

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-86

PROCEDURAL HISTORY

On November 21, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Burlington-Edison School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On November 28, 2017, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On December 19, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on December 20, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On December 29, 2017, OSPI received the Parent's reply. OSPI forwarded that reply to the District on January 2, 2018.

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

OVERVIEW

At the beginning of the 2017-2018 school year, the Student attended a District junior high school and was eligible to receive special education services under the category of specific learning disability. The Student's individualized education program (IEP) provided for specially designed instruction in the areas of reading and written expression. In response to the Parent's concerns about the Student's reading progress and the classroom structure, the District changed some of the Student's classes in which the Student was receiving specially designed instruction. Some of the changes led to the Student not receiving all of the special education services. In October 2017, the District completed a triennial reevaluation of the Student and determined the Student was no longer eligible for special education services. The Parent alleged that the District did not follow evaluation and eligibility procedures to determine the Student ineligible. The Parent also alleged that the District failed to respond to her request for the Barton reading program and her concern about the structure of the classroom and its impact on the Student. The District denied the allegations regarding the evaluation and eligibility determination, the Parent's request for the Barton reading program, and the failure to address the classroom structure. The District denied, in part, the allegation regarding the implementation of reading services.

ISSUES

1. Did the District follow procedures for determining that the Student no longer qualified for special education services?

2. Did the District follow procedures for responding to the Parent's request for the Barton Reading Program and concern about the classroom structure?
3. Did the District implement the Student's individualized education program (IEP) regarding reading services during the 2017-2018 school year?

LEGAL STANDARDS

Child Find: Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade. 34 CFR §300.111; WAC 392-172A-02040(2).

Evaluation before Change in Eligibility: Districts must evaluate a student eligible for special education before determining that the student is no longer eligible for special education services, and must include the parent in making that determination. 34 CFR §§300.305(e) and 300.304; WACs 392-172A-02000(2)(a) and 392-172A-03030(1). Districts must follow evaluation procedures as outlined in WACs 392-172A-03020 through 392-172A-03080. 34 CFR §300.305; WAC 392-172A-03030(1).

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(b); WAC 392-172A-03015.

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

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 carefully considered. 34 CFR §300.305; 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.

Determination of eligibility: (1) Upon completion of the administration of assessments and other evaluation measures: (a) A group of qualified professionals and the parent of the student determine whether the student is eligible for special education and the educational needs of the student; and (b) The school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. A student must not be determined to be eligible for special education services if the determinant factor is: (i) Lack of appropriate instruction in reading, based upon the state's grade level standards; (ii) Lack of appropriate instruction in math; or (iii) Limited English proficiency; and if the student does not otherwise meet the eligibility criteria including presence of a disability, adverse educational impact and need for specially designed instruction. In interpreting evaluation data for the purpose of determining eligibility for special education services, each school district must: Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the student's physical condition, social or cultural background, and adaptive behavior; and ensure that information obtained from all of these sources is documented and carefully considered. If a determination is made that a student is eligible for special education, an IEP must be developed for the student in accordance with WAC 392-172A-03090 through 392-172A-03135. 34 CFR §300.306; WAC 392-172A-03040.

Specific Learning Disability-Definition: A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia, that adversely affects a student's educational performance. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage. 34 CFR §300.8; WAC 392-172A-01035(k).

District 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: A severe discrepancy between intellectual ability and achievement; or a process based on the student's response to scientific, research-based

intervention; or 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. 34 CFR §300.307; WAC 392-172A-03045.

Specific Learning Disability—Determination: The group described in WAC 392-172A-03050 may determine that a student has a specific learning disability if the student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas: oral expression, listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; and mathematics problem solving. 34 CFR §300.309; WAC 392-172A-03055.

Method for documenting severe discrepancy: (1) 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. Where the evaluation results do not appear to accurately represent the student's intellectual ability or where the discrepancy between the student's intellectual ability and academic achievement does not appear to be accurate upon application of the discrepancy tables, the evaluation group, described in WAC 392-172A-03050, may apply professional judgment in order to determine the presence of a specific learning disability. Data obtained from formal assessments, reviewing of existing data, assessments of student progress, observation of the student, and information gathered from all other evaluation processes for students being identified for a specific learning disability must be used when applying professional judgment to determine if a severe discrepancy exists. When applying professional judgment, the group shall document in a written narrative an explanation as to why the student has a severe discrepancy, including a description of all data used to make the determination through the use of professional judgment.

