

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-60**

### **PROCEDURAL HISTORY**

On April 25, 2023, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Battle Ground School District (District).<sup>1</sup> The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On April 27, 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 April 27, 2023, OSPI received additional information from the Parent. OSPI sent the information to the District on May 2, 2023.

On May 3, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension, in part, to May 22, 2023. Part of the response was due on May 12, 2023.

On May 16, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on May 23, 2023. OSPI invited the Parent to reply.

On June 6, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 9, 2023.

On June 9, 2023, OSPI requested additional information from the Parent. On June 13, 2023, OSPI received the information and forwarded the information to the District on the same day.

On June 13, 2023, the District replied to the Parent's June 13, 2023 information and the information was forwarded to the Parent. The Parent replied the same day.

On June 14, 2023, OSPI requested additional information from the Parent. OSPI received the information from the Parent and forwarded it to the District on the same day.

On June 14, 2023, the OSPI complaint investigator interviewed the Student's special education teacher.

On June 15, 2023, the OSPI complaint investigator interviewed the Parent.

On June 15, 2023, OSPI requested additional information from the District and the Parent. On June 17, 2023, the Parent sent OSPI the information and OSPI forwarded the information to the District on June 20, 2023.

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<sup>1</sup> "Parent" refers to the Student's grandmother, who is the Student's legal guardian.

On June 21, 2023, the District provided additional information. OSPI forwarded the information to Parent on the same day. The Parent also sent additional information on the same day and the information was forwarded to the District.

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.

### **SCOPE OF INVESTIGATION**

This decision references events that occurred prior to the investigation period, which began on April 26, 2022. 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. Despite the Parent acknowledging the one-year timeline for the complaint, the Parent referenced 199 documents and emails as evidence of alleged violations, 70 of the documents were from before April 26, 2022.

### **ISSUES**

1. Did the District develop an individualized education program (IEP) for the Student designed to meet the Student's disability-related needs since April 26, 2022 according to WAC 392-172A-03110?
2. Did the District implement the special education services in conformity with the Student's IEP from April 26, 2022 according to WAC 392-172A-03105?
3. Did the District review and revise the Student's IEP since April 26, 2022 to address any lack of expected progress according to WAC 392-172A-03110?
4. Did the District provide the Parent with an opportunity to participate in team decisions in developing the Student's IEP since April 26, 2022 according to WAC 392-172A-03100?
5. Did the District conduct a comprehensive evaluation of the Student since April 26, 2022 according to WAC 392-172A-03020?
6. Did the District determine eligibility for all areas of the Student's disability(s) according to WAC 392-172A-01035?

### **LEGAL STANDARDS**

IEP Development: When developing each child's individualized education program (IEP), the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110.

IEP Implementation: A district must ensure it provides all services in a student's IEP, consistent with the student's needs as described in that IEP. 34 CFR §300.323; WAC 392-172A-03105.

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).

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; (2) participate in discussions about the child's need for special education and related services and supplementary aids and services; and (3) join with the other participants in deciding how the child will be involved and progress in the general curriculum and participate in State and district-wide assessments, and what services the agency will provide to the child and in what setting. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

The parent is an integral part of the IEP development process. The district must consider the parent's concerns and any information s/he provides. The district is not required, however, to adopt all recommendations proposed by a parent. The IEP team work toward consensus on IEP content, but if team members are unable to reach consensus it remains the district's responsibility to ensure that the IEP includes the special education and related services that are necessary to provide the student with a free appropriate public education. An IEP may therefore be properly developed under IDEA procedural requirements, yet still not provide the student all of the services that the parent believes are necessary components of the student's educational program. IDEA, 64 Fed. Reg. 48 12473-74 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so 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. 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.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the eligibility categories listed in state regulations, 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. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002) (see also WAC 392-172A-03020)(g) "In evaluating each student to determine eligibility or continued eligibility for special education service, the evaluation is sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified.")

## **FINDINGS OF FACT**

### **Background: 2020–2021 School Year**

1. During the 2020–2021 school year, the Student attended 6th grade in a District middle school and was eligible to receive special education services under the category of other health impairment. The Student was diagnosed with attention deficit hyperactive disorder (ADHD).
2. On May 26, 2021, the Student's team, including the Parent, met to review the IEP. The Student's IEP stated the Student had difficulty "focusing" and could have "high energy levels." The Student's challenges with focusing and staying on task affected her reading and comprehension of the material. However, the Student could refocus herself and respond positively to classroom accommodations. The Student's IEP provided goals in the area of reading (comprehension and vocabulary). The goals were as follows:
  - Reading comprehension: By 5/26/2022, when given a 5.6 grade passage, [Student] will accurately demonstrate reading comprehension, improving overall understanding of what is read from 11% on a 5.6 level on the first attempt to scoring 80% on a 5.6 level on the first attempt over 3 trials as measured by reading data collected by the special education teacher.
  - Reading vocabulary: By 5/26/22, when given a set of 10 grade level ELA (English Language Arts) vocabulary words and the word meaning [Student] will use those words correctly in a sentence improving vocabulary from 40% accuracy of correctly using the words within the sentences to 90% accuracy of correctly using the words withing the sentences over 4 trials as measured by reading data collected by the special education teacher.

The IEP provided for specially designed instruction in reading for 110 minutes per week in a special education setting. The IEP also included 23 accommodations that included shortened assignments, breaks, extra time to complete assignments, and an individualized healthcare plan (IHP). In addition, the IEP provided for one modification – modified grading.

3. The prior written notice that accompanied the IEP and provided to the Parent stated the Student "experienced learning loss during Covid-19" and would benefit from recovery services. The team considered increasing the reading minutes, but the Student benefitted from involvement in extracurricular activities during the school day that she would miss if reading

services increased. The notice also stated the District would conduct a reading evaluation, including an assessment to screen for dyslexia.

4. A special education progress report, dated June 15, 2021, stated the Student made sufficient progress to achieve the annual goals within the duration of the IEP. No data was provided.

### **Background: 2021–2022 School Year**

5. At the start of the 2021–2022 school year, the Student continued to be eligible for special education services, was in the seventh grade, and her May 2021 IEP was in effect.
6. The January 27, 2022 special education progress report stated the Student was making sufficient progress to achieve the reading goals within the duration of the May 2021 IEP. The report provided the following information, in part:

<b>Service</b>	<b>Baseline</b>	<b>Goal</b>	<b>June 15, 2021</b>	<b>Jan. 27, 2022</b>
Comprehension	11%	80%	Sufficient Progress	74%
Vocabulary	40%	90%	Sufficient Progress	65%

7. In February 2022, the Parent verbally requested a “new behavior assessment” of the Student. In the Parent’s complaint, she stated she did not receive a prior written notice regarding her request.

