

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-182

PROCEDURAL HISTORY

On December 18, 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 Bainbridge 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 December 18, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on December 19, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On December 22 and 30, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on December 28, 2023 and January 2, 2024.

On January 5, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on January 8, 2024. OSPI invited the Parent to reply.

On January 16, 2024, OSPI requested that the District provide additional information, and the District provided the requested information on January 17, 2024. OSPI forwarded the information to the Parent on January 18, 2024.

On January 22, 2024, the OSPI investigator spoke with the Parent and the Parent's advocate.

On January 25, 2024, OSPI received the Parent's reply. OSPI forwarded that reply to the District on January 26, 2024.

On February 9, 2024, OSPI received additional information from the Parent and forwarded that information to the District the same day.

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

ISSUES

1. Per WAC 392-172A-05010, since December 19, 2022, did the District appropriately provide the Parent with prior written notices (PWNs) after special education decisions were made regarding the Student?
2. Per WAC 392-172A-03005, since December 19, 2022, did the District appropriately refer the Student for an initial evaluation to determine if they were eligible for special education services?
3. Per WAC 392-172A-03020, was the District's evaluation conducted after December 19, 2022 sufficient?
4. Per WACs 392-172A-03020 and 392-172A-0302, since December 19, 2022, has the District appropriately considered the Parent's input into the Student's evaluation and individualized education program (IEP)?

LEGAL STANDARDS

Prior Written Notice: Written notice must be provided to the parents of a student eligible for special education, or referred for special education a reasonable time before the school district: (a) Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student; or (b) Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student. The notice must include: (a) a description of the action proposed or refused by the agency; (b) an explanation of why the agency proposes or refuses to take the action; (c) a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (d) a statement that the parents of a student eligible or referred for special education have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; (e) sources for parents to contact to obtain assistance in understanding the procedural safeguards and the contents of the notice; (f) a description of other options that the IEP team considered and the reasons why those options were rejected; and (g) a description of other factors that are relevant to the agency's proposal or refusal. 34 CFR 300.503; WAC 392-172A-05010.

Referral: 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.

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 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).

Initial Evaluation – Specific Requirements: The purpose of an initial evaluation is to determine whether a student is eligible for special education. 34 CFR §300.301; WAC 392-172A-03005(1). A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently

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 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."

comprehensive to identify all the student's special education and related services needs. No single measure or assessment as the sole criterion is used for determining a student's eligibility or determining an appropriate educational program for the student. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. In conducting the evaluation, the evaluation team must use a variety of assessment tools and strategies to gather relevant functional developmental, and academic information about the student. 34 CFR §300.304; WAC 392-172A-03020. When interpreting the evaluation for the purpose of determining eligibility, the district team must document and carefully consider information from a variety of sources. 34 CFR §300.306; WAC 392-172A-03040.

The evaluation must comply with the IDEA's procedural requirements. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student's IEP, including information related to enabling the student to be involved in and progress in the general education curriculum, or for a preschool child, to participate in appropriate activities. 34 CFR §300.304(b); WAC 392-172A-03020(2). A student will not receive special education and related services unless he or she is qualified for those services under one or more of the eligibility criteria established by WAC 392-172A-01035.

Eligibility Under IDEA: A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the eligibility categories listed in regulation and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations. 34 CFR §300.8(a)(1); WAC 392-172A-01035(1)(a). Upon completion of the administration of assessments and other evaluation measures: A group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student; and the school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. WAC 392-172A-03040.

Parent Participation in IEP Development: The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents (1) provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; and (2) participate in discussions about the child's need for special education and related services and supplementary aids and services. Individuals with Disabilities Education Act (IDEA), 64 Fed. Reg. 12,472, 12,473 (March 12, 1999) (Appendix A to 34 CFR Part 300, Question 5).

FINDINGS OF FACT

1. At the start of the 2022–23 school year, the Student returned to the District for second grade at a District elementary school (the Student previously attended a private school). The Student was not eligible for special education services and had accommodations under a 504 plan.

