

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-145

PROCEDURAL HISTORY

On December 1, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the complainant (Complainant) on behalf 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 December 2, 2022, 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 by December 19, 2022.

On December 22, 2022, OSPI received documentation/information consisting of a chronology of events, three emails, and a copy of the District evaluation from the District. OSPI was unable to provide the information to the Complainant as it consisted of Student personally identifiable information because there was no signed release of information from the Parent.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on December 2, 2021. 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.

ISSUE

1. Did the District comply with the procedures according to WAC 392-172A-03005 when referring and evaluating the Student?

LEGAL STANDARDS

District Responsibility: It is the general policy of the state that the common schools shall be open to the admission of all persons who are five years of age and less than twenty-one years residing in that school district. RCW 28A.225.155.

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. 34 CFR §300.301; WAC 392-172A-03005. 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 Timeline: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent. WAC 392-172A-03005.

Child Find for Parentally Placed Private School Students: Each school district must locate, identify, and evaluate all students who may be eligible for special education services who are enrolled by their parents in approved, nonprofit private, including religious, elementary and secondary schools located in the school district. WAC 392-172A-04005.

Districts where private elementary and secondary schools are located must conduct child find activities for parentally-placed private school children who reside outside the State? The child find requirements in 34 C.F.R. § 300.131(f) make clear that the district where the private elementary and secondary schools, including religious schools, are located is responsible for conducting child find. This includes individual evaluations, of all children suspected of having a disability enrolled by their parents in private elementary and secondary schools located in the LEA, regardless of where those children reside. This obligation applies regardless of whether those children reside in a State other than the State where the private schools they attend are located. *Questions and Answers on Serving Children With Disabilities Placed by Their Parents in Private Schools* (OSEP, February 2022) (Question H-1).

FINDINGS OF FACT

2021–2022 School Year

1. At the beginning of the 2021–2022 school year, the Student attended school in the District and had a Section 504 plan.
2. On August 26 and September 8, 2021, the Complainant emailed the District special education director (director), stating that the Student, who was attending the District at the time, would be attending a residential treatment school in another state. The email stated that when the Student returned to the District (“possibly March 2022”), “we need to secure a CHILD FIND like process and move forward with an Evaluation before March.” (Emphasis in original.)
3. In the latter part of September 2021, the Complainant and director exchanged emails regarding the Student’s eventual return to the District. The director asked:
 - “If there’s a concern about [Student] potentially needing a special education plan instead of a 504 plan, is there a reason we’re not pursuing the Child Find in [State]? It’s unclear if by

residential treatment it's an academic setting too or just therapeutic. Ideally if the family has the concern now, it should be explored immediately rather than waiting for the move to [District]."

- "When [Student] returns into the district do we know what his attendance area school would be?"
- "How confident are we in the projected return date?"

The Complainant responded, "So...you are suggesting we begin the CHILD FIND with [State]; the district/agency in which the residential/academic center is placed. Then, as the date of return becomes clear, we will bring [District] into the process." (Emphasis in original.)

4. On January 12, 2022, the Complainant emailed the District director and requested a special education evaluation of the Student. The director replied:
It sounds like you weren't able to get the [other state] evaluation done. Residency follows the student so based on the message I have it sounds like the student is still in [other state] so we're in the same weird position. However, we're getting closer to being inside the time period where we might be able to do something.

The director provided the Complainant with a referral to evaluate form. It was unclear from the documentation whether the form was for the District or the out-of-state district to evaluate.

5. In February 2022, according to the District, the District provided the Parents with information about the school district where the residential treatment program was located, including child find information.
6. According to the emails, on February 1, 2022, the Parent completed a consent to evaluate form. No form was provided by either the Complainant or District. It was unclear from the documentation whether the form was for the District or the out-of-state district.
7. The District reported that the other state school district conducted an initial evaluation of the Student, but that the out-of-state district did not meet to review the evaluation and determine eligibility.

