

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 21-009

PROCEDURAL HISTORY

On January 27, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Seattle 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 January 28, 2021, 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 February 9, 2021, the District requested an extension in its submission of its response to the complaint. OSPI granted the District's request and asked it to respond no later than February 24, 2021.

On February 24, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on February 26, 2021. OSPI invited the Parent to reply.

On March 11, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on January 28, 2020. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Did the District appropriately consider and respond to the Parent's requests to add counseling services to the Student's individualized education program (IEP) from January 28, 2020 to January 27, 2021, including:
 - a. following procedures to evaluate the Student in all areas of known and suspected disability as it related to the Parent's request for counseling services;
 - b. providing full consideration of all documentation and independent evaluations provided by the Parent to the IEP team regarding the Student's need for counseling;
 - c. providing the Student with counseling services as determined by the Student's IEP team to be necessary for the Student to receive a free appropriate public education (FAPE)?

LEGAL STANDARDS

IEP Implementation: At the beginning of each school year, each district must have in effect an individualized education program (IEP) for every student within its jurisdiction served through enrollment who is eligible to receive special education services. A school district must develop a student's IEP in compliance with the procedural requirements of the IDEA and state regulations. 34 CFR §§300.320 through 300.328; WAC 392-172A-03090 through 392-172A-03115. It must also ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105. The initial IEP must be implemented as soon as possible after it is developed. Each school district must ensure that the student's IEP is accessible to each general education teacher, special education teacher, related service provider, and any other service provider who is responsible for its implementation. 34 CFR §300.323; WAC 392-172A-03105. "When a school district does not perform exactly as called for by the IEP, the district does not violate the IDEA unless it is shown to have materially failed to implement the child's IEP. A material failure occurs when there is more than a minor discrepancy between the services provided to a disabled child and those required by the IEP." *Baker v. Van Duyn*, 502 F. 3d 811 (9th Cir. 2007).

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a child's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a child misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the child needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2); *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a child in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the child is, or continues to be, a child with a disability. As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015; *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4). Once the need for a reevaluation is identified, a district must act "within a reasonable period of time and without undue delay;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008). The IDEA does not specify who is qualified to conduct an FBA, for example there is no requirement that a board-certified behavior analyst, or any other specific individual, conduct an FBA. *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

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

During the school closures caused by the COVID-19 pandemic, districts were required to hold to evaluation timelines to the maximum extent possible. Districts and parents were permitted to agree to extend the 35 school-day timeline to complete an evaluation during this time. While signed consent was not required, agreements between districts and parents to extend timelines were to be documented, including the reason for the extension.

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. 34 CFR §300.502; WAC 392-172A-05005.

FINDINGS OF FACT

1. The 2019-2020 school year began on September 4, 2019.
2. At the beginning of the 2019-2020 school year, the Student was eligible for special education services under the category of hearing impairment,¹ was in the third grade, and attended a District elementary school.
3. On November 18, 2019, the Student's IEP team convened to develop his annual IEP. The team identified the Student's present levels of educational performance and developed new annual goals in written language (writing), reading (story organization), math (subtraction, basic

¹ The Student receives special education services primarily due to documented profound bilateral hearing loss.

addition & subtraction skills, multistep word problem), social/behavior (taking breaks, following directions, asking for help, behavior),² and communication (expressive, receptive ASL). The IEP team proposed the following specially designed instruction:

- Social/behavior: 145 minutes per week in a *special education* setting;
- Social/behavior: 50 minutes per week in the *general education* setting;
- Communication: 150 minutes per week in a *special education* setting;
- Reading: 200 minutes per week in a *special education* setting;
- Written language: 200 minutes per week in a *special education* setting; and,
- Math: 200 minutes per week in a *special education* setting.

The Student's November 2019 IEP additionally provided the Student 90 minutes monthly of audiology services and 90 minutes monthly of speech language pathology (SLP) services, provided in the *general education* setting.