2. On May 9, 2023, the Parents emailed the school counselor and referred the Student for a special education evaluation. In a further May 15, 2023 email, the Parent wrote that she was concerned the Student may have learning disabilities as well as sensory processing challenges, and noted the Student had ADHD, anxiety, and a "family history for learning disability."
3. On May 15, 2023, the District school psychologist sent the Parents written notice, documenting the referral. The "notice of referral" indicated the Student had been referred on May 9, 2023, and included information about the referral processes. The notice indicated the Student had been referred due to concerns in:
 - Reading or understanding what is read, Writing (putting thoughts/ideas into written words and sentences), Math (calculating or problem solving), Following directions, Putting thoughts into spoken words (expressive communication), Attention and concentration, Complying with adult directives, Easily frustrated, Extreme mood swings, Social/peer interaction skills, Motivational issues, Anxiety.
4. On June 6, 2023, a multidisciplinary team meeting was held to review the Parent's referral. According to the District's response to this complaint, at the meeting, the team determined it would conduct an initial special education evaluation of the Student.

In clarifying information, the District explained that during the meeting, the team did not reach a consensus on whether to move forward with the initial evaluation, in part because of the "District's special education administrator...having to leave prior to the end of the MDT meeting." However, following the meeting, the special education administrator consulted with District staff and recommended that, "given the lack of consensus, it would be better to propose moving forward with the initial evaluation as was done in the 6/7/23 [prior written notice]."

5. Based on Parent notes from the meeting, documented in a June 6, 2023 email from the Parent, it appears the school psychologist proposed trying general education interventions. According to the Parent's notes, the school psychologist stated he "does not suspect a student to qualify for special education unless they have gone through interventions and failed to make progress first with [response to intervention] RTI."
6. In additional information from the District, the District stated it did not agree with the characterization of the school psychologist's statements in the Parent's notes. However, the District stated it "does acknowledge that the school psychologist was not seeing a data-based reason for moving forward with an initial evaluation as of 6/6/23."

In the Parent's reply and an interview, the Parent emphasized that the school psychologist told them in the meeting that the Student first must go through the RTI process. The Parent also stated that no one questioned the emailed notes or her characterization of the meeting at the time she sent the email.

7. Also, on June 6, 2023, the Parents emailed the school counselor and general education teacher, stating that they wanted to clarify that "our goal is to have the school district complete a comprehensive neurocognitive evaluation for [Student]" and that they did "not agree that it is

appropriate to accept RTI in lieu of evaluation at this time.” In a second email to the school counselor, the Parent clarified that she supported providing the Student interventions and supports and that they “also believe [Student] has demonstrated a need for evaluation.”

8. On June 13, 2023, the District’s director of student services (director) called the Parent, and they discussed evaluating the Student. The Parent stated that the District reversed its decision to not evaluate the Student, and provided her handwritten notes of the phone call, which indicated the director stated “We’re gonna [sic] move forward with an evaluation.”
9. On June 20, 2023, the school psychologist sent a copy of the District’s proposed consent form and documentation regarding the proposed initial evaluation, including feedback and rating forms for the Parents to complete as part of the evaluation. In the email, the school psychologist stated he would start testing the Student at the beginning of the next school year.

This documentation included a prior written notice, dated June 7, 2023, with an initiation date of June 6, 2023, which documented that the team proposed to conduct a special education evaluation, noting:

While the district has recommended general education intervention to address issues related to anxiety and presented data suggesting that [Student] is achieving academically to a typical degree compared to peers in her same grade, we recognize that she is a student with a disability. Parents report that she does not want to go to school, had frequent visits to the nurses office in the beginning of the year, and reports high levels of distress at home, especially when working on math.

