



May 26, 2021

Patrick Dubbs, Superintendent
Wayne Local Schools
659 Dayton Rd
Waynesville, OH 45068

RE: Complaint #CP 0035-2021, Findings Letter

Dear Superintendent Dubbs:

After reviewing the information regarding the complaint concerning [REDACTED], (Student) the Office for Exceptional Children has determined the following:

Issue:

The Parent alleges the District “denied” her March 16, 2021 request for an independent educational evaluation (IEE) at public expense and did not request a due process hearing to show that its evaluation was appropriate. These are alleged violations of 34 C.F.R. 300.502 (b)(1) and (2).

Facts:

The Education Program Specialist (EPS) assigned to the complaint reviewed and considered all documentation and information submitted by both parties. Based on that review, the following facts were determined:

1. The most recent evaluation team report (ETR) was conducted on December 7, 2018 by the Student’s previous district of residence. The Student was determined eligible for special education and related services in the category of Specific Learning Disabilities (SLD).
2. The District submitted a “Transfer [individualized education program] IEP/Service Plan” form and “Meeting Notes” from an August 20, 2020 “move-in meeting.” These forms stated the District “accepted the ETR” and the IEP from the prior district with changes to goals 1 and 2.
3. An August 14, 2020 email from the School Psychologist to the Parent stated a meeting was scheduled for August 20, 20220 to review the Student’s “current ETR/IEP and address any needs or concerns for the upcoming school year.”
4. On January 6, 2021, the Special Education Coordinator emailed the Parent stating the District offered “the option of the school district to conduct a reevaluation of needs. [The Student] will be due for this reevaluation of needs by December 2021.” The email further stated after a reevaluation, a new IEP would be written with updated data.
5. On February 4, 2021, the Parent responded to the above email stating the Student “is not due for an evaluation for almost another year” and the IEP transferred from the Student’s previous district of residence “supports her needs as identified during her most recent and active evaluation.”
6. On March 13, 2021, the Parent emailed the building Principal and the Special Education Coordinator and stated, “I am writing to inform you of my request for an Independent Educational Evaluation at [the District’s] expense. Please tell me in writing of the criteria under which the independent evaluation must be conducted...”
7. On March 16, 2021, the District’s Attorney responded to the Parent’s request for an IEE as follows:

- a. The Attorney cited the Ohio Administrative Code (OAC) at 3301-51-05(G)(2), Independent educational evaluation, Parent right to evaluation at public expense.
 - b. "We previously discussed this rule during the mediation process. As [the District] has not yet had an opportunity to conduct an evaluation of [the Student], there is no evaluation with which you may disagree under this Rule. As such, the district will not be granting your request to an IEE."
8. On March 16, 2021, the Parent responded via email stating "the state clarified that when a student enters a new school district that the new district is to accept the previous school's ETR or complete their own...Since we are almost through the end of the year and your team has implemented an IEP using the ETR they received from [the prior district] and haven't conducted their own ETR, isn't that indication of the school's acceptance of the [prior district's] ETR?"
 9. A March 16, 2021 prior written notice contained the following information:
 - a. The notice was a response to the Parent's request for an IEE.
 - b. The Parent requested an IEE. "The district refuses the request for an Independent Educational Evaluation because the district has not conducted its own evaluation. The parent must disagree with the District re-evaluation before requesting an IEE."
 10. On March 17, 2021, the Special Education Coordinator emailed the Parent stating the District would contact the Parent to "schedule a planning meeting to proceed with a district re-evaluation." This email also contained an attachment of the March 16, 2021 prior written notice.
 11. The District did not submit documentation regarding a request for a due process hearing to prove the ETR was appropriate.
 12. An April 9, 2021 prior written notice contained the following information:
 - a. The notice was a response to the Parent's request for an IEE.
 - b. The District agreed to "work with the parent to obtain" an IEE and provided information on where an IEE could be obtained, as well as the District's criteria.
 - c. Under an explanation of the action proposed, the notice stated:
 - i. The Parent requested an IEE for Student on March 13, 2021.
 - ii. The District initially denied the request, because Parent did not state she disagreed with an evaluation completed by the District.
 - iii. The Parent had "expressly agreed to the ETR" which was completed by the prior district and adopted by the District on August 20, 2020.
 - iv. After correspondence with the Parent and the Department, the District agreed to the IEE.
 13. The District submitted a copy of an April 15, 2021 service contract for an IEE provider.

Finding:

The District is in violation of 34 C.F.R. 300.502 (b)(1) and (2) [Independent educational evaluation]. Under this section, a parent has a right to an IEE at public expense if the parent disagrees with an evaluation obtained by the district. If a parent requests an IEE, the district must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate or ensure that an IEE is provided at public expense. Here, the Student transferred from another district at the start of the 2020-2021 school year. On August 20, 2020, the District accepted the 2018 ETR conducted by the prior district, rather than conducting its own evaluation. At that point, the 2018 ETR became the District's ETR. On March 13, 2021, the Parent requested an IEE. On March 16, 2021, the District responded to the Parent's request via email and a prior written notice stating the District would not grant the IEE request. The District did not file a request for a due process hearing. Therefore, the District is in violation of this section.

Corrective Action for all Issues:

The documentation submitted demonstrated the District initially declined the IEE without filing due process. However, as of April 9, 2021, the District granted the IEE request. Therefore, the District corrected the violation with respect to the Student. Additional corrective action is required as follows:

1. The District will draft a memorandum regarding IEE requests and the requirements under 34 C.F.R. 300.502. Specifically, the memorandum must clarify the following:
 - a. When the District adopts an ETR from another district, it becomes the District's ETR.
 - b. When a parent requests an IEE, the District has only two options:
 - i. Grant the IEE; or
 - ii. File a request for due process to prove the ETR is appropriate.
 - c. The District may ask for a parent's reason why he or she objects to the district's evaluation, but the district may not require the parent to provide an explanation and may not unreasonably delay either providing the IEE or filing due process (see 34 C.F.R. 300.502(b)(4)).
2. **June 18, 2021:** A copy of the above memorandum must be provided to the OEC for approval, prior to dissemination.
3. **August 13, 2021:** After OEC's approval of the memorandum, the District will distribute this to all special education coordinators and intervention specialists. Each staff member must review, and sign that they have reviewed the memorandum. A copy of the memorandum acknowledgement with each staff member's name, title, signature and the date of review must be provided to the Department.
4. **August 13, 2021:** The District will reconvene the IEP team to discuss the results of the IEE. Following the meeting, the District will submit to the Department a copy of the parent invitation, prior written notice and the IEE report that was considered.

The District's final corrective action is due by **August 13, 2021**.

Please submit all corrective action by the above due dates to the Office for Exceptional Children, attention Heather Clingerman. Please reference the complaint number on all correspondence. We appreciate your cooperation in the resolution of the complaint investigation.

Sincerely,



Heidi Kleinman
Assistant Director, Dispute Resolution
Office for Exceptional Children

cc: [REDACTED], Parent
Marcia Booher, Special Education Director
Tabitha Justice, Attorney for District
Heather Clingerman, Education Program Specialist