

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-28

PROCEDURAL HISTORY

On March 22, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen 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 23, 2018, 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 March 30, 2018, the District requested an extension of time for the submission of its response. On April 2, 2018, the District and the Parent were notified that the deadline for the District's response was April 20, 2018.

On April 20, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on April 23, 2018. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply.

On May 3, 2018, the OSPI complaint investigator conducted a site visit/interviews with District staff.

OSPI considered all of the 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 site visit/interviews.

OVERVIEW

At the beginning of the 2017-2018 school, the Student attended first grade at a District elementary school, but was not eligible for special education services. In November 2017, the general education teacher referred the Student to the school guidance team. The guidance team accepted the referral as a referral for interventions, not as a referral for a special education evaluation. In January 2018, the general education teacher requested that the Student's referral be moved forward for a special education evaluation. The District then began the twenty-five day timeline to determine whether or not to evaluate the Student, and agreed to evaluate the Student. In February 2018, the Parent consented to the evaluation and in March 2018, the District evaluated the Student, but did not find the Student eligible for special education. The Parent alleged that the District failed to start the referral timeline when the general education teacher first referred the Student to the guidance team. The District admits the allegation.

ISSUE

1. Did the District follow special education referral and evaluation timelines and procedures during the 2017-2018 school year?

LEGAL STANDARDS

Decision Whether to Conduct an Initial Evaluation: Following a request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral and: notify the student's parents of the referral; collect and examine existing school, medical, and other records in the possession of the parents and school district; and within 25 school days after receipt of the referral, decide whether or not to evaluate the student. 34 CFR §300.301; WAC 392-172A-03005.

Initial Evaluation – Timeline: When a district determines that a student should be evaluated, it must provide prior written notice to the student's parents indicating the district's proposal to evaluate. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.301; WAC 392-172A-03005.

FINDINGS OF FACT

1. During the 2017-2018 school year, the Student was a first grader who attended a District elementary school. The Student was not eligible to receive special education services.
2. On November 3, 2017, the Student's general education teacher completed a "referral" form regarding the Student for the elementary school's guidance team and submitted it to the school counselor. The referral form provided information about areas of concern, including written expression, basic reading skill, reading comprehension, mathematics calculations and reasoning, which were all at the pre-kindergarten level. The form indicated that pre-referral strategies were implemented in the areas of written expression and basis reading skill. The form asked: What general education or SPED program would help this student succeed? The response stated: "IEP plus accommodations/modifications," indicating that the referral's intent was to evaluate the Student to determine if the Student was eligible for special education.
3. Later on November 3, 2017, the school counselor emailed the special education director and asked what to do with the referral. The director replied and stated that the first step was to convene the guidance team. The director also stated:

The idea is that this team would brainstorm additional strategies for the teacher to try about six weeks. At that time, if the new strategies aren't working, the team would reconvene (GT2) with addition of the school psych (or I could do it if she isn't available) and the parents, in order to make a decision about doing a sped assessment or not.
4. According to the District's response to this complaint, the guidance team was made up of a general education teacher, special education teacher, counselor, principal, and parents, when appropriate. The purpose of the guidance team was to address referrals by recommending interventions and making a referral for a special education evaluation, as needed.

5. On November 16, 2017, the guidance team met and made instructional recommendations to the Student's general education teacher, but did not initiate a referral for a special education evaluation. The documentation in this complaint does not show that the Parent was notified of the guidance team's decision.
6. On November 20-22, 2017, the elementary school had parent-teacher conferences. According to the District's response to this complaint, during the parent-teacher conferences, the Student's teacher spoke with the Parent.
7. On November 23-24, 2017, the District was out of session.
8. On December 12, 2017, the director emailed the counselor and asked about the status of the referral of the Student. The counselor replied, stating that data were being collected.
9. On December 13, 2017, twenty-five school days elapsed from the general education teacher's November 3, 2017 request for an initial evaluation of the Student.
10. From December 18, 2017 through January 1, 2018, the District was not in session.
11. On January 3, 2018, the general education teacher emailed the director and asked that the teacher's request for a special education evaluation move forward. At the time, the District considered January 3 as the special education referral date that started the twenty-five day timeline to determine whether or not to evaluate the Student.
12. On January 16, 2018, according to the District, the director and the general education teacher met to assemble documentation for a referral for a special education evaluation.
13. On January 23, 2018, the director emailed the District school psychologist, confirming the referral and discussed a timeline to evaluate the Student.
14. On February 8, 2018, the District sent the Parent a prior written notice, proposing to evaluate the Student, and included a consent form for the evaluation. According to the Parent's complaint, she received the documents on February 12, 2018.
15. On February 12, 2018, the Parent emailed the general education teacher and stated she was "surprised" about the referral. The Parent believed the Student's difficulties were caused by poor preschool and kindergarten experiences, but agreed that it "wouldn't hurt to get him tested."
16. On February 21, 2018, the Parent signed consent for the initial evaluation and returned the consent form to the District.
17. On March 15, 2018, the Parent emailed the director and principal and stated she was concerned about the length of time it was taking for the Student to be evaluated when the request for an evaluation was made "in October."

