

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-35

PROCEDURAL HISTORY

On May 7, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Stanwood-Camano School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 8, 2019, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On June 10, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on June 11, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

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

ISSUE

1. Did the District follow proper procedures for reevaluating the Student during the 2018-2019 school year, including ensuring Parent participation and properly exiting the Student from special education?

LEGAL STANDARDS

When investigating an alleged violation, OSPI must identify the legal standard that the District is required to follow and determine whether the District met that legal standard. OSPI reviews the documentation received from a complainant and district to determine whether there is sufficient evidence to support a violation. If there was a violation, there will be corrective action to correct the violation and maintain compliance.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural

safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

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).

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 IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment. Assessments and other evaluation materials must include those that are tailored to assess specific areas of educational need, and must best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment accurately reflects the student's aptitude or achievement level rather than reflecting the student's impairment. If necessary as a part of a complete assessment, a district may obtain at its expense a medical statement or assessment indicating any additional factors that affect the student's educational performance. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. 34 CFR §300.304; WAC 392-172A-03020(3).

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. The evaluation group's review does not need to be conducted through a meeting but if a meeting is held, parents must be provided with notice and afforded an opportunity to participate. 34 CFR §§300.305; WACs 392-172A-03025) and 392-172A-05000(2).

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

Procedures for Specific Learning Disabilities: In addition to the evaluation procedures for determining whether students are eligible for special education, school districts must follow additional procedures for identifying whether a student has a specific learning disability. Each school district shall develop procedures for the identification of students with specific learning disabilities which may include the use of (1) A severe discrepancy between intellectual ability and achievement; or (2) A process based on the student's response to scientific, research-based intervention; or (3) A combination of both within a school district, provided that the evaluation process used is the same for all students within the selected grades or buildings within the school district and is in accordance with district procedures. WAC 392-172A-03045.

Use of Discrepancy Tables for Determining Severe Discrepancy: If the school district uses a severe discrepancy model, it will use the OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement. The tables are developed on the basis of a regressed standard score discrepancy method that includes: the reliability coefficient of the intellectual ability test; the reliability coefficient of the academic

achievement test; and an appropriate correlation between the intellectual ability and the academic achievement tests. The regressed standard score discrepancy method is applied at a criterion level of 1.55. WAC 392-172A-03065.

For the purposes of applying the severe discrepancy tables, the following scores shall be used: a total or full scale intellectual ability score; an academic achievement test score which can be converted into a standard score with a mean of one hundred and a standard deviation of fifteen; and a severe discrepancy between the student's intellectual ability and academic achievement in one or more of the areas addressed in WAC 392-172A-03055(1) shall be determined by applying the regressed standard score discrepancy method to the obtained intellectual ability and achievement test scores using the tables referenced above. WAC 392-172A-03070.

Observation of Students Suspected of Having a Specific Learning Disability: School districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The evaluation group must: use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an evaluation; or have at least one member of the evaluation group conduct an observation of the student's academic performance in the general education classroom after the student has been referred for an evaluation and parental consent is obtained. WAC 392-172A-03075.

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

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student was in middle school and was eligible to receive special education services under the category other health impairment. The Student attended school in a different Washington school district.

2. In January 2018, while enrolled in the other school district, the district reviewed the Student's individualized education program (IEP). The IEP stated that the Parent's concerns were that the Student had difficulty with writing and reading comprehension, which was making other classes difficult. The IEP stated that the Student's behavior did not impede his learning or the learning of others, although the Student was diagnosed with attention deficit hyperactivity disorder (ADHD). The IEP provided for annual goals in the areas of reading and written expression, and the following specially designed instruction in the special education setting:
 - Reading: 60 minutes, 4 times weekly (provided by the special education teacher)
 - Written Expression: 60 minutes, 4 times weekly (provided by the special education teacher)

The IEP provided the following accommodations and modifications:

- Provide daily assignment list
 - Re-do assignment/tests/quizzes
 - Read aloud tools: text-to-speech
 - Read aloud CDs or human readers
 - Dictionary/Thesaurus
 - Spell check
 - Provide individualized/small group instruction
 - Take test in separate location
 - Breaks: Multiple or frequent
 - Extra time
 - Prior notice of tests/quizzes
3. In February 2018, the Student enrolled in the District as a seventh-grader and continued to be eligible to receive special education services under the category of other health impairment.