IEP Revision: A student's IEP must be reviewed and revised periodically, but not less than annually, to address: any lack of expected progress toward annual goals or in the general education curriculum; the results of any reevaluations; information about the student provided to, or by, the parents; the student's anticipated needs; or any other matters. 34 CFR §300.324(b); WAC 392-172A-03110(3).

IEP Amendments: After the annual IEP team meeting for a school year, the parent of a student eligible for special education and the school district may agree not to convene an IEP team meeting for the purposes of making changes to the IEP, and instead may develop a written document to amend or modify the student's current IEP. If changes are made to the student's IEP the school district must ensure that the student's IEP team is informed of those changes and that other providers responsible for implementing the IEP are informed of any changes that affect

their responsibility to the student. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or as provided in (c) of this subsection, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated. 34 CFR §300.324; WAC 392-172A-03110.

Decisions about Educational Methodology: As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. In the Matter of Dieringer School District, 114 LRP 17119, OSPI Cause No. 2014-SE-0005X (WA SEA March 14, 2014). So long as a district offers a program that can meet the student's individual needs and allows the student to make educational progress, it will meet its obligations under the IDEA. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 208, 102 S. Ct. 3034, 3052, 73 L.Ed.2d 690 (1982); *D.T. and D.T. ex rel. N.T. v. Seattle Sch. Dist.*, 57 IDELR 249 (W.D. Wash. 2011).

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 who is eligible to receive special education services. 34 CFR § 300.323(a); WAC 392-172A-03105(1). 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. 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.

FINDINGS OF FACT

2016-2017 School Year

1. During the 2016-2017 school, the Student attended a District junior high school and was eligible to receive services under the category of specific learning disability.
2. On November 4, 2016, the Student's individualized education program (IEP) team, including the Parent, met to develop the Student's annual IEP. Both the Parent and District staff agreed that the Student was hard working but had difficulties in reading and written expression that required specially designed instruction. The November 2016 IEP stated:
...On her last reading sample, [Student] read 91 words correctly at the 6th grade reading level with 97% accuracy. This is a lower number of words read for [Student] than last year but it still shows growth because the words are more difficult and she was reading at grade level. Last year she was reading at the 4th grade level.

When given an instructional level text and asked to answer questions about what she read, [Student] was able to answer with 58%. This passage was more difficult than

previous passages and [Student] had some struggles with it. Finding the main idea and other questions where she had to make inferences were difficult for her...

The IEP stated the Student was a “strong” writer but lacked confidence. The Student had improved in spelling, but continued to make some errors. She was able to write on one topic for ten minutes using complete sentences, but had difficulty separating her writing into paragraphs. She also had difficulty with capitalizations.

The November 2016 IEP provided for the following annual goals in the area of reading:

- By 11/3/2017, when given an instructional level passage assessment, [Student] will read the passage and answer questions improving reading comprehension from answering with 58% to answering 75% as measured by curriculum based measurements.
- By 11/3/2017, when given an instructional level passage, [Student] will read a passage and make inferences about the passage improving inferencing abilities from 58% to answering with 80% as measured by teacher-collected data.
- By 11/3/2017, when given an instructional passage, [Student] will read the passage quickly and accurately improving oral reading fluency from reading 91 correct words per minute to reading 110 correct words per minute as measured by teacher-collected data and curriculum based assessments.

The IEP provided for the following annual goals in the area of writing:

- By 11/3/2017, when given a writing prompt, [Student] will capitalize all the proper nouns improving sentence structure from capitalizing with 33% accuracy to capitalizing with 70% accuracy as measured by teacher-collected data.
- By 11/3/2017, when given a writing prompt, [Student] will write a 5 paragraph essay with an introduction, body paragraphs, and concluding paragraph improving writing proficiency from writing 5 paragraphs with teacher support to writing 4 paragraphs independently as measured by teacher-collected data.
- By 11/3/2017, when given a writing prompt, [Student] will separate her thoughts into multiple paragraphs improving writing proficiency from writing one continuous paragraph to writing multiple paragraphs as measured by teacher-collected data.

