

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-49

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 Tahoma 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 special education identification and evaluation.

On April 28, 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 13, 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 June 3, 2022, the OSPI complaint investigator interviewed the Parent and the District's director of special education regarding this complaint.

On June 6, 2022, OSPI received the Parent's reply/additional information from the Parent. OSPI forwarded that reply/information to the District on June 7, 2022.

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 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.

ISSUES

1. Whether since April 28, 2021, the District followed proper reevaluation procedures in relation to the Student.
2. Whether, since April 28, 2021, the District followed proper procedure to determine the appropriate placement for the Student.

LEGAL STANDARDS

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district

agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

Reevaluation – Review of Existing Data: As part of a reevaluation, the IEP team and other qualified professionals must review existing data on the student. Existing data includes previous evaluations, independent evaluations or other information provided by the parents, current classroom-based assessments, observations by teachers or service providers, and any other data relevant to the evaluation of the student. If the student's IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be eligible for special education services, and/or to determine the student's educational needs, the school district must notify the parents of that determination, the reasons for the determination, and the parents' right to request an assessment to determine whether the student continues to be eligible for special education and/or determine the student's educational needs. 34 CFR §300.305; WAC 392-172A-03025.

Placement: When determining the educational placement of a student eligible for special education including a preschool student, the placement decision shall be determined annually and made by a group of persons, including the parents, and other persons knowledgeable about the student, the evaluation data, and the placement options. The selection of the appropriate placement for each student shall be based upon: the student's IEP; the least restrictive environment requirements contained in WAC 392-172A-02050 through 392-172A-02070, including this section; the placement option(s) that provides a reasonably high probability of assisting the student to attain his or her annual goals; and a consideration of any potential harmful effect on the student or on the quality of services which he or she needs. 34 CFR §300.116; WAC 392-172A-02060.

FINDINGS OF FACT

Background: Student Information

1. As early as the Student's October 2017 evaluation, the Student's individualized education program (IEP) documented that the Student has a medical diagnosis of attention deficit hyperactivity disorder (ADHD), autism, and sensory processing disorder.
2. The 2017 evaluation noted the Student was found eligible for special education services under the category of emotional behavioral disability (EBD). The Student's disability impacted the

Student's ability to interact with peers during unstructured activities, follow directions from non-lead staff, maintain a calm body when frustrated, and write on-topic paragraphs. The Student demonstrated behaviors that impeded learning at times. Such behaviors include verbal exclamations and sounds, declining directions from staff, and difficulty with transitions.

3. The documentation showed that the impact of the Student's autism, sensory processing disorder, and ADHD imposed limits on the Student's social/emotional/behavioral and written language skills. The Student's behaviors resulted in the District placing the Student in a self-contained school.
4. Since the fall of 2017, the Student attended an out-of-District placement at a nonpublic agency (NPA). This was a self-contained therapeutic day school program to address the Student's social, emotional, behavioral, study, and organizational needs.

Background: 2020–2021 School Year

5. At the start of the 2020–2021 school year, the Student continued to be eligible for special education services under the EBD category and their October 2, 2021 IEP was in effect.
6. On September 24, 2020, the District sent the Parent a letter to obtain their consent to complete the Student's triennial reevaluation. The Parent consented to, and participated in, the Student's triennial reevaluation in October 2020. On the same day, the District requested, by email, that the Parent send the District a copy of the Student's autism diagnosis.
7. On October 10, 2020, the Parent sent an email to the District and to the Student's community medical provider, asking that the community medical provider send a copy of the Student's neuropsychological report to the District.
8. On October 12, 2020, the District completed a triennial reevaluation of the Student. The reevaluation was completed with input from the Student's teachers, Parent, observations, a review of existing data, and other information.
9. On October 12, 2020, the District developed an IEP for the Student. The District included in the Student's IEP that while the Student's eligibility category continued to be EBD, the Student's eligibility also fell under the category of autism. As a result of the Student's disability, they experienced difficulties with social, emotional, and behavior interactions with peers and had difficulty accessing their education due to the impact of autism and ADHD. The Student continued to attend a placement at an NPA in a fully self-contained school to address their unique needs. The District recommended extended school year services to support the Student. The evaluation noted that due to Covid-19 safety restrictions on the availability of in-person testing, limited evaluation data was available to the team.
10. On October 14, 2020, the District sent a prior written notice (PWN) to the Parent, documenting the Parent's request that the Student's special education eligibility category be changed from EBD to autism. The PWN documented that this request was rejected because the Parent had not provided documentation of the Student's diagnosis.

