

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-104

PROCEDURAL HISTORY

On July 7, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Mount Vernon 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 July 7, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on July 10, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 28, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On August 2, 2023, an OSPI investigator conducted a telephone interview with the Parent.

On August 3, 2023, OSPI received additional information from the Parent and forwarded it to the District on the same day.

On August 8, 2023, OSPI received additional information from the Parent and forwarded it to the District on August 9, 2023.

On August 9, 2023, OSPI received Parent's reply to the District's response and additional information from the Parent and forwarded the documentation to the District on August 9 and 10, 2023.

On August 14, 2023, OSPI received additional information from the Parent and forwarded it to the District on August 15, 2023.

On August 15, 2023, OSPI received additional information from the District and forwarded it to the Parent on the same day.

On August 16, 2023, OSPI's investigator interviewed the school psychologist at the Student's school, and the Student's speech and language pathologist, and three of his teachers.

On August 23, 2023, OSPI received additional information from the District and forwarded it to the Parent on August 24, 2025.

On August 24, 2023, an OSPI special education program supervisor with experience working with multi-lingual learners was consulted.

OSPI considered all 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 July 8, 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. During the 2022–23 school year, did the District appropriately implement the Student’s IEP, including social-emotional learning and speech services, according to WAC 392-172A-03110?
2. Per WAC 392-172A-03040, did the District follow proper procedures for exiting the Student from special education eligibility in the spring 2023?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction 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. Each school district must ensure that the student’s IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105.

“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 [student with a disability] and those required by the IEP.” *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. 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.

Upon completion of an evaluation (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 and the educational needs of the student. A student must not be determined to be eligible for special education services if the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction. WAC 392-172A-03040.

FINDINGS OF FACT

Background

1. On April 15, 2020, the Student's team held an evaluation meeting. The Student's evaluation was performed in English and Spanish¹, and the team agreed that the Student continued to meet the criteria for special education services eligibility under the category of autism, and had a need for specially designed instruction (SDI) in reading, written expression, and functional academics under adaptive skills.
2. On April 11, 2022, the Student's IEP team met and developed an IEP for the Student. The Student's IEP, to be in effect April 11, 2022–April 10, 2023, provided SDI in a general education setting, provided by a paraeducator as follows:
 - Reading: 30 minutes/2 times weekly
 - Written Expression: 30 minutes/2 times weekly
 - Adaptive: 30 minutes/1 times weekly

The Student received 1,730 minutes per week of building instructional time, with zero minutes served in the special education setting. The percent of time in a general education setting was 100%. The Student's LRE was 80–100%.

The IEP also included the following supplementary aids and service in a general education setting: "Speech/Language Therapy Consultation by a Speech Language Pathologist (SLP) for 15 minutes/1 times monthly."

2022–23 School Year

3. September 7, 2022 was the first day of school for the 2022–23 school year. The Student was a fourth grader in a District elementary school and continued to be eligible for special education services.
4. The Student was enrolled in an English/Spanish bilingual program in the District and had been in this program since kindergarten.
5. The Student's home and native language is Spanish, but the District's teachers and evaluation staff interviewed on August 16, 2023, stated that English was the Student's stronger language.
6. For the 2022–23 school year, the Student's IEP goals and progress reports were as follows:
Writing Goal: By 04/10/2023, when given a writing prompt [Student] will include 4 to 5 details in the passage improving written expression skills from using 1 to 2 details to using 4 to 5 details as measured by Teacher made tests and observation.

Progress Report, 1/30/23: [Student] included 4 out of 5 details in Spanish writing.

¹ According to an August 23, 2023 District email, the communication portion of that reevaluation was conducted using both Spanish and English. The remainder of the 2020 reevaluation was completed using English.

Reading Goal: By 04/10/2023, when given a grade level passage in Spanish [Student] will read the passage with understanding improving comprehension from answering 3 out of 5 comprehension questions correctly to answering 5 out of 5 comprehension questions correctly as measured by Teacher made tests and observation.

Progress Report, 1/30/23: [Student] improved his score on the Star Spanish test, scoring in the 5th percentile at this time last year to the 11th percentile this January 2023. Excellent progress!

Adaptive Goal: By 04/10/2023, when given when given time in the Spanish or English general education classroom [Student] will stay on target language during table time improving adaptive language skills from staying on target language during table time 80% of the time to staying on target language during table time 100% of the time as measured by teacher observation.

Progress Report, 1/22/2023: [Student] uses Spanish when expected in the classroom.

