

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 21-84

PROCEDURAL HISTORY

On October 20, 2021, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Longview 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 October 20, 2021, 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 November 5, 2021, OSPI received the District's response to the complaint and forwarded it to the Parent on November 8, 2021 OSPI invited the Parent to reply.

On November 16, 2021, OSPI received the Parent's reply. OSPI forwarded that reply to the District the same day.

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

ISSUE

1. Did the District follow special education referral procedures?

LEGAL STANDARDS

Referral: Any person who is knowledgeable about the student may make a written referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied and the district's child find obligation triggered 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 or not to evaluate. The district 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.

Response to Intervention and Referral Timelines: While the Office of Special Education Programs (OSEP) "supports state and local implementation of response-to-intervention (RTI) strategies¹ to

¹ OSEP states that "the core characteristics that underpin all RTI models are: (1) students receive high quality research-based instruction in their general education setting; (2) continuous monitoring of student

ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner...the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability." *Memorandum to State Directors of Special Education*, 56 IDELR 50 (OSEP 2011); *see also Memorandum to State Directors of Special Education*, 67 IDELR 272 (OSEP 2016).

FINDINGS OF FACT

1. At the start of the 2020–2021 school year, the Student was in the second grade and attended a District elementary school. The Student was not eligible for special education services.
2. On August 24, 2021, the Parent requested an initial evaluation by email. She requested testing in "all suspected areas of disability, including math, dyslexia, dyscalculia, auditory processing, executive function, speech, [] language, reading disability, functional vision, occupational therapy, and physical therapy."
3. August 31, 2021 was the first day of the 2021–2022 school year in the District.
4. On September 3, 2021, the District psychologist called the Parent to discuss the Parent's request for an initial evaluation. During the call, the psychologist and Parent discussed first implementing targeted interventions and monitoring the Student's progress. In the District's response to the Parent's complaint, the District explained that there were concerns that the Student's lack of consistent instruction during COVID-19 and past exposure to trauma may be impacting the Student's academic performance and progress.² The psychologist memorialized her phone call with the Parent in an email sent the same day that stated the targeted interventions would "allow the District to make an informed decision about whether or not to proceed with a comprehensive psychoeducational evaluation." The psychologist further outlined the District's next steps, including:

performance; (3) all students are screened for academic and behavioral problems; and (4) multiple levels (tiers) of instruction that are progressively more intense, based on the student's response to instruction."

² The District explained in its response that following the school facility closure in spring 2020, the Student's school began offering weekly instructional packet pickups with daily activities for students. The Parent picked up packets regularly. However, when school transitioned to online learning via "Zoom," the Student's attendance was documented as "sporadic." During this time, instruction was provided to students on connecting and obtaining letter names and sounds. The Student withdrew from her school on June 19, 2020 and began homeschooling with her Parent. The District reported that it does not have any records or information about the Student's progress during that time. According to the Parent, the Student's instruction was not consistent during homeschooling. The Student was reenrolled in the District on April 19, 2021—the spring of her first-grade year. Academic assessment of the Student upon reenrollment showed the Student had made little academic progress since the previous year of school and was performing below grade level. The Student's first grade teacher also reported the Student had "holes" in reading, writing and math. The District also reported that a paraeducator had been supporting the Student during independent work time to try and ease the Student's transition back to school and help her catch up. The Student also was invited to attend and did attend summer school.

discussing the Student at a Student Support Team (SST) meeting, developing targeted interventions and an implementation and monitoring plan; implementing the interventions and monitoring the Student's progress; reviewing the Student's progress at an SST meeting to determine whether there was need for a comprehensive evaluation; [and] informing the Parent of the SST's decision; and addressing any concerns.

5. From September 3 through September 21, 2021, the District implemented targeted interventions and collected data on the Student's response in the areas of reading and math.
6. September 6, 2021 was a school holiday and there was no school.
7. On September 17, 2021, the District completed iReady diagnostic tests of the Student in the areas of math and reading. In math, the Student was performing at the kindergarten level and in the 12th percentile. In reading, the Student was performing at the kindergarten level and in the 15th percentile.
8. On September 21, 2021, the SST team met to discuss the Parent's evaluation request and academic progress in response to the targeted interventions. The SST "determined the Student's homeschooling for seven months, for which period there was no evidence of specific instruction, could be a factor in the Student's deficient academic progress...The team also explained that the Student had major life changes at a young age that could be interfering with her learning." Based on the data reviewed, the SST determined that "further interventions are needed before a decision can be made regarding the need for a Special Education Evaluation." The SST developed a plan for the Student that included two reading interventions that were to take place over a minimum of four weeks and would be provided for 30 minutes, 5 times weekly.
9. On September 22, 2021, the school counselor called the Parent to notify her of the SST meeting's outcome. According to the Parent, during the call, the school psychologist relayed that the District was going to collect more data. The Parent stated in her reply to the District's response that she was not made aware during the call of the outcome of the iReady assessments the District had done, or that the SST had planned to do six weeks of interventions.
10. Also, on September 22, 2021, the school counselor filled out a prior written notice (PWN), which stated that the District "considered and rejected the option of, testing for special education at this time." The reason for rejecting the proposal by the Parent to do immediate testing was as follows:

[Student] missed a year of instruction due to COVID and has had a lot of change happen in her life. This lack of targeted instruction may be contributing to [the Student's] slow start. We want to give [the Student] the opportunity with consistent support to access the classroom and give her interventions that match her needs before moving to an evaluation.

The documentation shows the PWN was not immediately sent to the Parent after it was created.

