

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-87

PROCEDURAL HISTORY

On June 13, 2024, 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 Seattle 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 June 13, 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 26, 2024, OSPI received the District's response to the complaint and forwarded it to the Parent on July 3, 2024. OSPI invited the Parent to reply.

On July 10, 2024, OSPI received additional information from the District. OSPI forwarded the additional information to the Parent on July 11, 2024.

On July 22, 2024, OSPI requested that the District provide additional information, and the District provided the requested information the same day. OSPI forwarded the information to the Parent on July 23, 2024.

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

ISSUES

1. Whether, since April 2024, the District followed the special education referral procedures outlined in WAC 392-172A-03005?
2. Whether, since April 2024, the District followed the initial evaluation timelines outlined in WAC 392-172A-03005, including seeking consent within a reasonable amount of time following the decision to evaluate?

LEGAL STANDARDS

Reevaluation Procedures: A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise, and must occur at least once every three years, unless the parent and school district agree that a reevaluation is unnecessary. 34 CFR §300.303; WAC 392-172A-03015. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all of the evaluation procedures that the district intends to conduct. 34 CFR §300.304; WAC 392-172A-03020. The district must then obtain the parents'

consent to conduct the reevaluation and complete the reevaluation within 35 school days after the date the district received consent, unless a different time period is agreed to by the parents and documented by the district. 34 CFR §300.303; WAC 392-172A-03015. The reevaluation determines whether the student continues to be eligible for special education and the content of the student's IEP. 34 CFR §300.304; WAC 392-172A-03020(2)(a).

Reevaluation Consent: Once the need for a reevaluation is identified, a district must act "within a reasonable period of time and without undue delay;" and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. *Letter to Anonymous*, 50 IDELR 258 (OSEP 2008).

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was in third grade and attended a District elementary school. The Student was not eligible for special education services.
2. The District's 2023–24 school year began on September 6, 2023.
3. On January 4, 2024, the Student was referred for a special education evaluation related to speech articulation and evaluated in the area of communication.
4. On March 7, 2024, the speech language pathologist (SLP) emailed the Parents a draft of the Student's evaluation and individualized education program (IEP) in advance of a meeting scheduled for March 8, 2024.

The Parents responded and asked if this was specifically related to speech, stating "we had an [outside] evaluation done for [Student's] reading and writing, and have the results and a recommended IEP."

The SLP responded and clarified that the following day they would "talk about speech" and "qualify [Student] in Communication so that we can start working on his /r/ sounds and get a head start on that while the determination on for the educational piece is being made." The SLP asked the Parents to bring a copy of the outside evaluation.

5. On March 8, 2024, the Student was determined eligible for special education services under the eligibility category communication and the evaluation report recommended the Student receive specially designed instruction in communication, specifically articulation.

The Student's IEP team also developed an IEP, providing 90 minutes monthly of specially designed instruction in communication. And the Parent signed consent for the Student to receive initial special education services.

6. At the March 8, 2024 meeting, according to the complaint, "there was a conversation about his reading and writing and his need for an evaluation for that as well."

7. On April 2, 2024, the Parent provided the school a copy of a private evaluation, which indicated the Student had a specific learning disability in written expression. The Parent indicated they wanted a special education evaluation to see if the Student could receive supports in reading and writing.
8. The Parents, in their complaint, stated that the April 2, 2024 email was a request for an evaluation and alleged that the District failed to respond to their request to evaluate the Student within 25 school days. The Parents stated that the evaluation was, at that time, scheduled for September 24, 2024.
9. The District noted in its response that, at that time, the psychologist was on leave, and while the District had hired a contract psychologist to cover the workload, that individual left the position at the end of February 2024. The District stated, "As such, [school] was without a permanent psychologist on April 2, and as a result, the District failed to properly document the request for a reevaluation."
10. In April 2024, the Parents followed up about the evaluation as follows:
 - April 15: The Parent emailed the Student's general education teacher regarding the Student having some challenges with a classmate, which was impacting the Student's ability to focus and anxiety. The Parent also expressed concern regarding writing, including that the Student was "scared...of being made fun of, and [thus] he tries to hide his work." Separately, the Parent emailed, "I want to follow up on [Student's] evaluation. What are next steps?"
 - The principal responded, indicating the psychologist was on leave and that testing would be scheduled when the psychologist returned.
 - April 22: The Parent asked about the timeline for the psychologist returning, indicating the Student was having a hard time at school.
11. On May 1, 2024, the Parent emailed the principal and general education teacher, expressing urgency in getting the Student evaluated and stating that the Student's academic struggles were increasing.
12. On May 22, 2024, according to the Parents, "The school psychologist responded to the request for the evaluation. In her email, she was starting the timing of the request from the day she sent the email – not from the written request on April 2nd."

