

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-67

PROCEDURAL HISTORY

On June 21, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parents (Parents) of a student (Student) attending the Issaquah School District (District). The Parents 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 June 26, 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 June 18, 2018, OSPI received the District's response to the complaint and forwarded it to the Parents on June 19, 2018. OSPI invited the Parents to reply with any information they had that was inconsistent with the District's information.

On July 31, 2018, OSPI received the Parents' reply. OSPI forwarded that reply to the District on August 1, 2018.

On August 14, 2018, OSPI requested clarifying information from the District and spoke to the District's attorney on August 15, 2018.

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

OVERVIEW

At the beginning of the 2017-2018 school year, the Student attended a District high school and was eligible to receive special education services under the category of specific learning disability in the area of oral reading fluency. In April 2018, the District conducted a triennial reevaluation of the Student, and the District members of the Student's evaluation group determined that the Student was no longer eligible for special education. The staff acknowledged that the Student's assessment results showed that she continued to have a learning disability in the area of oral reading fluency, but believed that the Student was no longer in need of specially designed instruction due to the Student earning high grades in all of her general education classes, including her grade level English course. Staff recommended that the Student continue to receive accommodations under a Section 504 plan. The Parents disagreed with the staff members' determination and asked that the District reconsider the decision to exit the Student from special education.

The Parents alleged that the District failed to follow procedures for determining the Student's eligibility for special education services during the 2017-2018 school year. The District denied the allegation.

ISSUE

1. Did the District follow procedures for determining the Student's eligibility for special education services during the 2017-2018 school year?

LEGAL STANDARDS

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the following eligibility categories: intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or, for students aged three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). A child with a disability may seek to qualify for special education benefits under more than one eligibility category. *E.M. by E.M. and E.M. v. Pajaro Valley Unified Sch. Dist.*, 114 LRP 31486 (9th Cir. 2014). A student's eligibility category does not determine services. *In the Matter of Issaquah School District*, 103 LRP 27273, OSPI Cause No. 2002-SE-0030 (WA SEA 2002).

When Eligibility Ends: Students eligible for special education services remain eligible until one of the following occurs: a group of qualified professionals and the parent of the student determine the student is no longer in need of special education, based on a reevaluation; the student has met the high school graduation requirements established by the school district and has graduated with a regular diploma; the student turns twenty-one; or, the student's parent revokes consent in writing for the provision of special education and related services. 34 CFR §300.101; WAC 392-172A-02000(2).

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 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 §300.303; WAC 392-172A-03015.

Reevaluation Standards: In completing an evaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education

services, and if so the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors. Additionally, districts must ensure that the assessments and evaluation materials they use are selected and administered so as not to be discriminatory on a racial or cultural basis. Assessments must be provided and administered in the student's native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally unless it is clearly not feasible to do so. 34 CFR §300.304; WAC 392-172A-03020.

Evaluation/Reevaluation Report: An evaluation report must be sufficient in scope to develop the student's IEP, and at a minimum 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 regarding eligibility, 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.

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

FINDINGS OF FACT

1. At the beginning of the 2017-2018 school year, the Student attended a District high school and was eligible to receive special education services under the category of specific learning disability.
2. The Student's individualized education program (IEP) in place at the beginning of the 2017-2018 school year was developed in April 2017. The April 2017 IEP included annual goals in the areas of reading and post-secondary transition. The Student's reading goals stated:
 - When given a reading passage at the high school level (level 9), the Student will read the passage out loud without practice improving reading fluency from 105 cwpm (correct words per minute) to 120 cwpm (or higher) as measured by 3 curriculum based assessments over a 12 week period.
 - When given a list of multisyllabic words, the Student will use strategies (including identifying word parts: prefixes, word root, suffixes, and vowels) to automatically and fluently decode multisyllabic words, improving her multisyllabic word reading decoding accuracy from 65% accuracy, to 90% accuracy, as measured by 2 curriculum based assessments over a semester.
 - When given a list of common Greek and Latin roots, the Student will indicate (e.g., state, match, write) the meaning of the root, improving reading comprehension skills, from 53% accuracy in correctly indicating the meaning of the Greek and Latin roots, to 80% accuracy in correctly indicating the meaning of the Greek and Latin roots, as measured by 2 curriculum based assessments over a semester.

