

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-42

PROCEDURAL HISTORY

On March 28, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parents (Parent or Parents) of a student (Student) attending the Renton School District (District). The Parents alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On March 28, 2023 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 March 29, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to April 21, 2023.

On April 19, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on April 20, 2023. OSPI invited the Parent to reply.

On May 3, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on May 3, 2023.

On May 12, 2023, the OSPI complaint investigator interviewed the Parent.

On May 15, 2023, the OSPI complaint investigator conducted interviews with the District.

On May 15 and 16, 2023, the complaint investigator requested that the Parent provide additional information. The Parent provided the requested information on May 15 and 16, 2023. OSPI forwarded the information to the District on May 17, 2023.

On May 15, 2023, the complaint investigator requested that the District provide additional information, and the District provided the additional information that day. OSPI provided the information to the Parent on May 18, 2023.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

ISSUES

1. Whether the District appropriately considered the Parent's February 2023 request to reevaluate the Student per WAC 392-172A-03015?
2. Whether the District appropriately considered the Parent's January 2023 request for an individualized education program (IEP) meeting and/or whether the technology plan should have been incorporated into the Student's IEP?

LEGAL STANDARDS

Reevaluation Requirements: 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.

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(3).

As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. 34 CFR §300.305(a); WAC 392-172A-03025.

Parental Requests for IEP Meetings: When a parent or district believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student. IDEA (Appendix A to 34 CFR Part 300, Question 20).

IEP Revision and Content Requirements: 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. In conducting its review of a student's IEP, the IEP team must consider any special factors unique to the student, such as: the use of positive behavioral interventions and supports for a student whose behavior continues to impede the student's learning; the language needs of a student with limited language proficiency; instruction in the use of Braille for a student who is blind or visually impaired; the communication and language needs of a student who is deaf or hard of hearing; or the student's assistive technology needs. 34 CFR §300.324; WAC 392-172A-03110. Part of the information the IEP team considers when reviewing and revising a student's IEP is the result of the

most recent evaluation. When the student's service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 34 CFR §300.303; WAC 392-172A-03015.

FINDINGS OF FACT

Background: 2021–2022 School Year

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of intellectual disability.
2. On May 5, 2022, the District's restorative practices coordinator (coordinator) emailed the Parent after some incidents at school that involved the Student's use of a cell phone to text peers both during school hours and after school hours. In this message, the coordinator stated that she had spoken to the Parent about the incident and was informed that the Student does not have a cell phone and should not have a phone at school. The coordinator said that she saw the Student with a cell phone at lunch, and the Student said it belonged to her friend. The coordinator reported that the phone was taken from the Student. The coordinator shared that some other students had asked the Student not to send them so many texts after school. The coordinator wrote that she had shared the Parents' requests with the teachers and noted that the Parent did not want the Student to have access to a Chromebook at school.
3. The Parent responded to this email on the same date and stated that she now wanted all electronics banned from the Student's use at school. The Parent noted that she had engaged in this sort of conversation previously with the IEP team and they had said that the Student would be safe and supervised at school, but the Parent wrote that she did not believe this was happening. The Parent shared that the Student had brought a computer home from school on several occasions, though she was not allowed to do so. The Parent shared that the Student had incidents with email usage when she was in elementary school and had attended a class on internet safety with the counselor, principal, and a peer. The Parent wrote that the Student "falls under the ADA, so I am demanding that this be made a reasonable accommodation." The Parent wrote that the Student is "neither mature enough nor cognitively aware enough to handle the responsibilities of social media, internet use, email use, internet safety, sensitivity training, etc." In this email, the Parent also requested an IEP team meeting to remove the Student from general education classes as the Parent did not think the Student would be able to access electronics in a small group setting with more supervision. The Parent copied the assistant principal and other IEP team members on this message.
4. On May 6, 2022, the assistant principal responded to the Parent's email, writing that they oversee special education and wanted to review the Student's supports to move forward and support the Student's needs. The assistant principal wrote that, "It does sound like there are some concerns outside of the IEP and we want to make sure to address those as well." The assistant principal stated they would be in touch with the Parent and asked for the Parent's preferred time for a phone call.

