

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 17-08

PROCEDURAL HISTORY

On February 21, 2017, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Federal Way 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 February 21, 2017, 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 1, 2017, the District filed a due process hearing request involving the District's evaluation of the Student in response to the Parent's request for an independent educational evaluation (IEE) at public expense. On March 16, 2017, OSPI informed both the District and the Parent that based on the due process hearing request, OSPI would place SECC 17-08 into abeyance.

On April 19, 2017, the Parent contacted OSPI regarding additional concerns. On April 21, 2017, OSPI acknowledged the Parent's communication, and informed the Parent that her concerns were not allegations of a violation of the IDEA.

On May 2, 2017, OSPI received notice that the Parent had withdrawn her IEE request and the due process hearing was dismissed. On May 3, 2017, OSPI informed both the District and the Parent that OSPI would proceed with the investigation of SECC 17-08, and had set new timelines.

On May 24, 2017, OSPI received the District's response to the complaint and forwarded it to the Parent on May 26, 2017. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information. The Parent did not reply to the District's response regarding the allegations in this investigation. However, on May 25, 2017, the Parent contacted OSPI with information regarding additional concerns. On May 31, 2017, OSPI acknowledged the Parent's communication, and informed the Parent that her concerns were not allegations of a violation of the IDEA. OSPI provided the Parent with contact information for other ways in which she might pursue her concerns.

On June 9, 2017 and June 11, 2017, OSPI received additional communication from the Parent, raising a potential additional issue. On June 12, 2017, OSPI asked for additional information related to the Parent's concerns, and reminded the Parent of the procedures for requesting an additional complaint, but confirmed with the Parent that OSPI had not added an additional issue to this complaint.

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

OVERVIEW

At the beginning of the 2016-2017 school year, the Student attended ninth grade at a District high school, but was not eligible for special education services. On the first day of the 2016-2017 school year, the Parent referred the Student for a special education evaluation, and provided the District with a copy of the Student's independent educational evaluation (IEE), which a private provider had just completed. The District immediately agreed to evaluate the Student to determine whether the Student was eligible for special education services, provided notice of its decision to the Parent, and scheduled a meeting with the Parent to consider the components of the Student's evaluation. On September 30, 2016, the District and the Parent agreed that because the Student's IEE was comprehensive, the District's evaluation would consist of a review of existing information, and input from the Parent, the Student, and the Student's current teachers. On October 4, 2016, the District held an evaluation results meeting, including the Parent, and determined that the Student was eligible for special education services under the category of other health impairment. At the meeting, the District reviewed a seven-page draft evaluation report, which recommended the Student receive special education services in the areas of social/emotional functioning and study skills. The Parent and the professional members of the Student's evaluation group signed a signature page, which indicated their agreement with the Student's evaluation. The Parent asked that the Student's evaluation report include additional information from the review of records. During the evaluation results meeting, the District reproduced copies of that information, and added it to the Student's evaluation report. The District then repaginated the Student's evaluation report, including the signature page, and provided the Parent with a copy of the Student's evaluation report with the requested additional information included. The Parent alleged that the District did not follow procedures governing a special education referral or initial evaluation. The District denied the allegations.

ISSUES

1. Did the District follow special education referral procedures during the 2016-2017 school year?
2. Did the District follow special education initial evaluation procedures during the 2016-2017 school year?

LEGAL STANDARDS

Referral: Any person may make a referral of a student suspected of having a disability. The referral will be in writing, unless the person is unable to write. The district must document the referral, notify the parent of the student's referral, and notify the parent that the district will determine whether to evaluate the student with parental input. The district then collects and examines existing school, medical, and other records in possession of the district and the parent. Within 25 school days of receipt of the referral, the district must determine whether it will evaluate the student, and must provide the parent with written notice of its decision regarding whether to evaluate. 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). When a district has determined that it should evaluate a student to determine eligibility for special education services, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student, and arrive at a decision regarding eligibility within 35 school days after the district received the parent's written consent to evaluate, unless other circumstances apply. The evaluation must be sufficiently comprehensive to identify all of the student's needs for special education and related services, whether or not they are commonly linked to the disability category in which the student has been classified. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. 34 CFR §300.304; WAC 392-172A-03020. The evaluation team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

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 that 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. 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(4)(d). However, parental consent is not required before the IEP team reviews existing data as part of an evaluation or reevaluation. Parental consent is also not required before the administration of a test or other evaluation that is administered to all students, unless consent is required from the parents of all students. 34 CFR §300.300; WAC 392-172A-03000. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services. 34 CFR §300.302; WAC 392-172A-03010.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP. At a minimum, the evaluation report should include: a statement of whether the student has a disability that meets the eligibility criteria under IDEA; a discussion of the assessments and review of data that supports the evaluation group's conclusions, including any additional information required under WAC 392-172A-03080 for students with specific learning disabilities; how the student's disability affects his or her involvement and progress in the general education curriculum, or for preschool children, in appropriate activities; the recommended special education and related services needed by the student; other information needed to develop the IEP; and, the date and signature of each professional member certifying that the report reflects his or her conclusion, or, a statement representing the professional member's conclusion if he or she disagrees with the report's conclusions. 34 CFR §300.305; WAC 392-172A-03035.

