

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 19-42

PROCEDURAL HISTORY

On May 21, 2019, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) who attended the Seattle School District (District). The Parent alleged 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 22, 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 5, 2019, the District requested the complaint be dismissed because the communication evaluation was requested on May 18, 2018, not May 22, 2018, and asserted the issue raised in the Parent's complaint was outside of the one-year statute of limitations for SECCs. The District also asserted the Parent was aware of the issues raised in this complaint when she filed her last complaint in July 2018 and could have raised these issues at that time, but did not do so.¹

On June 5, 2019, OSPI informed the District that there is no mechanism for dismissing complaints filed with OSPI and that it would be continuing with the investigation as filed by the Parent.

On June 6, 2019, the District requested an extension of time for the submission of its response. On June 7, 2019, OSPI granted the request for an extension of time.

On June 6, 2019, OSPI spoke with the Parent by phone regarding her request to add an additional issue to the complaint. OSPI requested the Parent provide additional information.

On June 7, 2019, OSPI received additional information from the Parent. OSPI reviewed and determined the Parent raised an additional allegation, which was added to SECC 19-42. OSPI forwarded the additional information and notice of additional issue to the District on June 10, 2019. OSPI requested the District respond to the additional issue in its response.

On June 10, 2019, OSPI received a request from the District for an additional extension of time for the submission of a response regarding SECC 19-42. OSPI granted the request. The District was asked to submit its response by June 25, 2019.

¹ The Parent explained in her reply that while she was aware of the Student's specific needs and lack of supports related to his disability, they "were not aware of their son[s] need of supports by a speech language pathologist and occupational therapist for his communication challenges until the Student's private evaluations in the Spring on 2019," which necessitated she file a separate complaint to address their concerns specifically related to communication. OSPI notes the Parent's statement here is slightly confusing, given that she did in fact request a communication evaluation in May 2018, which indicates she believed the Student had a need for supports related to communication at the time she filed the previous complaint.

On June 11, 2019, OSPI received an email from the Parent, stating OSPI should request all meeting recordings and transcripts of recordings from the District. The OSPI investigator determined it was not necessary, at that time, to request recordings because the District had not yet submitted its response. The Parent was informed of her right to make a public record request to obtain additional documents should she want to obtain records not part of OSPI's investigation.

On June 13, 2019, OSPI received an email from the Parent, expressing concerns that the District withheld relevant records from the Parent and requesting again that OSPI request from the District the Student's full educational record from May 22, 2018 through present day. The Parent additionally informed OSPI that the Student attended the District until September of the 2018-2019 school year. On June 14, 2019, OSPI responded to the Parent that it was still waiting for the District's response. OSPI informed the Parent it would request additional documents as determined necessary, based on the issues under investigation and timeline involved for those issues, and the Parent would be provided a copy of any additional documents obtained by OSPI during the investigation.

On June 25, 2019, OSPI received the District's response to the complaint and forwarded it to the Parent on June 26, 28, and July 1, 2019. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's response.

On July 1, 2019, OSPI received an email from the Parent, asking for confirmation that OSPI had requested both "internal" and "external" communications from the District. OSPI responded to the Parent that it had requested the District provide all communications relevant to the issues upon which the complaint was opened.

On July 3, 2019, OSPI received a request from the Parent for an extension of time for the submission of her reply. OSPI granted the Parent's request. The Parent was asked to submit her reply no later than July 15, 2019.

On July 13, 2019, OSPI requested the Parent provide additional information, and the Parent provided the requested information on July 15, 2019 and July 16, 2019. OSPI forwarded the information to the District on July 17, 2019.

On July 15, 2019, OSPI received a request from the Parent for an extension for the submission of her reply. OSPI granted the Parent's request on July 16, 2019. The Parent was asked to submit her reply no later than August 5, 2019. As this presented an exceptional circumstance, the 60-day decision deadline was extended to August 19, 2019, as permitted by WAC 392-172A-05030.

On July 15, 2019 and July 16, 2019, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on July 17, 2019.

On July 27, 2019, OSPI received an email from the Parent, containing a list of documents the Parent believed were relevant and left out of the District's response.

On August 1, 2019, OSPI requested additional information from the District and spoke to the District on the phone to clarify the request. Specifically, OSPI requested the District review the list of documents in the Parent's July 27, 2019 email. OSPI requested the District provide OSPI with any documents on the list that were created during the time period under investigation. OSPI requested the District respond to its request for additional information by August 7, 2019.

On August 5, 2019, OSPI received a request from the Parent for an extension of time for the submission of her reply regarding SECC 19-42. OSPI granted the Parent's request on August 7, 2019, and asked the Parent to submit her reply no later than August 12, 2019.

