

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-121

PROCEDURAL HISTORY

On October 3, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Seattle School District (District). 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 October 4, 2022, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On October 21, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply. The Parent did not reply.

On November 13, 2022, OSPI requested that the District provide additional information about the Student's evaluation, and the District clarified the evaluation was not due until December 1, 2022, but that it would provide additional information if it became available.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on October 4, 2021. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUES

1. Did the District follow the special education referral procedures outlined in WAC 392-172A-03005 following the Parent's request for a special education evaluation on November 8, 2021, including considering existing data?
2. Did the District consider the results of the private evaluation of the Student completed in August 2022, per WAC 392-172A-05005(5)?

LEGAL STANDARDS

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 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 there is sufficient data to suspect a disability. 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.

Independent Educational Evaluation (IEE): If the parent obtains an IEE at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and may be presented as evidence at a hearing regarding that student. 34 CFR §300.502(c); WAC 392-172A-05005(5).

FINDINGS OF FACT

Background

1. The Student was not eligible for special education services and attended a high school in the District.
2. On August 19, 2021, according to the Parent, she emailed the assistant principal and requested that an individualized education program (IEP) be developed for the Student.
3. The District's 2021–2022 school year began on September 1, 2021.
4. According to the District, on or about September 1, 2021, the Parent requested an evaluation to determine if the Student was eligible for special education services.
5. On September 30, 2021, the District notified the Parent that it determined it would not proceed with an initial special education evaluation. The District provided the Parent a prior written notice and a copy of the procedural safeguards.

Complaint Timeline Began October 4, 2021

6. On October 27, 2021, the Parent forwarded the school psychologist an email from the Student's middle school teachers with evidence of his "poor academic performance" the school year before. The Parent also asked about the status of the academic interventionist and having this person work with the Student.

The school psychologist responded, noting the Student had some missing assignments and that he could meet with the Student. The psychologist also noted the academic intervention specialist position had not yet been filled.

7. On November 18, 2021, the Student's father emailed the high school counselor with concerns that the Student was falling behind in math and science, and requested the counselor check in with the Student.

The Parent then added on to the email in a second email, adding the school psychologist, and stated she again requested an assessment for special education. The Parent stated the Student struggled with attention deficit hyperactivity disorder (ADHD).

The school psychologist responded that he hoped to have the Student work with an academic interventionist, but the position had not been filled, and that while the Student was struggling, he did not appear to require specialized instruction. The psychologist stated he would refer the Student to the "student intervention team" (SIT).

8. The District noted in its response that while the psychologist stated in the November 18, 2021 email that he would bring the Parent's evaluation request to the SIT, "it appears that these concerns were not brought to the SIT and a decision regarding assessment was not made within 25 school days as required."

The District stated that given an earlier request for an evaluation was responded to properly, this failure to respond was an oversight and noted the school psychologist involved had retired and no longer worked in the District.

9. The District was closed for winter break between December 20 and 31, 2021.
10. On January 31, 2022, the Parent requested a 504 plan and assessment of the Student. The District stated that staff began working on a 504 evaluation and development of a 504 plan, and emails reviewed in the complaint indicated there were discussions between November 2021 and June 2022 about a 504 plan.

At the end of March 2022, the Student was found eligible for a 504 plan and the plan was developed. The 504 evaluation indicated the Student was already receiving some accommodations, such as preferential seating, extended time, assignments broken into smaller tasks, teacher check-ins, no grade deduction for late work, and available tutoring twice a week. The 504 plan included the following accommodations: "extra time on tests and assignments" and "breaking assignments into smaller parts so student can understand."

11. On May 4, 2022, the Parent emailed the counselor and noted she was not happy with the accommodations in the Student's 504 plan. The Parent noted the Student would be undergoing a private assessment in August 2022.
12. June 17, 2022 was the last day of the 2021–2022 school year.
13. In August 2022, the Parent obtained a private neurodevelopmental evaluation of the Student. The private provider diagnosed the Student with a learning disability in math and written expression, and autism spectrum disorder. The evaluation report included several recommendations, including that the Student "qualifies for educational support under Section 504."

