

SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 24-88

PROCEDURAL HISTORY

On June 14, 2024, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a complainant (Complainant) on behalf of a student (Student) attending the Shoreline 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 June 14, 2024, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 17, 2024. OSPI asked the District to respond to the allegations made in the complaint by July 3, 2024.

On July 3, 2024, the District requested an extension of time to respond to the complaint. OSPI granted the extension to July 10, 2024.

On July 10, 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 by July 23, 2024.

On July 22, 2024, the Complainant requested an extension of time to respond to the District's response. OSPI granted the extension to July 29, 2024.

On July 25, 2024, the OSPI complaint investigator interviewed the Complainant.

On July 29, 2024, OSPI received the Complainant's reply. OSPI forwarded that reply to the District on the same day.

OSPI considered all information provided by the Complainant and the District as part of its investigation. It also considered the information received and observations made by the complaint investigator during the interview.

ISSUES

1. Since February 2024, has the District followed child find/referral procedures per WAC 392-172A-03005 and conducted a sufficient evaluation per WAC 392-172A-03020?
2. Since February 2024, has the District followed proper procedures in conducting a functional behavioral assessment (FBA) and developed an appropriate behavioral intervention plan (BIP) to address the Student's behavioral concerns?
3. Since February 2024, has the District followed proper procedures for prior written notices (PWN) per WAC 392-172A-05010 regarding including all options requested by the Complainant and why the options were rejected with the reasons for such decisions?

LEGAL STANDARDS

Child Find: School districts must conduct child find activities calculated to locate, evaluate, and identify all students who need special education and related services, regardless of the severity of their disability. Child find activities must be calculated to reach students that have disabilities and need special education services regardless of the severity of their disability. 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(2).

To accomplish this, each district must implement policies and procedures that describe the methods it will use to conduct child find activities. A district's obligation to evaluate a student, either through its child find or referral processes, is triggered when the district has reason to suspect a disability 34 CFR §300.111; WAC 392-172A-02040. In other words, "[A] disability is 'suspected,' and therefore must be assessed by a school district, when the district has notice that the student has displayed symptoms of that disability." *Timothy O. v. Paso Robles Unified Sch. Dist.*, 822 F.3d 1105, 1119-20 (9th Cir. 2016).

Referral: Any person who is knowledgeable about the student may make a written referral of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied, and the district's child find obligation triggered when a parent informs a school that a student may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether to evaluate. The district 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.

Functional Behavioral Assessment (FBA): An FBA focuses on identifying the function or purpose behind a student's behavior. Typically, the process involves looking closely at a wide range of child-specific factors (e.g., social, affective, environmental). Knowing why a student misbehaves is directly helpful to the IEP team in developing a behavioral intervention plan (BIP) that will reduce or eliminate the misbehavior. The FBA process is frequently used to determine the nature and extent of the special education and related services that the student needs, including the need for a BIP, which includes behavioral intervention services and modifications that are designed to address and attempt to prevent future behavioral violations. *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-2); *Letter to Janssen*, 51 IDELR 253 (OSERS 2008).

An FBA is generally understood to be an individualized evaluation of a student in accordance with 34 CFR §§300.301 through 300.311 to assist in determining whether the student is, or continues to be, a student with a disability. As with other evaluations, to conduct an FBA, the district must

obtain the parents' consent and complete the FBA within thirty-five (35) school days after the district received consent. 34 CFR §300.303; WAC 392-172A-03015; *Questions and Answers on Discipline Procedures* (OSERS June 2009) (Question E-4).

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.

FINDINGS OF FACT

1. At the start of the 2023–24 school year, the Student was not eligible for special education, was in the second grade, and attended a District elementary school. The Student first enrolled in the District in February 2023.
2. The District's 2023–24 school year began on September 6, 2023.
3. On April 1, 2024, the Student's community social worker emailed the school counselor, requesting a section 504 evaluation of the Student.
4. On April 4, 2024, the school counselor forwarded the emailed request to the school psychologist and indicated that she agreed that the Student had been experiencing "significant difficulty" since returning from the mid-winter break (February 19–23, 2024). She also stated that she was not sure "how this would be effective in any case" and attached to her email a guidance team referral/notes form detailing the interventions the Student was currently receiving. She ended the email agreeing that a student study team meeting was a good idea to determine next steps for supporting the Student.
5. The guidance team referral/notes form included the following information regarding the interventions and supports the Student was receiving at the time of the section 504 evaluation request:
 - Counseling (dean of students) (tier 2 support): Daily
 - Additional math support (tier 2): 2 times/weekly