On August 5, 2019, OSPI received additional information from the Parent. OSPI forwarded it to the District the same day; and subsequently received more additional information from the Parent. OSPI forwarded the subsequent additional information to the District on August 6, 2019.

On August 7, 2019, OSPI received the requested additional information from the District. OSPI reviewed the additional documents, determined which documents were relevant to the investigation, and provided the relevant documents to the Parent on August 8, 2019. On August 12, 2019, OSPI provided the Parent with a CD of the additional documents received, which were not determined to be relevant for the investigation.

On August 7, 2019 OSPI received additional information from the Parent. OSPI forwarded it to the District on August 8, 2019.

On August 8, 2019, OSPI received additional information from the Parent. OSPI forwarded it to the District the same day.

On August 12, 2019, OSPI received additional information from the Parent, and forwarded the documentation to the District the same day. Subsequently, on August 12, 2019, OSPI received more additional information from the Parent and forwarded it to the District on August 13, 2019.

On August 13, 2019, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.²

Later, on August 13, 2019 at 6:41 pm, OSPI received the Parent's second version of her reply. OSPI forwarded the second version of the Parent's reply to the District on August 15, 2019.

On August 14, 2019, OSPI received additional information from the Parent, and forwarded the documentation to the District on August 15, 2019.

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

² The Parent sent her reply as a Google document at 4:49 pm on August 12, 2019. Because Google docs can be altered, OSPI saved a pdf copy at 10:31 am on August 13, 2019, subsequently sent the pdf to the Parent, and confirmed that the pdf copy OSPI sent was the version it would send to the District as the Parent reply.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 22, 2018, or are outside the scope of this investigation. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations.

A previous complaint filed by the Parent, SECC 18-71, contains additional background information on the Student's 2017-2018 school year, which overlaps with the time period at issue in this complaint. SECC 18-71 addressed issues relating to the following concerns alleged by the Parent, which are not addressed in this complaint, including: child find/special education referral procedures; individualized education program (IEP) development during the 2017-2018 school year, including determinations about whether the Student qualified for extended school year services (ESY) and supports in the area of organization and study skills; parent participation; progress reporting; whether the District ensured that each IEP team meeting was attended by a properly constituted IEP team; assistive technology needs; whether the Student experienced bullying that resulted in a denial of a free appropriate public education (FAPE) (including issues raised during the Student's participation in physical education class); and, IEP implementation from March 20, 2018 through June 2018. This decision will not discuss or make conclusions regarding any issues that have been decided in a previous complaint.

During the investigation of this complaint, the Parent raised multiple issues outside the scope of those initially identified in the request for an SECC investigation, and provided documentation on additional issues, such as: whether the District followed procedures in responding to a request for a functional behavioral assessment (FBA) and whether the District provided appropriate behavioral and social supports. The initial complaint did not raise these issues and the Parent was reminded throughout the investigation that OSPI was unable to investigate issues outside the scope of the original complaint, which alleged the District improperly responded to the Parent's request for a communication evaluation and failed to provide communication supports.

OSPI recognizes that communication and behavior are often related, particularly for students with a diagnosis of autism and attention deficit hyperactivity disorder (ADHD). However, in special education, these are two distinct service areas and areas of specially designed instruction: communication and behavior/social/emotional. The Parent's original complaint did not identify behavior as an area for OSPI to investigate. Thus, allegations related to behavior, behavior/social supports, and the FBA are outside the scope of this investigation or have been addressed in a previous complaint and will not be addressed here. OSPI has informed the Parent of other dispute resolution options, such as mediation and due process (which has a two-year statute of limitations), should she continue to have concerns.

ISSUES

1. Did the District follow procedures when responding to the Parent's request for a communication evaluation on May 22, 2018, including providing the Parent with prior written notice?

2. Did the District provide appropriate services to address the Student's communication needs?

LEGAL STANDARDS

Scope of Citizen Complaints: Through the special education citizen complaint (SECC) process, OSPI can investigate allegations that an educational service district, school district, or a subgrantee is violating or has violated Part B of the Individuals with Disabilities Education Act (IDEA) or regulations implementing the act. The alleged violation must have occurred within one year of the date the complaint was filed. 34 CFR §300.153; WAC 392-172A-05025. The scope of SECCs include determining the appropriateness of a district's determination regarding a child's educational program or placement. OSEP Memorandum 00-20 (July 17, 2000).³

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 the date the district received 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. 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.