The November 2016 IEP also provided for the following accommodations:

- Alternative locations for testing
- Copies of notes or outlines, graphics provided
- Difficult work may be completed in alternative location
- Extended time to complete assignments/tests when arranged with teacher and when effort shown
- Extended time to complete tests when arranged with teacher and when effort shown
- Speech-to-text
- Test items read

Additionally, the IEP provided for specially designed instruction in the area of writing for 30 minutes three times a week in the regular education classroom and reading 30 minutes four times a week in the special education resource room.

3. During the 2016-2017 school year, the District provided progress reporting regarding the Student's progress toward her reading goals. The progress reporting indicated:
- Improving reading comprehension:
 - November 4, 2017 (baseline) – 58%
 - March 17, 2017 – 75%
 - June 9, 2017 – 91%
 - Improve inferencing abilities:
 - November 4, 2017 (baseline) – 58%
 - March 17, 2017 – 76%
 - June 9, 2017 – 91%
 - Improve oral reading fluency:
 - November 4, 2017 (baseline) – 91 words per minute
 - March 17, 2017 – 121 words per minute
 - June 9, 2017 – 109 words per minute. The progress report stated: "On the last reading check [Student] read 109 words. Slightly less than the last check but still making great progress. [Student] has become a very fluent reader..."

The District also provided the following progress reporting regarding the Student's writing goals:

- Improve sentence structure from capitalizing:
 - November 4, 2017 (baseline) – 33% accuracy
 - March 17, 2017 – 40% accuracy
 - June 9, 2017 – 80% accuracy
 - Improve writing proficiency:
 - November 4, 2017 (baseline) – writing five paragraphs with teacher support
 - March 17, 2017 – writing three paragraphs independently
 - June 9, 2017 – Student is making progress. "She is able to write multiple paragraphs but still needs teacher editing..."
 - Improve writing proficiency from one long paragraph to multiple paragraphs:
 - November 4, 2017 (baseline) – one paragraph
 - March 17, 2017 – Student knows to separate paragraphs but will not independently
 - June 9, 2017 – when given a prompt in class she is able to write in multiple paragraphs with little difficulty
4. The Student's grades in reading during the 2016-2017 school year were as follows:
- First trimester – "B"
 - Demonstrates effort - Meets standard
 - Reads fluently at grade level – Meets standard
 - Reads for meaning to make connections and apply new understand – Meets Standard
 - Second trimester – "B+"
 - Demonstrates effort - Meets standard
 - Reads fluently at grade level – Skill not assessed
 - Reads for meaning to make connections and apply new understand – Exceed Standard
 - Third trimester – "A-"
 - Demonstrates effort - Meets standard
 - Reads fluently at grade level – Skill not assessed

- Reads for meaning to make connections and apply new understand – Exceed Standard

5. The Student's grades in writing during the 2016-2017 school year were as follows:

- First trimester – “B+”
 - Demonstrates effort - Meets standard
 - Ideas, organization, style – Meets standard
 - Conventions – Meets Standard
 - Demonstrates publishing skills - Meets Standard
- Second trimester – “B+”
 - Demonstrates effort - Exceeds standard
 - Ideas, organization, style – Meets standard
 - Conventions – Exceeds Standard
 - Demonstrates publishing skills - Exceeds Standard
- Third trimester – “A-”
 - Demonstrates effort - Exceeds standard
 - Ideas, organization, style – Exceeds standard
 - Conventions – Meets Standard
 - Demonstrates publishing skills - Meets Standard

6. On April 13, 2017, the Parent emailed one of the Student's general education teachers and stated she was concerned about the Student being “pulled out of class for extra help, as specified in her IEP.” The Parent indicated that the Student missed instruction, details, and assignments while out of the general education classroom and receiving services in the special education resource room. In response, the general education teacher stated that the Student was not penalized for “pull-out or other” and that “the idea is that what she misses with me, she gets in her small group.”

