEE provider recommended providing the Student with highly structured tasks, frequent breaks, visual references, "training in auditory discrimination", a picture exchange communication system, and assistive technology rather than being "person dependent".
  5. The Student's IEE report stated the Student was a happy and empathetic child who was very social but sometimes her peers did not understand the Student. The IEE stated at the time of the evaluation, a 1:1 paraeducator was helping the Student "navigate social relationships and improve her communications with others". The IEE stated the Student's "comprehension of oral instructions involving basic concepts was in the very low range while her expressive language ability and knowledge of verbal naming was in the below average range". The IEE

also stated the Student's "school readiness ability registered in the below average range" and that the Student's "working memory ability was in the very low range". The IEE further stated that the Student's statements were often unclear because her sentence formation was disordered and that the Student lacked communication skills sufficient to accurately report her experiences and concerns. The IEE recommended occupational therapy and speech-language therapy as related services and included the following educational recommendations and interventions:

- Classroom Modifications and Accommodations – structured auditory environment; preferential seating; short, highly structured tasks, interspersed with quiet periods; repeat oral instructions; provide visual supports such as schedules, visual cues for transition; consistency in daily routine; opportunities to demonstrate the Student's strengths in front of peers to build social relationships; extra attention for the Student's achievements and to maintain motivation.
- Reading – use "a whole-word approach" (not phonetic); adaptations of curriculum materials; language training to enrich word meaning; integrated learning experience where action, experience, words in print, and writing assignments are all part of a coherent structured program; training in auditory discrimination.
- Spelling and Written Output – emphasis on multiple choice activities with use of picture cues, constant repetition and revision of spelling lists; activities that emphasize writing from dictation; continual exposure to correct spelling and word configuration to enhance memorization.
- Mathematics – emphasis on showing, in addition to telling to reduce over-reliance on auditory memory in favor of learning.
- Social and Communication Behavior –
  - Functional Communication: systematically taught clear phrases that serve a function (purpose) for the Student's environment.
  - Social Behavior: Provide multiple opportunities to interact with typically developing peers in general education.
  - Social Skills Group: Participation in a social skills group targeting relational competence and strategies with peers to build relationships.
- Types of Support – Provide a range of environmental supports including visual supports and augmented communication so the Student's dependence is on environmental and structural supports rather than overly dependent on adult/person support.

### **2017-2018 School Year**

6. The District's 2017-2018 school year began on September 6, 2017. The Student continued to attend the same District elementary school and the Student's January 2017 IEP was in place.
7. Also on September 6, 2017, a private speech language pathologist completed a speech and language evaluation report (speech report). The speech report stated that the Student had a good foundation for word knowledge and vocabulary development, but exhibited deficits in sentence expression, grammatical morphemes, sentence comprehension, and grammatical judgement. The report also stated the Student's deficits negatively impacted her performance in social and academic situations, her ability to interpret what others have said, and her ability to express her ideas, wants, and needs. The report included "relevant

information” from the Student’s IEE. The report recommended school-based modifications and accommodations in the areas of reading, functional communication, social behavior, speech therapy services, and assistive technology. The report also included suggested IEP goals for “facilitating rich vocabulary develop[ment], improvising circumlocution strategies, and increase[ing] word retrieval abilities”.

8. On September 8, 2017, the District sent notice to the Parent that an IEP team meeting to review the recommendations from the Student’s IEE was scheduled for September 11, 2017<sup>1</sup>.
9. On September 11, 2017, the Student’s IEP team met to discuss the results of the Student’s IEE and the private speech and language evaluation report. The meeting notes stated the IEP team discussed providing the Student services in the areas of occupational therapy and adaptive skills. The notes stated the Parent stated that adaptive skills were not an area of concern and that the team agreed to complete an assessment revision to “consider updated evaluation data provided by the IEE to assist in determining qualification for school-based [occupational therapy] services”. The notes further stated the team discussed the Student’s eligibility category and also reviewed the services minutes for the speech therapy services. The notes stated the team discussed a “blended approach for service delivery (some push in, some pull out)” and also discussed adjusting the communication service minutes in the Student’s January 2017 IEP to reflect the change.
10. According to the Parent’s complaint, on September 11, 2017, she “requested a reevaluation to include the information from the outside IEE’s”.
11. Also on September 11, 2017, the Parent provided written consent to assess the Student. The consent form stated the IEP team requested the assessment revision because “the team would like to consider and integrate” the Student’s IEE and private speech report into the Student’s “existing school based evaluation”. The consent form stated the Student would be assessed in the areas of social/emotional, academic, medical-physical, general education, adaptive, cognitive, communication, and fine motor skills. The form further stated the District would conduct a review of existing data and collaborate with the assistive technology team.
12. Later on September 11, 2017, the District issued prior written notice, proposing to change the Student’s IEP after reviewing the recommendations of the Student’s IEE and the private speech report. The notice stated that the IEP team agreed that the Student’s adaptive functioning fell within the average range and was not an area of concern. The notice stated the team reviewed the definition of speech and language impairment and determined that this eligibility category continued to be the most appropriate for the Student. The notice also stated the team agreed to adjust the Student’s speech and language service to provide delivery of services based on a “blended model” and also agreed to adjust some of the Student’s social and communication goals to reflect her current levels of functioning. The

