

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-107

PROCEDURAL HISTORY

On July 11, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) representing the parent (Parent) of a student (Student) attending the Bellevue 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 Student's education.

On July 11, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on July 12, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On July 14, 2023, OSPI received the District's response and provided a copy to the Complainant on July 17, 2023. OSPI invited the Complainant to reply.

On July 17, 2023, OSPI received additional information from the District and forwarded the additional information to the Complainant on July 18, 2023.

On July 24, 27, and 28, 2023, OSPI received additional information from the District and forwarded the additional information to the Complainant on July 31, 2023.

On July 27 and August 29, 2023, the OSPI complaint investigator consulted with the OSPI assistant director for special education dispute resolution.

On August 2, 2023, OSPI received additional documentation from the District and forwarded the information to the Complainant on August 3, 2023.

On August 3, 2023, OSPI received the Complainant's reply to the District's initial response and forwarded it to the District on the same date.

On August 21, 2023, OSPI received additional information from the District and forwarded the additional information to the Complainant on the same day.

On August 21, 2023, OSPI received additional information from the Complainant and forwarded it to the District on August 23, 2023.

OSPI considered all information provided by the Complainant and the District as part of its investigation.¹

¹ OSPI was forwarded additional emails during the complaint investigation that were between the District and the Complainant, and as both parties were on the original email, OSPI did not forward duplicate copies of those emails.

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on July 12, 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.

ISSUES

1. Whether the District followed referral procedures following the Parent's April 13, 2023, special education referral per WAC 392-172A-03005?
2. Whether the District followed initial evaluation procedures, including obtaining written, informed consent from the Parent, per WAC 392-172A-03005 and WAC 392-172A-03000?
3. Whether the District followed child find procedures per WAC 392-172A-02040?

LEGAL STANDARDS

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. It must review the referral, and it must collect and examine existing school, medical, and other records. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

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. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

A student will not receive special education and related services unless he or she is eligible for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

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. 34 CFR §300.300; WAC 392-172A-03000.

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who need of special education and related services, regardless of the severity of their disability. Child find activities shall extend to students residing within the school district boundaries whether they are enrolled in the public school system; except that students attending nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392-172A-04005.

FINDINGS OF FACT

Background

1. On August 30, 2020, the Parent revoked consent for all special education services for the Student via email to the superintendent and other District staff. The Student had been eligible for special education services under the category of other health impairment (OHI). The District provided a prior written notice (PWN) to the Parent on September 17, 2020, acknowledging the Parent's revocation of all special education services and indicating that services ceased for the Student on September 3, 2020.
2. The Student's most recent individualized education program (IEP), prior to Parent revocation of all special education services, was developed by the IEP team on September 16, 2019. The IEP indicated that the Student's most recent evaluation was March 2, 2018. The IEP included annual goals in math (fluency and problem solving) and study skills (clarifying questions) and corresponding specially designed instruction.
3. Multiple District documents indicate efforts to obtain consent for implementation of a Section 504 plan in 2014 and 2018, as well as consent to reevaluate in a suspected area of need (social-emotional) in 2018; and after the Parent's revocation of consent for special education services, documentation indicates efforts to gain Parent consent to complete an initial evaluation. These documents include emails to the Parent, with consent forms attached, as well as communications through the Parent's attorney (Complainant) to assist in gaining Parental consent. These numerous attempts are highlighted, in part, below:
 - On January 2, 2018, the District provided the Parent notification of a special education referral and the Parent provided consent for an initial special education eligibility evaluation.
 - On January 23, 2018, the District provided notice to the Parent to initiate a change in the Student's Section 504 plan to include additional accommodations not currently provided by

the Student's most recent 504 plan. The Parent indicated they would not sign the proposed 504 plan, dated January 23, 2018. This notice also stated that the team agreed to begin an initial special education eligibility evaluation.

- On March 5, 2018, the Parent was provided a PWN, highlighting the evaluation team's determination that additional assessment was necessary in the social-emotional area and proposed a mental health evaluation.
 - On March 16, 2018, the Parent was provided a PWN, indicating that the evaluation report was finalized. The IEP team, including the Parent, developed the Student's initial IEP with services in math and study skills, and the Parent signed consent for the provision of special education services. The Parent did not provide consent for additional social-emotional assessment.
 - In 2020, the Parent revoked consent for all special education services.
 - On May 9, 2022, the District provided a PWN to the Parent, proposing to initiate an initial special education evaluation. The document highlighted the multiple efforts of the District to obtain parental consent, as well as multiple email responses from the Parent, indicating they will not provide consent. In addition, the District wrote that they are not able to override lack of parental consent for an initial evaluation, and that the District "stands ready to evaluate the Student."
4. District documentation of the responses from the Parent to the communications mentioned above demonstrate the Parent consistently refused to sign consent for an initial special education evaluation after August 30, 2020.

