

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-80

PROCEDURAL HISTORY

On May 31, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Bethel 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 May 31, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 1, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 6, 2023, the District requested an extension of time to respond to the complaint. OSPI granted the extension to June 23, 2023.

On June 14, 2023, the OSPI complaint investigator conducted a Zoom interview with the Parent.

On June 14, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on June 20, 2023.

On June 23, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on June 26, 2023. OSPI invited the Parent to reply.

Between June 30 and July 12, 2023, OSPI received additional information from the Parent, and OSPI forwarded the information to the District on June 30, July 5, and July 13, 2023.

On July 2, 2023, OSPI received the Parent's reply and forwarded it to the District on July 5, 2023.

On July 10, 2023, the OSPI complaint investigator conducted Zoom interviews with the Student's teacher and the school psychologist.

On July 13, 2023, the OSPI complaint investigator conducted a Zoom interview with the Student's special education teacher.

On July 13, 2023, OSPI received additional information from the Parent, and OSPI forwarded the information to the District on July 17, 2023.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interviews.

ISSUES

1. Whether the District followed child find and referral procedures per WAC 392-172A-02040 and WAC 392-172A-03005 during the 2022–23 school year, to address the Student's potential need for special education services?

2. Whether the District followed initial evaluation procedures per WAC 392-172A-03005 through WAC 392-172A-03040 and conducted a sufficient initial evaluation?
3. Whether the District developed an appropriate individualized education program (IEP) for the Student that addressed his unique, disability related needs per WAC 392-172A-03110?

LEGAL STANDARDS

Child Find: "The child find duty is triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability." *Dep't of Educ., State of Haw. v. Cari Rae S.* 35 IDELR 90 (U.S. District Ct HI, 2001) (quoting *Corpus Christi Indep. Sch. Dist.* 31 IDELR 41 (SEA TX 1999)). A disability is "suspected" when a school district "has notice that the child has displayed symptoms of that disability." *Timothy O. v. Pasa Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9th Cir. 2016). The 9th Circuit has stated that "if a school district is on notice that child may have a particular disorder, it *must* assess that child for the disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment" and that notice that a child may have a particular disability can come from expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or less formal indicators such as the child's behavior. *Timothy O.*, 822 F.3d at 1121. *See also, Pasatiempo v. Aizawa*, 103 F.3d 796, 803 (9th Cir. 1996) ("The informed suspicions of parents, who may have consulted outside experts, should trigger the statutory protection."); *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) ("The duty to evaluate a student arises when a disability is 'suspected,' or 'when the district has notice that the child has displayed symptoms of that disability'"); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 f.3d 1202 (9th Cir. 2009) (The requirement to evaluate a student may be triggered by the informed suspicions of outside experts).

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). 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). The referral request must be in writing, unless the person is unable to write and/or communicate orally. However, each school district must have an optional referral form for requesting an initial evaluation and provide it upon any referral request. 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.

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic

performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. No single measure or assessment as the sole criterion is used for determining a student's eligibility or determining an appropriate educational program for the student. WAC 392-172A-03020. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not they are commonly linked to the disability category in which the student has been classified. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions regarding eligibility, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. 34 CFR §300.305; WAC 392-172A-03035. The report must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, teacher recommendations, the student's physical condition, the student's social and cultural background, and adaptive behavior. In completing the evaluation report, the school district must ensure that information from all of these sources is carefully considered. 34 CFR §300.305; WAC 392-172A-03040. The evaluation report must include documentation of the individual assessments of each professional member of the group who contributed to the report that indicates: the procedures and instruments that were used and the results obtained; any conclusions from observations of the student; and a statement of the apparent significance of the

findings as related to the student's suspected disabilities and instructional program. 34 CFR §300.305; WAC 392-172A-03035.

IEP Development: When developing each child's IEP, the IEP team must consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial or most recent evaluation of the child, and the academic, developmental, and functional needs of the child. 34 CFR §300.324(a). WAC 392-172A-03110. The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding: the student's needs and appropriate goals; the extent to which the student will be involved in the general curriculum and participate in the regular education environment and State and district-wide assessments; and the services needed to support that involvement and participation and to achieve agreed-upon goals. Parents are considered equal partners with school personnel in making these decisions, and the IEP team must consider the parents' concerns and the information that they provide regarding their child in developing, reviewing, and revising IEPs. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 9).