Summer 2017

7. According to the Parent's complaint, the Parent was tutoring the Student in reading over the summer. The complaint stated that the Parent informed the District special education director of the assistance the Parent provided to the Student. The complaint stated:

...I informed him I help my daughter at home daily with homework and that we've contacted teachers for extra time on assignments. When my daughter can't finish assignments in class, she brings them home and I read articles to her so she can concentrate on comprehension and not get hung up on attempting to decode words. [Special education director's] response was to say that her teachers insist there has been improvement since last year. I restated that I tutored her over the summer using Barton, so that's why she improved since last year.

2017-2018 School Year

8. On August 30, 2017, the District's 2017-2018 school year began. At that time, the Student's November 2016 IEP continued to be in place.

9. The Student's class schedule for the first semester of the 2017-2018 school year was as follows, with the minutes per class that were able to be determined:
- Language Arts (45 minutes)
 - Washington State History
 - Science (55 minutes)
 - Mathematics (55 minutes)
 - Health (50 minutes)
 - Digttools (50 minutes)
 - Local and Global Issues
 - Fitness
 - Advisory Mixed (35 minutes)

According to the District's response to this complaint, the Student was scheduled to receive specially designed instruction in reading in a special education advisory class and was pulled out during her scheduled general education sciences extension class to receive additional specially designed instruction in reading. The Student's schedule reflects more time receiving specially designed instruction in reading than provided in the IEP. Accordingly, the District acknowledged that the Student received more reading services than provided in the IEP. According to the Parent, the advisory class was a homework completion class where no specially designed instruction was provided.

10. On September 5, 2017, the District proposed conducting a three-year reevaluation to determine if the Student continued to be eligible for special education services, the need for special education and related services, and the appropriateness of the services being provided. The notice of evaluation stated that the reevaluation would consist of assessments in the areas of medical-physical, student observation, academic, general education teacher report, and a review of the existing data.
11. On September 6, 2017, the Parent consented to the reevaluation.
12. On September 12, 2017, the Parent emailed the school principal, requesting that the Student be placed in a different special education "Advisory Class." The Parent also expressed concern about the Student being taken out of some of her general education classes.
13. On September 13, 2017, according to the District, the school principal consulted with the Student's special education teacher. Also that day, the principal emailed the Parent that the Student would be transferred to a general education language arts class for her advisory class until the end of the first quarter.
14. Regarding the implementation of specially designed instruction in the general education language arts class, the District's response to the complaint stated the following:
[Special education teacher] attempted to provide both a direct prescriptive reading curriculum and provide opportunities to adapt the delivery of instruction with the general education Language Arts course. Unfortunately, [Student] was not responsive to the instruction within the general education environment. Furthermore, [Parent's] decision to pull [Student] from the special education advisory class, and her subsequent resistance to an alternative pullout time, further reduced options for the provision of services.
15. On September 19, 2017, the Parent emailed the Student's special education teacher. The email stated:

I've thought about the conversation we had a couple of days ago, as far as taking [Student] out of Science Extensions for 10 minutes for some reading practice. I am going to have to say no for now, simply because she'd be missing the first 10-15 minutes of class and that makes it too hard for her to re-enter class and try to figure out the instructions and assignments for the day. I'm not denying service this year. I/we just need the services to make sense, and improve her overall progress, and not to interfere and cause delay in other areas. This is just something that will have to be discussed in her IEP meeting."

