

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-75

PROCEDURAL HISTORY

On May 23, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from an attorney (Complainant) representing a student (Student) attending the Clover Park School District (District). The Complainant alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, regarding the Student's education.

On May 23, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent. OSPI asked the District to respond to the allegations made in the complaint.

On June 3, 2024, the District requested to extend the timeline for the District response to June 14, 2024. OSPI approved the extension.

On June 17, 2024, OSPI received the District's response to the complaint and forwarded it to the Complainant on the same day. OSPI invited the Complainant to reply.

On June 20, 2024, OSPI received written consent from the Student's Parent to release information to the Complainant.

On June 28, 2024, OSPI requested additional information from the District. On July 9, 2024, OSPI received the information and forwarded the information to the Complainant the same day.

On July 10, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District the same day.

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

SCOPE OF INVESTIGATION

This decision references events that occurred prior to the investigation period, which began on May 24, 2023. These references are included to add context to the issues under investigation and are not intended to identify additional issues or potential violations, which occurred prior to the investigation period.

ISSUE

1. Whether, since June 2023, the District denied the Student a free appropriate public education (FAPE), specifically:
 - a. Whether the District met its child find obligations under WAC 392-172A-02040 and/or followed referral procedures under WAC 392-172A-03005; and,
 - b. Whether the District followed initial evaluation procedures, including obtaining consent and timelines outlined in WAC 392-172A-03000 and WAC 392-172A-03005?

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 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. School districts will conduct any required child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the IDEA. 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. 34 CFR §300.111; WAC 392-172A-02040.

To accomplish this, each district must implement policies and procedures that describe the methods it will use to conduct child find activities. 34 CFR §300.111; WAC 392-172A-02040(3). “[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)).

Initial Evaluation Timeline: When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, attempt without unnecessary delay to obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent or thirty-five school days after the date the consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process hearing or such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline. WAC 392-172A-03005.

FINDINGS OF FACT

2022–23 School Year

1. At the beginning of the 2022–23 school year, the Student was a sixth grader who attended the District. The Student had not been evaluated for special education services or for a 504 plan.
2. In September 2022, the District initiated a 504 evaluation of the Student. Later, the District met with the Parent and developed a 504 plan based on the Student’s diagnosis of autism and attention-deficit/hyperactive disorder (ADHD).

3. In October 2022, the District and Parent met to discuss the possible need for a special education evaluation. The prior written notice that accompanied the meeting stated the District did not evaluate the Student because the Student was going to change school districts "in the near future," according to a conversation between the school psychologist and the Parent. The District stated the Parent preferred the new school district evaluate the Student.
4. The Student attended the new school district until March 2023, after which the Student was homeschooled. The documentation does not show that the other school district evaluated the Student for special education eligibility.
5. In June 2023, according to the complaint, the Parent "recalled enrolling the Student in the District," indicating that the Student needed an individualized education program (IEP). The complaint stated that someone from the District told the Parent that someone would be in contact with her.
6. On August 2, 2023, the Parent enrolled the Student in the District according to the enrollment forms. The enrollment form indicated that the Student had a 504 plan.

2023–24 School Year

7. At the beginning of the 2023–24 school year, the Student was a seventh grader who was again enrolled in the District. The Student had a 504 plan, dated September 19, 2022, that included accommodations such as breaks, extended time, preferential seating, and written directions.
8. On August 30, 2023, the 2023–24 school year began in the District.
9. Beginning in September 2023, there were 14 documented behavior incidents involving the Student during the school year, according to the June 2024 draft evaluation report. The incidents were as follows:
 - 5/16/2024: Not following teacher directives throughout class; Telling the teacher "no" – refusal to comply
 - 5/10/2024: Cell phone violation; Non-compliance with teacher directives
 - 5/09/2024: Off task; Yelling across the classroom to speak to another student
 - 4/12/2024: Unsubstantiated – accused of grabbing student at lunch; however, video did not support complaint
 - 4/11/2024: Cell phone violation; Non-compliance with teacher directives
 - 4/09/2024: Did not respond to redirections from teacher; Separated from peer and moved closer to teacher; Continued non-compliance.
 - 3/27/2024: Lewd/Obs/Profanity – Other – Overheard by admin telling another student "to go kill self." [Student] reported he was joking with the student.
 - 3/28/2024: Not complying with new school rule – cell phone to be in backpack. He was allowed to keep backpack in close proximity; however, he continued to get into the backpack.
 - 3/07/2024: He was reported to have been in the girls restroom.
 - 1/19/2024: Talking during documentary with repeated reminders/redirection
 - 1/17/2024: Disrupting the class
 - 1/12/2024: Distracting others; Refusal to follow directions
 - 10/5/2023: Distracting others talking with repeated redirection; use of profanity