IEP Development for a Student with Behavioral Needs: In developing, reviewing and revising each student's IEP, the team must consider the use of positive behavioral interventions and supports and other strategies to address the student's behavior. 34 CFR §300.324(a)(2); WAC 392-172A-03110(2). This means that in most cases in which a student's behavior impedes his or her learning or that of others, and can be readily anticipated to be repetitive, proper development of the student's IEP will include positive behavioral interventions, strategies, and supports to address that behavior. IDEA, 64 Fed. Reg. 12,475, 12,479 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 38). A functional behavioral assessment (FBA) and behavioral intervention plan (BIP) must be used proactively, if an IEP team determines that they would be appropriate for a child. For a child with a disability whose behavior impedes his or her learning or that of others, and for whom the IEP team has decided that a BIP is appropriate, the IEP team must include a BIP in the child's IEP to address the behavioral needs of the child. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-1 and E-2).

Compensatory Education: A state educational agency is authorized to order compensatory education through the special education community complaint process. *Letter to Riffel* 34 IDELR 292 (OSEP 2000). Compensatory education is an equitable remedy that seeks to make up for education services a student should have received in the first place, and aims to place the student in the same position he or she would have been, but for the district's violations of the IDEA. *R.P. ex rel. C.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 56 IDELR 31, (9th Cir. 2011). Appropriate relief in the form of compensatory education is "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994)."

FINDINGS OF FACT

1. At the start of the 2022–23 school year, the Student transferred into the District to attend an elementary school. The Student was not eligible for special education services.

2. The District's school year began on September 1, 2022, and was an orientation day for the Parent and Student.
3. During orientation, the Parent spoke to the Student's teacher about the Student's need to have an IEP or 504 plan and was encourage by the teacher to speak to the school counselor.

Before leaving school on orientation day, the Parent spoke to the school counselor about the Student's need for an IEP or 504 plan. The counselor said they did not know the Student or his behavior well enough to evaluate him. The counselor did not ask the Parent if she wanted to make a written referral for special education, nor did she offer the Parent a referral form.

4. On October 17, 2022, the Student's teacher emailed the Parent that the Student had a "hard day." During the time the class was writing and illustrating on paper, the Student scribbled, made holes, and ripped his paper. Instead of finishing his writing while the other students played, he scratched the teacher's whiteboard, hit it on something, and broke an edge off.
5. On October 19, 2022, the Student's teacher emailed the Parent, and in part, stated that she would "talk with our counselor today to see how I can help the Student!"
6. In early November, the Student was moved from one teacher's class to another teacher's class in the same grade level.
7. On November 28, 2022, a pediatric clinic doctor wrote a letter, addressed "To whom it may concern," stating that the Student had been diagnosed with a Sensory Processing Disorder (SPD) and was seeking an Autism Spectrum Disorder (ASD) diagnosis from a neurology specialist. The doctor requested that appropriate accommodations be made for the Student to help with academic and social/emotional growth at school. She asked to be called if there were any questions. The Parent had contacted the doctor, scheduled the appointments, and covered the costs that led to the SPD diagnosis.
8. On November 29, 2023, the Parent emailed the doctor's letter regarding the Student's SPD diagnosis to the Student's teacher and the assistant principal.
9. On November 30, 2022, the Parent met with the assistant principal, and according to the Parent, she was told that the Student was on a "wait list" for an IEP evaluation.
10. On December 9, 2022, the pediatric clinic doctor who made the Student's SPD diagnosis, sent a letter to the Parent, addressed "To whom it may concern." The letter asked that the Student be given more time to complete meals, that his absences during the past week be excused and that an individualized education program (IEP) be developed to formally support his special needs. The letter also requested a call if there were any concerns. The Parent emailed this second letter to the assistant principal on December 12, 2023.
11. On December 12, 2022, the Parent shared her emails from the Student's previous kindergarten teacher with the Student's current first grade teacher and assistant principal. The emails stated that it sometimes took a minute for the Student to process what the teacher said and that it

was necessary to speak to him several times before the Student understood what the teacher wanted. The teacher also said the Student would make noise when she was trying to talk, throw toys, say he was going to punch someone, and make high pitched shrieking sounds. The teacher noted that she thought the Student might have sensory issues.

