

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-51

PROCEDURAL HISTORY

On May 4, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the North Thurston School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On May 5, 2022, 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 May 20, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply.

On May 25, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 26, 2022.

On May 24, 31, and June 8, 2022, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 8, 2022.

On June 15, 2022, OSPI received additional information from the Parent. OSPI forwarded the information to the District on June 16, 2022.

On June 16, 2022, OSPI received additional information from the District. OSPI forwarded the information to the Parent on June 16, 2022.

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 May 5, 2021. 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 follow procedures when evaluating the Student and determining eligibility for special education in May 2021?

LEGAL STANDARDS

Transfer Students Who Transfer from an Out-of-State School District: If a student eligible for special education transfers from a school district located in another state to a school district in

Washington State and has an individualized education program (IEP) in effect for the current school year, the new school district, in consultation with the student's parents, must provide the student with a free appropriate public education (FAPE) including services comparable to those provided in the IEP from the prior serving district, until the district: conducts an evaluation to determine if the student is eligible for special education services in this state, if the district believes an evaluation is necessary to determine eligibility under Washington state standards; and, develops, adopts, and implements a new IEP. 34 CFR §300.323(f); WAC 392-172A-03105(5). If the school district evaluates the student, the evaluation must be in accordance with WACs 392-172A-03005 through 392-172A-03040. "Comparable services" means services that are similar or equivalent to those described in the IEP from the previous district, as determined by the student's new district. Individuals with Disabilities Education Act (IDEA), 71 Fed. Reg. 46,681 (August 14, 2006) (comment to 34 CFR §300.323).

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

The evaluation must comply with the IDEA's procedural requirements. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he or she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

Evaluation/Reevaluation Standards: No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation

materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

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

Child with a Disability: Child with a disability or as used in this chapter, a student eligible for special education services means a student who has been evaluated and determined to need special education services because of having a disability in one of the following eligibility categories: Intellectual disability, deafness (including hard of hearing), a speech or language impairment, a visual impairment (including blindness), an emotional/behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deafblindness, multiple disabilities, or for students, three through nine, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services. WAC 392-172A-01035(1)(a).

Autism: Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional/behavioral disability. WAC 392-172A-01035(1)(a)(i).

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. If the evaluation results in a determination that the student is eligible for special education and appropriate related services, the district must then conduct an IEP meeting to develop an appropriate IEP. A district must provide a copy of the evaluation report and documentation of determination of eligibility to the parents, and at no cost to the parents. 34 CFR §300.306; WAC 392-172A-03040.

Students' Rights to FAPE: A FAPE is available to any student determined eligible for special education services even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. WAC 392-172A-02000(1).

FINDINGS OF FACT

Background: 2019–2020 School Year

1. During the 2019–2020 school year, the Student was a fourth grader who attended an elementary school in a district in another state. The Student was eligible for special education services under the category of autism.
2. In November 2019, the Student was reevaluated in adaptive behavior, phonological processing, visual-motor integration, communication, math, reading, and written language. The evaluation summary stated, in part:
 - Assessment of estimated learning ability, based on alternative means, showed that [Student]'s learning potential is in the average range.

- Assessment of academic achievement showed [Student]'s academic skills in reading and math skills fell in the average range. [Student]'s writing skills fell in the low average range.
 - Assessment of communication ability showed based on examiner observations and review of previous SLP (speech/language pathologist) testing that [Student] does not exhibit significant speech or language delays.
 - Assessment of social-emotional and adaptive skills showed [Student] does exhibit some social-emotional and adaptive deficits, but not significantly impacting his education at this time.
3. On November 5, 2020, the district developed a new individualized education program (IEP) for the Student. The IEP provided annual goals in the areas of written expression and math. The IEP provided "specialized academic instruction" for 1,305 minutes per week in a "separate classroom."

The IEP also included accommodations, such as text-to-speech, number table, separate setting (most beneficial time, special lighting, adaptive furniture), and simplified test directions.

4. On February 9, 2021, the district amended the Student's IEP. Special education services were changed to a total of 240 minutes of week for math and English language arts in the general education classroom, along with 1,305 minutes a week of special education instruction in a "separate classroom." The IEP stated the Student made good progress towards the annual goals and was reading at the fourth grade level.