2022–2023 School Year

8. At the beginning of the 2022–2023 school district, the Student began attending school in the District. The Student continued to have a Section 504 plan.
9. On September 1, 2022, the school year began in the District. The Student enrolled in the District.
10. On September 23, 2022, according to the District, the Student was referred for a special education evaluation. There was no indication in the documentation when Parent consent to the evaluation was provided to the District.
11. On December 1, 2022, the Complainant filed this complaint with OSPI.

12. On December 2, 2022, the District legal counsel emailed the Parent. The legal counsel stated:
We also want to acknowledge that once your child was re-enrolled in the [District] as of September 1, 2022, the staff at [high school] should have taken the draft evaluation document from the [out of state school district], reviewed that, and determined if any additional data was needed in order for the [District] to complete an initial evaluation, including considering any input from you about the same. The staff at [high school] were advised by [District] Special Education leaders that this is what needed to be done. To learn that it is December and this still has not been done is very concerning to [District] Special Education leaders. As such, the [District] would like to resolve this Community Complaint with you and get your child properly evaluated and receiving special education services as soon as possible. Based upon a review of the evaluation draft completed by [out of state school district] the only area where the [District] would want to see additional assessments be done is in the area of transition services. However, we do not believe that this should delay a determination of special education eligibility based upon the information that is available in the [out of state school district] draft evaluation.
13. On December 15, 2022, the District completed the Student's initial evaluation and held an evaluation group meeting. The evaluation group determined that the Student was eligible for special education services under the category of other health impairment. The evaluation report recommended services in the areas of behavior and social/emotional.

14. The District's response to the complaint stated the following:

The [District] agrees that the staff at its [high school] should have completed this evaluation sooner than December 15, 2022 based upon being provided the [out of state school district] draft evaluation report.

The [District] has offered the family minute for minute compensatory education for services missed from the date of enrollment through the date where the student begins receiving special education services, which should occur in mid-January (i.e., 30 days after the reevaluation was completed). The [District] believes that this is a more than generous compensatory education offer because it would have had at least 60 school days to complete the evaluation under the IDEA (25 school days for a candidacy determination and 35 school days from consent) after the student was enrolled. Because the [District's] former special education director gave the Parents less than clear information while he was in [State] and because the [high school] staff did not complete the evaluation in the manner that was expected of them, the [District] made this generous compensatory education offer to show the family that they acknowledge this situation was handled poorly and that the [District] wants to do better for them and their child moving forward. The family accepted this offer.

There was no other indication in the documentation that the Parent agreed to the District's proposed compensatory education services.

CONCLUSIONS

Issue One: Referral and Evaluation Timeline – The complaint alleged the District failed to follow referral and evaluation timelines in referring and evaluating the Student. Here, the Parent unilaterally placed the Student, who had a Section 504 plan, in a residential treatment program in

another state during the 2021–2022 school year. A school district where the private school is located is responsible for evaluating a student suspected of having a disability. A district is required to refer a student for evaluation if there is sufficient reason to suspect the student has a disability and requires specially designed instruction. Once the referral is accepted and parent consent is provided, a district has 35 school days to evaluate the student and determine eligibility.

During the 2021–2022 school year, the Parent and Complainant communicated with the District about conducting a special education evaluation of the Student for when the Student returned to the District. There appeared to be confusion about what district, the District, or the district where the out-of-state residential treatment program was located, was responsible for evaluating the Student while the Student attended the residential treatment program. To be clear, the out-of-state district where the residential treatment program was located was responsible for evaluating the Student. The out-of-state district did fulfill its responsibilities in evaluating the Student, but did not meet to determine the Student’s eligibility for special education services. Thus, the Student was not determined eligible for special education services at the time the Student enrolled in the District on September 1, 2022, but the Student did continue to have a Section 504 plan.

