

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-145**

### **PROCEDURAL HISTORY**

On October 20, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from the parent (Parent) of a student (Student) attending the **[REDACTED]** 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 October 20, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent October 23, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On October 23, 2023, OSPI received documentation from the District prior to OSPI asking the District to respond to the complaint. OSPI forwarded this documentation to the Parent on October 27, 2023.

On October 25 and November 3, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on November 6, 2023. OSPI invited the Parent to reply.

On November 8, 2023, OSPI received additional information from the District.<sup>1</sup> OSPI forwarded the additional information to the Parent the same day.

On November 16, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on November 17, 2023.

On December 3, 2023, OSPI received additional information from the District. OSPI forwarded the information to the Parent on December 4, 2023.

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

### **ISSUES**

1. Whether the District followed special education referral procedures between February and May 2023, including whether the decision to not evaluate the Student was reasonable and based on Student specific information?
2. Whether the District met its child find obligation to identify the Student as a student with a suspected disability and determine whether she was in need of special education services since February 2023?

### **LEGAL STANDARDS**

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the

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<sup>1</sup> OSPI notes the documentation provided by the District was largely duplicative of documents sent on October 23, October 25, and November 3, 2023.

severity of their disability. Child find activities shall extend to students residing within the school district boundaries whether or not they are enrolled in the public school system; except that students attending nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392-172A-04005. Child find activities must also be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade. WAC 392-172A-02040.

"[T]he child find duty 'is triggered when the [school district] has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability.'" *Dep't of Educ., State of Haw. v. Cari Rae S.* 35 IDELR 90 (U.S. District Ct HI, 2001) (quoting *Corpus Christi Indep. Sch. Dist.* 31 IDELR 41 (SEA TX 1999)). A disability is "suspected" when a school district "has notice that the child has displayed symptoms of that disability." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119 (9<sup>th</sup> Cir. 2016).

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. 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.

## **FINDINGS OF FACT**

### **2022–23 School Year**

1. At the start of the 2022–23 school year, the Student attended school in the District and was not eligible for special education services.
2. The District's 2022–23 school year began on September 1, 2022.
3. On February 9, 2023, the Parent emailed District staff, including the principal and the Student's general education teacher, regarding concerns she had about the Student. The Parent noted the Student was "having a really hard time in class" and that before and after school, the Student "complains of stomach aches and not wanting to go to school." The Parent also shared concerns that the Student stated she was being bullied in class. The Parent shared that the Student stated she had a hard time concentrating in school and expressed concern about the Student's seating assignment. Among her concerns, the Parent also noted that the Student

was evaluated by the "UW Autism Center" and stated she "would like to request a special education evaluation for [Student]."

4. In her complaint, the Parent alleged the District "refuse[ed] to conduct a special education eligibility evaluation...even though the District has a signed consent form for the evaluation." In her complaint, the Parent stated she requested a special education evaluation on February 9, 2023.
5. A District "notification of special education referral" document indicated a meeting was scheduled for March 21, 2023. The "contact attempt report" listed the following contact attempt dates: February 9, 13, and 17, March 1, 3, and 22, 2023.

The guidance team record document listed the date of the Parent's referral for special education as February 9, 2023.

6. On March 21, 2023, the Parent emailed the District a "redacted UW Autism Center evaluation" and an updated version of PowerPoint presentation for the guidance team meeting.

The report, dated February 9, 2023, noted that the Student's primary care provider had diagnosed her with "anxiety disorder" and a previous diagnosis of attention deficit/hyperactivity disorder (ADHD). The evaluation report included diagnostic impressions, including ADHD, generalized anxiety disorder, and post-traumatic stress disorder. The report stated, "Autism Spectrum Disorder (ASD) remains a rule-out diagnosis." The report noted the Student presented a complicated diagnostic case as "there is a certain degree of overlapping features among different diagnoses including ASD, ADHD, anxiety, and trauma"<sup>2</sup> and noted that "as there is family history of ASD, [Student] may have what is referred to as the 'broader autism phenotype' in which some features of ASD are present while not having sufficient criteria for a diagnosis as it is currently conceptualized. Given that [Student's] ADHD and PTSD have not been treated yet and anxiety is just beginning to be treated in therapy, an ASD diagnosis is being deferred at this time."