2022–23 School Year

5. At the start of the 2022–23 school year, the Student was a 10th grade Student and was not eligible for special education services. The school year began on September 1, 2022.
6. On January 3, 2023, the District sent an email to the Parent, providing information that the District was proposing a comprehensive special education evaluation and if the Parent wished to move forward, to let them know. The Parent did not respond regarding the evaluation.
7. On February 1, 2023, the Complainant requested that the District send a blank special education consent form for the Parent to sign. The District responded that there is no blank consent form as the District must identify the scope of the evaluation it is proposing. The District also reminded the Parent that the most recent referral was closed out in fall 2022, due to the Parent refusing to provide consent for the proposed evaluation.
8. On February 16, 2023, in communication with the Complainant, the District stated they would not allow an out of state provider to conduct the initial special education eligibility evaluation.
9. On March 16, 2023, the Complainant notified the District that the Parent was reluctant to provide consent for a special education evaluation and the District responded by saying they would send out a PWN, closing out the Complainant's referral.
10. On March 28, 2023, the District issued a PWN to the Parent, refusing to initiate an initial special education evaluation made on behalf of the Parent by the Complainant. Email communication from the Complainant indicated that the Parent would not provide consent, even in response to the Complainant's request.

11. On April 16, 2023, the District responded to a Parent email that included "send me consent for special education services" in the subject line of the email. The District responded that special education services could not be reinstated with a consent form. The District inquired whether the Parent would like the District to initiate an initial special education eligibility evaluation to determine the Student's eligibility for special education and present levels of performance and needs. The District stated that if the Parent desired such, the Parent would need to provide consent for evaluation.

12. Also, on April 16, 2023, in an email from the Parent to the District, the Parent stated, among other comments not relevant to the evaluation, that they would "seek the evaluation that they want."

The District responded to the Parent, stating that informed consent was required for an initial special education evaluation and asked the Parent to specifically indicate what type of evaluation they were seeking. Email communications from the Parent in response to the District's request for clarification were unresponsive and unclear.

13. On May 30, 2023, the District provided the Parent a PWN, with accompanying consent form, proposing to initiate an initial special education eligibility evaluation. This proposal was based on previous and ongoing concerns related to the Student's educational performance. A consent form was included for the Parent.

14. On June 5, 2023, the District communicated to the Parent via email, stating that the District had already determined that the Student was a candidate for a special education eligibility evaluation and requested that the Parent provide suggestions regarding the Student's areas of need, given the Parent's statements about the Student's mental health.

15. On June 11, 2023, the Parent sent an email to the District, stating that the Student was unavailable for evaluation as the Student was admitted to a children's hospital in another city for up to 90 days and requested that the District "toll our participation in special education evaluations."

16. On June 13, 2023, the District responded to the Parent's attorney, indicating that there was no need for a multidisciplinary team meeting, and the Parent can have the Student evaluated at the local school district (the district the children's hospital was in), as the Student is not residing in the District.

17. On June 13, 2023, the District issued a PWN to the Parent that the referral for initial special education evaluation would be closed on June 20, 2023, as the Parent had not provided timely consent, and because the Student was unavailable for evaluation and residing out of the District.

18. On June 16, 2023, the District provided the Parent a second PWN, refusing to initiate an initial special education evaluation, given that the Parent provided information that the Student was residing in another Washington state school district, and that previous multiple attempts to

gain consent for evaluation were unsuccessful. The PWN also included a statement that the Parent had been provided with information on how to seek an evaluation from the new district.

19. On June 24, 2023, the Parent provided additional information that the Student was in a county juvenile hall.
20. On July 7, 2023, the District communicated to the Parent that the District would move forward to initiate a referral if the Student was again residing within the boundaries of the District.
21. On July 11, 2023, the District communicated with the Parent and the Complainant regarding obtaining consent for an initial special education evaluation that would not be conditioned in such a way to invalidate the assessment results obtained by the third-party evaluators.
22. On July 17 and 24, 2023, the District followed up with the Parent and the Complainant regarding the communication sent on July 11, 2023, requesting consent for an initial special education evaluation.
23. On July 26, 2023, the District received a signed consent from the Parent for an initial special education eligibility evaluation. However, the District noted the consent form included conditions such as allowing the Parent to discuss assessment accommodations with the third-party evaluators, as well as only allowing the third-party evaluators to conduct certain assessments and review certain relevant Student records obtained during the evaluation process. The third-party evaluators were only to conduct assessment in some of the areas identified on the consent form, and the conditioned consent would not allow District staff to participate in the evaluation process to determine educational implications of the results, review records, or recommend additional testing if necessary.

