

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-161

PROCEDURAL HISTORY

On November 8, 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 Yakima 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 November 8, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on November 13, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 1, 2023, the District requested an extension to submit their response. OSPI granted an extension until December 4, 2023.

On December 4, 2023, OSPI received the District's response and sent it to the Parent on the same day.

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

ISSUE

1. Per WAC 392-172A-03005, has the District appropriately evaluated the Student during the 2023–24 school year to determine if the Student is eligible for special education services?

LEGAL STANDARDS

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 the student is a good candidate for evaluation. 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 was a second grader at a District elementary school and was not eligible for special education services.

2. An April 20, 2023 medical provider's letter regarding the Student stated, "[The Student] is currently under my medical care – I recommend extra learning support and resources to encourage his continued language skills in English and support for assignments."

The Parent submitted this letter to the District. Additionally, in her complaint, the Parent alleged that she was concerned about her Student's academic abilities and that she had requested special education services.

2023–24 School Year

3. On August 22, 2023, the District held its first day of instruction for the 2023–24 school year. The Student was a third grader in a District elementary school and was not eligible for special education services.
4. A September 26, 2023 medical provider's letter regarding the Student stated:
[The Student] is currently under my medical care. I am aware that he is struggling in school academically and specifically is behind on reading and math benchmarks. It is imperative that the school test [the Student] for learning disabilities. I believe that he may qualify and would benefit from additional services.

This letter was submitted by the Parent to the District. At the same time, the Parent also submitted the following August 2, 2023 letter to the District, "[The Student] was a patient...on 08/02/2023. It is my opinion that [the Student] would benefit from a speech evaluation for disfluency."

5. A September 28, 2023 prior written notice (PWN) stated, in part:
This is to notify you that we have received a referral for [the Student]. You and a team of qualified professionals will review existing records, along with any additional information you provide, and will make a decision whether or not to proceed with an evaluation. To assist us in gaining a thorough understanding of your child, please forward any pertinent information as soon as possible.
6. An October 11, 2023 PWN stated, in part:
Student will not be evaluated for special education at this time. The speech language pathologist will meet with [the Student] and give him strategies for stuttering. She will work with the classroom teacher to track if [the Student] is utilizing the strategies independently. ...The team will join [the Student's] fall conference to discuss his progress over the four weeks between this meeting and the conference.

The reason we are proposing or refusing to take action is (emphasis in original)

[The Student] is making academic progress and has started in a general education intervention reading group. In the past there was an increase in his progress when he attended intervention groups. Stuttering/dysfluency was not observed by the speech language pathologist. His teacher has only noticed when [the Student] appears nervous in class. Updated assessments will provide more information on intervention skills and groups he may benefit from, as well as his progress. The team will monitor his progress to determine next steps.

...

[Parent] asked about 504 accommodations. The team will discuss this at the conference after monitoring [Student's] progress.

This decision was based on a review of existing data, and input from the teacher, staff, and Parent.

7. On November 8, 2023, the Parent filed this special education community complaint, alleging that the District had not initiated an evaluation of the Student despite the Parent's request and concerns about the Student's academic performance.

8. A November 13, 2023 PWN stated, in part:

- The...team are refusing to initiate an initial evaluation of [Student's] cognitive and communication skills, at this term. The team including the SLP, school psychologist, administrator, teacher, Parent and Student met on November 8, 2023 during Student's fall conference.
- The team watched videos of students who stutter to get an understanding of what school-aged stuttering looks like. All team members, including [Parent], agreed that [Student] doesn't stutter.
- [Parent] brought up concerns regarding [the Student's] pausing to respond and lack of vocabulary at his age.
- The SLP talked about the silent period for bilingual speakers.
- The administrator talked about his progress on WIDA which would reflect a growth in his language scores.
- The team talked about continuing with tier 2 and 3 interventions specifically looking at vocabulary, and continuing to monitor his progress.