The report also included, in part, that the Student "has some challenges at school with inflexibility and emotional regulation, though her teacher has been able to offer approaches that support [Student] and build on her strengths and interests."

7. On March 21, 2023, the District's guidance team and Parent met to discuss the Parent's referral for a special education evaluation.

Based on the documentation, the team determined that a second meeting was needed before a decision could be made. The team needed additional time to review the "UW Autism Report"

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<sup>2</sup> The Parent noted in her reply to the District's response that the Student "has suspected autism too, but she cannot be diagnosed currently because she is living with her father half time and therefore cannot participate in trauma therapy – a requirement from the UW Autism Center for her further evaluation for autism."

the Parent provided to the team and the edits the Parent made to the PowerPoint earlier that day.

The guidance team record—which stated it was provided to the Parent on March 22, 2023—stated that the Student had recently by assessed by the UW Autism team, that the Student had not “demonstrated a need for any academic or social/emotional interventions”, and that the Student’s teacher reported “no academic or social/emotional concerns...in the school setting.”

The PowerPoint reviewed by the team included, in part:

- Parent input – strengths; areas of concern (strives for perfection, works hard outside of school so she can do well academically, tries not to stand out, might have autism, has a diagnosis of ADHD and PTSD, sensitive to sound and clothing, struggles with being “picked on at school”, challenges with emotional regulation)
  - Classroom update – Student’s strengths, “above average” academically, benefits from access to a calm down corner, private offices, challenge reading group
  - Educational history – District attendance and assessments, information and question from the Parent, grades
8. A March 22, 2023 prior written notice stated the team did not have sufficient time “to make a meaningful decision based on data and parent/teacher input provided” and noted the team would meet again.
  9. On March 23, 2023, the prior written notice was updated, at the Parent’s request, to note that all of the Student’s medical records were being considered.
  10. On April 19, 2023, a second guidance team meeting was held. The District stated this meeting was ended early.<sup>3</sup>

A prior written notice documenting the meeting indicated the team met and continued the discussion about the referral for a special education evaluation. The notice indicated, “The team did not have sufficient time to make a meaningful decision based on the data and parent/teacher input provided. The team will meet again at a mutually agreed upon time/date and determine if a special education or 504 evaluation is needed.”

The notice included that it was proposed the team meet again on May 2, 2023.

11. In an April 21, 2023 email with the case manager regarding scheduling another meeting, the case manager stated the District’s position “on whether [Student] warrants a special education evaluation of [sic] 504 evaluation” is “still up in the air, as it’s a team decision. All data available, including your input and autism evaluation will be utilized to make this decision. This is what we will discuss in our next meeting.”

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<sup>3</sup> OSPI notes there is disagreement between the Parent and District about why this meeting ended early.

12. The District, in its response, stated it determined on May 4, 2023, that it had “sufficient information to make a decision without meeting for a third time” and that the District determined the Student was not “a candidate for special education eligibility evaluation” but did propose to conduct a 504 evaluation. The District informed the Parent of this via email and sent a prior written notice.

The May 5, 2023 prior written notice documented that the District proposed to conduct an “initial Section 504 eligibility evaluation.” The notice stated:

The Student has medical/mental health diagnoses. There is not consensus as to if there is any evidence that the same impact the Student at school, with the mother believing they do and the school staff and father believing that they do not. As such, the appropriate next step is to conduct a Section 504 evaluation to gather additional data to determine if any of the identified medical/mental health diagnoses substantially limit the Student's ability to engage in one or more major life activities.

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There presently is not sufficient evidence to suspect that the Student is a student who would meet eligibility criteria for special education, as there is no indication that any medical/mental health diagnoses are adversely impacting the student's involvement and progress in the general curriculum.