Mediation Process: The purpose of mediation is to offer both the parent and the school district an opportunity to resolve disputes and reach a mutually acceptable agreement concerning the identification, evaluation, educational placement or provision of FAPE to the student through the use of an impartial mediator. Mediation is voluntary and requires the agreement of both parties. It may be terminated by either party at any time during the mediation process. Mediation cannot

³ In its response, the District asserted the Parent's filing of a SECC should be dismissed because the Parent's email requesting a communication evaluation occurred prior to May 22, 2018, which is when the one-year timeline for this complaint began. OSPI reviewed the District's request and determined the Parent's concerns regarding the request for a communication evaluation were ongoing and continued past May 22, 2018. Other issues relating to the Parent's request, including the Parent's request for an individualized education program (IEP) meeting to discuss her request for a communication evaluation and procedural issues relating to the request potentially occurred within the timeline under investigation. Accordingly, OSPI found the Parent's allegation to be within the relevant one-year timeline and investigated issues related to the complaint from May 22, 2018 through May 21, 2019.

be used to deny or delay a parent's right to a due process hearing under this chapter, or to deny any other rights afforded under this chapter. Mediation services are provided by the OSPI at no cost to either party. Each session in the mediation process will be scheduled in a timely manner and will be held in a location that is convenient to the parties to the dispute. 34 CFR §300.506; WAC 392-172A-05060.

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. 34 CFR 300.503; WAC 392-172A-05010.

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.

After a meeting, the district must provide prior written notice to the parent of the decisions made as a result of the meeting. This is particularly important when there is disagreement between the parent and the district regarding IEP content. If the IEP content reflects a district decision that it will refuse to provide certain services to the student, or if the district refuses to make changes to the IEP as a result of the parent's requests, the district must likewise provide prior written notice to the parent of those decisions. 34 CFR §300.503; WAC 392-172A-05010.

FINDINGS OF FACT

Background: 2017-2018 School Year

1. The District's 2017-2018 school year began on September 6, 2017.
2. During the 2017-2018 school year, the Student attended a District middle school. At the commencement of the school year, the Student did not have an individualized education program (IEP) in place because the Parents had not yet provided consent for the initial provision of special education.
3. On September 14, 2017, the Parents agreed to, and signed consent for, the Student to be reevaluated.
4. On October 13 and 16, 2017, the Student's evaluation group met to review of the results of the Student's reevaluation. The Student's Parents participated by phone. The evaluation team

determined the Student continued to be eligible for special education and related services under the category of multiple disabilities, based on the Student's diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), and "suspected diagnosis of Autism Spectrum Disorder," which had previously been diagnosed and documented as an anxiety disorder. The evaluation report stated the Student's diagnoses adversely impacted the Student's "capacity to interpret nonverbal cues from his environment and others around him, interact socially with peers, regulate his emotions, follow directives from adults, ignore classroom distractions, manage time effectively, and plan and maintain his organization relative to writing." The evaluation recommended the Student receive specially designed instruction in the areas of social/behavior, written language, and organizational/study skills. The Parent did not provide consent for the initial provision of special education services at that time.

5. On January 30, 2018, the Parents signed consent for the initial provision of special education services and the District implemented the Student's IEP.
6. The Student's IEP team met on February 27 and March 27, 2018, each time amending the Student's IEP.⁴
7. On May 10, 2018, the Student's IEP team met a third time and amended the IEP. The May 2018 IEP stated under "behavior" that the Student's "attention, anxiety, adaptability, ADHD, and social awareness, social communication impact [Student's] ability to be successful in the education environment." Under "communication needs," the Student's IEP stated "[Student] does not have any communication needs at this time."

Notes from the May 10, 2018 IEP meeting included the following agenda items: "Communication needs of the Student – '[Student] does not have any communication needs...' for communication impairments" and included the following notes:

- "Is literal when it comes to instruction"
- "Speaks very quietly and gets frustrated when others can't hear him"
- "Auditory processing when following directions"
- "Long processing speed"
- "And others See page 5 and present levels"

The May 2018 IEP amendment noted the Parent's concerns with the Student's communication skills and included neuropsychological findings from a neuropsychological independent educational evaluation (IEE), dated May 24, 2017, which stated:

[t]he Aphasia Screening Test revealed isolated oral spelling and enunciation errors, but otherwise showed no difficulties in language processing in situations of basic reading, written spelling, and math; word finding and naming; receptive language; and right-left orientation. His letter and number formation were uniform in size, appropriately spaced, and easily legible, but his written performances showed intense pencil pressure. [Student] earned a superior score on a more extensive measure of receptive language. Although he occasionally rushed his response, he more often took time to subvocally repeat the

⁴ Details of these amendments are not included because they did not relate to the request for a communication evaluation.

instructions before executing them. On measure of verbal fluency, his pace when generating words within semantic categories was excellent, and his pace of generating words that began with a common letter bested 2/3 of his same age peers.