- 9/27/2023: Continued talking during silent periods/activities
10. The Student's attendance record showed the Student missed school during that period on October 17, 18, and 20, 2023. There is conflicting evidence of the reason why the Student did not attend school:
 - The District stated that in early to mid-October 2023, the Parent kept the Student from educational services over a dispute regarding the Student's discipline.
 - The Complainant's reply contested the District's account, stating there was no disciplinary record for that time period.
 - There was a documented incident on October 5, 2023 in the "Student Disciplinary Report."
 11. On October 19, 2023, the assistant superintendent emailed the school assistant principal and the special education director (director), notifying them that the Student "will be absent until further notice" according to the Parent. The assistant principal indicated that work would be sent home for the Student to complete. It was unclear whether the reason for the absences was health reasons or otherwise.
 12. According to an email on the same day from the support specialist (specialist) to the school principal and assistant superintendent, the Parent called the specialist about a possible truancy action being initiated by the Student's middle school. The specialist provided information to the Parent about truancy.
 13. On October 26, 2023, according to the "Guidance Team Record – Special Education Referral" form, the Parent requested that the District evaluate the Student for special education services. Prior written notice, dated the same date, indicated the District agreed to evaluate the Student. The documentation provided by the District included a "Consent for Initial Evaluation" to evaluate in the following areas: adaptive; academic; general education; social/emotional/behavior; and cognitive, but other areas would be considered based on the input from the Parent.
 14. The complaint stated that it was not clear whether the Parent received the prior written notice, proposing the evaluation.
 15. On October 27, 2023, school psychologist 1 emailed another school psychologist (school psychologist 2) and the English language arts resource teacher (resource teacher) that he had talked with the Parent about the evaluation process and would be sending her a consent to evaluate form.¹
 16. On November 3, 2023, the Parent signed the consent to evaluate, but according to the District, the District did not receive the signed consent form until November 23, 2023.

¹ It should be noted that the Student's sibling was also going through the referral process at the same time. Thus, it was unclear sometimes if emails were about the Student, his brother, or both.

17. Also, on November 3, 2023, school psychologist 1 and the resource teacher exchanged emails regarding who was being referred (the Student or his sibling). School psychologist 1 stated he would call the Parent to make certain who was being referred.
18. On November 30, 2023, school psychologist 1 emailed the Parent, requesting medical documentation about the Student.
19. On December 4, 2023, the Parent emailed a letter, dated the same day from the Student's physician, that stated the Student was diagnosed with autism and ADHD. School psychologist 1 replied that the Student's testing had begun.
20. On December 18, 2023, the special education supervisor (supervisor) emailed school psychologist 1, stating his last day for the District would be December 22, 2022. Evaluations would then be transferred to school psychologist 2.
21. The Parent later indicated to the assistant principal that, according to a January 17, 2024 email, the Parent provided consent on November 6, 2023, and a meeting was scheduled for December 18, 2023. The meeting did not take place.
22. According to the District, school psychologist 1 did not follow District procedures to convene the "referral team" to review any history of interventions or consider interventions available through the MTSS (multi-tiered system of support) process before initiating the referral. The school psychologist proceeded to schedule an evaluation meeting without the referral team on December 19, 2023, according to a January 17, 2024 email from the assistant principal to the District special education director.
23. On January 9, 2024, the school psychometrist emailed the Student's teachers to begin evaluating the Student.
24. From January 12 through April 11, 2024, the Student had eight behavior incidents. The behavior incident reports indicated the behaviors were mostly related to being disruptive and not following directions.
25. On January 17, 2024, the Parent emailed the Student's diagnoses to the assistant principal.
26. On January 18, 2024, school psychologist 3 emailed the director that she had been assigned to complete the Student's evaluation. The email stated, "[Student] – consent 11/03/2023 Due: 1/08 (called to obtain extension on 1/08)..."
27. On January 29, 2024, the director emailed the assistant principal, school psychologist 1, and school psychologist 2, asking for an update about the evaluation.
28. The complaint stated that the District did not contact the Parent until February 6, 2024. On that day, school psychologist 2 emailed the Parent, stating the assessments that would be conducted and requested the Parent complete a behavior rating scale. School psychologist 2

stated, "When [Student] and [student] are healthy and return to school, we (the team) will complete the needed assessments..."

