

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-92

PROCEDURAL HISTORY

On December 28, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Richland School District (District). The Parents 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 29, 2017, 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 January 19, 2018, OSPI received the District's response to the complaint and forwarded it to the Parents on January 22, 2018. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On January 29, 2018, OSPI received the Parents' reply. OSPI forwarded that reply to the District on January 30, 2018.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student transferred into the District and was eligible to receive special education and related services under the category of multiple disabilities. In October 2016, the Student was reevaluated and an individualized education program (IEP) was developed. On September 1, 2017, the District held an IEP meeting at which the Parents requested that the District pay for an independent educational evaluation (IEE). The Parents subsequently emailed the District, asking about an IEE on September 5 and September 21, 2017. In October 2017, the Parents and District agreed to reevaluate the Student. The Parents alleged that the District failed to follow IEE procedures by not providing the Parents with information about obtaining an IEE. The District acknowledged that the IEE information was not provided to the Parents in a timely manner.

SCOPE OF INVESTIGATION

This decision references events which occurred prior to the investigation time period, which began on December 29, 2016. 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 time period.

ISSUE

1. Did the District follow procedures for responding to the Parents' request for an independent educational evaluation (IEE) during the 2017-2018 school year?

LEGAL STANDARDS

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. 34 CFR §300.502; WAC 392-172A-05005(1). An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. 34 CFR §300.502(a)(3)(i); WAC 392-172A-05005(1)(c)(i). At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. 34 CFR §300.502(a)(3)(ii); WAC 392-172A-05005(1)(c)(ii). Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. 34 CFR §300.502(a)(2); WAC 392-172A-05005(1)(b). Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. 34 CFR §300.502; WAC 392-172A-05005(2).

If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. 34 CFR §300.502(b)(2); WAC 392-172A-05005(2). If the district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parents still have the right to an IEE, but not at public expense. 34 CFR §300.502(b)(3); WAC 392-172A-05005(3). If the parents request an IEE, the district may ask for the parents' reason why they object to the district's evaluation. However, the explanation by the parents may not be required and the district must either provide the IEE at public expense or initiate a due process hearing to defend its educational evaluation. 34 CFR §300.502; WAC 392-172A-05005(4). If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner must be the same as the criteria that the district uses when it initiates an evaluation, to the extent those criteria are consistent with the parents' right to an IEE. 34 CFR §300.502(e); WAC 392-172A-05005(7).

FINDINGS OF FACT

2016-2017 School Year

1. On August 30, 2016, the Student transferred to the District from another Washington State school district and was eligible to receive special education services under the category of multiple disabilities.
2. In October 2016, the Student was evaluated by the District. The evaluation results stated that in addition to a review of existing data, the Student was evaluated in the areas of speech

and language, behavior, fine motor, and mathematics. Cognitive development was previously assessed by an independent evaluation that the Parents provided. The evaluation report included the following information:

- **Speech and Language** – the Student’s language and vocabulary were above average although the Student demonstrated a frontal lisp. According to the documentation, the Parent wanted articulation services continued.
- **Behavior** – the Student’s social skills were average or above average except in hyperactivity/inattention and autism spectrum, which were below average. The behavior observation stated “there was a subtle tendency for [Student] to lose focus” but his teachers did not report any “overtly negative behavior” in school.
- **Fine Motor** – fine motor precision and manual dexterity skills were average and fine motor integration skills were above average. The evaluation report stated: “No further occupational therapy service are recommended at this time. Fine motor skills are average or above average allowing him to access his curriculum.”
- **Mathematics** – the Math Inventory indicated that the Student was at the “below basic” level.¹

The evaluation report recommended that the Student receive specially designed instruction in the areas of social behavior, communication (articulation), and mathematics. The evaluation report recommended no related services, including no occupational therapy. The report also recommended that the Student no longer receive speech and language services as a direct service, but instead receive consultation services from a speech and language pathologist.