10. In the Parent’s complaint, the Parent alleged that the District offered to do “RTI/MTSS instead of evaluating on June 6, 2023,” despite the Parents having provided the Student with private math tutoring since September 2022, and the private tutoring expressing concern about the Student’s performance in math.² The Parent’s complaint also outlined that the Student’s “social-emotional difficulties” and anxiety adversely impacted her education.
11. In an interview with the Parent and her advocate, they pointed out that the District backdated the prior written notice that was sent to them on June 20, 2023. The Parent and her advocate—who attended the June 2023 meeting—stated that they did not decide at the multidisciplinary meeting to evaluate the Student, that it was clear at the meeting that the District did not agree to evaluate and rather would do RTI.
12. The school year ended on June 22, 2023.

2023–24 School Year

13. At the start of the 2023–24 school year, the Student was not yet eligible for special education services, was in the third grade, and attended a District elementary school.

² The Parent’s complaint indicated the Student participated in weekly private math tutoring starting in September 2022 and continuing through the present.

14. The District's 2023–24 school year began on September 5, 2023.
15. A September 8, 2023 email from the Parent to the school counselor and general education teacher indicated that at the end of the last school year, "There were some interventions suggested by the team utilizing RTI discussed to be added to the 504 plan knowing that [Student] would also be evaluated by [school psychologist] to determine if she needs an IEP."
16. A September 13, 2023 email from the Parent to the Student's team, included that the Parent had spoken with the school psychologist on September 12, 2023, and shared that she "had concerns about him conducting his evaluation right away when school just started and [Student's] only been with her new teacher for a few days" and that she asked the school psychologist "if we can push the testing to start after [Student] has a couple weeks to settle in and learn her new routine." The Parent also indicated the Student was seeing a private occupational therapist.

In part, the school counselor responded and asked if there was a timeframe for the evaluation and whether they should meet now or after the evaluation to discuss the Student and options for the Student.

The Parent replied that they had some information from the Student's occupational therapist and wanted to meet to discuss the Student's 504 plan.

17. On September 13, 2023, the Parents emailed the school psychologist and stated they wanted the Student to get used to her new third grade teacher before beginning the initial special education evaluation.
18. On October 5, 2023, the District received signed consent from the Parents. The consent form included the following areas: reading, cognitive, social emotional/behavioral, vision, math, health and development, written language, and "other" wherein the Parent added "suspect dysgraphia and dyscalculia. Also please see addendum below regarding Anxiety, Sensory Processing Disorder."

The October 5, 2023 email from the Parent sending the signed consent form stated, in part, "I really appreciate you and the team for allowing [Student] to acclimate to her new teachers...I think this was beneficial for [Student]. Transitions can be a challenge for her..."

19. On October 9, 2023, the school psychologist requested the Parents provide copies of any medical documents or evaluations of the Student to include in the District's evaluation.

The Parent responded on October 16, 2023, that she would "try to get the medical documents/evaluations that I have to you asap" and noted the Student was having a procedure that Wednesday and was having an occupational therapy screening the following Monday.

20. On November 14, 2023, the school psychologist followed up with the Parents about obtaining Parent feedback and social/emotional/behavioral rating forms that had previously been provided to the Parents in June 2023.
21. On November 21, 2023, the school psychologist emailed the Parents and requested any medical documents. The school psychologist also proposed a meeting to review the initial evaluation.
22. On November 27, 2023, the school psychologist emailed the Parents and provided them a copy of the Student's initial evaluation results. The school psychologist again requested any medical documents related to the Student's diagnoses and asked about the Parent's availability to meet to discuss the results of the evaluation.

The Parent responded, asking about the reason for the medical documentation and asking about the recommendation in the evaluation report that the Student would not be eligible for special education services.

23. The prior written notice, dated November 27, 2023, indicated the Student had been evaluated and that based on the evaluation, the Student was not eligible for special education services.
24. In her complaint, the Parent stated that the prior written notice represented predetermination of the Student's eligibility, and that the Parents were not "advised of meeting or attendees" or "afforded [the] opportunity to fully participate as an equal team member."
25. The initial evaluation report included in the District's response was dated November 29, 2023, and indicated the Student was not eligible for special education services.

