

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-32**

### **PROCEDURAL HISTORY**

On March 18, 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 [REDACTED] 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 21, 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 4, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on April 5, 2022. OSPI invited the Parent to reply. OSPI did not receive a reply from the Parent.

On April 20, 2022, OSPI requested that the District provide additional information, and the District provided the requested information on April 20, 2022. OSPI forwarded the information to the Parent on April 21, 2022.

On April 20, 2022, the OSPI complaint investigator conducted interviews with the District's director of special education for preschool and elementary programs.

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.

### **ISSUE**

1. Did the District comply with procedures following the Parent's June 22, 2021 and February 4, 2022 requests for an independent educational evaluation (IEE)?

### **LEGAL STANDARDS**

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. Parents are entitled to only one IEE at public expense each time the district conducts an evaluation with which the parents disagree. 34 CFR §300.502; WAC 392-172A-05005.

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. If the district initiates a hearing and the final decision is that the district's evaluation is appropriate, the parents still have the right to an IEE, but not at public expense. 34 CFR §300.502; WAC 392-172A-05005.

If the parents request an IEE, the district may ask for the parents' reason why they object to the district's evaluation. However, the explanation by the parents may not be required and the district must either provide the IEE at public expense or initiate a due process hearing to defend its educational evaluation. 34 CFR §300.502; WAC 392-172A-05005(4).

## **FINDINGS OF FACT**

### **Background & 2020–2021 School Year**

1. The Student is currently in the fourth grade and is eligible for special education services under the category specific learning disability (SLD).
2. The Student enrolled in the District on April 7, 2021.
3. On or around May 24, 2021, a "Notice of Meeting" was sent to the Student's Parent. The meeting was scheduled for June 15, 2021 and the purpose of the meeting was to review the evaluation reports and make an eligibility determination.
4. On June 15, 2021, the District sent the Parent a prior written notice (PWN) with the stated purpose of proposing an eligibility category for the Student. The PWN stated that the Student would continue to be eligible for special education services under the category SLD and that he would "age out" of the development delay category when he turned nine. The PWN stated that the team looked at the Student's record review, classroom data, standardized assessments, and informal observations to make the determination. The PWN noted that due to the COVID-19 pandemic and related closures, the District did not have current standardized test scores for students and that the team recommended "updated academics [sic] once the Student has been able to attend full day classes for 6 months or more." The PWN also stated that a virtual eligibility meeting was held on June 15, 2021 and that the Parent was in attendance.
5. The District's June 2021 evaluation report was completed by the school psychologist. The document shows that existing records were reviewed, including the Student's previous 2019 evaluation. In the 2019 evaluation, the Student was tested for cognitive ability using the WISC-V, which examined his: IQ, verbal comprehension, visual/spatial index, fluid reasoning, working memory index, and processing speed index. The 2019 evaluation showed significant delays in reading and written language and the scores were reported to be more than two standard deviations below the mean. The previous 2019 math data was also in the below average range.

The 2021 evaluation report did not indicate if the response to intervention (RTI) or discrepancy model was used for the Student's eligibility, but it appears that the discrepancy model, based on the 2019 data, was used for the SLD eligibility determination. The assessment results show skills in the average range related to receptive and expressive language. The OWLS-2 exam was administered in May and June of 2021 to measure these skills, and the assessment showed great improvement from the 2019 English and Spanish tests that were given for this area. The summary also showed that the Student was tested for hearing and listening skills and that the BASC-3 was administered in May 2021 to test his social and emotional skills. The summary shows that the Student was tested for occupational therapy needs in 2021.

6. On June 22, 2021, the Parent emailed an assistant principal at the District and requested an independent educational evaluation (IEE). In this message, the Parent stated that the last evaluation did not specifically address the Student's academic concerns. The Parent further clarified that she wanted the Student tested again for math, reading, and written language because the Student did not meet his goals. In her email, the Parent wrote that for reading, she would specifically like the Student retested for sight words and comprehension. The Parent also wrote that the Student had not been assessed for decoding or phonological processing, and the Parent wrote that she wanted these areas tested.