5. On May 13, 2022, the Parent and the assistant principal created a technology plan for the Student (tech plan). This tech plan included the following provisions:
 - Classwork will be provided in paper copies for the most part;
 - Only assignments that cannot be completed on paper will be done on the computer;
 - Each classroom will have a designated spot for her computer when it is not being used in the classroom;
 - One tab will be open in Chromebook for each assignment and tabs must be directly related to the assignment;
 - A 10-minute timer will be set by the Student once she has opened her computer for an assignment-teachers will complete a thorough check in on the computer work when the timer goes off;
 - Teachers will be checking additional times while the timer is running; computer screen will be set at the brightest setting;
 - The computer will be left in 6th period every day;
 - This information will be included in substitute teacher plans;
 - The Student does not have a cell phone and should never have one with her at school;
 - If the Student does have a cell phone school staff should take it and turn the phone into the office; and,
 - The school should call home and give the Student a lunch or after school detention, as a needed consequence for any violations of the tech plan.
6. During interviews with the complaint investigator, the Parent stated that she believed that this tech plan was needed to keep the Student safe at school and to ensure that she was not involved in peer bullying. The Parent stated that there had been incidents with the Student engaging in inappropriate peer behaviors while using other students' cell phones at lunch and before school. The Parent believed that these behaviors are due to the Student's disabilities, and her inability to understand complex social dynamics.
7. On May 24, 2022, the Parent emailed the assistant principal and stated that "we decided to keep the Student home until [special education] bus services are implemented and in place. After speaking to [children's hospital], we will also be keeping her home until she is pulled from Gen. Ed. Classes as we both feel that the Student is not capable of dealing with the complex social situations that peers her age who are not cognitively delayed experience day-to-day."

In this message, the Parent wrote that the Student's neurodevelopmental notes recommend that the Student be placed fully in special education classes. The Parent also wrote that the Student was recently manipulated into bullying other students by her neurotypical peers. The Parent also wrote that the Student had become more difficult at home and threatened to elope from the home and bus and that she only wanted to spend time with peers in the general education classrooms. Finally, the Parent shared that she was trying to obtain new psychological evaluations and supports for the Student.

8. On May 25, 2022, the Student's IEP team developed an amended annual IEP for the Student. Notes from the IEP meeting stated that the team considerations included a request from the Parent that the Student not have access to technology during the school day, due to her

inability to stay on certain assigned sites. The notes further stated that the Student was able to independently go from class to class and to tell teachers and staff her needs.

The IEP documented that the Student does not need assistive technology for her disability, but that all students in the District receive a Chromebook. The general education teacher's notes on this IEP indicated that the Student needed reminders to stay on task, especially with her Chromebook.

Notably, the IEP included one advocacy goal that required the use of a technology platforms. Progress monitoring data in the IEP indicated that the Student successfully made progress toward this goal and turned in assignments using her Chromebook in 4 of 5 trials. The IEP also contained goals in reading, math, and written language. The May 2022 IEP showed that the Student was placed in a general education setting for 40–79% of her class time. The IEP did not include the technology plan and did not indicate that any restrictions are needed on the Student's access of her computer or during social times (lunch, before school, etc.) at school. The IEP did include transportation.

2022–2023 School Year

9. At the start of the 2022–2023 school year, the Student continued to be eligible for special education services, attended a District middle school, and her May 2022 IEP was in effect.
10. On October 25, 2022, the District completed a reevaluation of the Student.
11. On December 6, 2022, the Parent emailed the District and requested “I would like the school district to pay for an outside psychologist to do an evaluation that has no ties to [District], someone that can be unbiased and take her medical information into consideration.”
12. In response to this message, on December 12, 2022, the District wrote a letter to the Parent and explained that the District interpreted the emailed request for the outside evaluation to be an independent education evaluation (IEE) request under the IDEA. This letter stated that the District disagreed with the Parent's request for the IEE, so would file a due process, in order to defend the October 25, 2022 reevaluation of the Student, as required by law. In this letter, the District provided the Parent with the “Special Education Procedural Safeguards” and the applicable regulatory citations.
13. During the prehearing conference for the due process hearing on December 28, 2022, the Parent stated that they had not ever requested an IEE and that they had not made any requests from the District. The District requested that the hearing should therefore be dismissed. The due process was subsequently dismissed.
14. On January 13, 2023, the District sent the Parent a prior written notice (PWN), which stated that it was proposing to continue a Zoom meeting with the Parent, to discuss the Student's schedule, at the Parent's request. The notes on this PWN indicate that the Parent continued to express concerns about the Student having access to the internet at school. The PWN

indicated that the Parent wanted to review the Student's time with a paraeducator in general and special education, due to the Student's alleged misuse of the internet while at school. The notes stated that the team discussed the Student's schedule with a paraeducator and described this time as "para coverage starting from when the Student steps off of the bus, to being escorted to the bus at the end of the day."

