

## **SPECIAL EDUCATION COMMUNITY COMPLAINT (SECC) NO. 23-82**

### **PROCEDURAL HISTORY**

On June 2, 2023, 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 Olympia 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 2, 2023, OSPI acknowledged receipt of this complaint and forwarded a copy of it to the District superintendent on June 6, 2023. OSPI asked the District to respond to the allegations made in the complaint.

On June 23, 2023, OSPI received the District's response to the complaint and forwarded it to the Parent on June 28, 2023. OSPI invited the Parent to reply.

On June 28, 2023, OSPI received the Parent's reply. OSPI forwarded that reply to the District on June 29, 2023.

On June 28, 2023, OSPI received additional information from the Parent. OSPI forwarded the additional information to the District on the same day.

On July 10, 2023, the OSPI complaint investigator requested the Parent provide additional information regarding this complaint. On July 19, 2023, the OSPI complaint investigator interviewed the Parent by phone.

On July 11, 2023, the OSPI complaint investigator requested the District provide additional information, and the District provided the requested information on July 12, 2023. OSPI forwarded the information to the Parent on July 12, 2023.

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

### **ISSUES**

1. In spring 2023, did the District follow proper initial evaluation procedures?
2. In spring 2023, did the District follow proper procedures for providing the Parent a copy of the procedural safeguards notice?

### **LEGAL STANDARDS**

Decision Whether to Conduct an Initial Evaluation: Following a written request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral and: notify the student's parents of the referral; 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. 34 CFR §300.301; WAC 392-172A-03005.

Notice of Procedural Safeguards: The notice of procedural safeguards must provide a full explanation of a student's rights related to: an independent educational evaluation (IEE); prior written notice; parental consent; access to education records; dispute resolution options and procedures; placement during a due process hearing; procedures for placement in an interim alternative setting; requirements for unilateral placement in private schools at public expense; civil actions; and attorneys fees. 34 CFR §300.504(c)w; WAC 392-172A-05015(3).

A copy of the procedural safeguards must be given to parents, at a minimum one time per school year and: the first time the child is referred or the parent requests a special education evaluation; the first time the parent files a community complaint or due process request in a school year; the first time the parent or the district files a due process hearing request during the year; on the date the district decides to make a disciplinary change of placement; or anytime the parent requests a copy. 34 CFR §300.504(a); WAC 392-172A-05015(1).

Notice of procedural safeguards must be in written language understandable to the general public and written in a parent's native language or, when appropriate translated orally so that the parent understands the notice. If the notice is provided orally to the parent, the district must maintain a written record of the translation. 34 CFR §300.504(d); WAC 392-172A-05015(4).

### **FINDINGS OF FACT**

1. At the start of the 2022–23 school year, the Student was not eligible for and had never been evaluated for special education services, was in the tenth grade, and attended a District high school.
2. The District's 2022–23 school year began on September 7, 2023.
3. On April 27, 2023, the Student's Parent referred the Student to the District's guidance team for a special education evaluation. The referral indicated that the Student's math teacher had concerns about the Student's ability to pass the second semester geometry course. The Student had not previously received special education services. The Parent made the special education referral through the District's website.
4. On May 5, 2023, the District sent the Parent a "Notification of Special Education Referral" document.
5. On May 8, 2023, the District sent the referral to the guidance team to begin reviewing the Student's records.
6. On May 9, 2023, the District sent the Parent an invitation to an "IEP referral" meeting, scheduled for May 23, 2023. The District included a copy of the procedural safeguards with the emailed meeting invitation as an attachment.

7. The District also sent a copy of the meeting invitation to the Parent by U.S. mail. The District included a copy of the procedural safeguards with the mailed invitation.
8. On May 22, 2023, the District held a meeting to discuss the review of existing school records for the Student. The District documented that the Parent did not attend the entire meeting, and that the Parent voiced disagreement with the District's assessment of the Student's needs.
9. The District's internal referral form indicated that the Student's standardized test results and grades in other courses showed the Student scored in the average range for reading and math skills, and was then passing their English class with a grade of A. The District noted that the Student had numerous absences from the geometry class in question. The Student's records indicated he received a grade of A in the fall semester, and a grade of A- in the spring semester of the 2021–22 school year in math class. As a result of this review of relevant data, the District concluded that the Student's academic struggles in geometry were more likely caused by their absences from the course. The District further observed that the Parent had not indicated other academic struggles for the Student, and that the Student was generally not attending their geometry class at the time.
10. On May 23, 2023, the District sent the Parent a prior written notice, documenting the District's finding that the Student historically performed well in all academic areas. The District determined that the Student's attendance was the most likely cause of the failing grade in the course and that the Student would benefit from attending class and participation in before and after school tutoring. The District declined to initiate an initial evaluation for special education.
11. The Student completed the 2022–23 school year with a grade of C in the geometry class.
12. On June 28, 2023, the Parent provided OSPI a reply to the District's response. In the June 28, 2023 email, the Parent acknowledged that the District had provided a copy of the procedural safeguards by email. The Parent partially objected to the District providing the procedural safeguard by email, observing that the District had no way to ensure that the Parent could receive or view the document by email.
13. On July 19, 2023, the OSPI complaint investigator interviewed the Parent. The Parent explained the various factors that led them to file this complaint. Many of those concerns were outside of the scope of the IDEA. The Parent acknowledged having received a copy of the procedural safeguards from the District, but stated she did not understand their significance in the special education context. The Parent reported having additional relevant data regarding the Student that supported their concerns for the Student's education and potential identification as a Student with a disability, and acknowledged that this information was not provided to the District when the Parent referred the Student for the special education evaluation.