The Student's IEP team also proposed to conduct a functional behavioral assessment (FBA) and to develop a behavioral intervention plan (BIP) to address concerns about behaviors interfering with the Student's ability to work and stay in class.³ Following the IEP meeting, the Parents requested the District contract with the Center for Deaf and Hard of Hearing Youth (CDHY) to complete the FBA.⁴ According to the District's response, the FBA portion of the evaluation has been delayed until after students return to in-person schooling.⁵

4. On January 9, 2020, the Parent emailed the District's student support supervisor and District's special education program supervisor and requested an independent FBA for the Student and added that it was recommended to him that CDHY complete the assessment.
5. On January 22, 2020, the Parent emailed the assistant principal to request a response to his previous request for an independent FBA. That same day, the assistant principal responded

² The Student's November 2019 IEP noted the Student was improving in behavior in that he was not shutting down on an assignment when not understanding it, and was continuing to work on work independent work completion, attending to tasks, and self-regulation.

³ The IEP team's decision to conduct an FBA to inform the development of a BIP was documented in a prior written notice (PWN), dated October 29, 2019 (it is believed the date of the PWN is in error and should read November 29, 2019, as the IEP meeting upon which the PWN is based did not occur until November 19, 2019).

⁴ In its response, the District noted that the Parent's request for an FBA "morphed into the District contracting for an FBA instead of a District evaluation for an FBA."

⁵ The District asserted that the CDHY evaluation should be considered an independent educational evaluation (IEE), even though the District had not yet completed its own FBA. It asserted that the comprehensive evaluation met the requirements of WAC 392-172A-03020(3): "The tests were selected to be appropriate for [Student], were valid and reliable, and ensured [Student] was evaluated in all areas of suspected disability. The evaluators were trained and knowledgeable, particularly with regard to students with hearing impairments, and there does not seem to be any question that the tests were administered appropriately."

that she had forwarded the Parent's request to the District's special education contact who works with students who identify as deaf and hard of hearing.

6. The timeline for this complaint investigation began on January 28, 2020.
7. On February 27, 2020, the assistant principal emailed the Parent to confirm that CDHY would be conducting the FBA, as well as an assessment in the area of communication.⁶ The assistant principal attached a release of information (ROI) to her email and indicated CDHY would begin reviewing documents and get started on the FBA once the ROI was returned.
8. Beginning in early 2020, the District also began contracting with CDHY to provide school-based counseling services in American Sign Language (ASL) to students with hearing impairments at the Student's school. According to the District's response, this was not intended by the District to be a special education service for any student, but rather "school-based counseling provided by [a] counselor in ASL and available to students who wanted to check in a few times each month to talk about emotions and relationships. The students did not receive [specially designed instruction] or work on IEP goals during these sessions." The District also noted in its response that the counselor assigned to the school did not sign, and the CDHY counselor was provided so students who required an interpreter would have access to counseling services.
9. On March 4, 2020, the assistant principal at the Student's school emailed the CDHY counselor providing services at the Student's school to ask if she could add the Student to her caseload. The counselor agreed and the Student was added to her list.
10. On March 5, 2020, the CDHY counselor began providing counseling services to the Student as part of the counseling services offered to all students with hearing impairments at the school.
11. On March 11, 2020, due to the COVID-19 pandemic, the District notified families that it would be closing schools for at least 14 days, beginning on March 12, 2020.
12. On March 12, 2020, Washington State Governor issued an emergency proclamation, mandating the closure of school facilities in the county in which the school was located, through at least April 24, 2020. The school facility closures were subsequently extended through the end of the 2019-2020 school year.
13. To accommodate students during the school facility closures, CDHY agreed to provide virtual school-based counseling to students. According to the District's response, this service was offered to the Student, but he did not participate. The District agreed to allow the Student to

⁶ In its response, the District explained that one question raised in the CDHY evaluation was whether it would be more appropriate for the Student to be instructed in American Sign Language (ASL) or Signing Exact English (SEE) going forward. For this reason, part of the communication evaluation was done in SEE to evaluate if there was a difference in the Student's communication abilities when using ASL or SEE.

make up any school-based counseling sessions he was unable to access due to the COVID-19 closures.