15. On February 2, 2023, the Parent wrote to the District, stating that she had not requested an IEE and that the District had previously agreed to new evaluation by the District's lead school psychologist.
16. Also, on February 2, 2023, the Parent emailed the District that they were hoping to "initiate the reevaluation of the Student." The Parent asked for information on the process and when the reevaluation of the Student could take place. The Parent also wrote that new medical information was sent to the school over a month ago and told the District that they should let her know if they have not received the new medical information to review.
17. Later, on February 2, 2023, the District's chief of student support services (director) emailed the Parent to clarify if the Parent was asking for a reevaluation of the Student or if the Parent was providing new information for the District to consider. In the message, the District stated that it still agreed with the reevaluation that was recently completed by the District in the fall of 2022, but the District agreed to review the new information that was provided by the Parent, to determine if a new reevaluation was needed at that time.

The Parent and District exchanged more emails that reflected a misunderstanding had transpired. The Parent believed that the District had agreed to complete a new reevaluation after the District's due process complaint and the Parent's previous special education community complaint had been resolved.¹ The District clarified that they had not agreed to conduct a new reevaluation for the Student.

18. On February 3, 2023, the Parent wrote to the director and stated that there was new medical information from last summer and additional testing on the Student from a private provider that should be reviewed by the District.

The director responded, and included the school psychologist, providing information about sending the records to the District. The director also noted that the school psychologist would review the new records to determine if a reevaluation was needed.

That day, the Parent dropped off the records to be copied.

19. Also, on February 3, 2023, the District responded to the Parent and stated that all new information would be reviewed. The District clarified that, "If new records have been received by the District, the records will be reviewed," and the school psychologist will schedule an

¹ On December 5, 2022, the Parent filed a special education community complaint that was opened as SECC 22-148. The decision addressed the fall 2022 reevaluation and found no violations. Records reviewed in that complaint investigation indicate there was discussion of a new reevaluation.

evaluation team meeting to review next steps, which may include consent for an assessment revision. The email further stated that if this was the "route the team agrees to take, we will discuss areas of evaluation that are missing or incomplete and address them through that process."

20. Later, on February 3, 2023, the school psychologist wrote to the Parent to document which records had been received and clarified that some private provider records that the Parent had asked about had not been received by the District. The school psychologist provided the District's fax number in bold text at the end of this email message.
21. On February 6, 2023, the school psychologist wrote to the Parent and stated that the records would be reviewed that week. The school psychologist noted that the autism assessment was not included in the records, and asked the Parent to provide that assessment if she wanted it reviewed by the District. The Parent responded that the assessment should have been with the materials, under the speech therapy clinic evaluation from December.
22. On February 8, 2023, the District sent the Parent a PWN that refused the request for the reevaluation. The reason stated for the refusal was:

The evaluation staff thoroughly reviewed the records provided by the Parent. Of the records provided, the report from [Children's hospital] documenting the November 2022 Autism evaluation indicated that the Student does not meet the criteria for autism spectrum disorder (ASD). It did note weaknesses in communication and social skills, which were addressed during the October of 2022 school-based evaluation. Of the other records provided, all educationally relevant information within these documents was considered with the October 2022 school-based evaluation.
23. On February 8, 2023, the school psychologist replied to the Parent's message by email, that she did receive the autism assessment with the Parent's materials and noted that she would review all documents and connect with the Parent by the end of the day.
24. On February 9, 2023, the school psychologist emailed the Parent and stated that all materials had been reviewed, and that the District determined that a reevaluation or assessment revision were not needed at that time. The District also sent the Parent the February 8, 2023 PWN to explain why the proposed action was not taken and a copy of the "IDEA Procedural Safeguards".
25. On February 9, 2023, the Parent responded to the District and asked if a June 30, 2022 note was considered in the recent determination related to the reevaluation. Specifically, the Parent asked about comments from a medical provider that stated that the Student, "...does not have the cognitive abilities to understand complex social interactions." The Parent asked how cognitive functioning is reflected in the IEP. In this email, the Parent also stated that a technology plan was addressed in an emergency IEP meeting the prior month. The Parent requested that the technology plan be added to the IEP, "...as to ensure that [the Student's] technology is as limited as possible (as stated in the plan), with no deviation; both in person and many Zoom conversations have addressed this issue with it [the technology plan] never being added; we are unsure why as we were assured it would be [added to the IEP]."

26. On February 13, 2023, the director wrote to the Parent and stated that the materials were all reviewed by the District, and that no additional evaluations were warranted after the review. In this message, the District also stated that, "...[the Student] has IEP goals in the areas of social/emotional, behavior, and adaptive. She is provided daily special education services in these areas as well as math, reading, and written language."

In this email, the District also stated that the technology plan had not been included in the IEP, nor ever agreed to by the IEP team. The message further stated that in the past five IEP meetings, the technology plan was not included in the IEP, because the Student lives in a, digital world and students need to be taught the skills of appropriate technology and social communications. [The Student] continues to have goals that specifically identify the use of a Chromebook and technology to effectively participate in instructional activities and complete assignments. Not unlike many other students, staff continue to teach use and monitor use of technology as well as much instruction throughout the school day includes use of technology, as well in her fine motor and use of assistive technology...