7. On March 21, 2023, there was an evaluation meeting to review a recent reevaluation of the Student. A summary of the evaluation provided that “[Student’s] autism no longer [has a] negative impact on his ability to access the general education curriculum and make appropriate progress.”

The evaluation’s assessments included:

WIDA² (03/24/2022)

Overall: 3.2

Listening: 3.1

Reading: 2.6

Speaking: 3.7

Writing: 3.2

Comprehension: 2.7

Literacy: 3

Oral Language: 3.5

KTEA-3 Results³

Test	SS	Rank (percentile)	Range
Letter and Word Recognition	90	25 th	Average
Reading Comprehension	80	9 th	Below Average
Reading Vocabulary	84	14 th	Below Average

² In its response, the District stated the WIDA is an assessment given to all multi-lingual students in the District to determine English language proficiency. The Student’s scores indicate that language is not a barrier to the Student’s learning and achievement on classroom exams and assessments. If the Student’s scores would have been in the “1s,” it would have been a concern that his language was a barrier to the Student’s learning. The District stated the Student can still participate in English language learning instruction even if he exits out of SDI.

³ In its response, the District stated the KTEA-3 is an individually administered test of academic skills domains: reading, mathematics, written language, and oral language. Each subtest and composite yields a “Standard Score” (SS) with a mean of 100 and a standard deviation of 15. Approximately two-thirds of children obtain scores ranging from 85–115. A percentile indicates that the student scored as well as or better than this percentage of their same age peers. The KTEA-3 was administered to assess the Student’s academic skills in reading and written language. Math was not included in this testing as it was not an area of concern.

Written Expression	84	14 th	Average ⁴
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Summary: On KTEA-3, Student's Word Recognition score falls in Average range, while his Reading Comprehension, Reading Vocabulary, and Written Expression scores fall in the Below Average range compared to his same-age, non-ESL/ELL peers. Other curriculum-based assessment results indicate that Student's reading skills are not significantly behind his peers.

STAR Math⁵

01/17/2023: 52nd percentile, 4.5 GE

09/19/2022: 72nd percentile, 4.6 GE

STAR Reading – English

Date	Percentile Rank	Grade Equivalent	Rank (out of 81 4 th graders)	Growth Percentile
09/16/2022	2 nd	1.7	61	
01/19/2023	10 th	2.8	55	High Growth
02/23/2023	7	2.6		

STAR Reading – Spanish

Date	Percentile Rank	Grade Equivalent	Rank (out of 81 4 th graders)	Growth Percentile
09/15/2022	2 nd		71	
01/12/2023	11 th		58	High Growth

IRLA: measures independent reading level in English.

03/09/2023: 1R (2.06)/Growth: 0.46 Years. Ranked 48th out of 85 4th graders.

02/16/2023: 1R (2.04)/Growth: 0.44 Years. Ranked 48th out of 85 4th graders.

02/07/2023: 1R (2.00)

01/27/2023: 2B (1.63)

10/06/2022: 2B (1.60)

ENIL: measures independent reading level in Spanish.

01/13/2023: T (1.11)/Growth: 0.11 Years. Ranked 60th out of 85 4th graders.

11/29/2023: T (1.10)

10/06/2022: T (1.00)

AIMSweb: Curriculum-based assessment

Reading Comprehension

- Scored 50th percentile for 3rd graders on a 3rd grade assessment, 88% correct responses.

⁴ In progress reporting, the District noted the Student “demonstrated a good sense of sentence structure, while his use of capitalization and punctuation was inconsistent.”

⁵ The District’s response stated the “STAR” was the District’s academic screener to monitor progress. It is a computer-adaptive assessment to monitor progress, performance and growth in reading, math, early literacy. It is given to each student at least three times a year.

- Scored 9th percentile for 4th graders on a 4th grade assessment 67% correct responses.⁶
- Reading Oral Fluency 98 correct words per minute on a 4th grade AIMSweb passage which is 22nd percentile, he read 93% of the words correctly.

Vineland Adaptive Behavior Scales, Third Edition (Vineland-3)⁷

Summary: On Vineland-3, [Student's] overall adaptive functioning score from parent rating falls in the Moderately Low range, while his scores from teacher ratings fall in the Adequate range. Based on parent and teacher ratings, direct observation, and specialists' input, no adverse educational impact was identified regarding [Student's] adaptive skills. Specially designed instruction in adaptive functioning is NOT recommended at this time.

