

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-33

PROCEDURAL HISTORY

On March 21, 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 Highline School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On March 22, 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 April 6, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent the same day.

On April 13 and 14, 2022, OSPI received the Parent's reply. OSPI forwarded that reply to the District on April 14, 2022.

On May 4, 2022, OSPI interviewed the District's co-director of special education via phone.

OSPI considered all information provided by the Parent and the District as part of its investigation. It also considered the information received during the interview.

ISSUES

1. Did the District follow special education evaluation procedures, including:
 - a. Responding to the Parent's April 2021 evaluation request in a timely manner; and,
 - b. Conducting a sufficiently comprehensive evaluation addressing all areas of suspected disability per WAC 392-172A-03020 and WAC 392-172A-03025?
2. Did the District follow the procedures outlined in WAC 392-172A-05005 following the Parent's March 2, 2022 request for an independent educational evaluation (IEE)?

LEGAL STANDARDS

Reevaluation Timeline: Reevaluations shall be completed within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. WAC 392-172A-03015.

Evaluation/Reevaluation Standards: In completing an evaluation, the evaluation group 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. Students

should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs. 34 CFR §300.304; WAC 392-172A-03020.

Consent for Reevaluation: A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. 34 CFR §300.300(c); WAC 392-172A-03000(3). Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought in his or her native language, or other mode of communication; understands and agrees in writing to the activity for which consent is sought, and the consent describes the activity and lists any records which will be released and to whom; and understands that the granting of consent is voluntary and may be revoked at any time. 34 CFR §300.9; WAC 392-172A-01040(1).

Independent Educational Evaluation (IEE): Parents of a student eligible for special education have the right to obtain an independent educational evaluation (IEE) of the student at public expense if they disagree with the district's evaluation. An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the education of the student in question. At public expense means that the district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district's criteria for IEEs. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate; or, ensure that an IEE is provided at public expense, unless the district demonstrates in a hearing under this chapter that the evaluation obtained by the parents did not meet agency criteria. 34 CFR §300.502; WAC 392-172A-05005.

FINDINGS OF FACT

2020–2021 School Year

1. At the start of the 2020–2021 school year, the Student was eligible for special education services under the category of emotional behavioral disability. The Student attended two private schools part-time located within the District's boundaries. The Student was not enrolled in the District and was not receiving services under an individualized education program (IEP) or services plan at the start of the school year.
2. The District stated in its response that special education services are provided to students in private schools between October 1 of a school year and the beginning of May of that school year. There is a District school psychologist, in this case psychologist 1, assigned to the private school the Student attends. There is a team of District staff who oversee proportional share services for students in private schools, with District school psychologists assigned to private schools.
3. On April 27, 2021, the director of the private school sent psychologist 1 a packet regarding the Student, who the private school felt should be considered for support and reevaluation

for special education services. This included an evaluation request form completed by the Parent and a private school teacher on April 21, 2021.

4. According to the District's response, psychologist 1 assumed the District would not be providing the Student services at the private school after May 2021. However, the District acknowledged that an evaluation should have been initiated.

The District also noted that since identifying the issues in this complaint, it has reviewed special education referral and evaluation requirements with the team of District staff who oversee private school students.

5. The Parent stated in his reply to the District's response that he submitted reports to the District in April 2021, to support initiating an evaluation, and that supported the Student's need for services in speech, math, reading, writing, and occupational therapy.
6. In May 2021, the Parent emailed psychologist 1 a private evaluation, indicating the Student's needs in the areas of social communication/pragmatics, articulation, math, and occupational therapy.

Psychologist 1 responded and acknowledged receipt of the information. Psychologist 1 stated:

We will definitely move forward with an evaluation for him...I do not think we are going to be able to complete the whole thing before the end of this school year, but what I can do is get your consent before the end of the year, and then complete it right in September when the school year starts, which would be fine because tutoring does not start until October.

7. On June 1, 2021, psychologist 1 emailed the Parent, noting the District would be moving forward with an evaluation for the Student. The psychologist noted she would need to request records from the Student's prior district and that she would get consent from the Parent prior to the end of the school year.
8. In early June 2021, psychologist 1 requested special education records from the Student's previous school district, which included a previous district evaluation from 2017.
9. On June 8, 2021, psychologist 1 emailed the Parent, stating she received the previous district special education records on June 7, 2021. The psychologist stated she would reach out to the Parent the following week to get consent and then they would begin the evaluation in September 2021.

The Parent responded, asking if it would be "possible to complete some of the evaluation this month or over the summer break so [Student] will be ready to go when tutoring begins in October?"