The report included that the Student was referred with concerns in math, following directions, social skills, emotional regulation, sensory issues, and executive function issues. The report indicated the Student had been diagnosed with ADHD, an anxiety disorder, sensory processing disorder, and Irlen Syndrome; and had received "dialectal behavior therapy."

The report summarized that the Student's strengths were in reading and writing, and included input from the Student's teachers. The teachers indicated that the Student's math was "up and down depending on anxiety level" and that while the Student was "strong in math...[she] just doesn't have as much confidence in that area." The teachers also described supports provided, such as breaks, frequent check-ins, a list of "strategies to utilize when she becomes anxious" taped to her desk.

The evaluation report indicated the Student was evaluated in the areas of reading, cognitive, social/emotional, math, and written language. The evaluation included the following assessments: Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), Kaufman Test of Educational Achievement, Third Edition (KTEA-3), Behavior Assessment System for Children, Third Edition (BASC-3); and looked at health and developmental information; and, included observations.

The evaluation report summarized that there were “no deficits found with [Student’s] cognitive profile”; scores in reading were average or higher; math scores were in the average range, although “anecdotal evidence suggests that [Student] has some apprehension about the subject of math”, that this was a source of tension for the Student, and that while the Student’s math skills were typically developing and the scores suggest the Student is “capable in the subject of math in general,” the Student “may need extra encouragement and practice to develop confidence in this area”; scores in writing were within the average range; scores in behavior related areas did not demonstrate a need for specially designed instruction.

The evaluation summarized that the Student’s disabilities were not adversely impacting her education nor did she show a need for specially designed instruction.

The evaluation report also attached a feedback document from the Parent, which included strengths and areas of need or limitation. The Parent’s feedback included information about school refusal behaviors, daily panic attacks when arriving home from school, and other areas of anxiety and fear. The Parent also provided information about the Student’s weekly 1:1 math tutoring, counseling, and work with an occupational therapist.

26. Regarding the sufficiency of the District’s evaluation, the Parent stated in her reply to the District’s response that the evaluation was insufficient for the following reasons:

- The parents were not included in the decision-making process for eligibility.
- The District failed to assess in all areas of suspected disability.
- The District failed to address the Student’s attendance, vision, and other concerns raised by Parents and “last year’s staff.”

The Parent also raised concerns that they were sent three different “final” evaluations reports and that in one, there was “another child’s information...included.” The Parent stated:

On November 27, 2023, the first version was sent with incorrect data (another child’s information and graph) and a missing page 15. On December 12, 2023, the second version replaced the correct student’s graph and added the missing page...on December 14, 2023, the last version added medical information and modifications to pages 7, 13, and 14.

27. On November 30, 2023, the Parent emailed the school psychologist and stated she had received the evaluation report but had not had an opportunity to thoroughly review. The Parent also stated, “I did notice that you’ve requested medical information” and asked him to “clarify the reason for this request, considering that the report is already completed.”

The psychologist responded that medical records were helpful to obtain information about the Student’s diagnoses and that he could update the special education evaluation with that information. The psychologist further stated, “evaluators will often give suggestions for accommodations to be implemented at schools, as looks to be the case here!” The psychologist stated the report contained the reasons the Student was not found eligible for special education and that they could discuss more with the Parents and team.

28. On December 11, 2023, the Parent emailed the school psychologist that they were awaiting copies of the medical documentation from the Student's private providers and stated they had other questions about the initial evaluation report.
29. Subsequent emails between the Parents and the school psychologist discussed the medical documentation and changes made to the initial evaluation report—e.g., a graph was corrected, and medical information was added to the health and developmental section. The school psychologist continued to propose holding a meeting to discuss.

The District, in its response, noted the Parents did not respond about availability for a meeting. Although in a December 14, 2023 email, the Parent stated she was "unclear what the purpose would be at this time [to meet] as we received a prior written notice from you indicating [Student] is not eligible." The school psychologist wrote that it would be helpful to discuss accommodations and interventions to address anxiety, and the Parent replied, "thank you for the explanation that the meeting is more to discuss [Student's] 504...[we'll] get back to you promptly."

