

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-104**

### **PROCEDURAL HISTORY**

On November 30, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Central Valley School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On December 2, 2021, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint before December 17, 2021.

On December 21, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on December 22, 2021. OSPI invited the Parent to reply. The Parent did not provide a reply.

On January 7, 2022, the OSPI complaint investigator requested that the District provide additional information on or before January 11, 2022, and the District did not respond to this request.

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

### **SCOPE OF INVESTIGATION**

In addition to the special education issue below, the Parent's complaint referenced concerns with the implementation of the Student's Section 504 Plan, which is not an issue in this complaint as OSPI does not have authority to investigate allegations related to Section 504 through the special education community complaint process. The Parent was referred by OSPI to contact the U.S. Department of Education, Office for Civil Rights, which has the authority to investigate discrimination claims under Section 504 of the Rehabilitation Act. Any references to this are included for context only and are not intended to identify additional issues or potential violations.

### **ISSUE**

1. Did the District follow the special education referral procedures for evaluating the Student?

### **LEGAL STANDARDS**

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with

parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

Definition of a Free Appropriate Public Education (FAPE): Every student eligible for special education between the ages of three and twenty-one has a right to receive a FAPE. 34 CFR §300.101; WAC 392-172A-02000. An eligible student receives a FAPE when he or she receives, at public expense, an educational program that meets state educational standards, is provided in conformance with an individualized education program (IEP) designed to meet the student's unique needs and includes whatever support services necessary for the student to benefit from that specially designed instruction. 34 CFR §300.17; WAC 392-172A-01080. The basic floor of opportunity provided by the IDEA consists of access to specialized instruction and related services. *Hendrick Hudson District Board of Education v. Rowley*, 458 U.S. 176, 102 S.Ct. 3034 (1982).

Prior Written Notice: Prior written notice ensures that the parent is aware of the decisions a district has made regarding evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate. 34 CFR 300.503; WAC 392-172A-05010.

Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

## **FINDINGS OF FACT**

1. The District's first day of school was August 30, 2021. The District's response indicated that the Student enrolled in the District on September 7, 2021.

2. At the start of the 2021–2022 school year, the Student was in the third grade, attended a District elementary school, and was not eligible for special education services.<sup>1</sup>
3. The District’s response acknowledged that the Student was referred by a prior school district for a special education evaluation in the areas of “ongoing concerns in reading, writing and math.”
4. On the Student’s first day of enrollment, September 7, 2021, the Parent emailed the Student’s teacher, explaining that the Student had been online for second grade because of a family member’s illness, that the Student had a 504 plan, and that the Parent believed he needed an evaluation for an individualized education program (IEP). The Parent explained “[w]e were going to initiate one at the beginning of second grade but he ended up doing online last year.”
5. On September 10, 2021, the Student’s teacher emailed the Parent to state that she had not received any paperwork on the Student’s needs and wanted to know whether the Student had a 504 Plan and an IEP.
6. On September 10, 2021, the Parent responded via email to the Student’s teacher with additional information. The Parent explained that the Student only had a 504 Plan and provided more information regarding her request for a special education evaluation, including concerns about the Student’s delays in reading and writing and a medical recommendation for an attention deficit disorder (ADD) evaluation because of the Student’s distractibility in the classroom and difficulty with focus. The Parent noted concerns with the Student’s ability to complete multi-step directions and that the Student had been “neglected in his environment for the first 18 months of life.” The Parent wrote, “I was just hoping to get testing started so that we can see if he qualifies for an IEP in at least reading and writing...I know it can take a little bit of time.”
7. The District’s response included documentation that the Student’s elementary school received a copy of a previously completed occupational therapy evaluation via fax on September 21, 2021.
8. The District’s response confirmed that a prior written notice was not provided to the Parent in September in response to her request for an evaluation. The District’s response included a timeline, which acknowledged that the Parent again contacted the Student’s elementary school on November 4, 2021 “regarding a special education referral” for the Student. No details were provided regarding this contact and no explanation was provided by the District’s