8. From May 11, 2018 through June 8, 2018, the District collected data on the Student's behavior during lunch, per the Parent's request, including, for example, whether he ate lunch alone or conversed with other students.
9. On May 18, 2018, the Parent emailed one of the District's special education directors (director) and stated she wanted a communication evaluation. The Parent noted the Student seemed to be using "nonverbal communication, which is clearly inappropriate and caus[ing] him and other students issues." The Parent explained in her email that she felt it was especially obvious during physical education (PE) class. The director responded and stated that her understanding was that the Student did previously receive [private] speech services that were discontinued due to a change in insurance. The Parent responded and stated the Student received speech therapy and writing support outside of the District in the past, but explained that the Student had previously been evaluated by a District therapist for speech therapy only and not communication.
10. On May 21, 2018, the Parent emailed the director to request an IEP meeting be scheduled to discuss several concerns, including scheduling a communication evaluation.

Timeline for this Complaint Began on May 22, 2018

11. On May 22, 2018, the Parent sent the following email to the director to further explain her request for a communication evaluation:

[Student] is repeating 6th grade, his eval in 4th grade was over 3 years ago.⁵ This limits change for middle schoolers. [. . .] We have been discussing how [Student] has a hard time starting conversations (goal on his IEP), he is eager for social interaction and has a hard time verbalizing his feelings. [Student's father] then brought up that [Student's] way of communicating during [physical education] (PE) could be the unwanted behavior he's been exhibiting, which makes perfect sense. He has been very physical from early age and his 3 word sentences when other kids were saying sentences twice as long or longer just fits right in with [Student's father's] observation. Just the fact that he has to repeat instruction

⁵ In the Parent's reply, the Parent stated the initial evaluation in the fall of 2016 inadequately addressed the Student's communication needs, including how it addressed the Student's writing skills, which the Parent stated is a form of communication. The Parent cited to comments made by teachers, including that the Student's functional communication skills were described as "marginal," and the Student was unable to utilize text to speech technology due to "difficulty with verbal expression and fluency" which "reportedly limit[ed] the effectiveness" of the alternative communication device. The Parent further noted in her reply that the Student's diagnosis of Autism Spectrum Disorder (ASD) inherently impacts the Student's ability to effectively communicate and that despite the Student's high cognitive abilities, the District repeatedly failed to properly assess the Student for his communication related needs. As this evaluation is well outside the one-year complaint timeline, the sufficiency of the evaluation is not addressed. Further, the Parent, at the time, disagreed with the evaluation, requested, and was granted an IEE.

back (per his IEP) before they sink in makes sense. Our advocate pointed out in [Student's] IEP all the mention of communication issues.

12. On May 22, 2018, the director responded to the Parent regarding her request for a communication evaluation via email and stated:

The district did evaluate communication when [Student] was a 4th grader. [Speech language pathologist (SLP)] indicated that his receptive and expressive language skills were within normal limits (SS for Listening Comp, Oral Expression and Oral Language Composite from 11-119) on the OWLS-II. She also assessed social language on the CELF-5 and found him to be within normal limits (SS=90), and assessed [articulation] via the Arizona (AAPS-3) and found articulation to be within normal limits. Finally, she reviewed voice and found fluency, voice quality, pitch, rate, prosody and loudness were age appropriate. I am going to request from the school team reports of receptive/expressive or social language concerns to aid in making a decision about a communication eval. [. .]

13. Also, on May 22, 2018, the Parent responded to the director that before she left in two weeks [when school ended], "we still need to schedule an IEP meeting to address the rest of the agenda that did not get addressed [at] the last IEP meeting." In her email, she added that she wanted to discuss "confirmation and consent form for communication evaluation or explanation of denial on [prior written notice] PWN."

14. Later, on May 22, 2018, the Parent emailed the director regarding an incident that occurred in PE class and noted she was considering transferring the Student to another district. The Parent raised concerns about the Student's interactions with other students.⁶

15. On May 24, 2018, the PE teacher emailed the IEP case manager and stated the Student left PE without permission after refusing to complete an assignment. The case manager responded with questions about what happened, stated the Student went to the office, and stated this was an example of the Student requesting a sensory break. The case manager also notified the Parent and stated he went over how to properly request a sensory break with the Student.

The case manager and the Parent exchanged several emails about the incident and the Parent stated she felt the incident was preventable if the Student had been properly supervised and supported according to his needs, including being provided with adequate communication supports to help express his frustration and to help process and communicate the rules for PE.

