

SPECIAL EDUCATION CITIZEN COMPLAINT (SECC) NO. 18-72

PROCEDURAL HISTORY

On July 9, 2018, the Office of Superintendent of Public Instruction (OSPI) received a Special Education Citizen Complaint from the parent (Parent) of a student (Student) attending the Evergreen School District No. 114 (District). The Parent alleged that the District violated the Individuals with Disabilities Education Act (IDEA), or a regulation implementing the IDEA, with regard to the Student's education.

On July 10, 2018, OSPI contacted the Parent for clarification regarding whether a special education evaluation had been conducted. On the same date, OSPI contact the District to confirm whether a special education evaluation had been conducted.

On July 12, 2018, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District Superintendent on the same day. OSPI asked the District to respond to the allegations made in the complaint.

On July 12, 2018, the Parent emailed OSPI, stating that the complaint issue regarding the referral procedures did not address her complaint.

On July 20, OSPI responded to the Parent, explaining how the complaint would address referral procedures. The District had not referred the Student for a special education evaluation so there was no evaluation to investigate.

On August 1, 2018, OSPI received the District's response to the complaint and forwarded it to the Parent on the same day. OSPI invited the Parent to reply with any information she had that was inconsistent with the District's information.

On August 6, 2018, OSPI received an email from the Parent, requesting all letters and documentation be sent by email because she was traveling August 9 through August 30, 2018.

On August 22, 2018, OSPI received an email from the Parent, stating she had not received a copy of the District's response.

On August 24, 2018, OSPI emailed a copy of the District's response to the Parent.

On September 3, 2018, OSPI received the Parent's reply. OSPI forwarded that reply to the District on the same day.

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

OVERVIEW

The Student is a five-year old preschooler who enrolled in the District but has not yet attended school. In May 2018, the Parent met with District staff to conduct an early childhood screening

and shared information with staff about the Student's diagnosis and the private services the Student had received. As part of child find, the District conducted a partial screening and requested information about the Student from the outside agencies to determine if the Student should be referred for a special education evaluation. The Parent signed releases to share information from the various agencies that had provided services to the Student to consider whether the Student should be referred for evaluation. In July 2018, the District provided the Parent with notice that proposed the Student would be evaluated for special education. The Parent alleged that the District failed to follow procedures for referring the Student for an evaluation. The District denied the allegation.

ISSUE

1. Did the District follow procedures for responding to the Parent's request for an initial evaluation during the 2017-2018 school year?

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. WAC 392-172A-02040(1). 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. WAC 392-172A-02040(1).

Referral: Any person who is knowledgeable about the student may make a referral for evaluation of a student suspected of having a disability. 34 CFR §300.301; WAC 392-172A-03005(1). A referral may be implied when a parent informs a school that a child may have special needs. *In the Matter of the Lake Washington School District*, 57 IDELR 27, OSPI Cause No. 2011-SE-0020X (WA SEA 2011). When a student suspected of having a disability is brought to the attention of school personnel, the district must document that referral. It must provide the parents with written notice that the student has been referred because of a suspected disabling condition and that the district, with parental input, will determine whether the student is a good candidate for evaluation. It must review the referral, and it must collect and examine existing school, medical, and other records. 34 CFR §300.301; WAC 392-172A-03005. The district must determine within 25 school days after receipt of the referral whether it will evaluate the student. The district must provide the parent with written notice of its decision. 34 CFR §300.301; WAC 392-172A-03005.

FINDINGS OF FACT

2017-2018 School Year

1. During the 2017-2018 school year, the Student was a five-year old preschooler who had enrolled in the District for the 2018-2019 school year. The Student was not eligible for special education services.