### **Complaint Timeline Began April 26, 2022**

8. On April 26, 2022, the Student’s special education teacher emailed a draft copy of the IEP and draft prior written notice in advance of an IEP meeting. In the email, the teacher proposed amending the vocabulary goal. The draft notice proposed amending the vocabulary goal, the Student participating in the smarter balance assessment (SBA) and District assessments without accommodations, and updated instructional minutes. The draft notice stated the following, in part:

The team considered adding goals in behavior/social skills as requested by [Student’s] guardian. This was rejected, as [Student] does not currently have these needs indicated on her most recent evaluation report. (The team will request an assessment revision to address the guardian's request for behavior/social goals and to determine if this is an area in which [Student] has a need for specially designed instruction.)

9. The Parent argued in the complaint that although the teacher stated in the email that the IEP and notice were drafts and the documents were marked “DRAFT,” the draft IEP and notice constituted predetermination and the following violations:
  - Failure to accurately represent the Student’s needs.
  - Failure to follow procedural guidelines.
  - Failure to consider relevant data when developing educational goals, services, and accommodations.
  - Failure to determine eligibility under the IDEA.
  - Failure to assess comprehensively resulting in an incomplete IEP understanding of student needs.

10. On April 27, 2023, the special education teacher emailed the Parent about the request for social goals. According to the Parent, this appeared to be a misinterpretation of what the Parent requested, which was a behavior assessment. The teacher added "if there are additional goal areas you would like us to address, we would need to conduct a reevaluation to determine if those are areas of need."
11. On April 28, 2022, the Parent emailed the assistant director of special education (assistant director), requesting an extension for the Student's annual IEP review so the IEP team could write accurate goals based on the independent educational evaluation (IEE). The Parent also stated that changing the vocabulary goal (in the draft IEP) "without knowledge or discussion with the team" was "extremely concerning. Ethically. Morally. Professionally. All wrong."
12. The June 2022 special education progress report stated the Student was making sufficient progress to achieve the reading goals with the duration of the May 2021 IEP. The report provided the following information, in part:

<b>Service</b>	<b>Baseline</b>	<b>Goal</b>	<b>June 15, 2021</b>	<b>Jan. 27, 2022</b>	<b>June 15, 2022</b>
Comprehension	11%	80%	Sufficient Progress	74%	88%, 82%, 62%
Vocabulary	40%	90%	Sufficient Progress	65%	80%, 90%, 85%, 65%

13. In June 2022, a private neuropsychologist conducted an IEE that included administering the "Behavior Assessment System for Children 3<sup>rd</sup> Edition (BASC 3)".

The report noted differences between nonverbal and verbal reasoning skills, the latter being more difficult for the Student. The Student showed below average language processing skills. Both the nonverbal reason and language processing skills contributed to reading comprehension difficulties, although there was no indication of dyslexia.

Behaviorally, the Student was diagnosed with ADHD, along with challenges with emotional regulation and anxiety. Childhood trauma may have impacted the Student's neurodevelopment.

Academically, the Student performed average in sight word reading and word decoding, below average in comprehension, and low average in reading fluency.

The report made recommendations to both the Parent and the District. The report recommended specially designed instruction for reading and study skills and accommodations, such as providing written and oral directions, providing notes/outline ahead of time, and permitting oral tests and retakes. In addition, the report recommended speech/language therapy, check-ins with the school counselor, and learning and organizational strategies. As a general recommendation, the report stated, "The IEP team should meet to review these recommendations and decide as a team what may be included in her IEP."

14. The Parent provided the District with a five-page "Parent Input Letter," dated July 1, 2022, that listed all the Parent's concerns about the Student's special education program, starting from

2016. The concerns expressed by the Parent in the letter mirrored the complaint issues. The Parent stated the District did not provide sufficient support to the Student to “aid in the closure of the educational gap that now has lasted five years.”

### **2022–2023 School Year**

15. At the beginning of the 2022–2023 school year, the Student was an eighth grader who attended a District middle school and continued to be eligible for special education services. The Student’s May 2021 IEP was in effect.
16. On August 31, 2022, the first day of school began in the District.
17. From September 2022 through February 2023, the District documented the services the District provided to the Student, including the behaviors that were addressed. The document described the instructional area and the services provided.
18. On September 11, 2022, the District proposed a reevaluation that included a review of existing data, general education teacher reports, Student observation, medical-physical, cognitive, academic, communication, and study skills. The consent form asked the Parent what additional areas needed to be considered in the assessment. The Parent stated, “Please see parent input letter in file dated July 1, 2022” and signed their consent.
19. On October 11, 2022, the District held a facilitated evaluation team meeting that included the Parent. The report reviewed the previous District evaluations results, the private neuropsychological evaluation, and the Student’s attendance. From kindergarten through fifth grade, the Student’s absences ranged from eight days to 23 days. In seventh grade, the Student was absent 28 and tardy nine days. So far this school year, the Student was absent one day.

The communication assessment consisted of standardized testing, language/speech sample, classroom observation, file review, and Parent and teacher report. The results of the “General Language Ability Index” were as follows:

	Standard Score	Percentile
General Index	84	14
Synonyms	102	55
Sentence Expression	85	16
Sentence Completion	99	47
Nonliteral Language	86	18
Meaning from Context	86	18
Double Meaning	81	10

According to the SLP who evaluated the Student, the Student demonstrated appropriate voice, fluency, and articulation skills. Her results were in the average range, except for double meaning. The Student had difficulty processing moderate to large amounts of verbal information. The “Clinical Evaluation of Language Fundamentals 5 (CELF-5)” was administered

to the Student's teachers. The teachers reported the Student had difficulty with processing written directions, but was helped by having both verbal and written instructions.

The Student's social language was assessed by a teacher rating scale. The rating scale was used to identify verbal and nonverbal pragmatic deficits that may negatively influence social and academic communication. The teachers' ratings ranged from deficient to average.

The Student was observed using the "Behavior Observation of Students in Schools", a structured observation system to measure the percentage of time a student was off task, actively engaged, and passively engaged. The Student was observed over four days in various settings. The Student's behaviors changed, depending on the day, class, and activity. The Student displayed hyperactivity, impulsivity, and distractibility that affected her focus on instruction and work completion. The report stated, in part:

[Student] was also in an elevated, hyperactive state when she was in her reading skills class in the resource room. Although she was in a quiet space with two other peers and the teacher, she was highly distracted and at times disruptive to the group (speaking in a loud voice, constantly engaging in off-task motor behavior in her seat, getting out of her seat, etc.). She required multiple prompts to focus and read parts of the story. She did better in the latter part of the period where students worked independently on the comprehension questions. Her resource teacher reported that [Student] is often 'ramped up' when she comes into class, but she can focus for short periods of time to engage in work. [Student's] hyperactivity during her 5th period reading skills class may be due to the time of day (right after lunch/recess and towards the end of the day).