The IEP provided for 250 minutes per week of specially designed instruction in reading in a special education setting. The IEP also provided for the following accommodations/modifications:

- Allow student to take a picture of a white board/screen
 - Allow extra time to respond when called on
 - Allow student to bullet written responses that are longer than a few sentences
 - Check work frequently to ensure understanding
 - Extended time up to the close of the grading window
 - Preferential seating as per teacher discretion
 - Provide a copy of Powerpoint presentations and lecture notes
 - Provide a copy of the notes/study guides – student note taking is still required
 - Option for pass fail grading
 - Option to meet standard for high school graduation on state standardized testing and end of course exams at Level 2 Basic
 - Test in a small group, test to be read out loud, frequent breaks, extended time
 - Extended time to finish quiz or test in alternate setting such as: homeroom, homework club, after school with teacher, etc.
3. From September – December 2017, the District issued progress reporting regarding the Student's annual goals. The progress reporting stated:
 - September 2017: The progress reporting for all three goals stated – In order to measure this goal at this time, I will be using the [Student's] reading scores in US History and American Literature. I will be checking in on a monthly basis to determine her progress. Her current median grade in American literature is 100% with a range[] being from 94.6% to 100%. [The

Student's] median grade in US History is 100% with the range being from 96.56% percent to 100%.

- October 2017: The progress reporting for all three goals stated – The progress monitoring was done via a reading comprehension assessment. The assessment was tied to an 11th grade Common Core-aligned passage and was given in 50 minute timeframe. [The Student] scored an 88% on the assessment the score shows that she can read well and fluently.
- November 2017: The progress reporting for all three goals stated – In order to measure this goal at this time, I will be using the [Student's] reading scores in US History and American Literature. I will be checking in on a monthly basis to determine her progress. Her current median grade in American literature is 100% with a range[] being from 90% to 100%. [The Student's] median grade in US History is 100% with the range being from 93.6% percent to 100%.
- December 2017: The progress reporting for all three goals stated – In order to measure this goal at this time, I will be using the [Student's] reading scores in US History and American Literature. I will be checking in on a monthly basis to determine her progress. Her current median grade in American literature is 100% with a range[] being from 90% to 100%. [The Student's] median grade in US History is 100% with the range being from 92% percent to 100%.

4. The District's first semester ended in January 2018. During the first semester of the District's 2017-2018 school year, the Student earned the following grades in her classes:

- Algebra 2 Lab (general education) – A
- Literature (general education) – A
- Spanish 2 (general education) – P
- Algebra 2 (general education) – A
- Weight Training (general education) – A
- Chemistry (general education) – B+
- US History (general education) – A
- Reading/Writing Lab (special education) – A

5. On February 5, 2018, the District and the Parents agreed to amend the Student's April 2017 IEP without holding a meeting. The amended IEP no longer included the following accommodations/modifications:

- Allow student to bullet written responses that are longer than a few sentences
- Option for pass fail grading

The District's February 5, 2018 prior written notice that addressed the amendment stated that the reason the accommodations were being removed from the Student's IEP was that the Student's area of need did not require two of the accommodations/modifications in her current IEP. The notice further stated "comparison of [specially designed instruction] needs and the nature of the modifications showed that neither was appropriate because neither addressed [the Student's] reading issues."

6. On Sunday, March 18, 2018, the Parents signed consent for the District to conduct the Student's triennial reevaluation. The consent form stated that the reevaluation would address the following areas:

- Review of existing data
- Academic
- Observation
- Age Appropriate Transition Assessment
- General Education
- Cognitive

The Parents noted on the consent form that they had "some concerns as stated previously".

7. On April 1, 2018, the District school psychologist emailed the Parents and attached a draft of the Student's April 2018 evaluation report. The psychologist stated that they would review the data and information from the reevaluation when they met on April 3. The psychologist stated that the team would be making the following decision together:
- If [the Student] continued to required specially designed instruction (currently being provided through read/write lab) and accommodations and modifications, or
 - If [the Student] should be considered for a 504 plan, which would enable her to have accommodations (such as additional time to complete assignments, additional time on tests in a small environment, copies of class notes). If she has a 504 she would no longer have specially designed instruction (read/write class).
 - If [the Student] no longer needs special education support or accommodations.

