

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 22-18**

### **PROCEDURAL HISTORY**

On February 14, 2022, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the Lake Washington School District (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On February 15, 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.

On March 4, 2022, OSPI received the District's response to the complaint and forwarded it to the Parent on March 7, 2022. OSPI invited the Parent to reply.

On March 15, 2022, OSPI requested the District provide a clarification and the District provided the requested information on March 17, 2022. OSPI forwarded the information to the Parent the same day.

On March 16, 2022, OSPI requested the Parent provide clarifying information and the Parent provided the information the same day. OSPI forwarded the information to the District on March 16, 2022.

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

### **ISSUE**

1. Did the District follow procedures to respond to the Parent's request on January 12, 2022 to schedule an individualized education program (IEP) meeting?

### **LEGAL STANDARDS**

Parent Request for IEP Meeting: When a parent or district believes that a required component of a student's individualized education program (IEP) should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). IDEA, 64 Fed. Reg. 12,475, 12,476 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 20). The District must schedule the meeting at a mutually agreeable time and place, and appropriately invite the parent to the meeting. 34 CFR §§300.322 and 300.328; WAC 392-172A-03100.

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. 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. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. The reevaluation must be conducted in all areas of suspected disability and must be sufficiently comprehensive to identify all of the student's special education needs and any necessary related services. 34 CFR §300.304; WAC 392-172A-03020.

### **FINDINGS OF FACT**

1. At the start of the 2021–2022 school year, the Student was eligible for special education services under the category of emotional behavior disability. The Student was enrolled in a District high school part time and a nonpublic agency (NPA) at Parent expense. During the first semester of the 2021–2022 school year, the Student did not take any classes at the high school.
2. The Student had an individualized education program (IEP) developed in September 2021. The IEP included goals and specially designed instruction in social/emotional, behavior, and organization. The IEP included several accommodations and provided that the Student would receive 180 minutes per week of specially designed instruction total in the special education setting (15 minutes, 4 times per week in each area).
3. Based on the prior written notice documenting the September 2021 IEP meeting, the Parent notified the IEP team that a private evaluation of the Student was in progress, and the District noted that the "evaluation will be re-opened should the parent provide a private evaluation."
4. On January 11, 2022, the Parent emailed the high school about enrolling the Student for classes. According to the District, the Student was enrolled in a math support class to receive special education services and a general education mythology class during second semester.
5. On January 12, 2022, the Parent emailed the special education teacher and District's director of special services (director), stating a private evaluation had been completed for the Student and that she wanted to "discuss the correct placement for [the Student]." The Parent stated she would send the results of the private evaluation for the District to review.

The special education teacher responded that an assessment revision would be needed, and they could get that set up as soon as the District received a copy of the private evaluation report.

6. On January 13, 2022, the Parent emailed the special education teacher and director a copy of the evaluation report and noted that the report was not yet finalized as she was meeting with the private evaluator the following week. The Parent also requested the District expedite the reevaluation meeting, "so that the correct placement is in place for the start of the 2<sup>nd</sup> semester."

The director subsequently provided a copy of the report to the District's school psychologist.

7. The private evaluation report, in relevant part, included several recommendations related to educational support, such as maintaining the Student's current placement at the NPA and fading in classes at the local high school if the Student was interested in accessing "alternate classes," which would allow her to, "Access more typical socializing with peers and provide her with an opportunity to adjust to group demands."
8. On January 28, 2022, the special education teacher, school psychologist, and director reviewed the Parent's request. The District stated in its response that staff "discussed how to respond to Parent's request for an immediate change in placement based solely upon [the private evaluator's] report" and the team determined they would need to "follow existing procedure to consider formally the private evaluation results...through the District's reevaluation and IEP team processes."
9. On January 31, 2022, the District's second semester began.
10. On February 1, 2022, the special education teacher emailed the Parent and proposed holding an IEP meeting to review the Parent's January 12, 2022 email and request.

The Parent emailed the special education teacher and director in response, stating that at a previous IEP meeting, the "[director] said that if we had an evaluation done that they would reevaluate. I would like a broader discussion, including placement. A meeting to initiate an evaluation review is not legally necessary. You can just send an evaluation consent form."

Based on subsequent emails and the meeting notice, the Parent was available February 9, 2022 and a meeting was scheduled to consider the private evaluation and consider reopening the District reevaluation.

11. On February 9, 2022, the Student's IEP team—including the special education teacher, Parent, general education teacher, and school psychologist—met and agreed, per the prior written notice, to reopen the District's reevaluation to consider the contents and recommendations in the private evaluation report.
12. The Parent stated that this meeting lasted approximately five minutes and "just [confirmed] that we need a consent form," which the Parent stated they sent her after the meeting.
13. On February 11, 2022, the Parent provided the District written consent to conduct the reevaluation and provided written parent input for the reevaluation.
14. According to the District's response, the reevaluation is underway and when it is complete, the IEP team will meet to consider the reevaluation, discuss recommendations, and determine the Student's educational placement.