29. The District's response noted that based on the District receiving the Parent's consent on November 23, 2023, the 35-day timeline to evaluate would run until January 30, 2024. However, the District stated the Student was absent many days from school.
30. From November 26, 2023 to January 30, 2024, the Student was absent 14 school days. The Student continued to miss school during January and February 2024; the Student missed 19 days out of 35 school days, returning to school on February 26, 2024. The District stated that the Student's absences were not disability-related; instead, there were a series of illnesses that affected the entire family.
31. The District's response stated the Student returned to school on February 26, 2024. The District continued to work with the Parent to complete the evaluation while the family recovered from their collective illnesses through March 2024. On February 6, 9, and 12, and March 12, 2024, school psychologist 2 exchanged emails with the occupational therapist (OT) about having the Parent complete assessment forms for the evaluation. As of March 12, 2024, the District was waiting for the Parent to complete the assessment forms.
32. On March 18, 2024, school psychologist 2 and the speech/language pathologist (SLP) exchanged emails about scheduling an evaluation meeting with the Parent. School psychologist 2 stated, "I ended up asking teachers to do the adaptive as no response from parent."
33. On March 19, 2024, the OT emailed school psychologist 2, stating:

I still haven't heard back from the mom. I sent the questionnaires out last week and sent an email. I also called and left a message a few weeks ago. I also sent an email to all the teachers and didn't hear back from any of them. I will go back and see if I have the right teachers. If I don't hear back from anyone then it is impossible to do a sensory evaluation. It's all based on parents and teachers answering questions.
34. On March 27, 2024, the assistant principal emailed the OT that the Parent rating scales had been received. On the same day, school psychologist 2 emailed the assistant principal, stating the Parent had not gotten back about scheduling the evaluation meeting.
35. The District acknowledged that the evaluation timeline was not met and argued it had minimal impact on the Student in "light of the circumstances." These circumstances included prolonged absences and the relatively recent diagnoses of autism and ADHD. The District stated that it has completed the evaluation and has a draft report to review with the Parent. The District proposed a meeting to determine the Student's eligibility for special education services. And if the Student is eligible, the IEP team would develop an IEP for the Student. Based on the Student's IEP, the team would determine what and how much compensatory education services are required.
36. The Student's 2023–24 grades were as follows:

Course	First Quarter	Second Quarter
7th Grad Math	D+	None
7th Grad Science	A	B
Beginning Band	A	B
Communication Tools	B	C+
7th Grade English Arts	D+	D
7th Grade Social Studies	B	C-
Connections	Pass	Fail

37. According to the Student’s 2023–24 attendance record, the Student was absent for 32.42 days from school.

CONCLUSIONS

Issue One: Child Find – The complaint alleged the District denied the Student FAPE by failing to timely identify and evaluate the Student for special education services. A district is required to locate, identify, and evaluate those students who are suspected of having a disability. OSPI notes the evaluation timeline is addressed in issue two below.

Here, the Student previously attended the District during the 2022–23 school year. During that school year, the Student initially had a 504 plan and in October 2022, the Student was referred for a special education evaluation. However, the Parent informed the District that the Parent was moving to a different school district, so the evaluation was not initiated at that time. The case record did not show that the new school district evaluated the Student. There was no indication why the Student was not evaluated.

The Parent proceeded to enroll the Student in the District for the 2023–24 school year. The Complaint stated that the Parent told the District that the Student needed an IEP, although there was no record of the Parent requesting the IEP at that time when the Student was reenrolled. At the beginning of the school year, the District implemented the Student’s 504 plan and at the request of the Parent, the Student was referred for evaluation on October 26, 2023. The Parent signed the consent to evaluate on November 3, 2023, but the District did not receive the consent form until November 23, 2023.

At the time the Student enrolled in the District, the District was on notice that a disability had been previously suspected. In fact, the District considered evaluating the Student during the 2022–23 school year, but the Parent moved to a different district. But from the time the District was going to initially evaluate the Student in October 2022 to August 2023, when the Student enrolled in the District, it was reasonable for the District to wait to consider if there was a change in the Student’s circumstances before evaluating, including considering whether the 504 plan was sufficient to meet the Student’s needs based on the medical diagnoses of autism and ADHD. Other than the two minor behavior incidents that previously occurred and the two medical diagnoses, there was no other indications in the case record that an evaluation was needed sooner. The District eventually proposed evaluating the Student on October 26, 2024. No violation is found with respect to child find.

Issue Two: Initial Evaluation Timeline – The complaint alleged the District denied the Student FAPE by exceeding the evaluation timeline that resulted in the Student not receiving special education services. A district is required to evaluate and determine a student’s eligibility for special education services within 35 school days of receiving consent from the parent.