The psychologist stated that staff looked forward to meeting with the Parents and discussing this as a team. Additionally, the psychologist stated that the Student had strong grades and did very well in class, but continued to struggle with reading fluency. The psychologist stated that if the Parents wanted to discuss this before the team met, to please let her know.

8. The Student's April 2018 evaluation report included the following information:
- Information from Parents: Parents reported that the Student has daily support on homework, private tutors, and access to a computer to complete work at home.
 - Medical Diagnosis: The Student's physician stated that "I have been [the Student's] pediatrician since birth. I am writing this letter to support her need for extra services in school. I believe that she has an anxiety disorder- and perhaps a learning disability."
 - Student's Grades (as of March 26, 2018):
 - Algebra 2 Lab (general education) – A
 - Literature (general education) – A
 - Algebra 2 (general education) – A
 - Yoga (general education) – A
 - Chemistry (general education) – B+
 - US History (general education) – A
 - Reading/Writing Lab (special education) – A
 - Teacher Feedback:
 - Literature – the teacher reported that she had only seen strengths from the Student. She always has her work done, participates, is on task in class, performs to a level way above her peers, is prepared, gets almost 100% on every single assessment. She is a top student. She is always on task, participates daily, always has her work completed (to an exceeding standard level). She uses testing in a separate location, but given her tests scores and her class performance, I wonder if this is a necessary accommodations. I have not seen any struggles from the Student at all.
 - Chemistry – the teacher stated that the Student was an incredibly hard worker – one of the best I've ever had. Has a great worth ethic and works hard to 1) complete her work 2) truly understand the work she is doing. She does ask questions for clarification and clarity. Weakness: can get overwhelmed and won't always ask for help (rarely). Sometimes might be distracted (very rare), participation is great and work completion is outstanding. She does frequently take extended time on assessments. I do break the test into smaller sections (to be less overwhelming). She does sit up front and utilizes classroom notes (handed out along with PowerPoints on teacher website).

- US History – the teacher stated that she did not see many weaknesses – I am actually surprised to see the Student still qualifies for IEP services. She turns in all her homework on time and usually receives A's on every test/quiz – often 100%. I do not have any concerns with reading or writing. The one accommodation she uses is taking tests in separate locations. She is always on task, I have never had to redirect her. She works well independently and with peers.
- Read/Write Lab – teacher reported that the Student mainly uses extra-time on testing. She has excellent work habits and study skills.
- Algebra 2 – teacher reported that the Student is incredibly hard working and dedicated to her education. She strives to fully understand all of the material and know why and how everything works. She has excelled in Algebra II this year. One of the hardest working students I have ever had. Everything she does is always completed fully. She uses extra time on tests.
- Weight Training – teacher reported the Student follows directions, stays on task, asks questions when needed, and works well with others. She participates daily in PE and turns in assignments.
- Assessment Scores:
 - Wechsler Intelligence Scale (2010 and 2013)
 - Verbal Comprehension – 2010 average & 2013 average
 - Perceptual Reasoning – 2010 superior & 2013 average
 - Working Memory – 2010 average & 2013 average
 - Processing Speed – 2010 average & 2013 average
 - Full Scale Score – 2010 average & 2013 average
 - Wechsler Individual Achievement (March/April 2018)
 - Oral Reading Fluency – low
 - Oral Reading Accuracy – low
 - Oral Reading Rate – low
 - Word Reading – average
 - Pseudoword Decoding – below average
- IEP Goal Progress (see finding of fact no. 3)
- Observation – The Student was observed in her 6th period History class on 3/13/18. The Student arrived to class on time and took a seat at a computer in the computer lab. She listened with her eyes on the teacher while directions were given. Next, she completed a worksheet and handed it in to the teacher. The Student returned to her seat and worked independently. She occasionally engaged in conversations with peers next to her, as many students did. The observation reflected that the Student is capable of focusing on classroom instruction and participating appropriately.
- Transition Assessments

The evaluation report stated that:

[The Student] does show a disability in oral reading fluency. Her education is impacted in that she requires extra time in order to achieve at the high level that she does. However, [the Student] currently has all A's and one B+ in her general education on level courses, including a 105% in English and History. She also passed the English/Language Arts End of Course with a level 3, meets standard score. Despite her disability, she is performing very well in her general education courses. It is recommended that [the Student] no longer

requires specially designed instruction in reading in order to make appropriate progress toward meeting grade level learning expectations.