In this email to the District, the Parent also wrote that the Student's most recent evaluation did not address his cultural and language needs. The Parent requested that the Student's IEE use culturally appropriate tools, such as the "Culture-Language Interpretive Matrix," and the Parent further clarified that the Student is a native Spanish speaker. Finally, in this email, the Parent also requested the IEP team revisit the Student's functional behavioral assessment (FBA) and behavioral intervention plan (BIP). The Parent wrote that the school reported that the Student sometimes gets angry and that the team needs to know how to help him pinpoint these behaviors. The Parent requested that these reviews be completed by a behavior specialist or a board-certified behavior analyst (BCBA).

7. The Student turned **[REDACTED]**.

#### **2021–2022 School Year**

8. The District's first day of school for school year 2021–2022 was September 9, 2021.
9. On February 4, 2022, the Parent forwarded the June 22, 2021 email, wherein she originally requested an IEE, to her advocate.
10. On February 14, 2022, the Parent's advocate wrote to the District and stated that, "Below you will also see a request for an IEE [to District staff member], dated last June, from the Parent. As you are likely aware an IEE request needs to be responded to within 15 calendar days. There has been no response. Please consider this a second request for an IEE." The Parent was included on this message to the District. The February 14, 2022 email to the District also stated that the Parent is now even more concerned for the Student and that the last evaluation did not fully address the Student's behavioral or academic concerns, nor did it address his unique

cultural and language needs as a native Spanish speaker. The email further stated that there were ongoing behavior concerns, and that this was the second request for an FBA and BIP for the Student.

11. Also, on February 14, 2022, the District's director of special education (director) responded to the advocate by email and wrote that the District did receive the request for the IEE in June 2021 "when school was out for the year." The Director apologized for not responding "in the fall." In this message, the director wrote that she would review the information and respond after viewing the records.
12. On February 15, 2022, the director wrote to the advocate, members of the Student's IEP team, and the Parent. In this message, the director stated that she had reviewed the reevaluation done in the spring of 2021, along with the past evaluations. The director wrote that the Student returned to the District in April of 2021, when students were returning from hybrid learning during the pandemic. The director wrote that the school team moved to "complete the reevaluation due to his age and turning 9, when an eligibility category must be determined to continue services." The director wrote that this reevaluation was completed in spring of 2021, after the Student enrolled in the school and the PWN, dated June 15, 2021, indicated the school team considered updating the academic areas after the Student had attended in-person instruction for six months. The end of February 2022 would have been approximately six months. In this message, the director further stated:

Because the school team did not have much time to get to know Student last spring after he reenrolled in the District in April after being in [a different Washington district] for a period of time, I recommend that the current school team do the following before we consider an IEE. These steps would allow the school team to gain more insight into Student's current strengths and needs after having him at the school for a significant amount of time now. Re-evaluate academic areas, complete FBA/BIP, utilize the Critical Data Matrix to assist in understanding the impact of language.

The director included the Student's principal and assistant principal in the message.

13. Also, on February 15, 2022, the advocate responded to the director's email. In the reply, the advocate stated that the Parent would like to move forward with the school-based reevaluation, FBA, and BIP. The advocate wrote that they remained concerned that that Student's academics were not fully addressed in the reevaluation. The advocate also stated that for the reading assessment, the Parent needed a full understanding of the Student's reading abilities, including reading comprehension, sight words, phonological processing, decoding, phonemic awareness, and nonsense words. The advocate wrote that assessments such as the "WIAT-IV" or "Feifer Assessment of Reading" should be able to help with this understanding and address whether the Student has dyslexia.

The advocate additionally asked for the Student's social and behavioral needs to be fully reevaluated and that an autism checklist be completed. The advocate thanked the District for agreeing to use the "Critical Data Matrix," and clarified that they were requesting for this tool to be used in the interpretation of the Student's academic and previous cognitive scores, to

provide more information on the Student's cultural and linguistic needs. Finally, the advocate asked the District when they could expect the necessary parental consent form.

The director responded to the advocate the same day and wrote that she would reach out to the team that day and get them in contact with the advocate and Parent. The director wrote that she would follow up after contacting the team to make sure all aspects of the reevaluation were addressed. No consent was attached and there was no response as to when the consent would be forthcoming.

14. The District's mid-winter break occurred from February 18–21, 2022.

15. On February 22, 2022, the advocate emailed the director and stated that it had been one week, and they had not heard anything about the evaluation, and the advocate asked to be connected with the reevaluation team.

The director promptly responded to this email and stated that she was meeting with the school psychologist the following day and that the school psychologist would follow up.