14. On June 12, 2020, the Student's IEP team convened to amend his IEP and discuss extended school year (ESY) services. The Parents attended virtually and participated in the meeting. The IEP team agreed the Student required ESY services in math and written language, as well as additional instruction in the special education classroom for the 2020-2021 school year. At the IEP meeting, the Parents additionally requested counseling services be added to the Student's IEP. Regarding counseling services, the PWN⁷ provided to the Parents following the IEP meeting stated, "The weeks [of general education counseling services] missed will be made up. It was also discussed that qualifications are looked into for counseling to be a service listed in his next IEP. Parents requested that when we are back in the fall, in the classroom setting, [Student] receives FBA testing for a BIP."⁸
15. June 19, 2020 was the last day of the 2019-2020 school year.

2020-2021 School Year

16. The 2020-2021 school year began on September 4, 2020.
17. At the start of the 2020-2021 school year, the Student continued to be eligible for special education under the category hearing impairment. The Student was in fourth grade at a District elementary school, and his November 2019 IEP was in effect.
18. On September 25, 2020, in anticipation of the resumption of in-person special education evaluations, a CDHY school psychologist emailed the Parents and staff at the Student's school to schedule the Student's evaluation. According to the District's response to this complaint, "The evaluation was originally scheduled to begin on October 6; however, due to COVID-19 protocols around in-person testing of students at school locations, the evaluation had to be delayed...[assistant principal] worked with District and CDHY staff to complete the required steps...and on October 19, notified CDHY and the family that the in-person evaluation could proceed...The evaluation was subsequently scheduled for October 27 and November 3, 2020."
19. Also on September 25, 2020, the assistant principal emailed the CDHY psychologist and asked if they could add an assessment to determine if the Student required counseling services.

⁷ The PWN was dated June 9, 2020. It appears this date was in error, as the IEP meeting was held on June 12, 2020.

⁸ In its response, the District wrote that "During the Spring of 2020, the District paused in-person special education evaluations due to health and safety issues related to COVID-19. In June 2020, the District began planning to conduct some evaluations remotely. In June 2020, the District reached out to CDHY regarding commencing the evaluation and CDHY confirmed that they were not conducting any virtual evaluations because they believed remote evaluations invalidated their results."

20. On October 27 and November 2, 2020, CDHY completed its evaluation of the Student. As part of the evaluation, the Student was evaluated in the following areas: academic achievement (reading, math, writing), executive functioning⁹, and “speech language and ASL evaluation” (communication).

21. On November 17, 2020,¹⁰ the Student’s IEP team convened to develop his annual IEP. At that time, the CDHY evaluation report had not yet been provided to the IEP team. The Parents attended and participated in the meeting. At the IEP meeting, the IEP team identified the Student’s present levels of educational performance and noted that the Student had met some of his goals and made progress on others, including meeting two of his social/behavior goals around emotional regulation and taking breaks. At the meeting, the Parents again requested counseling services be added to the Student’s IEP. The Parents requested the Student have counseling in the IEP because the school counselor does not sign and accordingly, the Parent felt that the Student would not have equal access to school-based counseling and believed that using an interpreter would be a barrier. The PWN stated that:

The IEP team agrees [Student] has been exhibiting frustration since prior to the school closure. [Student] was recently evaluated by CDHY, and social/emotional was one of the areas assessed. At this time, there is not data to suggest that [Student] requires mental health counseling as an IEP service. He currently receives specially designed instruction in the area of social/behavior, and met his two IEP goals around emotional regulation and taking a break. An IEP amendment meeting can be held once the CDHY results are received to adjust the IEP based on data/recommendations in the report.