2020–2021 School Year

5. On March 2, 2021, the Student enrolled in the District.
6. On March 9, 2021, the District conducted a "transfer review" for the Student. The review indicated the Student did not have a "formal diagnosis" of autism. The review stated the following, in part:

[Student's] evaluation does not indicate specific areas of specially designed instruction. It indicates that he should continue to receive special education under the category of AUT (autism). The specific areas are outlined in the IEP. The IEP recommends SDI (specially designed instruction) in English language arts (focusing on writing) and math. Equivalent services in the [District] are as follows: writing and math.

At the time of [Student's] annual IEP review on 11/5/2020, [Student] was placed in the Mild/Moderate SDC (special day class) self-contained classroom. An IEP amendment was conducted on 2/9/2021 that outlined a transition from the Mild/Moderate SDC classroom to the general education setting with RSP (related service personnel) support. [Student's] minutes are outlined below in the IEP deliberations.

[Student] was found eligible under the category of AUT based on the ADOS-2 (Autism Diagnostic Observation Schedule, 2nd Edition) results. [Student] does not have a formal diagnosis of Autism. Washington Administrative Codes (WAC) and district guidelines require a diagnosis of Autism to qualify under the category of AUT. Additionally, [Student's] recommended SDI as listed in the IEP dated 2/9/2021 indicate services in the areas of writing and math. Standardized assessment of [Student's] academic ability above revealed average ability in the areas of reading, writing, and math.

[Student's] transfer evaluation does not meet WAC and district guidelines to qualify as a student under AUT with services in writing and math. The transfer evaluation will be rejected and a new evaluation will be completed to determine continued eligibility. A new IEP will be drafted after the new evaluation has been completed. [Student] will receive services as indicated in his expired IEP until a new IEP can be completed...Equivalent services in the [District] are as follows: writing and math.

The transfer review indicated the Student would receive special education services in both writing and math for 25 minutes, five times a week until a new evaluation and IEP were completed. The services were provided through online and hybrid instruction for the remainder of the school year.

7. The prior written notice, dated March 9, 2021, described the District's proposal and the rationale as stated above.
8. According to the District's response to the complaint, the District acknowledged that the team's statement regarding the need for a "formal Autism diagnosis" was incorrect. The response stated, "The District personnel are not trained to perform the ADOS-2 and relies on outside sources to obtain those results. The District is moving in the direction of obtaining the ADOS-2 and training staff use ADOS-2 to make educational qualifications for Autism as a disability category in the 2022-2023 school year."
9. On March 29, 2021, the Parent signed consent for the Student's evaluation. The prior written notice stated the evaluation was needed to determine the Student's present levels of functioning.

Complaint Investigation Timeline Begins: May 5, 2021

10. On May 13, 2021, the evaluation group met to review the Student's existing data and evaluation results to determine the Student's eligibility for special education services according to Washington regulations. The team reviewed the results from the November 2019 out-of-state evaluation and the results of assessments conducted in part by the District school psychologist in the areas of social/emotional, adaptive behavior, cognitive, academic (reading, math, and written expression), and communication. The Student's teacher stated the Student's reading comprehension and math was approaching grade level, and that he did better with verbal comprehension than with reading comprehension. The teacher stated he participates in group activities, pays attention, and cooperates. The teacher provided the Student with additional time and help, including verbal, visual, and written directions, and breaking tasks down into smaller chunks.

The evaluation summary stated the following:

Standardized assessment of [Student's] social/emotional functioning revealed an overall Behavioral Symptoms Index of 57 in the average range, indicating [Student's] social skills are within normal limits for students his age. Standardized assessment of his adaptive skills revealed an overall General Adaptive Composite on 95 in the average range, with conceptual, social, and practical skills falling in the average range, indicating adaptive skills

that are functional and appropriate for a student his age. Standardized assessment of [Student's] cognitive skills using the WISC-V (Wechsler Intelligence Scales for Children, 5th Edition) revealed overall Full Scale IQ of 82 in the low average range, with Working Memory, Fluid Reasoning, and Processing speed in the low average range, Verbal Comprehension in the average range (relative strength), and Visual Spatial in the low range (weakness). Standardized assessment of [Student's] academic skills revealed Basic Reading, Reading Comprehension and Fluency, and Math Fluency in the average range, and Written Expression and Mathematics in the low average range (81 and 84). These scores are consistent with [Student's] cognitive ability and indicate overall academic skills at or close assessment of [Student's] articulation skills revealed no sound errors.