16. On May 25, 2018, the Parent requested a mediation meeting with the District. The Parent sent out a list of agenda items from previous IEP meetings of topics that still needed to be discussed, including communication concerns. The same day, a second District special education director (director 2) responded to the Parent that she would reach out to Sound Options to discuss scheduling and stated she believed "you asked to have the next meeting

⁶ Concerns raised by the Parent regarding allegations that the Student was bullied because of his disability, including a lack of social skills, were addressed in SECC 18-71 and are not addressed in this complaint. Facts related to these overlapping issues are included in this decision for continuity and context only.

facilitated by Sound Options.”⁷ During the first week of June 2018, the District and school staff discussed possibly scheduling a mediation or facilitated IEP meeting. However, when the District was informed that mediations require a four-hour commitment per OSPI’s contract with Sound Options, the District declined to engage in voluntary mediation at that time.

17. On May 27, 2019, the Parent emailed the school board director regarding several concerns she had with the District. In her email, she mentioned unresolved issues regarding how she felt the District was responding to the Student’s communication needs.
18. On June 4, 2018, the Parent emailed the special education teacher regarding social communication supports for the Student in his after-school club. The Parent explained that she felt an inappropriate conversation had occurred during the club and she asked the club advisor to redirect next time a similar situation arose. The Parent expressed concern that the club advisor had told her she was not trained in providing social skills training.
19. On June 6, 2018, director 2 emailed the Parents and stated they would be scheduling an IEP meeting. Among several agenda items, the director identified discussing the requested communication evaluation as one of the goals of the IEP meeting.
20. During the month of June 2018, District administrators, school staff, and the Parents exchanged many emails in an attempt to identify a time to schedule an IEP meeting.
21. On June 11, 2018, the director emailed the Parent to confirm the District did not agree to the Parent’s request for a facilitated IEP meeting due to the four-hour commitment for facilitated IEP meetings. The director confirmed her belief the IEP team could cover the proposed agenda items in 60-90 minutes.
22. The Parent emailed the director with her availability for an IEP meeting during the rest of the month of June. She explained that she was available the full week of June 18, 2018 through June 22, 2018, but due to child care limitations, she would need the meeting to be finished by 3:30 pm or 3:45 pm. She additionally offered the date of June 12, 2018 before 3:15 pm. The Parent expressed her frustration with the District declining to participate in a facilitated IEP meeting.
23. On June 12, 2018, the District’s SLP team leader emailed the director following his review of the Student’s file, in light of the Parent’s recent request for a communication evaluation and upcoming IEP meeting, and stated:

[Student’s] previous reports do not suggest an additional communication evaluation is warranted. His communication skills were assessed during an initial special education evaluation in 2015. The assessment revealed that his speech, language and pragmatic skills

⁷ The documentation in this complaint uses both “mediated IEP meeting” and “facilitated IEP meeting” to refer to the potential involvement of Sound Options in the IEP meeting the Parent and District were trying to schedule. Based on the documentation, the District considered and discussed scheduling a facilitated IEP meeting (as opposed to a mediation session, which would not necessarily be an IEP meeting).

are within the normal range. There is no available evidence that suggests his communication abilities have changed since his previous communication evaluation. In addition, an IEE from the Fall of 2017 reported his verbal skills are within normal limits. The report found that his social/behavior skills do not meet criteria for a non-verbal learning disability or autism spectrum disorder -diagnoses that often entail a social communication component. Rather, the report found evidence of AD/HD or AD/HD other, disorder of written expression and adjustment disorder with anxiety & depressed mood, none of which fall within the scope of speech language pathology. Given the student's diagnoses, SLP consult could be available to school staff if concerns arise about his ability to stay engaged in academic setting. [Director 2] invited me to present this information at an upcoming IEP meeting. Please let me know the date when you do.⁸

24. On June 15, 2018, the Parent emailed the director regarding her concerns about scheduling the IEP meeting she and the District were currently attempting to schedule. The Parent stated she believed the District was prioritizing the scheduling needs of building staff over the scheduling needs of families.
25. The District's 2017-2018 school year ended on June 18, 2018.
26. Also, on June 18, 2018, the Parent emailed the District regarding concerns that the Student lacked supports in PE class and on field trips related to communication and spatial awareness.
27. In her reply to the District's response to this complaint, the Parent also gave the example of "pairing oral instruction with written" as a "simple accommodation" she was "consistently asking for." The Parent stated this communication accommodation was never provided. Although, based on the Parent's reply, the Student's math teacher was often reading math problems aloud to the Student.
28. On June 21, 2018, the principal emailed director 2 and stated:

