

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-73

PROCEDURAL HISTORY

On May 26, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the PTSA (Complainant) regarding two students (Student A and Student B) attending the Seattle School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Students' education.

On May 26, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 31, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 16, 2023, OSPI received the District's response to the complaint and forwarded a redacted version to the Complainant on June 20, 2023. OSPI invited the Complainant to reply.

On July 11, 2023, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on July 12, 2023.

On July 13, 2023, OSPI requested that the District provide additional information, and the District provided the requested information on July 17, 2023. As the entirety of the provided information included personally identifiable information related to the students, and OSPI did not have a signed release of information from the parents of the students, OSPI was unable to provide this information to the Complainant.

OSPI considered the information provided by the Complainant and the District as part of its investigation.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 27, 2022. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Beginning May 27, 2022, did the District follow proper child find and initial evaluation procedures for Students A and B?

LEGAL STANDARDS

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability.

"[T]he 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. Paso 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 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).

Consent for Initial Evaluation: A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. 34 CFR §300.300(a); WAC 392-172A-03000(1). 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). The District must make reasonable efforts to obtain parental consent and keep a record of its attempts. 34 CFR §300.300(a)(1)(iii); WAC 392-172A-03000(1)(c).

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

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

Timeline for an Initial Evaluation: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility 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-03005(3)(a).

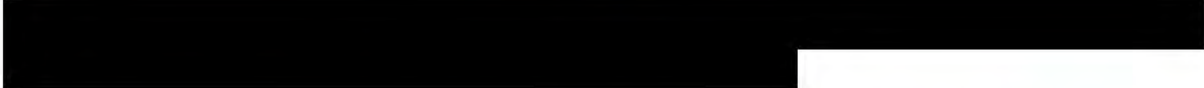
Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if 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. 34 CFR §300.304; WAC 392-172A-03020.

Consent for Initial Provision of Services: A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student. 34 CFR §300.300(b)(3); WAC 392-172A-03000(2)(d).

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). There is no requirement to provide day-for-day compensation for time missed. *Parents of Student W. v. Puyallup Sch. Dist. No. 3*, 31 F.3d 1489, 21 IDELR 723 (9th Cir. 1994). “There is no statutory or regulatory formula for calculating compensatory remedies. However, generally services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting. It is common in Washington for such one-to-one services to be calculated at half of the total hours missed.” *In re: Mabton School District*, 2018-SE-0036.

STUDENT A: FINDINGS OF FACT

2021–22 School Year

1. 
2. According to the Complainant, during the 2021–22 school year, Student A’s “family refused a special education referral.”

On this issue, the District’s response read, in part:

[Redacted]

3.

[Redacted]

[Redacted]

4.

[Redacted]

2022-23 School Year

5.

[Redacted]

6. According to the Complainant, during the 2022-23 school year, "Student A was removed from the classroom off and on...In the beginning of the year, Student A would be given 1:1 play time or 'breaks' with the office [staff]."

According to the District, during the 2022-23 school year:

[Redacted]

[Redacted]

[Redacted]

7. [Redacted]

8. [Redacted]

9. [Redacted]

10. [Redacted]

11. [Redacted]

[Redacted]

² [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

12. [Redacted]

[Redacted]

13. [Redacted]

14. [REDACTED]

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

21. [REDACTED]

22. [REDACTED]

23. [REDACTED]

24. [REDACTED]

³ [REDACTED]

25.

[Redacted]

26.

[Redacted]

27.

[Redacted]

[Redacted]

28.

[Redacted]

29.

[Redacted]

30.

[Redacted]

[Redacted]

31.

[Redacted]

32.

[Redacted]

33. [Redacted]

34. [Redacted]

35. [Redacted]

36. [Redacted]

[Redacted]

37. [Redacted]

38. [Redacted]

39. [Redacted]

40. [Redacted]

41. [Redacted]

42. [Redacted]

43. [Redacted]

[Redacted]

44. According to the Complainant:

[Starting] the week of April 24, 2023, the principal decided to place Student A in the Distinct Special Education Classroom [and] parental notification was not given nor consent gained for [such a] placement. Student A spent half the day in [the special education classroom] on April 24, 2023.

The principal told the special education teacher that she must have Student A in her class to avoid having a special education paraeducator removed from that classroom [to] be reassigned to be Student's A's 1-on-1 paraeducator...Student A does not belong in [the special education] classroom.

45. [Redacted]

46. According to the Complainant, at some point in May 2023, the principal assigned the Student a 1:1 paraeducator. The Complainant referred to this person's role as being that of an "interventionist."

47. [Redacted]

48. [Redacted]

49. [Redacted]

50.

[REDACTED]

51.

[REDACTED]

52.

[REDACTED]

53.

[REDACTED]

54.

[REDACTED]

55.

[REDACTED]

56.

[REDACTED]

57.

[REDACTED]

58.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

59. [REDACTED]

60. [REDACTED]

STUDENT A: CONCLUSION

The Complainant alleged the District did not follow proper child find and initial evaluation procedures for Student A.

School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. The child find duty 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. 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, such as outside experts consulted by parents, or less formal indicators such as the child's behavior.

[REDACTED]

District Efforts to Obtain Parental Consent for Initial Evaluation: A district is required to obtain informed parental consent before conducting an initial evaluation of a student suspected of needing special education services. 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. The district must make reasonable efforts to obtain parental consent and keep a record of its attempts.

[REDACTED]

OSPI does not find a violation.

Implementation of Response to Intervention Strategies: The Office of Special Education Programs (OSEP) "supports state and local implementation of response-to-intervention (RTI) strategies⁶ to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner."

⁴ The period under investigation begins on May 27, 2022. The information related to before this date is included for context only.