11. On October 5, 2021, the Parent emailed the school counselor, asking to be reminded about the District's decision regarding whether the District was going to evaluate the Student for special education. She stated that she remembered being called in the past, but that the family was going through a chaotic time and could not recall everything from the phone conversation. She also asked if the District would be doing evaluations with the Student.
12. On October 6, 2021, the school counselor responded to the Parent, stating that the District's plan was to meet again to discuss the Student's progress on October 19, 2021. The school counselor wrote, "Then I will contact you again and you can decide about proceeding with the evaluation based on her progress or decide to give her another 6 weeks to grow in the interventions if you are satisfied with her progress." The Parent responded that she should have received PWN of the District's decision by October 5, 2021, and that she had not received a PWN. She requested a PWN of the District's decision regarding whether to evaluate the Student and documenting their previous discussion. That afternoon, the school psychologist asked the Parent if she could call her because she believed there was a misunderstanding, and also if she would like her to email her the PWN or to send the PWN home in the Student's backpack.
13. On October 7, 2021, the Parent emailed the school counselor, stating that she believed 25 school days from the date she requested an evaluation was October 5, 2021, and that she did not receive the PWN until October 6, 2021, when it was sent home with the Student. She also stated that she disagreed with the District's decision to postpone deciding whether to evaluate the Student and that the date written on the PWN (September 22, 2021) was incorrect.
14. On October 8, 2021, the school counselor emailed the Parent and attached an action log for the Parent to clarify the steps and actions taken by the District regarding interventions with the Student and creation of the PWN. The District also clarified its plan to meet on October 19, 2021 to discuss whether the Student required an evaluation. According to the logs maintained by the District, the school counselor also agreed to set up a meeting with the Parent either in-person or over the phone. Also, on October 8, 2021, the school counselor emailed the school team to further communicate the Parent's request and concerns for when the SST team was scheduled to meet on October 19. The school counselor then updated the communication log and emailed it to the school principal.
15. On October 12, 2021, the Parent emailed the District and stated that while she had previously agreed with the District's plans orally, she believed the District would "have an answer" to her request for an initial evaluation by October 5, 2021, and no longer consented to proceeding with the informal interventions.
16. On October 19, 2021, the SST met and determined the Student required an evaluation for special education eligibility.
17. On October 20, 2021, the Parent filed this complaint with OSPI.

18. Also, on October 20, 2021, the school psychologist emailed the Parent to notify her of the District's decision and provided the Parent with PWN that indicated the Parent had previously requested testing, but that the District had "wanted time for [Student] to respond to instruction and get more information before testing for a disability, considering the Student's educational interruption and background." The PWN also noted that the District had also considered pursuing more interventions but decided against that option because the Student had not shown significant progress with the interventions trialed. The PWN also stated that the District made its decision based upon the Student's records and intervention progress, the Parent's conversations with the school counselor and psychologists, and the Parent's communication.

19. On November 1, 2021, the Parent returned the signed consent for an initial evaluation.

CONCLUSIONS

Special Education Referral Procedures: The Parent alleged the District did not follow special education referral procedures. Any person who is knowledgeable about the student may make a written referral of a student suspected of having a disability. A referral may be implied, and the district's child find obligation triggered when a parent informs a school that a child may have special needs. 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 or not to evaluate. The district 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. While the Office of Special Education Programs (OSEP) "supports state and local implementation of response-to-intervention (RTI) strategies to ensure that children who are struggling academically and behaviorally are identified early and provided needed interventions in a timely and effective manner...the use of RTI strategies cannot be used to delay or deny the provision of a full and individual evaluation to a child suspected of having a disability."

Here, the Parent made a referral for the Student for an initial evaluation on August 24, 2021. The District documented the Parent's referral on September 3, 2021 in an email to the Parent from the school psychologist, stating the District was going to collect additional information and then meet to determine if the Student required an evaluation. On September 21, 2021, the SST team met to review the documentation gathered and determined the Student did not require an evaluation, and that the District would proceed with six weeks of intervention, and then meet again to review the Student's response to the interventions and then reconsider whether the Student required a comprehensive evaluation. Although the District prepared a prior written notice (PWN) on September 22, 2021, documenting the SST meeting and decision, the Parent did not receive written notice (by email and via PWN) until October 6, 2021; however, 25 school days after the day the referral request was received was October 5, 2021. Accordingly, the District was in violation. Because the Parent had to ask the District to provide PWN on October 5, 2021 and the District provided the PWN past the 25-day timeline, OSPI orders the District to provide written

guidance to the impacted school regarding referral procedures, including the requirement to provide written notice to families within 25 school days. No Student specific corrective actions are necessary as the District did provide the Parent written notice, albeit one day late, and the District subsequently determined a special education evaluation would be initiated.

CORRECTIVE ACTIONS

By or before **January 7, 2022** and **January 21, 2022**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

The District will develop written guidance to be provided to all District certificated special education staff, including educational staff associates (ESAs), principals, and certificated special education teachers at the Student's school, and District special education administration staff, which will address special education referral procedures. ESAs include school psychologists, physical therapists, occupational therapists, speech language pathologists, school nurses, and other service providers. The guidance will include examples.

By **January 7, 2022**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by January 14, 2022, and provide additional dates for review, if needed.

By **January 21, 2022**, the District will provide OSPI with documentation showing that it provided the required staff with the written guidance. This documentation will include a roster of all staff members who were required to receive the written guidance, so OSPI can cross reference the list with the actual recipients.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this ____ day of December, 2021

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