16. On September 23, 2017, the Parent emailed the school's two special education teachers, asking if it was possible to "drop [Student] from Science Extension [Local and Global Issues] and [that] she receive Barton tutoring and 6-minute solutions during that time frame instead." The Parent's reasons were as follows:

- "She needs an alternative to meet her IEP minute requirements. Taking her out of Learning Strategies for advisory is working for her and I think it will continue to work for her. [Teacher] is organized and operates smoothly."
- "With the load of students that need attention in Learning Strategies, I don't think it would be beneficial and effective to put [Student] back in..."
- "[Student is a struggling reader, I thought I would do Barton after school, but [Student] is enjoying being in sports this year, so I'm letting her. Trying to do Barton at 7 o'clock after she is exhausted isn't the best strategy."
- "I am requesting Barton for these reasons: [Student] did improve her MAPS reading score over the summer, from 196 to a 205. I think (she did Lessons 3 and 4 in Barton over the summer). That shows me Barton was more effective than Blitz. I looked into why that might be, and Blitz seems to be faster-paced with less repetition and review. She needs repetition and review."
- "So far, in [general education teacher's] class, which is supposed to count as [Student's] IEP minutes, [special education teacher] hasn't offered to help [Student] once. There's already a barrier between those two, so it probably wouldn't make a difference at this point, anyway. I'm pretty sure I caused the barrier since I've spoken out about a few things, but I can't/won't keep fighting poor teachers every year for [Student]."
- "If we drop her completely from a non-core class and substitute in something else, she doesn't have to worry about what she's missing when she's gone and doing extra homework because she was pulled out of class."
- "She needs more language-based tutoring for reading, and now's the time to do it, before high school."

17. On September 25, 2017, one of the special education teachers replied to the Parent. The teacher stated:

Thanks for checking in. I double checked with [other special education teacher] and she also received your email. We are in the process of beginning testing for [Student] and gathering information. Please know that IA (instructional assistant) schedules are always flexible and are changeable throughout the school year to fit our students' needs. Once we have more information we will decide how to best meet her needs.

18. On October 24, 2017, the school psychologist, the Student's special education teacher, a general education teacher, and the Parent attended the evaluation results meeting. The evaluation results were as follows:

- **Medical-Physical** – The Student passed all school vision and hearing screenings. Developmental milestones were normal. The Parents reported that the Student has always had difficulty following directions, paying attention, and remembering things.
- **General Education Teacher** – The Student was quiet and a hard worker who was always on task. She was collaborative taking part in class discussions and provided relevant responses. Her grades were “A’s” and “B’s.”
- **Cognitive** –Results from the Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV), which the Student completed in October 2014 were used. No new cognitive testing was completed. The Student’s full scale score was 105, the verbal comprehension score was 98 and the perceptual reasoning score was 117. The results stated:

...Her overall performance is classified in the average range, however, due to statistically significant differences between composite index scores, [Student’s] cognitive performance is best characterized by considering individual index composites separately, rather than her full scale IQ score.

Based on composite index scores, [Student] exhibited a relative strength on tasks related to non-verbal, or perceptual reasoning abilities. [Student] was able to organize and categorize abstract visual information efficiently and quickly. She displayed strong visual planning skills. Verbal comprehension, working memory and processing speed domains all fell within the average range when [Student’s scores] were compared to those of the same age peers. No areas of cognitive processing stood out as a significant weakness.

- **Academic** – The WIAT-III results dated September 28, 2017 indicated that the Student made significant growth in writing. The academic results stated the following:

Not only was she writing in complete sentences, these sentences were more complex, with characteristics you would expect from a seventh grader. She continues to have difficulties in spelling but the errors did not distract from the content. Reading comprehension is a strength but struggles with decoding.

While [Student’s] score on the Spelling and Oral Reading Fluency subtests fell slightly lower than her overall average on the WIAT–III [Wechsler Individual Achievement Test, 3rd Education], [Student’s] Reading Comprehension subtest performance, Basic Reading and Reading Comprehension and Reading Fluency performance all fall within the expected range when academic testing scores are compared to her estimated ability based on cognitive testing with the WISC-IV.

The following were the results of the WIAT – III in reading and writing:

- Total Reading Composite – Standard score: 86
- Reading Comprehension Subtest: 103
- Word Reading Subtest: 89
- Pseudoword Subtest: 87
- Oral Reading Fluency: 81
- Basic Reading Composite: 88
- Reading Comprehension & Fluency Composite: 89
- Written Expression Composite: 105
- Sentence Composition Subtest: 104
- Essay Composition Subtest: 131

- Spelling Subtest: 79

- **Student Observation** – The results stated that during the observation by the school psychologist, the Student was attentive, followed directions, and displayed no behavioral concerns.