Overall, the classroom observations indicates that [Student] will continue to benefit from accommodations to support her behavior such as frequent check-ins and redirection, positive feedback for when she is engaging in expected behaviors, and providing her with breaks when needed. Strategic seating is also important and she may do better if seated near the teacher; however, it may help to seat her near a peer who will not engage in off-task behavior with her or have her work in a group with peers that she can interact with in a more positive manner.

The Student was assessed using the "Behavior Rating Inventory of Executive Function, Second Edition (BRIEF 2)". The Student's seventh and eighth grade teachers completed the BRIEF 2. The previous June 2022 neuropsychological IEE had the Parent complete the BRIEF 2. The Parent's results were in clinically significant range across all clinical areas. Based on the results, the report stated, in part:

Overall, the file review of parent/guardian ratings and the results of the BRIEF 2 suggests that at home and school, [Student] struggles with certain aspects of executive functioning. Many adolescents with ADHD have difficulties with executive functions related to working memory, planning and organization, and inhibitory control. An analysis of her scores indicates elevated scores by some teachers within the scales comprising the Behavior Regulation Index (Inhibit and Self-Monitor) and Working Memory (part of Cognitive Regulation). Her ability to regulate her emotions was also marked as an area of concern by the majority of her teachers. Difficulties with inhibiting or resisting one's impulses, evaluating one's behavior and its impact on others, as well as difficulty with emotional



regulation can affect [Student's] ability to sustain focus on tasks, remember information, and engage in consistently positive interactions with others.

The report reviewed the results of the BASC 3 from the neuropsychological IEE. The report stated, in part:

Per IEE report from [neuropsychologist], 'the parent's ratings yielded a validity F-index in the 'caution' range suggesting the ratings may depict the child in an inordinately negative fashion possibly indicating rating of the child's behavior that are more severe than it actually is. When validity ratings of this range are present, it is often an indicator that the parent is in high need of help or that a parent is trying to make clear to the clinician their desire for immediate assistance with the child. Other possibilities of elevations in this range are when there is secondary gain for intervention qualification purposes. It is important to review these scores cautiously, given the tendencies for ratings to likely be higher than what is valid. Within this context, parent ratings indicated Clinically Significant elevation on the following scales: Attention Problems, Conduct Problems, and Hyperactivity. Parent's ratings indicated At-Risk elevation on the following scales: Aggression, Anxiety, Atypicality, Depression, Somatization, and Withdrawal. On the BASC -3 Parent adaptive scales, [Student] was rated in the Clinically Significant range in Functional Communication and Activities of Daily Living. Adaptability, Social Skills, and Leadership were rated in the At-Risk range.'

The report stated the previous neuropsychological IEE indicated that the Student had a "diagnosis of Trauma and stress related disorder plus adjustment disorder with anxious mood and mixed receptive-expressive language disorder." The Student also had a diagnosis of ADHD for which she takes medication and for management of her anxiety.

20. The prior written notice, accompanying the evaluation, was provided to the Parent and stated the District proposed to continue the Student's special education eligibility and stated the following:

The reason we are proposing or refusing to take action is:

Assessment results indicate that [Student] continues to meet eligibility criteria for special education services under the category of Other Health Impairment/Health Impairments due to a diagnosis of ADHD and its adverse impact on her educational functioning. [Student] continues to require specially designed instruction (SDI) in the area of reading comprehension. She also requires SDI in study skills/executive functioning skills due to her struggles with planning and organizational skills. She will also receive [speech language pathologist] SLP consultation as a supplementary service. Although assessment results indicated that [Student] is eligible for communication services, her guardian chose to have these services delivered via SLP consultation at this time. However, guardian would like for [Student] to have access to SDI in communication services should she need it in the future.

Description of any other options considered and rejected:

- 1) It was considered to not provide SDI in study skills.
- 2) It was considered to provide SDI in communication.

The reasons we rejected those options were:

- 1) In the interim between [Student's] last team meeting on 9/8/2022 and her reevaluation meeting on 10/11/2022, she was provided with organizational assistance as an

accommodation. Team discussed continuing this as an accommodation only to support her with study skills. However, team agreed that [Student] struggles with planning and organizational skills, particularly when it comes to prioritizing and completing assignments. She is currently failing math and science due to missing assignments. Team agreed that [Student] requires SDI in study skills in order to support her planning and organizational skills, especially since she is transitioning to high school next year.

2) Team discussed providing [Student] with SDI in a one-on-one setting with the [SLP]. This would involve pulling [Student] out of the general education environment to provide the service. Guardians were also given the option of adding accommodations and/or allowing the SLP to consult with teachers and provide them with strategies on how to support [Student's] language processing skills including, but not limited to, reading comprehension and understanding multi-step directions. Guardian chose consultation at this time. Team will monitor [Student's] progress with this service and revisit service delivery method should the need arise in the future for more direct, specially designed instruction.

A description of each procedure, test, record, or report we used or plan to use as the basis for taking this action is as follows:

Guardian and staff input, record review, medical/health history review, results of IEE, district data, classroom grades, classroom observations, and standardized assessments in the areas of communication and study skills.

Any other factors that are relevant to the action:

Guardian expressed her concern with [Student's] lack of progress and failure to meet IEP goals for the past several years. Complete parent input dated 7/1/2022 will be attached to her upcoming IEP. Guardian expressed her continued concern with [Student's] i-Ready scores...

21. On October 31, 2022, the District sent an invitation to the Parent to discuss progress, review instructional needs, and review the Student's IEP.
22. On November 1, 2022, the assistant director emailed the proposed IEP agenda to the Parent.
23. On November 2, 2022, the special education teacher emailed the IEP draft to the Parent.
24. On November 4, 2022, the District conducted a facilitated IEP meeting with the Parent. Regarding special considerations in the IEP, the IEP stated the Student continued to have difficulties with "regulating her high energy and with sustaining focus in the classroom." The accommodations supported in this area. The Student's eighth grade teachers provided the following information, in part:
  - ELA and History Teacher (Current grade: D)  
The Student worked better with peers than on her own. She will decide prematurely that work is done. When reminded, she did not seem to care. The teacher provided 'check-ins' on deadlines and 'she seems to be turning her work on time.'
  - Math Teacher (Current grade: F)  
In the first couple of weeks, the Student was 'on task, not disruptive, completed work, and participated in discussions.' Recently, the Student had to reminded to put her phone away,

be on task, and complete her assignments. When notes with examples and how-to steps are provided, 'she generally is attentive and focused.'