30. Regarding medical documentation, the Parent noted in her reply that she had previously, in May 2022, provided the District with the Student's medical records by filling out "release of information forms provided by the school counselor" and noted the Student's 504 plan "specifies that the district received and considered documentation of the [Student's] medical diagnosis and management of [ADHD]." The Parent also stated that "confusion arose" as to why the District was requesting additional medical information "when the eligibility decision was already made."
31. On December 14, 2023, the school psychologist shared medical records related to the Student obtained during the evaluation with the school nurse.
32. On December 15, 2023, the Parents emailed the school psychologist that they would get back to him on the meeting proposal.
33. The District was on winter break from December 18, 2023 through January 1, 2024.
34. On December 18, 2023, the Parent filed this complaint, alleging that the District denied the Student a free appropriate public education (FAPE), and specifically that the District failed to provide her prior written notice as required and an "opportunity to participate as an equal team member and an opportunity to provide input." The Parent also alleged the District "predetermined" the Student's eligibility for special education without holding a meeting. The Parent further alleged that the evaluation was not comprehensive and that the evaluation and prior written notice contained "incorrect data."
35. In its response to this complaint, the District denied that the initial evaluation process was insufficient. The District stated:

Here, Student's initial evaluation was led by an experienced and trained school psychologist...[who] used a variety of instruments, tools and strategies as part of the evaluation, including standardized cognitive and academic achievement testing, published

social/emotional/behavioral rating scales given to both Parents and Student's teacher, and gathering of relevant functional, developmental, and academic information from the school, Student's teachers (past and present) and Parents...[Psychologist] sought multiple times to obtain additional information from Parents regarding any available medical documentation, copies of which were ultimately obtained from Parents and added to Student's evaluation in mid-December 2023...[Psychologist] also directly observed Student at school in both an unstructured and structured learning activity...Through these activities, [Psychologist] gathered multiple data points that provided a sufficient basis to determine whether or not Student was eligible for special education.

However, the District "admits that a determination of Student's eligibility for special education is not yet complete, as a team meeting has not yet been convened to review the assembled assessment data." The District acknowledged that a team meeting needs to be held to "review, collectively, the assembled data and reach an ultimate determination as to whether Student meets the IDEA's three-prong test for special education eligibility."

36. To date, the evaluation group has not met with the Parent to discuss the evaluation and finalize the eligibility determination.
37. In an interview with the Parent and her advocate, the Parent emphasized—and emails showed—that the District has asked her to do a facilitated or mediated meeting and that she agreed and proposed dates for mediation. However, the Parent stated the District then withdrew its request for the meeting. The Parent stated she was contacted by phone on January 5, 2024, and spoke with the mediation group who notified her that the District rescinded the mediation they had proposed.

The Parent also stated that with regards to earlier attempts to convene a meeting, it was not that the Parent did not want to meet regarding the evaluation or that she declined a meeting, rather that she wanted to meet before the eligibility decision was made. The Parent stated she did not understand the purpose of the meeting after the District sent her a prior written notice, stating the Student was not eligible for special education.

Regarding medical records, the Parent pointed out that she had previously signed releases of information that allowed access to the Student's medical records and doctors. And in addition, there were doctor's letters the Parent had requested but was waiting on, and therefore did not have those documents to share. The Parent stated that she now had additional records that she could share with the District regarding the Student's needs.

38. In additional information provided by the Parent, the Parent shared concerns and communications with the District raising concerns that the Student was showing school refusal behaviors and anxiety at school.
39. A January 22, 2024 letter from the Student's private tutor, shared with OSPI by the Parent, indicated the tutor—who previously taught elementary school in the District—thought the Student fit the definition of "twice exceptional" as she was very bright, "works hard to mask challenges from the learning disabilities that she experiences," and struggles with impacts of

ADHD and anxiety. The tutor noted the Student “She has a very quick mind, but has trouble prioritizing what she should be paying attention to” and also noted challenges with social/emotional regulation that impacted access to tutoring.