2018-2019 School Year

4. At the beginning of the 2018-2019 school year, the Student attended a District middle school and continued to be eligible to receive special education services.
5. On August 29, 2018, the District's 2018-2019 school year began.
6. On November 29, 2018, the District initiated a reevaluation of the Student without notifying the Parent or obtaining her consent.
7. On November 30, 2018, according to the District, the school psychologist realized that the Parent was not contacted to provide written consent for the evaluation. The school psychologist contacted the Parent by phone, "apologized, gained verbal consent to reevaluate, requested parent input, and mailed signature page for written consent and parent concerns."
8. On December 7, 2018, according to the District, the Parent was contacted by the school psychologist by phone and the evaluation results were discussed. The response to the complaint stated:

The adverse impact of ADD (Attention Deficit Disorder) was no longer manifested. It was explained to the parent that a change in eligibility category could be made to specific learning disability, with IEP goal in written expression. Discussion included whether there was a need for specially designed instruction with continued placement in resource language arts class or if Student could be served in general education with accommodations. Parent stated she was not opposed to Student being in general education.

9. On December 11, 2018, the Parent emailed the school psychologist and expressed concerns about the Student attending the general education English language arts class and the Student's ADD diagnosis. The Parent requested information about his current reading level compared to grade level.
10. On the same day, the Parent emailed the school psychologist and asked: "Can you also be prepared to tell me when [Student's] evaluation was started this year and what that process was?"
11. On December 14, 2018, the school psychologist emailed the Parent a "Reevaluation Draft."
12. On December 16, 2018, the Parent emailed the school psychologist, asking, "why was my son evaluated without my consent by not only yourself, but also by his teachers? When you called me to ask for consent-my son had already been evaluated. In our initial conversation on the phone I was also not given accurate information..."
13. On the same day, the Parent emailed the school psychologist about the Student's evaluation results that indicated the Student was a year behind in reading comprehension. The school psychologist and the Parent exchanged further emails about his reading performance and the District providing the results of the reading evaluation.
14. On an unknown date, the District provided the Parent with prior written notice (dated November 30, 2018) that provided a chronology of contacts with the Parent, including a December 19, 2018 phone call with the Parent. According to the prior written notice, they discussed the evaluation process, being in two physical education classes, his ADD diagnosis, and the Parent stating "process was not valid; needs to start over" on the phone call.
15. From December 24, 2018 through January 4, 2019, the District was on winter break.
16. On January 3, 2019, according to the District, the school psychologist met with the Parent. The psychologist explained that the Student "could still qualify for special education." They also discussed the possibility of a 504 plan.¹ The Parent and District agreed to meet January 15, 2019.
17. On January 15, 2019, the District evaluation group that consisted of the District school psychologist, the IEP manager, and three of the Student's general education teachers reviewed the reevaluation results. According to the District, the Parent also attended the meeting.

The reevaluation included a review of existing data. The review included grades from the previous school, and reading and writing levels. The Student's reading level was 100 words per minute with two errors and he was able to write a three paragraph essay. The District assessed the areas of reading, written language, and behavior in the reevaluation. The special education teacher administered the Wechsler Individual Achievement Test (WIAT) (3rd Edition) in reading and written language. According to curriculum-based measurements from

¹ Section 504 refers to Section 504 of the Rehabilitation Act of 1973.

September 2018, the Student was performing at the 31st percentile when compared to other seventh grade students in reading and at the 17th percentile in writing. The WIAT reading standard scores (SS) were as follows:

- SS = 124 Reading Comprehension
- SS = 96 Word Reading
- SS = 93 Pseudoword Reading
- SS = 91 Oral Reading Fluency
- SS = 99 Total Reading Composite
- SS = 94 Basic Reading Composite
- SS = 109 Reading Comprehension and Fluency Composite

The writing results were as follows:

- SS = 88 Sentence Completion
- SS = 73 Essay Composition
- SS = 86 Spelling
- SS = 79 Written Expression Composite

Four of the Student's teachers completed the "Conners Rating Scale," which is a rating scale for attention problems related to ADHD. The scores were as follows:

- ADHD Inattentive: No by all raters
- ADHD Hyperactive-Impulsive: No by all raters
- ADHD Combined: No by all raters
- Conduct Disorder: No by all raters
- Oppositional Defiant Disorder: No by all raters