Here, the District proposed evaluating the Student on October 26, 2023. The Parent signed the consent for evaluation on November 3, 2023, and the District received the consent form on November 23, 2023.

The District began the evaluation, but delays due to the Student’s absences, school psychologist 1 not following the District’s procedures, the Parent not responding to requests for information, and several unexplained periods of time when there was little or no action by the District slowed the evaluation to the point that, as of the date of the complaint, May 23, 2024, there was only a draft of the evaluation report and eligibility has not been determined. Evaluations need to be completed “without unnecessary delay” and within 35 school days of receiving consent, unless an extension is agreed upon. Although the Student’s absences and Parent slow responses contributed to the delay, they do not account for not finalizing the evaluation report and determining eligibility within the 35-school day timeline. A violation is found, and the Student was deprived of education benefit. Therefore, the violation amounted to a denial of FAPE.

For corrective action, the District is required to finalize the evaluation report and determine the Student’s eligibility. If the Student is eligible, the District is required to develop an IEP to identify the special education services needed to meet the Student’s disability related needs. The District and the Parent must also determine the compensatory education services to be provided to the Student for the period between January 2024, when the IEP should have been implemented, if eligible, and September 2024, which is when special education services per the IEP should start. The District will also be required to conduct training.

CORRECTIVE ACTIONS

By or before **September 6, 2024, September 13, 2024, September 20, 2024, and October 4, 2024**, the District will provide documentation to OSPI that it has completed the following corrective actions.

STUDENT SPECIFIC:

Evaluation Report

By no later than **August 30, 2024**, the District is required to finalize the evaluation report to be used to determine the Student’s eligibility and special education services, if eligible. The District must provide OSPI with a copy of the final evaluation report by **September 13, 2024**.

Eligibility Determination/IEP Meeting

By no later than **August 30, 2024**, the evaluation group must meet to determine the Student’s eligibility and if the Student is eligible, the IEP team must meet to develop the Student’s IEP. The

District must provide OSPI with a copy of the meeting notice, the eligibility determination, and the IEP, if the Student is eligible, and prior written notice by **September 13, 2024**.

Compensatory Education Services

By no later than **September 6, 2024**, the District and Parent will determine the compensatory education services to be provided to the Student and develop a schedule to implement the services. If there is disagreement regarding what services the Student will receive or how much services the Student will receive, OSPI will review a draft compensatory education plan and make the final determination.

The District will provide OSPI with documentation of the schedule for services by or before **September 13, 2024**. OSPI will review the schedule and provide follow-up deadlines as necessary.

DISTRICT SPECIFIC:

Training

By no later than **September 27, 2024**, the District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will co-develop and jointly conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 24-75.

The following District staff will receive training: Middle school special education staff, administrative staff, and counselors. The training will cover the following topics:

- Evaluation timelines
- Referral procedures
- Parent consent

The training will include examples.

By or before **September 6, 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.

The training will also include post-training implementation activities for staff to demonstrate their learning and the District to support implementation. The District will propose the plan and OSPI will review and provide input. The implementation support could include job-embedded coaching, holding community/parent engagement meetings, additional trainings or development of a training series, exploring policy and procedure revision, development of a District monthly audit to ensure discipline is being properly tracked, etc. By or before **September 13, 2024**, the District will provide OSPI with the training plan and post-training activities for review, input, and approval.

By or before **September 20, 2024**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by September 23, 2024.

By **September 27, 2024**, the District will conduct the training regarding the topics raised in this complaint decision.

By **October 4, 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.

RECOMMENDATION

OSPI strongly recommends the District follow the same timeline to finalize the evaluation, determine eligibility, develop an IEP, and offer compensatory education for the Student's brother who is similarly situated to the Student here in terms of the status of his initial evaluation for special education eligibility.

Dated this 17th day of July, 2024

Alyssa Fairbanks
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THIS WRITTEN DECISION CONCLUDES OSPI'S INVESTIGATION OF THIS COMPLAINT

IDEA provides mechanisms for resolution of disputes affecting the rights of special education students. This decision may not be appealed. However, parents (or adult students) and school districts may raise any matter addressed in this decision that pertains to the identification, evaluation, placement, or provision of FAPE to a student in a due process hearing. Decisions issued in due process hearings may be appealed. Statutes of limitations apply to due process hearings. Parties should consult legal counsel for more information about filing a due process hearing. Parents (or adult students) and districts may also use the mediation process to resolve disputes. The state regulations addressing mediation and due process hearings are found at WAC 392-172A-05060 through 05075 (mediation) and WAC 392-172A-05080 through 05125 (due process hearings.)