2. On January 30, 2018, the Parent completed the District enrollment forms for kindergarten for the 2018-2019 school year. The forms did not report any disability or health issues.
3. On May 23, 2018, the District's response to the complaint stated that the Parent had an informal, impromptu meeting with the school psychologist, occupational therapist, special education teacher, and speech/language pathologist from a District elementary school (school 1). The Parent informed the school staff that the Student had a diagnosis of autism spectrum disorder and had received speech therapy, occupational therapy, applied behavioral therapy, and vision therapy after her diagnosis. According to the District, after discussing the concerns the Parent had about the Student, the Parent was directed to the Early Childhood screening team at a different District elementary school (school 2) because "[Student] was a preschool student at the time."
4. On May 25, 2018, the school psychologist emailed the Parent. The email stated:
...If you can sign these release forms (and include the contact info for the 2nd one for the agency that works with [Student], that will help us get additional information for our meeting Tuesday. Meeting to discuss referral is Tuesday, May 29 at 2PM at [elementary school] [address]. If you bring [the Student] to this meeting, that will help us so that if we decide to move forward with evaluating, we can start the evaluation right then. It will give us a chance to see her and interact with her, which gives us additional information on her skills.

On the same day, the Parent signed releases of information for the Center of Autism and Related Disorders (CARD) and Knowledge Beginnings to share information about the Student with the District.¹

5. On May 29, 2018, the Parent responded to the school psychologist's May 25 email regarding releases of information. The email stated:
Thank you for providing the attached release forms, which I'll provide during today's appointment. I will also provide [Student's] original diagnosis from OHSU.² I am already on OHSU's wait list for another updated evaluation from OHSU with recommendations. I am requested CARD's notes dating back from September 2017. I've already requested a letter of recommendation from CARD. I've already requested support from her pediatrician.
6. Also on May 29, 2018, according to the District's response, the Early Childhood screening team at school 2 met with the Parent and the Student. The Parent shared a report of the autism spectrum disorder diagnosis from the Doernbecher Children Hospital at the Oregon Health and Science University (OHSU). According to the District, the screening team engaged the Student in some activities to assess the Student. The normal screening procedure was to

¹ The Center for Autism and Related Disorders is an agency that provided applied behavioral analysis therapy programs for the treatment of autism and related disorders. Knowledge Beginnings is a child development center.

² Oregon Health and Science University.

complete the Developmental Indicators for the Assessment of Learning (DIAL).³ In this case, however, the DIAL was not completed. The screening team determined that additional information from other agencies was needed before a decision could be made regarding referring the Student for a special education evaluation.

The OHSU report, dated February 5, 2015, provided to the District at the May 29, 2018 meeting stated the Student was evaluated at the autism clinic by a psychologist and occupational therapist. The report stated that the Student demonstrated a “qualitative impairment” in the areas of social communication, social interaction, and restrictive repetitive patterns of behavior, “consistent with a diagnosis of autism spectrum disorder.” The report also stated that the Student’s developmental levels were in the average range and a strength in visual spatial concepts. Her adaptive skills and self-regulation behaviors were below average for her age.

The Parent stated the following in the complaint about the March 29, 2018 meeting:

...On March 29, 2018, my daughter was neither identified nor evaluated by [school psychologist] and Staff at [school 2]. They instead requested documentation on services received to date. As parent, I signed several authorizations to release information from agencies where my daughter received and continues to receive services. [School psychologist] and Staff stated that “she is the best child seen today.” They clarified by saying that they typically see children who are unable to sit for long periods of time, present with unruly behavior, inability to speak, etcetera. They also reiterated that, if my daughter’s disabilities does not “significantly impact her academically” she would not qualify for special education and related services...

7. On May 31, 2018, the special education teacher sent a facsimile to the following agencies, requesting therapy notes and evaluation reports:
 - Early Choice Pediatric Therapy
 - Advanced Pediatric Therapies
 - Northwest Eye Care Professional
 - Innovative Services Northwest Pediatric Therapy

8. Sometime after May 31, 2018, the District received a copy of an evaluation of the Student conducted by Innovative Services on March 24, 2015. The Student was twenty-five months old at the time of the evaluation. The evaluation results were as follows:

| Test Area | % Delay | Test Age Equivalency |
|------------------|----------------|-----------------------------|
| Socialization | 20% | 20 months |
| Cognition | 0% | 29 months |
| Communication | | |
| Receptive | 0% | 27 months |
| Expressive | 4% | 24 months |
| Total | 0% | 26 months |
| Adaptive | ---- | 25 months |