The evaluation group did not find the Student eligible for special education. The reason for the Student's ineligibility was as explained as follows:

[Student] does not demonstrate the presence of a disability at this time. [Student's] evaluation indicates overall average or low average functioning across evaluation areas and he does not demonstrate a need for specially designed instruction. [Student's] least restrictive environment to access his education continues to be in the general education setting.

11. The prior written notice, dated May 13, 2022, stated, "The team considered continuing qualification under the category of Autism." The reason why the team rejected eligibility was as follows:

Standardized assessment of [Student's] social/emotional/behavioral skills revealed overall average Behavioral Symptoms Index.

Additionally, [Student] does not have a documented diagnosis of Autism, and does not demonstrate a need for specially designed instruction at this time.

12. The Parent provided the following dissent opinion to the evaluation:

I am writing this dissenting opinion regarding the meeting that occurred regarding my child [Student]. On the 13 May of 2021 it was determined that my child [Student] was not eligible for a continued IEP plan because he does not demonstrate an adequate need to be in a restrictive environment. My decision to disagree with the decision is primarily based on his IEP from [previous district] who has been working with my child since he was in a Mod-Severe environment. His IEP dated 02/2021 and signed by myself and his SELPA (special education local plan area) team was determined that it would be in the best interest of [Student] to transition from a special needs environment to a general education classroom with RSP support. In addition to this my child's IEP was based on an observation that did not include a general education setting but how he would respond in a virtual environment. I would like to continue with his original IEP currently in place from [previous school district] until my child can be properly observed in a general education classroom setting.

13. In addition, the Parent's complaint stated the District used "skewed data from (T-scores) and inaccurate statistics" to interpret scores. When asked by OSPI if the Parent had training in conducting and interpreting assessments, the Parent replied she had no training but took a statistics course in college. The Parent also stated that she had not requested an independent educational evaluation.

14. On May 17, 2021, the District emailed the Parent with a request to meet to discuss the Parent's concerns, including a 504 plan.
15. On October 21, 2021, the Student was withdrawn from the District.
16. In the Parent's reply to the District's response, the Parent stated the following:
- The District never considered the Student's previous diagnosis of autism.
 - "[Student's] most recent IEP with his updated testing was dated for 11/5/2020 where his overall standard was Nearly met ELA and Not met in Math.¹ This is proof that ALL of my child's existing data was not considered or reviewed."
 - The data used to determine whether the District would accept the previous November 2019 evaluation was outdated and inaccurate.
 - The District failed to consider the Student had a high risk for withdrawal and scores were clinically significant for atypicality, anxiety, and withdrawal.
 - The District did not observe the Student in a general education setting.
 - The District's academic assessment in the May 2021 evaluation was "alternative testing," which was not an appropriate assessment for the Student.
17. Regarding the alternative assessment, the District stated the academic assessment was not an alternative assessment. It is a standardized assessment used to test an individual student's academic ability compared to others in the same age range.
18. On May 4, 2022, the Parent filed this complaint with OSPI.

CONCLUSIONS

Issue One: Evaluation and Eligibility – The complaint alleged the District failed to appropriately evaluate the Student and follow procedures in determining the Student's eligibility for special education.

Evaluation

A district must comprehensively evaluate a student in all areas related to the suspected disability and use a variety of assessments and strategies to gather information about the Student. Districts must also ensure that assessments and other evaluations are used for the purposes for which they are valid and reliable, and are administered by trained and knowledgeable personnel and in accordance with any instructions provided by the producer of the assessment.

Here, after coming from another state where the Student was eligible for special education services under the eligibility category autism, the District determined the November 2019 evaluation did not meet Washington requirements and determined that a new evaluation would be conducted to determine the Student's present levels.

¹ The date of the previous evaluation was November 5, 2019.

