

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-48

PROCEDURAL HISTORY

On April 27, 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 Pasco 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 April 29, 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 May 16, 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.

On May 31, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 2, 2022.

On June 14, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on June 15, 2022. OSPI forwarded the information to the Parent on June 17, 2022.

On June 14, 2022, the OSPI complaint investigator conducted an interview with the Parent.

OSPI considered all of the 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 April 28, 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. The Parent alleged she referred the Student for a special education evaluation beginning two years ago and requested OSPI investigate this issue going back two years. OSPI informed the Parent in its opening letters that OSPI may only investigate those issues alleged in the one-year period prior to the complaint being filed.

ISSUE

1. Did the District implement referral and evaluation procedures to determine if the Student was eligible for special education?

LEGAL STANDARDS

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. WAC 392-172A-02040(1).

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. The referral must be in writing unless the person is unable to write. 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 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.

Response to Intervention and Referral Timelines: While the Office of Special Education Programs (OSEP), "supports state and local implementation of response-to-intervention (RTI) strategies¹ to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner...the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability." *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011); *see also Memorandum to State Directors of Special Education*, 67 IDELR 272 (OSEP 2016).

FINDINGS OF FACT

Background: 2020–2021 School Year

1. During the 2020–2021 school year, the Student was a second grader in a District elementary school. The Student did not receive special education services. The District indicated that the Student had a Section 504 plan.²
2. According to the Parent, the Parent made an unspecified number of requests to the District beginning September 2020 that the Student be tested, including one on April 13, 2021 when the Parent stated in a message to the Student's teacher:

I was wondering if there was a way to get [Student] tested. I know results may come in until next year or even get started until then, but I am not sure if she's having an issue processing, if it's laziness or what. I mean if it was on tv, she memorizes it from beginning to end, she can have detailed conversation about things that interest her, etc. I just want to make sure whatever decision I make for her for the next year is the right one and most beneficial to her.

¹ OSEP states that "the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction."

² Section 504 is part of the Rehabilitation Act of 1973.

3. The complaint investigation timeline began on April 28, 2021.

2021–2022 School Year

4. At the beginning of the 2021–2022 school year, the Student was a third grader who attended a District elementary school. The Student did not receive special education services. The Student continued to have a Section 504 plan.
5. On August 31, 2021, the 2021–2022 school year began in the District.
6. On September 8, 2021, the District special education director (director) provided training to staff at the Student’s school regarding the pre-referral, referral, and student assistance team processes.
7. In October 2021, the Parent reported she expressed her concerns to the Student’s teacher and the school assistant principal that her daughter was “not making the strides I was hoping for.” According to the District, the discussion regarded the Parent’s concern that the Student was not ready for third grade and that the Parent inquired about moving the Student back to second grade.
8. On November 8, December 13, 2021, and February 9, 2022, according to the District, the principal from the school where the Parent taught reported school staff received information on the student assistance team process and the special education referral process. In addition, on December 3, 2021, the principal emailed some of the school staff, including the Parent (as a teacher) about special education referrals:

Our special education referrals typically come out of the SAT (student assistance team) process that involves student problem solving and intervention prior to referral, which is the SAT packet that you worked on. As the team is making a direct referral, the information gathered in the SAT packet can be used. You can use the Sped forms and if the information has already provided the information on a previous form, reduce redundancy and only complete the information that has not already been provided on an SAT forms.
9. On December 9, 2021, according to the Parent, while attending a parent-teacher conference along with the assistant principal, the Parent requested the Student be “assessed.” The complaint stated:

Discussed assessing [Student] once again with teacher an VP [vice principal]. I was assured things would get rolling at this time. I was never made aware of any paperwork to be filled out. I did inquire about the 25-day period. This would have brought us to the end of Jan-early Feb for results of some sort. It was said it may take a little more time.
10. According to the District, the Student’s teacher and the school’s assistant principal met with the Parent on December 9, 2021 about the Student’s academic performance. The teacher indicated that the Student was at the same level as several other students and was receiving reading interventions. They discussed that the Student also receive reading interventions through the student assistance team.

The District complaint response stated, "At no time during the December 9 meeting did the Parent mention special education services or request that the student be evaluated for special education eligibility."

11. When OSPI asked the Parent about her requests for testing that did not specifically mention a possible disability or special education, the Parent, who is a teacher in another school in the District, stated that "everyone in the District" knew that the language she used regarding testing meant special education testing.

The District disputed this inference, stating there are other general education assessments, such as the "Star Assessment" and classroom screenings that are referred to also when parents request testing.

12. From December 20–31, 2021, the District was on winter break.

13. On January 7, 2022, the District stated the student assistance team met to discuss reading and writing interventions for the Student. The team decided to provide the Student with general education interventions for reading and writing.