18. On March 19, 2018, the Student's evaluation was scheduled to be conducted and the evaluation review meeting was scheduled for March 29, 2018.
19. On March 22, 2018, the Parent filed the complaint.
20. On March 26, 2018, the school psychologist emailed the director, general education teacher, and the special education teacher and stated:

I have spoken to [Parent] regarding the results of the evaluation, per [general education teacher]. [Parent] has stated a formal meeting is not needed at this point. She had reservations the student would not qualify anyways. She stated he did not have a good year in kindergarten and had no preschool. She has seen improvement even since November when the team had met...
21. On March 29, 2018, the Student's evaluation group reviewed the results of the Student's evaluation to determine the Student's eligibility for special education. The Parent did not attend the meeting. Based on the evaluation, the District found the Student ineligible for special education because the Student did not meet the eligibility requirements for a specific learning disability. On the same day, the District sent the Parent prior written notice of the decision.

CONCLUSIONS

Referral Timeline: The Parent alleged that the District failed to start the twenty-five day timeline to determine whether or not the Student would be referred for a special education evaluation when the general education teacher submitted a referral on November 3, 2017. When receiving a request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral, notify the parents, and collect and examine records, and within twenty-five days of the referral, decide whether or not to evaluate the Student. Here, the Student's general education teacher submitted a request for evaluation on November 3, 2017 to the school counselor who forwarded it to the guidance team. The guidance team did not inform the Parent and took no other action regarding the referral, except to provide instructional recommendations to the teacher. The District acknowledged that special education referral procedures were not followed in November 2017, and as a result, the Parent did not receive required timely notice of the November 3 referral, and the District did not seek the Parent's input into the decision whether or not evaluate. The District stated in its response to this complaint that staff turnover and the lack of established procedures facilitated in the confusion over what to do with the general education teacher's November 2017 referral.

At the request of the general education teacher, on January 3, 2018, the District began the twenty-five day timeline to determine whether or not to evaluate the Student and notified the Parent. On February 8, 2018, within twenty-five school days, the District proposed to evaluate the Student and sent the Parent prior written notice and the consent form to evaluate.

Evaluation Timeline: Once a district determines that it will evaluate a student for special education, a district must provide prior written notice to the parent, obtain consent, evaluate the student, and determine eligibility within thirty-five days after receiving written consent from

the parent. Here, the Parent gave her consent to the District for an evaluation on February 21, 2018. On March 22, 2018, the Parent filed the complaint, which was before the thirty-five day timeline expired. However, based on information provided by the District, the District held an eligibility meeting on March 29, 2018, within thirty-five school days, determined the Student was not eligible for special education, and provided prior written notice to the Parent.

CORRECTIVE ACTIONS

By or before **May 30, 2018** and **June 22, 2018**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC: None.

DISTRICT SPECIFIC:

The District will establish written procedures and provide training to all elementary, middle school, and high school certificated staff, including educational staff associates (ESAs), and administrators regarding the special education referral process.¹

- By **May 30, 2018**, the District will submit the draft procedures and training materials to OSPI for review. OSPI will approve the procedures and materials or provide comments by June 6, 2018 and additional dates for review, if needed.
- By **June 15, 2018**, the District will establish written procedures and provide training on the procedures to all District elementary, middle school, and high school teachers and administrators.
- By **June 22, 2018**, the District will provide OSPI with documentation demonstrating that all required staff received the written procedures and training. The documentation shall include the name, position, date, and signature of each staff member receiving the procedures and training. The documentation will include a roster of all elementary, middle school, and high school certificated staff, including educational staff associates (ESAs), and administrators to verify implementation of the corrective action.

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, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
PO BOX 47200
Olympia, WA 98504-7200

¹ Corrective action recommended by the District.

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.)