

WASA Special Education Administrators Conference
Hotel Murano – Tacoma
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Dispute Resolution Trends

Child Find

Districts have an affirmative duty to conduct child find activities that are calculated to locate, evaluate and identify students with suspected disabilities who reside within district boundaries and who might be in need of special education.

The IDEA does not require parents to request that the district evaluate their child in order for a district to be under its child find obligation. A district's IDEA obligation to evaluate a student, either through its child find or referral processes is triggered when the district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.

Make sure teachers or other staff understand their child find obligations. When parents are raising concerns about a student, but have not provided a written referral, make sure that district staff know how to assist the parent in making a written referral.

Cases: 2009-SE-0082 District's argument that parent never made written referral was not supported by its practices, and delayed decision to evaluate.

Compton Unified SD v. Addison 598 F.3d 1181 (USCA 9th Cir. 2010) District violated child find responsibilities by failing to refer 10th grade student for evaluation, given her failure in all classes, and childlike behavior.

WAC: 392-172A-02040

Evaluations and Reevaluations

Initial Evaluation: A school district must conduct an initial evaluation before beginning to provide special education and related services. The purpose of this initial evaluation is to determine whether the student has a disability as defined within the one of eligibility categories; whether because of the disability the student has an adverse educational impact, and whether the student needs specially designed instruction. The student must be assessed in all areas related to his or her suspected disability or disabilities. The evaluation must

be sufficiently comprehensive to identify all of the special education and related services he needs, whether or not they are commonly linked to the disability category in which he has been classified. A comprehensive evaluation includes obtaining and paying for outside evaluations if they are needed to complete the evaluation. The evaluation report for a student determined to be eligible for special education should provide the IEP team with the nature and extent of the special education, related services, other supports, and accommodations the student needs.

Reevaluation: The purposes of a reevaluation are: 1) to determine whether a student continues to be eligible for special education; 2) to address the present levels of performance and educational needs of the student; and 3) to address additions or modifications to the special education and related services for the student. A reevaluation of a student is conducted if conditions warrant a reevaluation or if requested by a student's parent or teacher. Reevaluations may occur not more than once a year unless the parent and district agree otherwise, and in no event less than once every three years unless the parent and district agree that a reevaluation is not necessary.

As part of a reevaluation (and as part of an initial evaluation through the referral process), the IEP team and other qualified professionals review existing evaluations and other data on the student, including information provided by the parents and current classroom-based assessments and observations, to determine whether additional information is needed for the reevaluation. If the IEP team and appropriate qualified professionals determine that additional assessments (i.e.; re-instrumentation or re-testing) are not needed to determine the continuing eligibility of the student, the district notifies the parents of this fact and the reasons for it, and provides them the right to request additional assessments in order to determine the eligibility of the student. The reevaluation report would then be created from the existing data. If additional data is needed, the evaluation group (which includes the parents, if the eligibility category is SLD) obtains the parents' consent, (or documents that the parents failed to respond) and conducts the necessary tests to complete the evaluation report.

Make sure that IEP team members and other qualified persons are reviewing the existing data to make the determination whether assessments are needed. Make sure to evaluate/reevaluate in all areas of suspected disability, and that the district's evaluation group includes persons qualified to evaluate the student. If the district believes new assessments are necessary for a reevaluation and the parent denies consent, the district may use due process to ask for a consent override. Finally make sure that parents are invited to the meeting to discuss the evaluation/eligibility results.

Cases: NB v. Hellgate Elementary SD 541 F.3d 1202 (USCA, 9th Cir. 2008). District cannot abdicate its affirmative duty to evaluate in all areas of suspected disabilities by referring child to an outside clinic.

JG v. Douglas County School District 552 F.3d 786 (USCA 9th Cir. 2008) While court found that the evaluation was timely within the meaning of the state regulation, it noted that compliance with the regulation would not necessarily mean that in each case the school district completed its evaluation in a reasonable period. "We are impressed that the purposes of the IDEA will be best fulfilled when school districts act as expeditiously as is practically possible to complete the evaluations of disabled children."

WAC: 392-172A-03000 through 392-172A-03045

Parent Participation

Parents must be given an opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education (FAPE). For meetings other than IEP and placement meetings, the student's parents must be notified early enough to ensure that they have an opportunity to attend and they must be given notice of the purpose, time, and location of the meeting, and who will be in attendance. When the purpose of the meeting is to address provisions of the IEP or placement, the meeting must also be scheduled at a mutually agreeable time and place.