10. A June 15, 2021 prior written notice stated:
[Student] moved into the [District] service area and currently attends school at [private school]. Special education records were received, and it was determined that [Student] does

qualify for special education services under the Emotional Behavioral Disability eligibility category. He qualifies for specially designed instruction in the areas of: Occupational Therapy, Social/Emotional/Behavioral, Reading, Writing and Math. [Student's] special education documents indicate placement in a self-contained behavior program. [Student] currently attends a general education class at [private school]. Based on the records received, [Student's] three year re-evaluation was due by 4/25/20. His evaluation has expired, and a new one must be completed at this time. A full re-evaluation will be initiated for [Student] when we return to school in the fall 2021...A private school service plan tutoring request will be made for [Student] in the fall so that he can receive services he is eligible for while the evaluation process takes place.

11. June 16, 2021 was the District's last day of school.

2021–2022 School Year

12. September 2, 2021 was the District's first day of the 2021–2022 school year.

13. In October 2021, services were initiated for all private school students within the District's boundaries. The District stated that the Student was offered "tutoring in the areas qualified for in the evaluation done in 2017 to make certain support was available."

14. On October 13, 2021, the Parent emailed psychologist 1, stating he was still waiting for the reevaluation consent form.

The psychologist responded:

The hold up is the enrollment piece. We have a new procedures in place this year that ALL students must enroll at their home school in order to be put in our system. No paperwork can be completed until enrollment is complete. He would not be enrolled for any kind of attendance at the school, but for paperwork purposes only. Once we complete his evaluation and the paperwork that goes along with it, he will be withdrawn (unless you decide for him to have an IEP instead of a private school service plan).

15. On October 20, 2021, according to the District's response, psychologist 1 received consent, via email from the Parent, to evaluate the Student.

The District response included a consent form with a handwritten note on the signature line: "consent rec via email 10/20/2021." The consent form noted the reevaluation would address review of existing data, fine motor, reading, writing, social/emotional/behavioral, cognitive, and math.

16. The Parent stated in his reply to the District's response that he "was never shown nor informed of the Reevaluation Notification/Consent form" included in the District's response, thus the Parent stated he was "unaware of all areas to be considered for the reevaluation, or that I had the opportunity to participate in the consideration of which areas would be assessed."

17. On December 13, 2021, an evaluation meeting was held. The evaluation report noted the Student was eligible for special education services under the category emotional behavioral

disability. The report recorded the recommendations that the Student receive special education services in reading, writing, and social/emotional behavior.

The evaluation report indicated the following information was reviewed or assessment/evaluative measures conducted:

- Social Emotional/Behavioral: "Behavior Assessment System for Children, Third Edition" (BASC-3) Parent rating, teacher rating; and, teacher reports
- Cognitive: "Wechsler Intelligence Scale for Children-Fifth Edition" (WISC-V)
- Reading, Math, Writing: "Wechsler Individual Achievement Test, Fourth Edition" (WIAT-4)
- Occupational Therapy: Review of classroom work samples; Parent interview; "Developmental Test of Visual Motor Integration" and other standardized assessments; "Sensory Profile" teacher rating; Classroom observations

The Parent, in his complaint, alleged the District failed to review existing data and assessments for the Student's evaluation. Nor did, the Parent alleged, the District reach out to the Student's private schools to obtain information for the evaluation. The Parent also noted that the evaluation report stated a parent interview was conducted, and the Parent stated he was not interviewed. The Parent stated that "assessment results were not provided...to me" and that there are references to a female student, for example "in school she frequently plays or fiddles with objects..."¹

The Parent included several private evaluations and reports in his reply to the District's response, which he stated he shared with the District. The private evaluations and reports indicated the following:

- Private School Reading Report: Reading scores from April and December 2021, showing the Student moved from a 4.8 to a 5.4 grade level after 229 hours of instruction.
- Occupational Therapy Reports: Session/evaluation in September 2020 with significant findings that the Student exhibit difficulty with age-appropriate executive functioning skills, self-regulation, self-monitoring/impulse control, working memory, organization skills, and task initiation/completion. The report recommended occupational therapy and several goals.
- Medical Report: The September 2020 report included diagnosis, current concerns, and recommended next steps.
- Previous Special Education Evaluation: The 2017 evaluation from the previous district found the Student eligible for special education services under the category emotional behavioral disability and recommended specially designed instruction in behavior, social/emotional, reading, math, written expression, and occupational therapy.