As a result of the family's request to meet again, we have offered after school times, which were not accepted, and then we have offered during the day times, which were not accepted. The last day of school was not one of the options we offered for many reasons. Now it seems as if it is the only option. We continue to want to try [to] partner with the family. We can't meet for more than 30 minutes tomorrow. We can re-arrange a few things and meet tomorrow from 11:30 to noon.
29. On June 21, 2018, the District created a counseling treatment plan for the Student during extended school year (ESY), which included goals in the areas of social skills (which under strategies/interventions, included in part, "build communication skills") and emotion regulation (which under objectives, included, in part "increase ability to communicate emotions [. . .]"). On August 8, 2019, the Parent explained to OSPI in an email that she had

⁸ In her reply to the District's response, the Parent raised concern with the SLP's email and stated the SLP "was not a member of the Student's IEP team. He predetermined the decision to not evaluate the student before the IEP team met." The Parent also stated the SLP failed to review all relevant information regarding the Student's communication abilities, such as "attendance, incident reports, school nurse reports, observation of the Student, Staff/teacher statements."

"repeatedly ask[ed] [the District] for ESY to ensure [Student] can maintain skills learned during [the] school year, including social skills, communication."

Documentation provided in this complaint and a previous complaint (SECC 18-27) indicate the Student did not qualify for or receive ESY services during the summer of 2018, but did receive counseling pursuant to the corrective action ordered in SECC 18-27.

30. On June 22, 2018, the IEP case manager emailed the Parents the Student's fourth quarter progress reporting. According to the progress reporting, the Student made the following progress on his annual goals relating to social/behavior:

- **Social/Behavior:** Met goal to interact with other students by having conversations based on mutual interest, based on observation in the classroom and at lunch.
- **Social/Behavior:** Some progress made in learning to correctly identify emotions based on nonverbal communication. The Student "when shown pictures...can identify at least 4 of 6 emotions."
- **Social Behavior:** Significant progress made on participating in PE according to the rules regarding physical contact. The impact of interventions was immediate and when the Student had an incident he was counseled and returned to the game without further incident.

The Parent responded, noting she felt the progress report was inaccurate, especially in areas regarding the Student's social/behavior progress. She asked for the supporting data and any other evidence the progress reporting was based on. She also asked that the progress report be corrected to accurately reflect the Student's progress.

31. On June 22, 2018, the District sent the Parents prior written notice (PWN) that it was declining the Parent's request for a mediated or facilitated IEP meeting. The PWN stated that "[t]he family requested a 4 hour mediated meeting, the school felt that 4 hours was unreasonable given the previous 20+ hours of meetings this year." The PWN continued: "The school requested a shorter meeting, 90 minutes." The PWN additionally included the following agenda items for the meeting, "the request for a Communication evaluation, Data on Goals, ESY services, OT questions, Counseling services."

32. On June 27 and 28, 2018, the Parents emailed the director several times and stated they were not available for an IEP meeting during the summer and stated they were frustrated staff schedules were given priority over parent attendance while trying to schedule a meeting. The Parent also expressed that she was skeptical an IEP meeting over the summer would be effective and noted other concerns she had with the special education services provided to the Student.

33. On July 6, 2018, the Parents filed SECC 18-71 with OSPI.

34. On July 11, 2018, an independent evaluator completed the Student's functional behavioral assessment (FBA).⁹ The report stated that "generally...[the Student] engaged in behaviors that

⁹ On April 27, 2018, the Parent requested a publicly funded IEE because she disagreed with the FBA the District had previously conducted. On May 13, 2018, the District granted the Parent's request for an IEE.

were consistent with his peers." The report also identified some socially avoidant behaviors and some work avoidant behaviors related to writing. The report provided recommendations, including but not limited to: that social skills training would be beneficial, limiting the use of his tablet, and provide opportunities for skill building. Throughout correspondences with OSPI and in her Parent reply, the Parent expressed concerns that the FBA was not thorough and did not appropriately address all of the Student's behavioral needs relating to the social skill deficits caused by the Student's autism and ADHD.¹⁰

35. On August 24, 2018, the Student was diagnosed with Autism Spectrum Disorder by a private provider.¹¹

2018-2019 School Year

36. The District's 2018-2019 school year began on September 4, 2018.
37. Also, on September 4, 2018, a decision was issued in SECC 18-71.
38. On September 5, 2018, the Parent emailed the Student's case manager to request an IEP team meeting to review the Student's new Autism diagnosis. The Parent additionally expressed her desire to review that "agenda items from past meetings that we didn't get to and amend [Student's] IEP with appropriate supports for him as well as new supports that a child with Autism requires." The Parent requested the case manager respond with three dates and times to meet.
39. On September 6, 2018, the Student's special education teacher emailed the Parent that he would be happy to set up an IEP meeting. He requested the Parent provide a bulleted agenda for the meeting, including any specific accommodations or modifications, and any recommendations from the Student's psychiatrist.
40. On September 10, 2018, the Parent emailed the director and special education teacher and again requested an IEP meeting be scheduled to address the previously agreed upon agenda items, which included the communication evaluation.
41. On September 11, 2018, the Parents transferred the Student out of the District and enrolled the Student at another school district in Washington.