In its response, the District noted that the District had made and continued to make school-base counseling provided by a counselor fluent in ASL available to the Student as a service provided to all students with a hearing impairment.

⁹ The evaluation included a Behavior Rating Inventory of Executive Functioning, Second Edition (BRIEF-2), which was described as a “standardized assessment designed to assess executive functioning in the home and school environments.” The evaluation report explained that “Executive functions are a collection of processes that are responsible for guiding, directing, and managing behavior, particularly during active, novel problem-solving.” The BRIEF2 specifically measured the following aspects of executive functioning: 1) Inhibition; 2) Self-Monitoring; 3) Shifting; 4) Emotional Control; 5) Initiation; 6) Working Memory; 7) Planning/Organization; 8) Task-Monitoring; 9) and Organization of Materials. The evaluation additionally included a Behavior Rating Index (BRI), which “captures the child’s ability to regulate and monitor behavior effectively.” The evaluation concluded that the Student was rated very differently in the classroom versus his home environment, which was found to be a “common pattern,” as “School and home place very different demands on youth, particularly the on-going school requirements to be organized, keep up with the pace of the classroom, self-regulate, follow multiple step directions throughout the day, and be flexible.” According to the evaluation, the “results of the BRIEF-2 indicate a need for structure (written out to-do lists for tasks), pre-teaching to provide meaningful context, and support in planning how to complete a long-term assignment.”

¹⁰ The PWN is dated November 9, 2020. It appears this date was in error, as the IEP meeting was held on November 17, 2020.

At the IEP meeting, the IEP team developed an IEP for the Student that included the following specially designed instruction and related services:

- Social/behavior: 200 minutes per week in a *special education* setting;
- Communication: 150 minutes per week in a *special education* setting;
- Reading: 200 minutes per week in a *special education* setting;
- Written language: 250 minutes per week in a *special education* setting;
- Math: 300 minutes per week in a *special education* setting;
- Audiology services (as a related service): 60 minutes per month in a *general education* setting; and,
- Speech language pathology (as a related service): 90 minutes per month in a *general education* setting.

22. On December 18, 2020, the Student's IEP team met to review the CDHY evaluation and to update the Student's IEP. The CDHY evaluation found that the Student was friendly and engaging and made a good effort, but was easily distracted. It continued to recommend the Student receive specially designed instruction in reading comprehension, written expression, and mathematics. The evaluation also evaluated the Student's executive functioning skills as they impacted the Student's behavior and the Student's communication. The CDHY evaluation made multiple recommendations for accommodations and supports in the school environment, including those to support the Student in being successful in the area of social/behavior. As part of the recommendations, the evaluator wrote: "[Student] and his family may want to consider counseling to support [Student] individually and with his family to support his emotional health, his identi[t]y as a person with hearing issues." The report included recommendations for resources in the community where the family could seek counseling support. The IEP team considered the CDHY evaluation and discussed that the Student had been requiring fewer breaks and appeared to be more engaged in work than prior to the school closures. The IEP team declined to add counseling services to the IEP and instead determined that 200 minutes per week of specially designed instruction in social/behavior was appropriate to meet the Student's needs so that he could continue to make progress. The District documented this in a PWN, dated December 11, 2020.¹¹

23. On March 10, 2021, the Parent emailed the District to inquire if the CDHY counselor would be attending that week's counseling session. She added that the Student had attended the previous week's session and the counselor did not attend, and she had not received an email regarding her attendance. That same day, the Parent received an email from the counselor, explaining that the counselor had met with her team in January and February to discuss concerns regarding the Student and there had not been any solutions. She noted that she and the Student worked together for two months with "very little progress," and that she and the Student were "not a good fit." She added that the Student "has been resistant to work with me by being late, avoiding eye contact or the screen, responding to questions with one or two words, and in some instances, he was yelling at someone in the background." The counselor concluded her email with the following recommendation:

¹¹ The date on the PWN appears to be in error, as it is dated prior to the IEP meeting date.