⁵ [REDACTED]

⁶ OSEP states that "the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction."

[REDACTED]

OSPI does not find a violation.

Timeliness of the Initial Evaluation: When the student is to be evaluated to determine eligibility for special education services, the school district shall fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent.

[REDACTED]

OSPI does not find a violation.

Thoroughness of the Initial Evaluation: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 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.

[REDACTED]

OSPI does not find a violation of the IDEA.

STUDENT B: FINDINGS OF FACT

2022–23 School Year

61. [REDACTED]

7 [REDACTED]

62. According to the Complainant:

Student B may have some special needs pertaining to his behavior and mental health...Academically, he is well above grade level. Student B has been violent with adults, staff, and classmates. The solution was to have in-class 1:1 support⁸ [and] to place Student B in the distinct special education [classroom] and to use the special education resource room.

...
Student B spends less and less time in the classroom learning everyday...He is experiencing more meltdowns and refusing to do...work, because he wants to go play in [the special education resource room].

According to the District:

[Redacted]

63.

[Redacted]

[Redacted]

64.

[Redacted]

65.

[Redacted]

66.

[Redacted]

⁸ The Complainant stated no less than three separate individuals provided the Student with 1:1 paraeducator support.

67.

[REDACTED]

68.

[REDACTED]

69.

[REDACTED]

70.

[REDACTED]

71.

[REDACTED]

[REDACTED]

72.

[REDACTED]

73.

[REDACTED]

74.

[REDACTED]

75.

[REDACTED]

76.

[REDACTED]

77.

[REDACTED]

78.

[REDACTED]

79.

[REDACTED]

80.

[REDACTED]

[REDACTED]

81.

[REDACTED]

82.

[REDACTED]

83.

[REDACTED]

84.

[REDACTED]

85.

[REDACTED]

[Redacted text block]

86. [Redacted text block]

87. [Redacted text block]

88. [Redacted text block]

89. [Redacted text block]

90. [Redacted text block]

[Redacted text block]

91. [Redacted text block]

92. [Redacted text block]

[Redacted text block]

93. [Redacted]

94. [Redacted]

95. [Redacted]

96. [Redacted]

97. [Redacted]

98. [Redacted]

99. [Redacted]

100. [Redacted]

101. [Redacted]

102. [Redacted]

⁹ [Redacted]

[Redacted]

103.

[Redacted]

104.

[Redacted]

105.

[Redacted]

106.

[Redacted]

107.

[Redacted]

108.

[Redacted]

109.

[Redacted]

110.

[Redacted]

10

[Redacted]

[Redacted]

111.

[Redacted]

112.

[Redacted]

113.

[Redacted]

114.

[Redacted]

115.

[Redacted]

116.

[Redacted]

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[Redacted]

118.

[Redacted]

[Redacted]

119.

[Redacted]

120.

[REDACTED]

121.

[REDACTED]

122.

[REDACTED]

[REDACTED]

[REDACTED]

123.

[REDACTED]

[REDACTED]

124.

[REDACTED]

[REDACTED]

125.

[REDACTED]

126.

[REDACTED]

127.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 128. [REDACTED]
- 129. [REDACTED]
- 130. [REDACTED]
- 131. [REDACTED]
- 132. [REDACTED]
- 133. [REDACTED]

STUDENT B: CONCLUSIONS

The Complainant alleged the District did not follow proper child find and initial evaluation procedures for Student B.

Suspicion of Disability under the IDEA: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. The child find duty 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. 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, such as outside experts consulted by parents, or less formal indicators such as the child's behavior.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] represents a violation of the IDEA and certain compensatory education is warranted.

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. There is no requirement to provide day-for-day compensation for time missed. Generally, services delivered on a one-to-one basis are usually delivered effectively in less time than if the services were provided in a classroom setting.

¹¹ December 16, 2022 represents the final day of the fall 2022 semester.

[REDACTED]

[REDACTED]

Other Initial Evaluation Requirements: A school district must assess a student in all areas related to his 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.

[REDACTED] OSPI does not find a violation of the IDEA on this score.

In conducting an initial evaluation of a student under the IDEA, a district’s evaluation team must consider information provided by the parent. Here, that requirement was met. For example: the Parent participated in MTSS meetings prior to April 5, 2023; the Parent submitted Student B-specific information to District staff, particularly in January and March 2023; the April 2023 initial evaluation included information provided by the Parent; and the Parent attended the initial evaluation meeting. In sum, OSPI finds the District’s April 5, 2023 evaluation group properly considered the Parent’s input; OSPI does not find a violation of the IDEA.

12 [REDACTED]

13 [REDACTED]

CORRECTIVE ACTIONS

By or before **August 18, 2023, October 6, 2023, January 12, 2024, March 4, 2024, and April 26, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT B SPECIFIC:

Compensatory Education

By or before **August 18, 2023**, the District and Parent will develop a schedule for 38 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 or related service provider. 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 **April 26, 2024**.

The District must provide OSPI with an update on the amount of compensatory services provided to the Student by providing documentation on **October 6, 2023, January 12, 2024, and March 4, 2024** of the compensatory services provided to the Student at that point. This documentation must include the dates, times, and length of each session, and state whether any of the sessions were rescheduled or missed by the Student. By or before **April 26, 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 **April 26, 2024**.

DISTRICT SPECIFIC:

None.¹⁴

¹⁴ OSPI notes that the school at issue here is also required to complete training on topics, including referral procedures, and that response-to-intervention should not delay referral initial evaluation decisions pursuant to a previous complaint, SECC 23-68.

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.

RECOMMENDATION

OSPI recommends the District continue to communicate with Student A's Parents in an effort to obtain consent to provide initial special education services to Student A.

Dated this 25th 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.)