CONCLUSIONS

Issue One: Prior Written Notice – The Parent alleged the District failed to provide prior written notice as required and that the prior written notice contained “incorrect data.”

Written notice must be provided to the parents of a student eligible for special education or referred for special education a reasonable time before the school district: Proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.

The first instance the District was required to provide prior written notice was to document the decision to initiate the evaluation, which was documented in a June 7, 2023 prior written notice. This prior written notice was provided to the Parent on June 20, 2023. The timing of the notice was irregular on multiple levels. First, the investigation shows the multidisciplinary team did not agree to initiate an evaluation at the June 6, 2023 meeting; rather, this decision happened after the meeting, in part when the Parent spoke with the District’s director of student services (director) around June 13, 2023. Thus, the District back dated the prior written notice, making it appear a decision was made on June 6 or 7, 2023. Second, prior written notice must be provided to a parent a reasonable time *before* a district initiates or refuses to initiate an action. Here, the Parents were provided the prior written notice on June 20, 2023, of an action initiated, at least according to the notice itself, on June 7, 2023—this, combined with the backdating of the notice and confirmed by contemporaneous emails—caused the Parent confusion about what decision was actually made with respect to an evaluation. While ultimately the confusion was rectified by the District’s agreement to evaluate and the prior written notice contained the required elements, OSPI finds a violation as the notice was not provided to the Parent prior to the initiation date on the notice.

The second instance was upon the completion of the evaluation, which the District documented in a prior written notice, dated November 27, 2023. This prior written notice stated that the Student had been evaluated and that based on the evaluation, the Student was not eligible for special education services. While the prior written notice was minimal on details, it sufficiently communicated the District’s evaluation decision that the Student was not eligible for special education. This meets prior written notice requirements; however, as discussed below in issue three, the District’s position is that the evaluation group has not finalized the eligibility determination of this Student, presenting a different concern addressed below.

Overall, OSPI finds a violation with respect to the timing of the June 7, 2023 prior written notice. The District will be required to provide staff written guidance relating to prior written notice requirements.

Issue Two: Referral Procedures – The Parent alleged the District offered to do “RTI/MTSS instead of evaluating on June 6, 2023,” thus failing to follow referral procedures.

There are several elements included in the special education referral process. 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. This occurred when on May 9, 2023, the Parent referred the Student for consideration for a special education evaluation and the District provided the Parent written notice, documenting the referral on May 15, 2023.

A district must then review the referral, and 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.

Here, on June 6, 2023, less than 25 school days after the referral, the multidisciplinary team met, discussed the referral. However, the investigation shows the multidisciplinary team did not reach a consensus regarding initiating an evaluation at the June 6, 2023 meeting; rather, this decision happened after the meeting, in part when the Parent spoke with the director around June 13, 2023. Thus, it is not entirely clear when the decision to evaluate was made; however, the call with the director was within 25 school days of the referral and could be considered the decision date.

Aside from the timeline, OSPI does express some concern related to the discussion at the multidisciplinary team. While the District's response included the position that "the school psychologist was not seeing a data-based reason for moving forward with an initial evaluation as of 6/6/23", the Parent's notes from the meeting indicated the psychologist stated he "does not suspect a student to qualify for special education unless they have gone through interventions and failed to make progress first with [response to intervention] RTI."³

OSPI notes that while OSEP "supports state and local implementation of [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." While it would be appropriate for a district to not evaluate a student because it did not suspect a disability and a need for specially designed instruction, it is not appropriate to require a student receive a certain amount of intervention time or go through an RTI process as a pre-requirement to being evaluated if a disability and need for special education was otherwise suspected. Here, the school psychologist's statements leaned toward there being a requirement to do RTI first. Yet, ultimately, the District did agree to initiate an initial evaluation of the Student. Thus, OSPI does not find a violation related to referral processes. However, OSPI strongly recommends the District consider whether staff require training on referral processes and RTI and

³ The District disagreed with this characterization; however, the Parent and her advocate who was at the meeting emphasized that this is what the psychologist communicated. The Parent and her advocate also highlighted that, at the time she sent the meeting notes in June 2023, no one on the team disagreed with her record of the meeting. From OSPI's perspective, regardless of the exact statements made at the meeting, this is an opportunity for the District to review its process and ensure communication around RTI is clear and accurate.

whether teams need coaching or guidance on how to share information about referral and RTI with parents.