Science Teacher (Current grade: D)

Most days the Student complies with classroom expectations. She sits in front and puts her phone away. She asks questions to test the limits in a positive way. She is headed in the right direction.

The IEP's "Adverse Impact Summary" stated:

[Student] qualifies for special education services under the category of Health Impairments due to a diagnosis of...ADHD and its impact on her educational performance. [Student] has high activity levels and she struggles with focusing and staying on task. Her difficulty with sustaining attention affects her ability to read information carefully and comprehend class materials. [Student] also struggles with executive functioning skills, particularly with planning and organization. This adversely impacts her ability to keep track of assignments and complete assignments and projects in a timely manner. Therefore, [Student] requires...SDI in the areas of reading and study skills in order to access the general education curriculum along with her typically developing peers. Additionally, [Student] will be provided with...SLP consultation as a supplementary service to support her language processing skills.

Based on the Student's needs, the IEP team developed goals in the areas of reading and study skills (work completion and task initiation) and provided the following specially designed instruction, in a special education setting:

- Reading: 135 minutes, weekly (provided by a special education teacher)
- Study skills: 30 minutes, weekly (provided a special education teacher)

Supplementary aids and services included SLP consultation for 45 minutes monthly. The IEP included 20 accommodations, such as checks for understanding, communication outlining services and goal data, no unfinished schoolwork expected to be completed at home, and prompting the Student to seek support with staff with mental health expertise. The accommodations also included "check to ensure assignments in planner, current assignment checklist/organization/prioritization." The frequency was "each class period, when there is work to complete."

25. The meeting notes from the IEP meeting indicated the Parent asked questions and gave her input into the IEP. The District staff responded to the Parent's questions about the Student's behavior and missed assignments, among other concerns. The notes showed the Parent asked about SLP consultation and what it would involve. According to the notes, the SLP stated she would go to the Student's classroom and show the teacher how to use visualization techniques. The Parent requested what was taught each week. The SLP stated the information could be provided in the "weekly update."
26. The prior written notice, accompanying the IEP, was provided to the Parent and stated that the recent IEE results were incorporated into the Student's IEP. Regarding behavior, the notice stated "the recent evaluation did not find this as an area of SDI (specially designed instruction).

But the team agreed to conduct another reevaluation to determine whether behavior should be an area of SDI.”

27. On November 7, 2022, the school psychologist emailed the Parent about discussing a proposed behavior assessment.
28. On November 9, 2022, the assistant director emailed the Parent and requested a meeting to address recovery services for the Student.
29. On November 10, 2022, the documentation showed the school counselor began working with the Student (per the accommodation). The documentation ended January 13, 2023.
30. On November 14, 2022, the Parent replied that behavior services were not adequately addressed. The Parent indicated she had waited nine months to discuss the need for a functional behavioral assessment (FBA) and behavior services.
31. On November 16, 2022, the principal emailed the Parent and school staff that after talking with the Parent, the principal stated, “One of goals is not have [Student] become too overwhelmed with the amount of makeup work she needs to complete to not just raise her grades but improve her understanding of the content....” The principal asked about teacher strategies that were being used with the Student and further communicated with staff about strategies.
32. On November 19, 2022, the Parent emailed the principal about counseling services.
33. On November 22, 2022, the principal emailed the school staff to ensure that staff was communicating to the Parent if the Student was refusing work or was off task.
34. On November 23, 2022, the special education teacher emailed the Parent a copy of the finalized IEP, documentation of Parent input, and the procedural safeguards.
35. On December 9, 2022, the Parent and the special education teacher exchanged emails about the Student having scissors while the special education assistant was present. The District stated the Student pulled the scissors out of the teacher’s desk and put them back when asked.
36. On December 10, 2022, the ELA/social studies teacher emailed the Parent about the Student’s current assignments. The teacher stated the Student was participating in class discussions and offered to read on several occasions. The teacher stated the Student still needed help organizing her class folders.
37. On December 12, 2022, the Parent emailed the director of special education (director) and others, repeating her concerns about the Student’s program. The Parent stated she did not disagree with the November IEP because she thought there would further discussion about the Student’s behavior and the prior written notice was “written in a deceitful, nonethical way.” The Parent stated she did not recall the District denying behavior services in the IEP meeting and requested a behavior evaluation.

38. On December 14, 2022, the Parent consented to an "assessment revision" that included a review of existing data, behavior/social, communication, and FBA. The Parent replied that she repeatedly requested a behavior evaluation since February 2021.
39. On December 15–19, 2023, the Parent and the assistant director exchanged emails about scheduling an IEP meeting with an IEP facilitator. The Parent declined IEP facilitation. The Parent requested a meeting the first week after the winter break. The IEP meeting was eventually scheduled for January 13, 2023.
40. From December 19, 2022 through January 3, 2023, the District was on winter break.
41. On January 6, 2023, the Parent emailed the assistant director, in part:  
According to your own data, it is not in dispute that [Student] has not made progress on her goals in the last 4 years. It is also not in dispute that I requested a behavior evaluation for [Student] when I requested the IEE. Not in dispute is the fact that the district sent me a PWN right after my request, denying services for behavior without a team meeting. Nor is it in dispute that the PWN was 'sent by mistake'. However, the problem with that is, someone dropped the ball on my behavior evaluation request, and from my perspective, has tried to brush my request under the rug...I have continued to voice my concerns at each IEP meetings about my student. Her self reported behavior, behavior at school, concerns from teachers, and her pediatrician. I have brought to the teams attention my students emotional state at each IEP meeting since then. Only now that my students behavior has escalated to grabbing scissors, 'to protect herself' from a teacher assistant, and my insistence for an FBA, is one finally being done.
42. On January 12, 2023, the director of secondary education proposed a meeting with the Parent, the assistant director, the principal, and the director of instructional leadership. The proposed plan was to discuss a number of issues, including compensatory services, the implementation of the Student's IEP, pragmatic testing, communication of progress, and a behavior evaluation. The Parent responded, repeating the difficulties she had with the District.
43. The District's documentation included a "Meeting Notice" that did not provide a date for when it was sent to the Parent. The notice stated the meeting was scheduled for January 13, 2022, to address "questions/concerns with the existing IEP."
44. On January 13, 2023, the Student's team, along with Parent, met to discuss the IEP. The meeting minutes listed the Parent's concerns, including but not limited to, the following:
- Not taking away recess/free time
  - What discipline is needed
  - The Student's assessment data
  - Special education minutes should not be used to work on missing assignments
  - Pragmatic language testing
  - "Wants another meeting; doesn't feel [principal] has provided information and teachers barely doing anything."

The District had additional concerns about discipline issues regarding recess, the Student's use of the phone, and missing assignments, among others.