Due to [the Student's] disability in oral reading fluency, the evaluation team highly recommends that [the Student] has accommodations in place under a [Section] 504 plan in order for her to make progress in the general education curriculum. It is recommended that the 504 team consider the following accommodations: provide a copy of PowerPoint presentations and lecture notes, allow student to take a picture of the white board/screen, allow extra time to respond when called on, extended time on assignments, and for testing: extended time, option to test in a smaller, alternate setting, frequent breaks.

9. On April 3, 2018, the Student's evaluation group, including the Parents, met to review the results of the Student's reevaluation. Based on the documentation in this complaint, the following people attended the meeting:

- Parents
- Student
- Special Education Teacher
- School Psychologist
- Assistant Principal
- Guidance Counselor
- General Education History Teacher
- General Education English Teacher
- Director of Special Services

Based on the meeting notes, the Parents presented information that the Student used a tutor "extensively", worked with the Parents until late into the night on school work, and "has struggled to perform at this level". The Student's teachers then provided information about her performance in class. The group discussed that the Student's reading fluency was still an issue, but that it was not directly impacting her grades. The school psychologist stated that the District typically did not offer specially designed instruction "at this level if it does not impact comprehension" as there was "no real reason to offer services." The psychologist stated that due to the Student's previous diagnosis of anxiety, she could have a Section 504 plan. The Parents stated that the Student only did well because of tutoring and the amount of work the Student put in, and stated that they wanted to keep the Student on an IEP. The special education teacher offered that if the Student wanted to continue to have the special education lab class, she could act as a teacher's aide for the special education teacher during that class period. The Parents stated that the Student would be a teacher's aide if she could earn a letter grade for the class for college purposes. The special education teacher stated that the class would be a pass/fail grade, but that many students went to college with a pass/fail grade in a class. The school psychologist stated that a Section 504 plan would be the best way to get services and that the Student could not remain in the lab class because it was not her least restrictive environment. The District members of the evaluation group then determined that the Student was no longer eligible for special education. The Parents disagreed.

10. Later on April 3, 2018, the Parents emailed the school psychologist, stating that after reading and reviewing the paperwork from the meeting, they noticed that the signature page of the evaluation report was not a sign-in sheet for attendance as the psychologist had stated. The Parents stated that they were never given the opportunity at the end of the meeting to mark the column, indicating their dissent to the opinions of the "panel". The Parents are also stated

that the during the "appeal process", they wanted to ensure the Student maintained her IEP status, and asked that the psychologist let them know what the next steps were.

11. On April 4, 2018, the District issued a prior written notice, proposing to discontinue the Student's eligibility category. The notice stated that the Student's "reevaluation was completed as part of a 3 year re-evaluation cycle in order to determine her continued eligibility for special education services. It is recommended that the Student be exited from special education." The notice stated that the reason the District was proposing the action was:

In order to qualify under the category of Specific Learning Disability all three of the following must be met: a student must have a learning disability, the disability must show an adverse educational impact, and it must be determined that the Student requires specially designed instruction.

[The Student] does show a disability in oral reading fluency. Her education is impacted in that she requires extra time in order to achieve at the high level that she does. However, [the Student] currently has all A's and one B+ in her general education on level courses, including 105% in English and History. She also passed the English/Language Arts End of Course with a level 3, meets standard score. Despite her disability, she is performing well in her general education courses. It is recommended that [the Student] no longer requires specially designed instruction in reading in order to make appropriate progress toward grade level learning expectations. Accommodations under a [Section] 504 plan are strongly recommended by the team.

The family has a dissenting opinion.

The notice stated the action would be implemented on April 17, 2018.