3. On October 25, 2016, the Student’s individualized education program (IEP) team held an IEP meeting to discuss the evaluation and conducted an annual review of the IEP. The IEP team then developed a new IEP for the Student. The October 2016 IEP included annual goals in the areas of social behavior, communication, mathematics, and written expression. The IEP provided for the following specially designed instruction:
 - Communication – 30 minutes 3 times monthly
 - Written Expression – 55 minutes 5 times weekly
 - Mathematics – 55 minutes 5 times weekly
 - Social Behavior – 55 minutes 5 times weekly

The IEP also included special transportation, a paraprofessional as needed, and consulting with a speech and language pathologist once a month.

2017-2018 School Year

4. On August 29, 2017, the District’s 2017-2018 school year began.
5. On September 1, 2017, the District held an IEP meeting to discuss the new school year. According to the meeting notes, the Parents expressed concerns about the Student’s progress in written expression, speech and language, and mathematics. The meeting notes indicated that the Parents stated that the October 2016 evaluation may not be valid. The

¹ The Quantile score was 315, which was approximately at the third grade level (305 to 555).

meeting notes stated: "Mom is stating she wants testing at the state's expense." According to the complaint, the Parents requested "copies of the District's testing and requested an IEE at public expense" at the meeting.

6. On September 5, 2017, the Parents emailed the District school psychologist regarding concerns about the Student having potential hearing loss, whether the Student was refusing services, and implementation of accommodations. The Parents also requested information about the Student's October 2016 evaluation and how the results were used to make decisions about services. In response, the District school psychologist offered to provide another copy of the October 2016 evaluation report and informed the Parents that they could request an IEP meeting at any time.
7. On September 6, 2017, the District school psychologist emailed the Parents, stating the following:

...The school team will review all of [Student's] records and meeting notes as well as your specific requests. I did send you a copy of the most recent evaluation and IEP so you can review those. We will set up an IEP meeting at a time that works for you so the entire team can come together and revise the IEP with all of the current information.
8. On September 11, 2017, the Parents emailed the District school psychologist, stating that they received the speech and language and occupational therapy evaluations. The Parents indicated they disagreed with the results and stated: "Please let us know how to proceed." The school psychologist replied, asking the Parents to put their concerns in writing.
9. On September 16, 2017, the fifteen-day time period expired for the District to either initiate a due process hearing or respond to the Parents' request for an IEE at public expense.
10. On September 19, 2017, the District school psychologist emailed the Parents, stating that the District was able to obtain previous records regarding the Student and requested that the Parents inform the District of any other records that were available.
11. On September 21, 2017, the Parents replied to the District school psychologist, stating that all the information provided by the Parents should be available and considered by the IEP team. In addition, the email stated: "...Per our request from the IEP we clearly request testing at the states expense, we have not received a response as of yet. Please provide [information regarding] how to proceed." On the same day, the District school psychologist emailed the Parents, and in part, requested that the Parents put their concerns in writing. The District's documentation in this complaint does not show that the District responded to the Parents' request regarding how to proceed with procuring an IEE.
12. On October 6, 2017, the IEP team met to discuss the Parents' concerns, including modifications/accommodations of the Student's work load. According to the District's response, the IEP team also discussed conducting a reevaluation of the Student. The Parents also shared medical information about the Student with the IEP team.

13. According to the District's prior written notice, dated October 23, 2017, on October 20, 2017, the District and the Parents agreed to reevaluate the Student. The Parents indicated in the complaint that the District was proposing to reevaluate the Student in response to the Parents' disagreement with the October 2016 evaluation. On October 23, 2017, the Parents signed consent for the reevaluation. The District's response to the complaint stated that District staff believed the request for an IEE was no longer relevant because the District and Parent agreed to a reevaluation.
14. On December 1, 2017, the District completed the Student's reevaluation. The reevaluation results were as follows:
- **Academic** – the Student's basic reading and comprehension scores were the average range although he showed weaknesses in the areas of mathematics and written expression.
 - **Social Behavior** – the results indicated that the Student exhibited more problems at home than at school. The Student's teachers reported the Student demonstrated appropriate social behaviors, maintained friendships, and displayed no conduct issues.
 - **Fine Motor** – the results indicated that the Student's manual dexterity was in the average range, but fine motor precision and integration skills are slightly below average. The evaluation report stated that the Student's fine motor skills were not impeding the Student's access to his curriculum.
 - **Speech and Language** – the results indicated that the Student's language skills were in the average to above average range, except for a lisp. However, the lisp did not interfere with the Student's performance in the classroom.