12. On December 14, 2022, the Parent called the assistant principal to express her concern about the Student hiding before school and fighting about not wanting to go to school.
13. On January 9, 2023, the Parent called the assistant principal to schedule a meeting to discuss, among other things, the Student's continued resistance to going to school.
14. On January 10, 2023, the Parent and the Student met with the assistant principal to discuss the Parent's concerns, including getting the Student to school. The Student said that he felt that the lunch teacher and other children were bullying him.
15. On January 23, 2023, the Parent sent a written request for a full special education evaluation of the Student to the executive director of special services (executive director). The request included a statement that at the September 1, 2022 school orientation, the Parent told the Student's teacher and the school counselor that the Student needed an IEP or 504 plan due to his special needs and was told by the counselor that because the Student was new and they didn't know his behavior, such a decision would take time.
16. On January 24, 2023, the pediatric clinic doctor wrote to the school principal, stating that the Student's SPD was a neurological condition effecting a child's ability to process information from all senses, which can cause "significant challenges in daily functioning as response to various stimuli is different than expected from a child without sensory problems." The doctor further stated that she was very concerned about the Student's ability to achieve an education due to his difficulties and that she was supportive of a full special education evaluation.
17. On February 2, 2023, the Student's teacher sent a message to the Parent about the Student on multiple occasions, saying the Student said "they made me do bad things" or "he told me to" but that no one was or had been near the Student. On one occasion, the teacher asked who "he" was, and the Student was unable to answer. The teacher said she thought it was a possibility that he was hearing things and asked the Parent what she thought. The teacher also stated that the Student's personality, behavior, and facial expressions could be completely different from one time to another.
18. On February 8, 2023, the Parent signed a consent for an initial special education evaluation. The District proposed to evaluate the Student in the following areas: medical-physical, adaptive, communication, behavior, fine motor, observation, general education, cognitive, social/emotional, and academic. The Parent also suggested that the following areas of need also be considered: emotional sensitivity/theory of mind, sensory difficulties/delay in processing information or direction, emotional regulation, overwhelming environment/situations, and speech/verbal communication.

19. On February 24, 2023, the Parent stated she was going to file a complaint, identifying her efforts to have the Student evaluated beginning in September 2022. The complaint stated that at the end of January 2023, the executive director told the Parent that the school had determined the Student was not in need of an IEP evaluation. Later, the Parent emailed the District that she was withdrawing her complaint.
20. On March 15, 2023, an evaluation meeting was held. The evaluation group discussed several areas in which the Student had been evaluated; however, the meeting was suspended and rescheduled due to an inability to resolve the issue of the Student's eligibility for special education and related services. According to the documentation, the participants could not agree on whether the Student was eligible for special education services.
21. In the draft of the March 15, 2023 evaluation report, the medical diagnosis section included the pediatric doctor's November 28, 2022 diagnosis of the Student's SPD. The space under the next heading "Educational Implications" was left blank.

The other areas reviewed in the March 15, 2023 evaluation report were general education, social/emotional, adaptive, cognitive, and academic, as follows:

- In the general education area of evaluation, the assessment summary referred to the Student's first quarter report card and the "Learning Assistance Program" (LAP) progress report for existing classroom data.
 - In the social/emotional area, the conclusions, based on a review of the Student's social/emotional/behavioral assessment, indicated that both home and school informants endorsed that those areas fell into the clinically significant and/or at-risk range, which included: hyperactivity, atypicality, withdrawal and depression, and in the clinically significant category aggression, attention problems, anxiety, adaptive skills, and social skills.
 - The Student's adaptive skills were found to be age appropriate.
 - His cognitive abilities presented with average to well above average intellectual skills.
 - The assessment summary of the academic area stated, in part, that the Student was cooperative throughout the testing, although he appeared fidgety or restless at times and was distracted often, which "impacted his performance and therefore his current academic results may be a low estimate of his true potential." Overall, his basic reading skills were within the average range, he had great strategies for writing complete sentences and math was a strength for him.
22. Also, on March 15, 2023, a doctor at a local children's neurology clinic wrote a letter, stating that he had been following the Student and had diagnosed him with Autism Spectrum Disorder (ASD) associated with "neurodevelopmental, mental or behavioral disorder, requiring support (level 1)". The doctor encouraged the Parent to share the diagnosis with the District to ensure appropriate programming for a child with ASD. The doctor's recommendations included occupational therapy (OT), speech therapy, and applied behavioral analysis (ABA) therapy. The Parent had contacted the doctor, scheduled appointments, and covered the costs that led to the ASD diagnosis.
 23. On March 16, 2023, the Parent wrote to a District representative that during November 2022, the Student's general education teacher said that she thought the Student might need OT.