In his reply, the Parent noted the District failed to assess the Student's speech-language needs. The Parent included a February 2022 speech reassessment that diagnosed the Student with "mixed receptive-expressive language disorder" and attention-deficit hyperactivity disorder (ADHD) and noted significant delays in social/pragmatic communication. The report included a recommendation for speech language therapy and a referral for an occupational therapy assessment to look at cognitive/executive functioning.

¹ It is not clear whether this is a typo or information about another student.

18. The Parent stated he reached out to psychologist 1 several times in January 2022 about the evaluation and a potential meeting to reconsider areas of eligibility. In a January 19, 2022 email, psychologist 1 stated she "previously misspoke" and that the evaluation was complete. The psychologist stated that:

If more information needs to be documented that was not reflected in the evaluation, we can create a notice called a 'Prior Written Notice' and document there. A re-evaluation extension would have had to take place prior to holding the meeting. If you don't agree with the recommendations, you could write what's called a dissenting opinion and submit it to the district.

19. On January 24, 2022, the Parent requested a meeting to discuss the service plan with the Student's private school teachers.

The District noted a different school psychologist (psychologist 2) was assigned because psychologist 1 was on medical leave.

20. On January 25, 2022, psychologist 2 emailed the Parent a copy of the service plan and recommended the Parent contact the District's co-directors of special education (co-directors) with any questions regarding services.

21. On February 8, 2022, the Parent called and emailed one of the co-directors, who responded on February 9, 2022 via email and phone.

During the phone call, the District noted the Parent voiced concerns about the evaluation in the areas of math and fine motor. The co-director stated she would reach out to the evaluation team for more information.

22. The Parent, in his reply, stated he did not have a concern about fine motor, but instead he brought up a previous private occupational therapy report and how that was not reviewed as part of the evaluation. The Parent also indicated he mentioned concerns about "body awareness," attention, participation, and social reciprocity.

23. On March 2, 2022, the co-director emailed the Parent, after meeting with the evaluation team, noting that the team stated the evaluation results did not support a need for services in math and fine motor, although motor accommodations were recommended.

24. Also, on March 2, 2022, the Parent requested an independent educational evaluation (IEE), stating he disagreed with the December 2021 reevaluation.

The Parent alleged in his complaint that the District neither agreed to nor denied his request.

25. Later, on March 2, 2022, the co-director responded and stated an answer to the request would be provided in 15 days.

26. The District stated that the co-directors of special education reviewed the December 2021 evaluation and “noted the evaluation team did not consider information from outside providers,” which impacted the decision to approve the IEE.

27. On March 18, 2022, the co-director emailed the Parent and agreed to conduct the IEE in the areas of concern, math and fine motor. The co-director stated that they had a list of providers the Parent could review, unless he had already identified someone.

The District clarified that it had not received a response from the Parent about the IEE since agreeing to conduct the IEE in March 2022.

28. The District acknowledged in its response that it missed the deadline to respond to the IEE request by one day.

29. The Parent stated he disagreed with the IEE being limited in scope to exclude speech and full occupational therapy assessments.

CONCLUSIONS

Issue One: Evaluation Procedures – The Parent alleged the District failed to respond in a timely manner to his request for a reevaluation and once the District conducted a reevaluation that the evaluation was insufficient.

The Student attends two private schools located within the District’s boundaries. The Student was eligible for special education services. The District stated in its response that special education services are provided to students in private schools between October and May of a school year. There is a District team assigned to private schools, and a school psychologist (psychologist 1) assigned to private schools the Student attended.

Response to Request for Evaluation: Specifically, the Parent alleged the District did not timely respond to the request for the reevaluation. While there is no specific timeline outlined in regulation for responding to a request for a reevaluation, a district should respond and obtain consent in a reasonable amount of time. Further, reevaluations shall be completed within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent.

Here, the Parent requested a special education evaluation in late April 2021 and a reevaluation was not initiated until the end of October 2021, with the evaluation being completed and a meeting held on December 13, 2021. The District acknowledged that the evaluation was not initiated in a timely manner, stating the psychologist assumed that it was permissible to wait as services would not be provided to private school students after May 2021 and until October 2021. OSPI agrees that the delay was unreasonable, noting that the school psychologist acknowledged in May and June 2021 that a reevaluation was needed, and several times stated she would obtain the Parent’s consent prior to the end of the school year.

OSPI finds a violation as the reevaluation was not timely initiated. As corrective action, the District will be required to develop guidance on special education timelines for staff overseeing private schools.