According to emails and the District's response:

- The psychologist provided a prior written notice, which according to the District, "retroactively document[ed] the request for special education evaluation"¹ and sent consent paperwork and the procedural safeguards. The prior written notice indicated the Student was referred for a reevaluation to determine if the student needs "additional supports in reading and writing," and referenced the private evaluation.
- The Parents signed the consent.

¹ The prior written notice stated "Parent initially made the request for reevaluation in February 2023. At the time, the district was not able to provide a response to this request due to staffing issues in the building. [Student's] case was assigned to this evaluator on 5/20/24 and parents were contacted on 5/22/24. Consent was sent on 5/22/24 with procedural safeguards. Consent signed 5/22/24."

- The District noted in its response that the May 22, 2024 consent made the evaluation due on September 24, 2024.
13. On May 23, and 28, 2024, the Parent reached out to the District's student support services supervisor (supervisor) to request an accelerated evaluation.
14. On May 31, 2024, the supervisor responded, and the following was shared via email between May 31 and early June 2024:
- There was a shortage of school psychologists, so the Student's evaluation would not be expedited. However, the supervisor stated that if the evaluation was not completed within the required timelines and the Student did need support in other areas, they would be "happy to talk about what kind of remedy there would be for the delayed evaluation completion."
 - The Parents asked about possible remedies and the supervisor shared that the remedy would be educational services in alignment with eligibility areas but provided outside the regular school day.
15. After the complaint was filed on June 13, 2024, the Parents spoke with the supervisor and emailed notes from the call included the following:
- "[Supervisor] acknowledged that the school district is well outside of the timeline due to lack of a psychologist and not having a replacement."
 - "He is working to find a psychologist to conduct [Student's] evaluation over the summer with the goal of having an IEP in place. He was not able to commit to that, due to the fact he needed to discuss with the psychologist he had in mind."
 - "A summer evaluation would not have a classroom evaluation, but he did not think that would be a problem given [Student's] situation."
 - "We talked about compensatory education for [Student], which would be determined once the evaluation is completed."
16. The Parents shared that the delay in comprehensively evaluating the Student has had the following impact on the Student:
- "[Student] is unable to do grade level work unassisted that involves reading and writing. Classmates have said cruel things about his writing and spelling errors."
 - "While good at math, he cannot comprehend word problems."
 - "He mostly won't raise his hand at school for fear of being made fun of if he makes a mistake."
 - "He is unwilling to show his work in the classroom."
 - "On evenings after bad days, [Student] is noticeably upset, and has on occasion asked us to take him out of school."
 - "We have seen a ripple effect on his sports, both inside and outside of school: Something that might be a small slight is taken as a major affront and is met with big emotions and resistance to continuing playing said sport. An example is kickball at school."
17. A June 17, 2024 progress reporting indicated the Student made significant progress on one communication goal ("vocalic /r/ words") and little or no progress on his other communication goal ("vocalic /r/ sentences").
18. In its response to the complaint, the District noted that due to staffing issues and shortages, it "failed to timely document the Parent's request for reevaluation and seek consent." In

additional information, the District stated that it was able to complete the evaluation during the summer and an evaluation feedback meeting was scheduled for July 11, 2024. The District stated it would propose compensatory education based on the IEP that is developed "and the delay from April 2 until May 22."

19. The July 11, 2024 reevaluation report indicated the Student was eligible for special education under the eligibility category specific learning disability. The report recommended the Student receive specially designed instruction in communication, reading, and written language.

CONCLUSIONS

Issue: Special Education Reevaluation Timeline and Consent² – The Parents alleged that the District failed to document their April 2, 2024 request for a special education evaluation to see if the Student could receive supports in reading and writing.