Observation Summary

[Student] was observed for 25 minutes during reading instruction on 2/16/23 in his English class taught...[Student] followed directions and transitioned well. He interacted with his peers well, and did not seem to have any difficulties with doing group tasks. [Student] was focused and on task. He raised his hand to volunteer to answer questions multiple times, and he was able to answer the question when the teacher chose him. [Student] did not stand out from the rest of the class.

Recommendations: While [Student's] overall score and domain scores from parent rating fall in the Moderately Low range, his overall score and domain scores from both teacher ratings fall in the Adequate range. Specially designed instruction in the area of adaptive skills is NOT recommended at this time.

The Kaufman Assessment Battery for Children, Second Edition (KABC-II NU)⁸

Summary: His overall cognitive ability measured by KABC-II NU (MPI) falls in the Average (SS=87) range.

Strengths: Visual Processing (using eyes for learning, seeing and using visual patterns)

KABC-II Results

The Mental Processing Index (MPI) is often used for students from a bilingual background and/or whose non-mainstream cultural background may have affected knowledge acquisition and verbal development. Due to [Student's] linguistic and cultural background, the MPI score was considered to be more representative of his overall cognitive ability.

⁶ The District stated in its response that this is a timed test and percentiles based on non-dual language/English learning students.

⁷ The District stated in its response that this assessment is a standardized measure of adaptive behavior. Because it is a norm-based instrument, the examinee's adaptive functioning is compared to that of others their age. Vineland-3 has three specific adaptive behavior domains (communication, daily living, skills, and socialization).

⁸ The District stated in its response that the KABC-II NU was administered on 3/6/2023 to assess the Student's cognitive abilities. The District stated, "It is important to note that an intelligence test does not measure global or innate intelligence. An intelligence test is an estimate of scholastic aptitude, or the kind of ability and reasoning that is required in traditional academic work. Many things such as creativity, mechanical aptitude, divergent thinking, personal adaptability, social intelligence, interpersonal understanding, self-knowledge, and common sense reasoning are absent or not well represented on an intelligence test."

[Student's] MPI score (SS=87, 19th percentile) falls in the **Average** range compared to his same-age peers.

Communication Assessment Summary

...Reevaluation in this area included review of background, data gathered from rating scales completed by parents and teachers, parent and teacher input, review of consultation records, observation of the student, and criterion-referenced assessment. Formal assessment of expressive and receptive language was not completed as [Student] was determined to be ineligible for SDI in these areas as of his previous reevaluation. Formal assessment of social/pragmatic language was not completed as there was not a standardized tool available which would provide valid results with consideration to [Student's] bilingual/bicultural background and diagnosis of ASD.

Background:

In April 2020, at age 7.3, reevaluation indicated that [Student] no longer met criteria to receive SDI (Specially Designed Instruction) for expressive and receptive language, but that he would continue to benefit from consultation services by the SLP to support his full participation in his education and use of his social communication skills in the classroom setting.

Significant Findings:

Parent Input: [Student's] parents prepared and presented written input at the evaluation meeting, which is attached to this evaluation as a statement of dissenting opinion. They expressed continued concerns regarding [Student's] overall ability to express himself, his language processing skills, his social/pragmatic language use, and his executive functioning skills.

Info from Adaptive rating scales regarding communication: The Communication domain measures how well the student exchanges information with others. [Student's] score from parent rating (SS=80, 9th percentile) falls in the **Moderately Low** range. His scores from two teachers (SS=86, 18th percentile) fall in the **Adequate** range. (average score: 90.34, Adequate).

Teacher input: [Student's] classroom teachers...provided input regarding [Student's] communication skills in their classrooms. They reported that [Student] generally prefers to work alone, but is able to work successfully in groups. He socializes with peers, and sometimes seems to even be more aware of social interactions than his peers. They indicated that he has friends, gets along with others, and does not experience atypical conflict with peers. They reported that [Student] asks for help at times. [Teacher 2] reported that [Student] engages in repetitive songs, 'memes', or sound bites, which can be distracting at times, but that this does not occur much more than it does with his peers. [Teacher 2] also reported that he has observed [Student] to have occasional difficulty with comprehension of figurative language in reading, but not much more so than his peers. Overall both of his teachers reported no notable concerns outside of the expected range for peers.

Consultation records: Since [Student's] previous reevaluation in April 2020, consultation services have been provided to his classroom teachers on a regular basis. This included [Student's] 1st, 2nd, 3rd, and 4th grade teachers. [Student's] teachers have consistently reported that he has not required additional communication support to be successful participating in his classroom environment.