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<sup>1</sup> The Student did, though, have a 504 Plan under the Rehabilitation Act of 1973. “Under Section 504, students with disabilities can access the accommodations, aides, and services they need to access and benefit from education” – the notable difference from the IDEA being that, under Section 504, a student is not entitled to specially designed instruction. <https://www.k12.wa.us/policy-funding/equity-and-civil-rights/information-families-civil-rights-washington-schools/section-504-students-disabilities>

for the lack of response to the Parent's request for evaluation for the period between September 7 and November 4, 2021.

9. On November 4, 2021, the District completed a "Referral for Special Education Evaluation," indicating the reason for the referral as follows:

A referral was made for [Student] due to the receipt of an Occupational Therapy Plan of Care that was brought to the attention of the School Psychologist on November 4, 2021. Although this plan of care was out of date upon its receipt by the district, its measure of this student's levels in the area of fine motor skills suggested a significant delay in that area. In the interest of formally examining this area of need, a referral is being initiated at this time. In summary, an initial evaluation was initiated due to the team wanting to collect data on [Student's] fine motor skills due to the data contained in his Occupational Therapy Plan of Care from 2019.

The District did not provide an explanation for the difference in time between receipt of the occupational therapy evaluation on September 21, 2021 and the referral dated November 4, 2021.

The referral document further indicated areas of suspected disability, including math, written language, reading, cognitive, and fine/gross motor. Specific information regarding each area of suspected disability included the following:

Math:

Student received Title I services in this area in Kindergarten and First Grade and made less growth than expected at that time. Student was referred in his First Grade school year for concerns in math; he was reported 'to be not currently working at grade level, it is hard for him to get started. He uses fingers as a strategy. Word problems are really hard for him, and he does not have the automatic [sic] with 10 and should be working towards 20. Parent added that math does seem to be an area of strength for Student, however, he will 'show splinter skills.' Parent continues to report concerns in this area.

Written Language:

Student received Title I services in this area when he was in Kindergarten and First Grade and made less growth than was expected at that time. In addition, when Student was referred during his First Grade school year (the 2018-2019 school year) the following concerns were indicated: 'at that time in the area of writing [Student] was reported to be doing better at telling stories and dictating stories. He doesn't write complete sentences at home. At school, he would do written comprehension and the teacher would let him dictate. He wasn't always able to retell the details and he would give a basic response. He has shown growth, just not as much as is expected. The team had hopes that he would stay in writing intervention in the end of the school year.' Parent continues to report concerns in this area.

Reading:

Student received Title I services in this area when he was in Kindergarten and First Grade and made less growth than was expected at that time. In additional, when Student was referred during his First Grade school year (the 2018-2019 school year) the following concerns were indicated: at that time in the area of reading, Student was reported to be able to recognize some sight words in isolation, but not as a part of a larger reading

passage. He was reported to be at a DRA level of 4 independently (Kindergarten level) and was at a level of 6 (Kindergarten level) with support. During small group instruction, the group was working on reading at a 'Literably' level of D (Kindergarten level). In the home environment, Student was reported to be sounding out irregular words (ex: 'meat', 'eat', etc.) and his sight word knowledge was increasing as well. However, Student was reported to not be '...consistently showing his skills,' At that time, Parent reported that Student currently knew around 25-30 sight words...when working at home. Student was reported to be doing better with his reading comprehension skills but it was reported to be 'still pulling teeth.' Student was reported to do well responding to simple questions, but was not able to respond to comprehension questions pertaining to the '5 W's' (i.e., who, what, where, when, and why questions)." Parent continues to report concerns in this area.

Cognitive:

Parent is curious if Student's cognitive abilities are different from his academic achievement and the team would also like to collect data in this area in order to determine if this discrepancy exists.