The Student was found eligible for special education services under the communication eligibility category and the Parents signed consent for the initial provision of services in March 2024. In April 2024, the Parents provided the District with a copy of a private evaluation, which indicated the Student had a specific learning disability in the area of written expression. The Parent indicated they wanted a special education evaluation to see if the Student could receive supports in reading and writing.

A school district must ensure that a reevaluation of each student eligible for special education is conducted when the school district determines that the educational or related services needs, including improved academic achievement and functional performance of the student warrant a reevaluation, or if the parent or teacher requests a reevaluation. A reevaluation may not occur more than once a year, unless the parent and school district agree otherwise. When a district determines that a student should be reevaluated, it must provide prior written notice to the student's parents that describe all the evaluation procedures that the district intends to conduct.

Here, the District noted in its response that in April 2024, the psychologist was on leave, and while the District had hired a contract psychologist to cover the workload, that individual left the position at the end of February 2024. The District stated, "As such, [school] was without a permanent psychologist on April 2, and as a result, the District failed to properly document the request for a reevaluation." Following this, the Parents continued to check in with the District about next steps for a reevaluation and raised concerns about the Student struggling at school throughout April and May 2024.

OSPI notes that District staff acknowledged that a reevaluation should take place and that the testing would be scheduled when the psychologist returned. Given the acknowledged need for a

² OSPI notes that originally it opened the complaint to investigate referral procedures and initial evaluation timelines. However, the District identified, and the investigation showed that the evaluation the Parents were concerned with was a reevaluation and not an initial evaluation. Therefore, OSPI will make conclusions based on the reevaluation and legal standards associated with reevaluations.

reevaluation, this was an improper delay. Once the need for a reevaluation is identified, a district must act “within a reasonable period of time and without undue delay,” and the U.S. Department of Education, Office of Special Education Programs (OSEP) has indicated that waiting several months to seek consent is generally not reasonable. And then, once consent is obtained, a district must complete the reevaluation within 35 school days after the date the district received consent.

The school psychologist returned from leave and sought consent from the Parents on May 22, 2024, almost two months after the Parents had requested further evaluation of the Student. Ultimately though, the District was able to complete the reevaluation over the summer, holding a reevaluation review and eligibility meeting on July 11, 2024. The July 11, 2024 reevaluation report indicated the Student was eligible for special education under the eligibility category specific learning disability. The report recommended the Student receive specially designed instruction in communication, reading, and written language.

Overall, OSPI finds that the District, as it acknowledged, failed to timely document the Parent’s request for reevaluation and seek consent, thus improperly delaying the reevaluation and the Student’s receipt of special education services in reading and written language. OSPI finds a violation. The District stated it would provide compensatory education based on the IEP that is developed and the delay from April 2 until May 22, 2024. OSPI agrees and will order compensatory education based on the IEP the Student’s team develops.

CORRECTIVE ACTION

By or before **September 13, 2024**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

Compensatory Education

By or before **September 13, 2024**, the District and Parent will develop a *draft* plan and schedule for compensatory education in reading and written language based on the IEP the Student’s team develops and the delay from April 2 until May 22, 2024.

By or before **September 13, 2024**, the District will provide OSPI with: 1) the *draft* compensatory education plan to OSPI for review; 2) the Student’s IEP; 3) prior written notice from the IEP meeting; and 4) any other documentation or explanation of the amount of compensatory education.

OSPI will review the draft compensatory education plan and either modify or approve the plan and set further dates for the District to submit documentation showing the compensatory education has been provided.

Please note, unless otherwise agreed to by the District and Parent, services will be provided by a certified special education teacher or related service provider. Services may be provided in a 1:1 setting or a group setting, if appropriate. Services will be provided outside the District’s school day and can be scheduled on weekends, over District breaks, or before or after school.

DISTRICT SPECIFIC:

None.

The District will submit a completed copy of the Corrective Action Plan (CAP) Matrix, documenting the specific actions it has taken to address the violations and will attach any other supporting documents or required information.

Dated this 5th day of August, 2024

Dr. Tania May
Assistant Superintendent of Special Education
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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.)