The District conducted the May 2021 evaluation to determine if the Student was eligible under the category of autism. The District assessed the Student in the areas of social/emotional, adaptive behavior, cognitive, academic (reading, math, and written expression), and communication. Despite the Parent's claim otherwise, the District reviewed the existing data from the Student's previous November 2019 evaluation and the November 2020 IEP. The District's evaluation was sufficiently comprehensive to identify the Student's present levels of academic and functional performance. The variety of assessments selected were valid and reliable for the purposes for which they were used in the evaluation and conducted by a qualified provider; in this case, the school psychologist.

Although the Parent alleged the District manipulated the test scores to reflect the Student's present levels of performance higher than they actually were, there was no evidence that the scores were somehow skewed to make the Student's level of performance higher. The Parent alleged the Student was not observed in general education setting; however, in this case, teacher input and observation were part of the evaluation data that showed the Student achieving near grade level with some general education supports. In addition, the Parent alleged the District inappropriately assessed the Student academically by using an alternative assessment. However, the District clarified that the assessment was not an alternative assessment; it was an assessment that was standardized on students in the same age range as the Student.

Although the District used the wrong criteria for eligibility in the transfer procedure, which the District acknowledged, the documentation showed that the evaluation itself met the requirements. No violation for the evaluation is found.

Eligibility

A district is required to determine whether a student meets the criteria for having a disability and if so, whether it has an adverse effect on their education that requires specially designed instruction. No single measure or assessment may be used to determine eligibility.

Here, based on the evaluation, the District determined the Student did not meet eligibility criteria because the Student did not have a diagnosis of autism and there was no adverse effect on the Student's education that required specially designed instruction. The first step in the eligibility process was to determine whether the Student met the criteria for a disability. As stated previously, the District acknowledged the team did not use the correct criteria to determine if the Student had a disability during his transfer review. Further, the District acknowledged that District personnel are not trained to perform the ADOS-2 and they rely on outside sources to obtain those results. The District stated it is moving in the direction of obtaining the ADOS-2 and training staff to use ADOS-2 to make educational qualifications for autism as a disability category in the 2022–2023 school year. Thus, OSPI finds that the District did not appropriately address whether the Student had a disability, as it did not appear to explore whether an educational determination that the Student had autism could be made even in the absence of a medical diagnosis. OSPI finds a violation related to the District's determination that the Student did not have a disability.

The next step was to determine if the disability had an adverse effect on the Student's education that required specially designed instruction. The Student was performing at near grade level, but a student can be eligible for special education even though the student is progressing from grade to grade. However, based on evaluation and classroom data, there were no indications that the Student continued to need specially designed instruction. The District considered the academic and functional assessment results—along with input from the Student's teacher—including the behavior results regarding atypicality, anxiety, and withdrawal. It should be noted that a clinically significant score does not necessarily mean the Student was eligible or required specially designed instruction. OSPI finds the evaluation team properly addressed the adverse effect piece of eligibility, but because the team did not use the correct criteria to determine whether the Student had autism, a violation is found. But because the District's decision was that there was no adverse effect and need for specially designed instruction, even if the Student had a disability, he would still be ineligible for special education services. Since the decision was Student-specific and consistent with the Student's abilities and needs, no violation is found for the second step of the eligibility determination. For corrective action, the District is required to ensure that training is provided to all special education teams regarding autism evaluations and eligibility determinations.

CORRECTIVE ACTION

By or before **September 16, 2022** and **October 7, 2022**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

By **September 30, 2022**, the District is required to provide training regarding autism evaluations and eligibility determinations to all District special education teams, including educational service associates and local education representatives. The training will include a discussion of least restrictive environment determinations and how LRE should not be conflated with eligibility decisions.²

By **September 16, 2022**, the District must submit the proposed training materials to OSPI. OSPI will provide feedback as needed. OSPI must approve the training materials.

² OSPI notes the District's evaluation report included the following statement: "[Student's] least restrictive environment to access his education continues to be in the general education setting." While in isolation, this is not a violation of the IDEA to include such a statement, OSPI is concerned that the District is incorrectly conflating least restrictive environment with eligibility determinations. Once a student is eligible for special education services, the IEP team determines the appropriate setting for such services. LRE should not be a factor in the eligibility decision. Further, specially designed instruction can be provided in either a special or general education setting.

By **October 7, 2022**, the District is required to provide verification that all required participants in the District have attended the training.

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

Dated this ____ day of June, 2022

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)