16. The District reported that on February 25, 2022, the school psychologist reported she had been trying to reach the Parent via email to discuss the reevaluation but could not reach her. The District submitted an internal email from the school psychologist to the director, which corroborates that the school psychologist emailed the Parent as of February 25, 2022, to discuss next steps for the reevaluation.

17. On March 4, 2022, the school psychologist reported that she conferred with the Parent for the reevaluation.

Internal emails between District staff, dated March 15, 2022, show that a meeting occurred with the Parent on March 4, 2022 to discuss the Student's reevaluation in the following areas: cognitive, reading, math, writing, fine motor, sensory processing, medical-physical, observation, communication, and social/emotional. This document further stated that a consent form was sent to the Parent on March 14, 2022.

18. The District reported that the "Consent for Reevaluation" was provided to the Parent on March 11, 2022 as well.

19. The District acknowledged that it missed the deadline for the requested initial IEE and that they never provided the Parent or her advocate with information on how to obtain an IEE at public expense.

## CONCLUSIONS

**Issue: Independent Educational Evaluation (IEE) Request:** The allegation under investigation for this complaint, is did the District complied with applicable state and federal legal requirements following the Parent's June 22, 2021 and February 14, 2022 requests for an independent educational evaluation (IEE)?

The IDEA's requirements for IEE requests are procedural in nature: if parents request an IEE at public expense, then a 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 that the evaluation obtained by the parents did not meet agency criteria.

In this case, the Parent made clear in her June 2021 email that she was requesting an IEE. The District neither initiated a due process hearing within 15 days, nor did the District ensure that the IEE was provided. There is no evidence that any information on how to obtain an IEE or that the District's IEE criteria was ever provided to the Parent subsequent to the June 2021 request. While both the evaluation summary from June 2021 and the prior written notice, dated June 15, 2021, indicate that the District believed it needed more data on the Student's performance in class due to the COVID closures from the 2020–2021 school year and the Student's recent transfer into the District, the Parent clearly requested an IEE at this time. While it is understandable that the District was on summer vacation, and that it needed more Student data due to the global pandemic, the IDEA regulations and the associated implementing state rules do not make allowances for such occurrences.

When the Parent and her advocate had not heard from the District by February of 2022, they reminded the District of the June 2021 IEE request, and asked for an IEE a second time, on February 14, 2022. In this instance, the District responded promptly to work with the Parent and advocate to arrange for a reevaluation of the Student. However, the District again did not provide the Parent with any information about its IEE procedures or criteria, did not agree to conduct an IEE, nor did the District file a due process request to justify its need for its own reevaluation over an IEE. While the Parent did agree to the reevaluation, and the District did create a comprehensive reevaluation plan, there is no evidence that any independent evaluations were offered.

The District conceded that it did miss the deadline for the requested initial IEE and that they never provided the Parent or her advocate with information on how to obtain an IEE at public expense. And for the second request, the District believed that the Parent wanted to have a reevaluation conducted by the District, as opposed to the IEE. The District reported that it is currently completing a BIP/FBA for the Student and a full reevaluation, which includes relevant cultural and language information.

OSPI finds the District failed to follow IEE procedures and finds a violation. The District will be required to review IEE procedures and develop written guidance on the same. However, OSPI finds that no Student specific corrective actions are warranted as the documentation indicates that the Parent already agreed to move forward with a District reevaluation and the reevaluation is underway. OSPI notes though, that the Parent is entitled to request an IEE following the completion of the District's reevaluation and OSPI expects the District to follow correct procedures if the Parent requests an IEE in future.

### **CORRECTIVE ACTIONS**

By or before **May 27, 2022** and **June 17, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

**STUDENT SPECIFIC:**

None.

**DISTRICT SPECIFIC**

**Written Guidance**

The District will review all existing IEE regulations (WAC 392-172A-05005), policies, and internal procedures and develop draft written guidance to be provided to all District certificated special education teachers, principals, and District special education administration staff. The guidance should ensure that all relevant special education staff know that parents must be provided with information on how and where to obtain an IEE at public expense, after a request is made, in compliance with the applicable state and federal regulations. The guidance should include best practices and examples for responding to requests, including what to do if requests are received during district breaks.

By **May 27, 2022**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by June 3, 2022, and provide additional dates for review, if needed.

By **June 17, 2022**, the District will provide OSPI with documentation showing that it provided all District certificated special education teachers, principals, and District special education administration staff with the written 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.)