---

<sup>1</sup> The date on the meeting notice stated the meeting was scheduled for September 12, 2017, but both the District and Parent stated the IEP team meeting was held on September 11, 2017.

notice further stated the team agreed to complete an assessment revision to determine whether the Student would be eligible for occupational therapy. The notice stated the team discussed providing the Student with assistive technology to use in the school setting and at home. The notice also stated the team considered but rejected:

- providing services in the area of adaptive skills because the Student was demonstrating adequate adaptive skills in the school setting
- changing the Student's eligibility category to specific learning disability because the Student's diagnosis and difficulties are related to language processing
- maintaining the Student's speech and language service minutes at the same level because the team agreed the Student should be participating in the general education classroom as much as possible given her needs
- conducting a reevaluation because an "assessment revision is adequate to incorporate new data" from the Student's IEE and private speech language evaluation into the Student's "current student-based evaluation"

Additionally, the notice stated the team agreed to reconvene the IEP team on September 20, 2017, to finish revising the Student's annual reading, writing, and mathematics goals and to "continue the discussion about appropriate accommodations".

13. On September 18, 2017, the District sent notice to the Parent that an IEP team meeting to continue the review of the recommendations from the Student's IEE and private speech report was schedule for September 20, 2017.
14. On September 20, 2017, the Student's IEP team, including the Parent, met and amended the Student's January 2017 IEP. The meeting notes stated the Parent read the recommendations from the IEE and the team discussed the Student's annual goals. The meeting notes also stated the team discussed the Student's accommodations and modifications and the Parent's request for a paraeducator to provide the Student with emotional support.
15. Also on September 20, 2017, the District issued prior written notice, proposing to change the Student's January 2017 IEP beginning on September 27, 2017. The notice stated the IEP team agreed that the speech language pathologist (SLP) would provide the Student with speech language services for thirty (30) minutes in the general education setting and thirty (30) minutes in the special education setting and that the speech language pathologist assistant (assistant SLP) would provide thirty (30) minutes in the special education setting. The notice also stated the team agreed to keep the reading and writing goals provided for in the Student's January 2017 IEP and remove the mathematics goal the Student had mastered. The team also agreed to make the following changes to the accommodations and modifications:
  - Change allowances for language errors instead of speech errors
  - Remove the classroom behaviors system/chart
  - Add check in and check out
  - Add sentences starters, as well as carrier phrases
  - Add use of primary paper, as well as graph paper
  - Remove pacing board
  - Remove sensory tools

- Add paired words to use of visual schedule

The notice also stated the team considered providing the Student with a paraeducator for emotional support, but rejected this idea in favor of a daily system for the Student to check in and out with a staff member to help identify the Student's emotions. The notice further stated, "data will drive the decision on whether [the Student] needs a paraeducator in the future". The notice also stated the IEP team discussed the "appropriate line of communication", and stated the general education teacher would address classroom issues and the IEP case manager would address IEP related topics.

16. On October 10, 2017, the District sent notice to the Parent that a meeting to review the assessment revision report was scheduled for October 31, 2017.
17. On October 31, 2017, the evaluation team met to discuss the results of the Student's assessment revision. The meeting notes stated the school psychologist "reviewed the assessment revision document page by page". The notes stated the evaluation team discussed the Student's current levels of performance based on teacher input and District assessments, the Student's accommodations, including current visual supports, and the teaching models used with the Student. The notes also stated the team discussed the Student's adaptive skills and discussed what "an adaptive goal for the Student could look like". The notes further stated the team discussed the Student's fine motor skills and considered occupational therapy as a related service.
18. The October 31, 2017 assessment revision report stated the school psychologist reviewed the Student's IEE and incorporated summaries of the IEE report in the areas of social/emotional, academic, medical-physical, adaptive, cognitive, and communication. The report also stated the school SLP reviewed and incorporated the Student's private speech report in the area of communication and the school occupational therapist (OT) reviewed and incorporated the Student's IEE into the area of fine motor skills. The report further stated the OT conducted an observation of the Student<sup>2</sup>, interviewed the Student's teacher, reviewed the Student's classroom work samples, and considered the concerns of the mother. The report further stated the assistive technology team held two sessions with the Student to assess the Student's use of different types of devices and software applications.<sup>3</sup> The assessment revision report recommended continuing specially designed instruction in the areas of reading, writing, mathematics, social skills, and communication, and also recommended providing occupational therapy, as a related service, and assistive technology. The school psychologist, the special education teacher, the OT, the SLP, the school principal, the District special education director, and an assistive technology staff member signed the assessment revision report. According to the Parent's complaint, she contributed to the assessment revision report by completing "the required forms for individual reports", but the District

---

<sup>2</sup> The report stated, "the therapist attempted to observe [the Student] in class multiple times; however due to Student absences only one observation was completed".