24. On March 18, 2023, the Parent wrote to the assistant principal, District representative, and the executive director, requesting that the Student's learning assistance program (LAP) teacher be replaced for telling the Student to go to the bathroom when he clears his throat. The Parent explained that the Student's throat clearing had been diagnosed as a Tic disorder, over which he has no control.
25. On March 20, 2023, the school psychologist sent the Parent a message about an incident in which the Student said he was getting "beat up" at recess. The Student said two boys bumped into him and he was going to attack them. When the teacher went to talk to the two boys, the Student ran over to them, began to push them, and said he would beat them up. When the psychologist told the Student that physical violence at school was never okay, the Student said, "he knew that but he needed to beat them up".
26. On March 29, 2023, the evaluation group and Parent reconvened to review the areas of the Student's evaluation that had not been reviewed at the March 15, 2023 evaluation meeting and to determine eligibility.
27. The March 29, 2023 evaluation report included information that had not been included in the March 15, 2023 draft evaluation report, including:
 - Communication: The examiner concluded the Student did not require specially designed instruction;
 - Fine Motor: The examiner concluded the Student had no areas of delay that required intervention from an occupational therapist in the school setting;
 - Observation: A review of all observations suggest the Student "presents with a high level of distractibility"; and,
 - Added to the area of medical diagnosis was the Student's ASD diagnosis "associated with neurodevelopmental, mental or behavior disorder, requiring support (level1)." The space below "Educational Implications" was again left blank, as it had been in the March 15 evaluation report.

The evaluation group ultimately found the Student eligible under the developmental delay category and the evaluation report noted the Student had "deficits in social-emotional development. Specifically, his disability adversely affects his capacity to engage in social interactions in an educational setting, problem solve independently, pick up on nuanced social skills, and manage feelings of frustration," and that, "These factors prevent [Student] from building and maintaining friendships."

28. On April 14, 2023, the District sent the participants an invitation for an IEP meeting to be held on April 19, 2023 to develop an IEP for the Student.
29. On April 19, 2023, an IEP meeting was held to develop an initial IEP for the Student. The IEP developed for the Student included factors considered by the IEP team. The Student's strengths and concerns were as follows, "Strengths-kindhearted, good memory with preferred interests, extensive knowledge with preferred interests, helpful" and "Concerns-social/emotional skills, picking up on social cues, people understanding who he is, perceiving that he has only one friend and having a hard time with others winning, such as at assemblies."

The IEP included results of the Student's performance on any general or District-wide assessments, which indicated he scored in the first grade equivalent for early literacy and math, and generally scored at or above benchmarks in reading.

The IEP team found that the Student did not demonstrate the need for communication services, language assistance, vision services, or assistive technology devices or services. The IEP stated that "in the case of a student whose behavior impedes one's own learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies and supports to address that behavior."

The IEP included the following information for the Student's present levels:

- Medical-Physical: The Student has diagnoses of Sensory Processing Disorder and Autism Spectrum Disorder.
- General Education Teacher Report: "The Student is kindhearted, caring and has extensive knowledge regarding his preferred interests. He has social miscues and interrupts things different than what's happening in class. During non-preferred tasks such as writing he has a hard time having a calm body."
- Adverse Impact Summary: "The Student's developmental delay adversely impacts his social/emotional skills. He requires specially designed instruction to support meeting grade level expectations in this area."
- Social/Emotional: "The Student was rated as clinically significant in the areas of withdrawal, atypicality and depression by his teacher. He is a kindhearted, sensitive boy who wants to be included in the group but requires accommodations to be successful. Isolation and unkindness are triggers. He has difficulty with personal space and often gets in others [personal space]. He often misreads the social cues of others. When he is asked to stop doing something he thinks the person is being mean or picking on him."

The IEP included annual social/emotional goals in personal space, responding to social interactions, and responding to peers. The IEP also included the following accommodations, "Allowing additional time for testing, allow for short breaks, assignments modified, checking with counselor or administration when seen hitting himself, fixating on a situation, or in extreme distress (big emotions, yelling/crying, etc.), choice to wear hat or headphones when needed to dampen sound, preferential line placement, preferential seating, use of adult proximity to support behavior." And the IEP included one modification, "daily access/use of the following: quiet space for lunch with peer."