12. On April 4-9, 2018, District staff exchanged emails with the Parents. The emails are summarized below:

- April 4 – The psychologist responded to the Parents' April 3 email, stating that at the beginning of the April 3 meeting, she had let the Parents know that the signature page was to show that they were all present to discuss the meeting, and that at the end of the meeting, she had talked about dissent and let the Parents know they could write a dissenting opinion. The psychologist stated that she would follow up with the District to ensure next steps and get back to them.
- April 4 – The psychologist sent a second email, stating that she had updated the reevaluation report and completed a prior written notice, which were attached. The psychologist stated "please note that I do document your dissent and that it was discussed at the meeting. Please send me or bring me a statement of dissent to be included in the official documents as part of the evaluation." The psychologist stated that the group had discussed dissent and that the Parents disagreed with the staff members' decision. The psychologist stated that if the Parents were able to come to the high school, they could check the dissent box on the evaluation report and initial and date it, or that she could check the boxes for them. The psychologist would then update the prior written notice to reflect what was done. Additionally, the psychologist stated that she had provided the Parents with a copy of the procedural safeguards at the meeting and that she was now including a link as well. She also indicated the page number for the page that addressed filing a due process hearing request.
- April 5 – The Student's mother replied, indicating that the Parents were unavailable that week and that they would discuss the psychologist's suggestions.

- April 5 – The psychologist responded, asking that the Parents let her know by the end of the day on April 6, if they wanted her to check the dissent box or if they wanted to come and check the box themselves.
- April 6 – The Student’s father replied, asking that the psychologist check the dissent box for them and forward a copy of the evaluation report to them.¹
- April 6 – The Student’s father sent a second email and included the District director of secondary special education (secondary director). The father stated that he had attached a letter “petitioning reconsideration of [the Student] from removal from the IEP program.”
- April 9 – The secondary director responded, thanking the Parents for their dissenting statement and stated that the statement would be attached to the Student’s evaluation report.

13. The documentation in this complaint included a letter, dated April 6, 2018, written by the Parents. The letter is addressed to OSPI. It is assumed this is the same letter as attached to the Parents’ April 6, 2018 email. The April 6 letter stated:

I am requesting that the panel’s decision to remove [the Student] from the IEP program be reconsidered. As the parents of [the Student] we recognize her strengths and weaknesses academically. Being part of the IEP program has substantially helped [the Student] not only academically but also socially. Her self-confidence is derived through the ability to achieve good grades in her classes which promotes her ability to interact with fellow students with confidence. There was a point when [the Student] was intimidated about going to school out of fear of being ridiculed or labeled as “dumb”. As you review the most current IEP re-evaluation dated April 2018 you will read that [the Student] definitely is challenged in her abilities to read and decipher words. In Elementary school we had [the Student] tested and screened and was diagnosed as a “Phenomic Awareness and Decoding” disability. To this day [the Student] is challenged in all her classes and struggles mightily. If you go by the re-evaluation you would question this is only because there is another side to this that you do not see. As discussed with the panel on April 3rd, we as parents have invested heavily in [the Student’s] education by supplementing with private tutoring over the years. [The Student] recognizes her challenges and maintains daily and weekly organizer and maintains six to eight hours of homework each night with the support of her parents. She also spends most of her time on the weekends on homework and studying. What has come to light during this reevaluation meeting dated April 3, 2018 is that [the Student’s] purpose in the IEP program was to address and improve on the “Oral Reading Fluency” among other goals which was never addressed directly. The claim is that she has plateaued to a level of non-improving in this area. Not having been addressed over the years would obviously result in a lack of improvement. This was a factor in determining the need to remove [the Student] from the program. I do not believe this justifies removal from the IEP program. The IEP [sic] program has been a great academic support for [the Student] and we would encourage you to allow her to maintain her status. [The Student] is a person of structure and organization that established a system that works for her academics. Any change at this point would have a negative effect on the great strides she has made. I ask that the school decision be reconsidered.

¹ The District’s April 4, 2018 prior written notice was updated to reflect the Parents’ agreement to the psychologist checking the dissent boxes on the evaluation report.