The District determined that the Student required a special education evaluation to be conducted by the District and was referred on September 23, 2022. The District completed the evaluation, and the evaluation group determined the Student was eligible on December 15, 2022. Based on the documentation provided by the District, the District should have referred the Student for evaluation at least by September 1, 2022, when the Student enrolled in school, based on their knowledge of the Student’s residential treatment placement, previous Parent/Complainant requests for an evaluation, and the evaluation conducted by the out-of-state district. These were sufficient reasons to suspect the Student had a disability and was in need of special education services. However, the Student was not referred until September 23, 2022, which delayed the 35-day evaluation timeline. A violation is found based on the delay in referring and evaluating the Student.

The District acknowledged exceeding the referral and evaluation timelines and have proposed compensatory services calculated beginning September 1, 2022 through when the IEP would be developed. The District indicated it had made this offer to the Parents and the Parents accepted, although there was no documentation confirming the amount of compensatory education hours offered or Parent agreement/acceptable. OSPI accepts the District’s proposed compensatory education services to the Student. In addition, the District is required to provide training regarding referral and evaluation timelines to certified special education staff and administrators at the District high school.

CORRECTIVE ACTIONS

By or before **February 3, 2023, February 10, 2023, February 17, 2023, March 3, 2023,** and **June 30, 2023,** the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

By **February 10, 2023**, the District is required to conduct an IEP meeting for the Student to develop a plan, including a schedule, to provide the necessary amount of compensatory education services required to make up for services the Student did not receive and to monitor the Student's progress. (Please see attached document required for documenting services.) The District will provide a written explanation based on Student data for the proposed compensatory education services.

The services will be provided by a certified special education teacher. Services may be provided in a 1:1 setting or a group setting, as appropriate. If the District's provider is unable to attend a scheduled session, the session must be rescheduled. If the Student is absent, or otherwise does not attend a session without providing the District or provider with at least 24 hours' notice of the absence, the session does not need to be rescheduled. The services must be completed no later than **June 30, 2023**.

By **February 17, 2023**, the District will provide OSPI with a copy of the Student's IEP, prior written notice, services rationale, and schedule of services. OSPI will review the compensatory education offer and IEP, and notify the District if any further deadlines or check-ins for compensatory education are needed.

The District either must provide the transportation necessary for the Student to access these services or reimburse the Parent for the cost of providing transportation for these services. If the District reimburses the Parent for transportation, the District must provide reimbursement for round trip mileage at the District's privately-owned vehicle rate. The District must provide OSPI with documentation of compliance with this requirement by **June 30, 2023**.

DISTRICT SPECIFIC:

Training

By **February 24, 2023**, the District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), is required to conduct a training with the staff that serve as District representatives, special education teachers, and District special education administrators from the Student's school regarding referral requests, and referral and evaluation timelines.

By or before **February 3, 2023**, the District will notify OSPI of the name of the trainer and provide documentation that the District has provided the trainer with a copy of this decision for use in preparing the training materials.

By or before **February 10, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments as needed.

By **March 3, 2023**, the District will submit documentation that required staff participated in the training. This will include 1) a sign-in sheet from the training, and 2) a separate official human resources roster of all staff required to attend the training, so OSPI can verify that all required staff participated in the training.

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.

RECOMMENDATION

The District notified OSPI that it was working to resolve the complaint with the Parents and expected the complaint to be resolved, and thus did not provide a response. Instead, the District provided limited information in response to OSPI's document request. OSPI encourages parties to work out a resolution, but meanwhile, unless the complaint is put on hold, the document submission according to the timelines is still required (See WAC 392-172A-05030). OSPI recommends the District review the written state complaint procedures to ensure that the District has an appropriate process for responding to special education community complaints. In addition, the District should realize that necessary facts will be interpreted against the District without an adequate response to the documentation requested.

Dated this 30th day of January, 2023

Dr. Tania May
Assistant Superintendent of Special Education
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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.)