The IEP provided for 75 minutes per week of social/emotional services provided by a special education teacher.

30. On April 19, 2023, the District sent out a prior written notice that proposed initiating an IEP for the Student with specially designed instruction in the area of social/emotional. It further stated that the Parent's proposed addition of a Tic disorder to the IEP was rejected. However, the school psychologist would obtain a release of information to confirm the diagnosis so it could be added to the evaluation and the IEP.

31. Also, on April 19, 2023, the Parent received the release form from the school psychologist and signed and returned it. As of July 2023, the Parent reported that she had not heard from the District about the Tic disorder being added to the Student's IEP.
32. On May 5, 2023, the Parent reported to the Student's special education teacher that on the day before, there had been an incident in which the Student misunderstood social cues and ended up hiding under a table, while other children stared at him. On another day, he said he had to make friends in his head because nobody wanted to play with him. The Parent stated she was concerned about how depressed he was becoming.
33. On May 12, 2023, the Student's general education teacher reported to the Parent that the Student's behavior challenges seemed to be increasing. He had a hard time staying on task even with breaks, he threw his fidgets around the classroom, he refused to walk in a line with the rest of the class, and sometimes started running down the hall and continued to ignore the teacher when she was trying to get his attention. The teacher stated that she was really concerned that the Student's behavior was getting in the way of his learning. She was not sure what to do and felt the doctor needed to consider something more.
34. On July 9, 2023, the school counselor stated that due to the Student's school attendance issues, the Student attended only about 50% of her small group sessions that began in the beginning of September 2022 and ended in January of 2023. He also attended about 50% of her small group sessions that started at the end of February and ran for six weeks. The counselor stated that when the Student attended her group sessions, he did well.

CONCLUSIONS

Issue 1: Child Find and Referral – The Parent alleged that the District did not properly follow IDEA's child find and referral procedures, which are required per WAC 392-172A-02040 and WAC 392-172A-03005, during the 2022–23 school year, and that the District failed to address all the Student's needs for special education and related services.

Any person who is knowledgeable about the child may make a referral of a child suspected of having a disability. A referral may be implied when a parent informs a school that a child may have special needs. In the case under consideration, the Parent told the Student's elementary school teacher, on September 1, 2022 that, based on the Student's previous year in kindergarten, she thought the Student needed to be evaluated for special education or a 504 plan. The teacher suggested that the Parent talk to the school counselor. The Parent then went to the counselor's office and repeated that the Student needed to have an IEP for special education or a 504 plan. The counselor said they did not know the Student well enough to evaluate him, which OSPI notes is not necessarily a reason to not proceed with a referral for special education. The counselor did not ask the Parent if she wanted to make a referral or support the Parent with submitting a written request, such as utilizing the District's referral form. There is no evidence that the Parent was provided with a prior written notice, documenting or denying her request for special education or an evaluation. By telling the teacher and the counselor that the Student needed an IEP, the Parent made an implied referral for a special education evaluation.

Although a referral must be in writing, each school district must have an optional referral form for requesting an initial evaluation. 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. In this case, that the Parent was making a referral request but was prevented from doing so in writing by not being provided with information that a referral needed to be in writing, including through using the District's referral form. Instead, as noted above, District staff told the Parent that essentially, because the Student was new, they could not consider special education yet. In addition, the District did not document the referral, did not provide the Parent with written notice that the Student had been referred and did not, in conjunction with the Parent, make a determination within 25 school days as to whether or not it would evaluate the Student.

Here, the District's child find duty was not initially triggered, because the District had no reason to suspect the Student had a disability before the Parent spoke to the teacher and school counselor. However, the District had an ongoing child find duty after the Parent initially spoke to the teacher. On November 28, 2022, the Student was medically diagnosed with a sensory processing disorder (SPD) and on the same day, the Parent sent the assistant principal an email about the diagnosis and attached a copy of the doctor's diagnosis and brief statement. On November 29, 2022, the Parent attached the doctor's statement concerning the diagnosis to an email that she sent to the Student's teacher. In addition, by this time, District staff had indicated some concerns with the Student's behaviors. As of November 28, 2022, the District had reason to suspect a disability and the child find duty was triggered. The SPD diagnosis was an expressed opinion by an informed professional as required and put the District on notice that the Student had a particular disability. Having received notice, the District was required to consider whether a special education evaluation was warranted. However, the District did not request a report from the doctor regarding the diagnosis and its educational implications, nor take steps toward considering a special education evaluation.