11. On March 7, 2021, the Parent emailed the District, requesting that the District complete a psychological reevaluation of the Student. The Parent suggested that this would assist in gauging the Student's social emotional readiness for school and determine how the Student was doing academically.
12. On March 8, 2021, the District responded, noting that the District completed the triennial reevaluation of the Student on October 12, 2020. The District observed that the Parent and the Student's teacher had completed social/emotional/behavioral questionnaires as part of that reevaluation. As a result of the October 2020 reevaluation, the District pointed out that the Student's IEP team determined the Student's educational placement based on this information. Part of that determination was that, at the time, the Student was not yet ready to transition back to their home/neighborhood school in the District.
13. On March 16, 2021, the Parent provided a copy of the Student's neuropsychological report, dated January 5, 2019, completed by a community medical provider, to the District. This report included an autism diagnosis for the Student.
14. On March 22, 2021, the Parent sent an email to the District, requesting that the District change the Student's special education eligibility category from EBD to autism.
15. On March 22, 2021, the District responded, observing that the IEP team had previously considered the change in category, dependent upon the Parent providing the private neuropsychological assessment data for the District to review. The District also observed that the eligibility category did not impact the services provided to the Student. The District further noted that when the Student was ready to transition from the out-of-District placement, the District would initiate another evaluation to address the change in placement and address the eligibility change at that time.

Complaint Investigation Timeline Began on April 28, 2021

16. On August 31, 2021, the Student's IEP team met to revise the Student's IEP. The District continued to find the Student eligible for special education under the category of EBD. The District continued to find that the Student's autism and ADHD had significant impacts on the Student's education, such that they continued their out-of-District placement at a self-contained school. The Student's August 2021 IEP provided the Student with specially designed instruction and special education services in social emotional/behavioral, writing, and study and organization.

2021–2022 School Year

17. The first day of school for the Student in their out-of-District placement was September 2, 2021. During the fall of 2021, the Student had begun to transition back to their home school within the District.
18. On September 6, 2021, the Parent sent an email to the District, providing notice that the family was considering moving, and that the upcoming move may impact the Student's mood.

19. The Student's IEP team scheduled a meeting for September 9, 2021. The Parent was unable to attend, so the meeting was rescheduled.
20. On September 17, 2021, the Student's out-of-District placement school contacted the Parent regarding the Student's annual IEP, and the Parent's availability to meet.
21. The District and Parent scheduled an IEP review meeting for October 6, 2021. The Student's IEP team subsequently met, and the IEP was finalized and became effective on October 11, 2021.
22. On October 21, 2021, the Parent sent an email to the District, inquiring what the Student's special education eligibility category was.
23. On October 21, 2021, the Parent sent an email to the District, informing the District that the family would be moving out-of-state.
24. On October 22, 2021, the Parent sent an email to the District, asking that the Student's special education eligibility category be changed from EBD to autism.
25. On October 24, 2021, the Parent left a voice message for the District, observing that the Student would soon transfer to an out-of-state school and stating the Parent's preference that the Student's special education eligibility category be autism rather than EBD.
26. Following receipt of the October 24, 2021 voicemail, the District called the Parent and outlined that the Student's special education eligibility category was not changed during the previous reevaluation meeting due to the Parent having not provided the community medical provider's documentation. The District also explained that this was documented in a prior written notice sent to the Parent on October 14, 2020.
27. On October 27, 2021, the District sent the Parent a letter to obtain consent for a reevaluation of the Student. The District obtained the Parent's consent on the same date.
28. On October 29, 2021, the Parent emailed the District that the Student's last day with the District would be November 19. Thereafter, the family would be moving out-of-state.
29. On November 8, 2021, the Parent emailed the out-of-District placement school, asking that the Student's special education eligibility category be changed from EBD to autism.
30. Also, on November 8, 2021, the Parent emailed the District, asking that the Student's IEP be modified to remove the special education eligibility category of EBD, and list only autism and ADHD.
31. On November 9, 2021, the District, responding to the Parent's November 8, 2021 email, indicated that the Student's special education eligibility category would not be changed without a reevaluation.