14. The District was on spring break April 9-13, 2018.
15. Based on information provided by the District, the Student was exited from special education on April 17, 2018.
16. On April 19, 2018, the Parents filed a due process hearing request and attached a copy of their April 6, 2018 letter. The due process hearing request stated that the resolution the Parents were seeking was for the Student to be "maintained" in the IEP program.
17. On April 30, 2018, the Parents informed the administrative law judge (ALJ) assigned to their due process hearing that they wanted to withdraw their request for a hearing. On May 3, 2018, the ALJ dismissed the due process hearing.²
18. Also on April 30, 2018, the Student's special education teacher emailed the secondary director, stating that the District had not created a Section 504 plan for the Student because the Parents had refused to sign for it.
19. The District's 2017-2018 school year ended on June 20, 2018.
20. The District's second semester ended in June 2018. During the second semester of the District's 2017-2018 school year, the Student earned the following grades in her classes:
 - Algebra 2 Lab (general education) – A
 - Literature (general education) – A
 - Algebra 2 (general education) – A
 - Yoga (general education) – A
 - Chemistry (general education) – A
 - US History (general education) – A
 - Reading/Writing Lab (special education) – A
21. On June 21, 2018, the Parents filed this citizen complaint.

CONCLUSIONS

The Parents alleged that the District failed to follow procedures for determining whether the Student continued to be eligible for special education during the 2017-2018 school year.

² In their reply to the District's response to this complaint, the Parents stated that they were confused by the process for scheduling the due process hearing and contacted the District. In response, the District directed the Parents to speak with their attorney. The Parents' attorney advised them to withdraw the due process hearing request and attempt to resolve the dispute at the local level, which, the Parents stated, is the only reason they withdrew their request.

The Parents' filing of this citizen complaint does not impede their right to file another due process hearing request regarding the same issue for investigation in this complaint. Parents may file a due process hearing request regarding any matter relating to the identification, evaluation, educational placement, or the provision of a FAPE to a student, which alleges a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint. See <http://apps.leg.wa.gov/WAC/default.aspx?cite=392-172A-05080>.

A student eligible for special education means a student who has been evaluated and determined to need special education because she has a disability in one or more qualifying eligibility categories and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. A student is eligible for special education services until a group of qualified professionals and the parent of the student determine the student is no longer in need of special education, based on a reevaluation.

A district must ensure that a reevaluation is conducted at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. The district must then obtain the parents' consent to conduct the reevaluation and complete the reevaluation within thirty-five school days after the date the district received consent.

In completing a reevaluation, the evaluation group must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student. This must include information provided by the parents that may assist in determining whether the student is or remains eligible to receive special education services, and if so, the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum. No single test or measure may be used as the sole criterion for determining the student's eligibility or disabling condition and/or determining the appropriate education program for a student. School districts must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors in addition to physical or developmental factors.

Here, prior to determining that the Student was no longer eligible for special education, the District conducted a triennial evaluation of the Student. The District obtained the Parents' consent on approximately March 19, 2018³, and then completed the reevaluation eleven school days later on April 3, 2018. The reevaluation report shows that the District obtained input from the Parents, which included information from the Student's physician, used technically sound, widely recognized assessment instruments, and that it used more than one test and measure to determine that the Student was no longer eligible for special education, as the District relied on the Student's assessments results, input from all of the Student's teachers, and the Student's grades and state testing scores, when making the determination. Additionally, the documentation in this complaint shows that the District considered the Parents' input at the April 3, 2018 meeting when making a determination of eligibility, and that the District provided the Parents with prior written notice of its intent to exit the Student from special education nearly two weeks before the Student was to be exited. The District followed procedures for determining the Student's eligibility for special education.

In their reply to the District's response to this complaint, the Parents stated that they "have determined to get [the Student] a comprehensive independent educational evaluation (IEE) through the private sector". If the Parents are seeking an IEE provided for under WAC 392-172A-

³ The consent form was signed on Sunday, March 18, 2018, so it is assumed the District received the signed consent on Monday, March 19, 2018.

05005, the Parents must notify the District of this, and the District must respond to the Parents' request within fifteen calendar days.

CORRECTIVE ACTIONS

STUDENT SPECIFIC:

None

DISTRICT SPECIFIC:

None

RECOMMENDATION

It is recommended that the District review its practices for reporting progress regarding IEP goals to parents in order to ensure that the progress reporting provides clear information about the student's progress toward the stated goals.

Dated this ____ day of August, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
Special Education
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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.)