Finally, on March 15, 2023, the District was put on notice of the Student's autism diagnosis by a doctor from a children's neurology clinic. Although some general recommendations were included by the doctor who made the autism diagnosis, no report, including the educational implications of the diagnosis, was requested by the District. The District failed to gather relevant educational information and also failed to consider the need for a special education evaluation related to the Student's SPD or his autism as required by statutory and case law. The 9th Circuit has stated that "if a school district is on notice that a child may have a particular disorder, it *must* assess that child for the disorder, regardless of the subjective views of its staff members concerning the likely outcome of such an assessment" and that notice that a child may have a particular disability can come from expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or less formal indicators such as the child's

behavior.¹ While ultimately, as discussed below, the District initiated an initial evaluation, the District failed to follow referral procedures in September 2022 and failed in its child find duties as of November 2022.

OSPI finds a violation and the District will be required to conduct training and provide the Student compensatory education as follows.

If the District had followed referral procedures, the District would have had 25 school days from September 1, 2022, to consider initiating an initial evaluation. It is unclear, given that the Student was new to the District, whether the referral would have immediately resulted in agreement to conduct an evaluation at the start of the school year; however, because the District was on notice of the Student's SPD diagnosis as of November 28, 2022, OSPI will consider that the start of the evaluation timeline, had there been no violation. Thus, the evaluation would have been completed by approximately February 3, 2023, and an IEP developed no later than March 3, 2023. Thus, the Student was deprived of approximately 6.5 weeks of services (the time between when the IEP could have been developed and when it was) and thus, the Student will be entitled to 8 hours (6.5 weeks times 75 minutes of special education services) of compensatory education.

Issue 2: Initial Evaluation – The Parent alleged that the District did not follow the initial evaluation procedures per WAC 392-172A-03005 through WAC 392-172A-03040 and that the District did not conduct a sufficient initial evaluation of the Student.

On March 15, 2023, the evaluation group held a meeting with the Parent, during which the Student's evaluation reports were reviewed and the Student's eligibility for special education was discussed. A draft of the evaluation report for the March 15 meeting identified the areas of evaluation and included the Student's SPD diagnosis and the doctor's note that SPD "is a neurological condition which effect's a child's ability to process information from all their senses. This can cause significant challenges in daily functioning as response to various stimuli is different than expected for a child without sensory problems." It is noteworthy that at the end of "Medical-Physical Findings," the space under the heading "Educational Implications" was left blank and there was no assessment summary.

The other areas of the Student's evaluation included in the draft evaluation report were general education, social/emotional, adaptive, cognitive, and academic. In the social/emotional area, the conclusions indicated both home and school informants endorsed areas falling into the clinically significant and/or at-risk range, including hyperactivity, atypicality, withdrawal and depression, and in the clinically significant category and aggression, attention problems, anxiety, adaptive skills and social skills. The Student's adaptive skills were found to be age appropriate. The

¹ See, e.g., *Timothy O.*, 822 F.3d at 1121. See also, *Pasatiempo v. Aizawa*, 103 F.3d 796, 803 (9th Cir. 1996) ("The informed suspicions of parents, who may have consulted outside experts, should trigger the statutory protection."); *J.K. v. Missoula Cnty. Pub. Sch.*, 713 F. App'x 666, 667 (9th Cir. 2018) ("The duty to evaluate a student arises when disability is 'suspected,' or 'when the district has notice that the child has displayed symptoms of that disability'"); *N.B. v. Hellgate Elementary Sch. Dist.*, 541 f.3d 1202 (9th Cir. 2009) (The requirement to evaluate a student may be triggered by the informed suspicions of outside experts).

Student's cognitive abilities presented with average to well above average intellectual skills. In the academic area, the Student appeared fidgety or restless at times and was distracted, often which "impacted his performance and therefore his current academic results may be low estimate of his true potential," but despite that, his basic reading skills were within the average range, he had great strategies for writing complete sentences, and math was a strength for him.