2022–2023 School Year

14. At the start of the 2022–2023 school year, the Student was not eligible for special education services and attended a District high school.
15. The District's first day of school was September 14, 2022.

16. On September 15, 2022, the Parent emailed the school psychologist and counselor a copy of the private evaluation and requested an IEP.

The school psychologist responded, noting she had opened a special education referral for the Student and that they had "25 school days to review/collect information and determine next steps," attached documentation of the referral (prior written notice), and attached a copy of the procedural safeguards.

17. According to the October 6, 2022 "guidance team record – special education referral", the Student was referred "due to concerns related to Autism Spectrum Disorder, Specific Learning Disorder in Math and Written Expression, and ADHD Combined Type," confirmed after a neurodevelopmental evaluation.

18. On October 6, 2022, the psychologist provided the Parent with a prior written notice, proposing to initiate an evaluation and provided the Parent with a consent form. The consent form indicated the evaluation would assess general background, math, cognitive, reading, written language, motor, social/behavior, communication, and study/organizational skills.

19. On October 7, 2022, the Parent consented to the evaluation via email.

20. The District stated in its response, regarding the private evaluation, that:

Upon receipt of the private evaluation, the team considered the findings as part of the decision whether to assess. [School psychologist] also used the information provided to guide the team in determining in what areas to evaluate [Student]. The private evaluation will also be considered as part of the District's evaluation of whether [Student] qualifies for special education.

21. The District noted that the Student's evaluation was due by December 1, 2022.

CONCLUSIONS

Issue One: Referral Procedures – The Parent alleged the District failed to respond to her request for a special education evaluation in November 2021.

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 there is sufficient data to suspect a disability. 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.

Here, the Parent initially requested an evaluation for special education in August 2021. The District, while it declined to evaluate the Student, followed procedures to consider the request and sent the Parent prior written notice of the decision on September 30, 2021.

After continuing to have concerns about the Student, the Parent again requested an evaluation for special education eligibility on or around November 18, 2021. The school psychologist stated he would bring the request to the "student intervention team" (SIT) but did not, and the District did not take any action on the Parent's request for the remainder of the 2021–2022 school year. The District acknowledged the violation, stating it was an oversight given they had properly responded to the referral in August/September 2021, and noted that the school psychologist involved had since retired.

As the District failed to follow referral procedures, OSPI finds a violation.

The Student was subsequently evaluated for special education eligibility during the 2022–2023 school year, with the Parent signing consent on October 7, 2022. While conducting the evaluation was delayed by the District's violation, the evaluation is now underway. OSPI finds that because the evaluation is underway and the violation seems to stem from an isolated incident with a staff person that is no longer employed in the District, no additional corrective actions are required.

Issue Two: Consideration of a Private Evaluation – The Parent alleged the District failed to consider the results of a private evaluation she obtained in August 2022.

If the parent obtains an IEE at public or private expense, the results of the evaluation: must be considered by the district, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the student; and may be presented as evidence at a hearing regarding that student.

In August 2022, the Parent obtained a private neurodevelopmental evaluation of the Student. The private provider diagnosed the Student with a learning disability in math and written expression, and autism spectrum disorder. The evaluation report included several recommendations, including that the Student "qualifies for educational support under Section 504." The Parent provided the District with a copy of the private evaluation on September 15, 2022. The school psychologist responded, acknowledged the referral for a special education evaluation and provided prior written notice. On October 6, 2022, the District provided the Parent with prior written notice, proposing to initiate a special education evaluation and the guidance team record, special education referral document specifically acknowledged the private evaluation. The District stated that the team considered the private evaluation when determining to evaluate the Student and that the private evaluation would be considered during the evaluation.

Thus, while the evaluation is not yet complete, the District has utilized and considered the private evaluation in the determination to evaluate the Student. OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 23rd day of November, 2022

Dr. Tania May
Assistant Superintendent of Special Education
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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.)