The Parent responded, asking how the reevaluation was going.

32. Also, on November 9, 2021, the out-of-District placement school responded to the Parent, informing them that they did not have the authority to make such a change to the Student's IEP, but would forward the request to the District.
33. On November 18, 2021, the Student ceased attending school in Washington and the Student's family moved out-of-state. The Student was enrolled in a school district in a different state. The out-of-state district communicated with the District around obtaining records and understanding the Student's needs relevant to their educational placement.
34. On November 30, 2021, the District sent an email to the Parent, documenting their phone communication with the out-of-state district. The District explained that the new district was not concerned with the Student's special education eligibility category, but rather the Student's out-of-District placement and whether the out-of-state district had an appropriate placement to accommodate the Student's needs.
35. On December 1, 2021, the Parent sent an email to the District, asking that it provide educational records to the Student's new school. As part of that correspondence, the Parent addressed the out-of-state district's possible interpretation of the District IEP as it related to the Student's educational placement in the out-of-state district. The Parent further expressed displeasure that the District has not changed the Student's special education eligibility category from EBD to autism.
36. On December 2, 2022, the District responded to the Parent and relevant out-of-state district staff, providing an overview of the Student's special education eligibility category, educational placement, behavior data, and transition from out-of-District placement to home school placement ahead of the family's move.
37. As part of its response in this matter, the District provided additional records, demonstrating communication with the out-of-state district and the District having provided educational records to the Student's new district.

Interviews

38. On June 3, 2022, the OSPI complaint investigator interviewed the Student's Parent. The Parent explained that since the Student moved to the new school district out-of-state, that the Student was reevaluated. As a result of the out-of-state evaluation, the Student's placement was changed. The Parent observed that they had requested that the Student's special education eligibility category be changed from EBD to autism since before the Student began to transition from the out-of-District placement to their home school. The Parent expressed displeasure that the District has not initiated a reevaluation upon the Parent's request, and that the reevaluation was not completed, nor the Student's special education eligibility category changed, prior to the family's move. The Parent indicated that they were satisfied with the Student's educational placement in the out-of-District school, as well as the Student's IEP services.

39. On June 3, 2022, the OSPI complaint investigator interviewed the District's director of special education. The District understood that the Parent wanted the Student's special education eligibility category be changed from EBD to autism. The District noted that this would not have resulted in a change of services for the Student. The District observed that it had requested the autism diagnosis documentation from the Parent prior to and during the Student's 2020 triennial evaluation. The Parent provided the documentation to the District after completion of the Student's triennial reevaluation.

While the Parent requested that the District reevaluate the Student after their triennial evaluation, the District noted that the Student would normally be reevaluated as part of the Student's transition from the out-of-District placement back to their home school. The District observed that the Parent informed the District that the family would be moving, and that the family did move, prior to the completion of the transition back to the Student's home school, and prior to the District completing a reevaluation during the 2021–2022 school year. Thereafter, the Parent requested that the District change the Student's special education eligibility category from EBD to autism, following the Student's move to an out-of-state school district. The District noted that the new school district would conduct an evaluation of the Student as part of the transfer, and this would be the appropriate time for the special education eligibility category to be changed, should the new school district find that appropriate.

CONCLUSIONS

Issue One: Reevaluation Procedures – The Parent alleged that the District violated the IDEA when it failed to reevaluate the Student when the Parent requested. The Parent reported having a medical diagnosis of autism for the Student, and that the District did not change the Student's special education eligibility category from EBD to autism accordingly. Specifically, the Parent alleged that these requests were made as early as the fall of 2020, and throughout the 2021–2022 school year, but that the District did not make the requested changes.