¹⁰ As previously discussed in the scope section, the issue of behavior and the FBA is outside the scope of this complaint; however, as the Parent identifies in her reply and in emails with OSPI, in students with autism, behavior and communication are often linked. However, in special education, behavioral and communication are two different distinct service areas. Should the Parent continue to have concerns with the sufficiency of the FBA, the Parent may wish to access other special education dispute resolution options.

¹¹ The letter provided by the doctor is dated August 24, 2017, but the Student's mother confirmed that this was a typo and the diagnosis was received in August 2018.

42. The Parent filed this complaint on May 21, 2019. The Student continues to attend school in another district in Washington, and does not attend school in the District.
43. On August 14, 2019, as part of the investigation of this complaint, the Parent provided a copy of a private evaluation completed by an SLP on April 11, 2019. The private evaluation report noted the Student "underwent a school speech and language evaluation...[and] the results of this evaluation indicated that [Student's] scores did not meet the criteria for qualification for speech and language services." The report also noted the following:
- Above-average ability to recall and understand information he has heard;
 - Average ability to general narratives and expressive language skills within normal limits;
 - Student's Parent "reports that his ability to convey his emotions is limited...in many instances he is unable to successfully convey a sequence of events that occurred in a personal experience to a listener who did not witness the incident...this causes confusion for the listener, which can prevent [Student] from getting support";
 - Receptive language skills within normal limits;
 - Parent's completion of a pragmatic language profile and indicated a primary area of difficulty is self-advocacy, inability to self-regulate, and lack of social connections;
 - Pragmatics profile indicates delayed social communication skills and delayed emotional regulation skills.

The report recommended speech-language therapy to address the Student's delayed social communication skills.

OPSI notes this evaluation occurred almost a year after the Parent requested a communication evaluation from the District (and after the Student had spent nearly a full school year in a different school district).

44. In its response to this complaint, the District stated that it remains ready and able to meet with the Parent to discuss the Parent's request for a communication evaluation should the Student return to the District.

CONCLUSIONS

Issue One – Communication Evaluation: The Parent alleged the District failed to follow procedures regarding the communication evaluation. A school district must ensure a reevaluation of each student eligible for special education is conducted when the school district determines 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. Generally, a reevaluation must occur at least once every three years, but may occur more frequently if the parent and school district agree otherwise. 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.

The Parent requested the District complete a communication evaluation for the Student on May 18, 2018. The District and Parent attempted to schedule an individualized education program (IEP) meeting to discuss the Parent's request, but conflicts in the schedule of both parties prevented

an IEP meeting from being held prior to the Student transferring out of the District in September 2018. Documentation indicates District staff were preparing to hold a meeting and gathering information about the Student's communication needs between May 22, 2019 and mid-June 2019 (e.g., the director's May 22, 2019 email indicates she was reviewing the Student's previous evaluations and by June 12, 2019, the District's speech language pathologist (SLP) had also gathered and reviewed the Student's previous evaluations). Further, the SLP team lead was invited to present his analysis at the meeting. The Parent alleged this indicated the District predetermined the decision to not evaluate the Student; however, OSPI finds that it is acceptable, necessary, and expected for staff to prepare for meetings—which is what the SLP was doing here. State regulations on meetings state that "A meeting...does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting." WAC 392-172A-05001. Here, despite attempts to schedule and staff preparation, an IEP meeting did not occur and no decision about the communication evaluation was made.

While best practice is to hold an IEP meeting as soon as possible after a request for an evaluation is made by a parent, OSPI acknowledges there are times when delays may occur. In addition to holding an IEP meeting to discuss a parent's request, the district must also provide the parent with prior written notice regarding the IEP team's decision. Here, the documentation showed both parties tried to find a mutually agreeable time, but were unable to agree on a time to meet prior to the end of the 2017-2018 school year. During the summer, the Parents were unable to meet. Upon commencement of the 2018-2019 school year, the District again tried to schedule an IEP meeting, but the Parent transferred the Student to a different district before the IEP team could meet and decide how to respond to the Parent's request. Here, a prior written notice was not required because the IEP team never met nor made a decision.