27. Later, on February 13, 2023, the Parent responded to the District and stated that denying the technology plan in the IEP was "against medical/psychiatric advice due to her documented inability to control impulses and tech safety."

28. An IEP meeting notice, dated February 14, 2023, was sent to Parent.

29. On February 14, 2023, the District sent the Parent a PWN that stated that the District was refusing to initiate the technology plan into the Student's IEP. The District wrote the reason for this was due to the IEP including goals that were specifically related to using a Chromebook, websites, technology, and providing redirects and prompts as needed. The PWN stated that the Student spent more than 80% of her day in special education class with paraeducator support provided to assist and monitor the Student. The PWN further stated that:

Technology is used throughout the school day for teaching and learning. Parent has made requests that limit Student's full participation in learning activities and assignment completion, as well as monitor her learning (iReady progress monitoring). If a plan is necessary, such would be developed by the IEP Team and not done in isolation. Staff monitor Student in class to promote appropriate use, assist with her learning, and monitor her on task actions.

30. On March 17, 2023, the District sent the Parent a PWN that responded to requests for a technology plan. The PWN noted the IEP team met on March 17, 2023, to discuss the Parent's concerns and the least restrictive environment (LRE) for the Student. This PWN noted the District proposed a change to the IEP, which included increased time in the general education environment. The PWN also indicated that the IEP team considered and rejected an option to include a technology plan into the IEP, because there are "IEP goals that address the appropriate use of technology." The PWN also noted that the team discussed and rejected a proposed reevaluation. The PWN stated that the reevaluation was rejected because "a comprehensive evaluation was completed in October of 2022 and supported by OSPI."

31. The District reported that it held IEP team meetings at the request of the Parent for the following dates: January 13 and March 17, 2023.

CONCLUSIONS

Issue One: Reevaluation Request – The Parent alleged the District failed to appropriately consider the Parent’s February 2023 request to reevaluate the Student.

When the student’s service providers or parents believe that the IEP is no longer appropriate, the team must meet to determine whether additional data and a reevaluation are needed. 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.

In this case, the IEP team did not agree with the Parent’s request for a reevaluation. The District made this determination after a review of the supplemental materials that were provided by the Parent and found that the District’s recent, October 2022 evaluation of the Student was sufficient. The October 2022 evaluation either already addressed information provided in the new documentation from the Parent or the new documentation did not highlight a new need—for example, the November 2022 autism evaluation indicated that the Student did not meet the criteria for autism spectrum disorder. While the Parent did request the reevaluation, the District did not agree that more than one reevaluation was needed for the Student that year. The District reviewed all of the Parent’s materials before making this decision. OSPI finds that the District’s actions were reasonable, and that the documentation did not support the need for a second reevaluation during the 2022–2023 school year. OSPI finds no violation.

Issue Two: Technology Plan – The Parent’s second allegation is that the District failed to appropriately consider the Parent’s request for an IEP meeting in January of 2023, and the Parent’s request that the technology plan be incorporated into the Student’s IEP.

When a parent or district believes that a required component of a student’s IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of FAPE. If a parent requests an IEP meeting because the parent believes that a change is needed in the provision of FAPE to the student or the educational placement of the student, and the school district refuses to convene an IEP meeting because no change is necessary for the provision of FAPE, the district must provide written notice to the parents of the refusal, including an explanation of why the district has determined that conducting the meeting is not necessary to ensure the provision of FAPE to the student.

Here, the District did not believe that the Student needed another IEP meeting or the addition of the technology plan² to the IEP, as the District did not have any evidence that the Student was unable to access a FAPE with the current IEP. The IEP team considered the Student’s technology

² OSPI notes the Student did have technology plan, developed by the Parent and the assistant principal. The plan was not part of the Student’s IEP, however.

related needs at previous IEP meetings and the District noted the Student's IEP already addressed technology use. The Student was supported by a paraeducator while at school and had an IEP goal that required the responsible use of a Chromebook and online learning platforms, which would have conflicted with the Parent's requested technology plan. Additionally, the District argued the Student was capable of safe technology use in class, with adult supervision.

The District sent the Parent PWN after each denied request for both additional IEP meetings and the addition of the technology plan. The District also provided the Parent with a copy of the IDEA procedural safeguards notice with each denial. OSPI finds that the District appropriately responded to the Parent's requests for IEP meetings and followed procedures to consider the requests and provide prior written notice. OSPI finds that the documentation does not support that the IEP team's decision was inappropriate when it decided not to incorporate the technology plan into the IEP. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 24th day of May, 2023

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.)