The evaluation provided information regarding the Student's progress on his previous IEP goals, which was mostly sufficient progress on the annual goals, medical information that stated the Student was not on medication for ADHD, and state testing results which were Level 3.² Curriculum-based measurements in reading comprehension and writing conducted in September 2018 found the Student in the range of 12th percentile to the 18th percentile and in the 17th percentile, respectively. The Student's grades during the first quarter of the 2018-2019 school year were all As. The evaluation included an observation on November 28, 2018 and interview of the Student on November 30, 2018. The observation stated, "Observed during Language Arts. On task on Chromebook. Reading Quietly. Rest of students are working at their desks. Does not raise his hand for teacher assistance." In the interview, the Student described his strengths and weaknesses and the impact of the ADD on his learning. The Student stated the ADD did not make learning more difficult for him.

18. At the meeting on January 15, 2019, the group of qualified professionals from the District and the Parent addressed whether the Student continued to be eligible under the category of other health impairment and considered whether the Student was eligible under the specific learning disability category. Based on the evaluation results, the Student was found ineligible for other health impairment. The evaluation summary stated, "[Student] had a medical diagnosis of ADD (Attention Deficit Disorder); however, his academic performance is not

² Level 3 indicates the Student scored above the minimum passing score.

currently impacted by ADD as reflected by the data from the behavioral checklists (Teacher form: Conners 3) directly aligned to ADD/ADHD.”

The District professionals and Parent also addressed eligibility under specific learning disability. The evaluation summary stated:

There is not a significant discrepancy between ability and achievement in the areas of reading comprehension or reading fluency. [Student’s] standard score of 109 (73rd %ile) on the Reading Comprehension & Reading Composite (WIAT III) is well above the criterion score of 83.³ [Student] obtained a standard score of 91 on the Oral Reading Fluency subtest. His performance is within the Average range.

There is a significant discrepancy between ability and achievement in the areas of Written Expression, however, the evaluation team determined continued placement in a SPED (special education) setting to be too restrictive, and could be considered a violation of FAPE, particularly if [Student’s] needs can be met through the delivery of accommodations or modifications.

19. Although there was no documentation of Parent input into the eligibility decisions, according to the District, the Parent participated in the meeting and provided input into the decision. In its response to the complaint, the District stated, “The district explained the results of the assessments, especially the area of writing. We discussed the accommodations that would be possible through a section 504 plan. The parent expressed her interest in placing him on a section 504 plan, and her belief that was more appropriate than continued placement in special education.”
20. On the same date, the District’s qualified professionals signed the “Evaluation Summary” form without dissenting opinions. The Parent did not sign the form or provide a dissenting opinion.
21. A prior written notice, dated January 15, 2019, stated the Student was exited from special education. The reason for the decision stated the following:

While there is a significant discrepancy between ability and achievement in written expression, it is the consensus of the evaluation team that [Student] is no longer in need of specially designed instruction in this area. There is not a significant discrepancy between ability and achievement in reading at this time. [Student] is not eligible for services under the category of Specific Learning Disability.

While [Student] has a diagnosis of ADD, at this time data from teachers (Conners 3) do not reflect an adverse educational impact directly related to ADD.
22. On January 30, 2019, the school psychologist emailed the Parent, stating, “I have received the completed Signature Page for the Exit Reevaluation Report on [Student]. I have attached it in this e-mail. I have also reattached the Report, and a copy of the Procedural Safeguards...” The District did not provide OSPI with a copy of the signature page with the Parent’s signature.

³ The criterion score is determined by applying the intellectual ability score to OSPI’s discrepancy tables.

23. On February 19, 2019, the District convened a meeting to determine that the Student was covered by Section 504 and required a 504 plan. On February 25, 2019, the Parent signed consent for the Section 504 plan.
24. On May 7, 2019, OSPI received the Parent's complaint.
25. On June 24, 2019, the District's 2018-2019 school year ended.

CONCLUSIONS

Consent and Evaluations Procedures – The complaint alleged that the District failed to follow reevaluation procedures. The Parent stated that the District did not obtain the Parent's consent before conducting the reevaluation.