13. In subsequent emails sent between the District, Parent, and Parent's attorney, the District clarified that the District was “proposing...conducting a Section 504 eligibility evaluation” and emails discussed whether consent was provided for a 504 evaluation.
14. In her complaint, the Parent alleged that by denying the Student a special education evaluation, the District “predetermined that she would not qualify for special education and related services” and argued the District was required by the IDEA to assess the Student in all areas of suspected disability. The Parent also alleged that the District had failed in its child find duties to identify the Student as a student with a disability.
15. In its response to this complaint, the District stated that “the majority of the multidisciplinary team that considered the referral for the same...did not believe the same was appropriate.”

The District further stated that it:

Properly responded to the concerns raised by the Mother by holding multiple meetings to consider conducting a special education eligibility evaluation and then properly documented its decision making related to the same...The District made its decision not to conduct a special education eligibility evaluation twelve school days after the follow-up Guidance Team meeting on April 19, 2023. The District does not dispute that its May 5, 2023 decision not to evaluate occurred 29 school days after the March 21, 2023 initial Guidance Team meeting, but points out that [Parent] only provided the UW Autism Report on March 21, 2023 and that it provided Prior Written Notice to both Parents explaining why it was not yet ready to make a decision as of that day.<sup>4</sup> The District believes that it was

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<sup>4</sup> In response to this complaint, the District's attorney questioned why the timeframe for the SECC investigation was from February 2023, noting that the Parent provided the UW Autism report to the District

appropriate for the Guidance Team to take the time necessary to review the UW Autism Report and to hold the follow up Guidance Team meeting on April 19, 2023 to allow for meaningful participation from both Parents in the decision-making process based upon dates of availability provided by both Parents. The District believes that erring on the side of thoughtful decision-making and meaningful parental participation was of significant importance and thus justified the holding of two meetings and the making of a decision by May 5, 2023.

And the District noted it would, be opening a new special education eligibility referral given that the Mother is again raising that she believes that her child should be evaluated for special education eligibility. That will be considered consistent with the IDEA and the Parents will receive the District's determination on if the student is a candidate for a special education eligibility evaluation within 25 school days...it appears that the District's determination will need to be made by December 1, 2023...

16. In her complaint, the Parent noted that she agreed the Student needed a 504 plan in the interim, but that a 504 evaluation was not sufficient to identify the Student's special education needs.
17. On May 22, 2023, the Parent emailed the school psychologist in response to the May 5, 2023 prior written notice. The Parent stated, "The determination of whether the student is a child with disability cannot be estimated. If the district believes that further data is needed to determine whether [Student] requires special education and related services to access education, the district is obligated to conduct an evaluation..."

The Parent noted the Student has a suspected disability (autism) and a diagnosed disability (ADHD) and included in her email citations to information and regulations on child find and special education evaluations. The Parent stated it was not clear to her why the Student, a student with a suspected disability and diagnosed disability, would not need a special education evaluation. The Parent stated it was unclear to her "from the PWN how the [District] was able to determine that [Student] does not require a special education eligibility evaluation. By denying [Student] a special education evaluation, the district predetermined that she would not qualify for special education and related services."

18. On May 23, 2023, the Parent signed consent for a 504 evaluation on a consent form labeled "Section 504 – Notification Consent". In the comments section, the Parent wrote, "I request that a 504 plan be provided to my child while the special education evaluation is being conducted. She needs supports and services in the following areas while the school evaluates which additional academic and non academic supports are needed: social, emotional, behavioral, communication..."

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on March 21, 2023, and that was the day the initial guidance team meeting was held. OSPI notes the documentation shows the Parent made the referral in February 2023.

19. The Parent stated in her reply to the District's response that she did give consent for the Student to be evaluated, and therefore the District's claim, as stated in her reply, "that they did not evaluate [Student] because I did not give my consent to do so" is incorrect.
20. On June 22, 2023, the District emailed the Parent a prior written notice, stating it was "closing the referral for an initial Section 504 eligibility evaluation" and reiterating that the District determined the Student was not a "a candidate for a special education eligibility evaluation."
21. The Student's current therapist provided an email, to be shared with the District and dated November 14, 2023, noting that the Student:
  - Has a diagnosis of generalized anxiety disorder (GAD), Post Traumatic Stress Disorder (PTSD), Attention- Deficit/Hyperactivity Disorder (ADHD) and depression. Autism Spectrum Disorder (ASD) is suspected, and [Student] has been assessed. However, because [Student] has PTSD symptoms, and she is not able to work through her PTSD symptoms at this time, she was not diagnosed with ASD.
22. On December 1, 2023, a guidance team meeting was held to consider whether to evaluate the Student for special education. The team determined it would move forward with a special education evaluation of the Student. According to the prior written notice, "Based on updated input from the Student's current teacher and both of her parents, there is sufficient evidence to support that the Student is a candidate for an initial special education."