³ The DIAL is a standardized assessment used to screen large groups of children to identify which children may need further testing.

| | | |
|-------------|----|-----------|
| Fine Motor | 4% | 24 months |
| Gross Motor | 4% | 24 months |

The evaluation results stated: "Following this developmental evaluation, [Student] is testing within typical range for a child her age. [Student] is not eligible for early intervention services at Innovative Services NW Pediatric Therapy at this time." Although the Student was not eligible for early intervention services at the time, Innovative Services provided speech therapy to the Student at the request of the Parent.

9. Sometime after May 31, 2018, the District received speech records from Innovative Services. The records stated that in February and April 2017, the Innovative Services provided two sessions of private speech services to the Student on February 27, 2018 and April 3, 2017. The speech goals were as follows:

- [Student] will identify and name emotions accurately in 80% of opportunities.
- [Student] will identify and use basic concept in 80% of opportunities.
- [Student] will use a variety of communicative intents (request, comment, greet/farewell, request information, provide information, request assistance, protest).
- [Student] will engage in reciprocal communication by asking a question or making a comment 70% of opportunities.
- [Student] will respond to bids for joint attention in 80% of opportunities.

10. On June 14, 2018, the school psychologist emailed the Parent, stating the following:

I received a call from Advanced Pediatrics earlier today, letting us know that [Student] was recently evaluated there and that you had indicated to them they needed to bill us (the school district), as we were the ones requesting she be tested by you. Was there a specific person that told you [Student] needed to be evaluated by Advanced Pediatrics? I know that when we (our childhood assessment team) met with you a few weeks ago, we had you sign a release form so that we could request [Student's] records (including any evaluations therapy/progress notes) from Advanced Pediatrics as well as other community therapy agencies, but we never requested that you have her reevaluated there or indicated that this was needed.

11. On June 14, 2018, the District's 2017-2018 school year ended.

12. On June 18, 2018, the Parent replied to the school psychologist: "I do not know what transpired from your point of initiating the request to the point of evaluation. But, what I do know is that an evaluation was started. The question becomes...who is responsible for the bill?"

On the same day, the school psychologist replied in an email to the Parent, stating: "Our request was for records from [agency], not an evaluation. So any evaluations that you had for [Student] would be your financial responsibility."

13. On June 20, 2018, The Parent's email reply to the school psychologist stated:

Please accept this email as a written request that [Student] be evaluated for special education. I am requesting that [school] evaluate her for both IDEA and Section 504 eligibility. I understand that Districts are required to test in all areas related to a student's suspected disability. [Student] has already been diagnosed with Autism Spectrum Disorders

on October 8, 2015 In [Student's] case, I am asking that she be evaluated in the following areas: health (physical and mental); vision; hearing; social and emotional health; general intelligence; academic performance; communication, speech and language; motor abilities...

The email cited information about evaluations, assessments, twice-exceptional, and the identification of a specific learning disability.

14. On July 9, 2018, the Parent filed this complaint with OSPI.
15. According to the District, the director of special services called the Parent on July 16 and 17, 2018 about her concerns and the director proposed to evaluate the Student. On July 25, 2018, the Parent emailed the director and made the following requests regarding an evaluation:
 - Who will conduct my daughter's evaluations and assessments?
 - Name the evaluation and assessments.
 - Detail all other sources that will be used.
16. On July 30, 2018, the director of special services emailed the Parent, stating the director had called the Parent on July 16 and 17, 2018, to address the Parent's concerns. The email addressed the Parent's concern about the evaluation process and the "three prongs of eligibility."⁴ In addressing the Parent's questions in the July 25, 2018 email regarding the evaluation, the email stated:

The following constitutes written notice of District's response to your requests written on page 13 of your July 25, 2018 letter of complaint: Within 25 school days of referral dated June 20, 2018, district staff at your neighborhood school of [school 1] will contact you and invite you to a meeting to discuss your referral and determine the assessments that will be needed to determine eligibility for special education and potential needs. The specific assessment instruments and the district staff who will be conducting the evaluation will be shared with you at the meeting...