19. Also at the October 24, 2017 evaluation results meeting, the school psychologist, middle school teacher, and special teacher completed an eligibility summary form regarding the Student. The District determined that the Student's continuing eligibility for special education services under the category of specific learning disability would be based on the severe discrepancy method. Based on the severe discrepancy method, the District found that the Student no longer met the eligibility requirements for a specific learning disability in reading and written expression. The District's eligibility summary form stated that the Student's reading and written expression were in the average range when compared to others her age, as well as her grades. The Student's teachers reported that she had strong study skills and "worked hard independently to consistently achieve good performance at school." The evaluation summary stated the following reason for determining the Student ineligible:

[Student] no longer demonstrates program eligibility or need for specially designed instruction under any disability classification at this time. [Student] no longer exhibits a significant discrepancy between her estimated cognitive ability as measured by the previously administered WISC-IV and her current academic performance on state determined academic subtests of the WIAT-III in the areas of reading, writing and math.

The Parent did not sign the eligibility summary form indicating whether she agreed or disagreed with the decision.

20. Also on October 24, 2017, the District issued a prior written notice, proposing to exit the Student from special education services. The proposal was based on the reevaluation results, teacher report, parent report, grades, record review, and classroom observations. The notice stated:

Evaluation results, teacher reports and [Student's] grades do not indicate that she is needing specialized support for academics at this time. It is the impression of the Evaluation Team, based on parent reports, that [Student] can benefit from increased access to the general education classroom setting curriculum, rather than individualized services at this time.

21. Later on October 24, 2017, the Parent wrote a letter to the school principal, stating she disagreed with the District's decision that the Student was no longer eligible for special education services. The letter stated, in part: "I am writing to request an independent educational evaluation at public expense for the following reason: I disagree with the evaluation results because my daughter has dyslexia and demonstrates reading and writing skills far below her peers and grade level."

22. On the same day, the Parent wrote a second letter to the school principal, stating she disagreed with the District's October 2017 reevaluation and requesting that the District pay

for an independent educational evaluation (IEE) of the Student. The Parent's letter stated the following list of concerns:

- "I am concerned that since I have denied some hindering services for my child, that we are being retaliated against, therefore, my child is receiving no services..."
- "[Student's] services seemed like they were predetermined...I know [special education teacher] decided last year that [Student] would not receive any phonemic-based instruction, and placing her a group classes would fulfill her IEP requirements. We tried that plan, it did not work. I expressed my concerns and suggested a better plan."
- "[School] owns a copy of the Barton Reading System and it has not been used on my child to improve her reading and spelling abilities except while under the care of [special education teacher] in 4th grade. I have requested to [special education teacher] that [Student] receive Barton tutoring for the third year in a row. I do not plan to allow any more substitutions for Barton since it has been proven to be the most effective program for those with dyslexia. She has failed to show progress using the other program that [special education teacher] used last year, in 6th grade, and partially in 5th grade (Blitz)..."
- "Students with behavior challenges interfere with my child's education and her right to a Free Appropriate Public Education (FAPE). My child is typically paired with other students that have IEP's with behavior problems because she is cooperative, respectful, and quiet, and it fulfills her IEP minute requirements. Since 5th grade, we have requested this not happen since it is distracting to my child and disrupts her education..."

23. On October 26, 2017, the District special education director sent a letter to the Parent that stated the District approved the Parent's request for an IEE, and included a list of potential evaluators. The letter stated, in part:

In accordance to our conversation today, I have shared with special education staff at [school] that you have requested that we not provide [Student] special education services until the IEE is completed. Should the IEE provide a basis for the school evaluation team to continue with special education eligibility, the IEP team will convene and discuss the duration and location of the specially designed instruction necessary for [Student] to meet her IEP goals.

24. On October 27, 2017, the school year's first quarter ended. The Student's grades were as follows:

- Language Arts – "B"
- Washington State History – "B"
- Science – "B"
- Mathematics – "A"
- Digttools – "P"
- Health – "P"
- Fitness – "A"
- Local and Global Issues – "P"
- Advisory – "P"

25. According to the District, no first quarter special education progress report for the 2017-2018 school year was provided to the Parent because the Student was no longer eligible to receive special education services.