## **CONCLUSIONS**

**Issue One & Two: Referral & Child Find** – The Parent alleged the District "refuse[ed] to conduct a special education eligibility evaluation...even though the District has a signed consent form for the evaluation." In her complaint, the Parent stated she requested a special education evaluation on February 9, 2023.

### Referral Procedures

There are several steps a district must take when a student is referred for a special education evaluation.

First, 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.

Here, on February 9, 2023, the Parent clearly requested the Student be evaluated for special education eligibility in an email, wherein she shared concerns, stated the Student was being evaluated for autism, and stated that she "would like to request a special education evaluation for [Student]." There is no indication the District documented this referral at that time or provided the Parent written notice that the Student had been referred. OSPI notes the District's "notification of special education referral" does document the referral, but this document appears to have been created at the March 21, 2023 meeting and states it was provided to the Parent on March 22,

2023. This does not satisfy the requirement to document the Parent’s referral as the regulations contemplate this documentation occurring contemporaneously with the referral being made.

Second, a district must review the referral, and it must collect and examine existing school, medical, and other records. In this case, the District did do this: it held two guidance team meetings and reviewed a variety of existing school, medical, and other records, along with Parent and teacher input.

Finally, 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. Here, the District made a determination on May 5, 2023—approximately 50 school days after the receipt of the referral. OSPI notes the District stated:

The District made its decision not to conduct a special education eligibility evaluation twelve school days after the follow-up Guidance Team meeting on April 19, 2023. The District does not dispute that its May 5, 2023 decision not to evaluate occurred 29 school days after the March 21, 2023 initial Guidance Team meeting, but points out that [Parent] only provided the UW Autism Report on March 21, 2023 and that it provided Prior Written Notice to both Parents explaining why it was not yet ready to make a decision as of that day.

Contrary to the District’s position, the Parent’s referral was not made on March 21, 2023, it was made on February 9, 2023. While it is true the Parent provided additional information on March 21, 2023, at the first guidance team meeting, even if there was an agreement to schedule a follow up meeting, the next meeting was not scheduled for almost another month. And, importantly between the second guidance team meeting and the District’s determination to not proceed with an evaluation, there is no indication that new or additional information was provided or reviewed. Thus, OSPI finds the District could have made a determination sooner than it did. While OSPI appreciates the District’s commitment to parent participation, it was also unreasonable that it took approximately 50 school days to make a determination when the regulatory timeline calls for a decision to be made within 25 school days of a referral.

Overall, given that the Parent’s referral was not documented properly, the Parent was not provided “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”, and because the District did not make a decision until 50 school days after the referral, OSPI finds a violation. Special education staff at the Student’s school will be required to receive training in the area of referral procedures.

#### Guidance Team Decision & Child Find

School districts must conduct child find activities calculated to locate, evaluate, and identify all students who are in need of special education and related services, regardless of the severity of their disability. Case law from the 9th circuit provides guidance that the child find duty is triggered when the district has reason to suspect a disability, and reason to suspect that special education services may be needed to address that disability. Thus, even when a student has a diagnosis, a



district may find that a special education evaluation is not warranted if a team does not have reason to suspect that special education services may be needed to address the disability.

Here, the District determined it would not evaluate the Student for special education eligibility, stating:

The Student has medical/mental health diagnoses. There is not consensus as to if there is any evidence that the same impact the Student at school...As such, the appropriate next step is to conduct a Section 504 evaluation to gather additional data to determine if any of the identified medical/mental health diagnoses substantially limit the Student's ability to engage in one or more major life activities...There presently is not sufficient evidence to suspect that the Student is a student who would meet eligibility criteria for special education, as there is no indication that any medical/mental health diagnoses are adversely impacting the student's involvement and progress in the general curriculum.