<sup>3</sup> The report stated further sessions "were not possible because of [the Student's] absences".



reportedly told her she was “not to sign the Assessment Revision Signature Page as [the Parent] did not ‘contribute’ to the reports”.

19. On November 2, 2017, the District issued prior written notice, proposing to amend the Student’s reevaluation. The notice stated the Student’s IEP team considered the Student IEE, the private speech report, observation from the OT, parent interview, recommendations from the collaboration with the assistive technology team, and input from the evaluation team. The notice stated the team recommended continued services in the areas of reading, writing, mathematics, social skills, and communication and also recommending initiating occupational therapy services and providing the Student with assistive technology. The notice stated the Parent inquired about recommending services in the area of adaptive skills, but this was rejected because “adaptive composite scores as rated by both of [the Student’s] teachers and her parent were within the average range”.

20. On November 9, 2017, the Parent filed this citizen complaint.

### **CONCLUSIONS**

**Issue 1: Consideration of IEE Results** – The Parent alleged that the District failed to follow procedures to consider the Student’s independent educational evaluation (IEE) because it did “not make it clear what recommendations from the Student’s IEE they are accepting or denying”. Prior written notice ensures that a parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student’s educational needs, and it clarifies that a decision has been made. The District’s documentation in this complaint shows the District held a meeting in August 2017, with the Parent and the Student’s IEE provider, to discuss the Student’s IEE. Additionally, the documentation shows the District held an IEP meeting on September 11, 2017 and on September 20, 2017, to consider the results of the Student’s IEE and private speech report and amended the Student’s IEP based on the recommendations. On the same days the meetings occurred, the District sent the Parent prior written notices, documenting the District’s decisions. Additionally, the September 20, 2017 prior written notice specifically identified the accommodations the District was going to adopt based on recommendations from the Student’s IEE and private speech report, and the Student’s amended January 2017 IEP showed the adjustments made to the amount of the Student’s specially designed instruction in the area of communication, as well as the setting it would be provided in. Also, on October 31, 2017, the District completed an assessment revision report to incorporate the results of the Student’s IEE and private speech report into the Student’s “existing school based evaluation” records. Based on the assessment revision report and review of the Student’s IEE and private speech report, the evaluation team recommended providing occupational therapy as a related service and assistive technology. The District is not required to adopt all of the recommendations in an IEE report, but is required to consider the findings and recommendations of an IEE and provide notice of its decision. The District has substantiated that it followed procedures for considering the results of the Student’s IEE.

**Issue 2: Reevaluation Procedures** – The Parent alleged that the District failed to follow procedures to reevaluate the Student. Prior to conducting a reevaluation, a school district must provide prior written notice to parents that describes any evaluation procedures the district proposes to conduct and obtain the parent’s consent. Consent means that the parent has been fully informed of all information relevant to the activity for which consent is sought; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. Here, the District’s prior written notice/consent form stated that the District intended to conduct assessments in the areas of social/emotional, academic, medical-physical, general education, adaptive, cognitive, and communication skills, but the District only conducted a review of existing data in those areas and did not conduct assessments. It is the District’s responsibility to clearly document what activity or assessment it plans to conduct as part of an evaluation. However, in this case, there is nothing to suggest that the District or the Parent believed that the District would conduct assessments in all these areas, as the Student had just received an IEE and private speech evaluation, and the purpose of the assessment revision was to incorporate the findings from the private evaluations and evaluate the Student’s need for occupational therapy services and assistive technology.

The Parent also alleged that the District prevented the Parent from signing the assessment revision report claiming that the Parent did not “contribute to the reports”. The assessment revision reports must contain the date and signature of each professional member certifying that the report reflects his or her conclusion, or dissent. However, it is noted that regulations do not preclude parents from signing assessment revisions. The Parent was not a professional member of the evaluation team and was not required to sign the assessment revision report. The documentation in this complaint shows the District complied with the procedures to reevaluate the Student.

### **CORRECTIVE ACTIONS**

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC:**

None.

Dated this \_\_\_\_ day of January, 2018

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

**THIS WRITTEN DECISION CONCLUDES OSPI’S INVESTIGATION OF THIS COMPLAINT**

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