Districts must reevaluate students for eligibility for special education at least every three years. Parents and districts may agree to reevaluate a student sooner than the three-year reevaluation interval. However, a student should not be reevaluated more than once per year unless agreed to by the parent and district.

In October 2020, the District completed the Student's triennial reevaluation. During the reevaluation process, the Parent raised the issue of the Student's autism diagnosis. The District requested that the Parent provide copies of the Student's diagnosis during the reevaluation process. On October 14, 2020, the District sent a prior written notice to the Parent, documenting that the District declined to change the Student's special education eligibility category due to the Parent having not provided a copy of the Student's diagnosis during the reevaluation.

Part of the Parent's complaint included the concern that the District had not reevaluated the Student in 2020 with new assessments; rather, it relied on old information. The Student's October 2020 reevaluation made use of existing data. Given that students were then receiving instruction

in a mix of hybrid and comprehensive distance learning, the Student's IEP team made use of a variety of data. These included observations completed by the Parent and the Student's teachers. Further, the completion of the 2020 triennial reevaluation is outside the timeline for investigation and therefore, OSPI makes no conclusion with respect to the sufficiency of the reevaluation.

The Parent ultimately provided copies of the Student's autism diagnosis to the District on March 16, 2021. The District communicated to the Parent that the District previously expressed a willingness to change the Student's special education eligibility category during the reevaluation process. The Parent and the District agreed that the IEP services the Student received as a result of their current special education eligibility category were appropriate for the Student, and would not change if the eligibility category changed.

In the fall of the 2021–2022 school year, the Parent and the District began discussions regarding the Student transitioning from the out-of-District placement back to their home/neighborhood school in the District. On September 6, 2021, the Parent informed the District that the family would be moving out-of-state in the near future. In early October 2021, the Student's IEP team met and developed the annual IEP. Thereafter, the Parent inquired again about the District changing the Student's special education eligibility category. On October 27, 2021, the District obtained the Parent's consent to conduct a reevaluation of the Student. The reevaluation would consider the Student's needs regarding their transition from the out-of-District placement back to the Student's home school in the District and the change in eligibility category. November 18, 2021 was the Student's last day attending school both with the out-of-District placement and the District school. The Student then moved with their family and began attending school out-of-state. The District's reevaluation of the Student was not completed prior to the family's move.

While the Parent expressed the preference that the Student's special education eligibility category be changed, the Parent did not provide the relevant information to the District during the Student's triennial reevaluation in 2020. The District obtained consent from the Parent to conduct a reevaluation in 2021. The family then relocated to an out-of-state school district prior to the completion of the reevaluation, which could have led to a change in the Student's special education eligibility category. As the District's position to consider the eligibility change through a reevaluation was reasonable and OSPI finds the District followed reevaluation procedures, OSPI finds no violation.

Issue Two: Placement – The Parent alleged that the District violated the IDEA when it failed to follow proper procedures when determining the Student's educational placement. The Parent reported that despite having requested that the District change the Student's special education eligibility category from EBD to autism, the Student's eligibility category was not appropriately updated. The Parent alleged that as a result of the District's failure to appropriately update the Student's eligibility category, that the Student's subsequent educational placement in their out-of-state district was not appropriate.

The educational placement of a student eligible for special education is determined by a group of persons, including the parents, persons knowledgeable about the student, the evaluation data, and the available placement options. During the course of this investigation, the Parent and the

District reported that the Student's educational placement and services were appropriate for the Student while attending school in the District/District placement at an NPA. As observed above, the Student was appropriately reevaluated in 2020.

The Student's family relocated out-of-state prior to the completion of the reevaluation begun in the fall of 2021. The Parent was dissatisfied with the out-of-state district's educational placement determination based on their understanding of the Student's educational Washington placement. An educational placement determination by a district in a different state is outside the scope of OSPI to adjudicate. However, OSPI notes that the District appropriately provided the Student's new school district with educational records and information about the Student's placement and program in the District placement. OSPI finds no violation.

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.)