Issue Three & Four: Sufficient Evaluation, Eligibility Determination, and Parent Participation

– The Parent alleged the District predetermined the Student’s eligibility without holding a meeting and that the evaluation was not comprehensive. The Parent also alleged the District failed to provide her an “opportunity to participate as an equal team member and an opportunity to provide input.”

Evaluation & Parent Participation

The purpose of an initial evaluation is to determine whether a student is eligible for special education. A school district must assess a student in all areas related to his or her suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor ability. The evaluation must be sufficiently comprehensive to identify all a student’s special education and related services needs. No single measure or assessment as the sole criterion is used for determining a student’s eligibility or determining an appropriate educational program for the student. If a medical statement or assessment is needed as part of a comprehensive evaluation, the district must obtain that statement or assessment at their expense. A group that includes qualified professionals selected by the district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, in order to determine if the student is eligible for special education and the content of the student’s IEP, including information related to enabling the student to be involved in and progress in the general education curriculum.

Here, the evaluation report indicated a sufficient evaluation was conducted. The Student was evaluated in the areas of reading, cognitive, social/emotional, math, and written language; the evaluation utilized the following assessments: Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V), Kaufman Test of Educational Achievement, Third Edition (KTEA-3), Behavior Assessment System for Children, Third Edition (BASC-3); the evaluation report included health and developmental information; and, included observations and input from teachers.

The parents of a child with a disability are expected to be equal participants along with school personnel, in developing, reviewing, and revising the IEP for their child. This is an active role in which the parents provide critical information regarding the strengths of their child and express their concerns for enhancing the education of their child; and participate in discussions about the child’s need for special education and related services and supplementary aids and services. In addition, a comprehensive evaluation must consider information provided by parents.

The Parent had opportunities to participate in the initial evaluation. The District provided the Parent with feedback and social/emotional/behavioral rating forms for the Parent to complete. The District considered the Parent’s desire to delay the start of the evaluation until the Student had time to get used to her new teacher as the Parent stated transitions could be challenging for the Student. The school psychologist also requested the Parent provide copies of any medical

documentation or outside evaluations beginning on or around October 9, 2023. The Parent, at one point, stated she would send medical documents and provided information that the Student was being screened for and/or seeing a private occupational therapist. The Parent shared that she was not trying to withhold medical information from the District, rather she had previously signed releases of information to share medical information with the District and the Parent also stated there was information she had requested from the Student's providers that she would have shared, but had not received yet herself. The Parent ultimately did not provide the District any medical documentation until after the evaluation was completed; although, the school psychologist updated the evaluation report's medical and developmental section when additional information was provided. The evaluation report also attached a feedback document from the Parent, which included strengths and areas of need or limitation. The Parent's feedback included information about school-refusal behaviors, daily panic attacks when arriving home from school, and other areas of anxiety and fear. The Parent also provided information about the Student's weekly 1:1 math tutoring, counseling, and work with an occupational therapist.

Overall, the evaluation utilized a variety of instruments, tools, and strategies as part of the evaluation, including standardized cognitive and academic achievement testing, published social/emotional/behavioral rating scales given to both Parents and Student's teacher, and the gathering of relevant functional, developmental, and academic information from the school, Student's teachers (past and present) and Parents. Thus, OSPI finds that the evaluation was sufficient comprehensive.

Eligibility Determination & Parent Participation

A district is not specifically required to hold a meeting to determine eligibility; rather, upon completion of the administration of assessments and other evaluation measures: A group of qualified professionals and the parent of the student determine whether the student is eligible for special education services and the educational needs of the student; and the school district must provide a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. Although, most districts hold a meeting to review the evaluation report and make the eligibility determination. A student eligible for special education means a student who has been evaluated and determined to need special education because he or she has a disability in one of the eligibility categories listed in regulation and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations.