45. On January 16, 2023, the Parent emailed the principal regarding an incident involving a horseshoe. The Parent alleged the principal failed to communicate with the Parent as promised about classroom data performance and a plan to make up assignments. In addition, the Parent stated she had requested a written report about the scissors incident and had not received one. The Parent also referred to a conversation on January 5, 2023, with the principal stating the Student's "PE (physical education) grade is still also suffering because the work is not being broken down or revised..."
46. On January 17, 2023, the Parent emailed the SLP questions regarding the evaluation and requested to see what the Student was being taught.
47. On January 17 and 18, 2023, the Parent separately emailed the principal, the assistant director, and the special education teacher about her concerns regarding communication with the school, missed assignments, and the scissors incident. The Parent requested "every ELA assignment you give her in the classroom," the Student's "bi-weekly" test results, a plan to address missing assignments, and a follow up regarding the scissor incident. The Parent also requested more information about iReady scores. The Parent stated that a parent "can't be considered an equal participant in the meetings or as a support to staff" without the same access to scores and diagnostic results. The Parent stated the following IEP services were not being implemented:
- "Check to ensure assignments in planner, current assignment, checklist/organization/prioritization. Frequency: Each class period when there is work to complete. Location: Gen/Sped classroom."
  - "Provide background information prior to introducing new topics/concepts/reading materials. Frequency: when introducing new topics. Location: Gen-Ed/SPED settings."
  - "Provide list of step-by-step instructions on assignments with two or more steps. Frequency: assignments with 2 or more steps. Location: Gen-Ed settings."
48. Regarding the implementation of the planner, the Parent stated:  
Five weeks later, the first entry in [Student's] planner was made on November 18, 2022, which included four assignments with due dates. However, there were no further entries for two months, until January 17, 2023. From January 17<sup>th</sup> through February, the entries in her planner were sporadic and minimal, with several days having no entries at all. In March, there were several entries scattered throughout the month, but there were still 16 days without any recorded information. This pattern continued in April, with only two entries and 18 days lacking any entry. In May, there were a total of seven entries, but again, there were 13 days with no recorded information. Unfortunately, in June, there were no entries made in her planner. [Student] ended the school year with 56 missing assignments. The lack of consistent entries in her planner and the significant number of missing assignments underscore the urgent need for improved study skills, organization, and prioritization strategies.

The Parent provided a copy of the planner and it verified the Parent's above statement.

The special education teacher reported that all services and accommodations were implemented, except during Student absences.

49. Regarding the implementation of accommodations, the District stated:

The guardian has provided examples of unfinished work as evidence of accommodations not being met. However, the Student has an accommodation that unfinished school work will not be completed at home. In addition, work was being sent home during the vacations for which the guardian had pulled her from school. Further, school districts do not generally keep logs or other data of accommodations being implemented. Staff members are notified of accommodations and it is expected that accommodations are being implemented. If we are made aware that an accommodation is not being implemented, we initiate steps to ensure that accommodations are implemented immediately.

50. In January 2023, a private reading clinic evaluated the Student. The report, dated January 23, 2023, stated the Student was evaluated by the Peabody Picture Vocabulary Test-5, Detroit Tests of Learning Aptitude-Second and fourth Editions, Woodcock Reading Mastery Test-3<sup>rd</sup> Edition, Wide Range Achievement Test-5<sup>th</sup> Edition, and the Gray Oral Reading Test-Fifth Edition. The reading results ranged from scoring in the first percentile in listening comprehension to 37<sup>th</sup> percentile in reading accuracy.

The report stated:

Although [Student] is on medication for ADHD, her weak focus and attention impacts her attention to detail, her comprehension, and her ability to follow oral directions...[Student] needed to have instructions repeated on several of the tests and was often impulsive. She frequently checked her phone, even when asked not to. She apologized when she was reminded to not check her phone. She lacked the ability to control herself. [Student] was also very energetic and talked fast, almost frantically, during some of the testing. She exaggerated her accomplishments, felt all the teachers in her school hated her, and often contradicted information her grandmother had provided...

We also recommend [Student] meet with her pediatrician to discuss the effectiveness of her current medication as well as its dosage. Based on her difficulty with maintaining attention during testing, she may need her medication adjusted or changed.

Despite the Student's behavior during the testing, the report did not address whether the results were accurate reflection of the Student's abilities. The report recommended the Student attend the reading clinic at least 160 hours, to be implemented daily for at least one hour per day and at least two hours per day during the summer to "meet her potential."

51. On January 23, 2023, the assistant director emailed the Parent that because of the extensive number of emails requesting significant amounts of information to different staff, the District established a communication protocol with the Parent. The protocol included the following:

- Beginning February 1, 2023, all communication between the Parent and the District will be done through biweekly video meetings with the assistant director and the director of instructional leadership for middle schools.
- The District will require confirmation from the Parent that the Parent will attend.
- The Parent will notify the District of her list of topics to be discussed at the meeting.
- The Parent will not communicate with any other District staff regarding the Student's special education services.

- The plan does not prevent access to the Student’s records or attendance to school activities that are open to all parents.
- The communication plan does not apply to emergency situations or IEP meetings.

52. The January 2023 progress report provided the following information based on the November 2022 IEP:

<b>Service</b>	<b>Baseline</b>	<b>Goal</b>	<b>January 2023</b>
Reading Comprehension	61%	88%	63%, 63%, 75%
Reading-Main Idea	50%	85%	50%, 67%, 54%
Reading-Vocabulary	60%	85%	75%, 70%, 80%
Work Completion	17 missed assignments	8 missed assignments	24 missed assignments
Task Initiation	5 minutes	2 minutes	3 minutes, 2 minutes, 1 minute

53. On February 3, 2023, the school psychologist emailed the Parent a copy of the draft assessment revision and the FBA. The Parent replied she did not respond to request to complete the behavior assessment because she requested clarification from the District but did not receive it. The District replied that the assessment results were included in the report and offered to review the protocols with the Parent.

54. On February 6, 2023, the District emailed the Parent about clarification regarding the Student’s speech pragmatics assessment and visits with the counselor.

55. On February 7, 2023, the Student’s team, that included the Parent, held an IEP meeting. According to the meeting notes, the team discussed the scissor incident, bus referrals, interpretation of the assessment results, and the Student’s progress. The notes showed the Parent gave input and asked questions to which the District staff responded. For example, the Parent stated the Student was not making progress, but the District stated the Student made progress in sustaining her focus.

56. On February 10, 2023, the Parent emailed the assistant director an agenda to be discussed at the biweekly meeting that included the “importance of accurate reporting and why team is determined to close the evaluation rather than report all the accurate facts to make an informed decision.”

57. On February 16, 2023, a “Notice of Meeting” was sent to the Parent to discuss the assessment revision on February 21, 2023.