26. On November 1, 2017, the Parent replied in a letter to the special education director and stated that she wished to rescind her request for an IEE. She also stated that she decided to "accept the results that my child will no longer have an Individualized Education Plan at [school]." The Parent included general recommendations about implementing special

education services at the school, including addressing the classroom structure of the special education advisory class.

27. On November 21, 2017, OSPI received the Parent's citizen complaint.

CONCLUSIONS

Issue 1: Procedures for Evaluating and Determining Eligibility for Specific Learning Disability –

In her complaint, the Parent disputed that the Student was no longer eligible for special education. Districts must evaluate a student eligible for special education before determining that the student is no longer eligible for special education services, and must include the parent in making that determination. An evaluation must be conducted by a group of qualified professionals that use a variety of assessment tools and strategies to collect relevant functional, developmental, and academic information about the student, including information from the parent to determine eligibility. The district must ensure that no single measure or assessment is used as the sole criteria for determining eligibility. The determination of eligibility must draw on information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, and other sources of information. The information from each of these sources must be documented and carefully considered. 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. These procedures may include the use of a severe discrepancy between intellectual ability and achievement. The evaluation group may determine that a student has a specific learning disability if the student does not achieve adequately for the student's age or meet the state's grade level standards when provided with learning experiences and instruction appropriate for the student's age in one or more of the following areas: oral expression; listening comprehension; written expression; basic reading skill; reading fluency skills; reading comprehension; mathematics calculation; and mathematics problem solving.

Here, the documentation in this complaint showed that a group of qualified professionals used a variety of assessments to collect information about the Student, including teacher and parent input. The documentation showed that the evaluation group used the evaluation results to determine that there was not a severe discrepancy between the Student's intellectual ability and achievement in reading or written expression. However, the documentation was unclear regarding what achievement scores were used to determine whether there was not a discrepancy in one or more of the eight areas of a specific learning disability. The District's statements pertaining to any lack of discrepancy in the evaluation and eligibility were conclusory and lacked the specific data to support their conclusions.

Additionally, there was no documentation to show that the evaluation group documented and carefully considered any potential impact that the Parent's tutoring had on the Student's performance and need for specially designed instruction.¹ While there was no testing method that could discount the impact of the tutoring, the evaluation group should have used their

¹ OSEP Letter to Lillie/Felton (April 5, 1995)

professional judgement and explained whether the Student's educational achievement reflected service augmentation and what the Student's achievement would be without such help. The evaluation team also failed to reconcile that a student can continue to be eligible for special education services even though the student has not failed or been retained and is advancing from grade to grade. In a situation where a student is advancing grade to grade, the evaluation group must make an individual determination whether educational advancement was an outcome of the specially designed instruction that was provided to the student or that specially designed instruction was no longer required to sustain advancement.

It must be noted that this finding does not necessarily mean that the Student continues to be eligible for special education services. The District will be required to reevaluate the Student, even if only using existing data, and again determine eligibility following the required procedures by clarifying the discrepancy used, documenting and carefully considering parent input and parent tutoring, and providing a sufficient explanation of the impact of terminating specially designed instruction on the Student's performance.

Issue 2: Procedures for Considering the Parent's Request for Barton Reading and Classroom Concerns – The complaint alleged that the District failed to consider the Parent's request that the District use the Barton reading program with the Student. According to the District, the District waited for the evaluation results before convening an IEP meeting to address the Parent's concerns. As a general rule, parents or students do not have the right to make decisions about methodology and educational philosophy. However, the district's discretion in selecting methodology does not relieve it of its obligation to at least consider the parents' recommended methodology. Here, the documentation showed that the Parent made requests to the District for the Student to be instructed using the Barton reading program because the Parent did not believe the Student was progressing satisfactorily in her reading.

The Parent may provide input to the IEP team regarding their preference for a specific methodology, but unless the methodology was required for the Student to receive a free appropriate public education, methodology was at the discretion of the District.