- Behavior chart (tier 1): Daily
 - Push-in/breaks: Multiple times/day
 - Incentives/rewards (dean of students/principal): Daily
 - Incentives/reward (teacher): Additional daily breaks in class
6. On April 8, 2024, the school psychologist emailed the community social worker, thanking her for the section 504 referral request and indicating that the student study team meeting would be scheduled for early May 2025. The school psychologist also asked for confirmation of the Student's guardian so that they could be invited to the meeting, as well.
 7. On May 7, 2024, the District held the student study team meeting to discuss the referral request, and the team included the Student's community social worker, the Student's court appointed special advocate (CASA), the principal, the school psychologist, the school counselor, a community educational advocate, the Student's teacher, the Student's community mental health therapist, the Student's learning assistance program teacher, and a special education teacher. Even though the request was for a section 504 evaluation, the District team also considered whether to conduct a special education evaluation.

The student study team meeting covered several areas of discussion: 1) purpose of the meeting; 2) school relevant background (medical, school history, attendance history, family/language); 3) current data (math, reading, writing, other); 4) concerns; 5) strategies and interventions; 6) brainstorming; and 7) action plan/person responsible/follow-up date. The Student's post-traumatic stress disorder diagnosis was noted, as well as the possible evaluation for autism. Brainstorming included discussion of whether there was suspicion of a disability, if the Student's behavior was the result of adverse childhood experiences (ACEs), and if the challenges were long-standing or under "normal/not normal" circumstances.

Ultimately, the team determined to write a behavior plan, with a data collection system included, led by a District board certified behavior analyst (BCBA). Additional action plans agreed to were conducting a preference assessment for motivators, building more 1:1 time into the Student's schedule, and accessing tutoring funds from the community non-profit organization involved with the Student. The team also agreed to follow-up before the end of the school year. The team did not agree that a special education evaluation was warranted.

8. The Student's CASA emailed the District on May 10, 2024, following up on the student study team meeting of May 7, 2024, to solidify the completion dates for the action plan items. He expressed his concern regarding the 14 early dismissals of the Student noted on the form, as he wasn't aware that the number was so high.
9. On May 10, 2024, the District sent a prior written notice (PWN) to the Student's guardians and the other team members who participated in the student study team meeting. The PWN stated that the District "would not evaluate the Student for special education or 504 eligibilities at this time," as the Student's "behavioral challenges are not long standing and easily explained by their circumstances." Under the section where the District is to describe the procedure/test/record/ report that were used as a basis for the decision, the District indicated

"Team meeting," referencing the student study team meeting notes taken during the May 7, 2024 meeting. The team meeting notes from the May 7, 2024 meeting were included with the PWN, as were procedural safeguards for the guardians.

10. On May 13, 2024, the Student's CASA emailed the District team, inquiring about who would be conducting the functional behavioral assessment (FBA) that would inform the development of the behavior plan and data collection system. He also queried whether a formal request was needed to initiate the FBA, and that the Student's guardian was in favor of the FBA.
11. On May 14, 2024, the Student's community mental health therapist emailed the District team regarding the decision not to evaluate the Student for special education eligibility. He stated that he believed all "understand that the Student's behavior challenges are linked to but not limited to trauma and ACEs." He also stated that "not everyone who has ACEs develops PTSD which is the diagnosis that they have." The mental health therapist believed that the symptoms the Student was exhibiting are the "manifestation of their disability."

CONCLUSIONS

Issue 1: Child Find/Referral Procedures – The Complainant alleged that the District did not follow child find and referral procedures, including conducting a special education evaluation.

All districts must have in place child find procedures to locate, evaluate and identify students who need special education and related services, and the child find activities must also be calculated to reach students who are homeless, wards of the state, or highly mobile students with disabilities. Anyone who is knowledgeable about the student may make a written referral of a student suspected of having a disability, and the district must document that referral. It then must provide the parents with written notice that the student has been referred and that the district, with parental input, will determine whether to evaluate.