The March 15, 2023 evaluation meeting was suspended and then rescheduled due to the reported inability of those present to agree on whether the Student was eligible. The meeting was rescheduled for March 29, 2023. The evaluation report reviewed at the rescheduled meeting contained some alterations and additional information in communication, fine motor, and evaluation. In communication and fine motor, the examiner concluded the Student did not require specially designed instruction. Also added to the March 29 report was the Student's autism diagnosis "associated with neurodevelopmental, mental or behavior disorder, requiring support (level1)." The space below "Educational Implications" was left blank.

However, omitted from the report was any consideration of the Student's school refusal, which had been a documented issue since the beginning of the school year. Bullying of the Student was another issue that, although not as apparent as the school refusal issue, merited consideration. Federal and state law require that the Student's evaluation must be sufficiently comprehensive to identify all the Student's special education and related service needs, whether or not they are commonly linked to the disability category in which the student has been identified. In this case, the eligibility category being considered was primarily related to the Student's social/emotional development and as such, information about bullying and school refusal behaviors would have been relevant.

The District evaluated the Student and considered findings in a broad spectrum of areas, including medical-physical, general education, social/emotional, adaptive, cognitive and academic. With the exception of the medical-physical area, the information gathered reflected a significant amount of the investigation, testing, review, observation, and assessment. The District met the requirement that the evaluation team use a variety of tools to gather functional, developmental, and academic information regarding these areas. However, in the areas of the Student's SPD, autism, school refusal, and bullying, the District appears to have gathered virtually no information and gave these areas of suspected disability little or no consideration. The District did not request a report from the doctor regarding the SPD diagnosis and its educational implications. Likewise, on March 15, 2023, the District was put on notice of the Student's autism diagnosis. Although some general recommendations were included by the doctor regarding the autism diagnosis, no report, including the educational implications of the diagnosis, was requested by the District. The District failed to gather information or separately assess or evaluate the Student for his SPD or his autism as required by the IDEA, Washington rules, and case law. The 9th Circuit has stated that "if a school district is on notice that child may have a particular disorder, it *must* assess that child for the disorder" and that notice that a child may have a particular disability can come from expressed parental concerns about a child's symptoms, expressed opinions by informed professionals, or less formal indicators such as the child's behavior.

The Parent sent the Student's SPD and autism diagnoses to the District soon after receiving them in November of 2022 and March of 2023. These diagnoses, as well as the Student's school refusal and bullying issues, may not be commonly linked to the Student's social/emotional disability identified by the District; however, because they could impact the Student's services and supports that might enable him to be involved in and progress in the general education program, they must be evaluated. The District had an obligation to obtain and consider information from the doctors making the diagnoses that would allow the IEP team to determine what special education services the Student needed. An evaluation report interprets evaluation data to determine if a student is eligible for special education services, and if so, the student's needs. In completing an evaluation report, the District must ensure that all sources of information are carefully considered. To meet this requirement, the District must have *all* the information needed by the IEP team to create an appropriate program of services for the Student. The District did not gather information regarding the Student's diagnoses or the Student's school refusal and bullying issues. Without this information, the District could not give consideration to all the issues that required examination and deliberation. Thus, OSPI finds that the District's evaluation, while meeting some requirements for an initial evaluation, was not sufficient and OSPI finds a violation.

As corrective action, if the Student is still enrolled in the District, the District must either conduct its own assessments, or if it is determined necessary information, obtain, at its expense, a medical report that includes an assessment of any impact the Student's autism and sensory processing disorder might have on the Student's education, as well as what support or services that might be needed to minimize such impact.

Issue 3: Individualized Education Program (IEP) Development – The Parent alleged that the District did not develop an appropriate IEP for the Student that addressed his unique, disability related needs per WAC 392-172A-03110.

On April 19, 2023, a prior written notice was sent out, indicating that the District was proposing to initiate an IEP and educational placement for the Student that would provide him with specially designed instruction in social/emotional. The Parent's request that the Student's Tic disorder be added to the IEP was rejected, but the District stated it could be added to the evaluation and IEP after the diagnosis was confirmed. The Parent signed the appropriate release and returned it to the school psychologist so confirmation could be put in motion; however, to date, the Parent reports she has received no information about the Tic disorder being added to the IEP.