Be clear about the purpose of the meeting when inviting the parent, so that a parent may adequately prepare for the meeting. Also make

sure parents are included in all meetings regarding their child, except staff preparatory meetings.

Make sure the all necessary team members are at the meeting. If they are not able to attend, make sure this information is conveyed before the meeting date so you can determine whether the parent agrees to the excusal. Follow procedures for excusing team members. If parents do not agree, the meeting needs to be rescheduled.

Cases:: M.L. v. Federal Way School District, 304 F 3rd 634 (USCA, 9th Circuit2005). Failure to involve general education teacher in meeting did not allow parent to meaningfully participate and denied the student a FAPE when proposal was to move from general education to a more restrictive setting.

Shapiro v. Paradise Valley Unified SD, 317 F.3d 1072 (USCA, 9th Circuit 2003). Failure to involve teacher from private school and failure to respond to parent's request to reschedule meeting, denied meaningful participation and denied the student a FAPE.

SECC 10-21: District facilitated parent's participation. Simply because the district does not agree to the parent's requests, does not mean that the parent is denied meaningful participation.

WAC: 392-172A-03100; 392-172A-05000

IEP Implementation

Progress Reporting: The purpose of progress reporting is to provide parents with information, on a regular basis about whether or not a student is progressing towards meeting his or her annual goals. The information in the IEP must address 1) how the district will measure the student's progress towards meeting annual goals; and 2) when the district will provide periodic reports on the progress towards annual goals.

Make sure that progress reporting is consistent with the measures addressed in the IEP and is occurring consistent with the frequency described in the IEP. Keep data used to measure progress. Information such as "I enjoy having the student in my class," a grade alone, and sometimes even numbering systems, do not provide

parents enough information to assess whether the student is appropriately progressing towards his or her IEP goals, and are not consistent with the data measure.

Cases: 2010-SE-0110: While the district issued progress reports stating the student progressed, the reporting was not consistent with measures described in the IEP and in fact the evidence did not support progress.

M.P. v. Poway Unified School District 54 IDELR 278 (USDC So. District CA 2010). The District was able to show that the student made progress, using data it maintained for progress reporting, despite the fact that the student did not achieve commensurate with his peers.

SECC 10-09 The District issued report cards and progress reports for the student, however, those did not address progress towards annual goals.

WAC: 392-172A-03090

Transfer Procedures: Any student who transfers from another school district with a current IEP, whether from Washington State or another state, should be provided services that are comparable to the services in the current IEP, and that will provide a free appropriate public education to the student. The district and parent consult to determine the comparable services. The provision of comparable services continues until the district adopts the student's IEP from the previous school district or develops, adopts and implements a new IEP in accordance with IEP development rules. If a student has moved from another state and the district believes it needs to conduct an initial eligibility determination to meet state standards, the comparable services must continue until the evaluation is completed, the parent provides consent for initial services (if applicable) and the team develops and implements an IEP (if applicable) While comparable services do not necessarily mean the exact replication of the services provided for in the IEP, they should approximate, as close as possible, the services and placement options.

When a district provides comparable services, the issue is not whether the district agrees with the services. If the district believes that different services or a different placement is required, the district

should follow evaluation procedures while implementing the IEP in effect.

Cases: SECC 10-27 While the district erred in determining it needed to conduct an initial evaluation for the student transferring from another in-state district, it was not required to implement an amendment created by the prior district and drafted after the student was no longer enrolled in the district.

Letter to Champagne, (OSEP, 2008). When student transfers from out of state, and the new district believes that it needs to determine whether the student is eligible, it is an initial evaluation.

AM v. Monrovia 627 F.3d 773, (USCA 9th Cir, 2010) The Student with severe cognitive impairments received services provided by a private school in a home setting. Prior to enrolling in a neighborhood school, the IEP team amended the IEP placing the student in a general education setting. The receiving district implemented the IEP in effect prior to enrollment in a self-contained setting, not the new IEP that was never implemented. The Ninth Circuit agreed, noting that this more appropriately met IDEA's purpose of minimizing disruption to the student.