Conclusions: The results of this evaluation, including parent and teacher rating scales, parent and teacher input, review of records, and criterion-based assessment, indicate that [Student] no longer demonstrates a need for special education services in the area of speech/language/communication.

8. On March 21, 2023, as part of the reevaluation, the Parent submitted an input form, which provided in part as follows:
 - Student's grades in English are mainly at the first and second grade level.
 - These scores demonstrate a need for SDI.
 - Teacher 2 has noted that "[Student] has occasional difficulty with comprehension of figurative language in reading but not much more than his peers.' This might be true in 4th grade, but will that be the case as he moves into middle and high school and when he transitions from reading to read the text to reading to read the subtext? It is clear from the teacher feedback that they are seeing the impact it is not captured in the current testing."
 - "Yet, as he gets older and he enters larger and multiple environments that he cannot control like his 4th grade classroom and being with the same friends since kinder, he is highly likely to struggle."
 - "As his parents, we encourage the team to have, at least, a 3-year lens in mind when developing the IEP."

The Parents also requested an independent educational evaluation (IEE).

9. A prior written notice (PWN), dated March 22, 2023, stated, "[Student] no longer qualifies for special education services. The reason we are proposing or refusing to take action is: The evaluation results found no evidence that [Student's] autism no longer (sic) has adverse educational impacts that requires specially designed instruction."
10. During the first semester of the 2022–23 school year, the Student received grades for almost 50 different skills and subjects. In four areas, the Student was considered at risk of being below standard at the end of the year or would require significant support and practice to approach mastery. In every other subject or skill, the Student was graded as progressing or meeting standard.
11. During the second semester of the 2022–23 school year, the Student received grades for over 50 different skills and subjects. In four areas, the Student was considered at risk of being below standard at the end of the year or would require significant support and practice to approach mastery. In every other subject or skill, the Student was graded as progressing or meeting standard.
12. On July 7, 2023, the Parent filed this complaint that alleged in part:
 - Services have not comported with the IEP.
 - Support from paraeducators has been inadequate and inconsistent.
 - SLP determined that her services were unnecessary.
 - School psychologist evaluation contradicts the results shown in the Student's most recent report card and testing results conducted by her. His latest report card he is "at risk" in reading. And he is "progressing," but not on track in writing and math. He is in the 7th percentile and reading at a second grade level.

- The testing conducted is incomplete. For example, he was not tested in the social-emotional area.

13. On July 28, 2023, the District submitted its response to the Parent's complaint. Regarding the first issue related to IEP implementation, the District responded that it appropriately implemented the Student's IEP and stated, in part, as follows:

- During the first week of the 2022–23 school year, the Student received his SDI within the general education classroom 2x/week for 30 minutes.
- The Student's SDI increased to 4x/week for 20 minutes the following week. This increased the amount of SDI to 80 minutes per week, which exceeded the 60 minutes per week of total SDI in the Student's April 2022 IEP.
- Outside of the Student's IEP, the District also hired a Spanish-language paraeducator in October 2022. Beginning October 14, 2022, the Student received support from this District paraeducator in his Spanish class twice a week for 30 minutes.
- From February 17 through 24, 2023, the Student's SDI minutes outside the Spanish class were temporarily stopped, but resumed on February 24, 2023, at an increased frequency of 25 minutes 3x/week.

Regarding the second issue, the District's response stated, in part:

Here, the District met these regulatory requirements when it exited Student from special education eligibility, because it conducted a reevaluation of Student and took into account a review of various sources of data in all areas of suspected disability, including student records, standardized assessments, observations, parent input and teacher recommendations...Student's assessment scores largely fell in the average range and, indicated that Student's academic and functional skills were not so significantly behind those of his peers that the demonstrated an adverse educational impact that required continued SDI...Accordingly, the reevaluation team followed all applicable reevaluation procedures in determining that Student be exited from continued special education services through an IEP.

14. On July 31 and August 1, 2023, the Student's IEE was conducted.

15. On August 2, 2023 an OSPI investigator interviewed the Parent and on August 9, 2023, OSPI received the Parent's reply to the District's response in this complaint. Based on these two sources of information, the Parent expressed, in part:

- The District has not demonstrated that they have followed the Student's daily schedule and the District failed to provide any concrete evidence that it performed IEP services.
- A Spanish paraeducator was not hired until about October 14, 2022.
- Spanish reading is the Student's biggest educational weakness.
- The Student has social emotional struggles in socializing with other students, reading body language, but the Student is not violent, and he does not act up.
- In the March 21, 2023 IEP meeting, the SLP said that the Student was not evaluated properly.
- The Student has a private psychiatrist, and the psychiatrist told the Parent that the school does not use a reliable evaluation.
- The Parent did not realize that SDI services would be stopped immediately.
- The District failed to provide "service provider notes or other documentation to show that IEP services were performed."