The team considerations of the IEP indicated the team considered the Student's strengths and the Parent's concerns; the results of the Student's performance on any general state or District-wide assessments (which were at grade level); communication and assistive technology needs were considered but the Student did not demonstrate a need for either at this time; and, the Student's social/emotional concerns were determined to impede his learning. The IEP indicated that while he is triggered by isolation and unkindness, he does well when included in the group and benefits from positive relationships. Under the IEP's present levels of educational performance and measurable annual goals is an adverse impact summary and the statement that the Student's developmental delay adversely impacts his social/emotional skills. He requires specially designed instruction to support meeting grade level expectations in this area. The IEP provides the Student

with 75 minutes per week (15 minutes per day) of social/emotional services from a special education teacher in a special education setting.

When developing the student's IEP, the IEP team was required to consider the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the initial or most recent evaluation of the student, and the academic, developmental, and functional needs of the student. While as described above, the IEP team considered many of these elements, the District also failed to consider essential components of this requirement. There is no evidence that adequate information gathering and consideration were given to the Parent's concerns regarding the Student's SPD and autism diagnoses, the Student's school refusal and bullying issues, and the Student's Tic disorder, either before or when the IEP was developed (or in the case of the Tic disorder, consider whether the IEP needed to be amended).

Finally, a parent is considered to be a partner with the district in making joint, informed IEP decisions regarding the student's needs and agreed-upon goals, as well as the extent to which the student will participate in the regular education environment and the services needed to achieve that involvement. In developing the initial IEP, the team must consider the parent's concerns and the information they provide regarding the student. In this case, the District's failure to investigate and consider the Parent's reported medical concerns related to his diagnoses, as well as the Parent's reported issues with the Student's school refusal and bullying, which were brought to the District's attention primarily by the Parent, raises the issue of whether the District regarded the Parent as a partner during the evaluation and IEP development process. This ultimately illustrates that the IEP did not address all the Student's specific individual needs. Thus, OSPI finds a violation as the IEP did not address all the Student's needs. The Student's IEP team will be required to meet and discuss whether any amendments to the IEP are required to ensure it meets the Student's needs.

CORRECTIVE ACTIONS

By or before **August 18, 2023, September 1, 2023, September 15, 2023, October 20, 2023, and January 5, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Compensatory Education

By or before **August 18, 2023**, the District and Parent will develop a schedule for eight hours of compensatory education in social emotional.

Unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District's school day and can be schedule on weekends, over District breaks, or before or after school. The compensatory services can be provided through a District summer program, if that program will provide specially designed instruction in the Student's areas of service. The District will provide OSPI with documentation of the schedule for services by or before **August 18, 2023**.

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 **December 29, 2023**.

By or before **January 5, 2024**, 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 **January 5, 2024**.

Assessment

If the Student is still enrolled in the District, by or before **October 15, 2023**, the District must either conduct its own assessments or, or if it is determined necessary information, obtain at its expense, a medical report that includes an assessment of any impact the Student's autism and sensory processing disorder might have on the Student's education, as well as what support or services that might be needed to minimize such impact.

By or before **October 20, 2023**, the District will provide OSPI with documentation, confirming the assessments were conducted or obtained.

IEP Meeting

By or before **September 8, 2023**, the Student's IEP team, including the Parent, will meet. At the meeting, the IEP team must address the following topics:

- The Student's needs related to potential school refusal, bullying, and his sensory processing disorder and autism diagnoses.
- Whether any amendments to the IEP are required to meet the Student's needs.

By or before **September 15, 2023**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the IEP team's discussion and decisions; c) a list of people, including their roles, who attended the meeting; d) the IEP if amended; and e) any other relevant documentation.

DISTRICT SPECIFIC:

Training

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop training/training implementation plan and jointly conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-80.

The following District staff will receive training: District special education administrators and psychologists, and the following at the Student's school: principal, assistant principal, and special education certified staff (teachers). The training will cover the following topics:

- Referral procedures and timelines, including the requirement to have a referral form for optional parent use.
- Child find responsibilities.
- Initial evaluation procedures, including assessing all areas of need, even if not commonly associated with the eligibility category.

The training will include examples.

By or before **August 18, 2023**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

The training will also include post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. The implementation support could include job-embedded coaching, additional trainings or development of a training series, exploring policy and procedure revision, development of a District monthly audit to ensure referral timelines are being properly tracked, etc. By or before **September 1, 2023**, the District will provide OSPI with the training plan and post-training activities for review, input, and approval.

By or before **September 15, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 29, 2023.

By **October 13, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 20, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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 28th day of July, 2023

Dr. Tania May
Assistant Superintendent of Special Education
PO BOX 47200
Olympia, WA 98504-7200

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.)