Sufficient Evaluation: The Parent also alleged the evaluation was insufficient as it did not consider information the Parent provided, including existing private assessments and evaluations, nor did it consider information from the Student's private schools. Further, the Parent stated the District failed to assess the Student's speech-language needs.

In completing an evaluation, the evaluation group 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. Students should be comprehensively assessed in all areas of suspected disability, and districts must use assessment tools and strategies that provide information that directly assists those determining the student's educational needs.

Based on the documentation, the District did fail to consider information provided by the Parent, information from the private schools, outside/private assessments and evaluations, and stated it interviewed the Parent for the evaluation when it did not. The District acknowledged the evaluation was insufficient, noting "the evaluation team did not consider information from outside providers," which impacted the decision to approve the Parent's request for an independent educational evaluation (IEE).

OSPI finds there was another way the evaluation was insufficient, in that the evaluation did not address the Student's speech/communication needs, in part because the Parent was never provided a consent form and only provided consent via an email. A district is required to obtain informed parental consent before conducting any assessments as part of a reevaluation of a student eligible for special education services. Consent means that the parent: has been fully informed of all information relevant to the activity for which consent is sought, and understands and agrees in writing to the activity for which consent is sought. The Parent stated he never received the consent form and did not see it until he received the District's response in this complaint, and the consent form itself included a handwritten note that consent was provided via email. This means the Parent did not see that communication was not included and that occupational therapy was limited to fine motor on the consent form. The consent form would have been the Parent's opportunity to let the District know the Student should have been evaluated in communication as well and that his concerns about occupational therapy were broader than just fine motor skills.

Without the opportunity to provide informed consent and the District's failure to review information provided by the Parent as part of the reevaluation, the District's reevaluation was insufficient to identify the Student's needs, including needs in speech. OSPI finds a violation. As corrective action, the District will be required to include speech/communication and occupational therapy broadly (i.e., more than only fine motor) in the IEE it has granted.

Issue Two: IEE – The Parent alleged the District neither approved nor denied his request for an IEE within the required timeline. If the parents request an IEE at public expense, the district must either: initiate a due process hearing within 15 days to show that its evaluation is appropriate, or ensure that an IEE is provided at public expense. Each district will provide to parents, upon request for an IEE, information about where an IEE may be obtained and the district’s criteria for IEEs.

On March 2, 2022, the Parent requested an IEE. The District admitted that it responded one day outside the 15-day timeline when it responded to the Parent on March 18, 2022, granting the Parent’s request for an IEE. OSPI finds a violation but notes that no specific corrective actions are needed for the timeline violation as the District has already granted the Parent’s IEE request.

The Parent also disagreed with the District limiting the IEE to exclude speech and a full occupational therapy assessment. The District clarified that the Parent, as of the beginning of May 2022, had not yet responded to the email agreeing to the IEE. Therefore, it is not clear the District has limited the scope of the IEE as the Parent and District have not yet discussed providers for the evaluation. However, the District in its response and responsive documents characterized the Parent’s concerns as being specifically about fine motor and the email granting the IEE did not mention speech. As discussed, the fact that the Parent was not provided the consent form directly impacted whether the reevaluation addressed the additional areas the Parent was concerned about—speech and occupational therapy broadly. Thus, OSPI finds it would be improper for the District to exclude speech from the IEE and limit the IEE to fine motor. OSPI notes this is addressed by the corrective action ordered above.

CORRECTIVE ACTIONS

By or before **May 20, 2022, June 3, 2022, June 17, 2022, and September 9, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

IEE

By or before **May 20, 2022**, the District will email the Parent, reiterating its agreement to conduct an IEE. The District will communicate that this includes assessing math, speech, and occupational therapy. The District will provide the Parent with its list of IEE providers and/or IEE criteria. The District will copy OSPI on the email, and then move forward with the IEE once the Parent has selected providers.

DISTRICT SPECIFIC:

Written Guidance

The District will develop draft written guidance on special education timelines to be provided to all District staff who oversee private schools. The guidance should include information on referral, initial evaluation, and reevaluation timelines. The guidance should include best practices for working with private schools, reminders that timelines are still in effect even when proportionate share services are not being provided, and examples.

By **June 3, 2022**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by June 10, 2022, and provide additional dates for review, if needed.

By **June 17, 2022** and **September 9, 2022²**, the District will provide OSPI with documentation showing it provided all District staff overseeing private schools has received and reviewed the guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of May, 2022

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.)

² The District can determine if all the staff overseeing private schools need to receive the guidance again as a reminder for the new school year, or if there are new staff on this team, whether only the new staff need the guidance.