Fine/Gross Motor:

The Occupational Therapy Plan of Care documented (dated 4/25/2019) that was received by the district indicated that Student was exhibiting significant deficits in the area of fine motor skills.

10. On November 4, 2021,<sup>2</sup> the District provided the Parent with a prior written notice, "proposing to initiate a referral" on the same date and offering a copy of the "Notice of Procedural Safeguards for Special Education Students and Their Families."
11. On November 5, 2021, the Parent provided written consent for initial evaluation and completed the District's "Initial Developmental History Form."
12. On December 3, 2021, the District completed the evaluation and evaluation report. The report summarized the results of an initial evaluation:

Student presented a current level of cognitive or intellectual functioning assessed to indicate a very low performance in comparison to same-aged peers. His Fluid Reasoning and Working Memory skills were assessed to be within the average range, while his Verbal Comprehension, Visual Spatial, and Processing skills were both assessed to be in the very low range.

Student presented basic reading, reading comprehension, written expression, and math calculation skills in the very low range for his age level and his math problem solving skills were assessed to be within the low average range.

An Occupational Therapy Evaluation was completed which concluded that Student demonstrates average visual-perceptual and fine motor skills and low average visual motor

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<sup>2</sup> This notice was dated in typed font as November 4, 2021; however, there was an unsigned handwritten correction to the date which appears as September 10, 2021. The September 10, 2021 date is written next to a crossed out, typed date of November 4, 2021. The investigator asked the District to provide an explanation for the two dates; however, no explanation was received. The November 4, 2021 date was confirmed by the District's response in which it provided an outline of District actions.

skills compared with his same aged peers, with notation of some challenges with visual motor coordination and proximal stability.

The District team and Parent completed an "Eligibility Determination" on December 3, 2021, noting his medical diagnosis of attention deficit hyperactivity disorder (ADHD) and deciding that the Student had a disability under the category of other health impairment. The team recommended the Student receive specially designed instruction in basic reading skills, reading comprehension, written language, and math calculation.

13. On December 9, 2021, the Student's IEP team, including the Parent, met to develop an IEP for the Student. The IEP reviewed the Student's present levels of academic and functional performance in the academic areas of reading, written language, and math. The IEP included annual goals in math (double digit addition, one digit addition), reading (beginning sight words, comprehension), and written language (capitalization, punctuation, and spelling). The IEP provided the Student with the following specially designed instruction:
- Math: 150 minutes per week (provided in the special education setting)
  - Reading: 150 minutes per week (provided in the special education setting)
  - Writing: 150 minutes per week (provided in the special education setting)

The IEP provided accommodations and modifications to support the Student's access to the general curriculum and his engagement in District and state assessments. The IEP indicated that special education services were to begin on December 9, 2021.

14. The Parent was provided a prior written notice on December 10, 2021, "proposing to initiate an IEP" on the same date and offering a copy of the "Notice of Procedural Safeguards for Special Education Students and Their Families." The prior written notice explained that the Student had been recently identified by the evaluation team as needing specially designed instruction in the areas of reading, written language, and math. The notice also noted that the team discussed the Student's areas of concern and authored two goals in each academic area, recommending 150 minutes per week of pull-out specialized instruction for math, reading, and written language for a total of 450 minutes of pull-out specialized instruction per week.
15. The Student was determined eligible for special education services on December 3, 2021. According to the District's calendar, December 3, 2021 was 17 school days<sup>3</sup> after written consent was provided on November 5, 2021. The implementation of the Student's IEP occurred on December 9, 2021, a total of 21 school days after consent was provided and the evaluation began.

## CONCLUSIONS

**Issue: Referral Procedures** – The Parent alleged the District failed to follow referral procedures to respond to her written referral for a special education evaluation of the Student.

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<sup>3</sup> According to the District calendar, the District did not have school on November 11, November 25-26, and November 29, 2021.