The Parent also indicated her belief that because a mediated IEP meeting¹² did not occur, this meant the District was not acting in good faith and was denying her an IEP meeting. Although the District originally agreed to schedule a facilitated IEP meeting and then retracted its agreement, which—in retrospect—OSPI notes may have impeded collaboration with the Parent, mediation and IEP facilitation is a voluntary process for parents and districts to use in an effort to resolve disputes. Because it is a voluntary process, it is not a violation, nor does it necessarily indicate bad faith if either party declines to participate. The District is, however, obligated to hold an IEP meeting when requested, to discuss a Parent's request for re-evaluation, which the District attempted to do. Further, the District has stated it remains ready and able to meet to discuss the Parent's request should the Student return to the District. Accordingly, the District followed procedures regarding the requested communication evaluation.

Moving forward, OSPI notes the Student received a new diagnosis of Autism Spectrum Disorder in August 2018, which should be taken into consideration should the Parent choose to reenroll the Student in the District and request a communication evaluation. Further, the Student has since

¹² Based on the documentation in this complaint, while the Parent used the term mediation or mediated IEP meeting, the Parent and the District both seemed initially interested in scheduling a facilitated IEP meeting (as opposed to a mediation). Regardless of the phrases used, ultimately, the meeting did not occur.

had multiple communication evaluations (school district and private) that the District would need to take into consideration *if* the Student returns to the District. The Parent argues that the Student's subsequent April 2019 private speech evaluation indicates the District should have been aware of his communication needs in the spring of May 2018. While this evaluation does recommend speech-language therapy as of April 2019, this private evaluation has no bearing on the events that occurred between May 22, 2018 and when the Student was unenrolled from the District on September 11, 2018. While the report *might* indicate the Student had those needs previously, it is not dispositive on the matter. Regardless, since a meeting did not ultimately occur and the District did not make a decision (either to grant or deny the evaluation), a report that was created 11 months after the fact holds no weight in this investigation.

OSPI understands that in this situation, coordinating everyone's schedule was unusually difficult, but recommends considering alternatives such as allowing the Parents to participate by phone and/or or seeking permission from the Parents to excuse certain members and have those members submit written statements of their input prior to the meeting for the IEP team to consider and discuss at the meeting. While OSPI believes the District could have made additional efforts to schedule a meeting, the District was not out of compliance with the IDEA or state implementing regulations. No violation is found.

Issue Two – Communication Services: The Parent alleged the District failed to provide the Student with appropriate communication services from May 21, 2018 through September 11, 2018. Districts are required to implement the services in a student's IEP.

The Student did not have any communication services on his IEP during that time because he had not yet been evaluated for communication. And, any potential need for communication services had not yet been identified by the District, as the Parent did not request a communication evaluation until May 18, 2018.

SECC 18-71 addressed IEP implementation issues from March 20, 2018 through the end of the 2017-2018 school year. Issues regarding whether communication services were denied during that time fall under the issue of IEP implementation, which was addressed by SECC 18-71. However, the Student did receive specially designed instruction in the area of social/behavior and at the end of the school year/summer of 2018, the District conducted a functional behavioral assessment (FBA). SECC 17-81 addressed these topics, in part. Further, SECC 18-71 discussed the Parent's concerns for behavior/social skills support during physical education and in response to bullying, and accordingly, those concerns are not addressed as part of this complaint.

The Parent did raise additional requests for communication supports and supports during the school day or on field trips related to communication needs. These requests should and likely would have been discussed at an IEP meeting. As discussed above, the Parent and District were unable to schedule an IEP meeting to discuss the Parent's requests. From June 18, 2018 through September 4, 2018, the District was on summer break and the Parents indicated in emails that they were unavailable to have an IEP meeting over the summer (July-August). On September 6, 2018, the case manager and Parent began emailing to discuss scheduling an IEP meeting to discuss the Parent's concerns, including her request for a communication evaluation. On

September 11, 2018, the Parent transferred the Student to another district before an IEP meeting could be held. Thus, from June 18, 2018 through September 11, 2018, the District did not have an obligation to provide any particular communication services to the Student because the Student did not have an evaluation indicating he had a need for such services, nor were communication services included in the Student's IEP. Accordingly, the District is not in violation.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

OSPI appreciates the difficulties faced when scheduling an IEP meeting in this situation as accommodating everyone's schedule was challenging. OSPI reminds the District to consider alternatives such as allowing parents to participate by phone and/or seeking permission from parents for certain members to instead submit written statements summarizing their input prior to the meeting for the IEP team to consider and discuss at the meeting.

Dated this ___ day of August, 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.)