

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-68**

### **PROCEDURAL HISTORY**

On May 5, 2023, the Office of Superintendent of Public Instruction (OSPI) received and opened a Special Education Community Complaint from a teacher (Complainant) regarding a student (Student) attending the Seattle 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 5, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on May 10, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On May 26, 2023, OSPI received the District's response to the complaint and forwarded a redacted version of the response<sup>1</sup> to the Complainant on May 31, 2023. OSPI invited the Complainant to reply.

On June 14, 2023, OSPI received additional information from the District. As the entirety of this information contained personally identifiable information (PII) related to the Student, and because OSPI was not provided a signed release of information from the Parent, permitting OSPI to share PII with the Complainant, OSPI could not provide the Complainant with a copy of this information.

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

### **ISSUE**

1. Beginning March 2023, did the District follow proper special education referral procedures, including whether the decision to not evaluate the Student was substantively appropriate and whether the District gathered relevant information from the Parent?

### **LEGAL STANDARDS**

Referral: Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. The request must be in writing, unless the person is unable to write and/or communicate verbally. 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

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<sup>1</sup> Since OSPI had not received a signed release from the Student's parent, giving us permission to send the Complainant copies of education records for the Student, OSPI provided a redacted version of the District's response.

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) strategies<sup>2</sup> 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).

### FINDINGS OF FACT

1. [REDACTED]
2. According to the Complainant:

[In March 2023], I received a request from the student's mother to have her son evaluated for special education services...As student's teacher, I took the request to our special education teacher and she informed me I needed the request in writing. I relayed the information to the student's mother and she emailed me the request. We then held the MTSS meeting at school where the request for evaluation was rejected. The prior written notice reads, 'Student was referred for special education evaluation. After review of the relevant information, including the referral form, educational and/or relevant medical records, the information did not indicate a need for an evaluation at this time. The decision not to evaluate was based on [an agreement] that additional intervention attempts within the general education classroom are appropriate before special education is considered.'
3. According to the Complainant, on March 2, 2023, the Student "had an episode in the classroom where he was crying and having chest pain. He was expressing thoughts of not existing. I spoke with mom after school and we talked about this happening not only at school...but other times as well."

4. [REDACTED]

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<sup>2</sup> 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."

5. According to the Complainant, on March 8, 2023, the Complainant followed up with the Parent, who shared her concerns regarding the Student's "frustration with learning" and the amount of time it took the Student to complete homework, and the Complainant forwarded this information to the special education teacher.

[REDACTED]

6. On March 20, 2023, the Complainant emailed the school counselor, stating the Student would "benefit from hearing and practicing 4<sup>th</sup> grade [math] fundamentals a second time."
7. On March 20, 2023, the Parent emailed the Complainant, stating she was requesting "IEP classes" for the Student, as the Student had "been struggling with math, reading, and writing [and because Student] forgets what he learns."
8. On March 23, 2023, the Complainant forwarded a copy of the Parent's email, wherein the Parent requested the Student be evaluated for special education eligibility to the special education teacher.
9. On March 29, 2023, the school psychologist emailed the Complainant and principal, stating, in part, "The team must review both pre and post data to ensure that Tier 1 and Tier 2 interventions have been implemented for a sufficient amount of time, typically 6-8 weeks, before considering a special education evaluation."
10. On March 30, 2023, the District provided the Parent with a prior written notice that read, in

[REDACTED]

11. On March 30, 2023, the school psychologist emailed the Complainant and the principal, stating he had created "a FORMS link" for the Student's teachers to submit data on the



Student. Said email read, in part, "The...MTSS cycle usually takes around 8-10 weeks, and we will need to collect data during this time."

12.

[REDACTED]

13.

[REDACTED]

14.

[REDACTED]

15. According to the Complainant: an MTSS meeting was initially scheduled for April 6, 2023, but it got rescheduled to April 27, 2023; the Parent did not attend the April 27, 2023 meeting; at the meeting, a different District staff person informed the Complainant that the Parent had refused translation services<sup>3</sup>; at the meeting, (a) a social worker mentioned the family reported the Student suffered from "allergy attacks", but the Complainant "spoke up at the meeting"

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<sup>3</sup> According to the Complainant: the Student's first language was Spanish; and, Complainant clarified with the Student's family – after the April 27, 2023 meeting – that they had not refused translation services.

and stated this was a misinterpretation, and that the Student actually suffered from panic attacks, and (b) the Complainant shared reading and writing MAP assessment scores that "were low in the beginning of the year and dropped at mid-year."

16.

[REDACTED]

17.

[REDACTED]

18.

[REDACTED]

19.

[REDACTED]

20.

[REDACTED]

21.

[REDACTED]

[REDACTED]

22.

[REDACTED]

4

[REDACTED]

[REDACTED]

23.