Prior Written Notice

A district is required to provide the parent with prior written notice of the proposal to reevaluate a student. The notice must be given to the parent within a reasonable amount of time before the district initiates the reevaluation. Here, the District began the evaluation on November 29, 2018, but provided the Parent with prior written notice sometime after December 19, 2018, although the notice was dated November 30, 2018. The District also provided documentation of an undated, unsigned copy of the "Reevaluation Notification/Consent" form that was part of the "Evaluation Summary" form. There was no indication that the Notification/Consent form was provided to the Parent at all, or in a timely manner before the evaluation. A violation is found.

Review of Existing Data & Consent

As part of a reevaluation, the individualized education program (IEP) team—which includes the parent and other qualified professionals—must review existing student data, evaluations, information provided by the parent, and observations by teachers and related service providers to determine what additional data, if any, is needed to determine the student's eligibility and individual needs. Parent consent is not required for a review of existing data nor is a meeting, but the district still must ensure the parent is provided an opportunity to provide input into the decisions. Here, the January 2019 evaluation summary indicated existing data was considered as part of the evaluation, but there was no evidence that the IEP team, including the Parent, and other qualified professionals reviewed existing data, such as prior evaluations and information provided by the Parent, to determine what additional data was needed prior to conducting the additional assessments, for which consent was required.

A district is required to obtain written consent from a parent before conducting additional assessments. Here, the District acknowledged that consent was not obtained from the Parent before conducting the reevaluation. The District did immediately notify the Parent and requested her *verbal* consent. Although a January 30, 2019 email from the school psychologist to the Parent alluded to the Parent eventually providing written consent, the District provided no verification that the Parent gave her written consent for the additional assessments nor was written consent provided before the District began its evaluation. A violation is found.

Reevaluation Standards/Report

A district must conduct a comprehensive evaluation that uses a variety of assessment tools to gather relevant information about the Student, including information provided by the parent. No single test or measure may be used as the sole criteria to determine eligibility. The assessments must be valid and reliable and administered by trained personnel. The evaluation report, among other requirements, must draw upon information from a variety of sources, such as aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition and social background, and adaptive behavior. In completing the evaluation report, the district must ensure that the information obtained from all of these sources is documented and carefully considered.

Here, the District conducted the WIAT III in the areas of reading and writing, and the Student's teachers completed the Conners Rating Scales to assess the Student's ADHD, both of which are considered technically valid and reliable. The District's evaluation used numerous sources of information including standardized testing, curriculum-based measures, grades, state testing results, medical information, and progress towards the Student's annual goals. The District's report included data from all the assessments administered along with classroom data, IEP progress, and state testing results, although the results from previous ability testing were absent. The assessments that were administered were appropriate, but the evaluation did not seek information from the Parent to begin with and as a result, the report did not document parent input and did not document careful consideration of the Parent's input. A violation is found.

Eligibility Under Other Health Impairment

To be eligible for special education services, a student must meet the eligibility criteria for the disability and the disability must have an adverse effect on the student's education that results in the need for specially designed instruction. Other health impairment means a student who has limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems and adversely affects a student's educational performance.

Here, the Student was previously diagnosed with ADHD—which is a qualifying condition under the other health impairment category—and was eligible to receive special education services under the category of other health impairment. The District evaluated the Student's behavior and attention by having staff complete the Conners Rating Scale. The teachers' ratings indicated no significant problems related to the ADHD. The District determined the Student was no longer eligible under the category of other health impairment. The evaluation summary stated, "[Student] has a medical diagnosis of ADD; however, his academic performance is not currently impacted by ADD as reflected by data from behavioral checklist (Teacher form: Conners 3) directly aligned to ADD/ADHD." The documentation showed the District based the eligibility decision for other health impairment on the results of the Conners Rating Scale alone. However, no single test or measure may be used as the sole criterion for determining the student's eligibility. The District used only the results from the Conners Rating Scale to determine eligibility, and failed to consider and document the other assessments and information used to base the eligibility decision on.

And, as discussed above, there is no documentation that Parent input was solicited or considered. The January 15, 2019 prior written notice also reflects the reliance solely on the Conners Rating Scale. A violation is found.

Eligibility Under Specific Learning Disability

In addition to following general evaluations procedures, the District must follow additional procedures for determining eligibility under the category of specific learning disability.