[Student] would work well with someone who is hearing and a signer and has a profound understanding of DHH experiences. Counseling does not work if the student is resistant. Also, I'm a social emotional specialist who provide[s] school counseling support, not a mental health therapist. I specialize in personal identity and development and social emotional skills. What [Student] needs is outside of my scope. In the report, I recommend the school contact [private therapist], who is also hearing and signs. She works with families with DHH children. I believe she is the best person to help you and [Student] and will provide you with excellent support and resources at home.

24. On March 11, 2021, the Parent emailed the assistant principal and the special education teacher to ask if they were able to contact the private provider recommended by the CDHY counselor. She noted the Student's counseling session was scheduled for the following day and inquired how long the Student would be without counseling. The special education teacher responded that the District did not have the resources to continue counseling for the Student and that CDHY had "given due diligence to supporting [Student]." The special education teacher relayed that the Parents could reach out to other community resources, or the private counselor recommended by the CDHY counselor.
25. On March 11, 2021, the Parent relayed to the OSPI investigator her concerns that the District was requiring the family to seek private counseling services for the Student.

CONCLUSIONS

Counseling Services: The Parents alleged the District failed to appropriately consider their requests to add counseling services to the Student's individualized education program (IEP) from January 28, 2020 to January 27, 2021. In particular, the Parents alleged that the District did not follow procedures to evaluate the Student in all areas of known and suspected disability as it related to their request for counseling services, did not give full consideration of all documentation provided to the IEP team regarding the Student's need for counseling, and failed to implement counseling services in the Student's IEP.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs warrant a reevaluation, or if the parent or teacher requests a reevaluation. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive. A functional behavioral assessment (FBA) is a type of reevaluation of a student that assists IEP teams in determining whether a student is or continues to be a student with a disability. It focuses on identifying the function or purpose behind a student's behavior and assists IEP teams in determining the nature and extent of special education services a student needs and in developing a behavior intervention plan (BIP). As with other evaluations, to conduct an FBA, the district must obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district receives consent. During the school closures caused by the COVID-19 pandemic, OSPI required districts to continue to follow evaluation timelines to the maximum extent possible. Districts and parents were permitted to agree to extend the 35-school day timeline to complete

evaluations. While signed consent was not required, districts were required to document agreements to extend timelines, as well as the reason for the extension.

On November 18, 2019, in response to concerns regarding the Student's social/behavior needs, the Student's IEP team proposed the Student receive an FBA for the purpose of further evaluating the Student's behavior and to help the IEP team develop a BIP. On January 9, 2020, the Parents requested an independent educational evaluation (IEE) for the purpose of having the Center for Deaf and Hard of Hearing Youth (CDHY) complete the FBA. The District confirmed on February 27, 2020, that it would contract with CDHY to complete the FBA. The Parents were provided with a consent and release of records form to sign the same day. During the spring of 2020, the District also began contracting with CDHY to offer counseling services as a general education service to all students who were deaf or hard of hearing who it felt might benefit from educational counseling. The District contracted with the CDHY because the counselor assigned to the school was not fluent in ASL. During this time, the Parents began requesting that counseling services be added to the Student's IEP. The school administration and Student's IEP team explained to the Parents that the Student's current evaluation did not indicate the Student required counseling services to benefit from his specially designed instruction, and that he was receiving the counseling as a general education service. In response to the Parent's concerns, in September 2020, the District requested the CDHY evaluation additionally assess the Student's need for counseling.