It is clear that the Student has a disability—multiple sources of information indicate the Student has been diagnosed with ADHD, PTSD, and anxiety. The Student was also suspected of having autism, although not diagnosed yet for a variety of reasons. Thus, the decision here comes down to whether there is reason to suspect that special education services are needed to address the disability.

The Parent expressed that the Student was struggling at school, including with emotional regulations, and private report noted the Student “has some challenges at school with inflexibility and emotional regulation,” but also stated that “though her teacher has been able to offer approaches that support [Student] and build on her strengths and interests.” In spring 2023, District staff and members of the guidance team shared that they did not see the Student has having a potential need for specially designed instruction at school, that the Student had not “demonstrated a need for any academic or social/emotional interventions,” and that the Student’s teacher reported “no academic or social/emotional concerns...in the school setting.”

Upon investigation, OSPI finds that the District’s guidance team considered relevant information about the Student, information from her teacher, information from the private evaluation, and input from the Parent. The majority of the guidance team did not suspect that special education services may be needed to address the Student’s disability and thus, the District did not propose to conduct a special education evaluation. OSPI finds that the District followed the proper process and considered relevant, Student-specific information. OSPI finds no information from the spring of 2023 that clearly shows the District erred in its decision and thus does not find a violation.

OSPI notes the Parent stated it was unclear to her “from the PWN how the [District] was able to determine that [Student] does not require a special education eligibility evaluation.” The prior written notice stated, “There is not consensus as to if there is any evidence that the same impact the Student at school...as there is no indication that any medical/mental health diagnoses are adversely impacting the student's involvement and progress in the general curriculum”—OSPI understands this to mean that the District did not suspect that special education services were needed. However, OSPI notes that the District could have been more explicit in its language that while a disability was suspected, a need for special education services was not.

More recently, On December 1, 2023, a guidance team meeting was held to consider whether to evaluate the Student for special education. The team determined it would move forward with a special education evaluation of the Student. According to the prior written notice, "Based on updated input from the Student's current teacher and both of her parents, there is sufficient evidence to support that the Student is a candidate for an initial special education." Given that the team review updated input, the recent decision to evaluate the Student does not show there was a violation during the period investigated in this complaint—spring 2023.

### Consent

OSPI also notes that the Parent raised concerns that the District failed to proceed with an evaluation despite the Parent providing consent. In May 2023, the District declined to conduct a special education evaluation and instead proposed a 504 evaluation. The Parent did sign a consent form labeled "Section 504 – Notification Consent" and wrote in the comments section, "I request that a 504 plan be provided to my child while the special education evaluation is being conducted. She needs supports and services in the following areas while the school evaluates which additional academic and non academic supports are needed: social, emotional, behavioral, communication..." Importantly, because the District declined to conduct a special education evaluation, the Parent indicating she was giving consent to an evaluation did not obligate the District to conduct a special education evaluation. The District was seeking consent for a 504 evaluation—a different process. As discussed above, a district, while it must consider information from a parent, determines after receipt of a referral whether it will evaluate a student. A parent providing consent for a special education evaluation when a district has not determined an evaluation is needed does not trigger the duty to evaluate. Thus, OSPI finds no violation with respect to the District not conducting an evaluation following the Parent's provision of consent on a 504-evaluation consent form.

### **CORRECTIVE ACTION**

By or before **January 5, 2024, January 31, 2024, and March 8, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

##### **Training**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on referral procedures, including documentation, notice, and timelines. The District will provide the trainer with a copy of this decision, SECC 23-145.

The following District staff will receive training: District special education administrators and special education staff at the school the Student attended during the 2022–23 school year.

The training will include examples and best practices for balancing timeline and parent participation requirements.

By or before **January 5, 2024**, 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 **January 31, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by February 9, 2024.

By **February 29, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **March 8, 2024**, 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.

Dated this 13th day of December, 2023

Dr. Tania May  
Assistant Superintendent of 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.)