The Parent also expressed concern about the special education advisory classroom structure and its impact on the Student. The District's documentation shows the District responded to the Parent's concerns by removing the Student from her special education advisory classroom, and placing her in a general education advisory class, which was inconsistent with the Student's IEP. Changes to the amount and location of a student's special education services must be made by the IEP team, which can occur by either holding a meeting or amending a student's IEP without holding a meeting, if the district and the parent agree. Here, the District failed to either hold a meeting to address the concerns or seek agreement to amend the Student's IEP without holding a meeting.

Issue 3: IEP Implementation – The complaint alleged that the District failed to provide the Student with specially designed instruction in the area of reading consistent with her IEP. The school district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. Here, the Student's November 4, 2016 IEP provided for specially

designed instruction in reading 30 minutes four times a week in the special education classroom. Based on the documentation in this complaint, at the beginning the 2017-2018 school year, the Student was assigned to a special education advisory class, where she was to receive specially designed instruction in reading, and was also scheduled to receive reading instruction in a special education setting during part of the time her general education science class met. However, two weeks into the school year, the Parent requested that the Student be assigned to another advisory class and the District agreed. The District stated in its response to this complaint that in trying to accommodate the Parent's request to move the Student to another advisory class, the District was unable to provide all the specially designed instruction in reading required by the IEP, because the Student was no longer in a special education class. The District provided no documentation to indicate the amount of reading services that were provided to the Student after she was removed from her special education advisory class. From August 30, 2017 to October 24, 2017, the date of the eligibility determination, the Student should have received approximately 18 hours of reading services. The documentation indicated that some services were provided; the District provided worksheets that were used in the Student's instruction. The Student's first quarter grades of the 2017-2018 school year also indicated progress. Considering that more intensive instruction can be provided through 1:1 instruction rather than in a classroom or group setting, the District will provide the Student with 10 of compensatory services in reading.

CORRECTIVE ACTIONS

By or before **February 15, 2018, February 22, 2018, March 16, 2018, March 30, 2018, April 20, 2018, June 29, 2018, and July 6, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

1. By **February 15, 2018**, the District will conduct an expedited reevaluation of the Student with the consent of the Parent. The IEP team and other qualified professionals will review existing data to determine if additional assessments are required. Once the reevaluation is completed, the evaluation group will determine eligibility in reading. By **February 22, 2018**, the District will provide OSPI with documentation of the evaluation and eligibility determination. *If the Student is eligible*, the IEP team must convene and develop an IEP by **March 9, 2018**. The District will provide OSPI with documentation of the IEP and accompanying notices by **March 16, 2018**.
2. By **March 9, 2018**, *if the Student is eligible*, the District, the special education reading teacher, and the Parent will develop a schedule to provide the Student with 10 hours of compensatory services in the area of reading based on the failure to provide reading services. The services will be provided outside of the District's regular school day. The services must be provided by a certificated special education teacher. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District with at least 24 hours' notice of the absence, the District does not need to reschedule. The services must be completed no later

than **April 27, 2018**. The District will provide OSPI with documentation of the schedule by **March 16, 2018**.

By **April 20, 2018** and **June 29, 2018**, the District shall provide OSPI with documentation that the compensatory services have been completed. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled by the District or missed by the Student.

The District must either provide the transportation necessary for the Student to access these services, or must reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must reimburse the Parent for round trip mileage at the District's privately owned vehicle rate. The District must provide OSPI with documentation by **July 6, 2018**.

If the Student is not eligible for special education, no further action is required regarding the Student.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to the Student's evaluation group, the Student's special education teachers, and the school principal, including the IEP representative of the District. The guidance will address the calculation of severe discrepancy; consideration of service augmentation; and addressing grades and progress from grade to grade. The guidance will also address the procedures for amending a student's IEP and implementing an IEP. The guidance will include examples and steps to ensure that the District is in compliance and will maintain compliance.

By **February 15, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by February 28, 2018 and provide additional dates for review, if needed. The District will provide OSPI with documentation showing it provided all necessary staff with the written guidance by **March 30, 2018**. This will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

Dated this ____ day of January, 2018



Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
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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.)