The evaluation report recommended the Student receive specially designed instruction in the areas of mathematics and written expression. No related services were recommended.

15. Also on December 1, 2017, the District held an IEP meeting to begin developing the Student's annual IEP², but according to the District, the new IEP was not finalized at the time.³
16. The District was on break December 20, 2017 through January 2, 2018.
17. On December 28, 2017, the Parents filed the complaint.
18. On January 17, 2018, the District sent the Parents a letter, stating "[District] is not opposed to providing an IEE for [Student]." The letter included the District's criteria for funding an IEE and a provision for waiving the criteria if parents could demonstrate other factors that warranted a waiver. The criteria included the following:
- Location of evaluators conducting IEEs
 - Qualifications of evaluators conducting IEEs
 - Cost for IEEs
 - Timeline for completing the IEE

² The District acknowledged that the Student's October 25, 2016 IEP was not reviewed within a year. The IEP is required to be reviewed at least annually.

³ According to the District, the District has determined to wait until the completion of the Student's IEE to finalize a new IEP for the Student at the request of the Parents.

- Provision of evaluation report to District
- Conflict of interest requirements

The letter further stated:

Once you have chosen the provider, please let me know and I can arrange the contract, the release of information between the provider and the school district, and follow up with you regarding scheduling the evaluation.

CONCLUSION

The complaint stated that the District failed to provide the Parents with information about an IEE after they requested an IEE. If parents request an IEE at public expense, the district must provide the parents with information about how an IEE may be obtained and the district's criteria. In addition, the district must either initiate a due process hearing within fifteen (15) days to show that its evaluation is appropriate or ensure that an IEE is provided at public expense without unnecessary delay. Here, the District acknowledged that the IEE procedures were not followed because it did not provide the Parents with the written IEE procedures, and that it failed to either initiate a due process hearing within fifteen (15) days of the request to show the District's evaluation was appropriate, or ensure that the IEE was provided at public expense. After the complaint was filed, the District approved the Parents' IEE request.

In the Parents' reply to the District's response to this complaint, the Parents also expressed concerns about the District's criteria for funding an IEE. In short, the IEE must meet the same criteria as an evaluation initiated by the District, including the location of the evaluation and the examiner's qualifications. It is not inconsistent with the Parents' right to an IEE for the District to have additional criteria in its policy, provided that it allows the Parents to demonstrate that unique circumstances justify an IEE request that does not fall within the District's criteria.

CORRECTIVE ACTIONS

By or before **March 23, 2018** and **May 4, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **March 16, 2018**, the District will hold an IEP meeting to develop the Student's annual IEP. By **March 23, 2018**, the District will submit 1) a copy of any meeting invitations; 2) a copy of the new IEP; 3) a copy of any prior written notices; and, 4) any other related documentation.

DISTRICT SPECIFIC:

The District proposed, in part, the following corrective action and OSPI accepted the District's proposal, in part, to remedy the violation.

By **April 27, 2018**, the District will provide training to all District special education teachers, case managers, and school psychologists regarding IEEs. The training will specifically address parents' rights to request an IEE, how to document when an IEE request is received, how to respond to

IEE requests, and who to notify in the special education department when a request is received. The training will include examples.

- By **March 23, 2018**, the District will submit a draft of the training materials to OSPI for review. OSPI will approve the materials or provide comments by April 6, 2018 and additional dates for review, if needed.
- By **May 4, 2018**, the District will submit documentation that staff participated in the training. This will include 1) a sign-in sheet, and 2) a roster of who should have attended so OSPI can verify that staff participated. If any of the staff are unable to participate, the District will provide a follow-up session(s) within the required timeframe.

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 February, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)