In this case, a community social worker made a referral for a section 504 evaluation on behalf of the Student to the school counselor in April 2024. Importantly, District documentation, including the District's formal response to this complaint, stated that even though the request was for a section 504 evaluation, the "team considered whether to conduct a special education evaluation," as well. The counselor forwarded the referral request to the school psychologist, including information she had regarding the supports that the Student was already receiving. The school psychologist scheduled a student study team meeting within the 25-school day referral timeline where it would be determined that the District would not evaluate the Student for special education eligibility.

However, no District documentation exists regarding notifying the Student's guardians of the referral for evaluation by the community social worker nor of inviting them to participate in the

student study team meeting.¹ The student study team meeting notes, as well as the District's response, indicated that the Student's guardians were not in attendance to offer input to the evaluation decision, nor does it appear that input was sought from the guardians in another format. Again, the regulations provided that a district must provide the parents with written notice that the student has been referred and that the district, with *parental input*, will determine whether to evaluate. While the District sought information from private providers working with the Student, without the participation of the guardians, the District did not meet the notification and input requirements related to the Student's guardians who were not able to provide input to the decision regarding whether to conduct a special education evaluation or not. Therefore, OSPI finds a violation. As corrective action, the District will reconsider the referral and determine whether a special education evaluation is warranted with input from the Student's guardians.

Issue 2: Functional Behavior Assessment/Behavioral Intervention Plan Procedures – The Complainant alleged that the District did not follow proper procedures related to an FBA and development of a behavioral intervention plan.

An FBA focuses on identifying the function or purpose behind a student's behavior and involves looking closely at a wide range of child-specific factors. Understanding the circumstances of why a student has behavioral issues assists the IEP team in developing a behavioral plan that will reduce or eliminate challenging behavior.

In this case, the District determined not to evaluate the Student for section 504 and special education eligibility, though decided to develop a behavior support plan to address the Student's challenging behaviors. The development of the behavior plan, led by a District BCBA, would be informed by an FBA process to identify the purpose/function behind the Student's behavior. A preference assessment for Student motivators was also to be conducted as part of the FBA process. District documentation indicates the behavior plan was developed and implemented prior to the end of the school year, though the impact on the Student's behavior has been inconsistent. OSPI finds no violation.

Issue 3: Prior Written Notice Procedures – The Complainant alleged that the District did not follow procedures regarding prior written notices (PWN).

Prior written notice ensures that the parent is aware of district decisions regarding evaluation, placement or implementation of the IEP. It documents input provided regarding the student's educational needs, and it clarifies that a decision has been made. A prior written notice should document any disagreement with the parent and should clearly describe what the district proposes or refuses to initiate, however, there is no requirement that a District address specifically every item of parent input or request.

¹ OSPI notes that there is not a regulatory requirement to hold a meeting to consider a referral or to invite parents to meetings like student study team meetings. However, the regulations do require a district to obtain and consider parent input when moving through the special education referral process.

In this case, the District did not notify the Student's guardian of the community social worker's referral for evaluation and their proposal to hold a student study team meeting to discuss the referral. Related to the PWN provided to the guardians following the student study team meeting, the District did provide notice to the guardians regarding the District's decision not to evaluate the Student for special education eligibility, and indicated the reasoning was based on fact that the Student's "behavioral challenges are not long standing and easily explained by their circumstances." The violation regarding notifying the parents/guardians is addressed already above, and here, OSPI notes the District did provide the guardians PWN regarding the evaluation decision. Thus, OSPI finds no violation.

CORRECTIVE ACTIONS

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

STUDENT SPECIFIC:

Referral Reconsideration

By or before **September 18, 2024**, the student study team, inclusive of the guardians, will reconsider the evaluation referral and determine whether to conduct a special education eligibility evaluation. If the student study team holds a meeting, the guardians' input must be sought in some format, through information provided by the guardians or their attendance at a meeting. OSPI recommends the District also consider the May 2024 information from the Student's community mental health therapist regarding their belief that the symptoms the Student was exhibiting are the "manifestation of their disability" as this information was provided after the student study team meeting.

By **September 20, 2024**, the District will provide the guardians and OSPI with a PWN, summarizing the group's discussion and decisions.

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 12th day of August 2024

Dr. Tania May
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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.)