## **CONCLUSIONS**

**Issue One: Decision Whether to Conduct an Initial Evaluation** – The Parent alleged that the District violated the IDEA when it failed to follow proper initial evaluation procedures. The Parent

alleged that the Student's academic progress was indicative of the Student's need for special education services. Following the Student's referral for evaluation, the Parent alleged that the District did not follow the appropriate process for the initial evaluation.

Following a written request for an initial evaluation to determine if a student is eligible for special education, a district must document the referral, and: notify the student's parents of the referral; 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.

On April 27, 2023, the Parent requested that the District evaluate whether the Student was eligible for special education services. The Parent's referral was based on the Student's lack of progress in geometry. However, importantly, there is no documentation that indicated anyone suspected, at that point, that the Student had a disability. On May 5, 2023, the District acknowledged the referral. On May 9, 2023, the District invited the Parent to a meeting, scheduled for May 23, 2023, to discuss the initial records in the District's possession. On May 23, 2023, the District sent the Parent a prior written notice, documenting the District's decision not to evaluate the Student based on the examination of the Student's records. During the interview with the OSPI investigator, the Parent acknowledged that additional relevant information regarding the Student was not provided to the District as part of the initial evaluation process. The District made the determination not to evaluate the Student, 18 days after the Parent's referral.

The evidence in the records supports that the District did collect and examine existing records in the District's possession, including academic, testing, and attendance records. The District completed the review of these records in less than 25 school days and made the decision to not initiate an initial special education evaluation. For these reasons, OSPI does not find a violation. However, OSPI recommends the District connect with the Parent regarding the additional information the Parent stated she had that may indicate the Student has a disability.

**Issue Two: Notice of Procedural Safeguards** – The Parent alleged that the District violated the IDEA when it failed to provide a notice of procedural safeguard following the Parent referring the Student for initial evaluation for special education. The Parent alleged that the District had to provide the notice of procedural safeguards in a form accessible to them, or in the alternative, in a legally required format.

A copy of the procedural safeguards must be given to parents, at a minimum one time per school year, and: the first time the child is referred or the parent requests a special education evaluation; the first time the parent files a community complaint or due process request in a school year; the first time the parent or the district files a due process hearing request during the year; on the date the district decides to make a disciplinary change of placement; or anytime the parent requests a copy.

In the complaint, the Parent alleged that the District did not provide them with a copy of the procedural safeguards. The record contains copies of emails and electronic meeting invitations sent to the Parent with a copy of the procedural safeguards attached. In reply to the District's

response in this complaint, the Parent acknowledged receiving the procedural safeguards via email, but alleged that the District had no way of ensuring the Parent could access the electronic copy of the procedural safeguards sent on May 9, 2023. The District reports having sent a copy of the procedural safeguards to the Parent by U.S. mail on May 10, 2023, in addition to emailed versions. The record in this case includes evidence that the Parent submitted the special education referral to the District through the District's website. The Parent also communicated with the District and OSPI by email, responding to records received electronically.

The evidence in the records supports that the District did provide the Parent with a copy of the procedural safeguards after the Parent referred the Student for evaluation for special education. While the Parent alleged that the District could not be assured that the Parent could access electronic documents, the record included evidence of the Parent accessing the District's website and communicating with the District by email, indicating the Parent likely could access the emailed procedural safeguards. Furthermore, the District documented having sent the Parent the procedural safeguards by U.S. mail also. For these reasons, OSPI does not find a violation.

### **CORRECTIVE ACTION**

#### **STUDENT SPECIFIC:**

None.

#### **DISTRICT SPECIFIC:**

None.

### **RECOMMENDATION**

The Parent reported having additional relevant data regarding the Student to support their concerns for the Student's education and potential identification as a Student with a disability and acknowledged that this information was not provided to the District when the Parent referred the Student for the special education evaluation. OSPI recommends the District connect with the Parent regarding this additional information.

Dated this 28th day of July, 2023

Dr. Tania May  
Assistant Superintendent of Special Education  
PO BOX 47200  
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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.)