The staff at [school 1] will contact you to set a mutually agreeable time within the first few days of school (school starts August 28, 2018) to address your requests with your most recent letter and respond to your referral for evaluation.
17. As of August 28, 2018, the District was unable to confirm that it has received all the information that was requested due to a teacher strike that is still in progress. The school year has not started at the date of this report.

CONCLUSIONS

The complaint alleged that the District failed to follow child find procedures. The Parent stated that the District failed to refer the Student for an evaluation and did not provide written notice to the Parent.

⁴ In order to be eligible for special education services, a student must meet the eligibility requirements of at least one category of disability, the disability adversely affects the student's educational performance, and the student needs special education and related services as a result of his or her disability or disabilities.

Under child find, a district has an affirmative obligation to identify, locate, and evaluate all children with disabilities residing in the district, including gifted children. Any person who is knowledgeable about the student may make a referral for evaluation of a student suspected of having a disability. Once a referral is received, a district must document the referral and provide written notice to the parent. A district must then collect and examine existing school, medical, and other records in the possession of the parents and school district, and within 25 school days after receipt of the referral, decide whether or not to evaluate the student. A referral may be implied when a parent informs a school that a child may have special needs.

Here, the Parent met with District special education staff on two occasions, May 23 and May 29, 2018, to discuss the Parent's concerns about the Student. On both occasions, the Parent told staff that the Student had been diagnosed with autism spectrum disorder and was receiving speech services, occupational therapy, applied behavioral therapy, and vision services. The District described the May 23, 2018 as an informal conversation between some of the school staff and the Parent. In the conversation, the staff directed the Parent to the Early Childhood screening team at school 2 and requested releases of information from the Parent to gather information from the outside agencies that have provided services to the Student. On May 29, 2018, as part of the District's child find process, school 2's Early Childhood screening team conducted a partial screening with the Student and met with the Parent regarding her concerns about the Student. The Parent informed the Early Childhood screening team about the Student's diagnosis and the private services the Student received, and provided the District with the report from OHSU.

Although the Parent did not provide a written referral for an initial evaluation at the May 29, 2018 meeting, the Parent conveyed enough information to the screening team to trigger a referral for an evaluation.⁵ Once a referral for evaluation was made, the District was required to document the referral and provide the Parent with written notice. Within twenty-five school days of the request for evaluation that occurred on May 29, 2018, the District was required to review the referral, gather and review existing records, and determine whether the Student would be evaluated. Based on the request for evaluation being made on May 29, 2018, the twenty-five school day timeline in this situation would end on September 14, 2018, factoring in the summer break and school holidays. This timeline may differ if the school year begins late due to the teacher strike. Meanwhile, on July 30, 2018, the District proposed evaluating the Student and provided the Parent with written notice of the proposal. However, based on the District's failure to consider the May 29, 2018 meeting as a referral for an evaluation and not providing written notice to the Parent that a referral was made, a violation was found.

CORRECTIVE ACTION

By or before **September 21, 2018** and **October 12, 2018**, the District will provide documentation to OSPI that it has completed the following corrective action.

STUDENT SPECIFIC:

None required.

⁵ The Parent provided the District with written referral for an initial evaluation on June 20, 2018.

DISTRICT SPECIFIC:

By **October 5, 2018**, the District will provide school 2's Early Childhood screening team with written guidance regarding the procedures for requesting an evaluation.

By **September 21, 2018**, the District will submit a draft of the written guidance. OSPI will approve the written guidance or provide comments by September 28, 2018 and provide additional dates for review, if needed. By **October 12, 2018**, the District will provide OSPI with documentation showing that the written guidance have been provided to all staff responsible for early childhood screening process. This will include a roster of all staff members who are involved in the early childhood screening process, so OSPI can cross-reference the list with the actual recipients.

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 ____ day of September, 2018

Glenna Gallo, M.S., M.B.A.
Assistant Superintendent
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.)