WAC: 392-172A-03105

Prior Written Notice

Prior written notice documents decisions and the reasons for decisions. A prior written notice must be given to parents within a reasonable time before the district initiates or changes the student's identification, evaluation, educational placement or the provision of a free appropriate public education. It must explain why the district proposes or refuses to take action, including evaluative materials used in making a decision. It must describe any other options the district considered, and it must explain its reasons for rejecting those options. Prior written notice ensures that parents are aware of the decisions a district has made regarding proposals for evaluation and other matters affecting placement or implementation of the IEP. It documents that full consideration has been given to input provided regarding the student's educational needs, and it clarifies that a decision has been made. The prior written notice should document any disagreement with the parents, and should clearly describe what the district

proposes to initiate, or refuses to initiate. It also includes a statement that parents have procedural safeguards so that if they wish to do so, they can follow due process procedures and request a hearing to resolve the conflict.

Understand the difference between an invitation to a meeting and prior written notice. Invitations notify the parents of the purpose of the meeting, time and location, and who will be in attendance. In addition, invitations to IEP meetings or meetings to discuss placement are scheduled at a mutually agreeable time and place. Prior written notice addresses decisions made as a result of a meeting. (It is called prior written notice because the notice of decisions is to be provided to the parent after the decision is made but before a decision is implemented.)

Cases:: SECC 10-19 The District failed to provide prior written notice addressing why they were not adopting parent's proposal.

WAC: 392-172A-05010

Discipline

Manifestation determinations: When a district has determined that it will be removing a student for more than 10 consecutive school days (or more than 10 cumulative school days because the removals show a pattern), it must conduct a manifestation determination meeting. A student's conduct will be a manifestation of their disability if: 1) the conduct in question was caused by, or had a direct and substantial relationship to the student's disability; or, 2) The conduct in question was the direct result of the school district's failure to implement the IEP. If it is a manifestation, the student must be returned to his placement, unless the parent and district agree to a different placement as part of a modification to a behavioral intervention plan.

If the conduct is a manifestation of the student's disability, the team must conduct a functional behavioral assessment and implement a behavior intervention plan. If the student already has a behavioral intervention plan, review the plan and modify it if necessary to address the behavior.

IEP teams need to consider both the conduct in question and the implementation of the IEP to determine whether there is a manifestation. All information about the student's disability and behavior, including outside information, must be examined to address whether the conduct in question is a manifestation of the student's disability.

CASES: SECC 10-11 After district determined student's behavior was a manifestation of his disability, they failed to return him to his classroom, and there was no evidence that the parents agreed to an interim alternative educational placement.

2010-SE-0098 The ALJ concluded the district erred when it determined that the student's behavior was not a manifestation of his disability. In addition to considering the student's actual diagnosis, the district should have considered other available information, including reviewing past student behaviors, when making the determination.

2010-SE-0097; 2011-SE-0017X; 2011-SE-0018X The district erred in determining that the behavior was not a manifestation of his disability, however the ALJ determined that the district's request to remove the student to an IAES was appropriate due to the student's escalated behaviors.

WAC: 392-172A-05145

Other Pending Case Law aka What to look for in coming days, weeks or months regarding IDEA exhaustion requirements.

Two cases have been argued in the past few months: one before the 9th circuit court of appeals, Payne v. Peninsula School District 07-35115, (9th Circuit) (en banc rehearing ordered Sept. 7, 2010) argued December 15, 2010; and, one before the Washington State Supreme Court, Dowler et. al. v. Clover Park School District 84048-2, argued May 17, 2011. Both of these cases raise the issue of whether the exhaustion requirement under IDEA applies when the parent does not wish to seek "educational relief," but wants to obtain damages for allegations of harm to a student in the educational setting.

RESOURCES:

OSPI Special Education Website <http://www.k12.wa.us/SpecialEd>
Tips from Special Education
http://www.k12.wa.us/SpecialEd/pubdocs/Tips_From_OSPI_SpEd.pdf

Technical Assistance Papers:
<http://www.k12.wa.us/SpecialEd/publications.aspx>

Dispute Resolution (Includes complaint and due process summaries, and other information about dispute resolution options.)
<http://www.k12.wa.us/SpecialEd/DisputeResolution/default.aspx>

National Dissemination Center for Children with Disabilities
<http://nichcy.org/>

Office of Special Education Programs Policy Letters by Topic:
<http://www2.ed.gov/policy/speced/guid/idea/letters/revpolicy/index.html>

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Douglas H. Gill, Ed.D.
Director, Special Education