Severe Discrepancy

If the district is using the severe discrepancy method to identify a specific learning disability, the district must use OSPI's published discrepancy tables for the purpose of determining a severe discrepancy between intellectual ability and academic achievement. The ability score correlates to a criterion score, which is then compared to the academic score. Here, the evaluation stated that the Student's criterion score was 83, which was compared to his academic scores. However, the evaluation did not indicate the basis for the 83 criterion score. No intellectual ability testing was conducted or mentioned in the evaluation or cited in the review of existing data. While this may have been an oversight, a severe discrepancy, or lack thereof, cannot be verified without the intellectual ability score.

In the area of reading, the District found no discrepancy between the Student's ability and achievement, which was supported by data. In writing, the District found a severe discrepancy but stated, "...[T]he evaluation team determined continued placement in a SPED setting to be too restrictive, and could be considered a violation of FAPE, particularly if [Student] needs can be met through the delivery of accommodations or modifications." As described above, a student is eligible for special education services when they have a disability that adversely impacts their education and requires specially designed instruction. Whether the Student would be placed in the special education setting or in general education is not a determining factor in deciding eligibility⁴. The placement in a general or special education setting does not show whether there is an adverse effect that requires specially designed instruction. Specially designed instruction can and should be provided in the general education classroom to the maximum extent appropriate. If the District's explanation meant there was no adverse effect that required specially designed instruction, then the District will need to make that clear in the corrective action. Absent that explanation, the District did not consider the correct factors in making the determination that the Student was no longer eligible for special education services. A violation is found.

Observation

School districts must ensure that a student who is suspected of having a specific learning disability is observed in the student's learning environment, including the general education classroom setting, to document the student's academic performance and behavior in the areas of difficulty.

⁴ Special education services can be provided in a variety of alternate settings, and are not limited to a special education classroom.

Here, the District interviewed and observed the Student as part of the reevaluation. The documentation of the observation provided little information about the Student's academic performance and behavior, but the interview with the Student supplemented the observation and the results of the Conners Rating Scale, which were based on teacher observations. No violation is found.

CORRECTIVE ACTIONS

By or before **August 1, 2019, August 13, 2019, September 4, 2019, and September 11, 2019**, the District will provide documentation to OSPI that it has completed the following corrective actions. Other dates will be added as the need arises.

STUDENT SPECIFIC:

By **September 4, 2019**, the District must begin to reevaluate and determine the Student's eligibility by first conducting a review of existing data. The IEP team, which includes the Parent and a qualified group of District professionals, must first review existing data to determine if additional assessments are required or if the assessments from the November 2018 evaluation are sufficiently comprehensive and current.

By **September 4, 2019**, the District will provide OSPI with documentation regarding the review of existing data. This should include documentation from a meeting with the Parent (either in person or via phone), including the invitation, meeting notes, prior written notice, and consent for additional assessments (if applicable). The District will also propose next steps, including timelines to conduct the additional assessments, if required, write the report, make the eligibility determination, and submit the documentation of the reevaluation and eligibility determination, along with the prior written notice, to OSPI. By September 13, 2019, OSPI will discuss the proposed next steps with the District and provide additional deadlines for review, if necessary.

Pending the outcome of the above, if the Student is found eligible, the District must convene the Student's IEP team and develop a new IEP. OSPI will provide dates by which the District will be required to submit the Student's new IEP to OSPI for review. In addition, the District must provide compensatory education services in each area of specially designed instruction the Student is found eligible for. Upon receipt of the Student's new IEP, OSPI will determine the appropriate amount of compensatory services and corresponding deadlines for documentation. Pending the timeline determined above by September 13, 2019, OSPI will determine the timeline and additional deadlines for completing the IEP and the District providing OSPI with a copy of the IEP, prior written notice, and the compensatory service schedule.

The compensatory services will be provided by certificated special education teachers with support from paraeducators, as needed.

The District either must provide the transportation necessary for the Student to access these services, or reimburse the Parent for the cost of providing transportation for these services. If the District reimburse the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately-owned vehicle rate.

DISTRICT SPECIFIC:

By **September 4, 2019**, the District, in consultation with the Northwest Educational Service District 189, will provide training for the special education case managers and special education teaching and ESA staff at the middle school identified in this complaint regarding reevaluation procedures and the eligibility determination.

By **August 1, 2019**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By **August 13, 2019**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 23, 2019 and additional dates for review, if needed.

By **September 11, 2019**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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

Dated this ____ day of July, 2019

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.)