14. On February 23, 2022, the District provided special education training to all teaching staff at the Student's school. The topics including the following:

- Referrals
- Pre-Referral Interventions
- The Building Process
- Exclusionary Considerations
- Referral Meetings

15. On March 18, 2022, the Parent emailed the Student's teacher and others and stated, "With conferences just around the corner and 55 days from when I requested for my daughter, [Student], to be assessed for Sped, I am curious to know what the status is on that..." The school psychologist responded, stating that the Parent's email was considered the written request for a special education evaluation.

16. On March 21, 2022, the school psychologist emailed the Parent about her concern about the delay in evaluating the Student. The email, in part, stated, "It sounds like at conferences in December was when initial concerns were discussed at length and the decision at that time was work with the Student Assistance Team (SAT) to identify appropriate interventions to her." The psychologist told the Parent that "since there is no current written request on record. I have taken your email from Friday as the written request and have generated the prior written notice that written request was received. If we can locate the initial written request submitted by you we can modify the date at which the referral request was received."

The psychologist provided the Parent with forms to fill out for the referral.

17. On March 22, 2022, according to the Parent, the District was "looking for paperwork with a request." The Parent stated she was never previously told by the District that she needed to fill out paperwork for the Student to be evaluated.

18. On March 25, 2022, the Parent stated she attended parent-teacher conferences. She was told that the Student's testing "would be well underway" after spring break.
19. From April-8, 2022, the District was on spring break.
20. On April 11, 2022, the District notified the Parent about a meeting scheduled for April 18, 2022 to review the special education referral and determine whether the Student would be evaluated for special education eligibility. The Parent stated she thought the meeting was to "go over the assessment information."
21. On April 18, 2022, according to the District, the Parent emailed the psychologist, stating, "I am electing to cancel" the meeting and filing a complaint.
22. Also, on April 18, 2022, the multi-disciplinary team met to review records, including the Parent's parent input form. The team decided to evaluate the Student for special education eligibility.
23. The prior written notice, dated April 18, 2022, stated that despite the Student's progress from the interventions provided to her, the Student "continues to experience challenges with disconnecting from academic material that may be a manifestation of ADD (attention deficit disorder), and may require specially designed instruction to make continued growth." The notice was sent to the Parent on April 19, 2022.
24. The "Parent Consent for Evaluation," dated April 18, 2022, was signed by the Parent on May 2, 2022.
25. On April 27, 2022, the Parent filed this complaint with OSPI.
26. The District's website provides the following information regarding child find:
Students in need of specialized education may be brought to the attention of the school district by parents or child care providers, educational staff, community agencies or other concerned individuals. Parents who wish to make their child (3yrs old to 21yrs old) a 'Focus of Concern' for special education may contact their neighborhood school directly, or call the District Special Services Department at [phone number] for assistance.
27. When asked by OSPI how a teacher refers a student for a special education evaluation, the director stated there were two ways: one was through the weekly data meetings at each building and two was handing the referral directly to the school psychologist.

CONCLUSION

Issue One: Referral and Evaluation – The complaint alleged the District failed to follow referral procedures. The Parent stated the District failed to timely respond to the Parent's requests for testing. A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a referral request for an initial evaluation to determine if the student is eligible for special education services. The referral must be in writing, unless the person is unable

to write. The District must notify the parent of the referral and within 25 days, determine whether there is sufficient reason to suspect a disability. Without unnecessary delay, the district will obtain consent from the parent to evaluate the student.

Here, the documentation showed that the Parent requested that the Student be "tested." However, the Parent, who was a teacher in the District, did not indicate she was referring to testing for a special education evaluation until March 18, 2022, which at that time, the District considered the request to be a special education referral. Although the Parent argued "testing" meant a special education evaluation, this could not be confirmed by the District and was not how the District interpreted the Parent's concerns prior to March 2022. The District stated testing could also mean testing general education students for academic issues or general screeners, which parents can also request from the District. A district is not required to assume that any and all requests for "testing" without more information about a parent's concerns or a suspected disability are necessarily requests for a special education evaluation. Had the Parent been clear that she was requesting a special education evaluation, then her earlier request certainly would have constituted a referral. The documentation indicates that the Parent, as a teacher in the district, received information about the student assistance team and special education referral processes.

The District notified the Parent of the receipt of the referral as of March 18, 2022. The District met on April 18, 2022 (in 16 school days, well within the required 25 school days after the referral) and determined the Student would be evaluated for special education eligibility and provided the Parent with prior written notice of the proposed evaluation. On April 27, 2022, the Parent filed the complaint with OSPI. On May 2, 2022, the Parent signed consent for the evaluation and the evaluation is in process. Based on the documentation, the District followed the required referral procedures. No violation is found.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of June, 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.)