58. On February 17, 2023, the school psychologist emailed the updated draft documents for the upcoming IEP meeting.

59. On February 21, 2023, the Student’s team, that included the Parent, met and reviewed the assessment revision that addressed the Student’s behavior. The report addressed the Student’s disciplinary records that included nine referrals, mostly bus referrals for shouting and using the cell phone, for example. The report also reviewed two “scissors” incidents. The



Student took a pair of scissors from the teacher's desk and told the teacher it was for "protection" from the special education assistant. The Student returned the scissors as requested. The teacher stated the Student reported being "depressed." Despite the Student's apparent dislike for the special education assistant, the teacher stated the Student worked well and listened to the special education assistant.

The report reviewed the findings from the June 2022 IEE and input from the Student's teachers. The teacher reported the Student had made improvements in getting ready for class, staying on task, completing assignments, and putting her cell phone away.

The assessment evaluated the Student's social language and the Student demonstrated appropriate social skills when compared to same-age peers. The evaluation also administered the BASC-3 to the Student's teachers. The District requested the Parent complete the parent questionnaire, but the Parent did not respond because the Parent stated she requested clarification and did not receive it. The following behavior were considered "at-risk" by one or more of the Student's teachers:<sup>2</sup>

- Hyperactivity
- Aggression
- Atypicality
- Adaptability
- Social Skills
- Leadership
- Externalizing Problems
- Internalizing Problems
- School Problems
- Behavioral Symptoms
- Adaptive Skills

Areas that were identified as "clinically significant" by one or more of the Student's teachers were as follows:<sup>3</sup> aggression, depression, and somatization.

Regarding the FBA, the report stated:

The results of the FBA indicate that the main area of concern in the classroom setting is [Student's] socializing/talking with peers instead of consistently using her class time wisely. Teachers report that although [Student] may engage in socializing behavior/talking to peers, it is not disruptive to the classroom environment and does not require specialized behavioral support. She responds to classroom accommodations already put into place in her IEP. For instance, she will stop the behavior once redirected by the teacher.

The report indicated the effects of the Student's disability on her involvement and progress in the general curriculum were as follows:

[Student] has a diagnosis of ADHD and she continues to demonstrate high activity levels and difficulty with consistently focusing and staying on task. It is not uncommon for children with ADHD to struggle with reading comprehension skills as the ability to comprehend material is influenced by a multitude of factors such as initiating the task of reading a given passage, resisting distractions and sustaining focus and attention on the material being read for a prolonged period of time, and engaging one's working memory to link previously read information with new, incoming information. [Student's] difficulty

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<sup>2</sup> At-risk means a behavior is either a significant problem that may be severe enough to require formal treatment or a potential of developing a problem that needs careful monitoring.

<sup>3</sup> Clinically significant suggests a high level of maladjustment.

with sustaining attention affects her ability to read information carefully and comprehend the material without having to employ strategies such as re-reading the material and looking back for specific information. She requires...SDI in...reading comprehension...to access the general education curriculum. [Student] also struggles with executive functioning skills, particularly with planning and organization. This adversely impacts her ability to keep track of assignments and complete assignments and projects in a timely manner. Due to this, [Student] also requires SDI in study skills/executive functioning skills. Additionally, [Student] will be provided with SLP consultation as a supplementary service to support her language processing skills.

60. The prior written notice, accompanying the assessment revision, was provided to the Parent and stated the assessment results demonstrated some behavioral difficulties related to the Student's ADHD, including hyperactivity, being easily distracted, difficulty with sustaining her focus for long periods of time, and organizational difficulties. The Student's behavioral needs in these areas could be supported in the classroom "with accommodations and SDI in study skills."

The notice stated the Parent did not agree with the results of the evaluation and the decision to not recommend specially designed instruction in behavior/social.

61. The notes from the February 2023 IEP meeting to review the assessment revision showed the Parent asked about bus referrals, the scissors incident, implementation of services, accommodations, the FBA, and the lack of progress in reading.

62. On February 27, 2023, the Parent emailed the assistant director about the Student's assignments while the Student was traveling on two trips totaling 13 days. The Student's teachers previously told the Parent they would gather materials and assignments for the Student to complete. The Parent stated:

To date, there is no plan for [Student's] school work, and she leaves Thursday night. I am requesting that any assignments that teachers want done, to also be sent to myself no later than Wednesday and modified according to her IEP. I need to be able to review it, communicate the information to [Student's] (biological) mom, and make sure [Student] has all the materials needed before she leaves. If [Student] does not receive clear broken-down step by step instructions, she will not be able to complete the work independently. According to her evaluations, if she is overwhelmed and doesn't understand, she will shut down and not complete any assignment. Lastly, I am anticipating the [prior written notice] explanation of the denial of services, so I can write my well supported response to the district.

63. On February 27, 2023, the Parent emailed the assistant director regarding her previous request for a copy of the Student's records. The assistant director replied that the Parent could not access the shared drive with the records and provided the Parent with another option to access records. The Parent responded she was able to access the records.

64. On March 1, 2023, the principal emailed the Student's assignments.

65. From March 2–7, 2023, the Parent and assistant director exchanged emails regarding the content of the Student’s records. The Parent requested copies of assessment protocols and the District offered to meet with the Parent to review the original protocols.

66. In February 2023, the District provided additional progress monitoring information as follows:

Reading Comprehension

- 12-13-22: Leonardo da Vinci (Read Naturally) – 63%
- 01-10-23: The Cloning Controversy (Read Naturally) – 63%
- 01-24-23: The Bird (ReadWorks) – 75%
- 02-02-23: Stephen Hawking (Read Naturally) – 69%
- 02-14-23: Landlocked (ReadWorks) – NO GRADE YET
- 02-17-23: Rihanna Rocks the Business World (ReadWorks) – 91%

Reading (Main idea)

- 11-17-22: Greenbrier Bunker (Read Naturally) – 42%
- 12-01-22: Leonardo da Vinci (Read Naturally) – 50%
- 01-10-23: The Cloning Controversy (Read Naturally) – 67%
- 01-13-23: The Bird (ReadWorks) – 54%
- 02-02-23: Stephen Hawking (Read Naturally) – 50%

Reading (Vocabulary)

- |               |               |
|---------------|---------------|
| 11-10-22: 60% | 02-03-23: 90% |
| 11-29-22: 75% | 02-10-23: 80% |
| 01-03-23: 70% | 02-17-23: 70% |
| 01-19-23: 80% |               |

Study Skills (Work Completion)

- 12-15-22: 22 missing assignments (3 of the assignments flagged as missing were from [special education teacher’s] class – they were not missing, but they showed up when [Student’s] schedule changed)
- 01-03-23: 20 missing assignments (3 of the assignments flagged as missing were from [special education teacher’s] class – they were not missing, but they showed up when [Student’s] schedule changed)
- 01-12:23: 19 missing assignments (3 of the assignments flagged as missing were from [special education teacher’s] class – they were not missing, but they showed up when [Student’s] schedule changed)
- 02/07/23: 24 missing assignments (3 of the assignments flagged as missing were from [special education teacher’s] class – they were not missing, but they showed up when [Student’s] schedule changed)

67. On April 25, 2023, the Parent filed this complaint with OSPI.

68. According to the Student’s attendance record, the Student missed approximately 20 days of school from the beginning of the school year to May 22, 2023. When asked by the OSPI complaint investigator about the impact of the absences on the Student’s progress, the special education teacher stated the impact was significant. The Student missed approximately 20 days of instruction by teachers, learning concepts, and practice activities. The absences also caused the Student to make up assignments in her general education classes. These

assignments were provided by the general education teachers who shortened and adapted the assignments as necessary.