- Evaluations must be “provided and administered in the [S]tudent’s native language or other mode of communication ... most likely to yield accurate information on what the [S]tudent knows and can do academically, developmentally, and functionally.”

16. On August 16, 2023, OSPI’s investigator interviewed the District’s staff. The school psychologist provided the following information:

- The Student was given academic adaptive, communication, and cognitive assessments.
- Cognitive testing was not required, but was added to get a better understanding of the Student.
- The academic assessment used were the KTEA, STAR, IRLA and ENIL; teacher 3 gave the Student the Aims Web; and the KABC was the cognitive assessment.
- The Student was not significantly behind all other students at the school. Even if the Student’s academics are not at grade level, that does not mean he needs SDI. The COVID pandemic has had a big impact on the learning of all students currently in school.
- The Student’s results on his assessments were compared to the results of other students in his school.

According to the SLP:

- She was listed as a consultation service on the IEP.
- She would check in with the Student’s teachers, not the Student, and follow-up if necessary.
- Based on her conversations with the teachers, there was no evidence that the Student was impacted in a manner that he needed SDI in speech.
- She was ready to exit the Student from special education services since the previous evaluation.
- She used the SLAM assessment with the Student. It is used with bilingual students.
- To assess the Student, the SLP also evaluated the Student’s conversation and received input from Parents and teachers.

The school psychologist and SLP both agreed that the Student was much stronger in his English skills than his Spanish skills.

Teacher 1 provided the following information in the interview:

- The Student was within the normal range for fourth graders and in many academic areas, he is above the middle of his peer students.
- He is engaged in math and science, and attentive during instruction.
- He is below average in reading and writing, but is not extremely below average. Post COVID, many children fall into this category.
- The Parent often raised the issue of social/emotional learning (SEL). The Student is in the norm regarding SEL. He responds well to social cues.

Teacher 2 provided similar information to what was provided by teacher 1, indicating:

- Academically, the Student was similar to his classmates and peers. He may not be performing at grade level because the pandemic caused regression in many students.
- Socially and emotionally, the Student was a typical fourth grade boy.

Teacher 3 explained and provided the following:

- The Student was provided push-in services in his general education classroom.
- The Student received his English SDI in reading and writing all year.
- The Student received his Spanish SDI in reading and writing all year except for the first six weeks of the 2022–23 school year until a Spanish speaking paraeducator was hired.

- The Student was doing as well as his classmates based on conversation with other teachers.
- Spoke to the previous year's resource teacher, and according to this person, the Student needed minimal support and made good progress in relations to his classmates.

All of the staff interviewed expressed that they agreed the Student should be exited from special education services and that they were not pressured to exit the Student from special education services.

CONCLUSIONS

Issue 1: IEP Implementation – The Parent's complaint alleged the special education services in the IEP had been inconsistently provided and that paraeducator support was inadequate. The District's position is that it appropriately implemented the Student's IEP.

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. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 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.

The Student's April 2022 IEP called for SDI in reading for 60 minutes per week, in writing for 60 minutes per week, and 30 minutes of adaptive instruction per week. The IEP stated that these services were to be provided by a paraeducator. The IEP did not include a 1:1 paraeducator, nor did the IEP mention that these services were to be conducted specifically in Spanish. Despite that, the District hired a Spanish-speaking paraeducator about five weeks after the start of the 2022–23 school year in October 2022 to work with the Student.

When a paraeducator is listed as the provider of SDI, there is still a requirement that the SDI be designed and monitored by a special education teacher. Thus, a special education teacher can also provide that SDI and should be involved in the delivery of SDI regardless. What is most important is that a student is receiving the SDI. In the present case, the Student's IEP does not provide for a 1:1 paraeducator, so the fact that a Spanish paraeducator was not hired to work with the Student until mid-October does not alone establish that the District materially failed to implement the Student's IEP. As stated in the District's response, the Student continued to have the support and instruction from the certificated Spanish teacher.