The District's evaluation report and the prior written notice indicated the District did not find the Student eligible for special education. However, in this case, because there was not an evaluation meeting held, it is not clear this was a determination made by all the professional members of the evaluation group regarding the Student's eligibility for special education.

The District indicated it wanted to hold an evaluation meeting and the District itself acknowledged that "a determination of Student's eligibility for special education is not yet complete, as a team meeting has not yet been convened to review the assembled assessment data." The District stated that a team meeting needs to be held to "review, collectively, the assembled data and reach an

ultimate determination as to whether Student meets the IDEA's three-prong test for special education eligibility."

There were some attempts to schedule a meeting; although, OSPI finds that there was confusion over the timing and in some of the communication which likely contributed to a meeting not being scheduled. For example, on November 21, 2023, *prior* to sending the Parent the evaluation report, the school psychologist proposed a meeting to review the evaluation. The Parents did not provide availability for a meeting. Then, *after* the school psychologist sent the evaluation report and prior written notice to the Parent on November 27, 2023, the District continued to propose a meeting. The documentation indicated there was confusion about the purpose of a meeting after this point, as the evaluation report was completed and sent to the Parents, and thus the Parent questioned what the purpose of the meeting was, given the District indicated the Student was not eligible for special education services. In response, the District seemed to indicate that a meeting would be to discuss the Student's 504 plan and not to discuss the evaluation. As part of this investigation, the Parent clarified that she did want to meet but was confused about what the goal of a meeting would be after the District sent the evaluation report and prior written notice. Ultimately, a meeting was not scheduled, and the Parent was not able to participate in the determination of eligibility.

Given the totality of the circumstances, while OSPI finds that the evaluation is sufficient (discussed above), OSPI finds that the District has not finalized its determination of eligibility with Parent involvement in that decision, within the 35-school day evaluation timeline. OSPI finds a violation. As corrective action, the District will be required to schedule an evaluation group meeting with the Parents to go over the evaluation, and because at this point the Parent has additional medical and other documentation, the group should consider whether this new/additional information should be incorporated into the evaluation report and considered when making the final eligibility determination.

CORRECTIVE ACTIONS

By or before **March 7, 2024** and **April 5, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Evaluation Group Meeting

By or before **February 29, 2024**, the professional members of the evaluation group and the Parents will meet to go over the evaluation and make a finalized eligibility decision. At this point, the Parent has additional medical and other documentation, the group should consider whether this new/additional information should be incorporated into the evaluation report and considered when making the final eligibility determination.

If the group determines that further time is needed to incorporate new information, the District should either seek the Parent's consent to formally extend the evaluation timeline or the District

could consider whether a new, limited reevaluation (or a new full comprehensive evaluation) is needed.

By or before **March 7, 2024**, the District will provide OSPI with the following documentation: a) any relevant meeting invitations, b) a prior written notice, summarizing the groups discussion and decisions; and c) any other relevant documentation. If the group determines that additional time or evaluation is needed, OSPI will review the plan and determine whether additional corrective action deadlines are warranted.

DISTRICT SPECIFIC:

Written Guidance

By **March 29, 2024**, the District will ensure that the following individuals receive written guidance on prior written notice requirements, including prior written notice timing/dates: the principal, the school psychologist, and special education certificated staff (teachers), at the school that the Student is enrolled in. The guidance will include examples and discussion of best practices.

By **March 7, 2024**, the District will submit a draft of the written guidance to OSPI for review. OSPI will approve the guidance or provide comments by March 15, 2024.

By **April 5, 2024**, the District will submit documentation that all required staff received the guidance. This will include a roster of the required personnel. This roster will allow OSPI to verify that all required staff members received the guidance.

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

OSPI strongly recommends the District consider whether staff require training on referral processes and RTI and whether teams need coaching or guidance on how to share information about referral and RTI with parents.

Dated this 12th day of February, 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.)