[REDACTED]

**CONCLUSIONS**

**Issue 1: Referral Procedures** – The Complainant alleged the District did not follow proper referral procedures for the Student in spring 2023.

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5 [REDACTED]

Any person who is knowledgeable about the student may make a referral of a student suspected of having a disability. The request must be in writing, unless the person is unable to write and/or communicate verbally. 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.

Here, OSPI finds in some respects, the District did follow proper referral procedures; in other respects, though, the District did not follow proper referral procedures.

First, on March 20, 2023, the Parent emailed the Complainant, requesting the Student be provided with "IEP classes." On March 23, 2023, the Complainant forwarded a copy of the Parent's email to the special education teacher. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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6 [REDACTED]



[REDACTED]

[REDACTED]

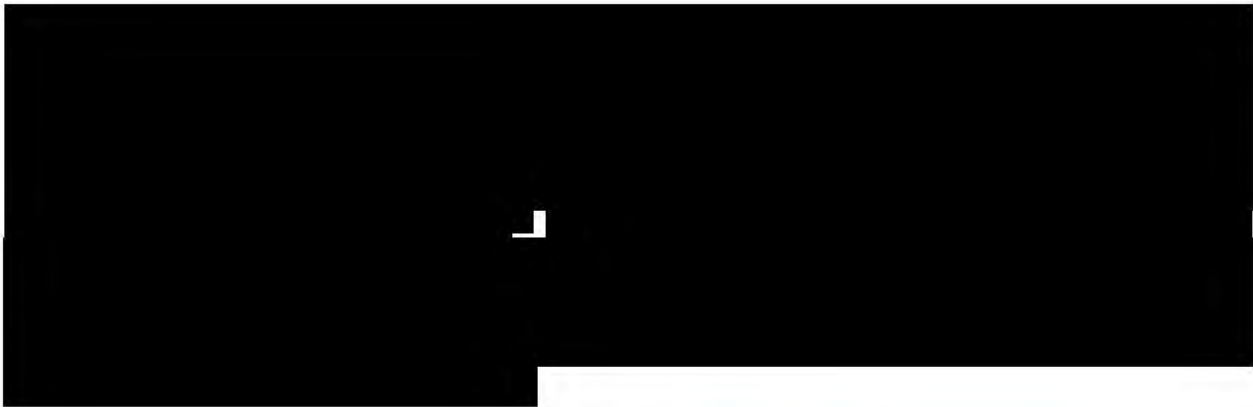
[REDACTED]

[REDACTED]

7 [REDACTED]

<sup>8</sup> 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.”

9 [REDACTED]



### **CORRECTIVE ACTIONS**

By or before **July 14, 2023, August 25, 2023, and September 11, 2023**, the District will provide documentation to OSPI that it has completed the following corrective actions.

#### **STUDENT SPECIFIC:**

##### **Collection of Data**

By or before **July 12, 2023**, the District will gather any and all WIDA and ELL matrix data, and any other data the referral team requires to properly determine whether the referral team suspects the Student of having a disability under the IDEA.

By or before **July 14, 2023**, the District will provide OSPI with a copy of all such relevant information.

##### **Referral Meeting**

By or before **September 8, 2023**, the referral team will gather all Student specific data gathered to-date, including the WIDE and ELL matrix information, and determine whether it suspects the Student of having a disability under the IDEA. Specifically, the referral team will determine whether it needs to conduct an initial special education evaluation of the Student.

By or before **September 11, 2023**, the District will provide OSPI will all a copy of all documentation relevant to said meeting, including the relevant prior written notice.

#### **DISTRICT SPECIFIC:**

##### **Training**

The District, in cooperation and collaboration with a non-District employee (e.g., the ESD or other trainer), will develop and conduct a training on the below topics. The District will provide the trainer with a copy of this decision, SECC 23-68.

The following District staff will receive training: the principal, assistant principal, special education certified staff (teachers), general education teachers who have students with IEPs in their classes, educational staff associates (ESAs), paraeducators, etc., at the Student's 2022–23 school. The training will cover the requirements of WAC 392-172A-03005, including (1) the requirement that the prior written notice documenting the referral group's determination must be provided to the parent within 25 school days; (2) response-to-intervention should not delay referral initial evaluation decisions; (3) student specific information relevant to the referral issue of whether a student is suspected of having a disability under the IDEA needs to be gathered within 25 school days; (4) any individual with knowledge of a student may make a special education referral; special education referrals are not limited to the parents of any particular student; and (5) a prior written notice must be provided in the native language of the parent.

The training will include examples.

By or before **July 14, 2023**, 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.

By or before **August 25, 2023**, the District will submit a draft of the training materials for OSPI to review. OSPI will approve the materials or provide comments by August 30, 2023.

By **September 11, 2023**, the District will conduct the training regarding the topics raised in this complaint decision.

By **September 11, 2023**, 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.

Dated this 30th day of June, 2023

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.)