15. As of March 16, 2022, in response to questions from OSPI, the Parent stated that she had not heard anything from the District about scheduling assessments or other parts of the reevaluation the District was conducting.
16. April 14, 2022 is 35 school days after the Parent provided consent.
17. The Parent, in her complaint, alleged that the District inappropriately delayed in scheduling an IEP meeting following her request for a meeting. The Parent also stated, in additional information, that her complaint was "about the slow effort to reevaluate my child."

## **CONCLUSIONS**

**Issue: Meeting Scheduling** – The Parent, in her complaint, alleged the District inappropriately delayed in scheduling an individualized education program (IEP) meeting following her request for a meeting and thus delayed initiating a reevaluation.

When a parent believes that a required component of a student's IEP should be changed and requests an IEP meeting, the district must conduct an IEP meeting if it believes that the change may be necessary to ensure the provision of a free appropriate public education (FAPE). The District must schedule the meeting at a mutually agreeable time and place. Further, a 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 warrant a reevaluation, or if the parent or teacher requests a reevaluation.

Here, in a fall 2021 IEP meeting, the Parent notified the District that a private evaluation of the Student was in progress and the District stated that the "evaluation will be re-opened should the parent provide a private evaluation." The Parent, in emails, stated she hoped to expedite the reevaluation, "so that the correct placement is in place for the start of the 2<sup>nd</sup> semester [second semester began January 31, 2022]." The private evaluation report recommended maintaining the Student's current placement at a nonpublic agency (NPA)—currently a placement at Parent expense—and fading in classes at the local high school if the Student was interested in accessing "alternate classes."

On January 12 and 13, 2022, the Parent emailed the special education teacher and District's director of special services, notifying them that the private evaluation was complete and subsequently provided a copy of the evaluation report (although the Parent indicated she was meeting with the private evaluator the following week and that there could be additional changes to the report). The Parent stated she wanted to "discuss the correct placement for [the Student]." The special education teacher responded that an "assessment revision" would be needed and on January 28, 2022, District staff reviewed the evaluation report and the Parent's request, confirming that the team need to "follow existing procedure to consider formally the private evaluation results...through the District's reevaluation and IEP team processes," despite the Parent's "request for an immediate change in placement based solely upon [the private evaluator's] report."

Despite the Parent's request that the District provide her with the reevaluation consent form without a meeting, the District proposed holding an IEP meeting, which was scheduled at a mutually agreeable date and time on February 9, 2022. On February 9, 2022, the Student's IEP team met and agreed to reopen the District's reevaluation to consider the private evaluation. According to the Parent, the meeting lasted approximately five minutes and "just [confirmed] that we need a consent form." On February 11, 2022, the Parent provided consent for the reevaluation and provided written input. The reevaluation should be completed by April 14, 2022 (35 school days after Parent consent was provided), although the Parent noted that as of March 16, 2022, she had not heard anything from the District about scheduling assessments or other parts of the reevaluation.

The Parent's email on January 12, 2022 regarding the private evaluation and request to discuss placement represents a request to change a component of the IEP or the provision of a FAPE to the Student. The Washington special education regulations do not contain a specific process or timeline to consider a private evaluation, although regulations related to IEP development and evaluations require a district to consider information in a private evaluation in the development of a student's special education program. It is reasonable that the District proposed holding an IEP meeting and initiating a reevaluation to incorporate the information from the private evaluation. Although an IEP meeting is not needed just to confirm that consent is required for a reevaluation, and in retrospect does seem unnecessary here, holding that meeting does not violate the IDEA or special education regulations. At the time it was scheduled, the District may have been anticipating that further discussion about the reevaluation was needed prior to sending the Parent the consent form. Ultimately, the Parent signed consent for the reevaluation approximately a month after she made the request. While it is likely the reevaluation process and obtainment of consent could have occurred slightly sooner, a month does not represent an unreasonable delay. OSPI understands the Parent's frustration and desire to have had the discussion prior to the start of second semester; however, the District followed special education procedures and in the absence of any violation, OSPI defers to the IEP team's decision that a reevaluation was necessary instead of amending the IEP based only on the private evaluation. Overall OSPI finds no violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

OSPI notes that several District holidays and breaks (including spring break) impacted the 35-school day timeline for the reevaluation. Given that District staff had an opportunity to review the private evaluation prior to the initiation of the reevaluation, OSPI encourages the District to prioritize completing the reevaluation early if possible and recommends the District communicate

with the Parent regarding the timeline and whether any additional assessments need to be scheduled.

Dated this \_\_\_\_ day of March, 2022

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