When a parent refers a student suspected of having a disability for a special education evaluation, the district must document the referral and determine, within 25 school days after the receipt of the referral, whether it will evaluate. Then, the district must provide the parent with prior written notice of the decision. Here, the District did not respond within 25 school days to the Parent's request for special education evaluation on September 7, 2021 with a prior written notice, either to propose a referral for special education evaluation or decline to refer the Student for a special education evaluation. This is a violation.

The District's response verified that the Student was later referred by the school psychologist on November 4, 2021 for a special education evaluation, the District determined it would evaluate that day, and the Parent provided written consent for an evaluation on November 5, 2021. The District's response further established that the Student was determined eligible for special education services on December 3, 2021 (17 school days later), and an individualized education program (IEP) was developed and implemented beginning December 9, 2021. The IEP provided the Student with 150 minutes per week of specially designed instruction in each of the areas of math, reading, and written language for a total of 450 minutes per week of specially designed instruction.

Given the District's failure to respond to the Parent's referral within 25 school days, the Student's initial evaluation was improperly delayed. Because the Student was ultimately found eligible for special education and an IEP developed, compensatory education is warranted as an equitable remedy to address the delay in the provision of special education services.

To determine the amount of compensatory education, OSPI used the referral to evaluation and IEP development timeline ultimately followed by the District in November and December of 2021 as an approximation of what would have occurred earlier. Had the District completed a referral within a few school days of the Parent's request for evaluation on September 7, 2021, OSPI estimates that the Parent could have signed consent by September 14, 2021. The Student could have been eligible for special education services and had an IEP in place as early as October 13, 2021 (about 21 school days after the date a possible referral and consent for evaluation could have been completed, given that it ultimately took the District 17 school days to complete the evaluation and a further four school days to complete and implement the IEP). According to the District calendar, there are 37 school days between October 13, 2021—when an IEP could have been implemented—and the date the Student's IEP was to be implemented on December 9, 2021. This means the Student missed approximately 3,330 minutes (55.5 hours of instruction). Given that compensatory education is provided in a 1:1 setting and the earlier evaluation/IEP development timeline is an estimate, the overall amount of compensatory education ordered will be approximately half of the missed time, or 27 hours divided between math, reading, and written language.

### **CORRECTIVE ACTIONS**

By or before **February 11, 2022, February 25, 2022, March 11, 2022, April 8, 2022, and August 15, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

## **STUDENT SPECIFIC:**

### **Compensatory Education**

By or before **February 4, 2022**, the District and Parent will develop a schedule for 27 hours of compensatory education divided between math, reading, and written language, as follows:

- Reading: 9 hours
- Writing: 9 hours
- Math: 9 hours

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider and will be provided in-person. Services must be provided outside the school day and can be provided on weekends or District breaks. Services will be provided in a 1:1 setting.

After reaching agreement on the schedule with the Parent, the District will provide OSPI with documentation of the schedule for services by or before **February 11, 2022**.

If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **August 5, 2022**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **April 8, 2022** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **August 15, 2022**, the District must provide OSPI with documentation that it has completed compensatory services for the Student.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **August 15, 2022**.

## **DISTRICT SPECIFIC:**

### **Written Guidance**

The District will develop written guidance to be provided to all District certificated special education teachers, general education teachers, and principal(s) at the Student's school, and District special education administration staff, which will address the following:

- Special education referral procedures, including the requirement to respond to referrals for special education evaluations from parents and timelines.
- The requirement to provide a prior written notice, documenting the referral and evaluation decision in response to parent requests for special education evaluation.



The guidance will include examples.

By **February 25, 2022**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by March 4, 2022, and provide additional dates for review, if needed.

By **March 11, 2022**, the District will provide OSPI with documentation showing that it provided all District certificated special education and general education teachers, principals, and District special education administration staff with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

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

Dated this \_\_\_\_ day of January, 2022

Glenna Gallo, M.S., M.B.A.  
Assistant Superintendent  
Special Education  
PO BOX 47200  
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**THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT**

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