69. During the 2022–2023 school year, the Student’s special education teacher reported the following data on missed assignments:

- Term 1 – 4 missed assignments
- Term 2 – 10 missed assignments
- Term 3 – 10 missed assignments
- Term 4 – 1 missed assignment
- Term 5 – 8 missed assignments
- Term 6 – 17 missed assignments

The teacher stated the Student improved through the school year until the end of year when she missed more assignments. The increase of missed assignments at the end of the year coincided with the Student not taking her medication, according to the teacher and Parent. The Parent stated the Student’s physician wanted to stop the medication for a period of time to assess the Student’s behavior without medication. During this time, the teacher reported that the Student was more easily distracted, lacked focus on her work, and engaged in attention seeking behavior.

70. The District also provided progress data on task initiation. The data is as follows:

- 11-17-22: 2 minutes
- 12-08-22: 3 minutes
- 01-10-23: 2 minutes
- 01-19-23: 1 minute
- 02-14-23: 2-3 minutes with each redirection
- 02-17-23: 1 minute
- 03-17-23: 3 minutes
- 03-28-23: 3 minutes
- 03-31-23: 1 minute
- 04-14-23: 1 minute
- 04-18-23: 5-8 minutes
- 05-04-23: 1 minute
- 05-05-23: 5 minutes
- 05-11-23: 15 minutes
- 05-26-23: 4-5 minutes
- 06-02-23: 5 minutes

71. Regarding the implementation of the IEP, the Parent provided a document that listed service dates as evidence, in part, that the District did not implement the Student’s services. The document listed the month, date, day of the week, and attendance. The Parent concluded that since the dates began on December 2, 2021, the Student missed services in September, October, and November 2021, which were beyond the one-year complaint timeline.

The special education teacher reported that services were implemented according to the Student’s IEP, except when the Student was absent or there was a shortened school day, for example.

## CONCLUSIONS

**Issue One: IEP Development** – The complaint alleged the District failed to develop an IEP that met the Student’s needs in the areas of behavior, reading, and communication. A district is required to develop an IEP that meets the unique of the student.

Although the Parent’s complaint made allegations about the Student’s May 21, 2021 IEP, this complaint investigation can only address the November 2022 IEP that was developed within the

one-year complaint investigation timeline. It should be noted that the Student's May 2021 IEP should have been reviewed by May 2022. However, the District agreed to delay the May 2022 IEP at the Parent's request to first review the IEE results before holding the IEP meeting.

Before the November 2022 IEP meeting, the IEP team received the results of the June 2022 IEE performed by the neuropsychologist. Based in part on the IEE, the IEP team identified the Student's needs regarding behavior, such as focusing and staying on task that affected her reading. The challenges with attention, along with the Student's absences, caused the Student to miss general education assignments that needed to be made up. The team also identified needs in executive functioning and language processing. Based on this information, the IEP team developed an IEP that provided annual goals in the areas of reading and study skills and provided specially designed instruction in these areas.

To address the Student's impact of her distractibility and difficulty remaining on task, the IEP provided an extensive list of 23 accommodations and one modification (modified grading). The accommodations were selected to address the unique needs of the Student.

Although the Parent wanted specially designed instruction for the Student's behavior needs, the District stated the Student did not need specially designed instruction for behavior because the accommodations appropriately addressed her needs. The IEP team's decision to provide accommodations rather than specially designed instruction was reasonable in light of the Student's needs and abilities. Regarding communication, the Student's IEP identified the Student's need for improving language processing skills. According to the prior written notice, the District recommended language services, but deferred to the Parent's request that the SLP provide only consultation that consisted of 45 minutes a month to staff.

Based on the IEP being consistent with the Student's abilities and needs, no violation is found.

**Issue Two: IEP Implementation** – The complaint alleged the District failed to implement the special education services and accommodations in conformity with the Student's IEP. A district must ensure that the special education services and accommodations are implemented in conformity with the student's IEP.

The Parent alleged the District failed to implement the Student's IEP based on documents from 2021. Regarding SLP services, the Parent alleged the SLP failed to implement services at times based on the absence of information from the SLP in the special education teacher's weekly reports. The Parent also alleged the accommodation related to assignments to be completed was not implemented. The 2021 documents the Parent referred to as documentation of a failure to implement the IEP were before the one-year timeline that began on April 26, 2022. Therefore, OSPI cannot address allegations that the IEP was not implemented prior to April 26, 2022, and this documentation from 2021 does not necessarily indicate a violation after April 26, 2022 either.

The Student's November 2022 IEP provided 20 accommodations that included a planner, step-by-step directions, and background information when introducing new topics. The Parent alleged the planner was not filled out for periods of time, although it was not clear there was necessarily

work to complete during these periods. However, given the possible range of missed assignments from 17 to 56 during recent weeks, the planner should likely have had more entries. Based on the documentation that the planner was not used consistently, a violation is found. Although there is no absolute requirement for a district to contemporaneously document the implementation of accommodations, and other evidence is considered in the determination, the lack of documentation here weighs considerably in determining whether a violation is found as, given the nature of the planner accommodation, there would have been documentation had it been implemented. As corrective action, the District is required to provide written guidance regarding the requirement to implement a student's accommodations according to the IEP. The Student's IEP team will also be required to meet to discuss the planner accommodation and strategies to support the Student.

Regarding the other accommodations, the Parent alleged the District failed to provide these accommodations when providing make-up assignments for the Student to complete while absent on vacation and the documentation showed the Parent consistently asked for and the District provided ways to assist the Student in making up general education assignments, such as the Student making up work during 5th period. (It should be noted that another accommodation for the Student was "no unfinished school work expected to be completed at home.") But the Parent asked for the Student's assignments when the Student was absent while on vacations. The Parent must keep in mind that no matter how diligent the District was in helping the Student make up assignments, it was not the same as receiving the initial instruction from the teacher, learning the concept, and being able to practice it. The Parent was frustrated by what she saw as the District not implementing the accommodations for background information and step-by-step directions. But the Student's IEP expressly stated that the accommodations were for the general education and special education setting, not necessarily for making up assignments while the Student was absent. No violation is found for regarding the implementation of these accommodations.