...

The team considered initiating a special education evaluation.

The reason(s) we rejected those options: ((emphasis in original)

[Student] continues to make progress towards his WIDA and academic scores. Historically, when [the Student] receives interventions, [the Student] has demonstrated the ability to make progress. These interventions have been reinstated since the referral meeting on 10/10/23. The...team have not observed [the Student] stuttering even during pressured timed-tests.

This decision was based on a review of existing data, professional observations, and input from the teacher, staff, and Parent.

9. A subsequent November 15, 2023 PWN stated, in part:

[Student] will be evaluated to determine if he qualifies for special education services. He will be evaluated in the areas of cognition, academic, behavior/social-emotional, communications skills.

...

Dut to ongoing parent and doctor concerns the team will evaluate.

...

The action will be initiated on 11/15/2023.

10. On December 4, 2023, the District submitted its response. Regarding the case's issue, the District stated, "[We] had justifiable reasons for refusing evaluations – continued assessment and monitoring were required prior to moving to an evaluation. Further...complaint... is moot as the District has now agreed to initiate and (sic) evaluation."

CONCLUSIONS

Issue 1: Evaluation Referral – The Parent alleged that the District has not initiated an evaluation of the Student despite the Parent's request and concerns about the Student's academic performance. The District has responded that it "had justifiable reasons for refusing evaluations – continued assessment and monitoring were required prior to moving to an evaluation. Further...[the] complaint...is moot as the District has now agreed to initiate and (sic) evaluation."

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 the student is a good candidate for evaluation. 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.

In the present case, the Parent presented the District in April 2023 with a doctor's letter, dated April 20, 2023, expressing that the Student would benefit from "extra learning support and resources to encourage his continued language skills in English and support for assignments".¹ In her complaint, the Parent alleged that she expressed to the District that she was concerned about her Student's academic abilities. However, the letter did not clearly indicate the Student had a suspected disability and there is no contemporaneous documentation that the Parent clearly indicated she was requesting special education services. Under the circumstances, best practices at this point would have been for the District to clarify with the Parent what her intent was when she submitted the letter. For example, was the Parent's intent to ask the District for special education services?

In September 2023, the Parent submitted another doctor's letter, dated September 26, 2023, which stated, in part, "It is imperative that the school test [the Student] for learning disabilities. I believe that he may qualify and would benefit from additional services." The District acknowledged this letter in a September 28, 2023 PWN as a request for an evaluation, documented the referral, reviewed existing information, and in an October 11, 2023 PWN, expressed that it was not going to evaluate the Student for special education services. In this circumstance, the District acted in a timely fashion in responding to the Parent's evaluation request. The District reiterated that

¹ OSPI notes that while the issue in this complaint was opened related to the 2023–24 school year, upon investigation, we found that the Parent had raised this as a concern starting in April 2023. As this is connected to the overall referral and initial evaluation concerns raised, OSPI is considering the information from April 2023.

decision in a November 13, 2023 PWN, but then on November 15, 2023, the District reevaluated the data and its decision, agreeing to evaluate the Student for special education services.

In the present case, the District appropriately acknowledged the Parent's request for an evaluation in their September 28 PWN, and then in their October 11 and November 13 PWNs, informed the Parent why it was not going to evaluate the Student. Based on these actions, the District appropriately addressed the Parent's request for an evaluation, and thus, OSPI does not find a violation in the present case. Regardless, the Parent will receive what she has requested because the District agreed to conduct an evaluation on November 15, 2023.

CORRECTIVE ACTION

STUDENT SPECIFIC:

None.

DISTRICT SPECIFIC:

None.

RECOMMENDATION

OSPI notes that an evaluation of the Student is currently underway and if the Student is found eligible for special education services, OSPI strongly recommends the IEP team consider the impact of the delay in identifying the Student and consider whether any compensatory education services are needed.

Dated this 3rd day of January, 2024

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.)