Due to restrictions imposed by the COVID-19 pandemic impacting the ability of CDHY to complete the evaluation in-person, and concerns that the evaluation needed to be completed in-person to be accurate, the CDHY evaluation was not completed until November 2, 2020—which was significantly longer than 35 days. However, documentation showed the District reached out to CDHY as required, to inquire if parts of the evaluation could be completed remotely and made efforts to complete the assessments it could as quickly as possible once the Student was able to be assessed in-person. Also, while the District did not specifically request consent from the Parent to extend the evaluation, the District maintained communication with the Parent regarding the delay and the reason for it, which the Parent did not specifically oppose. OSPI notes that while technically the District did not complete the evaluation within the required 35 days and it is unclear if it obtained consent to extend the timeline, these violations did not impact the Student's ability to receive special education services and did not delay the provision of necessary services. Accordingly, OSPI finds that no corrective actions are warranted.

The CDHY evaluators were trained and knowledgeable, particularly with regard to students with hearing impairments, and took steps to make sure the Student received appropriate accommodations during the evaluation. The Parents do not appear to disagree that the evaluation was appropriate, but rather disagree with the IEP team's decision that the Student does not require counseling as a related service based on the evaluation report, which stated the Student and his family "may want to consider counseling to support [Student] individually as a person with hearing issues." The Parent opined that because the CDHY evaluation recommended the family may want to consider individual and family counseling that the District should provide the service and that the Parents should not be required to find a community provider. However, documentation

showed the IEP team appropriately considered the evaluation, as well as the Student's progress on IEP goals and other input from IEP team members. The team's proposal that the Student continue to receive specially designed instruction in social/behavior instead of counseling was based on student-specific factors, including that the Student had made progress on his IEP goals in social/behavior in response to specially designed instruction in the area of social/behavior, and that the Student's IEP included multiple strategies and accommodations, including those recommended by the CDHY evaluation, to help the Student be successful in the social/behavior area. The District provided the Parents resources so they could pursue clinical counseling for the Student outside of school should they wish to do so. The team then properly documented their decision, including the Parents' disagreement, in a prior written notice. An IEP team is not required to provide the exact service requested by a parent, but rather to evaluate the student's need for services and make a determination based on student-specific factors—which it did here through the CDHY evaluation. OSPI accordingly finds no violation.

Because the Student was not eligible for counseling services as a special education service during the time period at issue in this complaint, the District was also not obligated to provide the Student services in this area and therefore, did not violate any IDEA procedures regarding implementation of counseling services.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATIONS

The Parents appear to raise concerns that the school counselor assigned to the Student's school is not fluent in ASL, and that the Student would not have access to school-based counseling should he need it because the CDHY counselor has discontinued providing school-based services to the Student. For this reason, the Parents have continued to request counseling services through the IEP process, even though the IEP team has determined the Student does not require counseling as a related service. If the District is providing school-based counseling services to all general education students and believes the Student would benefit from counseling as a general education service, it needs to provide the Student equal access to these services. This, however, is not a special education issue under the IDEA and OSPI is accordingly unable to address it through the special education complaint process. If the Parents believe the Student is being discriminated against, Parents may file a complaint with the Federal Department of Education, Office for Civil Rights.

It is also noted that throughout the documentation, references to counseling services appeared in relation to the Parent's request for an FBA and concerns about the Student's behavior. There were no references to concerns about the Student's mental health or documentation that the

Parents were requesting an evaluation to specifically address concerns that the Student's mental health was impacting the Student's ability to benefit from special education services or preventing access to the general education setting. If the Parents are concerned that the Student is experiencing mental health issues that require additional considerations not addressed by evaluations for behavior, or if the Parents have new information about the Student's mental health that they feel the IEP team should be aware of, they are encouraged to request an IEP team meeting to discuss the Student's needs, including whether an additional evaluation is required.

Finally, while not an issue raised in this complaint, there were multiple errors with dates on the prior written notices. Specifically, the dates on the prior written notices all occurred prior to the IEP meetings they were referencing. While this appears to have been a harmless error as the Parents attended and participated in the meetings the PWNs were referencing, the District is encouraged to review this matter to ensure accuracy of records moving forward.

Dated this ____ day of March, 2021

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.)