**Issue Three: Review and Revise the IEP** – The complaint alleged the District failed to review and revise as appropriate the Student's IEP due to a lack of progress in reading comprehension. 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 documentation showed the Student's ADHD had a negative effect on her reading. The Student's May 2021 and November 2022 IEPs provided reading goals in the areas of comprehension and vocabulary. The Student's June 2022 and January 2023 progress reports showed the Student made progress towards the annual reading goals. The Parent argued that based on iReady scores, the Student has not made progress towards grade-level standards. However, progress on IEP goals and in special education is measured against a student's own performance. Although the Student made progress, the District also conducted IEP meetings, assessment revisions, and agreed to an IEE that continually assessed the Student's performance and determined if the services were appropriate for the Student. The IEP team added goals and services as necessary. Based on the documentation that the Student made progress in the reading goals and that the IEP team reviewed and revised the IEP as appropriate, no violation is found.

**Issue Four: Parent Participation** – The complaint alleged the District failed to “observe the guardian’s right to participate in the IEP process.” A district must ensure that a parent has an opportunity to participate in decisions regarding the IEP.

Here, the documentation showed that prior to meetings, the Parent received notices of meetings, communicated concerns through emails and phone calls, and received draft copies of IEPs and evaluations reports, and received progress reports. During the IEP and evaluation meetings, the team discussed both District evaluations and IEE results. The Parent asked questions, made requests, and the District responded to the Parent. An IEP facilitator was present at two meetings to help ensure parent participation. In addition, the District took meeting notes and the documentation showed the District shared the meeting notes with the Parent, provided prior written notice, and followed up with the Parent about issues discussed, although not as much as the Parent wanted. OSPI notes that parent participation does not always mean complete agreement with IEP decisions. A district is not required to agree with the parent to have the parent fully participate.

In preparation for an IEP meeting, the special education teacher emailed a draft copy of the IEP and the prior written notice on April 26, 2022. The email clearly identified both the IEP and notice as a draft, and both documents were marked “DRAFT.” The Parent’s complaint stated that the draft documents constituted predetermination, which prevented the Parent from participating in the IEP decisions. Draft IEPs provided before IEP meetings are not unusual and are permissible if it is clear the IEP is a draft, such as having a draft stamp on the IEP or informing the Parent of its draft status, as the draft was here. After receiving the Parent’s concern about the IEP’s status, the District followed up with the Parent, explaining that the IEP and notice were draft copies not meant to be final. It should be noted the IEP meeting did not immediately occur after the drafts were sent to the Parent. The IEP meeting occurred in November 2022. Regarding the draft prior written notice, a draft notice is unusual, but it is not necessarily a violation if it is clearly understood that it is a draft. Like the IEP, the email and the notice clearly indicated the notice was a draft. While there was insufficient evidence to support that the drafts constituted predetermination and was, therefore, a violation, OSPI cautions the District in writing notices before IEP meetings, which can result in the appearance of predetermination. Overall, OSPI finds no violation.

**Issue Five: Comprehensive Evaluation/Issue Six: Eligibility** – The complaint stated, “...[District’s] assessments failed to address all areas of [Student’s] disability, resulting in an incomplete understanding of her needs. This includes failing to assess and identify [Student’s] ongoing Language disorder...” and the need for behavior supports. An evaluation must be sufficiently comprehensive to identify all of the student’s special education needs.

Language Disorder: In June 2022, a neuropsychologist conducted an assessment of the Student. The evaluation report stated that the results indicated a language disorder and recommended speech/language therapy. In October 2022, the District conducted an evaluation that included a communication assessment, along with a review of existing Student data (including the results from the neuropsychological evaluation), general education teacher reports, Student observations, academic assessment, and a study skills assessment. The communication assessment consisted of two standardized evaluations that assessed oral language skills and the

use of social language. The results from the oral language assessment showed that the Student's general index was at the 14th percentile. The subtests ranged from a low in double meaning (10th percentile) to high in synonyms (55th percentile). The teacher ratings from the social language assessment ranged from deficient to average. Based on the evaluation, the District offered SLP services, but the Parent preferred SLP consultation. Based on documentation that the District appropriately evaluated the Student in the area of communication using multiple sources of data that were Student-specific, no violation is found.

Behavior: The June 2022 neuropsychological evaluation assessed the Student's behavior. The evaluation included the BASC 3. The evaluation report the Student was diagnosed with ADHD, along with difficulties with emotional regulation and anxiety. The October 2022 evaluation incorporated the findings from the neuropsychological report, documenting the Student's issues with attention and focus. In addition, the October 2022 evaluation included a structured observation of the Student that was conducted four different times and a study skills questionnaire that was completed by the Parent and teachers to assess executive functioning. The evaluation recommended special education services in study skills to address the Student's difficulty with executive functioning. In February 2023, the District conducted an assessment revision that included a review of the Student's disciplinary record, the IEE results, information from the October 2022 evaluation, a functional behavioral assessment, and observations. Based on the documentation that the District appropriately evaluated the Student using multiple sources of data that were Student-specific, no violation is found.

Eligibility: Based on the comprehensive evaluation the District conducted, the team found the Student continued to be eligible for special education services under the category of other health impairment. The decision was based on Student-specific data and consistent with the Student's needs and abilities. No violation is found.

### **CORRECTIVE ACTIONS**

By or before **September 8, 2023** and **September 29, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **IEP Meeting**

By or before **September 1, 2023**, the Student's IEP team, including the Student if she wants to attend, will meet. At the meeting, the IEP team must address the Student's planner accommodation, how it will be implemented (e.g., paper planner, electronic planner, etc.), and whether any additional services or supports are needed to support the Student in completing assignments.

By **September 8, 2023**, the District will provide OSPI with: i) a prior written notice, summarizing the group's discussion and decisions concerning the above matters; ii) a copy of the Student's IEP; iii) any relevant meeting invitations and prior written notices; and iv) any other relevant documentation.



**DISTRICT SPECIFIC:**

By **September 22, 2023**, the District will ensure that the following individuals receive written guidance on the topic of implementation of accommodations: all general education and special education teachers, and administrators at the school that the Student was enrolled in during the 2022–2023 school year. The guidance will include examples and discussion of best practices.

By **September 8, 2023**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by September 15, 2023.

By **September 29, 2023**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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 22nd day of June, 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.)