FINDINGS OF FACT

1. During the 2015-2016 school year, the Student attended eighth grade as a choice transfer student at another district, and was not eligible for special education services.
2. On March 9, 2016, the other district completed an initial evaluation of the Student, determining the Student was not eligible for special education services. The Parent did not agree with the other district's evaluation, and requested a comprehensive independent educational evaluation (IEE) from a private provider, which the other district agreed to provide.
3. Before the start of the 2016-2017 school year, the Parent withdrew the Student from the other district and enrolled him in the District, which is his resident school district.
4. September 7, 2016 was the District's first day of school, and the Student began attending ninth grade at a District high school.
5. Also on September 7, 2016, the private provider, selected by the Parent, completed the Student's IEE report.
6. Also on September 7, 2016, the Parent referred the Student for a special education initial evaluation, providing the District with a copy of the Student's IEE. The District provided the Parent with a written notice, acknowledging the Parent's referral, immediately agreeing to evaluate the Student, and proposing to meet on September 30, 2016 to discuss the components of the Student's initial evaluation. The notice also indicated that the school psychologist provided the Parent with a copy of the procedural safeguards.
7. On September 17, 2016, the Parent emailed the school psychologist, requesting an individualized education program (IEP) for the Student as soon as possible.
8. On September 19, 2016, the school psychologist emailed the Parent, stating that as they had previously discussed, they were scheduled to meet on September 30, 2016, and she would ask the Parent to provide consent for the District to evaluate the Student at the meeting. The school psychologist also stated that the District's evaluation of the Student would include information from the Student's IEE, and if the Parent consented, the District would seek input from both the Parent and the Student at the meeting. The Parent responded, stating the Student already had an evaluation from the other school district, was in the "IEE status," and he should not complete another evaluation.
9. On September 20, 2016, the Parent again emailed the school psychologist, stating the Student needed a section 504 plan and an IEP in place that day.
10. On September 21, 2016, the school psychologist emailed the Parent, stating that even though the Student had an IEE, before the District could develop an IEP for the Student, the District needed to complete its own initial evaluation of the Student. The school psychologist stated that because the Student's IEE was comprehensive, the

District did not need to conduct new testing, but the Student's initial evaluation should include input from the Parent, the Student, his current teachers, and perhaps a classroom observation. The school psychologist noted that they were meeting on September 30, 2016, but asked if the Parent wanted to meet before that date.

11. On September 29, 2016, the Parent emailed the school psychologist, stating she would attend the meeting the following day.
12. On September 30, 2016, the school psychologist met with the Parent to discuss the components of the District's evaluation of the Student. The same day, the District issued a prior written notice, stating it was proceeding with the Student's initial evaluation. The notice stated the District would review information provided by the Parent, the Student's teachers, and all available educational records, along with the Student's IEE report, available from the prior district.
13. On October 4, 2016, the District completed the Student's initial evaluation and held an evaluation results meeting, including the Parent. According to the District, the school psychologist brought copies of a draft evaluation report with her to the meeting, which consisted of seven paginated pages, and included the signature page for the evaluation report.¹ The Parent and all professional members of the evaluation group signed the Student's evaluation report and checked a box indicating agreement with the report. Also according to the District, during the meeting, the Parent asked that the Student's evaluation report also include information from the Student's records, and during the same meeting, the District reproduced that information and added it to the final evaluation report, requiring the District to repaginate the final two pages by hand, including the signature page. The District then provided the Parent with a copy of the final evaluation report, including the pages repaginated by hand.
14. The Student's finalized evaluation report included a review of the Student's current performance in the general curriculum, teacher interviews, the Parent's input, the Student's health documentation, previous evaluations, and extensive information from the Student's IEE. The report stated the Student's academic assessments indicated average scores for total reading, basic reading, reading comprehension & fluency, and written expression, and low scores for mathematics and oral language. The report noted the Student's IEE did not recommend the Student receive specific support for reading, writing, mathematics, or communication. However, the report stated the Student had a current diagnosis of attention deficit hyperactive disorder (ADHD), an unspecified neurodevelopmental disorder, depression, anxiety, a historical diagnosis of adjustment disorder, a provisional diagnosis of post-traumatic stress disorder (PTSD), and a sleep disorder. The report stated these diagnoses currently presented an adverse impact on the Student's educational functioning, and determined the Student was eligible for special education services under the category of other health impairment. The report recommended the Student receive services in the areas of

¹ Although the documentation did not include a copy of the seven-page draft evaluation report, the last two pages of the Student's final reevaluation report, including the signature page, were originally numbered 6 and 7, but those numbers were lined through and renumbered as pages 14 and 15.

social/emotional functioning and organizational/study skills, but consistent with the IEE obtained by the Parent, did not recommend reading, writing, mathematics, or communication services.

15. Also on October 4, 2016, the District issued prior written notice, stating the evaluation group, including the Parent, determined the Student was eligible for special education services under the category of other health impairment.
16. On February 21, 2017, the Parent filed this complaint with OSPI.

CONCLUSIONS

1. Special Education Referral Procedures: The documentation substantiates that the District followed special education referral procedures for the Student. Here, after the Parent referred the Student for a special education evaluation on September 7, 2016, the District documented the referral, and without delay, provided prior written notice of its decision to complete an evaluation of the Student.
2. Special Education Initial Evaluation Procedures: The documentation also substantiates that the District followed initial evaluation procedures for the Student. The Parent alleged that the District's evaluation of the Student was insufficient because it did not recommend that the Student receive special education services for reading, and further alleged that the Student's evaluation group did not include a person who could interpret the results of the Student's IEE. However, the Student's evaluation group included the school psychologist, who was credentialed and qualified to interpret the Student's IEE, which did not recommend reading services. Additionally, the District's evaluation included a review of the Student's academic assessments, which stated that the Student scored within the average range for total reading, basic reading, and reading comprehension & fluency, and therefore, did not recommend services for reading. The Parent also alleged that the District's evaluation report was fraudulent because of the repaginated pages. However, the District explained that it added the additional pages in the Student's report at the Parent's request, and nothing about crossing out a page number by hand violates the requirements to complete an evaluation report.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

Dated this ____ day of June, 2017

Douglas H. Gill, Ed. D.
Assistant Superintendent
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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.)