The District responded to the Complainant the same day regarding the District's inability to act on this consent. The District stated it would not be able to conduct the initial evaluation in the manner contemplated by the Washington Administrative Code (WAC) 392-172A-01070, to determine whether the Student has a disability and the special education and related services that the Student needs.

24. On July 28, 2023, the District provided another consent form to the Parent, along with an authorization form for release of records or information.
25. On August 2, 2023, the Parent provided consent to the District for an initial special education evaluation and the District reaffirmed that District personnel would be involved in reviewing evaluations, making recommendations regarding educational implications, or determining if other assessments were recommended.
26. On August 3, 2023, the District confirmed that the third-party evaluators were moving forward to conduct assessments this summer as part of the initial evaluation.
27. On August 21, 2023, the District communicated with the Parent and Complainant that the assessors were waiting to hear from the Parent to schedule assessment appointments. In

addition, the District indicated that observations would be scheduled after the start of the school year, and again requested the Parent sign a release of information for medical or mental health records.

28. On August 29, 2023, the Complainant, through email communications, confirmed that the Parent had scheduled appointments with one of the third-party assessors for the initial special education evaluation.

CONCLUSIONS

Issue 1: Parent special education referral – The Complainant alleged the District failed to address the Parent’s referrals for a special education evaluation.

When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether there is sufficient data to suspect a disability. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision.

In 2018, the Student was eligible for special education services in math and study skills. The District has worked to obtain Parent consent for an evaluation since and following the Parent’s revocation of all special education services for the Student in August 2020, as they knew the Student needed, and was not receiving, special education services given her previous eligibility.

During the 2022–23 school year, the District continued its efforts to obtain Parent consent with multiple referrals made for an initial special education eligibility evaluation on behalf of the Student. These referrals were ultimately closed due to a lack of Parent consent for evaluation, despite efforts to obtain consent. The closures were documented in PWN and sent to the Parent and Complainant. OSPI finds that, given the totality of the communications and the Parent’s refusal to provide consent for an evaluation, it was reasonable for the District to close out the referrals and document the same with PWN. The District demonstrated that despite closing out referrals, when new referrals were made, it considered and again attempted to obtain Parent consent. Therefore, OSPI finds no violation.

Issue 2: Initial evaluation procedures, including obtaining written, informed consent – The Complainant alleged the District failed to follow appropriate procedures to obtain the Parent’s consent to conduct an initial evaluation for special education eligibility.

The purpose of an initial evaluation is to determine whether a student is eligible for special education. The evaluation must be sufficiently comprehensive to identify all the student’s special education and related service needs. A district must 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 the scope of the evaluation and agrees in writing.

In this case, the District has been attempting to gain written Parent consent for an initial special education eligibility evaluation ever since the Parent revoked consent for special education services on August 30, 2020. The District was aware of its obligation to evaluate the Student as they had reason to suspect has a disability and that special education services may be needed to address that disability. During the 2022–23 school year, the District continued its efforts to obtain Parent consent with multiple referrals made for an initial special education eligibility evaluation on behalf of the Student and multiple attempts to obtain consent. These referrals were ultimately closed due to lack of Parent consent for evaluation. The closures were documented on a PWN and sent to the Parent and Complainant.

While a consent form for an initial special education eligibility evaluation signed by the Parent was presented to the District on July 26, 2023, it contained conditions that would have invalidated the results of the evaluation and that did not allow the District to conduct an initial evaluation as described in special education regulations. Ultimately, on August 2, 2023, the Parent provided informed, written consent to the District for an initial special education eligibility evaluation for the Student. While OSPI understands the Parent and Complainant’s frustration, much of the delay in initiating an evaluation was due to the Parent refusing to provide consent. Consequently, OSPI finds no violation.

Issue 3: Child find procedures – The Complainant alleged the District failed to identify the Student as a student potentially in need of special education services. School districts must conduct child find activities calculated to locate, evaluate, and identify all students who need special education and related services. Child find activities are triggered when a district has reason to suspect a student has disability, and that special education services may be needed to address that disability.

In this case, as discussed above, the District has been trying to initiate a special education eligibility evaluation since the Parent revoked consent for special education services on August 30, 2020. The District had even attempted to expand the initial eligibility evaluation that the Parent consented to in 2018, to include the area of social-emotional, without success. The District has been diligent in their child find effort to work collaboratively with the Parent, initiating multiple referrals proposing a comprehensive evaluation to determine the Student’s present levels of performance and identifying additional areas of possible concern. The Parent ultimately provided informed, written consent on August 2, 2023, and the evaluation process has been initiated with the third-party assessors. As a result of these facts, OSPI finds no violation.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this 6th day of September, 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.)