The Parent indicated there was no "proof" that these services were provided in the form of data sheets, service provider treatment notes, or other documentation showing the Student received any Spanish reading services during the 2022–23 school year. However, here, the Student had three goals going into the 2022–23 school year, and according to his progress reports, he was

making progress towards achieving his goals. Regarding his writing goal, the January progress report showed that the Student was providing four out of five details in Spanish writing. Regarding his reading goal, the January progress report showed that he improved his score on the Star Spanish test from 5th percentile the previous year to the 11th percentile this year. Regarding his adaptive goal, his January 2023 progress report showed the Student was using Spanish when expected in the classroom. Thus, based on the progress reports, the Student was making progress and this indicates that the Student's IEP was being implemented.

Finally, based on the Parent's original complaint, OSPI opened this case partially on an IEP implementation issue that mentioned social-emotional learning and speech services. In the present case, the Student did not have any social-emotional SDI in his April 2022 IEP; thus, there is no failure to implement these services.⁹ As for speech services, the Student was entitled to 15 minutes of those services per month. This service was for a consultation and not for the provision of SDI. According to the SLP, she did consult with the Student's teachers regarding his speech and was told that the Student was doing fine. There is no evidence that the Student was not receiving his speech consultation services, or that there was a regression in the Student's expressive communication to establish that the District materially failed to implement this service.

For the reasons stated above, OSPI does not find a violation as to the first issue.

Issue 2: Eligibility Determination – The Parent's complaint alleged that the Student was not evaluated properly, nor in his native language. Also, the Parent alleged the information used by the District was not reliable. The District's position is:

Here, the District met these regulatory requirements when it exited Student from special education eligibility, because it conducted a reevaluation of Student and took into account a review of various sources of data in all areas of suspected disability, including student records, standardized assessments, observations, parent input and teacher recommendations...Student's assessment scores largely fell in the average range and, indicated that Student's academic and functional skills were not so significantly behind those of his peers that the demonstrated an adverse educational impact that required continued SDI...Accordingly, the reevaluation team followed all applicable reevaluation procedures in determining that Student be exited from continued special education services through an IEP.

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. 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

⁹ OSPI notes that if the Parent is concerned the April 2022 IEP was improperly developed to exclude services in the area of social-emotional, this is outside of the time frame for investigation of a special education community complaint. In a complaint, OSPI can investigate potential violations going back one calendar year from the complaint being filed, in this case, the investigation period began July 8, 2022. OSPI notes that a due process hearing can address potential violations going back two years.

sufficiently comprehensive to identify all of the student's special education needs and any necessary related services.

Upon completion of an evaluation (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 and the educational needs of the student. A student must not be determined to be eligible for special education services if the student does not otherwise meet the eligibility criteria, including presence of a disability, adverse educational impact, and need for specially designed instruction.

In the present case, the Student had a triennial re-evaluation in March 2023. The reevaluation was conducted in English, which according to the Student's teachers is the Student's stronger language, although the Student may speak Spanish at home and is in a bilingual English/Spanish program. The Student was given academic, adaptive, communication, and cognitive assessments. The evaluation also reviewed the Student's scores on the WIDA, which is an assessment given to all multi-lingual students in the District. Based on his WIDA scores, the school psychologist expressed that language was not likely the reason the Student's educational work may at times fall below his grade level. Thus, the fact that the reevaluation was conducted in English does not alone mean the reevaluation was insufficient.

The Student's evaluation was based on multiple assessments, classroom observations, work review, and teacher and Parent input. The Student's results on his assessments were compared to the results of other students in his school. According to the District's staff, the Student was not significantly behind all other students at the school, and that even if the Student's academics are not at grade level, that does not mean he needs SDI. According to the Student's SLP and teachers, the Student was within the normal range academically and social/emotionally for fourth graders. The SLP expressed that she was ready to exit the Student from special education services since the previous evaluation. Teacher 1 stated that the Student is below average in reading and writing, but is not extremely below average. Teacher 2 mentioned that socially and emotionally, the Student is a typical fourth grader. Teacher 3 spoke to the Student's resource teacher from the previous year who said the Student needed minimal support. This comment is also consistent with the Student's April 2022 IEP. According to this IEP, the Student was receiving 1,730 minutes of education per week, all of it in a general education setting, and was receiving about 125 minutes per week of SDI or about seven percent of the Student's weekly instruction. Thus, the Student's SDI was a small percentage of his overall education heading into the 2022–23 school year.

It is understandable that the Parents wanted higher scores on the Student's assessments and grades, but based on the record in this case, the District did comply with applicable regulations in conducting the Student's reevaluation. Thus, there is no violation as to the second issue.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 31st day of August, 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.)